

AMERICAN GREENFUELS ROCKWOOD (TENNESSE), LLC PURCHASE ORDER TERMS AND CONDITIONS

Acceptance and Terms and Conditions. This purchase order (“PO”) (front and backside and any addendums, amendments, exhibits, or attachments (“Supplements”)) is a legal contract between Seller and Purchaser, as named on the reverse side of this document. Seller hereby accepts this PO and any Supplements by signing the acceptance copy and promptly returning it to the buyer. Even without such written acknowledgment, Seller’s full or partial performance under this PO will constitute acceptance of these terms and conditions. By accepting this PO, Seller agrees to be bound by, and to comply with, all the terms and conditions contained in this PO and any Supplements to this PO. Purchaser may revoke this PO at any time before Seller’s acceptance. Terms and conditions proffered by Seller that are different from, or in addition to, the terms and conditions in this PO, whether contained in any acknowledgment of this PO, or with delivery of any goods or services under this PO, or otherwise, will not be binding on Purchaser, whether or not they would materially alter this PO, and Purchaser hereby rejects them.

Time of the Essence. Failure to deliver the goods or services ordered under this PO within the time specified herein shall entitle Purchaser, in addition to any other rights or remedies, to cancel this order and purchase the goods or services elsewhere, in which event Seller shall be responsible for any increase in Purchaser’s cost in fulfilling this order. Payment or acceptance of any items after the scheduled delivery date shall not constitute a waiver of Purchaser’s right to cancel this order with respect to subsequent deliveries.

Price, Invoices, Taxes, and Payment. This PO shall not be filled at a price higher than shown on the face of the PO. If no price is set forth on the front of the PO, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, the goods and services ordered under this PO will not be billed at a higher price than last quoted or charged without Purchaser’s specific written authorization. No extra charges of any kind is allowed unless specifically agreed to in writing by Purchaser. All applicable taxes arising out of transactions contemplated by the PO will be borne by Seller except as otherwise specified by the parties in writing. Seller warrants to Purchaser that the prices for the goods or services sold to Purchaser under this PO are not less favorable than those currently extended to any other customer for the same or similar goods and/or services in equal or fewer quantities. If Seller reduces its prices for such goods and/or services during the term of this PO, Seller shall correspondingly reduce the prices of goods and/or services sold thereafter to Purchaser under this PO. Invoices shall be sent to Purchaser’s address shown on the other side of this PO, and shall contain the PO number, a description of goods or services, and if this PO is for goods - any applicable item number the quantity, unit price, and total purchase price. All taxes shall be stated separately. Payments shall be made in 30 days, unless otherwise stated on the front of this PO

Safety Data Sheets. For goods sold hereunder, Seller represents that it has provided or will provide to Purchaser, upon request, all appropriate and current Safety Data Sheets (“SDS”), labels, and updated information for any goods sold under this PO.

Representations and Warranties. Each party represents and warrants that: (a) it has the legal capacity, authority and power to execute, deliver, and perform the obligations under this PO; (b) its obligations under this PO constitute legal, valid, and binding obligations, enforceable in accordance with their respective terms and conditions. Where goods are ordered under this PO, Seller represents and warrants that: (a) the goods delivered hereunder conform in all material respects to the specifications and/or requirements set forth in this PO; (b) Seller holds full legal and beneficial title to the goods upon delivery hereunder; (c) title to the goods is delivered free from security interests, liens, and encumbrances; (d) good and merchantable title shall vest in Purchaser upon delivery of the goods; (e) it will not substitute any quantity of the goods specified hereunder without Purchaser’s written consent; and (f) the goods delivered are free from any defects in design, material or workmanship, are of good and merchantable quality, and are fit for the particular purposes for which they are acquired. Where services are to be rendered under this PO, Seller represents and warrants that: (a) the services are delivered in a professional and workmanlike manner, consistent with industry standards, and conform in all material respects to the specifications and/or requirements set forth in this PO, and (b) no substitutions in the quality or scope of services to be rendered shall be made without Purchaser’s written consent. Purchaser’s inspection, test, acceptance, payment, or use of the goods or services shall not affect Seller’s obligations under these warranties, and all of Seller’s warranties that are implied by law shall survive any inspection, delivery, acceptance, or payment by Purchaser. Seller shall replace or correct, at Purchase’s option and at Seller’s cost, defects of any goods not conforming to these warranties. If Seller fails to correct defects in or replace nonconforming goods within ten (10) days from the date Purchaser notifies Seller of the defect or defects, Purchaser may, upon ten (10) days prior written notice to Seller, either (a) make such corrections or replace such goods and charge Seller for all costs incurred by Purchaser, or (b) revoke its acceptance of the goods in which event Seller shall be obligated to refund the purchase price and make all necessary arrangements, at Seller’s costs, for the return of the goods to Seller. Any attempt by Seller to limit, disclaim, or restrict these warranties or any remedies of Purchaser, by acknowledgment or otherwise, in accepting or performing this PO, will be null, void, and ineffective without Purchaser’s written consent.

Inspection. All goods and services are subject to inspection and testing by Purchaser at all times and places, including the period of manufacture and in any event prior to final acceptance. Final acceptance or rejection of the goods or services will be made as promptly as practical after delivery, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods or services as are not in accordance with this PO, nor impose liabilities on Purchaser for them, and Purchaser reserves the right to reject any of all items not in conformity with the specifications noted within this purchase order, in any respect, whether material or not. Purchaser’s payment for the goods shall not constitute its acceptance of the goods. Goods rejected and goods supplied in excess of quantities ordered may be returned to Seller at Seller’s expense. Payment, if any, made for any good rejected hereunder shall be promptly refunded by Seller. Records of all inspection work by Seller will be kept complete and available to Purchaser during the performance of this PO and for seven (7) years after Seller’s completion of this PO.

Limitation of Liabilities. PURCHASER’S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS ORDER IS LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE GOODS AND/OR SERVICES. FOR BREACH HEREUNDER, PURCHASER’S LIABILITY IS LIMITED TO DIRECT, ACTUAL DAMAGES. UNDER NO CIRCUMSTANCES SHALL PURCHASER BE LIABLE TO SELLER FOR SPECIFIC PERFORMANCE OR CONSEQUENTIAL DAMAGES SUCH AS LOST PROFITS, BUSINESS INTERRUPTION DAMAGES, LOSS OF USE, LOSS OF SERVICE, LOSS OF CAPITAL, THIRD-PARTY CLAIMS INCLUDING SPECIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES IN TORT, CONTRACT, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH PURCHASER’S PERFORMANCE, PURCHASER’S SUSPENSION OF PERFORMANCE, PURCHASER’S FAILURE TO PERFORM, OR PURCHASER’S TERMINATION OF ITS OBLIGATIONS ARISING UNDER THIS PO.

Indemnification. Seller shall indemnify, defend, and hold harmless Purchaser, its affiliates, and its respective directors, officers, employees, representatives, and agents (collectively the “Indemnified Parties”) and, upon request, shall defend each of them from and against any or all claims, demands, litigation or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services ordered hereunder, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller’s employees, workers, servants, agents, subcontractors or suppliers. Seller shall, upon request, pay or reimburse Purchaser or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys’ fees, as incurred by Purchaser or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage.

Work at Purchaser's Facility and Insurance. If Seller's work under this PO requires Seller to be on the premises of Purchaser or one of its customers or at Purchaser's direction, Seller will take all necessary precautions to prevent any injury to persons or damage to property, including following any rules, procedures or other requirements of Purchaser. Seller will maintain Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed above), Automobile Liability and Employers' Liability insurance with limits as reasonably required by Purchaser, as well as appropriate Workers' Compensation insurance as will protect Seller from all claims under any applicable workers' compensation and occupational disease acts. At Purchaser's request, Seller will furnish to Purchaser a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverage's are in effect, with waiver of subrogation, naming Purchaser as an additional insured, and containing a covenant that such coverage and will not be canceled or materially changed until ten (10) days after prior written notice has been delivered to Purchaser. Seller shall not perform any work at Purchaser's facility until all required insurance has been obtained and original certificates confirming coverage and which show Purchaser as an additional insured under the policies that have been furnished to Purchaser purchasing department.

Breach. Purchaser may by written notice of default to Seller may suspend or terminate all or any part of this PO if Seller breaches this agreement by: (a) failing to perform within the time specified herein or any extensions agreed to by Purchaser in writing; (b) failing to perform any of the other provisions of this PO, or so fails to make progress as to engender performance of this PO in accordance with its terms, and in the circumstances set forth herein, and does not cure such failure within a period of five (5) days (or such longer period as Purchaser may authorize in writing) after receipt of notice from Purchaser specifying such failure; or (c) failing to comply with any of this PO's representations or warranties. Seller shall continue to perform its obligations under this PO to the extent not terminated, and will be liable to Purchaser for any excess costs incurred by Purchaser on account of Seller's breach. As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, in which case an equitable reduction in the PO price will be negotiated. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this PO, Seller will promptly notify Purchaser in writing. If Seller does not comply with Purchaser's delivery schedule, Purchaser may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller. The rights and remedies of Purchaser provided in this paragraph will not be exclusive and are in addition to any other rights and remedies provided by the Uniform Commercial Code, by law, at equity or under this PO.

Confidentiality. The parties shall keep all information pertaining to the goods ordered or services rendered under this PO confidential. "Confidential Information" means any information or data disclosed by a party to the other party with respect to the terms, conditions, and obligations under this PO. The parties shall safeguard this confidential information, use it solely for executing the terms and conditions of this PO, and not disclose it to any third party without each other's written consent. Further, Seller shall keep as Confidential Information all information derived any other data furnished by Purchaser in connection with this PO (in whatever form or format), or from work performed at Purchaser's facility, and will not divulge, copy, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Purchaser's prior written consent. Upon completion or termination of the obligations under this PO, Seller will promptly return to Purchaser all materials incorporating any such information and any copies. Seller agrees that no acknowledgment or other information concerning this PO and the goods or services provided hereunder will be made public by Seller without the prior written agreement of Purchaser.

Assignment. Neither this PO in its entirety, nor any rights or obligations hereunder, may be assigned by either party, by operation of law or otherwise, without prior written consent of the other party, with such consent not to be unreasonably withheld, delayed, or conditioned, with the exception that Purchaser may assign this PO to an affiliate without consent.

Non Inducement, Invalidity, and Severability. The making, execution, and delivery of this PO has not been induced by any representation, statement, warranty, or agreement other than those expressed herein or set forth herein. If any provision of this PO is found to be illegal or unenforceable by a competent court or public authority having jurisdiction, or should the performance of any obligation hereunder cause a violation of any applicable laws, regulations, rules, and, or requirements of the United States of America, that provision shall be modified to the extent necessary to make the provision enforceable and preserve the parties' intent, which may include deletion of the provision from this PO, if necessary. In instances where a provision is modified or deleted, the remainder of this PO shall not be affected and shall continue in full force and effect. Further, each provision of this PO that excludes or limits liability is considered reasonable by the parties and shall be construed separately.

Law and Jurisdiction. Each party, at its own expense and at all times, shall comply with any and all applicable laws, rules, regulations, ordinances and orders of public authority, including, but not limited to, tax and social security laws, applicable worker's compensation laws, unemployment insurance requirements, immigration laws, employer's liability requirements, and minimum wage requirements. The formation, validity, interpretation, performance, and enforcement of this PO shall be governed by and construed in accordance with the laws of the State of New York, U.S.A. Each party expressly submits to the exclusive jurisdiction of the state and federal courts situated in New York, New York, U.S.A., and each party irrevocably and unconditionally agrees that all claims arising out of or related to this PO or for recognition or enforcement of any judgment may be brought in such courts. In any litigation or other proceeding arising out of or related to this PO, the prevailing party (that is, the party for whom a judgment is rendered, a decision is made, or an order is entered in its favor) shall be awarded its reasonable attorneys' fees and the costs and expenses it incurred to enforce its rights under this PO.

Notice and Binding Transmission Methods. All notices sent by one party to the other party shall be sent by email or hard copy letter, with email transmissions being sent to the address provided in this PO, and with letters being sent certified mail (return receipt requested) or by overnight delivery service, sent to the address identified herein. Any applicable notice period shall commence at the time and on the date the notice is dispatched, if sent by electronic transmission, or upon receipt, if delivered in hard copy form. Facsimiles of documents with original signatures, PDFs of documents with original signatures sent via email transmission, or email transmissions with digital signature(s), shall be as effective as manually signed original documents.

Entire Agreement and Changes. At all times Purchaser will have the right to make changes to this PO, including changes to drawings, designs, configurations, specifications, service requirements, and quantities, methods of shipment, packing and delivery schedules, or locations of delivery. If any such changes cause an increase or decrease in the cost of or the time required for delivery of good, or the performance of any work under this PO, an equitable adjustment will be made in the contract price or delivery schedule, or both, and this PO will be modified in writing accordingly. Nothing in this section, including any disagreement with Purchaser as to any claimed adjustment, will excuse Seller from proceeding with this PO as changed. Any claim by Seller for adjustment under this section must be provided to Purchaser, in a detailed writing, and delivered to Purchaser within five (5) days after the date Seller receives notification of a change. Any change will be authorized only by a duly executed amendment to this PO. Information, such as technical information or guidance provided to Seller by representatives of Purchaser, will not be construed as a change within the meaning of this paragraph. If Seller considers that the conduct of any of Purchaser's employees has constituted a change under this PO, Seller shall immediately notify Purchaser, in writing, as to the nature of the change and any proposed adjustment, which will then be subject to this paragraph. This PO and any Supplement sets forth the entire understanding and agreement between the parties as to the subject matter hereof. No amendment, change, modification, or addition to any provision of this PO is binding unless agreed by both parties and confirmed in writing. All prior or contemporaneous agreements between the parties as to the subject matter hereof are superseded by this PO. There are no representations, warranties, understandings, or agreements to the subject matter hereof, other than those expressly set forth in this PO, and all proposals, negotiations, and representations relating thereto are merged herein.