

PURCHASE ORDER TERMS AND CONDITIONS

APPLICABILITY: These Purchase Order Terms and Conditions (these "Terms") are the only terms that govern the provision by NOCO Sustain LLC (the "Contractor") of the goods and services (collectively the "Work") described in the Proposal and Agreement (the "Order Form") to which these Terms are attached. The Order Form and these Terms (collectively, this "Agreement"), together with any Change Order (as defined below) agreed to by the parties in writing, comprise the entire agreement between Contractor and the client listed on the Order Form (the "Owner") with respect to the Work, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Form, the Order Form shall control. Owner and Contractor agree that this Agreement prevails over any of Owner's general terms and conditions regardless of whether or when Owner has submitted its request for proposal, order, or such terms, and all such general terms and conditions are entirely without effect. Provision of goods or services to Owner does not constitute acceptance of any of Owner's terms and conditions and does not serve to modify, amend, or supplement this Agreement.

OWNER AUTHORITY: Owner warrants that (a) Owner owns or validly leases the property identified on the cover page to this Agreement (the "Property"), in which the Work is to be performed, (b) Owner has all requisite authority to enter into this Agreement, and (c) this Agreement is not entered into by Owner in violation of any previous agreement with any third party or any applicable statute, law, or ordinance.

SCOPE OF THE WORK: The Work, and the purchase price for such Work (the "Price"), is as set forth in the Order Form. This Agreement, if not accepted by Owner in writing (either by signature on the face of the Order Form or otherwise), shall be deemed accepted by Owner once Contractor has begun the Work without objection by Owner. Contractor is not obligated to issue or accept any change to the Order Form.

CHANGE ORDERS: Except as provided in this final sentence of this Section, if either party wishes to change the scope or performance of the Work, it shall submit details of the requested change to the other party in writing. Contractor shall, within a reasonable time after such request, provide a written estimate to Owner of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Work arising from the change; and (c) any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and may agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing. Once so agreed to, a Change Order shall become part of this Agreement. Contractor may charge a processing fee for the time it spends assessing and documenting a change request from Owner. Notwithstanding anything to the contrary set forth elsewhere in this Agreement, Contractor may from time to time change the Work without the consent of Owner provided that such change does not materially affect the nature or scope of the Work, or the fees or any performance dates set forth in the Order Form.

COOPERATION: Owner shall: (a) cooperate with Contractor in all matters relating to the Work and provide such access to Owner's premises as may reasonably be requested by Contractor for the purposes of performing the Work; and (b) respond promptly to any Contractor request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Contractor to perform the Work in accordance with the requirements of this Agreement.

LIMITATION OF LIABILITY: Owner is responsible for maintaining all-risk property insurance in sufficient amounts to cover all of Owner's property, including the Property, and Owner shall look solely to such

insurance for coverage of all losses, and not Contractor, in the event of damage to Owner's property occurring for any reason whatsoever. The Owner shall defend, indemnify, and hold harmless Contractor for any costs, expenses (including reasonable attorneys' fees), losses, damages, and claims brought or liabilities imposed against Contractor by any third party relating to or arising out of the provision of the materials and services contemplated by this Agreement (including the Work), except to the extent that such claims or liabilities directly result solely from Contractor's gross negligence or willful misconduct. **NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH ELSEWHERE IN THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO CONTRACTOR UNDER THIS AGREEMENT.**

PRE-EXISTING CONDITIONS: Contractor will not be liable for any interior or exterior pre-existing conditions at the Property. Contractor will not be liable for any items which have not been properly protected or brought to Contractor's attention in writing and agreed to by Contractor prior to commencement of the Work. Contractor does not assume, and hereby disclaims, responsibility for any existing violation of building codes. Corrections of such violations are not to be construed as part of this Agreement unless expressly stated in the Order Form.

FORCE MAJEURE: Contractor shall not be liable for any delay or impairment of performance resulting in whole or in part from Acts of God (including severe weather conditions), labor disruptions, governmental decrees or delays, epidemics, pandemics, insurrections, war risks, shortages, inability to procure or ship product or obtain permits and licenses, supplies of materials, or any other circumstances or causes beyond the reasonable control of Contractor in the conduct of its business. If Contractor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Owner or its agents, Contractor shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, damages, or losses sustained or incurred by Owner, in each case to the extent arising directly or indirectly from such prevention or delay.

ADDITIONAL LIMITATION OF LIABILITY: IN NO EVENT SHALL CONTRACTOR BE LIABLE TO OWNER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, OR DATA, ANY DIMINUTION IN VALUE, OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, IN EACH CASE WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT CONTRACTOR OR OWNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

OWNERSHIP OF MATERIALS: All work and materials delivered to the Property (the "Contractor Materials"), whether actually incorporated in the Property or not, is the property of Contractor until Contractor has been irrevocably paid in full by the Owner; provided, however, that risk of loss shall be with the Owner for all Contractor Materials located at the Property. All Contractor Materials, to the extent in Owner's possession or control, shall be held in trust by Owner for the benefit of Contractor until Contractor has been irrevocably paid in full by the Owner. The Owner agrees that Contractor shall have access to the Contractor Materials at the Property at all reasonable times, including, without limitation, during normal business hours, until the same have been paid for in full. All excess materials not incorporated into the Work shall be considered the property of Contractor, and Contractor may remove any and all materials if the Work is not paid for when due. All leftover materials are the property of Contractor and shall be removed from the Property by Contractor.

PAYMENT TERMS: Owner shall pay the Purchase Price in one or more installments at the time(s) set forth in the Order Form. Owner expressly agrees that the term payment "Upon Completion" or similar language, or the failure to list a payment time for any specific line item or task in the Order Form, means that all monies due with respect to such line item or task are payable to Contractor on demand when such line item or task is substantially complete or substantially performed. Payment will be by check, cash, money order, credit card, or ACH transfer. If payment is by credit card, additional processing fees may apply in Contractor's sole discretion. Owner will pay Contractor a late charge of 1.5% per month on any unpaid balance existing after 30 days of invoice date. The Owner shall be responsible for all sales, use, and excise taxes, and any other taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the Owner hereunder and on any materials or services provided hereunder. In the event that Contractor refers any delinquent sum due by Owner to collections for non-payment, in addition to any other remedies, Owner expressly acknowledges and agrees that Owner will be responsible for all costs and charges that Contractor incurs in connection with such delinquent sum, including, but not limited to, reasonable attorneys' fees, court costs, fees, disbursements, and collection agency charges.

DEFAULT/TERMINATION: Contractor may, upon written notice to Owner, terminate this Agreement or defer performance in the event Owner defaults in the performance of any obligation of Owner herein or otherwise breaches this Agreement, which default or breach remains uncured after 15 days of receiving notice thereof, or in the event Contractor has reasonable belief that Owner is unable or unwilling to pay amounts owing when due. Contractor shall be entitled to recover from Owner all costs and expenses incurred by Contractor in enforcing its rights under this Contract, including reasonable attorneys' fees and disbursements. Either Contractor or Owner may terminate any ongoing maintenance or routine service portion of this Agreement, solely on a going-forward basis, upon 30 days' prior written notice to the other party.

LIMITED WARRANTY: For a period of three years after installation, Contractor warrants that all work to be performed by Contractor hereunder shall have been performed in a good and workmanlike manner in all material respects, in each case in accordance with generally recognized industry standards (such warranty, the "Contractor Warranty"). The Contractor Warranty does not apply to any materials to be installed or used pursuant to this Agreement. In the event that a specific material incorporated into or used as part of the Work is defective, the Owner agrees that Contractor is released from any responsibility or liability with respect to such material and that the Owner must negotiate with, and look solely to, the manufacturer for servicing or replacement of such material; provided that Contractor may, in its sole discretion, perform servicing or replacement of such material on such terms as may be agreed to between the manufacturer, Contractor, and Owner. **EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION, CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY OF ANY TYPE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CONTRACTOR ALSO MAKES NO PERFORMANCE GUARANTEES. OWNER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE CONTRACTOR WARRANTY SHALL BE FOR CONTRACTOR TO, AT CONTRACTOR'S OPTION, EITHER RE-PERFORM THE NON-COMPLIANT WORK OR CREDIT OR REFUND THE PRICE OF THE NON-COMPLIANT WORK AT THE PRO RATA CONTRACT RATE.**

PERSONNEL AND SCHEDULE: The Owner agrees that Contractor will select the personnel to perform the work specified in this Agreement in its sole discretion. Start and end dates presented in the Agreement are estimates only, and time is not of the essence. Owner agrees, until either (a) the Work is performed or (b) this Agreement is terminated (the "Term"), and for a period of one year after the Term, not to

employ or solicit for employment any employee of Contractor or any affiliate of Contractor, in each case of whom Owner was made aware in connection with this Agreement. Contractor may subcontract any part of the Work to one or more third parties.

ACCESS: The Owner hereby authorizes Contractor to enter upon the Property as reasonably necessary to perform the Work. The Owner agrees to obtain consent for Contractor to enter upon adjoining neighbor's premises, if necessary, in order to enable Contractor to perform and complete the Work. During the Term, Contractor shall have at all times reasonable access to the Property and both Contractor and Owner will take all reasonable steps necessary to coordinate the progress of the Work so that the Work may, subject to the other terms and conditions of this Agreement, be completed in a timely manner.

UTILITIES: Owner agrees to provide Contractor with all necessary utilities to perform the Work at no charge to Contractor.

INTELLECTUAL PROPERTY: All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information (collectively, "Intellectual Property Rights"), and all documents, work product, and other written materials that are delivered to Owner under this Agreement or prepared by or on behalf of Contractor in the course of performing the Work, including any items identified as such in the Order Form (collectively, the "Deliverables"), shall, as between the parties, be owned solely by Contractor. Contractor hereby grants Owner a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free, and perpetual basis solely to the extent necessary to enable Owner to make reasonable use of the Work. Contractor is hereby granted the right to use any images or descriptions of the Work for promotional, marketing, or educational purposes.

INDEPENDENT CONTRACTOR: Contractor and its personnel are and shall remain at all times an independent contractor and not an employee of the Owner. Contractor and the Owner acknowledge that this Agreement does not create a partnership, joint venture, or employment relationship between them and neither party has the right or authority to bind the other party with respect to third parties.

APPLICABLE LAW: This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws principles.

DISPUTE RESOLUTION: Any legal suit, action, or proceeding arising out of or relating to this Agreement or the Work shall be instituted in any United States federal court or state court having jurisdiction in Erie County, New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

WAIVER OF JURY TRIAL: **EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT OR IN CONNECTION WITH THE WORK IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE WORK. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS**

REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS DECIDED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SEVERABILITY: If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

ENTIRE AGREEMENT: The entire understanding between the Owner and Contractor with respect to the subject matter hereof is set forth in this Agreement and there are no other promises or conditions in any other agreement, whether oral or written, concerning the subject matter of hereof.

NON-WAIVER: The waiver by either party of an actual or threatened breach, default, delay, or omission of any of the provisions of this Agreement by the other party shall be in writing and will not be construed as a waiver of any subsequent actual or threatened breach of the same or other provisions. Except as provided in the "Change Orders" Section above, this Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by Owner and Contractor. **ADDITIONALLY, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, THIS AGREEMENT IS NOT INTENDED TO WAIVE, MODIFY, OR AMEND, AND SHALL NOT BE CONSTRUED AS WAIVING, MODIFYING, OR AMENDING, ANY STATUTORY OR OTHER NON-CONTRACTUAL RIGHTS OF CONTRACTOR WITH RESPECT TO THE WORK, INCLUDING ANY STATUTORY LIENS ARISING IN FAVOR OF CONTRACTOR WITH RESPECT TO THE WORK AND THE MATERIALS PROVIDED IN CONNECTION THEREWITH.**

NOTICE: All notices, requests, demands, or other communications required or permitted by the terms of this Agreement shall be given in writing to the parties at the addresses listed in the Order Form.

ASSIGNMENT: Neither party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other party except that Contractor may assign or transfer this Agreement to the successor of all or substantially all of the assets or business of Contractor through sale, acquisition, merger, or other similar business transaction.

COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed or accepted copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.