



Process Solutions • Fabrication Innovation

## **PURCHASE ORDER TERMS AND CONDITIONS**

### **1.0 ACCEPTANCE**

Any acceptance of this purchase order, ("Order") is limited to acceptance of the express terms contained herein. No prior or current course of dealing, usage of trade or custom of the industry or printed form of Seller, such as billing invoice, bill of lading or packing list, shall modify or supplement the terms of the order. No amendment, alteration, modification, or waiver of the terms of this Order shall be valid or enforceable unless in writing and signed by the party sought to be charged. Commencement of work or shipment of any part of the good covered by this Order constitutes acceptance of all its terms and conditions.

### **2.0 AGREEMENT**

Prior courses of dealing and performance and trade usage and verbal agreements not reduced to a writing signed by W. Soule, to the extent they differ from, modify, add to or detract from the terms herein, shall not be binding on us. This Purchase Order and any accompanying documents embodies the entire agreement and understanding between Seller and W. Soule and supersedes all prior agreements and understandings relating to the subject matter hereof, whether oral or written.

### **3.0 IDENTIFICATION AND INVOICING**

The order number must appear on every document or communication relative hereto. A packing slip must accompany each shipment. Seller shall render an invoice electronically or induplicate original for each shipment or service applying against this Order. Invoices with bills of lading or prepaid expense bills attached, shall be directed to the billing address as listed in the documentation and accompanying this Order ("Documentation") unless otherwise specified. Invoices shall not cover more than one Order and must show cash discount terms. Buyer reserves the right to calculate the applicable discount period based on the terms agreed to by the parties. All electronic transmissions made pursuant to this order shall be deemed by the parties to be the same as written communications for all purposes and for all applications of law (including any applicable statute of fraud).

### **4.0 SHIPPING INSTRUCTIONS**

All goods shall be shipped freight prepaid, F.O.B. destination, unless otherwise stated in the Documentation. Shipments shall be routed or shipped as specified in the Documentation or where not specified via the least expensive method to meet Buyer's delivery time and requirements as specified in the Documentation. W. Soule count of the goods will be final as to all shipments not accompanied by a packing slip. Notwithstanding the use of any F.O.B. or other term on the face of this Purchase Order to the contrary, Seller assumes all risk of loss of the goods until the goods are fully received at their destination.

### **4.0 DELIVERY**

Delivery times specified are of the essence and are for delivery at W. Soule's designated destination. Seller will promptly inform W. Soule of any occurrence which will, or is expected to, result in a delivery at any time or in any quantity not specified in this Purchase Order. Unless W. Soule has given Seller an extension of time in writing, W. Soule may reject and/or return, at Seller's expense and risk of loss, any delivered or tendered delivery of goods that are received after any specified delivery date. W. Soule's acceptance of goods or services delivered or performed after the scheduled delivery date will not waive W. Soule's right with respect to such late delivery nor shall it constitute a waiver of future compliance with the terms hereof.

#### **CORPORATE OFFICE**

P.O. Box 2169 (49003) | 7125 S. Sprinkle Road | Portage, MI 49002  
(269) 324-7001 | Fax (269) 324-7950  
[www.wsoule.com](http://www.wsoule.com)

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## **5.0 INSPECTION/REJECTION**

Goods are subject to Buyer's inspection and approval at destination to ensure compliance with the specifications of this Order. Buyer may reject goods for noncompliance and such goods shall remain the responsibility of Seller and any expenses incurred shall be before Seller's account. Title to goods shall pass to Buyer upon delivery of conforming goods.

## **6.0 TAXES**

Buyer shall pay state and local sales or use taxes or provide an exemption certificate to Seller. Seller shall pay all other taxes which may be levied or become due as a result of this transaction.

## **7.0 ASSIGNMENT**

Seller shall not assign or subcontract any performance of this Order, including any right to payment, without Buyer's prior written consent.

## **8.0 DEFAULT**

Buyer may, subject to the provisions of paragraph 9.0, by written notice to Seller, cancel all or any part of this Order or exercise any other remedy provided by law or in equity, if:

1. Seller fails to deliver the goods or perform services within the time specified therefore;
2. In Buyer's good faith judgment, Seller fails to perform any of the other provisions of the Order, or fails to make progress so as to endanger performance of this Order in accordance with its terms, and doesn't cure such failure within a period of ten days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure;
3. Seller is in breach of any of the terms or conditions of this Order; or
4. Seller becomes insolvent or makes an assignment for the benefit of creditors, or there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law.

## **9.0 REMEDIES**

If Buyer cancels this Order in whole or in part as provided in paragraph 8.0, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods or services similar to those cancelled and Seller shall be liable to Buyer for any excess costs for such similar goods and services. Seller shall continue the performance of this Order to the extent not cancelled.

## **10.0 FORCE MAJEURE**

No failure in performance of any obligation or any obligation assumed hereunder by either party shall be deemed a Breach of this Order if the same arises from any cause beyond the reasonable control of such party.

## **11.0 WARRANTIES**

Subcontractor warrants its' work against all deficiencies and defects in materials and/or workmanship and agrees to satisfy same without cost to Owner or Contractor for a period of two (2) years from the date of substantial completion of the Project or per Contract Documents whichever is longer. Seller warrants that all goods manufactured and supplied by Seller and all services performed by Seller under this Order shall conform to applicable specifications, drawings, samples and descriptions. Seller also warrants that all goods and the results of services performed shall be free and clear of all liens, claims, charges or encumbrances of every kind. All goods delivered under this Order shall be new and comply with all applicable laws rules and regulations.



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## **12.0 INFRINGEMENT**

Seller warrants that Buyer's purchase, manufacture, installation, use and/or resale of the good covered hereby will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right or any claim of misappropriations of third party proprietary rights, e.g., trade secrets. Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including reasonable attorney fees, arising from or out of any breach of the foregoing warranty.

## **13.0 INDEMNIFICATION/LIABILITY**

Seller agrees to defend, indemnify and hold Buyer harmless:

1. From any cause of action, demand, claim liability, loss or expense of every kind an nature, including attorney's fees for any injury to or death of persons (including employees of buyer) or damage to property (including Buyers) incident to or arising from or alleged to arise from the design, manufacture, production or use of the goods described herein or services provided hereunder, except those proximately caused by Buyers sole negligence and from all liability or expense arising from violations by the Seller of any applicable laws, rules and regulations concerning the manufacture, sale, price and delivery of the goods or services provided for herein.
2. Seller is solely liable for the acts and omissions of its employees, agents, contractors, subcontractors and will defend and protect Buyer from all losses, claims, expenses and damages, including attorney's fees, arising from or out of the presence of activity of Seller's personnel while at Buyers premises.
3. In no event shall either party be liable for punitive, indirect, incidental, or consequential damages suffered by the other party.

## **14.0 INSURANCE**

In the event that Seller is providing labor and/or delivering materials to a W. Soule & Co. facility or project site, Seller shall purchase and maintain all insurance required by Contractor in the Subcontractor prequalification process, and in Exhibit A of this document, that will protect it from claims arising out of its operations under this Agreement, whether the operations are by the Seller, or any of its consultants, Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts, any of them, may be liable. Seller shall name as additional insureds on its insurance policies for all purposes, including completed operations coverage, for the period required by the Contract Documents: the Contractor; Owner; any party identified as an indemnified party in the Contract Documents; and anyone the Contractor is required to name as an additional insured in the Contract Documents.

## **15.0 TRUCKING/CARGO**

If applicable Seller/Subcontractor shall maintain Motor Truck Cargo Liability Insurance, as indicated in Exhibit A of this document, covering Seller/Subcontractor to cover loss of or damage to any W. Soule & Co. owned, leased, or rented property/cargo whether in transit or under the Seller/Subcontractor's care and or custody. Policy limits need to equal the value or replacement cost of the matter insured. Subcontractor needs to comply with Federal and State Regulations and provide the MCS-90 endorsement. Certificate to be issued without tariff clause.

## **16.0 CONFIDENTIALITY**

This order is confidential between the Buyer and Seller. Seller shall not publish or disclose any details concerning this Order to any third party without Buyers prior written consent.



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### **17.0 SEVERABILITY**

In the event any one or more of the provisions of this Order shall for any reason be held invalid, illegal, or unenforceable, the remaining provisions of this Order shall be unimpaired.

### **18.0 GOVERNING LAW**

This order shall be governed and construed for all purposes under and in accordance with the laws of the State of Michigan, except for any such law that would apply the law of other jurisdictions.

### **19.0 AUDITS**

If any part of the payment provided for hereunder is to be made on the basis of Seller's costs or other flexible billing basis, Seller agrees to:

1. Maintain such books and records for a period of 7 years from the date such costs were incurred and
2. Make such books and records available to Seller for audit at any reasonable time or times within said Seven (7) year period.

### **20.0 WAIVER**

Any failure of the Buyer to insist upon strict performance of any of the terms of this Order, or to exercise any rights here under, shall not be construed as a waiver of Buyers rights.

### **21.0 COMPLIANCE WITH LAW**

The Seller agrees to comply with Federal, state and local tax laws, social security acts, unemployment compensation acts, equal employment opportunity acts, and workers' compensation acts insofar as applicable to the performance or delivery of this Purchase Order.

### **22.0 TERMINATION**

W. Soule reserves the right to terminate this Purchase Order or any part hereof (i) for our sole convenience and (ii) for cause if Seller fails to comply with any of the terms herein, including without limitation, late deliveries or deliveries of products which are defective or which do not conform to this Purchase Order. In the event of such termination for convenience, Seller shall (i) immediately stop all work hereunder and shall immediately cause Seller's suppliers or subcontractors to cease such work , (ii) to be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination and (iii) not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Any claim by Seller for payment of the termination charge provided for hereunder shall be deemed waived unless asserted in writing to W. Soule within fifteen (15) days after receipt by Seller of the notice of termination. In the event of termination for cause, W. Soule shall not be liable to Seller for any amount.

### **23.0 ENVIRONMENTAL HEALTH & SAFETY**

If Seller's work under this Order requires Seller to be on the premises of Purchaser or at Purchaser's direction, Seller shall establish an Environmental, Health & Safety program implementing measures, policies and standards conforming to (1) those required or recommended by governmental and quasi-governmental authorities having jurisdiction and (2) requirements of the Purchaser. Seller will comply with procedures and policies established by Purchaser or site Owner related to safety, security, access, working hours, drug-free workplace, etc., at and assumes responsibility for all Environmental, Health & Safety requirements related to the Sellers work. The Seller shall notify Purchaser supervision of any incident, relating to the Seller's work, involving people, property or environment immediately. A formal incident report shall be submitted to Purchaser within 24 hours.



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In accordance with 29CFR 1910.1200, please forward the most current Safety Data Sheet for each element, chemical, chemical compound and chemical mixture named in this order, to be received prior to first material shipment.



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## Insurance Requirements “Exhibit A”

Before mobilization on site or commencing the work, the Subcontractor(s) shall procure and maintain at their own expense, all insurance of the type and having coverage limits in the amount required, including completed operations under the W. Soule & Co. contract, and Owner Terms and Conditions. The Contractor does not represent that any of the below listed policies, coverages or limits of protection are adequate to satisfy the interests of the Subcontractor. It shall be the obligation of the Subcontractor to determine if coverage under Section’s E - H are in effect and satisfactory for the risk management goals of the Subcontractor.

### **A. COMMERCIAL GENERAL LIABILITY INSURANCE** including but not limited to the following coverage:

1. Premises / Operations Liability.
2. Explosion, Collapse and Underground Hazards Included.
3. Products / Completed Operations Hazards Included.
4. Contractual Liability Coverage Included.
5. Personal Injury Liability.
6. The Limits of Insurance shall be at least as follows:
  - \$2,000,000 General Aggregate Limit (Other than Products/Completed Operations)
  - \$2,000,000 Products/Completed Aggregate
  - \$1,000,000 Personal and Advertising Injury Limit
  - \$1,000,000 Each Occurrence Limit

### **B. BUSINESS AUTOMOBILE INSURANCE** with these policy coverages:

1. Owned Vehicles
2. Hired Vehicles
3. Non-Owned Vehicles
4. Each of the above listed coverages shall provide coverage in the following minimum limits:
  - \$1,000,000 Bodily Injury & Property Damage each accident

### **C. WORKERS COMPENSATION & EMPLOYERS LIABILITY INSURANCE**

1. Statutory Workers Compensation Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. In the event that the work of this contract falls within the purview of the United States Longshoremens’ and Harbor Workers’ Compensation Act, The Jones Act or the Federal Employer’s Liability Act, the Subcontractor(s) shall extend coverage to provide and maintain in full force and effect during the period covered by this subcontract, insurance against the liability imposed under either or both of these Acts as applicable, including Sole Proprietors and Corporate Officers performing work on site, \$1,000,000.00 (or Statutory Minimum).
2. Employers Liability Coverage minimum of \$1,000,000.00 each accident including Occupational Disease.

### **D. EXCESS or UMBRELLA LIABILITY INSURANCE**

1. Excess or Umbrella coverage is to be excess over Section A, Section B and Employers Liability in Section C as identified above or per Owner requirements \$5,000,000.

#### **CORPORATE OFFICE**

7125 S. Sprinkle Road | Portage, MI 49002  
(269) 324-7001 | Fax (269) 324-7950  
www.wsoule.com

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#### **E. TRUCKING/CARGO**

1. If Subcontractor is providing trucking/hauling services, Subcontractor will maintain Motor Truck Cargo Liability Insurance covering Subcontractor for loss of or damage to any W. Soule & Co. owned, leased, or rented property/cargo whether in transit or under the Subcontractors care and or custody. Policy limits need to equal the value or replacement cost of the cargo/matter insured. Subcontractor needs to comply with Federal and State Regulations and provide the MCS-90 endorsement if transporting hazardous waste. Certificate is to be issued without tariff clause.

#### **F. PROFESSIONAL LIABILITY**

1. If the scope of work requires design, engineering or professional services, "Professional Liability (Errors & Omissions) Insurance, in an amount not less than \$1,000,000 per claims made or otherwise specified if Owner requirements are greater, for damages caused by any act or omission of Subcontractor, or of any other person for whose acts or omissions Subcontractor may be liable arising out of the performance of services in a professional capacity. If Subcontractor should terminate such coverage at any time before three (3) years or Owner requirement after acceptance or termination of Subcontractor's Work, Subcontractor shall provide evidence of continuing coverage in the required limits or obtain extended reporting period coverage ("tail cover"), for a period of not less than three (3) years or Owner requirement from Subcontractor's last services. Subcontractor agrees to furnish a copy of the Professional Liability policy on request.

#### **G. ENVIRONMENTAL/POLLUTION LIABILITY**

1. If the scope of work requires remediation, abatement, the handling of hazardous or toxic substances, or exposure to causing a pollution event, Pollution / Environmental Liability in the amount of \$1,000,000 each claim, aggregate or otherwise specified if Owner requirement is greater. The coverage shall remain in effect for not less than 3 years following completion or as Owner contract documents dictate. Please see Trucking/Cargo (E) if transporting hazardous waste.

#### **H. INSTALLATION FLOATER/BUILDERS RISK/RESPONSIBILITIES FOR PROPERTY INSTALLED OR BEING INSTALLED**

1. If the scope of work requires equipment or materials that are to be permanently installed, an Installation Floater policy shall be required with limits to reflect the contract value and/or the value of any equipment in your care, custody and control. In the event of loss or damage to Subcontractor's equipment, material or contract works during the course of construction; Subcontractor hereby agrees to first seek recovery from its own property insurance coverage if applicable. In cases of claims paid by Owners or Contractors Builders Risk Insurance coverage, Subcontractor is responsible for payment of any deductibles applied to insured losses under those policies, which arise from Subcontractor's work.

Before commencing work, the Subcontractor shall furnish a certificate in the ACORD format from all insurance companies confirming that the above required insurance is in force stating policy numbers, date of expiration, and coverage thereunder. Said certificate should state W. Soule & Co. as Certificate Holder and that such insurance is in effect for any and all work performed under contract to W. Soule & Co., and further that W. Soule & Co., the Owner and any entity listed is an additional insured (except for Professional Liability and Workers Compensation) for any and all work performed under contract to them and that such coverage is on a primary and non-contributory basis. Further, it is a requirement of this subcontract that any/all additional insureds be protected to the full limits carried by Subcontractor, not just to those required by this subcontract. Waivers of Subrogation are necessary in favor of W. Soule & Co. and the Owner. Subcontractor will attach to its certificate a copy of its General Liability policy endorsement under which W. Soule & Co., Owner or any party to be indemnified is added as an additional



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insured, utilizing ISO forms CG 2033 and 2037 or their acceptable equivalents. It is also agreed that all policies provide a thirty (30) day notice of cancellation or reduction in and/or elimination of protection otherwise provided under these policies to W. Soule & Co..

If the Subcontractor fails to procure and maintain such insurance(s), W. Soule & Co. shall have the right to procure and maintain the said insurance(s) for and in the name of the Subcontractor and the Subcontractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance(s). At the option of W. Soule & Co. the cost of said insurance(s) purchased by W. Soule & Co. for the Subcontractor shall be deducted from any amounts then due or which would thereafter become due to the Subcontractor under this or any other contract between W. Soule & Co. and the Subcontractor.

Certificate Holder:  
W. Soule & Co.  
7125 S. Sprinkle Rd.  
Portage, MI 49002

Certificate shall be submitted through the W. Soule & Co. prequalification portal:  
[www.wsoule.com/subcontractors](http://www.wsoule.com/subcontractors)

Questions can be directed to: [prequalification@wsoule.com](mailto:prequalification@wsoule.com)

