



**PURCHASE ORDER
GENERAL TERMS AND CONDITIONS
FOR GOODS and SERVICES**

1. DEFINITIONS

“**Buyer**” means PRO EM PARTY AND EVENT RENTALS, LLC. “**Supplier**” means the party providing the Goods and/or Services, as identified in the Contract. “**Goods**” means any or all of the goods, products, materials, components, supplies and equipment to be provided, or as part of the Services to be performed, whether or not specifically identified as such in the Contract. “**Services**” means all labor and services, including any applicable installation, construction and contracting Services, to be provided by Supplier pursuant to the Contract. “**Parties**” means Buyer and Supplier.

“**Contract**” means the Purchase Order, the Invitation to Bid, the Request for Proposal, these Purchase Order General Terms and Conditions, and any and all amendments thereto. “**Invitation for Bid (IFB)**” means any document, including drawings and designs or letters, issued by Buyer that describes any or all of the goods, products, materials, supplies and equipment to be provided. “**Request for Proposal (RFP)**” means any document, including drawings and designs or letters, issued by Buyer that describes the nature and scope of the Services as well as any or all of the goods, products, materials, supplies and equipment to be provided as part of the Services to be performed. “**Bid**” or “**Proposal**” means the written offer, if any, of Supplier to provide the Goods and/or to perform the Services, whether pursuant to and IFB, RFP or otherwise. “**Purchase Order**” means the document issued by Buyer to Supplier, identified as such, together with any instructions, addenda, schedules or other materials delivered concurrently with such document. “**Unaccepted Terms**” means terms or conditions endorsed upon, delivered with or otherwise contained in Supplier’s counteroffer or other writing that are a deviation from, exception to or otherwise in conflict with the Contract.

2. ACCEPTANCE OF PURCHASE ORDER

Buyer’s issuance of a Purchase Order constitutes an offer to enter into a contract with Supplier on the terms and conditions set forth in the Contract. Acceptance by Supplier of the offer extended by the Purchase Order must be made on, and is expressly limited to, the exact terms and conditions contained in the Contract. Notwithstanding anything provided by Supplier to the contrary, no Unaccepted Term shall become part of the Contract unless expressly accepted in a signed writing by Buyer. If Supplier provides Goods or starts the Services without Buyer’s written agreement to any Unaccepted Terms, Supplier shall be deemed to have accepted the terms of the Contract exclusive of all such Unaccepted Terms. Buyer’s acceptance of or payment for Goods delivered or Services performed shall be subject to all of the provisions of the Contract and only those provisions, and shall not constitute a contractual acceptance of any Unaccepted Term. If a Bid or Proposal is referenced in the Purchase Order, the Bid or Proposal is incorporated into the Contract only to specify and describe the Goods and Services and to set forth the prices and/or the rates to be charged by Supplier for the Goods and Services, and only to the extent that such descriptions, prices and rates are consistent with the Contract. No inconsistent terms in a Bid or Proposal, including an Unaccepted Term, shall be incorporated into the Contract unless Buyer specifically identifies and agrees in writing to such Unaccepted Term. Buyer may withdraw the Purchase Order at any time before it is accepted by Supplier. Furthermore, Buyer will not be bound by any “disclaimers” or “click to approve” terms or conditions now or hereafter contained in any website used by Buyer in connection with the Goods and/or Services (as applicable) or the Purchase Order, as all such terms inconsistent with the Contract shall be deemed Unaccepted Terms.

3. PRECEDENCE OF DOCUMENTS

The order of precedence of the Contract is: first, the Purchase Order; second, these General Terms and Conditions for Goods and Services; and third, the IFB or RFP.

4. ETHICS POLICY

By accepting the Contract, Supplier agrees to do business in accordance with Buyer’s business ethics policy, which provides that members of Buyer’s governing bodies, its officers and employees and their family members shall not accept any gift or benefit offered in an attempt to influence a purchasing decision. Supplier’s offering or giving of such “gifts”, whether or not made with intent to obtain special consideration, shall be a material breach of contract entitling Buyer to cancel any contracts with Supplier.

5. PRICES; INVOICES; PAYMENT

Buyer shall compensate Supplier based on the prices and/or at the rates stated in the Purchase Order (“**Prices**”), except as may be otherwise provided, qualified, or limited herein. Supplier warrants that the Prices for the Goods and/or Services (as applicable) to be provided are not less favorable than those currently extended to any other customer for the same or similar goods and services. In the event Supplier reduces its prices for such goods or services prior to accepting the Purchase Order or during the term of performance of the Purchase Order, Supplier agrees to (i) notify Buyer of such reduced price and (ii) reduce the Prices charged to Buyer accordingly. No additional charges will be added to the Prices, nor will any increase in the Prices last quoted or charged to Buyer be effective, whether due to increased materials, labor or transportation costs or otherwise, without the prior written consent of Buyer, in its sole discretion.

Supplier agrees to provide correct and complete invoice(s) at the time of completion of delivery of Goods and/or Services, or as frequently as otherwise agreed, to Buyer’s Accounts Payable Department at the address indicated on the Purchase Order. Invoices shall reference the Purchase Order number, the location of the Services and Buyer’s project manager (if applicable); shall describe the Goods and/or Services; and shall state separately all taxes, transportation charges, Prices, and labor charges, as applicable. The time for payment of invoices, as specified in the Contract, or for accepting any prompt payment discounts offered, will be computed from date of receipt of Goods and/or Services or date of receipt of correct invoice (whichever is later). Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice. If no payment terms are specified in the Contract, Buyer will pay all properly invoiced amounts due to Supplier within sixty (60) days after Buyer’s receipt of such invoice, except for any amounts disputed by Buyer in good faith. In the event of a payment



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or billing dispute, Buyer will deliver a written statement to Supplier listing all disputed Goods and/or Services and providing a reasonably detailed description of each disputed item. The parties will seek to resolve all such disputes expeditiously and in good faith. Supplier will continue performing its obligations under the Contract notwithstanding any such dispute. Supplier will not issue an invoice to Buyer prior to delivery of the Goods and/or completion of the Services (as applicable) and then only in accordance with these general terms and conditions. All invoices and payments hereunder will be denominated in US dollars.

6. TAXES

Unless otherwise provided on the Purchase Order, the Price includes all applicable taxes. Where applicable, Buyer may provide Seller with a tax exemption certificate.

7. CHANGES

At any time, by written notice to Supplier and without notice to sureties or assignees, if any, Buyer may make changes in the Goods and/or Services, or the time, manner, method or place of performance hereunder. If such change increases or decreases the cost or time required for performance, an equitable adjustment shall be made in the price or time for performance, as applicable. All such changes shall be evidenced by a formal change order to the Contract. Any claim for adjustment by Seller under this section must be asserted, if at all, by written notice to Buyer within 30 days after notice of the change, or the claim is waived.

Buyer's employees, including but not limited to Buyer's technical personnel, may exchange information with Seller's personnel. Any such exchange is understood not (i) to affect the Goods and/or Services, (ii) to change the price for the Goods and/or Services or (iii) otherwise be deemed to modify the Contract. Any discrepancies, omissions or lack of clarity in drawings, specifications, or purchase orders, must be referred to the Buyer for written interpretation before a Purchase Order is processed. Buyer shall have the right at any time before completion of the order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and equitable adjustment shall be made. Changes shall not be binding upon Buyer unless evidenced by a formal change order to the Purchase Order and issued and signed by Buyer.

8. EXPEDITING

At Buyer's option, the Goods furnished under the Purchase Order shall be subject to expediting. If requested, Supplier shall (a) supply schedules and progress reports for Buyer's use in expediting; and (b) shall arrange, at times convenient to it, reasonable access to Supplier's plants and, if applicable, those of Supplier's major suppliers by Buyer's personnel for expediting purposes.

9. TIME OF THE ESSENCE

Time is of the essence of the Contract. Adherence to the Contract schedule and delivery of all Goods and/or completion of the Services on or before the dates specified in the Contract is a material obligation of Supplier. Supplier shall furnish and maintain ample and competent labor, supervision and management, as well as ample resources and facilities at the Jobsite to meet the Contract Schedule. If at any time the delivery of Goods and/or Services is behind schedule, Supplier shall immediately put into effect a corrective recovery program acceptable to Buyer for getting the delivery of Goods and/or Services back on schedule ("**Corrective Action Program**"). The Corrective Action Program shall be subject to Buyer's review, modification and approval.

10. FORCE MAJEURE

If any delay in Supplier's performance is caused by a Force Majeure Event (as defined below), the time for performance shall be extended for the period of such occurrence. As used herein, "**Force Majeure Event**" means acts of God; explosion; fire; flood; drought; epidemic; earthquake; riot; insurrection; blockade; war; terrorism; or other hostilities; strike, lockout or other industrial disturbance; act or restraint of governmental authority whether valid or invalid; action or non-action by any such authority which causes the lapse of necessary governmental authorizations, permits, licenses, certificates or approvals; that is reasonably beyond the control of Supplier and that Supplier is not able to overcome by the exercise of reasonable diligence.

Supplier shall notify Buyer expeditiously, and in any event within ten (10) days, of the occurrence of a Force Majeure Event, and the failure of Supplier to so notify Buyer will be deemed a waiver of any claim for an extension of time for performance by Supplier. During the period of Supplier's delay or failure to perform, Buyer may purchase Goods and/or Services from other sources and cancel or reduce its schedules and/or releases to Supplier by such quantities, without any liability to Supplier. Buyer may also, at Buyer's sole option, elect to extend the period of performance to cover the period caused by the Force Majeure Event. If Price escalation is provided for in the Contract, the date that such escalation is to occur shall be extended to account for any delay in time of performance whether or not attributable to a Force Majeure Event, unless Buyer suspends performance pursuant to Section 11 below. If a Force Majeure Event occurs that affects delivery of Goods or provision of Services to Buyer, Supplier will allocate its available resources in a manner that assures Buyer of at least the same amount of total time in completing the deliveries as was allocated to Buyer before the Force Majeure Event.

11. CANCELLATION; SUSPENSION

At its discretion, Buyer may cancel all or any part of the Contract at any time (including during a Force Majeure Event) by written notice to Supplier, and Buyer shall pay Supplier an amount for Goods and/or Services furnished to and accepted by Buyer that is consistent with the pricing set forth in the Contract, plus Supplier's cost of non-standard materials on hand specifically for the purpose of the Contract and Services in progress, which amount shall not exceed the original price under the Contract. If so instructed by Buyer, Supplier shall deliver



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such Services in process and non-standard materials to Buyer or Buyer's assignee. Buyer will make no payments for Goods, Services in process, or materials fabricated or procured by Supplier in amounts in excess of those authorized in Buyer's delivery releases. Any unapplied payments made by Buyer for Goods and/or Services shall be credited against the amount due to Supplier, and any payment in excess of the amount due to Supplier shall be refunded to Buyer. Buyer may suspend the Services, either in whole or in part, by written notice to Supplier, and Buyer shall reimburse Supplier for its actual costs of storage of materials and shut-down and start-up of Services in progress at the time of the suspension notice. Any claim for adjustment not asserted by Supplier by written notice to Buyer within 30 days after the notice of cancellation or suspension will be deemed waived.

12. DEFAULT

If Supplier defaults in its performance, Buyer shall be entitled to cancel all or any part of the Contract. If the Contract is terminated or cancelled due to Supplier's default or breach, Buyer shall be entitled to recover the cost of completion of the project, plus reasonable compensation for any costs incurred due to any delay in performance, in addition to any other applicable remedies. Supplier shall pay Buyer such costs within 30 days after written demand by Buyer. Supplier shall immediately notify Buyer in writing upon the occurrence of any default by Supplier hereunder, or of any event which, with the giving of notice or passing of time, would constitute a default by Supplier hereunder.

13. WAIVER

The waiver by either party of any breach or failure to perform in accordance with the Contract, or the failure of a party to exercise or any delay in exercising any rights or remedies, or the failure of a party to notify the other properly in the event of a breach shall not be construed as a waiver of any other term or condition herein, or of any subsequent or continuing breach of the same or any other term or condition or will not operate to excuse the defaulting party from further compliance with the Contract. Neither Buyer's use or acceptance of any Goods delivered or Services performed pursuant to the Contract nor payment to Supplier by Buyer shall be construed as a waiver of any rights of Buyer arising out of Supplier's prior or subsequent failure to comply with any of the terms and conditions of the Contract.

14. INSPECTION; REJECTION; ACCEPTANCE

Supplier shall deliver Goods and/or perform the Services in accordance with the Contract and those standards of care, skill and diligence and customarily accepted practices and procedures normally provided by a professional in the performance of the same. Buyer shall have the right to inspect and test all Goods furnished and/or Services performed at any time prior to completion of performance, and shall the right make a final inspection within a reasonable time after completion of performance. Such tests and inspections shall be as specified by Buyer and shall be held at a time and in a manner acceptable to Buyer. Successful completion of Buyer's final inspection, as determined solely by Buyer, shall constitute acceptance of the Goods and/or Services. *However, failure to inspect or test by Buyer shall not relieve the Supplier of any responsibilities hereunder.* Payment under the Contract, or any part thereof, shall not constitute Buyer's acceptance or release Supplier from its responsibility to perform its obligations under the Contract.

If Buyer requires replacement or re-performance of non-conforming Goods and/or Services (as applicable), Supplier will, at its expense, promptly replace or re-perform the non-conforming Goods and/or Services (as applicable) and pay for all related expenses, including, but not limited to, transportation charges for the return of the non-conforming Goods and the delivery of replacement Goods. If Supplier fails to timely deliver replacement Goods or re-perform Services (as applicable), Buyer may replace the non-conforming Goods and/or Services (as applicable) with goods and/or services (as applicable) from a third party and charge Supplier the cost thereof and terminate the Contract for cause.

15. TITLE; RISK OF LOSS

Except for Goods acquired by Supplier as Buyer's agent, title and risk of loss to the Goods and/or Services, or any part thereof, shall remain with Supplier until acceptance by Buyer of the Goods and/or Services, or any part thereof. Title and risk of loss shall pass only as to the Goods and/or Services, or any part thereof, that are accepted by Buyer.

16. WARRANTY PROVISIONS

Supplier warrants that it is authorized to sell the Goods and/or perform the Services as set out in the Contract. Supplier warrants that, in addition to any and all express and implied warranties provided under the Uniform Commercial Code as adopted in the State of Arizona (the "UCC"), the Goods and/or Services shall be: (a) completed in full conformance with the description thereof set forth in the Contract; (b) free from defects in design, material, workmanship and inspection; (c) suitable for the purposes intended, whether expressed or reasonably implied; (d) of the best quality, (e) when shipped, free from all liens, security interests and encumbrances of any type whatsoever; and (f) shall be manufactured, produced, labeled, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations. If, within one year after the date of acceptance, or during such longer warranty period agreed to between Buyer and Supplier, the Goods and/or Services or any part thereof does not conform to these warranties, notwithstanding Buyer's acceptance, prior inspections or prior knowledge of the non-conformity, or its substantiality or ease of discovery, and Buyer so notifies Supplier within a reasonable time after discovery of the non-conformity, Supplier shall, at its sole expense, promptly correct such non-conformity. Supplier warrants and shall forever defend that it has and is transferring good title to the Goods.

Supplier's liability shall extend to all damages proximately caused by the breach of any warranty. All warranties provided in the Contract shall be assignable by Buyer.



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Supplier hereby assigns to Buyer all warranties relating to the Goods and, if Supplier cannot assign such warranties, Supplier shall, at Buyer's request, enforce such warranties on Buyer's behalf.

17. RIGHT TO USE GOODS OR SERVICES REQUIRING CORRECTIONS

If Buyer discovers that the Goods and/or Services or any part thereof requires correction, Buyer shall nevertheless have the right to use the and/or completed Services or part thereof until such time as it is convenient to Buyer for such Goods and/or Services to be removed from service for correction. Buyer's right to use the completed Goods and/or Services may be limited in such manner or degree as Supplier may specify in writing as being reasonably necessary to protect the Goods and/or Services until corrections can be made.

18. PACKAGING and SHIPMENT

All Goods covered by the Purchase Order must be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Supplier must provide Buyer prior written notice if it requires Buyer to return any packaging materials. Any return of such packaging materials will be made at Supplier's expense.

Supplier shall arrange and be responsible for the shipment and receipt of all Goods required to be furnished by Supplier. Supplier shall not charge for boxing, crating, packaging or loading or for transportation costs other than as specifically agreed to in the Contract. Supplier shall pay the cost of premium transportation costs incurred to enable Supplier to meet scheduled deliveries, unless Buyer otherwise agrees in writing. Goods shall be packed to prevent damages from weather and transportation, taking into account the transportation means to be used.

A packing list shall accompany each shipment showing Buyer's Purchase Order number, listing only the Goods covered by the Contract and the number of containers in which such Goods are packed. The Purchase Order must appear on all applicable shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order. If, after authorization by Buyer, Supplier purchases Goods as Buyer's agent, shipping receipts, original bills of lading, express receipts and air bills shall be sent to Buyer on the date the Goods are shipped.

All Goods will be delivered to, and all Services will be performed at, the address(es) specified in the Purchase Order during Buyer's normal business hours or as otherwise instructed by Buyer.

19. ORDER OF PERFORMANCE OF SERVICES

Buyer and other Suppliers and sub-contractors may be working at the site of the Services during the performance of the Contract. Buyer may direct Supplier to schedule or reschedule the order of performance of the Services in such a manner as to reasonably avoid interference with the general operations of Buyer and performance of other services to Buyer by other suppliers or sub-contractors.

20. NO PAYMENT FOR ANCILLARY SERVICES

No additional compensation shall be paid to Supplier for providing any service, facility, thing, or material ancillary to the Services, unless separate payment therefor has been specifically provided for in the Contract. Compensation for all services, facilities, things, or materials necessary or required to execute the Services in accordance with the provisions of the Contract is included in the Prices provided for in the Contract.

21. USE OF PREMISES

In those instances where the Services are being performed on Buyer's premises, Buyer shall provide Supplier a reasonably sized and located area for the storage of materials and equipment. Supplier shall confine its equipment, materials, and the operations of its workers as specified by Buyer, and Supplier shall not unreasonably congest or obstruct the premises with material and equipment, and shall clean up the Services area and remove all waste materials and rubbish. When the Services are finished, Supplier shall remove from the Services area all tools and machinery owned or rented by Supplier and all rubbish and material resulting from the Services, and shall leave the premises in a safe and clean condition. If applicable, Supplier shall dispose of refuse from the site in a landfill approved by Buyer. If Supplier fails to perform clean-up Services to Buyer's reasonable satisfaction, Buyer may perform such Services and charge and set-off against amounts due to Supplier all reasonable costs incurred in doing so. Supplier, at its sole expense and to Buyer's satisfaction, shall repair all damage done, by Supplier at the jobsite, to the work or property of others.

22. INDEMNITY

Supplier shall indemnify, defend and hold harmless Buyer and members of its governing bodies, its directors, officers, members, managers, shareholders, employees, agents, its affiliates, and their respective directors, officers, members, managers, shareholders, employees, customers and agents (the "Indemnified Parties") for, from and against any and all claims, demands, suits, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, direct and indirect costs and expenses, fines, penalties, and liabilities (collectively, "Losses") for injury to or death of any person or persons, including employees of Buyer or of Supplier or its sub-contractors, or damage to property, including property of Buyer or of Supplier or its sub-contractors, to which the Indemnified Parties may be put or subjected by reason of any act or omission, on the part of Supplier, any sub-contractor or supplier of Supplier, or any of the directors, officers, partners, members, managers, agents, servants or employees of Supplier, or of its sub-contractors or suppliers. Such actions include, but are not limited to, (i) Supplier's manufacture and/or supply of Goods to Buyer, (ii) Supplier's performance of Services, (iii) any defect in the Goods, (iv) the negligence or willful misconduct of Supplier, its agents or employees, (v) any claim for bodily injury or death, damage to



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property or any claim by an employee or subcontractor of Supplier for wages and benefits, (vi) Supplier's breach of any representation, warranty, covenant or other obligation hereunder, and/or (vii) the infringement of any third party proprietary rights with respect to (A) Services performed by Supplier, and/or (B) Goods supplied by Supplier (including, without limitation, with respect to Supplier's manufacture and/or Buyer's use or possession thereof).

Supplier's obligations under this Section shall extend to indemnify, defend and hold harmless the Indemnified Parties where they are allegedly concurrently negligent with Supplier, any sub-contractor or supplier of Supplier, or any of the directors, officers, partners, members, managers, agents, servants or employees of Supplier, or of its sub-contractors or suppliers, in causing or contributing to the liability causing event, but shall not extend to any liability that has been judicially determined to have been caused by the sole negligence of Buyer. Supplier shall also indemnify, defend and hold harmless the Indemnified Parties for, from and against any and all Losses for contractual claims arising out of Supplier's agreements with third parties. Supplier's obligation to indemnify will survive the expiration or termination of the Purchase Order by either party for any reason.

The remainder of this Section, notwithstanding, Supplier's obligations under this section shall not extend to the sole or gross negligence or willful misconduct of the Indemnified Parties.

23. INSURANCE

Without limiting any liabilities or any other obligations of Supplier, Supplier shall provide and maintain, with forms and insurers acceptable to Buyer, and until all obligations under the Contract are satisfied, the minimum insurance coverages, as follows:

23.1 Workers compensation insurance with minimum statutory limits to cover obligations imposed by applicable laws and regulations, including without limitation federal and state statutes.

23.2 Employer's Liability insurance with a minimum limit of \$1,000,000.

23.3 Commercial general liability insurance with a minimum limit of \$2,000,000 each occurrence and \$2,000,000.00 aggregate. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability, contractual liability, broad form property damage, and completed operations for a period of two years after Acceptance.

23.4 Business automobile liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each accident with respect to vehicles assigned to or used in the performance of the Services, whether owned, hired or non-owned.

23.5 If required by Buyer, Professional Liability insurance with a minimum limit of \$1,000,000 annual aggregate. Supplier shall maintain such coverage for a period of five years after the effective commencement of the Contract.

23.6 If required by Buyer, Aircraft Public Liability insurance covering airplanes and rotorcraft whether owned, hired or non-owned with a combined single limit for bodily injury and property damage of not less than \$10,000,000, including passenger liability coverage.

23.7 If required by Buyer, "All Risk" builders risk insurance covering the Services, including the interest of Buyer, with limits adequate to cover the value of the Services installed and Goods while in transit and while stored at the jobsite, which affords coverage from the time the Services is commenced until Acceptance.

23.8 Any other coverages which may be reasonably required by Buyer including installation floaters and Suppliers equipment.

23.9 The policies required by Sections 23.3, 23.5, 23.7 and 23.8 shall include the Indemnified Parties as additional insureds and shall stipulate that the insurance afforded for the Indemnified Parties shall be primary insurance and that any insurance carried by Buyer shall be excess and not contributory insurance.

23.10 Supplier and its insurers providing the required coverages shall waive all rights of subrogation against the Indemnified Parties.

23.11 Prior to commencing the Services, Supplier shall furnish Buyer with Certificates of Insurance as evidence that policies providing the required coverages, conditions and limits are in full force and effect, by sending such Certificates of Insurance directly to the Buyer's Authorized Procurement Agent at the address stated on the Purchase Order. Such certificates shall provide that not less than 30 days advance notice of cancellation (10 days in the event of non-payment of premium) shall be sent directly to the Buyer's Authorized Procurement Agent at the address stated on the Purchase Order.

23.12 In the event of a loss for which Buyer may have coverage under one of the policies required by the Contract, Supplier shall, upon Buyer's request, provide Buyer with a certified copy of the applicable policy.

23.13 Costs for coverages maintained by Supplier in excess of or in addition to those required shall not be charged to Buyer unless otherwise agreed to by Buyer.

23.14 The insurance policies may provide coverages that include deductibles or self-insured retentions. Supplier shall be solely responsible for deductibles and/or self-insured retentions, and Buyer, at its option, may require Supplier to secure the payment of such self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

24. PATENTS; COPYRIGHTS, INTELLECTUAL PROPERTY

If the Goods and/or Services supplied by Supplier are produced or performed to designs not originated by Buyer, Supplier warrants that the sale and use of all such Goods and/or Services will not infringe any foreign or domestic patent or copyright or constitute the unlawful use of trade secrets or other intellectual property rights (each, an "IP Infringement"). Supplier shall indemnify, defend and hold harmless the Indemnified Parties against all Losses for actual or alleged IP Infringements related to the sale and use of the Goods and/or Services. If the sale or use of all or any part of the Goods and/or Services is held to constitute an IP Infringement, and the use of any or all of them is enjoined, Supplier shall immediately, at its own expense, either procure for Buyer a license for continued use of any such Goods and/or



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Services, replace them with substantially equal but non-infringing Goods and/or Services, modify them such that they become non-infringing, or remove them and refund the purchase price and pay all costs incurred by Buyer in connection with the removal and replacement of the Goods and/or Services .,

As between the parties, all patentable or copyrightable ideas, writings, designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information, designs, parts, machines or other processes and materials made, conceived or developed by Supplier alone or with others including employees and sub-contractors which result from or relate to any Services performed under the Purchase Order (collectively, "**Work Product**"), and all rights with respect thereto, will at all times be and remain the sole and exclusive property of Buyer. Supplier shall supply (and cause its employees and sub-contractors to supply) all assistance reasonably requested in securing for Buyer's benefit any patent, copyright, trademark or service mark registration or other evidence of ownership of any such intellectual property, and shall provide full information regarding any such item and execute all appropriate documentation prepared by Buyer in applying for or otherwise registering, in Buyer's name, all rights to any such item. Buyer may grant licenses to make, use, buy or sell any product or service derived from the Goods and/or Services.

Standard goods manufactured by Supplier and sold to Buyer without having been designed, customized or modified for Buyer do not constitute Work Product and, as between the parties, all rights with respect thereto will remain the sole and exclusive property of Supplier.

The foregoing notwithstanding, Supplier hereby grants to Buyer a non-exclusive, royalty-free worldwide license to use such of Supplier's intellectual property, if any, as is required to give Buyer full benefit of any Goods that incorporate such Supplier intellectual property.

Except as otherwise set forth herein, as between them, each of Buyer and Supplier will retain the sole and exclusive rights in all of its intellectual property.

25. AUDIT

Buyer shall have the right, at its own expense, to audit and to examine, inspect and copy Supplier's written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders), all documents, books, records, data compilations on any storage media, computer programs, or other evidence (collectively, "**Supplier's Records**") deemed necessary by Buyer to substantiate any of Supplier's invoices and to audit for compliance with all terms and conditions of the Contract. Any such audit shall be undertaken at reasonable times. Supplier shall fully cooperate with any such audits, and Buyer or its designee shall be afforded access to all of Supplier's Records. Supplier shall provide Buyer with adequate and appropriate workspace in which to conduct its audits. The right to audit shall extend for a period of three years following the date of final payment by Buyer hereunder, during which period Buyer shall complete any audit that it deems appropriate. Unless a longer period is required by law, Supplier shall preserve all of Supplier's Records supporting Supplier's invoices and compliance with the terms of the Contract until the later of (a) completion of any audits and resolution of all disputes arising therefrom, or (b) three years following the date of final payment by Buyer hereunder. Buyer shall notify Supplier in writing if, as a result of an audit, Buyer determines that Supplier's Records do not support one or more of Supplier's invoices. Supplier shall respond to such notification within 30 days, and the parties shall use good faith efforts to resolve the disagreement, if any. Upon resolution of any disagreement in favor of Buyer, the amount, with interest thereon at the rate of 1.5% per month, compounded monthly (or the maximum interest permitted by law, if any, whichever is less), computed from the due date of the questioned invoice to the date of reimbursement to Buyer, shall be, at Buyer's option, either (a) paid to Buyer by Supplier within 30 days, or (b) setoff against any amount owed by Buyer to Supplier, with any excess not setoff refunded to Buyer as provided in (a) above. Supplier shall require all sub-contractors of any tier, insurance agents, and material suppliers to comply with the provisions of this Section by insertion of the requirements of this Section in a written agreement between Supplier and the sub-contractor, insurance agent or material supplier.

26. INDEPENDENT SUPPLIER; NO THIRD PARTY BENEFICIARIES

Supplier shall have the status of, provide Goods and Services as an independent Supplier in accordance with its own means and methods, and is not a co-venturer, agent, employee or representative of Buyer, except as expressly stated herein. There are no third party beneficiaries of the Contract.

27. SAFETY

In providing Goods and/or Services Supplier shall take all safety precautions and shall furnish and install all safeguards necessary for the prevention of accidents, fires and release or creation of environmental pollutants, and adhere to safe construction practices specified by the National Electric Code and all other applicable industry standards. In connection therewith, Supplier shall provide all necessary safety-related tools and equipment for its work crews, maintain all fences, barricades, lights, shoring and other protective structures or devices necessary for the safety of workers, equipment, the public and property. Supplier shall provide fire extinguishers on the job site during the course of the Services of the type and sizes recommended by the National Fire Protection Association to control fire resulting from the particular Services being performed, and Supplier shall instruct its employees in the use of such fire extinguishers. Fire extinguishers shall be placed, ready for instant use, in the immediate vicinity of the Services being performed. Supplier shall abide by and require all of its employees, sub-contractors and agents to abide by Buyer's safety requirements.



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28. CONFIDENTIALITY

If the parties have executed a separate confidentiality agreement the terms of such confidentiality agreement will govern the disclosure and receipt of confidential information by and between the parties and the same shall be deemed a part hereof. If a confidentiality agreement is not in effect between the parties, the remainder of this Section 29 will apply.

Supplier shall retain in confidence and not divulge or allow to be divulged to third parties, intentionally or through Supplier's negligence or that of Supplier's agents or employees, information that is proprietary or commercially valuable to Buyer, or Buyer's customers as the case may be, relating to Buyer's operations that Supplier obtains in connection with the provision of Goods and/or the performance of Services or information that Buyer has identified as proprietary or confidential. Supplier shall not refer to Buyer in any advertising or publication without Buyer's prior written consent.

29. LIENS

If, by virtue of supplying all or any portion of the Goods or performing all or any portion of the Services, a third-party files a lien against the premises upon which the Goods are installed or the Services is performed, Supplier shall, promptly on demand of Buyer and at Supplier's expense, take any and all action necessary to cause any such lien to be released or discharged. If Supplier fails to cause such lien to be released or discharged within five days after Buyer's demand, Buyer may satisfy the amount of the lien and set-off all amounts paid in satisfying the lien against amounts due to Supplier from Buyer under this Contract or any other agreement between Buyer and Supplier.

30. SURETY BONDS

On behalf of providing Services if requested by Buyer, Supplier shall furnish a performance bond, a labor and materials payment bond and/or a fidelity bond as security for the faithful performance and payment of all of Supplier's obligations under the Contract. Each bond shall be in an amount at least equal to the Contract price and written by a surety approved by Buyer. Each bond shall be accompanied by a certified copy of such surety's agent's authority to act. Each bond shall contain a waiver of all rights under A.R.S. 12-1641. At Buyer's option, the labor and materials payment bond, together with a copy of the Purchase Order and any other document deemed necessary by Buyer may be recorded in the office of the County Recorder pursuant to A.R.S. 33-1003, prior to the furnishing of any Goods and/or performance of the Services.

31. COMPLIANCE WITH LAWS; EQUAL OPPORTUNITY

Supplier warrants that, in performing its obligations under the Purchase Order, Supplier will comply (and will require all of its employees and other agents involved in Supplier's performance under the Purchase Order to comply) with all applicable federal, state and local laws, codes, regulations, rules and orders in the performance of the Purchase Order and that any Goods have been manufactured in compliance with the Fair Labor Standards Act and all other applicable federal, state and municipal laws, codes, regulations, rules and orders. Supplier further warrants that it will not discriminate against any applicant or employee because of race, color, religion, sex or national origin.

32. PROVISION OF MATERIAL SAFETY DATA SHEETS

If Supplier is providing any chemical substance, Supplier shall furnish a Material Safety Data Sheet (MSDS) with each shipment for every chemical item purchased hereunder in a format that complies with federal and state OSHA regulations. Prior to providing substitute chemicals or chemicals with changes in composition, Supplier shall provide two weeks written notice to Buyer and shall not ship such Goods or use them in performing the Services without the prior authorization of Buyer.

33. COSTS; FEES

Should either party sue to enforce its rights herein, the prevailing party shall be entitled to reimbursement from the other party of reasonable attorneys' fees and litigation costs and expenses, including witness fees of any kind, in an amount to be determined by the court.

34. ASSIGNMENT

Except as otherwise provided in this Contract, Supplier shall assign or delegate performance under the Contract, nor assign any interest in it without the prior written consent of Buyer.

35. ENTIRE AGREEMENT; AMENDMENT

The Contract constitutes the entire agreement between the parties with respect to the subject matter thereof, and no understandings or obligations not set forth therein shall be binding upon them. No amendment of the Contract shall be valid unless it is in writing, makes specific reference, by Purchase Order Number, to the Purchase Order being amended, and is signed by duly authorized representatives of both parties. The Contract shall not be modified, amended or altered by Supplier's preprinted forms and shall not be construed to include Unaccepted Terms. No verbal agreements or conversations with any officer, agent or employee of Buyer or Supplier shall affect or modify any of the terms or obligations set forth in the Contract.

36. SEVERABILITY OF PROVISIONS

If any part of the Contract is unenforceable, such unenforceability shall not extend beyond the part affected. Unless otherwise agreed to by the parties, the unaffected part of the Contract shall continue in full force and effect and shall be binding upon the parties hereto.



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37. NO EXCLUSIVITY or MINIMUMS

The Purchase Order is a non-exclusive agreement. Buyer is free to engage others to provide goods or services the same as or similar to the Goods and/or Services (if any) to be provided under the Purchase Order. Buyer is not obligated to any minimum purchase or future purchase obligations under the Purchase Order.

38. NOTICES

Any notice, demand or request provided for in the Contract, or served, given, or made in connection with it, shall be in writing and shall be delivered in person, by courier service providing next-day delivery, by email or facsimile, or sent by United States mail, postage prepaid, to the person and to the address specified below:

To Buyer: the original shall be delivered to the address and attention of the Authorized PRO EM Procurement Agent shown on the Purchase Order. A copy shall be delivered to:

PRO EM Party and Event Rentals, LLC
1450 E. Grant St.
Phoenix, Arizona 85034

To Supplier: At the address shown on the Purchase Order.

If sent by mail, notices shall be effective three business days after deposit in the mail. If hand-delivered or sent by facsimile or email, notices shall be effective upon delivery.

39. GOVERNING LAW; UCC TO APPLY; JURISDICTION AND VENUE

This Contract shall be governed by and construed in accordance with the laws of the State of Arizona, without regard to conflicts of law principles. Except as otherwise provided in the Contract or in statutes pertaining to Buyer, Supplier and Buyer shall each have all remedies afforded by the UCC. All remedies provided for in this Contract shall be cumulative and shall be in addition to all other remedies available to either party at law or in equity. Buyer and Supplier agree that any action, suit, or proceeding arising out of or relating to this Contract shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court.

40. SURVIVAL OF TERMS

Cancellation, expiration, or termination of this Contract shall not relieve the parties of obligations that by their nature should survive such cancellation, expiration, or termination, including audit rights, confidentiality, warranties, remedies, or indemnities.