

PURCHASE ORDER
ADDITIONAL TERMS AND CONDITIONS

1. REQUIREMENTS. Seller agrees and warrants that the material and equipment to be provided shall be in strict accordance with this Purchase Order and the Project Contract Documents for the Job, which include but are not limited to, plans and specifications, general and special conditions, schedules, shop drawings, change orders, and this Purchase Order and any revisions, supplements or addenda thereto, all of which, including this Purchase Order are collectively herein referred to as the "Project Contract Documents", and which are incorporated herein by reference and have been made available or will be made available to Seller upon request. In case of conflict between or among the Project Contract Documents, the most stringent shall govern and be controlling.
2. PRICE INCLUSIVE. The price includes delivery of all materials F.O.B. job site, freight and cartage prepaid, and at job locations Hemingway Chimney will indicate, unless this Purchase Order specifies otherwise.
3. NO MODIFICATIONS. It is a condition of this Purchase Order that any provisions printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this Purchase Order, shall have no force or effect, and that Seller by such acknowledgment thereby agrees that any such provisions therein or any such alterations in this order shall not constitute any part of this Purchase Order. This Purchase Order contains the entire agreement of the parties, and failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights.
4. PRICE IS FIRM. Prices in this Purchase Order are firm and are not subject to increase.
5. SCHEDULING. Hemingway Chimney's schedules are based upon the agreement that the goods will be delivered to or as directed by Hemingway Chimney by the dates specified on the face of the Purchase Order or as ordered for release. Time of delivery is therefore of the essence and if the goods are not delivered in the quantities and within the time specified hereon, Hemingway Chimney may, in its sole discretion, reject such goods and cancel this Purchase Order, and in any event may affect cover. All costs necessary to remove and/or replace any missing or defective materials shall be the responsibility of the Seller.
6. SELLER'S INDEMNITY. Seller will indemnify, hold harmless, and defend Hemingway Chimney from all liability for loss, damage, or expense, including costs and reasonable attorneys fees, in any manner arising out of or incident to the Seller's failure to perform its obligations strictly in accordance with the terms of this Purchase Order.
7. NO ASSIGNMENT. Seller shall not delegate or assign any duties or claims under this Purchase Order without Hemingway Chimney's prior written consent. All claims for moneys due or to become due from Hemingway Chimney shall be subject to deduction by Hemingway Chimney, for any setoff or counterclaim arising out of this or any other of Hemingway Chimney's Purchase Orders with Seller, whether such setoff or counterclaim arose before or after any such claim against Hemingway Chimney.
8. CANCELLATION AND MODIFICATION. Hemingway Chimney reserves the right at any time and from time to time without cause, to cancel, modify or suspend all or any part of the undelivered portion of this Purchase Order by notice to Seller. In the event of such cancellation, modification or suspension, Hemingway Chimney shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Hemingway Chimney's right to terminate this purchase order for default of Seller.
9. TERMINATION. Upon the happening of any one or more of the following events, Hemingway Chimney shall forthwith have the unrestricted right to cancel and terminate this Purchase Order without cost or liability to Hemingway Chimney: (1) Seller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (3) institution of legal proceedings against Seller by creditors or stockholders; (4) appointment of a receiver for Seller by any court of competent jurisdiction.
10. PROJECT CONTRACT DOCUMENTS BINDING. Seller agrees to be bound by the terms and conditions of the Project Contract Documents. All Project Contract Documents are available for Sellers review at Hemingway Chimney's home office. If the Project Contract Documents require Seller to be approved, then this Purchase Order is conditioned upon the receipt of such approval from the proper entity and shall not be binding on Hemingway Chimney until so received.

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11. WORK AT SITE. All drawings, prints, samples, tests, and reports, if and as required by the Contract Documents, shall be supplied by Seller without charge. When this Purchase Order includes delivery, installation, or work at site:
- a) All work, whether on or off site, shall be done by Union Labor in strict accordance with union regulations.
 - b) The proper type of labor shall be employed to the end that there shall be no strikes, stoppages, or slowdowns,
 - c) Certificates of insurance satisfactory to Hemingway Chimney, including, but not limited to auto liability insurance covering all vehicles, must be furnished before work may be started or delivery commenced.
 - d) Seller assumes full liability for all taxes, including but not limited to sales, use, property, social security, unemployment, disability, income, withholding, etc., now or hereafter imposed by federal, state, or municipal governments, or any subdivision thereof.
 - e) Seller shall provide all required closeout documents including, but not limited to, warranties and guaranties. Warranties and guaranties shall be in effect for the durations indicated in the Contract Documents.
 - f) Seller shall assume the entire liability and responsibility for all claims of bodily injury, (including death), and property damage, arising out of, connected with or related to Seller's delivery, installation or work at the site, except as the same may be caused by the acts or omissions of Hemingway Chimney, and Seller shall indemnify and hold Hemingway Chimney harmless from and against any such claims, waiving any limitation on Seller's liability contained in the Worker's Compensation Act for claims made by its employees who may be injured at the site.
12. PATENTS. Seller guarantees control of all patented devices, processes, materials, and equipment, used in performing or filling this Purchase Order, and Seller shall defend and indemnify Hemingway Chimney, the general contractor, and the owner against all suits, damages, and claims arising from the use of same at any time, and shall pay all costs, expenses, and judgments in connection therewith.
13. SELLER'S ASSURANCES. Seller shall furnish affidavits and instruments certifying that payment has been made for all labor, materials, and services furnished in the performance or filling of this Purchase Order, releases and indemnities as required at the time for payment, and written guarantees with respect to the labor, materials, and services supplied by Seller. These documents shall be in such form and substance as Hemingway Chimney may require. Seller's billings and invoices shall be subject to ten (10%) percent retainage. Except in the event of Hemingway Chimney's unjustified and wrongful refusal to pay sums due to Seller, Seller agrees not to file any claim for lien under the Illinois Mechanic's Lien Act against the Project, the Owner, the sums remaining due from Owner to Contractor, or on or against any payment bond under which Hemingway Chimney or the General Contractor is obligor.
14. RECIPROCAL OBLIGATIONS AND CONDITIONAL PAYMENT. Any provision hereof to the contrary notwithstanding, Hemingway Chimney's obligation to make any payments to Seller shall be expressly subject to and conditional upon Hemingway Chimney's receipt of funds therefore from the owner or general contractor, the receipt of such funds by Hemingway Chimney being an express condition precedent to Hemingway Chimney's obligation to make any payments to Seller.
15. CONDITIONS TO CLAIMS. All claims, extras, or damages asserted by Seller under this Purchase Order shall be subject to all the conditions and restrictions governing the assertion by Hemingway Chimney thereof in the Project Contract Documents.
16. QUALITY. Materials and equipment delivered (whether paid for or not) are subject to inspection, testing, and approval before acceptance. Seller expressly warrants that all goods will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that they will be new, of good quality, merchantable and free from defects. Since Seller has been advised of the proposed use of the materials and equipment to be furnished, Seller further warrants that they will be fit for the purposes intended. In addition, all such materials and equipment shall be Underwriters Laboratory rated. These warranties shall survive any inspection, delivery, acceptance, or payment by Hemingway Chimney. Seller (and the

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materials to be furnished) shall comply with all applicable federal, state and local laws and with all applicable rules, regulations and orders issued thereunder.

17. NON-CONFORMITY. All materials and equipment not fully up to standard and not in compliance with the requirements hereof or allegedly violating any statute ordinance, or administrative order, rule, or regulation, may be rejected by Hemingway Chimney and returned or held at Seller's expense and risk. Hemingway Chimney shall have the right, if it deems itself in good faith to be insecure as to Seller's ability to conform to or perform its obligations under this Purchase Order, to demand and receive from Seller adequate assurance of Seller's ability and willingness to perform its obligations hereunder.
18. TIME OF ESSENCE. The time of delivery of material and equipment and performance of labor at any time or times specified are of the essence of this Purchase Order. Deliveries are to be made at the place, in quantities and at times specified in instructions set forth herein or in the written instructions which may from time to time be furnished by Hemingway Chimney.
19. PRODUCT LIABILITY INSURANCE. By accepting this Purchase Order or furnishing material and equipment specified herein, Seller agrees that there is now in full force and effect and will be continuously in effect at Sellers' cost and expense, one or more insurance policies providing product liability insurance coverage to Seller with a combined single limit of not less than \$_____, and that such policy or policies, or replacements therefore will be kept and maintained in full force and effect until Seller's obligations hereunder have been completed and for a period of three years thereafter. Copies of such policies shall be furnished to Hemingway Chimney from time to time upon Hemingway Chimney's request. If the foregoing blank is not completed, then the number shall be deemed to be \$1,000,000.00.
20. ENTIRE AGREEMENT. This Purchase Order constitutes the entire and complete agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and shall be governed by, construed and enforced in accordance with the laws of the State of Illinois without regard to conflicts of law principles. No representations, understandings, or agreements have been made or relied upon in the making or acceptance of this Purchase Order other than those specifically set forth herein.
21. MISCELLANEOUS. No change, modification or waiver of any term hereof shall be valid unless it is in writing and signed by both Hemingway Chimney and Seller. The headings have been inserted for convenience only and are not to be considered when interpreting the provisions of this Purchase Order. This Purchase Order may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument and facsimile signatures shall be considered the same as originals.
22. PREVAILING WAGES. If this Project is included in the definition of "Public Works" set forth in the Illinois Prevailing Wage Act, then it is stipulated that not less than the prevailing rate of wages shall be paid to all laborers, workers and mechanics performing work under this Purchase Order. Subcontractor shall cause the forgoing sentence to be inserted into each lower tiered subcontract.