



VENDOR TERMS & CONDITIONS

HBX-AD-PRO-002
Revision: 0

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1.0 SCOPE OF SPECIFICATION

This specification defines the non-technical requirements for vendors of equipment, materials, or services as requested by Hero BX. Vendors may bid or quote standard designs or improvements as alternates, which must meet and comply with all aspects of the issued request.


Exceptions must be specifically stated in detail and are subject to the approval of Hero BX.

Definitions

- "Owner" and/or "Buyer" shall mean Hero BX.
- "Engineer" shall mean the person assigned by Owner as the Project Engineer or their designated representative.
- "Bidder" shall mean the firm or organization which offers to supply equipment, materials, or services.
- "Manufacturer" shall mean the maker of equipment or materials from either raw material(s) or parts from another source for sale to Owner or Vendor/Supplier for sale to Owner.
- "Supplier" and/or "Vendor" shall mean the firm or organization which provides equipment, material(s), or services to Owner.
- "Purchase Order" shall mean the purchase order or purchase orders issued by Owner or Buyer to Bidder, Manufacturer, Supplier or Vendor for the goods or services Owner is buying.

2.0 REFERENCED CODES & STANDARDS

- 2.1 Owner may specify applicable codes and standards pertaining to each project. This is done as a convenience for Supplier, Bidder and Manufacturer. The Owner's specification of such codes and standards does not eliminate Bidders, Suppliers or Manufacturers obligations to confirm that their goods and services comply with all applicable codes and standards. The content of all referenced documents, including any supporting referenced documents, are considered applicable to the project where listed.
- 2.2 Some applicable regulations, codes, standards or specifications may be unclear or in apparent conflict. It is the Owner's stated policy that it will meet and comply with the latest applicable editions, whether stated or not. Latest editions as used in this document means the effective edition at the time of inquiry or placement of order for equipment, materials, or services.
- 2.3 If there is a conflict among specifications, the more stringent will govern. Code requirements and local regulations will be met and complied with as a minimum requirement for all facilities and operations. Conflicts shall be immediately reported to Owner.

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3.0 BID DOCUMENTS

- 3.1 The bid documents of purchased equipment and engineering services will include, without limitation, the following:
 - 3.1.1 A cover letter explaining the scope of the specific bid package;
 - 3.1.2 A copy of corresponding data sheet(s) completed;
 - 3.1.3 A copy of any other applicable specification to the specific bid package;
 - 3.1.4 Any additional specifications or exceptions relative to the bid package; and
 - 3.1.5 A measurement and payment description of each bid item.

4.0 TERMS AND CONDITIONS

4.1 General

The following terms and conditions (“Terms and Conditions”) shall apply to all Purchase Orders between Buyer and Supplier. Whenever a term defined by the Pennsylvania Uniform Commercial Code (“UCC”) is used in these Terms and Conditions, the definition contained in the UCC shall control. Suppliers shall familiarize themselves and their officers, directors, employees, contractors and affiliates with these Terms and Conditions and Buyer’s other terms specified in the additional contracts included in the bid package. The Purchase Order shall constitute no more than offer to purchase goods and services from Supplier in accordance with these Terms and Conditions and any additional terms and conditions expressly set forth or incorporated by express reference on the Purchase Order or any additional contract between Buyer and Supplier, which when accepted by Supplier shall constitute a binding contract between the parties. Acceptance of the Purchase Order is expressly limited to the Terms and Conditions herein, and any terms and conditions proposed by Supplier in Supplier’s quotation, invitation, acceptance, acknowledgment, invoice, transmittal or any other document which are different from, conflict with or add to the Terms and Conditions shall be deemed to materially alter the Terms and Conditions and are hereby objected to and rejected by Buyer. Acceptance of a Purchase Order, including acceptance of the Terms and Conditions herein, shall occur upon the happening of any of the following events: (a) receipt by Buyer of an acknowledgment copy of the Purchase Order signed by Supplier without alteration thereto, or (b) receipt by Buyer of notification from Supplier that Supplier has commenced performance hereunder or that Supplier intends to deliver, ship or provide the goods and services to Buyer. No charges beyond the price specified in the Purchase Order shall be allowed except with the written consent of Buyer. Acceptance of the goods shall not relieve Supplier from any of its obligations and warranties hereunder. Supplier's name and Buyer’s Purchase Order numbers must be on all invoices, packages, shipping documents, packaging sheets, quality certifications and correspondence.



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4.2 Prices, Taxes and Quantity; Price Protection

Supplier shall provide the goods and services called for by the Purchase Order in accordance with the prices and delivery dates stated in the Purchase Order. If prices and/or delivery dates are omitted, then Supplier shall offer its lowest prices and best delivery method, both of which shall be subject to written acceptance by Buyer. Unless otherwise expressly set forth in the Purchase Order or required by applicable law, all prices include all applicable federal, state and local taxes and duties imposed upon or on account of such sale, unless otherwise indicated herein. Supplier shall accept all tax exemption certificates provided by Buyer (if any). In the event of an imposition of any tax on the articles and materials hereby furnished which must be borne by Buyer, Supplier agrees to remit to Buyer any refund which Supplier might receive by reason of the unwarranted collection of such tax. Supplier warrants that the prices for products or goods purchased hereunder and all allowances made and services provided in connection therewith are not discriminatory and not violative of the Federal Trade Commission Act or the Robinson-Patman Act, or any similar applicable law or regulation.

4.3 Invoices and Payment

Invoices must be issued for each shipment applying against the Purchase Order. Invoices shall be payable within thirty (30) calendar days after receipt, inspection and acceptance of goods by Buyer unless a later payment date is provided for in the Purchase Order or in Supplier's invoice, in which case the later date shall control. Supplier shall set forth on each invoice the following: (a) Purchase Order number; (b) number of quantities of products or goods shipped; (c) services to be rendered, if any; (d) Supplier's invoice number; (e) the applicable price per product or good ordered and delivered; (f) taxes, if applicable; and (g) make, model number, serial number and type of product or good. After Buyer has approved Supplier's invoice, Buyer shall pay Supplier those approved amounts via check, wire-transfer, or corporate card (if applicable). Until Buyer receives Supplier's invoice, no prompt payment time limits shall commence. Buyer shall not be liable for any taxes related to the Purchase Order other than any applicable sales and use taxes. Because of the difficulty of validating aged charges, Supplier agrees that Buyer shall not be responsible for any charges or costs not invoiced by Supplier within ninety (90) calendar days of the delivery of the products or goods in the Purchase Order.

4.4 Discount Period

If applicable and noted on the face of the Purchase Order, any discount period shall begin when Buyer shall have received both invoice (electronic or hard copy) and proper shipping papers, or upon Buyer's receipt of the goods, whichever is later.

4.5 Changes

No change shall be undertaken except upon written authorization of Buyer. Buyer may at any time by written notice, make changes within the general scope of a Purchase Order in the specifications, designs, drawings, packaging, methods of shipment, quantities, place of delivery/location or delivery schedules. If any such change causes an increase or decrease in the costs of or the time required for Supplier's performance, an equitable adjustment shall be made in the price or delivery schedule, or both, provided a written request for such an



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adjustment shall be made to Buyer within ten (10) business days from the date of Supplier's receipt of the written notice making the change, and the Purchase Order shall be modified accordingly by written "Change Order." Buyer reserves the right to modify the Specifications (defined below) at any time. Supplier shall advise Buyer of any cost changes resulting from the modified Specifications, and Buyer shall have the right to accept such cost changes or terminate the Purchase Order. Any cost reductions resulting from a change in Specifications shall be for the benefit of Buyer. Nothing contained herein shall relieve Supplier from proceeding without delay to perform the Purchase Order, as changed. If the cost of property made obsolete or excess as a result of such change is paid for by Buyer, then Buyer shall prescribe the manner of disposition of such property.

4.6 Title and Risk of Loss

Title to the goods and risk of loss shall pass to Buyer upon delivery, free and clear of all charges, claims and liens of any nature. Unless otherwise agreed in writing, title to the goods and all risk of loss during shipment, and if from foreign point until clearance by United States Governmental Department or Agency having jurisdiction thereon, shall remain with Supplier irrespective of F.O.B. point or other terms. If shipment is from a foreign point, then Supplier shall fully comply with the provisions of the customs laws of the country of import in regard to valuation for duty, etc. Unless otherwise agreed in writing, Supplier shall be responsible for the payment of all duties, taxes, tariffs, broker fees, insurance and other costs associated with delivery of the goods to Buyer or Buyer's customers. The parties acknowledge that, even if it is deemed that title may pass at point of origin, the goods are subject to subsequent inspection and acceptance by Buyer.

4.7 Time of Delivery; Buyer's Remedies; Shipment

TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY OF PRODUCTS, GOODS OR SERVICES LISTED IN THE PURCHASE ORDER. Supplier must immediately advise Buyer if any product or item cannot be shipped as ordered by the stated date. Shipments or performance not made on the date or dates specified in the Purchase Order may be cancelled or rejected by Buyer.

(i) *Partial Shipment:* At Buyer's option, in the event of shipment of less than all products or items ordered, Buyer may either accept shipment and pay only for the products or items received, pro rata based on the unit price of the item ordered, or reject the entire shipment.

(ii) *Late Shipment:* Buyer reserves the right to cancel the Purchase Order or any portion thereof if shipment is not made when and as specified and charge Supplier for any loss sustained as a result of such cancellation, including, but not limited to, shipping charges. Supplier shall indemnify Buyer for any losses or damages suffered by Buyer as a result of such late delivery. Further, Buyer may reject the late delivery without cancellation of the Purchase Order as to other subsequent required shipments. Each shipment required under the Purchase Order is to be considered separately, and Buyer's right to reject a late delivery shall not be affected by acceptance of other late deliveries by Supplier. All such cancelled shipments shall be returned to Supplier at Supplier's expense. Acceptance by Buyer of a late delivery of either the whole or part of the goods under the Purchase Order shall not constitute a waiver of Buyer's claim for any damages resulting from the late



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(iii) *Early Shipment*: Products shipped prior to the date specified, at Buyer’s option, may be subject to anticipation and warehouse charges, payable by Supplier, or may be returned to Supplier, at Supplier’s expense, to be held until proper shipping date.

Buyer reserves the right, in order to maintain the scheduled delivery date, to require Supplier to expedite delivery by shipping via a speedier, alternate transport means. Additional costs attributable to such expedited delivery shall be paid by Supplier. Buyer may cancel any portion of the Purchase Order which remains unfulfilled after the beginning of any bankruptcy proceedings by or against Supplier or after the appointment of an assignee for the benefit of Supplier's creditors or of a receiver. Shipment shall be made in accordance with the specific instructions from Buyer set forth in the Purchase Order or as per oral or written instructions provided by Buyer. In the absence of specific shipping instructions, Supplier will request such instructions from Buyer. If instructions are not provided upon request, then shipment shall be routed via the most economical mode of commercially reasonable transportation available. Unless otherwise agreed to in writing by Buyer, the prices set forth in the Purchase Order include all charges for packing, crating and storage, and Supplier is obligated to suitably pack, mark and ship all products and goods to prevent damage and to conform to the requirements of common carriers. If Supplier is responsible for transportation and delivery, then Buyer shall have the right to return all freight damaged merchandise to Supplier and to receive full credit therefore.

4.8 Inspection and Testing

Buyer reserves the right to inspect Supplier’s production and warehouse facilities and all articles and materials supplied by Supplier, services rendered by Supplier, and to reject any articles, materials and services not in accordance with Buyer’s specifications (“Specifications”) or the warranties set forth herein, or shipped contrary to shipping instructions, and to return same at Supplier’s risk and expense, with all handling and incoming and outgoing transportation charges for Supplier's account. Such inspection may include any measurement, testing or examination which leaves possible the return of the goods or items to Supplier in substantially the condition in which they were delivered to Buyer. Buyer may reject or revoke its acceptance of any goods or services which do not strictly conform with Supplier’s obligations under the Terms and Conditions, and in such event, Buyer shall be entitled to exercise all or any of the remedies set forth herein or available under the UCC and any other applicable law. Moreover, Buyer reserves the right to reject any products or goods that it deems non-conforming, defective, stale, unsafe, unfit or in any other way unsuitable for its purposes. Buyer’s inspection, discovery of any breach of warranty, failure to make an inspection or failure to discover any breach of warranty shall not constitute a waiver of any of Buyer’s rights or remedies whatsoever. Articles or materials returned are not to be replaced except on written instructions from Buyer; provided, however, Buyer reserves the right to request (and therefore to require) replacement of rejected products or goods as well as payment of damages, at Supplier’s expense. Failure to give notice of defects to Supplier shall not constitute a waiver of breach of warranty or of any other condition.



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4.9 Compliance with Laws

The goods and services which are the subject of the Purchase Order have been or will be procured, manufactured, performed and/or sold in strict compliance with all applicable federal, state and local laws, rules, regulations and orders. As such, in its performance of the Purchase Order, Supplier shall comply with all applicable federal, state and local laws, rules, codes and regulations, including, without limitation, all applicable United States import/export laws and regulations and any requirements for packaging, labeling, crating and registering the goods for transportation. SUPPLIER AGREES TO INDEMNIFY AND HOLD HARMLESS BUYER, ITS CUSTOMERS AND AGENTS, FOR ANY LOSS, DAMAGE, EXPENSE OR AWARD (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED AS A RESULT OF SUPPLIER'S NON-COMPLIANCE WITH THIS SECTION.

4.10 Supplier Representations and Warranties

Supplier expressly represents and warrants that all products and goods purchased and delivered hereunder: (i) shall strictly conform in all respects with Buyer's descriptions and Specifications incorporated herein (and as amended from time to time); (ii) shall strictly conform in all respects to any samples, drawings, Specifications or other written documents presented to Buyer in connection with the sale of such products or goods to Buyer; (iii) shall be merchantable, of new and best material and fit for the purpose for which such products or goods are intended; (iv) shall be free from all defects, including latent defects, in workmanship and material and design. If Supplier is also providing any services pursuant to the Purchase Order, then Supplier warrants that such services shall be performed in an appropriate and workmanlike manner, free from defects, and in accordance with all specifications and requirements.

Furthermore, Supplier represents and warrants that: (i) Supplier owns all rights, title and interests in the products and goods and has the legal authority to sell, license or otherwise transfer the right to use or sell such items to Buyer; (ii) the products and goods, and the production and sale thereof, and all warranties, guarantees, representations by Supplier made or authorized to be made in connection therewith are in all respects in compliance with all applicable international (including applicable import and export regulations), federal, state, local laws, statutes, rules, and regulations; (iii) the goods are fit for the use intended; (iv) neither the products and goods, nor their sale or use will infringe any United States or foreign letters patents, trademarks, copyrights, trade secrets, or similar intellectual property rights of any third party; and (v) the goods are not sourced from or through the "grey market" or distribution channels which are unofficial, unauthorized, or unintended by the original Manufacturer.

All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of the Purchase Order. Supplier may not negate, exclude, limit or modify and warranty otherwise available to Buyer. Any attempts to do so are ineffective and shall not in any way bind Buyer.

In addition to the foregoing express warranties, the goods and services purchased under the Purchase Order shall be subject to all warranties arising by operation of law. All of these warranties shall survive inspection, delivery, acceptance and payment, shall run to Buyer,



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its officers, agents, employees, successors, assigns, customers and users of the goods and shall not be deemed to be exclusive. Buyer reserves the right to require Supplier to replace any articles and materials not supplied in accordance with these warranties, free of cost to Buyer.

4.11 Cancellation

Buyer may, after giving written notice to Supplier, cancel the Purchase Order prior to delivery. Upon an Event of Default by Supplier of any its obligations hereunder, Buyer may, in addition to any other rights or remedies it may have, cancel the Purchase Order and seek damages from Supplier. In the event of any cancellation hereunder, Supplier shall cease any work or delivery and observe any instruction from Buyer as to work in progress.

4.12 Termination

If Supplier is unable to make shipments by the date required as specified in the Purchase Order, then Buyer reserves the right to modify or cancel the Purchase Order. Buyer may terminate the Purchase Order if Supplier materially breaches the Purchase Order and these Terms and Conditions or so fails to perform its obligations hereunder as to endanger its performance in accordance with the terms within the time allowed. In addition to the rights and remedies set forth in these Terms and Conditions, Buyer may, by written notice to Supplier, terminate and cancel the Purchase Order, or any part of it, upon the occurrence of any of the following events (“Events of Default”):

(i) Supplier fails fully to perform any of its obligations under the Terms and Conditions, including without limitation, the timeliness of delivery, the conformity of goods delivered or conformity with any express or implied warranty hereunder;

(ii) The commencement of an involuntary case or the filing of a petition against Supplier (i) seeking reorganization, arrangement, adjustment or composition of or in respect of Supplier under the federal Bankruptcy Code as now or hereafter constituted, or under any other applicable federal or state bankruptcy, insolvency, reorganization or other similar law, (ii) seeking the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Supplier for any part of its property, or (iii) seeking the winding up or liquidation of its affairs, and such involuntary case or petition is not dismissed within thirty (30) calendar days after the filing thereof;

(iii) The commencement by Supplier of a voluntary case or the institution by Supplier of proceedings to be adjudicated as bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, under the federal Bankruptcy Code as now or hereafter constituted, or any other applicable federal or state bankruptcy or insolvency or other similar law;

(iv) The consent by Supplier to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Supplier for any substantial part of its property;

(v) The making by Supplier of any assignment for the benefit of creditors;



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(vi) The admission by Supplier in writing of its inability to pay its debts generally as they become due or the failure of Supplier to generally pay its debts as such become due;

(vii) The taking of any corporate action by Supplier or its equity owners or governing body or any committee thereof in furtherance of any of the foregoing; or

(viii) Buyer, in its reasonable opinion, believes that Supplier's ability to perform the Purchase Order is in danger or impaired.

In the event of such termination and cancellation, Buyer shall have the rights and remedies set forth in these Terms and Conditions, and Buyer's sole liability to Supplier shall be for conforming goods completed and delivered to Buyer in accordance with the Purchase Order. Any such cancellation will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which can be set off against damages to Buyer. Whenever Buyer has the right to demand of Supplier adequate assurance of due performance, Buyer shall be sole judge of the adequacy of assurance given by Supplier.

4.13 Rights and Remedies

If an Event of Default occurs, Buyer shall, in addition to the right of cancellation, be entitled to all remedies for a breach of contract set forth in the UCC and all other remedies available at law or in equity. Additionally, Buyer may, at its option: (i) refuse to accept delivery of the goods or services; (ii) refuse to accept a subsequent tender of substitute, conforming goods; (iii) return nonconforming or late delivered goods to Supplier at Supplier's cost and expense and, at Buyer's option, either recover all payments made therefore and expenses incident thereto, or at Supplier's expense, receive replacement therefore; (iv) recover any advance payments from Supplier for undelivered goods; (v) to the extent applicable, rework the goods to make the goods conform to the warranties and charge Supplier for the expense thereof; (vi) use the goods for a purpose other than the purpose originally intended and charge Supplier for the amount by which the purchase price exceeds the price of goods normally required for such alternative purposes; (vii) have Supplier repair (if applicable) or replace defective goods at Supplier's expense; or (viii) if defective goods are repaired or replaced by Buyer or Supplier, charge Supplier for all costs and expenses of repairing or restoring non-defective work or goods disturbed as a consequence of repairing or replacing defective goods.

Buyer shall be entitled to exercise any or all of the remedies under the UCC and/or as specified in these Terms and Conditions or each of such remedies in part; provided, however, that Buyer shall not be permitted to recover more than once for any part of a performance called for by these Terms and Conditions. **NONE OF THE REMEDIES AVAILABLE TO BUYER HEREUNDER MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER.** Buyer shall be entitled to recover costs and attorney fees in the enforcement or defense of any rights hereunder. Moreover, Buyer's right to return goods is not affected by any assignment by Supplier of monies due or to become due hereunder. Furthermore, if the cost of purchasing such substitute goods, products or services exceeds the price stated in the Purchase Order, then



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Supplier shall pay the difference to Buyer. This payment shall not prejudice any other rights Buyer may have against Supplier.

4.14 Indemnification

Supplier assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless Buyer, its officers, agents, employees, managers, subsidiaries, affiliates, successors, assigns, customers and users of the products and goods purchased hereunder, from and against any and all losses, expenses (including without limitation, court costs, investigative costs and reasonable attorneys' fees and other professional fees), fines, penalties, costs, damages (including consequential and incidental damages), demands, liabilities, judgments, executions, recoveries, suits and claims in connection with or arising out of any actual or alleged personal injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of (i) any act, error, omission or misrepresentation, whether negligent or not, of Supplier or its agents, employees, suppliers, subcontractors and consultants, provided that such injury, death, damage or destruction is not occasioned by the sole negligence of Buyer or its agents, employees and subcontractors, or (ii) any defect, whether latent or patent, in any good or product of Supplier which was sold to Buyer hereunder, (iii) the breach by Supplier of any of the Terms and Conditions hereof or representations contained herein; (iv) the performance of any labor or services performed hereunder by Supplier, its employees or subcontractors, or (v) any failure of the products or goods sold to Buyer hereunder to conform with the Specifications and/or to comply with any warranty of Supplier. Such indemnification obligations hereunder shall be in addition to any other remedies provided by law, and such indemnification obligations shall survive the termination or expiration of the Purchase Order.

In addition to the representations and warranties set forth elsewhere in these Terms and Conditions, Supplier represents and warrants that all merchandise furnished hereunder will not infringe upon any United States or foreign patent, trademark or copyright. Supplier agrees, at its own expense, to indemnify, defend and hold harmless Buyer, its officers, agents, employees, managers, subsidiaries, affiliates, successors, assigns, customers and users of the products and goods purchased hereunder, from and against any and all liability, loss, damage and expenses (including without limitation, court costs, investigative costs and reasonable attorneys' fees and other professional fees), resulting from any actual or claimed trade secret, trademark, patent or copyright infringements or other literary or artistic rights infringement affecting the articles or materials furnished hereunder, or any claim that any of the goods purchased hereunder, or any part thereof, or any use thereof in the reasonable contemplation of the parties at the time of their purchase, constitutes an infringement of any patent, trademark or copyright, or any litigation based thereon, and such obligation shall survive acceptance of the goods and payment therefore by Buyer. If the products or goods purchased hereunder or any part thereof or any use thereof in reasonable contemplation of the parties at the time of their purchase is held in such suit to constitute an infringement and use is enjoined, then Supplier shall promptly and at its own expense (i) procure for Buyer the right to continue use of the products or goods purchased hereunder, or (ii) replace the same with non-infringing products or goods satisfactory to Buyer, or (iii) modify such products or goods in a way satisfactory to Buyer and its legal counsel so they become non-infringing.



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Supplier shall maintain, with insurance carriers that maintain an A.M. Best rating of a least “A” VIII and are qualified to do business in the state in which the Purchase Order is to be performed, commercial general liability insurance (including products/completed operations, vendors’ liability and contractual liability coverage), automobile liability insurance for all vehicles to be used by Supplier, and employer’s liability insurance with respective minimum limits of liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, as well as workers’ compensation insurance in accordance with all statutory requirements. All policies hereunder shall provide Buyer with at least thirty (30) days prior written notice of any cancellation of or material change to any such policies. All policies shall be endorsed to name “Hero BX and its subsidiary and affiliated companies of any tier” as additional insureds, and Supplier shall provide proof of such insurance coverage upon Buyer’s request. Buyer reserves the right to increase the mandatory insurance limits at any time and from time to time.

Upon written request of Buyer, Supplier shall promptly provide certificate(s) from its insurers indicating (i) the amount of insurance coverage; (ii) the nature of such coverage; (iii) Buyer, its directors, officers, and employees, et al. as additional insureds as stated above; (iv) that the insurance provided is primary as respect to any and all claims arising out of the Purchase Order and that any similar coverage maintained by Buyer will be excess and non-contributory; and (iv) the expirations date(s) of each applicable policy.

4.16 LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES WHATSOEVER WILL BUYER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSSES RESULTING FROM BUSINESS INTERRUPTION, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. NO LIMITATION ON LIABILITY OR ON DAMAGES FOR BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHER LIABILITY SHALL APPLY TO SUPPLIER, EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY BUYER IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER.

4.17 Confidentiality and Proprietary Information

Supplier acknowledges that it is, may be or will be privy to Confidential Information (as defined below). Supplier agrees it will use the Confidential Information only in furtherance of the Purchase Order and the arrangements between Buyer and Supplier, and Supplier shall not transfer or otherwise disclose the Confidential Information to any third party except as provided for herein. Supplier shall: (i) give access to such Confidential Information solely to those of its employees with a need to have access thereto in furtherance of or in connection with the Purchase Order, or as required by applicable law; and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that Supplier takes with its own confidential information but, in no event, shall Supplier apply less than a reasonable standard of care to prevent such disclosure or



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unauthorized use.

As used herein, “Confidential Information” means any and all information relating to Buyer, and any of its respective subsidiaries or affiliates, that may be received by or be provided to Supplier from time to time, including, without limitation, Specifications, business records or data, trade secrets, and confidential planning or policy matters, business strategies, internal policies, and procedures, matters subject to attorney-client privilege, and any financial or accounting information, the existence of this or any other agreements or communications between Supplier and Buyer, and the terms of any such agreement, and all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning any such person or entity, together with analysis, compilations, studies or other documents, whether prepared by Supplier or by Buyer, which contain or otherwise reflect such information.

Goods, services, and/or products made or developed to Buyer’s design shall not be supplied to anyone else without the prior written consent of Buyer. Supplier shall not reveal any Specifications, designs or other information supplied to it by Buyer nor disclose to third parties any of the details of the Purchase Order without the prior written consent of Buyer. Supplier agrees that all information contained in the drawings, blueprints, Specifications and other documents submitted by Buyer to Supplier hereunder shall be considered “Confidential Information” hereunder and is exclusively proprietary to Buyer. All Confidential Information shall be returned to Buyer upon completion, expiration or termination of the Purchase Order, as applicable.

4.18 Property of Buyer

Unless as otherwise provided in the Purchase Order or agreed to in writing, property of every description including, but not limited to, all tooling, tools, equipment and material furnished or made available to Supplier, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Supplier shall not modify Buyer’s property without the written consent of Buyer. Supplier shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Supplier’s possession or control shall be kept in good condition, shall be held at Supplier’s risk, and shall be kept insured by Supplier, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not consumed in the performance of the Purchase Order, it shall be subject to inspection and removed by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Supplier as and what directed by Buyer. Supplier shall disclose the location of such property, prepare it for shipment, and ship it to Buyer in as good condition as originally received by Supplier, reasonable wear and tear excepted.

4.19 New Material

Supplier warrants that none of the items furnished under the Purchase Order are surplus, used, remanufactured or recondition or of such age or so deteriorated as to impair the usefulness or safety thereof, unless as otherwise specified on the face of the Purchase Order.



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4.20 Design Improvements; Inventions

If the Purchase Order has as one of its purposes, certain design, experimental, development or research work, then Supplier agrees to communicate promptly to Buyer full details of any design, invention (whether or not patentable) or other intellectual property right conceived or first reduced to practice by Supplier or any of its employees in connection with the performance of the applicable Purchase Order. Upon Buyer's request, Supplier shall assign to Buyer any and all right, title and interest of Supplier or its employees in each such design, invention or other intellectual property right, and perform all acts (at Buyer's expense) and execute all papers which are necessary to vest in Buyer full right, title and interest therein.

4.21 Force Majeure

A party shall not be liable to the other for delay or failure to perform any of its obligations hereunder provided such delay or failure to perform is due to fire, storm, flood, earthquake, act of God, war, insurrection, riot, court order, strike, work stoppage, governmental action, or other unanticipated event beyond the control of such party (an "event of force majeure"). In the event Supplier claims that an event of force majeure has rendered it unable to perform, and as a condition to exercising rights under this Section so that Buyer may seek alternative sources of performance, Supplier must provide written notice to Buyer within twenty-four (24) hours of the occurrence of such event, together with a detailed description of such event and the expected duration of non-performance. If any such cause continues or is expected to continue for more than thirty (30) days, then Buyer may, at its option, cancel the Purchase Order and terminate its arrangements with Supplier.

4.22 Export Control

Supplier shall notify Buyer in the event the products or information covered by the Purchase Order are subject to export regulations of the U.S. Government. Supplier shall comply with all laws related to exportation of the products or information to be delivered hereunder.

4.23 Assignment and Subcontracting

Supplier may not, without Buyer's prior written consent, assign or transfer, voluntarily or by operation of law, the Purchase Order, nor subcontract with any other party for the furnishing of goods or services specified by the Purchase Order. Buyer may assign its rights and obligations hereunder, in whole or in part, to any party without the consent of Supplier.

4.24 Notices

All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made and received when personally delivered against or upon actual receipt by registered or certified mail, postage and fees prepaid, return receipt requested, to the respective addresses of the parties listed on the Purchase Order. Any party may alter the address to which communications or copies are sent by giving notice of such change of address in conformity with the provisions of this Section.



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4.25 Set Off

In addition to all other rights and remedies hereunder, Buyer may set off any amount due from Supplier to Buyer, whether or not under the Purchase Order, from any amounts due to Supplier.

4.26 Amendment/Modification

These Terms and Conditions may be added to, modified, superseded or otherwise altered except by a written instrument or written Change Order signed by an authorized representative of Buyer and delivered by Buyer to Supplier.

4.27 Entire Agreement

When accepted, the Terms and Conditions, along with the Specifications and the terms on the face of the Purchase Order, will constitute the complete statement of the terms of the arrangement and contract between the parties hereto, are intended as a final expression of the terms of such contract, and will supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term herein. Buyer's acceptance or acquiescence in a course of performance rendered by Supplier hereunder shall not be relevant to determine the meaning of this arrangement even though Buyer has knowledge of the nature of the performance and opportunity for objection.

4.28 Survival

All representations, warranties and guarantees of Supplier in these Terms and Conditions shall survive the delivery of the goods and services to Buyer, the inspection and acceptance of the goods by Buyer, and the payment of the purchase price thereof by Buyer.

4.29 Waiver

Buyer's failure to exercise any of its rights under the Purchase Order upon one occasion shall not waive Buyer's rights to enforce the same on another occasion. Any delay, lack of enforcement, or waiver by Buyer of any default or other breach of the Purchase Order shall not constitute a waiver of any subsequent default or other breach, and such shall not preclude Buyer from enforcing any and all of the Terms and Conditions.

4.30 Miscellaneous

In the event that any provision of the Terms and Conditions or the Purchase Order is declared invalid by any tribunal or law, the remainder of the provisions shall not be affected thereby, and each term and provision not declared invalid or unenforceable shall be valid and shall be enforced to the fullest extent permitted by law. The Purchase Order and the Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, agents, successors and permitted assigns. The Purchase Order and the Terms and Conditions and all questions relating to their validity, interpretation, performance, and enforcement shall be construed in accordance with, and shall be governed by, the substantive laws of the Commonwealth of Pennsylvania without regard to its



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principles of conflicts of law. The parties hereby consent to the exclusive personal jurisdiction and venue of the United States District Court for the Western District of Pennsylvania, Erie Division unless subject matter jurisdiction is not satisfied, in which case each party hereby submits to the exclusive personal jurisdiction and venue of the Court of Common Pleas of Erie County, Pennsylvania. Buyer and Supplier expressly exclude the application of the United Nations Convention on Contracts for the International Sales of Goods, as amended. In the event of any litigation concerning these Terms and Conditions, the substantially prevailing party shall be entitled, as a portion of its award, to its costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees.

5.0 SUPPLEMENTAL VENDOR REQUIREMENTS & INSTRUCTIONS

5.1 Exceptions

Quotations shall be for the exact conditions set forth in the bid request and attachments thereto. If the Bidder's equipment differs in any way, they shall itemize the differences in their quotation under a separate heading titled "Exceptions to Specifications". Bidders are encouraged to submit alternate proposals when they consider the alternate to be an improvement or more economical, but base proposals shall meet specifications.

5.2 Interchangeability

Equipment has been selected to provide maximum interchangeability of parts where economically practical. Vendor shall be prepared to submit a proposal to meet these requirements.

5.3 Brand Names

Brand names and figure numbers, when specified, for equipment or materials shall be adhered to. Substitution of another brand, make, or model number is prohibited without Engineer's approval.

5.4 Delivery

Shipment of the equipment and/or material shall be made as specified. The Bidder should bear in mind that the shipping time quoted will be an important consideration in the award and should quote their best shipment based on a normal Production Schedule.

When determining your promised shipping date, allow three (3) weeks for Buyer's approval and return of drawings as required by attachments to the Bid Request.

5.5 Progress Reports

The Owner may require regular periodic detailed forecasts and progress reports from Seller for materials covered by a purchase order resulting from Bidder's quotation. Unpriced copies of Seller's Purchase Orders to Sub-Suppliers may also be required.



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5.6 Escalation

Firm quotations are required. If escalation is included, the conditions shall be clearly stated as an exception.

5.7 Description

Bidder shall give complete description of equipment and/or services, including materials of construction, when applicable.

5.8 Drawings

When specified, bidder shall furnish typical outline, arrangement, and sectional drawings with their description of equipment. Bidder is to submit with their quotation either a statement of concurrence with the time allotted for preparation and submittal of drawings to the Buyer, or the number of calendar weeks required by the Bidder to prepare and submit the drawing requirements after receipt of a purchase order. The number of drawings shall be as specified on the Data Sheet(s).

5.9 Performance Tests

Quotations shall state the extra cost, if any, for witnessed performance tests. If the Bidder does not have adequate facilities for performance testing (i.e., power supply, motors for pumps, steam, etc.), he shall so state in their quotation.

5.10 Special Tools

Bidder shall submit a list of the type, quantity, and unit price of special tools required for operation and maintenance of the equipment that they propose to furnish, as a part of their quotation.

5.11 Erection or Start-up

When Bidder considers erection supervision, specialists, or start-up personnel to be necessary, the cost shall be quoted as separate items for periods of one hour, one day, or more. Travel and per diems should be included.

5.12 Proprietary Information

This Bid Request and all drawings, designs, specifications, and other data appended or related to it are the property of Buyer and are delivered only for the purpose of enabling each potential bidder to prepare and submit a proposal in response thereto. The information contained or referred to in the Bid Request or appended to it is not disclosed or released for any other use or purpose and must be returned to Buyer unless otherwise stated.

5.13 Proposal Data

Bidder/Vendor is responsible for the services of all sub-vendor(s), subcontractor(s), or fabricator(s) to be utilized on proposed work. Furthermore, Bidder/Vendor must indicate



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clearly in their proposal the name(s), address(es), and work to be performed by any sub-vendor(s), subcontractor(s), or fabricator(s) employed by him. Bidder/Vendor shall not deviate from foregoing agreement without Buyer's written approval.

5.14 Quantity Increase/Decrease

Quantities of material or equipment set forth in the applicable technical specification(s) are subject to increase or decrease depending upon actual construction requirements. The Engineer may submit supplements and/or exceptions to any of the attached Engineering Specifications to produce a job specific Engineering Specification.

6.0 SURVEY OF CHANGES

6.1 2/19/2021 – Revision 0 – CEP – Initial Issue