

Resilient Elements Co.

QUOTATION/PURCHASE ORDER

Job Name and Location: Pedestrian Overpass Structure SR 92 and Digital Drive, Lehi, Utah

Owner and Bid Documents No.: UTA Tiger First/Last Mile Program Project LEH_OP_1

Applicable Project Specifications and Plans: Civil Science 100% Plans and Specs with MSE Wall Layouts and Qty Tables

The Reinforced Earth Company (RECo) offers to furnish Materials in accordance with the Project Specifications and Plans identified above at the Purchase Order Price, and subject to the terms and conditions set forth in the executed Quotation/Purchase Order and the attached General Terms and Conditions, hereinafter referred to as the Agreement. This Quotation/Purchase Order will expire on 3/10/2025 unless an executed copy is received by RECo on or before the expiration date. RECo may withdraw or modify this Quotation/Purchase Order at any time prior to acceptance by the Purchaser.

I. MATERIALS TO BE SUPPLIED, PURCHASE ORDER AMOUNT AND SPECIFICS

A. Materials Supplied:

1. Bid Line Items: **A-43, A-44, A-45 MSE Walls A, B and C**
2. Reinforced Earth Structures:
 - a. Materials to be supplied: **3 MSE WALLS with 5 X 10 Rectangular Panels with Reinforced Earth®** 50mm x 4mm steel reinforcing strips.
 - b. Architectural Finish: **RECo Standard Ashlar Stone (Fishlar) Architectural Finish**



B. Purchase Order on a Unit Price Basis:

1. For invoicing purposes, the value of the contract will be broken down as follows:
15% - Eng. Approval 45% - Soil Reinforcements/Acc. 40% - Concrete Panels
2. Unit prices in accordance with the following Schedule of Unit Prices and estimated quantities;
(Escalation per Section III, part B) (Invoicing based on Production per Section IV)

MSE Panel Walls: 10,474 sf @ \$18.85/sf = \$197,434.90 (plus tax)

(Above area is approximate wall area based on exposed wall face. RECo did not to a wall takeoff. Final wall pay area to be determined based on RECo approved shop drawings)

TOTAL PURCHASE ORDER AMOUNT = \$ \$197,434.90, plus applicable taxes.

*****ALL Bonds are specifically excluded. NO Retention allowed *****

C. Specifics:

- RECo's Terms and Conditions is a part of this Quotation/Purchase Order. All other materials and services not listed are excluded from this Purchase Order. The Purchase Order price does not include any applicable taxes, duties, permits, licenses or bonds. If the Project is tax exempt, a current tax exemption certificate must be attached to this Purchase Order at the time of acceptance.
- RECo will provide the complete P.E. sealed design (Excluding External/Global Stability) and supply of 3 Reinforced Earth® Panel Walls for Contractor construction. Our pricing does **NOT** include a check on the overall stability of the foundation soils below and behind the structure, or a check of any potential failure planes external to the structure. RECo may participate in the evaluation of the foundation soils to recommend optimum MSE designs, but the geotechnical engineer shall maintain overall responsibility for external stability. Also, we did not check bearing pressures. No soils report was provided at bid. Geotech Engineer to determine foundation conditions such as adequate bearing pressure, settlement and global stability.
- MSE Wall Backfill shall be tested and conform to AASHTO soil strength and electrochemical requirements.
- Top panels will be standard FLAT-top to fit below Contractor C.I.P. concrete coping.
- Materials required for skewing strips are included.
- Quantities are estimated. Pay area will be based on RECo's actual approved drawings
- All material pricing is FOB jobsite. Precast Panels delivered as double load. Single load will add cost.
- This quote is valid for up to **60 days only**.
- Pricing does **NOT** include:
 - External/Global Stability, Settlement, and Bearing Capacity Design.
 - Any color, coatings, sealers, or abrasive blast finishes if Owner required.
 - Any drainage design or materials, and any Impervious Membrane around the soil reinforcement zone if required.
 - Unlimited site assistance.

II. TIME

A. Shop Drawing Submittal: Shop Drawings shall be submitted for review and approval as directed by contractor and agreed upon by RECo at a rate not later than 45 days after RECo's receipt of this executed Agreement and RECo's receipt of Final Project Drawings, Specifications, Addendums, Architectural Finish Details and any necessary survey data.

B. Schedule for Delivery of Materials: RECo shall deliver the Materials as set forth in Article I of this Purchase Order beginning 4 to 6 weeks following the receipt by RECo of approved shop drawings and approved architectural finish. Schedule can be improved to supply bottom row of panels only to get wall above water line. The deliveries shall be made at a rate not to exceed 2,000 /sf/week, and at a rate not less than 300 /sf/week, in truckload quantities as scheduled with the Final Delivery Date being no later than 6 months from start of casting.

III. PURCHASE ORDER PRICE

A. Technical Assistance: The Purchase Order Price includes on-site technical assistance at a mutually agreed time to be provided to the Purchaser, upon reasonable request, in a single trip not to exceed three (3) days. Additional technical assistance provided at the request of the Purchaser shall be at the rate of \$600 per day plus reasonable travel and living expenses.

B. Escalation: Materials delivered after December 31, 2020, as a result of delay that is not the fault of RECo, shall be subject to an increase of 8% per annum for escalation costs.

IV. PAYMENT

Purchaser agrees to make payments on invoices submitted on time by RECo to the Purchaser, in accordance with the terms and conditions set forth in this Agreement. Invoices will be prepared and submitted for payment on the basis of manufactured quantities (PRODUCTION) in accordance with the Schedule of Unit Prices set forth above.

V. CHANGES

The following rate schedules shall apply for the valuation of additions to the Purchase Order price, as applicable, for changes to the work directed by Purchaser:

A. Changes to the Design: Any additional work required to obtain Approved Shop Drawings resulting from changes or modifications to the contract documents shall be provided at the following rates, plus reasonable travel and living expenses: 1) Engineer: \$ 195.00/hour; 2) Designer: \$ 175.00/hour.

B. Changes to the Schedule: Changes in the Schedule for Delivery of Materials, which affect RECo's sequence or schedule for fabrication or any arrangements for transportation or shipping of Materials, shall entitle RECo to an adjustment in the Purchase Order price.

C. Changes to Quantities: RECo's Quotation is based upon the purchase of all Materials as set forth in Article I. If this is a Unit Price Purchase Order, additions or deletions shall be invoiced in accordance with the Schedule of Unit Prices set forth in Article I, unless the actual quantities vary by more than 10 % from the quantities set forth above, in which case the Unit Prices will be subject to an equitable adjustment.

D. Replacement Materials: Any additional Materials required as a result of damage, abuse, loss or other reason that is not the fault of RECo shall be supplied at Purchaser's expense at the unit prices set forth below, plus any additional transportation or shipping costs. These prices are to be applied whether this Purchase Order Agreement is on a lump sum or unit price basis.

1.	Facing Panels	\$ <u>18.00</u> /sf	4.	Connector Pins	\$ <u>3.00</u> /ea
2.	Soil Reinforcement		5.	Bearing Pads	\$ <u>3.00</u> /ea
	a) Strips (50mm x 4mm)	\$ <u>3.00</u> /lf	6.	Filter Cloth	\$ <u>0.30</u> /sf
	b) Welded Wire Mats	\$ <u>4.00</u> /lf	7.	Contact Adhesive	\$ <u>5.00</u> /tube, 2lbs
3.	Bolt Sets	\$ <u>1.50</u> /ea	8.	Other _____	\$ <u>0.00</u>

VI. OTHER TERMS AND CONDITIONS

Inconsistent Terms: Where any provision of this Agreement is inconsistent with any provision of any of the Project Specifications and Plans or in the event that any right or obligation included in the Agreement is modified, limited or altered by the terms of any Bid Document or by any terms proposed by the Purchaser, the terms and conditions of this Agreement shall govern. All prices are based upon execution of this Agreement without modification.

The Parties hereby agree that this contract and its associated documents may be transmitted, signed and sent through electronic means including, but not limited to, electronic mail and/or facsimile, and the resulting agreement shall be binding as if the parties had met and signed such agreement in person. This Agreement may be executed in counterparts. The Parties further agree that this contract and its associated documents will constitute an original record and/or original signature to the extent any rule of law requires an original record or original signature.

THE REINFORCED EARTH COMPANY

ACCEPTED

Purchaser: _____

(Company Name)

GENERAL TERMS AND CONDITIONS

The present General Terms and Conditions are applicable to the supply and provision of Materials and associated Services (together referred to as the "Works") by Reinforced Earth Company ("Supplier") and are binding on the purchaser ("Purchaser") and Supplier (together referred to as the "Parties"). Any purchase order ("Purchase Order") placed to Supplier, or acceptance of any quotation issued by Supplier ("Quotation") shall constitute the acceptance by the Purchaser of these General Terms and Conditions, which shall supersede the Purchaser's own standard terms and conditions of purchase, or any other contractual terms not expressly provided herein, unless otherwise agreed in writing by the Parties. These General Terms and Conditions shall form, together with the relevant Supplier Quotation and/or Purchase Order, the entire contract between Supplier and the Purchaser ("Contract") in connection with the Works. In case of any inconsistency between the Purchase Order/Quotation and these General Terms and Conditions, they shall be taken in the following order of precedence: 1) Quotation and/or Purchase Order, 2) General Terms and Conditions. No amendment, changes or additional terms proposed by Purchaser to the Contract shall be valid unless expressly accepted by one of Supplier's authorized representatives.

1. DEFINITIONS

- 1.1. **"Claims"** shall mean any claims, liens, judgments, penalties, awards, remedies, debts, liabilities, damages, demands, costs, losses, expenses (including without limitation legal costs and expenses) or causes of action, of whatever nature including without limitation, those enjoyed by successors or assigns of the party initially entitled to bring the relevant claim.
- 1.2. **"Consequential Loss"** shall mean: (i) indirect or consequential loss, and (ii) loss and/or deferral of production, loss of use and loss of revenue, profit or anticipated profit (if any) whether direct or indirect, and whether or not foreseeable at the effective date of the Contract.
- 1.3. **"Days"** shall mean business days.
- 1.4. **"Internal Stability check"** shall mean check of design plans and drawings aiming at preventing the occurrence of purely internal failure of the RE Structure, i.e. failure modes not engaging outside the volume limited by the foundation level at the bottom, the facing elements in the front and the end of the soil reinforcement at the back.

This check is limited to i) soil reinforcement tensile capacity; ii) soil reinforcement pull-out capacity; iii) facing elements structural capacity; and iv) structural capacity of connectors between soil reinforcement and facing elements.

Any additional structural element resting on top or at the back of the RE Structure is excluded from this check. The check is carried out based on the calculation assumption provided to Supplier by the Purchaser and assuming a correct execution of the works, in compliance with local regulations and the provisions of the Manual (as herein defined).
- 1.5. **"External Stability check"** shall mean check of design plans and drawings aiming at preventing the occurrence of failures engaging volumes at least partially outside the RE Structure.

This check shall include without limitation i) sliding on the base; ii) bearing capacity of the foundation soil; iii) overturning, where applicable; iv) compound sliding failure (failure surface engaging volumes both outside and inside the RE structure); and v) global sliding failure (failure surface engaging only volumes outside the RE structure).

The check is carried out based on the calculation assumption provided to Supplier by the Purchaser and assuming a correct execution of the works, in compliance with local regulations and the provisions of the Manual (as herein defined).
- 1.6. **"Materials"** shall mean any good, material or tool (including without limitation any other accessories) supplied by Supplier to the Purchaser under the Contract, for the purpose of the construction of any RE Structure.
- 1.7. **"Owner"** shall mean the entity designated as such in any of the Project documentation.
- 1.8. **"Project"** shall mean any construction project and any related contractual undertakings provided by Purchaser for the purpose of which Supplier supplies the Materials and/or Services, under the Contract.
- 1.9. **"RE Structure"** shall mean any structure for the purpose of which Supplier supplies the Materials and/or Services, under the Contract.
- 1.10. **"Services"** shall mean any service performed by Supplier for the sole benefit of the Purchaser and limited to the design of any RE Structure and/or technical guidance in connection with the use of any Materials supplied under the Contract.
- 1.11. **"Specifications"** shall mean the technical specifications issued by the Purchaser and/or the Owner, or any relevant party for the purpose of the completion of the Project, agreed to by Supplier and relating to the Materials supplied under the Contract.

2. Supplier's SCOPE OF WORKS

2.1. **Supply of Materials:**

Supplier shall supply the Materials in compliance with the Project plans and Specifications.

2.2. **Design of RE Structure:**

- 2.2.1. Where Supplier is required by Purchaser to provide design services, Supplier shall solely be liable for the issuance of design plans and drawings relating to Internal Stability check of the RE Structure based on the calculation assumptions provided to Supplier by the Purchaser and/or the Owner, namely soil design parameters and external loads, and any other significant constraint.

It is understood that Supplier provides for design of the RE Structure assuming a correct execution of the works, in compliance with Project Specifications, local regulations and Supplier construction and quality control procedures manual (the "Manual").

- 2.2.2. Supplier's obligations under the present Clause shall not include any element of an External Stability check, save as otherwise provided in the Purchase Order.

2.3. **Technical Guidance:**

- 2.3.1. Supplier shall supply the Materials together with associated Manual. Where required by Purchaser, Supplier may provide Purchaser's relevant personnel with presentations and clarifications about the procedures detailed in the Manual, as well as advice on the implementation of said procedures.

- 2.3.2. The Manual solely provides for general recommendations for the construction of the RE Structure, and important safety principles relating to the use and handling of the Materials. Supplier makes no representation of warranty as to the merchantability or fitness for purpose of any such recommendation and does not assume any responsibility or liability for any Claim resulting from the use of the Manual thereof.

- 2.3.3. Notwithstanding Sub-clauses 2.3.1. and 2.3.2., any presentation, clarification or advice provided to Purchaser further to the present Clause is of a consulting nature only and shall not, at any time, relieve Purchaser from its sole responsibility to construct the RE Structure in accordance with the Project Specifications or local industry standards for reinforced earth structures, and all applicable local, state or federal statutes and regulations, including, without limitation, the responsibility to use backfill material and compaction procedures conforming to the Project Specifications.

3. **DELIVERY OF MATERIALS**

- 3.1. **Incoterms:** Supplier shall at its sole discretion determine the best mode of delivery of the Materials ("Delivery") in accordance with the ICC Incoterms (2010 edition), or as otherwise specified in Supplier's Quotation.

3.2. **Purchaser's obligations:**

- 3.2.1. Purchaser undertakes to comply with the following obligations for any Delivery of Materials:

- i) Purchaser shall ensure good access to the agreed Delivery point; and
- ii) Purchaser shall be liable for offloading and suitable stacking of the Materials. Purchaser shall ensure that needed equipment be available at the agreed Delivery point in order to properly offload the Materials; and
- iii) Purchaser shall ensure that offloading of the Materials occur within two (2) hours from Delivery at the agreed Delivery point. If Purchaser fails to comply with this requirement Supplier shall be entitled to invoice to Purchaser any additional costs due to Purchaser's delay; and

- 3.2.2. Purchaser shall inspect the Materials within two (2) Days following Delivery, failing which the Materials shall be deemed accepted and in conformity with the Specifications. Purchaser shall notify Supplier in writing of any non-conformity of the Materials (including discrepancies in quantities) without undue delay. Each Claim, if any, shall set forth all relevant available details and afford Supplier a period of thirty (30) Days to rectify the defect. Supplier reserves the right to jointly inspect the Materials and the representatives of Supplier shall be permitted to take such samples and make such investigations as Supplier deems necessary. Any failure from Purchaser to notify Supplier of any defect in the Materials within two (2) Days following Delivery shall be deemed as acceptance of the Materials.

- 3.3. **Delayed Delivery:** If Purchaser contends that Supplier is delaying the Project, or any portion thereof, due to delayed Delivery, Purchaser shall notify Supplier in writing within two (2) Days of the start of the delay, and allow five (5) Days for correction of such delay. Such notice is a condition precedent to the Purchaser's right to claim against Supplier for such delay. If notice is not provided in accordance with the terms of this Agreement, Purchaser waives its right to claim for delay. Any failure from Purchaser to notify Supplier of any delay within two (2) Days following start of the delay shall be deemed as Purchaser's waiver of its right to Claim in connection with delayed Delivery.

4. **PRICE AND PAYMENT TERMS**

- 4.1. **Price:** The price of the Materials shall be the price set out in Supplier's Quotation. Unless otherwise agreed in writing, prices are exclusive of any applicable value added tax (VAT) or other applicable taxes, charges or duties.
- 4.2. **Payment:** Supplier shall be entitled to invoice Purchaser on a monthly basis. Payment shall be made within thirty (30) Days from the date of Supplier's invoice, by bank transfer to the bank account of Supplier (as specified in the Contract or otherwise notified by Supplier). No retention shall be withheld from any invoiced amount.
- 4.3. PAYMENTS TO SUPPLIER SHALL NOT BE DEPENDENT UPON, OR OTHERWISE SUBJECT TO OR CONDITIONED UPON, THE RECEIPT BY PURCHASER OF PAYMENT FROM THE OWNER OR ANY OTHER THIRD PARTY.
- 4.4. **Late Payments:** A service charge of 0.5% per month or the maximum amount allowed by law, whichever is lower, shall apply to late payments. Supplier's right to claim such interest shall be without prejudice to any other rights and remedies of the Supplier including, without limitation, the right to cancel all or part of the Contract, to suspend deliveries and to demand immediate payment for all Materials previously delivered.
- Remedies for default of payment:** Without prejudice to any other remedy it may have at law or under this Contract, if any payment is more than five (5) Days late, Supplier may suspend fabrication and delivery of Materials until payments are brought current. Thereafter, the Contract Price may be increased to compensate for Supplier's costs associated with the interruption or alteration of the fabrication sequence or schedule, or the schedule for Delivery of Materials. Supplier is entitled to recover from Purchaser all reasonable costs associated with enforcing this Clause upon presentation of relevant documentation.

5. TRANSFER OF TITLE AND TRANSFER OF RISK

- 5.1. Transfer of title shall pass from Supplier to Purchaser upon receipt by Supplier of payment of the total Contract price for Materials.
- 5.2. Transfer of risk attached to the Materials shall pass from Supplier to Purchaser upon Delivery as per applicable Incoterms (2010 edition).

6. WARRANTY

- 6.1. Supplier warrants that the Materials will be manufactured in accordance with the Specifications. In the event that Purchaser notifies Supplier of any material non compliance in the Materials ("Defect") within eighteen (18) months from the date of Delivery, Supplier shall carry out any corrective actions provided in Subclause 6.2.
- 6.2. Supplier's liability under this warranty is limited to repair of the Defective Materials, or delivery of any replacement Materials at the agreed Delivery point, at Supplier's option.
- 6.3. Supplier's warranty applicable to the original Materials shall also apply to the repaired or replaced Materials for a period of twelve (12) months after completion of repair or replacement under this warranty.
- 6.4. Notwithstanding Subclauses 6.1. to 6.3., Supplier shall not be liable for Materials failure to comply with the warranty in any of the following events:
- i) the Defect arises because Purchaser failed to follow the Supplier's written instructions as to the storage, commissioning, installation, use and maintenance of the Materials, including without limitation the provisions of the Manual;
 - ii) the Defect arises as a result of Supplier following any drawing, design or Project Specifications supplied by Purchaser and/or the Owner;
 - iii) Purchaser alters or repairs such Materials without Supplier's prior written consent; or
 - iv) the Defect arises as a result of normal wear and tear, esthetical damage, wilful damage, negligence or abnormal storage or working conditions or any misuse of the Materials, including in particular damage resulting from rough handling or use in contradiction with the provisions of the Manual.
- 6.5. SUPPLIER'S OBLIGATIONS UNDER THIS CLAUSE SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO DEFECTIVE MATERIALS. SUPPLIER GIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING (WITHOUT LIMITATION) ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER WRITTEN OR ORAL OR IMPLIED IN FACT OR IN LAW, AND ALL WARRANTIES, CONDITIONS OR OTHER TERMS IMPLIED BY STATUTE, COMMON LAW, WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE OF ANY NATURE WHETHER SOLE OR CONCURRENT) OR OTHERWISE ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

7. INDEMNITY AND LIMITATION OF LIABILITY

- 7.1. **Mutual Indemnity:** EITHER PARTY SHALL BE RESPONSIBLE FOR AND SHALL SAVE, DEFEND, INDEMNIFY AND HOLD THE OTHER PARTY HARMLESS FROM AND AGAINST ANY CLAIMS IN RESPECT OF:
- I) PERSONAL INJURY INCLUDING DEATH OR DISEASE TO ANY OF ITS OWN PERSONNEL;
 - II) LOSS OF OR DAMAGE TO ITS OWN PROPERTY (WHETHER OWNED, LEASED OR OTHERWISE PROVIDED TO IT); AND
 - III) ALL DAMAGE TO THE ENVIRONMENT INCLUDING WITHOUT LIMITATION SUBSURFACE DAMAGE, LOSS, COSTS OR EXPENSES ARISING FROM POLLUTION OR CONTAMINATION
- ARISING FROM, RELATING TO OR IN CONNECTION WITH, THE PERFORMANCE OR NON-PERFORMANCE OF THE CONTRACT.

EITHER PARTY SHALL IN NO CASE HAVE ANY LIABILITY TO THE OTHER PARTY BY WAY OF INDEMNITY OR BY REASON OF BREACH OF CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT OR ANY OTHER REASON WHATSOEVER FOR , INDIRECT, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, COSTS, EXPENSES, FEES (INCLUDING LEGAL FEES), LOSS OF USE, PURE ECONOMIC LOSS, LOSS OF PROFIT, LOSS OF BUSINESS, STANDBY TIME OR BUSINESS INTERRUPTION), WHETHER OR NOT FORESEEABLE AT THE EFFECTIVE DATE OF THE CONTRACT (HEREINAFTER "CONSEQUENTIAL LOSS"). EACH PARTY SHALL SAVE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FROM ITS OWN CONSEQUENTIAL LOSS ARISING FROM, RELATING TO OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE CONTRACT. THE INDEMNITY GIVEN IN THIS ARTICLE SHALL APPLY IRRESPECTIVE OF CAUSE AND NOTWITHSTANDING THE NEGLIGENCE OR BREACH OF DUTY (WHETHER STATUTORY OR OTHERWISE) OF THE SUPPLIER OR ANY OTHER ENTITY OR PARTY AND SHALL APPLY IRRESPECTIVE OF WHETHER ANY CLAIM IS BASED IN TORT, UNDER CONTRACT OR OTHERWISE AT LAW.

- 7.2. **Limitation of liability:** WITHOUT PREJUDICE TO ANY PROVISIONS TO THE CONTRARY CONTAINED HEREIN, SUPPLIER'S LIABILITY TO PURCHASER ARISING FROM OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THE WORKS UNDER THE CONTRACT SHALL BE LIMITED TO THE LOWER OF ONE HUNDRED PERCENT (100%) OF THE VALUE OF THE WORKS AS PROVIDED UNDER THE CONTRACT OR USD ONE MILLION (1,000,000).
- 7.3. LIMITATIONS ON LIABILITY, WAIVERS AND INDEMNITIES IN THE CONTRACT ARE BUSINESS UNDERSTANDINGS BETWEEN THE PARTIES AND SHALL APPLY TO ALL LEGAL THEORIES OF RECOVERY, INCLUDING BREACH OF CONTRACT OR WARRANTY, PROFESSIONAL ERRORS AND OMISSIONS, BREACH OF FIDUCIARY DUTY, TORT (INCLUDING NEGLIGENCE), STRICT OR STATUTORY LIABILITY, OR ANY OTHER CAUSE OF ACTION, PROVIDED THAT THESE LIMITATIONS ON LIABILITY, WAIVERS AND INDEMNITIES WILL NOT APPLY TO ANY LOSSES OR DAMAGES THAT MAY BE FOUND TO HAVE BEEN CAUSED BY EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- 7.4. THE PARTIES ALSO AGREE THAT EITHER PARTY WILL NOT SEEK DAMAGES IN EXCESS OF THE CONTRACTUALLY AGREED-UPON LIMITATIONS DIRECTLY OR INDIRECTLY THROUGH SUITS AGAINST OTHER PARTIES WHICH THE OTHER PARTY MAY JOIN AS A THIRD-PARTY DEFENDANT.

8. INSURANCE

Supplier shall procure and maintain during the duration of the Contract, the following insurances:

- i) Workmen compensation and employer's liability insurance which complies with any applicable labour laws; and
- ii) General liability insurance.

9. CHANGES

- 9.1. Any changes to the Scope of Works (including without limitation relating to quantity or schedule) as provided in the Contract, in excess of 5% of the Contract price or USD ten thousand (\$10,000) shall be subject to a written change order to be mutually agreed to and executed by authorized representatives of the Parties.
- 9.2. Any Change that causes Supplier to incur additional costs shall entitle Supplier to an equitable adjustment in the Contract price.

10. PATENTS, TRADEMARKS AND PROPRIETARY RIGHTS

Supplier has actual or pending patents, trademarks, and proprietary rights in certain of the Materials, processes, and configurations (i.e., cruciform shape panels) supplied to Purchaser. Any proprietary right attached to the drawings and other information supplied to Purchaser under the Contract remain the property of Supplier and may not be disclosed or provided to any other person or used for any other purpose without Supplier's written consent.

11. FORCE MAJEURE

- 11.1. For the purposes of this Contract, an event of force majeure ("Force Majeure Event") shall mean any unforeseeable circumstance due to any cause beyond the reasonable control of either of the Parties, (including, without limitation, flood, fire, governmental act or regulation, act of God, embargo, war, national strike, lockout, labour interruption, breakdown or partial failure of plant or machinery, shortage of raw materials and/or means of transport or energy or any act or omission of any third party concerned with the manufacture, processing or delivery of the Materials) which occurs after the execution of the Contract and prevents the performance of all or part thereof, provided however, that force majeure does not justify a suspension of payments for any part of the Works already performed.
- 11.2. The occurrence of a Force Majeure Event shall cause temporary suspension of the respective obligations of the Parties (with the exception of the Buyer's obligation to make payment to Supplier) for the duration of the continuing Force Majeure Event (to the extent that the force majeure event precludes the Parties from performing such obligations), without any liability or compensation to either of the Parties.

- 11.3. Either Party shall at all times take all reasonable steps within their respective powers (but without incurring unreasonable additional costs) to:
- a) prevent Force Majeure Events affecting the performance of their obligations under the Contract; and
 - b) mitigate the effect of any Force Majeure Event.
- 11.4. The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.
- 11.5. Should a single Force Majeure Event last for a continuous period of more than one hundred eighty (180) Days then the Parties shall endeavor to agree any modifications to this Contract which may be equitable having regard to the nature of the Force Majeure Event.

12. DISPUTE RESOLUTION

- 12.1. **Governing Law:** This Contract shall be governed by the laws of Supplier's registered office.
- 12.2. **Dispute resolution:** The Parties agree in first instance to use their best efforts to resolve any Claim arising out of, or in connection with this Contract by amicable settlement and consider referring the dispute to proceedings under the International Chamber of Commerce ("ICC") Mediation Rules. The commencement of proceedings under the ICC Mediation Rules shall not prevent any party from commencing arbitration in accordance with Sub-clause 12.3.below.
- 12.3. In case the Parties fail to reach an agreement within thirty (30) Days from the date of notification of the Claim by one Party to the other, all claims, disputes and other matters in question between the Parties shall be resolved by an arbitration court, in accordance with the latest current version of the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. Arbitration proceedings shall be conducted in Supplier's place of registration and in the English language. The decision of the arbitrators shall be final, binding and enforceable upon the Parties and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event that the failure of Supplier or Purchaser to comply with the decision of the arbitrators requires either party to apply to any court for enforcement of such award, the non-complying party shall be liable to the other for all cost of such litigation including attorneys' fees.

13. MISCELLANEOUS

- 13.1. **Contract for Exclusive Benefit of Purchaser:** This Contract, including the General Terms and Conditions, is for the exclusive benefit of the Purchaser. It confers no rights by way of third-party beneficiary or otherwise on any other party
- 13.2. **Assignment:** This Contract cannot be assigned without Supplier's prior written consent.
- 13.3. **Termination:** The Supplier shall be entitled, without prejudice to its other rights and remedies, either to terminate all or part of any or every Contract or to suspend any deliveries if Purchaser becomes insolvent or enters into any composition, arrangement or agreement (including a voluntary arrangement or agreement) with its creditors, or has passed a resolution for voluntary liquidation.
- 13.4. **No Limitation of Rights or Remedies:** Nothing in the Purchase Order or these General Terms and Conditions shall be deemed a limitation of any rights or remedies that Supplier may have under any Federal or State mechanics' lien laws or under any applicable labor and material payment bonds, unless such rights or remedies are expressly waived in writing.
- 13.5. **Headings:** The headings in the Contract are solely for the convenience of the Parties and shall be used neither in the interpretation of the Contract, nor to impose or lessen any obligation on either of the Parties.
- 13.6. **Enforceability:** If any article, paragraph, term, covenant, or condition of this Contract is determined to be invalid or unenforceable, the remainder of the Contract, including the General Terms and Conditions, and the application of the remaining articles, paragraphs, terms, covenants, or conditions shall be unaffected thereby, and shall be valid and enforceable to the fullest extent permitted by law.