

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** "Goods" as used herein shall mean the goods, products, materials, supplies, parts, assemblies, drawings, documents, or services covered by this Purchase Order. "Work" as used herein shall mean the furnishing of all labor, materials and supplies and doing all things necessary to produce, deliver or install the Goods in accordance with the terms and conditions of this Purchase Order.
2. **ACCEPTANCE-AGREEMENT.** This Purchase Order must be accepted in writing by Seller. If Seller should fail to accept in writing, Seller's commencement of Work, delivery of Goods or any other conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of this Purchase Order, whichever occurs first, shall constitute acceptance by Seller of this Purchase Order and all of its terms and conditions. Any terms proposed in Seller's acceptance or Purchaser's offer which add to vary from or conflict with the terms of this Purchase Order shall be deemed to be a material modification and are hereby objected to and shall be void. If this Purchase Order has been issued by Purchaser in response to an offer and if any of the terms herein are additional to or different from any terms or such offer, then the issuance of this Purchase Order by Purchaser shall constitute an acceptance of such offer subject to the express conditions that the Seller consent to such additional and different terms set forth in this Purchase Order and acknowledge that this Purchase Order constitutes the entire agreement between Purchaser and Seller. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Purchaser to the contrary within 10 days of receipt of this Purchase Order.
3. **TERMINATION FOR CONVENIENCE OF PURCHASER.** Purchaser reserves the right to terminate this Purchase Order or any part hereof for its sole convenience. In event of such termination, Seller shall immediately stop all Work and shall immediately cause any of its suppliers or subcontractors to cease such Work. Upon, termination by Purchaser under this paragraph, Purchaser shall pay to Seller without duplication (under no circumstances shall such amounts, however, exceed the aggregate price specified in this Purchase Order and payment of such amounts shall constitute Purchaser's sole obligation hereunder) the price for all Goods which have been completed and delivered to Seller in accordance with this Purchase Order plus the actual cost incurred by Seller in accordance with this Purchase Order to the extent reasonable in amount and properly allocable to the terminated portion or this Purchase Order.
4. **TERMINATION FOR CAUSE.** Notwithstanding any provisions set forth in paragraph 3 above to the contrary, Purchaser may also terminate this Purchase Order, or any part hereof by written notice of default to Seller under any one of the following circumstances: If Seller fails to comply with any provisions of the Purchase Order and does not cure any such failure within a period of 10 days after receipt of notice from Purchaser specifying such failure; or if Seller fails to provide Purchaser upon request for reasonable assurances of future performance of the terms and conditions of the Purchase Order. In event of such termination for cause, Purchaser shall not be liable to Seller for any amounts due under this Purchase Order and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination. Additionally, Purchaser, if it so elects, may further notify Seller that all right, title and interest in and to all or any portion of the Goods shall pass immediately to Purchaser upon payment therefore.
5. **PROPRIETARY INFORMATION-CONFIDENTIALITY-ADVERTISING.** Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing this contract unless Seller obtains written permission from Purchaser to do so.
6. **WARRANTIES.** Whether or not Seller is a merchant of the Goods or Work provided by it, Seller warrants with respect to all Goods and Work provided by it that:
 - A. All Goods will conform to the specification, drawings, samples or other descriptions specified by Purchaser or if none are so specified to Seller's standard specifications for such Goods;
 - B. All Goods will be new and will be "First Quality Goods" as defined in the applicable trade industry or business; and unless specified to the contrary on the face hereof will be free from defects or materials and workmanship; and will be free from all liens and encumbrances or other claims of any third parties; and will conform to any affirmation of fact made on any container, label or advertisements; and will be of merchantable quality, free from latent or patent defects; and will be safe for their intended use.
 - C. If Seller knows or has reason to know or the particular purpose for which Purchaser intends to use the Goods, Seller warrants that such Goods will be fit for such particular purpose.
 - D. All Goods will be adequately contained, packaged, marked and labeled in compliance with all applicable laws and regulations;
 - E. All Goods furnished will conform in all respects to any samples or models or any other description, promises or affirmations or fact made by Seller.
 - F. Seller agrees to use its best skill and judgment in performing the Work, to perform the Work in a workmanlike, efficient and safe manner and in conformance to standards generally accepted in the relevant trade or industry with workmanship proper and sufficient for the purposes contemplated, to cooperate with Seller in every way, to ensure insulation or delivery of the Goods with minimum disruption to Purchaser's business activities, and to maintain competent supervision and direction and to otherwise maintain the necessary materials, equipment and skilled workers to install the Goods and to otherwise properly prosecute the Work to completion within the time parameters established by Purchaser.
 - G. Any Work performed under this Purchase Order shall be free from defects due to faulty materials, equipment or workmanship until the expiration or one year from the final payment made under this Purchase Order.The foregoing warranties shall run to Purchaser, Winegardner & Hammons Hotel Group and the successors and assignees of the foregoing parties along with any customers and users of the Goods sold by Purchaser.
7. **PRICE / PRICE WARRANTY.**
 - A. All cash discount periods shall be computed from the date or receipt of Goods by Purchaser or a correct invoice for Goods, whichever is later. Cash discounts will be based on the full amount or invoice less freight charges and taxes separately stated on the invoice.
 - B. Any reduction in applicable freight rated, excise taxes and/or sales/use taxes in force on the date or the Purchase Order, whether separately stated on the face of the order or not, shall be paid to the Purchaser or credited against the price of the Goods or Work.
 - C. Freight charges or rates billed to Purchaser must be billed net of any discounts or pricing adjustments granted to Seller.
 - D. Seller warrants that the prices for the Goods and Work sold or provided hereunder are no less favorable than those currently extended to any other customer for the same or similar Goods or Work and that no additional charges or any type (including but not limited to shipping, packaging, labeling, taxes, insurance, and storage) shall be added without Purchaser's expressed written consent.
8. **FORCE MAJEURE.** Any federal, state or municipal action, statute, ordinance, or regulation, strike or other labor trouble, fire, windstorm or other incident outside of Purchaser's control which shall affect the Purchaser's ability to receive and use the Goods ordered shall constitute a valid ground for suspension of shipment or delivery of Goods under this Purchase Order, upon notification to Seller by telegram or letter and without penalty to the Purchaser, except a cancellation for such cause may not be made without reimbursement to Seller for expenditures actually made for labor and materials upon authority of this Purchase Order.
9. **PATENTS / INDEMNIFICATION.** Seller warrants that the Goods specified herein and their sale or use alone or in combination according to Purchaser's specifications or recommendations, if any, will not infringe any United States or foreign patent, copyright or trademark. In case the sale or use of the Goods shall be found to constitute patent, copyright or trademark infringement and their use is enjoined. Purchaser may, at its sole option, pursue any remedy or remedies available at law or in equity including without limitation requiring Seller to either procure for Purchaser the right to continue to use such Goods, modify them so they become non-infringing or remove them and refund the total purchase price therefore. Seller further agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against the Purchaser or its agents, customers or other vendors for alleged patent or copyright infringement as well as any alleged unfair competition resulting from similarity in design, trademark or appearance or the Goods furnished hereunder; and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from such suit or proceeding including any settlement. Purchaser may be represented by and actively participate through its own counsel in such suit or proceeding if it so desires, and the cost of such representation shall be paid by Seller.
10. **INDEMNIFICATION/INSURANCE/INDEPENDENT CONTRACTORS.** Seller shall defend, indemnify and hold harmless Purchaser against all damages, liability, claims, losses and expenses (including attorneys' fees) arising out of, or resulting in any way from any defect in the Goods purchased hereunder or from any act or omission of Seller, its agents, employees or subcontractors arising from or connected with the delivery of the Goods or the performance of the Work. Seller shall maintain such public liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) worker's compensation and employer liability insurance as will adequately protect Purchaser against such damage liabilities, claims, losses and expenses (including attorney's fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Purchaser. This indemnification shall be in addition to the warranty obligations of Seller.

If in the performance of this Purchase Order, the Seller or any of its agents, employees or subcontractors is required to enter upon Purchaser's premises or the premises of any third party for whom Winegardner & Hammons Hotel Group ("WHG") is performing hotel management or construction related services, then the Seller for itself and on behalf of any agent, employees, or subcontractors agrees: (a) to comply with all laws, rules, regulations, orders and ordinance applicable to all Work done hereunder, (b) to protect such premises from mechanic's and materialmen's liens, (c) to take all reasonable precautions prescribed by any persons in charge of any part of such premises, (d) to maintain proper workers' compensation insurance covering all employees engaged in the performance of Work hereunder, (e) to defend, indemnify and hold harmless Purchaser, its officers, employees, agents and any other persons having rights in the premises or being on or about the premises from all fines, penalties, costs, losses, expenses, including consequential damages, resulting from injury, including death to persons (including but not limited to, any employee or agent of Seller) or property arising from or in any manner growing out of the action or neglect of Seller, its agents, employees and subcontractors.
11. **CHANGES/MODIFICATIONS.** Purchaser shall have the right at any time to make any changes in drawings, specifications, packaging, time and place of delivery, method of transportation, and/or quantity of items called for. If such changes cause an increase or decrease in the cost or, or the time required for performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly.
12. **INSPECTION/TESTING.** Payment for Goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such Goods and to reject any or all of said Goods which are in Purchaser's judgment defective or non-conforming. Goods rejected and Goods supplied in excess or quantity called for herein may be returned to Seller at its expenses and in addition to Purchaser's other rights. Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such Goods. In the event Purchaser receives Goods whose defects or non-conformity is not apparent on examination. Purchaser reserves the right to require replacement as well as payment of all damages.
13. **REMEDIES.** Purchaser's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Should Seller fail to perform any of its obligations under this Purchase Order, in addition to indemnifying and holding the Purchaser harmless against all expenses, claims, demands or liabilities' arising out of such breach, Seller further agrees that:
 - A. Purchaser shall be entitled to all incidental damages resulting from a breach by Seller including, but not limited to all expenses incurred in inspection, receipt, transportation, and care and custody of Goods rightfully rejected, any commercially reasonable charges, expenses or commissions incurred in effecting cover, and any other reasonable expenses incident to a delay or breach by Seller.
 - B. Purchaser shall also be entitled to consequential damages resulting from a breach for any loss resulting from general or particular requirements and needs of Purchaser of which Seller is aware at the time of executing the Purchase Order and which reasonably cannot be prevented by cover or otherwise.
14. **DELIVERY.** Time is of the essence in this Purchase Order. If delivery of Goods or performance of work is not completed within the time parameters established herein; Purchaser reserves the right without liability in addition to its other rights and remedies to terminate this Agreement by notice effective when received by Seller as to Goods not yet shipped or Work not yet performed and to purchase substitute Goods or contract with third parties for the performance of the work and charge Seller with any losses incurred.
15. **ENTIRE AGREEMENT.** This Purchase Order, including all items incorporated herein by reference, contains the final and entire contract between Purchaser and Seller, and no agreement or other understanding proportion to add to or modify the terms and conditions hereof shall be binding upon Purchaser unless agreed to by Purchaser in writing on or subsequent to the date of this Purchase Order. This Purchase Order shall have been deemed to have been executed and delivered in Cincinnati, Ohio and shall be construed, governed and interpreted under the laws in the State of Ohio with jurisdiction and venue with respect to any suit brought under this Purchase Order residing in the Courts of Hamilton County, Ohio.
16. **ASSIGNMENT AND SUBCONTRACTING.** This Purchase Order and any payments to be made hereunder may not be assigned or transferred without prior written approval by Purchaser.
17. **INVOICES.** The packing slip must accompany each shipment or the Goods. Any order shipped short but considered complete by Seller must be so noted on the Purchase Order. If shipment is to WHG as agent for Purchaser, a copy of the packing slip must be forwarded concurrently to both Purchaser and WHG. If no packing slip is sent, a count or weight reported by Purchaser or WHG or any co-signee shall be final and binding on Seller with respect to such a shipment.
18. **RISK OF LOSS.** Seller assumes all risk of loss or damage to all Goods until the delivery thereof as herein provided and all risk or loss or damage to any Goods rejected by the Purchaser or as to which the Purchaser has revoked its acceptance from the time of such rejection or revocation.
19. **SET OFF.** Purchaser shall be entitled at all times to set off any amounts owing at any time from Seller, or any affiliated company of Seller, to Purchaser, or any third party for whom WHG is performing hotel management or construction related services, against any amounts payable at any time by Purchaser in connection with this Purchase Order.
20. **WAIVER.** Purchaser's failure to insist on performance of any terms or conditions of the Purchase Order or to exercise any right or privilege for purchase, or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges whether of the same or similar type.
21. **SAMPLES.** If samples are requested by this Purchase Order, Seller shall not forward quantity shipments until Purchaser had approved in writing Seller's samples which have been processed or fabricated by means of the tooling and process methods to be used in the production of Goods in quantities ordered by Purchaser.
22. **LIMITATION OF PURCHASER LIABILITY.** In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or connected with or resulting from this Agreement or from the performance or breach thereof shall, in no case exceed the price allocable to the Goods or Work which give rise to the claim. Purchaser shall not be liable for penalties or any description. Any action resulting from any breach on the part of Purchaser as to Goods delivered or Work performed hereunder must be commenced within one year after the cause of action has occurred.
23. **DISPUTES.** Should any dispute occur between the parties out of or related to this Agreement or their rights and responsibilities to each other the matter shall be settled and determined by arbitration under the then current rules of the American Arbitration Association. The decision and award of the Arbitrator shall be final and binding and the award rendered may be entered in any court having jurisdiction thereof. The arbitration shall be held and the award deemed to be made in Cincinnati, Ohio.
24. **COMPLIANCE WITH LAWS.** Seller warrants that all Goods delivered hereunder will have been produced in compliance with and all Work performed hereunder will be undertaken in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to any material safety data sheets required pursuant to the OSHA Hazard Communication Standard.
25. **SEVERABILITY.** The invalidity in whole or any part of any condition or this Purchase Order shall not affect the validity of the other conditions.
26. **WAIVER OF RIGHT TO FILE LIENS.** Seller hereby agrees not to file any mechanic's laborer's or materialmen's lien or other lien against the hotel or premises to which the Goods will be delivered or Work performed, and Seller hereby waives any right to file any such lien and shall, if requested, execute a waiver of lien in recordable form.
27. **GRAVITIES.** Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Purchaser or WHG any gratuity with a view toward securing any business from Purchaser or WHG or influencing such Purchaser or WHG with respect to the terms, conditions or performance of any contract or purchase order. Any breach of this warranty shall be a material breach of each and every contract between Purchaser and Seller or any other contract entered into by and between Seller and WHG individually or in its capacity as manager and authorized agent for any hotel property managed by it.
28. **RIGHT TO AUDIT.** If the price stated herein is other than a fixed price. Purchaser shall have the right to inspect and audit all of Seller's and Seller's subcontractor's (if any) books, records, correspondence, receipts, vouchers, memoranda, etc. relating to or affecting this Purchase Order and Seller and Seller's subcontractors (if any) shall preserve all such records for a period of one year after final payment. Seller shall provide for such right to audit by Purchaser and all contracts with any subcontractors relating to this Purchase Order.
29. **TITLE.** In full or partial payments made to Seller prior to the delivery of all Goods or the performance of all Work hereunder title to all Goods identified in this Purchase Order at the time of such payment or thereafter shall pass to Purchaser and Seller shall be deemed a bailee of all Goods remaining in its possession, but in no event shall the risk or loss pass to Purchaser until the Goods are delivered to the destination specified herein and accepted by the Purchaser.