



PURCHASE ORDER

DRAFT

Total Facility Solutions, Inc.

1001 Klein Road, Suite 400
Plano TX, 75074
972-535-7300

INVOICE ADDRESS Send only pdf invoice to the link below:

accounting@tfs-us.com

NOTE: Mailed or faxed invoices will not be processed.

(Call 972-535-7300 for AP related questions only)

TO: **Fenny Engineering Co**
104 Gondola Park Drive
Venice, FL
United States

SHIP TO: Total Facility Solutions, Inc.
380 Stone Break Road Ext.
Trailer #71
Malta, NY 12020
United States

***TFS purchase order number must appear on all documentation including delivery tickets, invoices and freight bills of lading. A copy of the signed delivery ticket must be mailed with each invoice. TFS purchase order terms and conditions dated January 11, 2013 apply to this purchase order. Confirming PO. **Do not duplicate.**

REQUESTED BY			PAYMENT TERMS		SHIP VIA		FREIGHT	
Piaf Rodriguez			Net 45		VENDOR TRUCK			
Line No	QTY	UOM	ITEM CODE	DESCRIPTION	UNIT PRICE	AMOUNT	TAXABLE	
1				PO to Fenny Engineering to model analyze and provide seismic where required for GF project per proposal dated 12-8-16 from Jack Fenny.		50,000.00	N	

Vendor acknowledges receipt of this purchase order and agrees to the terms and conditions attached. Sign and return to the address shown on the header of this document.

SUBTOTAL:	50,000.00
TAX:	0.00
TOTAL:	50,000.00 USD

VENDOR ACKNOWLEDGEMENT
SIGNATURE

DATE

BY: _____

TFS BUYER

Total Facility Solutions Purchase Order
Standard Terms and Conditions

From the date of Seller's receipt hereof, any purchase order ("Purchase Order") submitted by Total Facility Solutions ("TFS") to Seller ("Seller") shall be deemed an offer to purchase under the terms and conditions set forth herein.

ARTICLE 1: TERMS OF ACCEPTANCE

- 1.1 The terms and conditions contained herein supersede all other terms and conditions and all other previous commitments, verbal or written. Seller's written acceptance, or the initiation of performance by Seller, shall constitute acceptance of this Purchase Order. Acceptance by Seller of any Purchase Order is expressly limited to the terms and conditions of this agreement ("Agreement"). No terms or conditions stated by Seller, either verbally or in any invoice or document acknowledging or otherwise accepting this Purchase Order shall be binding upon TFS unless specifically agreed to by TFS in writing.

ARTICLE 2: SHIPMENTS

- 2.1 Seller shall ship goods via the method specified by TFS. Seller acknowledges regardless of the method of shipment, Seller shall be responsible for the timely delivery of products and agrees to use all commercially reasonable efforts to avoid delays in shipment.
- 2.2 Seller shall be responsible for appropriate packing and protection of the goods to adequately assure safe transit to the destination, and further to assure safe unloading practices at the shipment destination. No charge for packing, loading, protecting or shipping will be allowed unless expressly agreed to by TFS. Further, TFS reserves the right to refuse any load being transported that does not, in TFS' sole opinion, meet standards of best practices for loading and unloading of material.
- 2.3 Seller guarantees that any shipment will be transported in accordance with local, state, federal and OSHA standards.

ARTICLE 3: PAYMENT

- 3.1 All properly documented invoices shall be submitted to TFS' Invoice EMAIL address in PDF (See page 1 of this PO) by the 15th of each month for processing. Unless otherwise agreed to in writing payment terms shall be forty-five (45) calendar days after TFS receipt of a properly documented invoice. TFS shall not pay or be liable for any late charges of any sort or kind. Payment to Seller shall be subject to and upon the same terms of the payment by such Owner or General Contractor to Purchaser.
- 3.2 All invoices must be itemized and identified with the Purchase Order number and with specific Purchase Order item numbers, freight, taxes and other similar charges.
- 3.3 Payment will be made by TFS only for goods accepted and that conform to the requirements of the Purchase Order.
- 3.4 If required by TFS, an amount of up to ten percent (10%) of the total value of the goods or services furnished may be held as retention until TFS and TFS' customers are reasonably satisfied that all conditions and obligations of the Purchase Order have been met. TFS, in accordance with Article 3.4 hereof, will make payment in the amount of ninety percent (90%) of the value established under this Purchase Order to Seller as set forth otherwise herein less a ten percent (10%) rate of retention.
- 3.5 If requested by TFS, Seller agrees to furnish lien waivers and acceptable proof of payment for all labor and material as a condition of TFS' payment obligation.
- 3.6 Failure to follow the foregoing shall: a) relieve TFS from making payments within the payment term; b) result in no penalty or interest claimed by Seller for late payments.

ARTICLE 4: CHANGES

- 4.1 TFS shall have the right to make changes to specifications, drawings, or other documents defining the scope of this Purchase Order. If any such change shall cause an increase or decrease in the price set forth in the Purchase Order, or in the time required for performance, or to any other provision of this Purchase Order, an equitable adjustment will be negotiated in good faith. Seller shall continue to proceed with the Purchase Order as changed while any adjustments to price or other Purchase Order provisions are being negotiated.
- 4.2 Seller's claim for adjustment under this provision must be submitted to TFS in writing no later than ten (10) days from the date of receipt by the Seller of the change notification and failure on the part of the Seller to do so shall constitute a waiver of such claim.

ARTICLE 5: SHIPPING DELAYS

- 5.1 Time is of the essence in this Agreement and every provision term and condition hereof. Seller agrees to furnish prompt written notice to TFS of all projected or actual shipping delays. Said notice shall state the reason or reasons for the delay and the actions, if any, undertaken by Seller to avoid and/or limit or contain such projected or actual delay. Acceptance by TFS of late performance hereunder shall not constitute a waiver of this provision.

ARTICLE 6: TITLE AND RISK OF LOSS

- 6.1 Title to the goods shall pass to TFS upon Seller's receipt of payment.
- 6.2 Notwithstanding the foregoing, risk of loss or damage to items covered by this Purchase Order shall remain with Seller until the delivery of the goods to the possession of TFS at the destination specified by TFS. The risk of loss or damage to goods which fail to conform to the Purchase Order shall remain with Seller until cured, provided however, Seller shall not be liable for loss or damage to the goods caused by the negligence of agents or employees of TFS.

ARTICLE 7: TERMINATION FOR CONVENIENCE

- 7.1 TFS may terminate any Purchase Order in whole or in part at any time and will reimburse the Seller for only those reasonable, substantiated, and necessary costs incurred directly in the performance of this Purchase Order to the date of termination. TFS shall not be liable for any consequential or indirect damages arising out of cancellation by TFS.
- 7.2 All finished goods, raw materials, design, plans and work in process that relates to this Purchase Order shall become the property of TFS upon payment following a termination for convenience.
- 7.3 TFS shall have the right to return any or all materials under this Purchase Order to Seller as a whole or partial termination of this Agreement. TFS sole liability resulting from such return shall be the cost of shipping or delivering such goods, materials and or equipment to Seller unless such materials are rejected for non-conformance or for late delivery, which will result in Seller being responsible for shipping or delivery costs.
- 7.4 In no event shall TFS' obligations to Seller, as a consequence of termination under this Article 7.0 exceed the aggregate purchase price of the items so terminated. Upon payment, TFS shall have no further obligation to Seller for the applicable Purchase Order. Further, TFS shall not be liable for restocking fees under this Agreement no matter how the same was caused.

ARTICLE 8: TERMINATION FOR CAUSE

- 8.1 If Seller delays shipment of the goods covered by this Purchase Order or fails to satisfactorily respond to TFS' request for delivery assurances, repudiates this Purchase Order or otherwise materially breaches any other provision of this agreement, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors, TFS may, in addition to any other right or remedy provided herein or by law, terminate all or any part of this Purchase Order without incurring any liability on account of such termination.
- 8.2 In the event that TFS terminates this Purchase Order in whole or in part as provided in this Article 8.0, TFS may purchase from others, upon such terms and in such manner as TFS may deem appropriate, similar goods to those so terminated. Seller shall be liable to TFS for any direct excess costs incurred by TFS in procuring substitute goods.
- 8.3 Any unearned progress payments made to Seller by TFS shall be returned to TFS promptly following Seller's receipt of notice of termination pursuant to this Article 8.0.

ARTICLE 9: REGULATORY COMPLIANCE

- 9.1 Seller represents that all goods delivered to TFS shall be manufactured and sold in compliance with all applicable federal, state and municipal laws, rules, codes and regulations.
- 9.2 In the event the product sold does not conform to the standards, codes and/or regulations of any applicable law or TFS' specifications, TFS may return the product for either correction or replacement at Seller's expense. Any penalties assessed against TFS resulting from an alleged violation for Seller's failure to comply with the applicable laws and regulations shall be Seller's sole responsibility and Seller shall indemnify TFS from the same.

ARTICLE 10: EXPEDITING – CORRESPONDENCE

- 10.1 TFS has the right and option to expedite Purchase Order. Seller agrees to fully cooperate with TFS' expediting effort and to keep TFS informed of its progress, including projected shipment status and the costs of expediting, if any. Seller's claim for price adjustment related to expediting must be submitted to TFS in writing no later than ten (10) days from the date TFS requests the Purchase Order be expedited and failure on the part of the Seller to do so shall constitute a waiver of such claim.

Total Facility Solutions Purchase Order
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ARTICLE 11: TFS' RIGHT TO INSPECT – ACCEPTANCE

- 11.1 TFS or TFS' representative shall have the right to inspect and test all goods or work to the extent practicable and at all times and places, including the Seller's premises, subject to TFS' giving reasonable advance notice to Seller. TFS' right to inspect and test the goods or work shall extend through the manufacturing process, the time of shipment, and for a time period of not less than sixty (60) calendar days after arrival at the destination.
- 11.2 TFS' inspection or participation in any tests (or the failure of TFS to inspect or test) and payment by TFS shall not act to relieve Seller of any of its obligations to conform to all of the requirements under this Purchase Order or impair TFS' right to reject or revoke acceptance of non-conforming goods.
- 11.3 Final acceptance of the goods by TFS shall take place upon the successful start-up and operation of the equipment at the site of installation.

ARTICLE 12: GUARANTEES AND WARRANTIES

- 12.1 In addition to warranties provided by law, Seller expressly guarantees and warrants all goods to be free from defects in materials and workmanship and all goods conform strictly to specifications, drawings and approved samples, if any, and to be new and of the most suitable grade and to meet or exceed all performance criteria set forth in the Purchase Order and related documents. Seller further guarantees and warrants that Seller has good title free and clear of all liens, claims, security interests or encumbrances to all goods furnished under this Purchase Order. All guarantees and warranties shall run to TFS, its successors, assigns and customers. All guarantees and warranties shall survive inspection, test, acceptance, and payment by TFS. In the event of a breach of this section, TFS may either return for credit or require prompt correction, repair, or replacement of the defective or nonconforming goods. All costs, including shipping, travel, removal and installation costs incurred in connection with the goods to be replaced or repaired shall be borne by Seller.
- 12.2 All Seller inspections, service, repairs or corrective work resulting from Seller-furnished defective or nonconforming goods or the replacement thereof shall be performed by Seller promptly and at the Seller's expense and at the convenience of TFS and/or TFS' customers.
- 12.3 TFS may, at Seller's expense, repair defects in Seller's equipment or procure replacement goods if Seller fails to promptly proceed with repair, correction or replacement of defective goods. TFS shall be entitled to deduct all cost for the foregoing repairs, corrections, or replacement from any amounts owed to Seller. If the amount to repair such defects exceeds the remaining balance or amount owed to Seller under the purchase order, Seller shall promptly pay TFS for the difference up to a maximum of the total amount under the purchase order. Seller shall not be relieved of any obligations it may have to TFS due to TFS' actions under this Paragraph 12.3.
- 12.4 TFS' inspection and/or approval of Seller's drawings and/or inspection of goods by TFS shall not relieve Seller of any of its responsibilities under this Purchase Order nor shall same relieve Seller of its obligation to repair, correct or replace defective goods as set forth in this Article 12.0.

ARTICLE 13: DURATION OF GUARANTEES WARRANTIES

- 13.1 Any guarantee or warranty provided by Seller shall be valid for a period of not less than the later of: eighteen (18) months from date of shipment of the goods or twelve (12) months from date of installation of the goods at the relevant facility – longer if stated in body of Purchase Order.
- 13.2 All goods repaired, corrected, or replaced under the provisions of Article 12.0 shall be subject to the same guarantee and warranty provisions for the remainder of the original guarantee and warranty period or for a minimum period of twelve (12) months from the date of TFS' or TFS' customers' acceptance of the repaired, corrected, or replaced goods, whichever period is longer.

ARTICLE 14: PATENT INFRINGEMENT

- 14.1 Seller agrees to indemnify TFS and TFS' customers and hold them harmless from and against all liability, loss, damage and expense, including actual counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement with respect to any part of the goods covered by this Purchase Order or their use, and such obligation shall survive acceptance of the goods and payment therefore by TFS.
- 14.2 In addition to any indemnification as provided herein, if by virtue of patent infringement suit, an injunction is issued against Seller, TFS, or TFS' customers that prohibits or limits the use of any items provided by Seller, Seller shall, at TFS' request, either a) immediately supply TFS and/or TFS' customers with non-infringing replacement goods of similar kind and quality at no additional cost or b) procure for TFS and/or TFS' customers a license to use infringing goods at no additional cost to TFS and/or TFS' customers, or c) modify the infringing goods to make them substantially equal but non-infringing, all at no additional cost to TFS and/or TFS' customers.

ARTICLE 15: INDEMNIFICATION

- 15.1 Seller shall be responsible for, and indemnify TFS and TFS' customers against all losses, claims, expenses and damages, either to person or property or from death of any persons, which result from or arise out of any negligent act or omission on the part of the Seller, its agents, employees, or subcontractors. Seller shall at all times maintain sufficient liability, property damage, and employee liability insurance to protect TFS and TFS' customers and shall supply, upon request of TFS, certificates satisfactory to TFS evidencing such coverage, if supplier is performing work at the site.
- 15.2 Seller shall promptly pay all its wages and bills for labor and materials used in, or specifically fabricated for, the prosecution of this Purchase Order. Seller agrees to indemnify and hold TFS and TFS' customers harmless from any and all claims, liens, judgments, damages, expenses and costs (including court costs and attorney's fees) incurred as a result of Seller's failure to pay such wages and bills.

ARTICLE 16: LIEN WAIVER AND LIABILITY LIMITATION

- 16.1 If requested by TFS, Seller shall promptly deliver to TFS a satisfactory release of all liens.
- 16.2 Under no circumstances shall TFS be liable to Seller for consequential or indirect damages of any kind under this Purchase Order.

ARTICLE 17: DISPUTES

- 17.1 Any controversy or claim between the parties hereto shall be noticed in writing by the complaining party and such controversy or claims shall not cause the Seller to interrupt or slow its fulfillment of obligations related to this Purchase Order. Such controversy or claim shall subsequently be reviewed and discussed between Seller and TFS as a condition precedent to the initiation of any legal proceeding. In the event litigation or an alternative dispute resolution process is necessary to enforce a provision or provisions of this Agreement, the prevailing party shall be entitled to recover all costs, expenses and attorney's fees reasonably expended in enforcing such provision or provisions.

ARTICLE 18: ASSIGNMENT

- 18.1 Seller shall not assign this Purchase Order or any part thereof, without the prior written consent of TFS. Seller shall require that no assignee divulge any information concerning this Purchase Order except to those persons necessarily concerned with the transaction.

ARTICLE 19: EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

- 19.1 TFS is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference.

ARTICLE 20: WAIVER

- 20.1 Failure of TFS to insist upon strict performance of any of the terms and conditions of this Purchase Order, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Purchase Order shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

ARTICLE 21: GOVERNING LAW

- 21.1 This Purchase Order shall be governed by and construed and interpreted according to the laws of the State of Texas. Collin County, Texas or the county in which the shipment is destined shall be the proper place of venue for any suit related or in respect to this Purchase Order.

ARTICLE 22: COMPLETE AGREEMENT

- 22.1 This Purchase Order contains the complete and entire Agreement between the parties hereto and supersedes any previous communications, representations or agreements, whether verbal or written, with respect to the subject matter hereof. NO CHANGE, ADDITION, OR MODIFICATION OF ANY OF THE TERMS OR CONDITIONS HEREOF SHALL BE VALID OR BINDING ON EITHER PARTY UNLESS IN WRITING SIGNED BY AN OFFICER OR DESIGNATED REPRESENTATIVE OF TFS.

ARTICLE 23: 3D CAD Block Requirement

- 23.1 To fulfill the purchase orders terms & conditions, a 3D CAD file will be required on any fittings, valves, regulators, components, etc. to complete the order. The file is to be sent in an electronic format and must be 3D accurate. The term "Accurate" should be directly related to that part manufactures cut-sheet/spec sheet and have American Standard dimensions. Dimensional and spatial requirements of the part applies to, but is not limited to; valve handles, gauges, end-to-end connections, connection types, etc.. Level of part detail requirement is of the external form only, any internal workings of part are not required to be represented. File format to be submitted should be AutoCAD 2013 compatible with a file extension of .DWG. Submitted file must be identified with the following naming convention: manufacture, description, and part number. (Example: manufacture_name_Reducer Coupling_PVC-(829-131)).