

This purchase order constitutes the entire contract between the vendor or seller named on the face hereof ("Seller") and Mountaineer Park, Inc., ("Buyer") covering the goods described herein (the "goods"). Seller's acceptance must be limited to the terms and conditions stated herein, without any modification, addition or alteration. Any terms contained in Seller's acknowledgements or any other documents that are different from or additional to the terms and conditions hereof, whether or not Seller has acknowledged this Purchase Order. Time is of the essence hereof.

TERMS AND CONDITIONS

1. PRICE: This Order shall not be filled at higher prices than specified herein. If price terms are omitted from the face hereof, the price of the goods shall be the lower of (i) the price last quoted or paid (whichever is later) or (ii) the prevailing market price at the time of the shipment. Unless otherwise provided herein, prices shown on this Purchase Order are deemed to include all taxes not expressly imposed by law on the buyer of the goods ordered hereunder. Buyer shall not be responsible for any charge for packing, boxing, storage or cartage.

2. SHIPMENT AND INSPECTION: The terms and routing of shipment shall be as provided on the face hereof, or as Buyer otherwise directs. Buyer may revise shipping instructions as to any goods not then shipped. Buyer shall have the right to inspect any or all of the goods at Seller's plant or upon Buyer's receipt, at Buyer's election, which right shall be exercisable notwithstanding Buyer's having paid for the goods prior to inspection. Buyer, by reason of its failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods which do not conform to the specification therefore, or to have waived any of Buyer's rights or remedies arising by virtue of such defects or nonconformance.

3. PAYMENT: The time period allowed for payment, as indicated on the face hereof, shall commence upon receipt of Seller's invoice or upon receipt of the goods, whichever is later.

4. RISK OF LOSS: Notwithstanding any provision hereof to the contrary, title to, and risk of loss of, the goods shall remain with Seller until the goods are delivered at the F.O.B. point specified in this Purchase Order, or if no such point is specified, then, when the goods are delivered to Buyer. However, if the goods are of an explosive, inflammable, toxic, or otherwise dangerous nature, Seller shall hold Buyer harmless from and against any and all claims asserted against Buyer on account of any personal injuries and/or property damages caused by the goods, or by the transportation thereof, prior to the completion of unloading at Buyer's plant or warehouse.

5. WARRANTIES: Seller warrants to and covenants with Buyer as follows: Seller will deliver to Buyer title to the goods free and clear of all security interest, liens, charges, restrictions or encumbrances of any kind, nature or description, the goods shall be free from defects in material and/or workmanship; unless otherwise specified in this Purchase Order, the goods shall be new and not used or reconditioned; the goods and their packaging shall conform to the description thereof and/or specifications therefore contained in this Purchase Order. In placing this Purchase Order, Purchaser is relying on Seller's skill and judgment in selecting and providing the proper goods for Purchaser's particular use. The goods shall in all respects be suitable for the particular purpose for which they are purchased and the goods shall be merchantable. Seller shall indemnify and save and hold Buyer harmless from and against any and all damages, losses, demands, costs and expenses arising from claims by third parties for property damage, personal injury or other losses or damages arising from Seller's breach of its obligations hereunder.

6. REMEDIES: In the event of Seller's breach of this contract, Buyer may take any or all of the following actions without prejudice to any other rights or remedies available to Buyer by law: (1) require Seller to repair or replace such goods, and upon Seller's failure or refusal to do so, repair or replace the same at Seller's expense; (2) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at Buyer's option; said return to be made at Seller's cost and risk; (3) cancel any outstanding deliveries hereunder, and treat such breach by Seller as Seller's repudiation of this contract; In the event of Buyer's breach hereunder, Seller's exclusive remedy shall be Seller's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

7. FORCE MAJEURE: For the purposes of this contract, an event of "force majeure" shall mean any or all of the following events or occurrences: strikes, work stoppages, or other labor difficulties; fires, floods or other acts of God; transportation delays; acts of government or any subdivision or agency thereof; or any other cause, whether or not similar to the causes or occurrence enumerated above; in all cases, which are beyond the control of the party claiming the occurrence of a force majeure event and which delays, interrupts or prevents such party from performing its obligations under this contract. Notwithstanding any provision hereof to the contrary, the reduction, depletion, shortage, curtailment or cessation of Seller's supplies or reserves or any other supplies or materials of Seller shall not be regarded as an event of force majeure. The party affected by a force majeure event shall give notice thereof to the other party within ten days following the occurrence thereof and shall apprise the other party of the probable extent to which the affected party will be unable to perform or will be delayed in performing its obligations hereunder. The affected party shall exercise due diligence to eliminate or remedy the force majeure cause and shall give the other party prompt notice when that has been accomplished. Except as provided herein, if performance of this contract by either party is delayed, interrupted or prevented by reason of any event of force majeure, both parties shall be excused from performing hereunder while and to the extent that the force majeure condition exists, after which the parties' performance shall be resumed. Notwithstanding the foregoing, within five days following Seller's declaration of a force majeure event which prevents its full and/or timely delivery of the goods hereunder, Buyer may, at its option and without liability (1) require Seller to apportion among its customers the goods available for delivery during the force majeure period; (2) cancel any or all delayed or reduced deliveries; or (3) cancel any outstanding deliveries hereunder and terminate this contract. If Buyer accepts reduced deliveries or cancels the same, Buyer may procure substitute goods from other sources, in which event this contract shall be deemed modified to eliminate Seller's obligation to sell and Buyer's obligation to purchase such substituted goods. After cessation of a force majeure event declared by Seller, Seller shall, at Buyer's option but not otherwise, be obligated to deliver goods not delivered during the force majeure period. After cessation of a force majeure event declared by Buyer, neither party shall be obligated to deliver or purchase goods not so delivered and purchased during the force majeure period.

8. PATENTS: It is anticipated that the goods will be possessed, used and/or sold by Buyer and/or its customers. If by reason of any of these acts a suit is brought or threatened for infringement of any patent, trademark, trade name or copyright with regard to the goods, their manufacture or use, Seller shall at its own expense defend such suit and shall indemnify and save and hold Buyer and its customers harmless from and against all claims, damages, losses, demands, costs and expenses (including attorneys' fees) in connection with such suit or threatened suit.

9. LABOR: If this Purchase Order covers the performance of labor by Seller on Buyer's premises, Seller shall indemnify and save and hold Buyer harmless from and against any and all claims and liabilities for injury or death to any person or damage to property arising out of Seller's performance under this Purchase Order. Seller shall obtain and pay for public liability for injury or death to any person or damage to property arising out of Seller's performance under this Purchase Order. Seller shall obtain and pay for public liability and property damage insurance in amounts acceptable to Buyer insuring against said injuries, death and damages, and shall furnish Buyer with insurers' certificates evidencing such insurance, which certificates shall provide that the coverage evidenced thereby shall not be cancelled except upon 30 days' prior notice to Buyer.

10. COMPLIANCE WITH LAW: Seller warrants that it will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its performance under this Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938, as amended, the Equal Employment Opportunity Clause prescribed by Executive Order 11246 dated September 24, 1965 as amended, and any rules, regulations or orders issued or promulgated under such Act and Order. Seller shall indemnify and save and hold Buyer harmless from and against any and all claims, damages, demands, costs and losses which Buyer may suffer in the event that Seller fails to comply with said Act, Order, rules, regulations, or orders. Seller further warrants that all goods sold hereunder will comply with and conform in every respect to the standards applicable to the use of such goods under the Williams-Steiger Occupational Safety and Health Act of 1970, as amended, and any regulations and orders issued there under. Any clause

required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein.

11. DESIGNS, TOOLS, DIES, ETC.:

(a) If the goods are to be produced by the Seller in accordance with the designs, drawings, or blueprints furnished by Buyer, Seller shall return the same to Buyer at Buyer's request upon completion or cancellation of this Purchase Order. Such designs and the like shall not be used by Seller in the production of materials for any third party without Buyer's written consent. Such designs and the like involve valuable property rights of Buyer and shall be held confidential by Seller.

(b) Unless otherwise agreed herein, Seller at its cost shall supply all materials, equipment, tools and facilities required to perform this Purchase Order. Any materials, equipment, tools or other properties furnished by Buyer or specifically paid for by Buyer shall be Buyer's property. Any such property shall be used only in filling orders from Buyer and may on demand be removed by Buyer without charge. Seller shall use such property at its own risk, and shall be responsible for all loss of or damage to the same while in Seller's custody. Seller shall at its cost store and maintain all property in good condition and repair. Buyer makes no warranties of any nature with respect to any property it may furnish to Seller hereunder.

12. GOVERNING LAW: This Purchase Order and the contract between the parties evidenced hereby shall be deemed to be made in the State of West Virginia and shall in all respects be construed and governed by the laws of that State.

13. MISCELLANEOUS:

- (a) This Purchase Order may be performed and all rights hereunder against Seller may be enforced, wholly or in part, by Buyer or by any one or more of the corporations now or hereafter subsidiary to or affiliated with Buyer.
- (b) The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of subsequent breach of the same term, condition or provision.
- (c) Seller shall not assign its rights or obligations under this Purchase Order without the prior written consent of Buyer.
- (d) Seller shall not insure the goods for Buyer's account unless the terms of this Purchase Order so require.
- (e) Stenographic and clerical errors, whether In mathematical computations or otherwise, made by Buyer on this Purchase Order or any other forms delivered to Seller shall be subject to correction.
- (f) The entire understanding and agreement of the parties with respect to the transactions contemplated herein is contained In this document, and any prior understanding, agreements, and representations, oral or written, shall be deemed superseded and merged herein. Any modification hereof, to be valid, must be in writing and executed by both parties.
- (g) Buyer may, upon notice of Seller and without liability to Buyer, cancel this contract and any outstanding deliveries hereunder, (1) as to standard products of Seller not then shipped hereunder, at any time prior to the shipment, or (2) If (a) a receiver or trustee is appointed to take possession of all or substantially all of Seller's assets, (b) seller makes a general assignment for the benefit of creditors, (c) any action or proceeding is commenced by or against Seller under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors, or (d) Seller becomes insolvent or commits an act of bankruptcy. If an event described in (2) of this section occurs, Buyer may at Buyer's sole election pay Seller its actual direct out-of-pocket costs to date of cancellation, as approved by buyer, in which event the goods shall be the property of Buyer and Seller shall safely hold the same subject to receipt of Buyer's shipping instructions.