



PRODUCT SALES AND SERVICE AGREEMENT

1. **Date of Agreement:** November 2, 2018
2. **Terms of Agreement:**
This Product Sales and Service Agreement with attached Appendix and Exhibits constitute the entire agreement between Buyer, identified below, and Meeco Sullivan, LLC, Meeco Division, as Seller, for the sale and delivery of Products and the performance of Services with respect to the Project at the Premises.
3. **Buyer Information:**
 - 3.1. **Legal Name:** City of Corpus Christi
 - 3.2. **Address:** Attn: Marina 400A N. Shoreline Blvd., Lawrence St. T-Head
(Street)

<u>Corpus Christi</u>	<u>Nueces</u>	<u>Texas</u>	<u>78401</u>
(City	County	State	Zip)
 - 3.3. **Billing Address (if different from 3.2): Please send a copy to the Marina address above.**
Attn: Accounts Payable P.O. Box 9277
(Street)

<u>Corpus Christi</u>	<u>Nueces</u>	<u>Texas</u>	<u>78469</u>
(City	County	State	Zip)
 - 3.4. **Phone:** 361-826-3980
 - 3.5. **Fax:** 361-883-4778
 - 3.6. **E-Mail:** ginas@cctexas.com
 - 3.7. **Buyer's Federal ID # (SS or EIN):** 74-6000574
 - 3.8. **Buyer's State ID #:** _____
 - 3.9. **Buyer's Type of Organization:** Municipal Government
 - 3.10. **State in which organized:** Texas
 - 3.11. **Authorized Representative:** Gina Sanchez
 - 3.12. **Buyer's Contract/Purchase Order #:** _____
4. **Premises Owner Information, if other than Buyer**
 - 4.1. **Legal Name:** _____
 - 4.2. **Address:** _____
(Street)

(City	County	State	Zip)
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 - 4.3. **Owner's Type of Organization:** _____
 - 4.4. **State in which organized:** _____
 - 4.5. **Authorized Representative:** _____

4.6. Phone: _____
4.7. Fax: _____
4.8. E-Mail: _____

5. **The Project:**

5.1. The Project is as set forth on the Description of Work, which is attached hereto as Exhibit A and by this reference incorporated herein, and the actual physical location of the Project at the Premises (the Job Site) shall be specified in the Description of Work. The Project is or will be located at the Premises, which is located at the following address (if no address listed, then the Premises is the address set forth in Section 4.2 hereof):

5.2. Address: Corpus Christi Municipal Marina, 400A N. Shoreline Blvd., Lawrence St. T-Head
(Street)
Corpus Christi Nueces Texas 78401
(City) (County) (State) (Zip)

Within City Limits?

☒ YES

☐ NO

5.3. The materials, components, product(s) and equipment set forth on the Description of Work are the Products. The services related to the installation and/or assembly of the Products and which the Seller agrees to provide to the Buyer hereunder are the Services.

5.4. Services may include Delivery to the Job Site, off-loading, Project supervisory activities, and Installation, in each case if elected by the Buyer and set forth in the Description of Work.

6. **Project Fee; Terms of Payment:**

6.1. The Buyer shall pay Seller a Project fee in an amount equal to \$ 144,019.28 for the sale and Delivery of Products and the performance of Services hereunder the (Project Fee). The Project Fee shall include all applicable federal, state, and local sales or use taxes, unless Buyer is entitled to an exemption from any such taxes and an appropriate tax exemption certificate accompanies this Agreement, or is otherwise provided to Seller in a form, and at such time, as is reasonably acceptable to Seller. The Project Fee shall be payable in accordance with the following payment plan:

Payment Event:	% of Project Fee Payable	Payment Terms:
Contract Execution (Initial Payment)	N/A	With submittal of signed Contract.
Upon beginning the Fabrication of Products (Initiation Payment)	N/A	Due upon receipt of invoice.
Upon delivery of the Products to the Premises (Shipment Payment)	50%	Due upon receipt of invoice.
Upon Completion of the Project (Final Payment)	50%	Due upon receipt; involved monthly for work completed.

6.2. The Initial Payment, if applicable, must be submitted to Seller with Buyer's executed copy of this Agreement. Other scheduled payments (Initiation Payment, Shipment Payment, and Final Payment) shall be payable at such times as indicated in the payment event chart, above. Any other costs or expenses which are the responsibility of the Buyer under this Agreement (such as costs associated with Change Orders, or the like) will be invoiced to the Buyer and shall be due and payable within ten (10) business days after the invoice date. Payments are not subject to retention, and Payments are subject to the Texas Prompt Payment Act (Chapter 2251 Texas Government Code).

7. **Warranties; Disclaimers**

7.1. Products and installation Services (which Services, if applicable, shall be specified in the Description of Work) shall be warranted in the manner set forth in Exhibit B to this Agreement.

Buyer Initials _____
Page 2 of 11

Meeco Sullivan Initials JS

7.2. Certain Products carry separate manufacturer warranties. Copies of separate manufacturer warranties for applicable Products will be provided to the Buyer in conjunction with the delivery of a final invoice to the Buyer. Although Seller shall not be obligated to satisfy warranty obligations for Products which are subject to separate manufacturer warranties, all claims under such warranties must be submitted to the Seller, and, if so submitted, Seller shall assist Buyer with the assertion and satisfactory resolution of any warranty claims with the manufacturer of such Products.

7.3. Seller has been notified that certain chemicals used in wood treatment processes are known to cause cancer. If the Products include treated wood products, Seller expressly disclaims any obligation or liability therefor.

8. Notices

All legal notices and other formal communications under this Agreement shall be in writing and sufficiently given if (i) personally delivered to the addressee; (ii) delivered by nationally recognized overnight courier service evidencing written receipt of delivery; (iii) mailed by U.S. Certified mail, return receipt requested, postage paid; (iv) by facsimile or via email transmission with subsequent confirmation by delivery in any manner previously mentioned, addressed to the Buyer (to the attention of the Authorized Representative) at the address set forth in Section 3, above, and addressed to the Seller at the following address and to the attention of the following Authorized Representative:

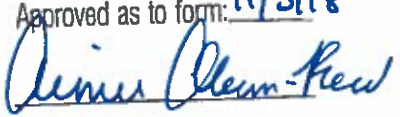
Meeeco Sullivan, LLC

1501 E. Electric Avenue
McAlester, OK 74501

ATTN: Dan Adams, Authorized Representative

Fax: (918) 423-3215

Email: CustomerPortal@meecosullivan.com

Approved as to form: 11/5/18

Assistant City Attorney
For City Attorney

9. Insurance: Before performance can begin under this agreement, seller must deliver a certificate of insurance ("COI"), as proof of the required insurance coverage, to the buyer. Additionally, the COI must state that buyer will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. Buyer must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Exhibit C, the content of which is incorporated by reference into this agreement as if fully set out here in its entirety.

This Agreement is entered into as of the date set forth in Section 1, above.

Seller: Meeeco Sullivan, LLC

Buyer: Corpus Christi Municipal Marina

Signature: 

Signature: _____

Name: Forrest D. Feidock

Name: _____

Title: Meeeco Division Manager

Title: _____

Date: 2 November 2018

Date: _____

10. Non-Appropriation: The Continuation of this agreement after the close of any fiscal year of buyer, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this agreement as an expenditure in said budget, and it is within the sole discretion of buyer's city council to determine whether or not to fund this agreement. Buyer does not represent that this budget item will be adopted, as said determination is within the city council's sole discretion when adopting each budget.

11. Verification Regarding Israel: In accordance with Chapter 2270, Texas Government Code, buyer may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: 1) does not boycott Israel; and 2) will not boycott Israel during the term of the contract. The signatory executing this agreement on behalf of seller verifies that the company does not boycott Israel and will not boycott Israel during the term of this agreement.

Exhibit A
Corpus Christi Municipal Marina
400A North Shoreline, Lawrence St. T-Head
Corpus Christi, TX 78401

Description of Work

Miscellaneous Repairs to The Following Docks Per Exhibit A Page 2:

Dock C and D

Dock E

Dock G and H

Description of Materials

9" Atlantic System - Laminated beams

Unique design creates unparalleled strength, stability and durability

Superior frame strength requires less piling than other systems

Largest utility chase in the industry -easy installation and accessibility

Ipe Decking

Deluxe hardwood, natural resistance to decay eliminates the need for treatment, long lasting and low maintenance.

Attached to frame on 2' maximum spans

Polyethylene Floats

Shell: Roto-molded polyethylene, resistant to marine life and petroleum

Core: Expanded polystyrene block is molded inside the shell.

Shell thickness shall be .150 inches ARM STD +/-20%.

Firmly bolted to the frame

Pile Anchorage System

Pile guides supplied by Meeco Sullivan, LLC

Piles provided by Buyer

Bumpering/Fendering

Single row 2" x 6" treated Southern Yellow Pine sidewood on perimeter

Black flat #5007 vinyl bumper on perimeter attached with stainless steel staples

Black 6" corner bumpers

Mooring Devices

12" Aluminum deck cleats

Dock C and D

- 1) Remove and Replace (12) 12" aluminum deck cleats
- 2) Remove and Replace (4) outside mount pile brackets, and (3) inside mount pile brackets
- 3) Remove and replace (2) 3' x 40' finger made to match up to Tidemaster Docks. Wants Atlantic Docks made with plywood on bottom of finger.
- 4) Total of (6) fingers listing, crew to lift deck (SYP) and either tighten bolts, replace clips, or drop concrete/ sand bags to even out.

Dock E

- 1) Remove glue from finger where we did repairs to beam on dock.
- 2) Replace 100' of flat vinyl bumper missing from dock.
- 3) Remove and Replace (12) 15" aluminum deck cleats along headpier
- 4) Remove and Replace (10) 12" aluminum S deck cleats
- 4) Repair damaged headpier beam 8' wide
- 5) Remove and Replace (20) 1" x 6" x 8' pieces of damaged IPE decking
- 6) Remove and Replace (20) 1 x 6" x 6' pieces of damaged IPE decking
- 7) Remove and Replace (9) pile brackets
- 8) Provide (1) box of staples for re-stapling loose vinyl (to be used on all of docks) by Corpus Christi Marina employees
- 9) Total of (4) fingers listing, crew to lift deck (SYP) and either tighten bolts, replace clips, or drop concrete/ sand bags to even out

Docks G and H

- 1) Total of (4) fingers on Dock G and (4) fingers listing on Dock H. Need to look at floats, adjust as necessary. One of the fingers as much as 4 1/2" listing Need to be prepared to move floats, add concrete, and check finger bolted connections.
- 2) Total of (4) locations on Dock G and (4) locations on Dock H with the headpiers raised higher than the fingers. Need to be prepared to move floats, add concrete, and check finger/headpier bolted connections.

Items Included: Total, including materials, freight, offloading, and installation

Items Not Included: Engineer stamped plans, utilities, permits, or fees, and all applicable tax

Ninety (90) day repair warranty applies

Any additional damage discovered while performing this work or prior to completing this work shall result in a Change Order to be executed prior to commencement of additional work or continuation of a Sales Agreement.

Does not include any demolition or disposal of existing docks.

EXHIBIT B

Warranties

a. Warranty for Services

If the Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work), Seller warrants that such installation Services will be of good quality, free from defects in workmanship, and in conformance with the Description of Work for a period of ninety (90) days from the date of Completion. In the event of a claim under this warranty, Seller will re-perform the applicable installation Services during normal business hours at no additional cost to the Buyer; provided that the Seller is notified of any such defective installation within fifteen (15) days after such defect is discovered. Backcharges for corrective work performed by Buyer will not be honored without Seller's prior written consent; Seller's warranty obligations for Installation Services are as specifically set forth in this Exhibit.

b. Products not subject to Separate Manufacturer Warranty

Seller is providing repair service labor to perform the services listed above. Seller warrants that such repair service shall be free from defects in workmanship for a period of ninety (90) days from completion of work, subject to the conditions set forth below or as otherwise set forth in the Product Sales and Service Agreement executed between the Seller and the Buyer.

The warranty set forth above is subject to the following conditions:

1. Any unauthorized modifications to the Products shall invalidate this warranty.
2. If a Product has been subject to improper care, improper use, abuse, misuse, or has otherwise not been properly maintained, the Seller may revoke all or any portion of the warranties provided under this Agreement at any time during the warranty period.
3. This warranty will not apply to damage caused by conditions such as "acts of God" which exceed a Product's design specifications.
4. Seller may, in lieu of repair or replacement of a Product subject to this warranty, pay the Buyer an amount equal to the cost of either the repair or replacement of the Product(s) for which a warranty claim is applicable.

c. Bonded Project Warranty

For bonded Projects, the warranty for Installation Services and Products not subject to a separate manufacturer warranty as set forth in Subsections a. and b., above shall be a period of one (1) year from the Date of Completion.

d. Products subject to Separate Manufacturer Warranty

The following Products may be subject to separate manufacturer warranties:

- Flotation devices;
- Concrete Deck Panels;
- Wave attenuators;
- Panel coating materials.

Copies of such warranties will be provided to the Buyer in conjunction with the delivery of a final invoice to the Buyer. All claims under such warranties must be submitted to the Seller, and, if so submitted, Seller shall assist Buyer with the assertion and satisfactory resolution of any warranty claims with the manufacturer of such Products

EXCEPT AS SPECIFICALLY SET FORTH HEREIN OR IN THE PRODUCT SALES AND SERVICE AGREEMENT BETWEEN THE SELLER AND THE BUYER, NEITHER SELLER NOR MANUFACTURER MAKES ANY OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR TRADE USAGE ARE HEREBY DISCLAIMED AND EXCLUDED FROM THIS AGREEMENT. IN NO EVENT SHALL SELLER OR MANUFACTURER BE LIABLE FOR ANY LOSS OF USE, COST, FEES OR ANY LIABILITY FOR DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES OR DELAYS.



EXHIBIT C

Insurance Requirements

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this contract until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor, to commence work until all similar insurance required of any subcontractor has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies by endorsement, and a waiver of subrogation endorsement is required on all applicable policies. Endorsements must be provided with Certificate of Insurance. Project name and/or number must be listed in Description Box of Certificate of Insurance.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change, or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
COMMERCIAL GENERAL LIABILITY including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$1,000,000 Aggregate
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS'S COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employers Liability	Statutory and complies with Part II of this Exhibit. \$500,000/\$500,000/\$500,000

- C. In the event of accidents of any kind related to this contract, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.

- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. Contractor agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations, and activities of or on behalf of the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any, cancellation, non-renewal, material change or termination in coverage and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this contract.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this contract.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

Appendix A – Additional Terms and Conditions

1. Project Responsibilities:

- 1.1. Whether or not the Seller provides Project supervisory or Installation Services hereunder (which Services, if applicable, shall be specified in the Description of Work), Buyer shall be solely responsible for the following with respect to the Project at the Premises:
- 1.1.1. All applicable governmental approvals and permits (and payment of all associated fees therefor) necessary for execution and completion of the Project at the Premises. Such permits shall include, but not be limited to federal, state or local building permits, permission for the use of public areas in connection with the Project, and the like.
 - 1.1.2. If Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work), Buyer shall provide Seller (at Buyer's expense) with such Project information as the Seller may determine to be reasonably necessary, including, without limitation, a site survey to detail the Project Job Site, a bathymetric study, soil reports, water reports, subsurface reports, zoning and/or other legal limitation information or confirmations. All such information shall be provided at or before the commencement of installation Services, or at such other time as the Seller and Buyer shall reasonably agree.
 - 1.1.3. If Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work), the Buyer is solely responsible for making all utilities available to the Seller that Seller deems necessary for performing installation Services. The Seller is not responsible for installing or disconnecting such utilities, or performing any other work regarding utilities.
 - 1.1.4. Buyer shall designate and provide a staging/launch area(s) that is adequate in size and reasonably acceptable to Seller for: (1) unloading and storage of Products; and (2) ready access to the Job Site for Installation of the Products. The staging/launch area shall be identified and designated prior to Shipment, and must, at a minimum, be sufficient to support an eighteen-wheel semi-truck/trailer, an all-terrain forklift, a crane and/or a winch truck. Seller will not be responsible for normal wear and tear on the staging launch area ("normal wear and tear" being defined as wear and tear consistent with and reasonably consistent with the scope and magnitude of the Project, the delivery and movement of Products, and the performance of the Services, associated therewith). An acceptable staging/launch area(s) must be secured prior to Delivery.
- 1.2. If Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work) Seller shall be responsible for the following with respect to the Project at the Premises:
- 1.2.1. Maintain for the duration of the Project the following insurance coverage: in accordance with Exhibit C. Such insurance coverage will begin on Shipment and shall remain in force until Completion.
 - 1.2.2. Supervise and coordinate all activities at, upon and in connection with the Project and the Premises, including: (a) equipment storage at, and/or staging to the Project; and (b) keeping the Project staging/launch area and Job Site free from accumulation of packing material or rubbish caused by the performance of installation Services and for the removal and lawful off-site disposal of all debris and excess materials.
 - 1.2.3. Subject to and in reliance upon Buyer's compliance with the provisions of Section 1.1 of this Agreement, Seller shall be obligated to perform the Installation Services in accordance with applicable federal, state, or local laws, rules, regulations, and codes.
- 1.3. If Seller is arranging the Shipment and Delivery of the Products (which Services, if applicable, shall be specified in the Description of Work) Seller shall be responsible for arranging the Shipment and Delivery of the Products to the staging/launch area at the Premises.

2. Change Orders; Delays

- 2.1. The Seller or Buyer may, by Change Order, make changes to the Project within the general scope of this Agreement. Any Change Order must be submitted to the other party for its approval. Once the Change Order is approved by both parties, the Project Fee and the projected date for Completion shall be equitably adjusted. Any charges or credits that result from a Change Order's equitable adjustment shall be subject to the terms of Payment set forth in S 6 of this Agreement.
- 2.2. Any modification by the Buyer after Shipment that alters the Project from what is specified in this Agreement without approval of the Seller may, in the reasonable determination of the Seller, result in additional costs that will be borne by the Buyer and will be evidenced by Change Order.
- 2.3. If the Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work), and if concealed conditions are encountered during installation that: (a) are below the surface of the ground and/or body of water; (b) vary from the conditions described by the Description of Work and its specifications; (c) vary from Premises information furnished by the Buyer pursuant to Section 1.1 of this Agreement; or (d) vary from any other information furnished by the Buyer, then, within a reasonable time after the first observance of the conditions, the Project Fee and the anticipated date of Completion may be equitably adjusted by Change Order.
- 2.4. If Seller is arranging the Shipment and Delivery of the Products (which Services, if applicable, shall be specified in the Description of Work), Seller will expend reasonable commercial efforts to Deliver the Products, and if the Seller is performing Installation Services (which Services, if applicable, shall be specified in the Description of Work) to complete the Project, all as specified in the Description of Work. However, Seller will not be considered to be in breach of this Agreement if circumstances beyond its control, including but not limited to an act of God or concealed conditions at the Premises, prohibit Seller from performing Services in the manner and time period specified in the Description of Work. If the Buyer has caused completion of the Project to be delayed beyond 30 days after the anticipated date of Completion, the Project Fee and the anticipated date of Completion shall be equitably adjusted by Change Order.

3. Retention of Title:

- 3.1. Seller retains title in all Products Seller provides to Buyer pursuant to this Agreement and the Description of Work and all other plans, drawings and written items produced as a part of the Services (all such items are Collateral) until the final payment is paid in full.

4. Governing Law; Dispute Resolution; Damages

- 4.1. The Agreement shall be governed by and construed under the law of the State of Texas, without regard to conflict of law provisions.
- 4.2. In the event of a dispute arising under this Agreement or any Services performed or not performed hereunder, the parties agree to attempt to resolve such dispute(s) as follows: first, by a meeting of applicable representatives of Buyer and Seller, such meeting to be held within three (3) days after the written demand for any such meeting by either Buyer or Seller, and such meeting shall be held at a time and location selected by the party receiving such notice.
- 4.3. Except as otherwise expressly provided in this agreement Buyer and Seller agree to waive all claims for any consequential damages that may arise out of or relate to this Agreement, including but not limited to any loss of business, principal office overhead and expenses, loss of profits not related to this Agreement, or loss of reputation. This provision shall also apply to the termination of the Agreement and shall survive termination.

5. Miscellaneous

- 5.1. By their respective execution of this Agreement, each of Buyer and Seller represent and warrant to the other that (a) they are each duly organized and validly existing under the laws of their state of organization, that this Agreement has been duly and validly authorized and approved by all appropriate entity action, and that they have full power and authority to enter into this Agreement and to perform their obligations hereunder; (b) that this Agreement does not violate the terms of conditions of any contract, statute, or law applicable to them; and (c) that this Agreement, as executed, is a valid and binding agreement unto them, and is enforceable in accordance with its terms.
- 5.2. This Agreement embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof and supersedes any prior agreements and understandings relating to the subject matter hereof. Buyer has not relied upon any promise, warranty or representation, either oral or written, of Seller, other than as stated in this Agreement. Seller has not relied upon any promise, warranty or representation, either oral or written, of Buyer, other than as stated in this Agreement. No course of prior dealings between the Buyer and the Seller shall apply. Prior to execution by the Buyer, this Agreement constitutes an offer to sell Products and to perform Services pursuant to the specific terms and conditions of this Agreement. Seller specifically rejects any different or additional terms that may have been previously discussed or proposed by the parties, are now or hereafter proposed by Buyer, or are contained in Buyer's purchase order, order confirmation or any other documents submitted by Buyer. Buyer agrees that by instructing Seller to proceed with the fabrication of Products or provision of Services as contemplated in this Agreement, it accepts Seller's offer pursuant to the terms of the this Agreement, and agrees that this Agreement constitutes the entire agreement of the Parties, and acknowledges that any additional or different terms, conditions, agreements, or understandings that have been discussed by the parties or contained in Buyer's purchase order, order confirmation, preliminary budget, or any other documents submitted by Buyer to Seller, or by Seller to Buyer, are not part of the parties' agreement.
- 5.3. This Agreement may be executed in two or more counterparts, each of which is an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one of such counterparts, provided that the counterpart produced bears the signature of the party sought to be bound. Delivery of the executed signature pages by electronic or facsimile transaction constitutes effective and binding execution and delivery of this Agreement.
- 5.4. This Agreement may be amended, modified or superseded, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, but only by a written instrument executed by each party hereto. No waiver of any nature, in any one or more instances, shall be deemed to be or construed as a further or continued waiver of any condition or any breach of any other term, covenant, representation or warranty in this Agreement.
- 5.5. The parties do not intend the benefits of this Agreement to inure to any third party, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such third party against either of the parties hereto. The terms and conditions of this Agreement, particularly the pricing and payment terms, are confidential and proprietary information of Seller. By its receipt and review of this Agreement, Buyer acknowledges and agrees that it shall be held in confidence and shall not be disclosed to any third party without the prior written consent of Seller, and shall only use such information for the purpose of the Project and for not further purposes.
- 5.6. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the effective period of this Agreement, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Seller acknowledges that buyer is a government entity subject to the Texas Public Information Act. Release of information in accordance with Texas Public Information Act is not violation of this agreement.
- 5.7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 5.8. The section headings contained in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

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- 5.9. Should Seller be delayed in the performance of its obligations hereunder as a result of a force majeure, such as fire, strike, accident, unanticipated intervention of governmental authorities or application of law, rule or regulation, unusual weather, inability to procure necessary goods or services which have been timely ordered, or other matters beyond the reasonable control of Seller, Seller shall not be liable for damages to Buyer for the delays so caused. In the event that Seller experiences an event of force majeure, it shall take every reasonable step to mitigate the effects of such event upon the timely performance of its obligations under this Agreement. For excusable delays in the performance of its obligations hereunder as described above, Seller and Buyer shall execute an amendment to this Agreement reflecting an equitable adjustment to the terms and conditions set forth herein.

6. Definitions:

The following definitions shall apply to capitalized terms not otherwise defined in this Agreement:

- 6.1. **Authorized Representative** shall mean the person delegated by the Parties to enter into and administer this Agreement. The Authorized Representative of the Buyer is identified in Section 3 of this Agreement, and the Authorized Representative of the Seller is identified in Section 7 of this Agreement.
- 6.2. **Change Order** shall mean a written document that details the scope and cost of the desired changes which is entered into in accordance with this Agreement and approved by signature of both Buyer and Seller.
- 6.3. **Completion** shall mean the later of (i) the Delivery of the Products to the Premises; or (ii) if Seller is performing installation Services (which Services, if applicable, shall be specified in the Description of Work), then (A) the date that the Buyer and Seller execute a certificate of Completion (Certificate of Completion) whereby they each certify that, subject to items on the Punch List, the installation of the Project is sufficiently complete in accordance with the Description of Work so that the Buyer can occupy, take possession or utilize the Project for the purpose for which it is intended, or (B) if a Certificate of Completion is not prepared, the date that a final invoice is transmitted from Seller to Buyer.
- 6.4. **Delivery or Delivered** shall mean the physical delivery of the Products identified in the Description of Work. If Delivery is included in Description of Work, the Seller shall arrange to have the Products shipped to the staging/launch area at the Premises, FOB. If Delivery is not included in the Description of Work, then the Buyer shall accept the Products at the loading dock of the Seller's manufacturing facility (or, as applicable, the loading dock of a third party manufacturing facility), FOB. Title and risk of loss to the Products shall pass to Buyer upon Delivery.
- 6.5. **Fabrication** shall mean the manufacture of Products at the Seller's manufacturing facility (or, as applicable, the manufacture of Products at a third party manufacturer). Fabrication shall begin after (i) Seller is in receipt of this Agreement, executed by Buyer; (ii) Seller is in receipt of Buyer's Initial Payment, if required, (iii) Seller has confirmed Buyer's credit approval; and (iv) Seller is in receipt of drawings 'approved' and signed by Buyer.
- 6.6. **Installation** shall mean assembly of Products at the Job Site in accordance with the Description of Work, subject to revisions and Change Orders in accordance with this Agreement.
- 6.7. **Punch List** shall mean a list of items that need to be accomplished to fully implement the Description of Work which is included as a part of the Certificate of Completion.
- 6.8. **Shipment**, if included in the Description of Work, shall mean initiating the transportation of the Products by the Seller to the staging/launch area at the Premises.
- 6.9. All other capitalized terms, not otherwise defined in this Section 6 shall have the definitions given them in the paragraph in which they first appear in this Agreement, or, if not defined herein, shall have the meaning set forth in the Uniform Commercial Code as adopted in the State of Texas.

JSJ