

ADDENDUM TO PURCHASE ORDER
(COMPANY NAME) (“BUYER”)
TPG – Dallas. (“SELLER”)
DATED _____, 20__ (“CONTRACT”)

In consideration of the following mutual covenants, and notwithstanding any term or condition of the Contract to the contrary, Buyer and Seller hereby agree to modify and amend the above-referenced Contract as follows:

1. Seller shall not be responsible for any contract or agreement beyond the Prime Contract, Purchase Order, and this Addendum unless specifically presented to Seller for review. Seller does not agree to assume any obligation that does not arise from the Seller’s work on the Project, unless the Seller agrees to assume a specific obligation, in writing.
2. Buyer’s obligation to pay Seller shall not be conditioned or contingent upon Owner’s payment to Buyer, unless Owner fails to pay Buyer due solely to the fault of Seller. Payment shall be due within 30 days of issuance of Seller’s invoice and is not subject to discount or retention. Seller may cease or suspend its contractual obligations if Buyer fails to pay Seller as required under the Purchase Order and does not waive any right to file a lien or bond claim.
3. Seller shall be entitled to an equitable increase in compensation resulting from delay, disruption, interference, or other impairment of Seller’s work caused by Buyer.
4. Changes to the plans and specifications shall be made by the Buyer by written change order and shall only be deemed accepted by Seller if signed by Seller. Seller shall be entitled to an equitable price adjustment for such changes.
5. If required and requested by Buyer, Seller shall name Buyer as an additional insured only to the extent that claims and liabilities covered by such insurance arise from Seller’s negligent or wrongful acts or omissions.
6. Seller shall provide goods/materials (“Goods”) which comply with the approved shop drawings and the Goods are subject to industry tolerances. Seller makes no warranty whether the same are fit for any particular purpose.
7. Seller will not be required to waive lien rights, if any, except to the extent of payment received from Buyer.
8. In the event of (a) any breach or default by Seller, (b) any claim against Seller, or (c) any defects covered by warranty, Seller will be given reasonable notice and reasonable time to remedy, resolve, or cure any and all such breaches, defaults, claims, or defects. Seller shall be required to submit a claim for additional compensation/time with enough time to allow Buyer to submit the claim in a timely fashion to Owner.
9. Buyer may not terminate Seller for convenience, unless Buyer’s contract with the Owner is terminated for convenience.
10. No decision, opinion, determination, or direction of Buyer, Owner, Architect, or Engineer shall be final or binding if biased, contrary to or inconsistent with the plans and specifications governing the work, or are erroneous, or in bad faith.
11. Seller shall not be responsible for work performed by other parties, or for Goods supplied or work performed by other parties and shall pay for only those licenses/permits necessary for the performance of its obligations under the Contract.
12. Seller shall not be liable for any consequential, incidental or punitive damages and shall be liable for only those liquidated or delay damages directly caused by Seller’s wrongful or negligent acts or omissions. Seller’s cumulative liability for delay, direct, and liquidated damages shall not exceed \$100,000.
13. Buyer shall have forty-eight (48) hours in which to inspect the Goods (“Inspection”) and verify that Seller’s Goods comply with the plans and specifications prior to installation. Thereafter, Buyer shall be deemed to have accepted the Goods, unless Seller receives written notification from Buyer within seventy-two (72) hours of the Inspection of Buyer’s rejection of some or all of the Goods. Seller agrees to provide Buyer with conforming Goods to replace any Goods rejected by Buyer. Buyer is responsible for any costs incurred in inspecting the Goods.
14. Buyer may only offset against any payments owed to Seller on this Project to the extent Buyer has a good-faith dispute.
15. Buyer shall be liable for any costs incurred by Seller up to any suspension ordered by Buyer.
16. **MANDATORY BINDING ARBITRATION: All claims or controversies, involving Buyer and Seller only, arising out of or related to the Contract shall be submitted to and resolved by binding arbitration by a single arbitrator in the State where the work is being performed. The American Arbitration Association (“AAA”) shall conduct the arbitration unless the parties mutually agree to use an alternative arbitration service. Judgment upon any award made by the arbitrator may be entered in any court having jurisdiction thereof, if necessary. The prevailing party shall be entitled to recover all reasonable attorney’s fees and costs incurred in resolving such disputes, including but not limited to expert witness fees. The State where the work is being performed shall be applied in the event of any dispute.**
17. Any claim may be brought within the applicable statute of limitations, and Seller waives no rights to pursue such claim.
18. Seller shall indemnify and defend Buyer, and other parties specified in the Contract for claims, suits, judgments, damages, litigation, liabilities, losses, costs, attorney’s fees, and expenses that result from, arise out of, or are caused by, and only to the extent of, Seller’s wrongful misconduct and/ or gross negligent acts or omissions on the



Project. For the purpose of clarity, Seller's defense obligations apply only to the extent of Seller's negligent acts or omissions and do not include the indemnified parties' proportional negligence, wrongful conduct, or liability.

19. Seller is entitled to an equitable time extension in the event of any delay caused by inclement weather, unforeseen conditions, labor disputes, equipment failure or force majeure.

20. Seller agrees to deliver the Goods, Buyer shall provide suitable approaches to points of delivery. Seller may cease deliveries if the approaches are unsatisfactory. In the event Buyer orders delivery beyond curb line, Seller shall not be liable for damages to sidewalks, driveways or other property as a result of such deliveries. All delivery prices are based on prompt unloading and deliveries may be discontinued or subject to an additional charge in the event of delays.

21. In event that actual quantities vary from estimated quantities by more than 10% and/or the duration of the project extends beyond the original scheduled completion date of the project, Seller shall be entitled to an equitable increase in compensation for any increase in its costs. Seller shall produce and deliver Goods in accordance with its normal operating schedule.

22. Any special product(s) and high-volume standards (collectively, "Special Products") will be invoiced on a mutually agreed upon delivery date and ownership transferred, upon Invoicing. Seller reserves the right to require full or partial pre-payment for any Special Products ordered.

23. Special Products may not be returned.

24. If Special products(s) cannot be accepted within 30 days of invoicing, a 10% storage fee will be assessed monthly unless otherwise agreed upon in writing.

25. All Special Products ordered as part of a Cash Sale must be fully paid prior to production.

26. A disposal fee of \$200/ton will be charged for all Special Products on hand over 90 days from the mutually agreed upon delivery date.

27. Seller makes no warranty or guarantee that its goods or materials shall remain water-tight and has no responsibility for the approval or design of the waterproofing/coating system, if applicable.

28. If during the performance of the contract the cost of materials significantly increases through no fault of Seller, Seller and Buyer agree that Seller shall have the right to equitably adjust the price of this contract by an amount reasonably necessary to cover any such significant increase in the cost of materials. As used herein, a significant cost increase shall mean any increase in cost of materials exceeding 6% experienced by the Seller from the date of the contract signing.

29. Delivery pricing is based on Seller's current fuel surcharge rate and is good for 7 days from the date stated on the quote. Thereafter, Buyer is responsible for paying Seller's fuel surcharge rate in effect on each delivery date. Fuel surcharge rates are derived from pricing, as established by the U.S. Energy Information Administration's Gasoline and Diesel Fuel Index, published at <https://www.eia.gov/petroleum/gasdiesel/>

30. This Addendum and Seller's quote or proposal, dated _____, 20)), are incorporated into the Contract and control over any inconsistent provisions in the same.

**A special is defined as any manufactured piece that is specifically made for a project/application and cannot otherwise be used.*

AGREED this ____ day of _____ 20__.

(Company)

By: _____
Name: _____
Title: _____

Thompson Pipe Group - Dallas

By: _____
Name: _____
Title: _____