



## BILLING INSTRUCTIONS

**NOTE:** Any invoice which does not strictly conform with these instructions is subject to return for correction. Such invoice will be discounted and paid as if it has been dated on the date of receipt of a properly corrected submittal.

1. Invoice in Duplicate.
2. Bill Separately for each Purchase Order.
3. Bill for Items, and in Units at Unit Prices Exactly as Shown.
4. Show Complete P.O. Agreement Number.
5. Mail Original and Copy to Gutierrez Construction Co., Inc.  
One Wall Street, Burlington, MA 01802

## GENERAL TERMS OF PURCHASE

1. **Changes** — Gutierrez Construction Co., Inc., shall have the right from time to time by written notice to Seller to make changes in specifications, design, delivery schedules (postponements only), testing, packing or destination. If any such change causes an increase or decrease in the cost of, or the time required, for performance, an equitable adjustment shall be made in the purchase order price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless made in writing within (10) days from receipt by Seller of notice of change. Price increases or extensions of time for delivery shall not be binding on Gutierrez Construction Co., Inc., unless evidenced by a Purchase Order Change Order issued and signed by Gutierrez Construction Co., Inc.
2. **Deliveries** — Gutierrez Construction Co., Inc., construction schedules are established in reliance upon the dates specified on the face hereof for delivery of the items covered by this order. Time is, therefore, of the essence of this Purchase Order. If any such item is not completed by the date specified on the face hereof, Gutierrez Construction Co., Inc., reserves the right, without liability, to cancel this order, by notice effective when received by Seller, as to items not yet shipped or services not yet rendered, to purchase substitute items or services elsewhere, and to charge Seller with any loss incurred. Any provisions hereof for delivery by installments shall not be construed as making the obligations of Seller waivable. Seller shall notify Gutierrez Construction Co., Inc., in writing promptly of any delays (however caused), and of any actual or potential labor dispute which delays or threatens to delay the timely performance of this order. If Seller is unable to complete performance at the time specified for delivery hereunder, by reason of strikes, labor difficulties, riot, war, fire or other causes beyond Seller's reasonable control, Gutierrez Construction Co., Inc., at its option, may elect to take delivery of items hereunder in their uncompleted state at such proportion of the contract price as the work then completed bears to the total work hereunder, and to cancel this order, without liability as to the balance of the items covered hereunder. When prices, terms and deliveries are noted on this order, the Seller is not authorized to furnish or ship the items specified, except on the basis of the prices, terms and deliveries noted, without written authorization from the purchaser. Gutierrez Construction Co., Inc., reserves the right to refuse payment for any items billed at prices other than, or delivered at a date other than, specified on this order without prejudice to Gutierrez Construction Co., Inc., legal remedies for nonperformance on the part of the Seller.
3. **Delivery Tickets** — Delivery tickets must be left with a Gutierrez Construction Co., Inc., foreman or superintendent at the job site at time of delivery. On shipments not accompanied by a delivery ticket, Gutierrez Construction Co., Inc., count will be accepted as final and conclusive.
4. **Invoices** — All invoices will be discounted (if applicable) and paid on the basis of the date received in correct form. Correct form may be achieved by adhering to the above billing instructions. Any invoice not properly submitted is subject to return for correction.
5. **Insurance** — In case Seller performs any work at the site of the construction, Seller shall furnish BEFORE WORK STARTS insurance carrier's certificate showing that Seller is protected by Workmen's Compensation and Public Liability insurance satisfactory to Gutierrez Construction Co., Inc. All work performed at site of construction or in preparing or delivering materials to the said site shall be at the risk of the Seller alone, and the Seller shall indemnify and save Buyer harmless from any claim or damage or other liability which shall or could be asserted by any employee of Seller or by any other person, firm or corporation arising out of or connected with the work done or materials furnished under this Purchase Order, and upon demand to reimburse Gutierrez Construction Co., Inc., for all expenses and attorney fees incurred in defending or adjusting any such claim.
6. **Warranty** — Seller warrants all products, materials, or services delivered hereunder to be free from defect of material or workmanship, and to conform strictly to the specifications furnished. This warranty shall survive any inspection, delivery, or acceptance of the materials or services, or payment therefor by Gutierrez Construction Co., Inc.
7. **Inspection** — Final inspection shall be at Gutierrez Construction Co., Inc., premises unless otherwise agreed in writing. Items rejected as not conforming to this Purchase Order shall be returned at Seller's expense, including transportation and handling costs.
8. **Gutierrez Construction Co., Inc., Property** — All tools, special dies, molds, patterns, jigs, and any other property furnished to Seller by Gutierrez Construction Co., Inc., or specifically paid for by Gutierrez Construction Co., Inc., for the use in the performance of this Purchase Order, shall be and remain the property of Gutierrez Construction Co., Inc., shall be subject to removal at any time upon Gutierrez Construction Co., Inc., demand, shall be used only in filling orders from Gutierrez Construction Co., Inc., and shall be clearly identified as the property of Gutierrez Construction Co., Inc. Seller assumes all liability for loss or damage of such property.
9. **Patents** — Seller agrees to defend, at Seller's expense, all suits, actions or proceedings in which Gutierrez Construction Co., Inc., or the users of any of the products made by Seller hereunder, are made defendants, for actual or alleged infringement of any U.S. or foreign letters patent resulting from the sale or use of the items purchased hereunder (except infringement necessarily resulting from adherence to specifications furnished by Gutierrez Construction Co., Inc., to Seller hereunder), and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against such defendants therein.
10. **Compliance With Laws** — Seller shall comply with all applicable laws, codes, ordinances, statutes and regulations of governmental authorities including, among other things, matters involving wages, hours, materials, race, color and creed, hazardous substance disclosure, and other matters, whether or not specifically mentioned herein. Seller shall indemnify Gutierrez Construction Co., Inc. against and hold it harmless from all liabilities, costs and expenses incurred or sustained by Gutierrez Construction Co., Inc. as a result of Seller's failure to so comply.
11. **Taxes** — The Seller will accept exclusive liability for all Federal, State and Local taxes and insurance payable under the Social Security Act, Unemployment Insurance laws and Withholding tax laws and similar or related laws and applicable regulations, as to each and every employee engaged by him in the performance of the work and/or the production, sale and delivery of materials under this order. Seller also agrees to meet all requirements that may be specified under regulations promulgated under the Federal Social Security Act and applicable State Unemployment Insurance Law and any other law and any governmental regulation applicable thereto.
12. **Assignment** — Seller shall not delegate any duties, nor assign any rights or claims, under this Purchase Order, without the prior written consent of Gutierrez Construction Co., Inc., and any such attempted delegation or assignment shall be void.
13. **Bankruptcy** — In the event of any proceedings, voluntary or involuntary, in bankruptcy, or insolvency, by or against Seller, including any proceeding under the Chandler Act; or in the event of the appointment, with or without Seller's consent of any assignee for the benefit of creditors or of a Receiver, Gutierrez Construction Co., Inc., shall be entitled to cancel, without liability, any unfulfilled part of this Purchase Order.
14. **Title to Specifications** — Gutierrez Construction Co., Inc., shall at all times have title to, and the right to possession of all specifications, drawings, and instructions, furnished by Gutierrez Construction Co., Inc., to Seller and intended for use in connection with this Purchase Order. Seller shall use such specifications, drawings, and instructions only in connection with this Purchase Order and shall not disclose such specifications, drawings, or instruction to any person, firm or corporation other than Seller's employees or subcontractors, if any, engaged in the work hereunder. Seller shall upon Gutierrez Construction Co., Inc., request, or upon completion of this Purchase Order, promptly return all specifications, drawings, and instructions to Gutierrez Construction Co., Inc.
15. **Signs** — Seller will not be permitted to display any signs, posters, etc., on or around the building or on or around the site.
16. **Conformance With Specifications** — The material being purchased hereby is for the use of Gutierrez Construction Co., Inc., in the construction of the project indicated on the face of this purchase order, in accordance with the Plans and Specifications prepared by the Architect. Materials received which do not conform with said Specifications and Drawings are subject to return to the Seller at the Seller's risk and expense.
17. **Indemnification** — Seller will indemnify Gutierrez Construction Co., Inc., against and save it harmless from and against loss or expense imposed upon Gutierrez Construction Co., Inc., for damages resulting from the death of or injury to persons or destruction of property caused by the negligent act or omission of the Seller, its agents or employees in the performance of this Agreement.
18. **Handling Charges** — Except as otherwise stated herein, Gutierrez Construction Co., Inc., shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service nor for any charges incurred therefor, unless such charges are included in the applicable tariff freight rate from point of shipment to the designated delivery point.
19. **Breach of Contract** — In the event of any breach by the Seller of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien or potential claim or lien against Gutierrez Construction Co., Inc., or the Owner of the premises, arising out of the Seller's performance of this Agreement, Gutierrez Construction Co., Inc., shall have the right to retain out of any payments due or to become due to the Seller, an amount sufficient to protect Gutierrez Construction Co., Inc., completely from any and all loss, damage or expense therefor until the situation has been satisfactorily remedied or adjusted by the Seller.
20. **Approvals** — The Seller shall furnish, for the approval of the Architect, all shop drawings and such samples as he may require and all workmanship and materials entering herein shall be in strict accordance with said approved samples.
21. **Shop Drawings** — The Seller shall exercise the utmost diligence to obtain the drawings and information necessary to prepare shop drawings and/or the materials herein contemplated, and if at any time drawings or information have not been furnished or approved the Seller shall, from time to time and at frequent intervals, inform Gutierrez Construction Co., Inc., in writing as to what drawings or information may still be required to complete the delivery within the time specified.
22. **Acceptance of Work** — It is mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.
23. **Access to Shops** — Gutierrez Construction Co., Inc., or its representative, shall have full and free access to the shops, factories or other places of business of the Seller, or of the vendors of this Seller, in order that it may inform itself as to the general condition and progress of the work herein contemplated.
24. **Prompt Delivery** — Work on all materials called for shall be started at once, in order that the Seller may commence deliveries to the building as herein stated or upon receipt of notice mentioned herein. If the materials herein called for be not delivered promptly, thereby causing or threatening to cause delay in the general progress of the work, Gutierrez Construction Co., Inc., shall have the right to investigate the cause of said delay and to expedite deliveries, and all expenses thus incurred by Gutierrez Construction Co., Inc., shall be charged to and paid by the said Seller.