

DELONG'S, INC.
PROPOSAL TERMS AND CONDITIONS

1. **Terms:** "Seller" shall mean DeLong's, Inc., and "Buyer" shall refer to the entity to whom this Proposal and/or Work Order was submitted.
2. **Terms and Conditions:** Structural steel will be furnished to this Project in accordance with the terms and conditions of the bidding documents and the American Institute of Steel Construction Code of Standard Practice for Buildings and Bridges, current edition. This Proposal constitutes an offer that may be accepted by Buyer issuing a notice to proceed (i.e., purchase raw materials or begin detailing/design services) or a request to Seller to prepare to begin performing the work, at which point this Proposal becomes a binding agreement. This Proposal is based on the negotiation of mutually acceptable contract terms; hence, Seller does not agree to be bound by all terms included in any other agreement. This Proposal is for immediate acceptance and shall constitute a contract of sale after being accepted by the Buyer and acceptance is acknowledged by the Seller in writing.
3. **Delivery and Demurrage Fees.** Delivery F.O.B. TRUCKS means delivery to the point nearest to the place of use that can reasonably be reached upon adequate roads available, which shall be determined solely by the delivery driver. If required, Buyer is responsible for building any necessary access roads and moving any objects that may impede delivery to the unloading point. Seller does not offer "Just in Time" under the hook delivery. No demurrage charges allowed. The freight allowance includes two hours at the delivery address for unloading. Trucks shall be unloaded without unreasonable delay. Buyer will pay \$125 per hour after the first two hours for the wait time of unloading trucks. All quotations are based on full truckload shipments. Any partial shipments will be at an additional cost to the Buyer. Buyer is responsible for providing crane and assistance to stack trailers if necessary. Buyer shall be required to provide Seller with two (2) weeks advance notice for all requested deliveries. Buyer is responsible for any cancellation charges of planned loads if sufficient notice is not given. Typical cancellation notice requires a minimum of two (2) business days in advance of the shipment, or one (1) business day prior to the shipment leaving Seller's property, whichever is greater. Seller will not accept any back charges concerning availability of equipment, permits, or road use curfews/restrictions. When quoting on material delivered and erected, roads will extend to or be located immediately alongside the point of use. Buyer shall immediately inspect all goods and materials upon receipt for condition and completeness against the weight and shipping list. If there is damage, a shortage, or nonconformance of goods, Buyer may not return the materials but must instead note the damage, shortage, or nonconformance on the weight and shipping list and file a written claim with the Seller within seven (7) days; otherwise conformance, quality, and completeness shall be conclusively presumed and the Buyer shall be deemed to have waived any and all claims. If Buyer or Owner claims that Seller's work is defective, they shall give Seller written notice within five (5) days of when they knew or could have known of the alleged deficiency, and Seller shall have the opportunity to cure per Section 12.
4. **Drawings, Plans, and Specifications.** Seller shall be entitled to rely upon the plans and specifications that were provided by Buyer. If the design is not complete at the time of this bid, Buyer may be required to provide Seller with released for construction drawings before detailing, material purchases, or fabrication will commence. Seller reserves the right to additional compensation for unreasonable delays in Seller's receipt of released for construction drawings or due to errors and omissions. Seller excludes shop drawing approval and Professional Engineer stamp.
5. **Time and Change Orders.** Buyer shall provide Seller with the project schedule and any modifications promptly and allow a reasonable amount of time to complete Seller's work by the project completion date. Seller will not be bound by any schedule that was not included in bidding documents, or to any schedule revisions absent prior written agreement. Seller shall be entitled to an equitable adjustment in the price of the Work, including but not limited to, any increased costs of labor, including overtime, or materials, resulting from any change of schedule, acceleration, quantity, out of sequence work or delay caused by others for whom Seller is not responsible. Storage of materials exceeding 30 days from the original contract delivery date will be charged at a rate of \$5.00 per ton per month. If concealed physical conditions that differ from those indicated in any plans, specifications, reports, surveys, or other information provided to Seller, then the Proposal Price shall be equitably adjusted for such concealed or unknown conditions by Change Order upon the claim of either party. In case of termination by Buyer, Seller shall be entitled to receive payment for executed work, unreturnable material, costs reasonably incurred by reason of such termination, and anticipated profits based on a percentage of the work completed.
6. **Force Majeure.** Any failure or omission by Seller in performance of its obligation shall not be deemed a breach or create any liability for damages or other relief (other than additional time) if it arises from any cause beyond the reasonable control of such party, including, without limitation, acts of God, floods, fire, explosions, storms, earthquakes, acts of public enemy, war terrorism, rebellion, insurrection, riot, sabotage, invasion, epidemic, quarantine, strikes, lockouts, labor disputes other industrial disturbances, or any order or action by any governmental agency, or causes of similar nature. If Seller is delayed at any time in the commencement or process of Work by any cause beyond Seller's control, Seller shall be entitled to an equitable extension of time and price.
7. **Payment Terms.** Payment must be made to Seller within thirty (30) days of the date of Seller's invoice. The amount to be paid hereunder shall be subject to the addition of any federal, state, or other tax imposed by existing or future law or ruling, upon the sale, transportation, fabrication or erection of the material. No sales or use taxes are included in the quotation unless it so states. If sales or use taxes are applicable and not stated above, it is to be collected and remitted directly to the taxing authority by the Buyer. Payments not received when due shall incur service charges at the rate of one and one-half percent (1 ½ %) per month (18% per annum) until paid. If Buyer fails to pay Seller, in accordance with this provision, Seller may, without prejudice to any other available remedies, limit or cancel the credit of Buyer, suspend further deliveries or performance, or terminate this contract. The contract amount shall be increased, by appropriate adjustment, by the amount of Seller's demobilization, delay and remobilization costs. Seller shall be entitled to recover its costs and attorneys' fees incurred for any non-payment of amounts due. The above items of payment assume that the Buyer has a favorable credit standing and if investigation should indicate otherwise or if at any time there are unfavorable developments which, in the sole judgment of Seller, affect the Buyer's credit rating or the status of its account the Seller may require new terms of payment before proceeding further with this contract. Acceptance by the Seller of less than full payment shall not be a waiver of any of its rights.
8. **Failure to Give Adequate Assurances.** If Buyer's financial condition gives Seller, in its judgment, reasonable grounds for insecurity concerning Buyer's ability to perform its obligations under the Contract, Seller may require full or partial cash payment in advance or may suspend any further deliveries or performance until Buyer's financial condition materially improves and all unpaid sums due to Seller have been paid.
9. **Releases and Lien Waivers.** Any form or release wherein the Seller purports to release the Buyer, Owner or Design Professional is hereby qualified by the following language, whether or not the Seller specifically adds the language: "This release shall apply only to work for which payment has been received in full by Seller; and it shall not apply to retainage, unbilled changes, or claims or amounts not yet paid." The Seller will not agree to an advance waiver of its lien rights, it's right to delay damages, it's right to consequential damages, or to withholding payment for disputes between Buyer and Owner unrelated to Seller's work. Buyer shall furnish to Seller within 15 days after receipt of a written request, or earlier if required by law, information necessary and relevant for Seller to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site on which the Project is located and the Owner's interest therein.
10. **Title and Risk of Loss.** Title to and risk of loss of the materials provided to the project by Seller shall pass to Buyer upon delivery or transfer of written title. Seller shall retain a security interest and right of possession in the materials until Buyer makes full payment for those materials.
11. **Warranty, Limitation of Liability, and Assumption of Risk.** Seller agrees to correct all Work under this contract which proves to be defective in workmanship or materials. No allowance will be made for labor, repairs, or alterations performed by the Buyer, without the Seller's written consent. These warranties shall commence on the date of substantial completion of the Work or of a designated portion thereof and shall continue for a period of one year or for longer periods of

time as agreed to in writing by Seller. Seller disclaims and Buyer waives all other warranties, express or implied, including but not limited to warranties of habitability, merchantability, and fitness for a particular purpose. Seller's liability for any action shall be limited to the Proposal price charged for such material as may prove defective or not in accord with the specifications. In no event shall Seller be liable to Buyer or other third parties for any special, indirect, incidental or consequential damages or lost profit arising out of, or in any way connected with, Seller's work under this Agreement. Seller is not responsible for damage to shop coat of paint due to exposure to weather caused by delay in shipment, abuses in unloading, erection or other causes beyond Seller's control.

12. **Opportunity to Cure.** Seller shall be given a reasonable opportunity to cure such alleged deficiency (and at its sole discretion Seller may repair or replace with equal quality any limited warranty items) upon receipt of such written notice. Failure to provide Seller with such notice and an opportunity to cure such alleged deficiencies shall constitute a waiver of such claims. If the Seller fails within five (5) working days after receipt of written notice from the Buyer to commence and continue correction of work not in accordance with this Agreement, the Buyer may make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Seller.

13. **Indemnification.** To the maximum extent allowed by law, Buyer shall defend, indemnify, and hold harmless Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines and other expenses (including investigation costs, litigation costs, and attorney's fees) that Seller may incur or be obligated to pay to the extent of Buyer's (i) negligence, (ii) violation or alleged violation of any federal, state, county or local laws or regulations, (iii) breach of this Contract, or (iv) other negligence for which Buyer is responsible. Seller will take full responsibility for its own actions and negligence. Seller will not agree to indemnify any other party for the consequences of that party's actions or negligence.

14. **Mediation and Arbitration.** Any claims arising out of or related to this contract shall be subject to mediation and then arbitration. The parties shall share the mediation and arbitration fees equally. Mediation and arbitration shall be held in Missouri or a location agreed upon by the parties. The parties shall mutually agree upon an arbitrator who is a construction lawyer with at least ten (10) years of construction law experience. The arbitrator shall require exchange by the parties of documents relevant to the issues raised by any claim, defense, or counterclaim on which the producing party may rely in support of or in opposition to any claim, defense, or counterclaim, with due regard for eliminating undue burden and expense and the expedited and lower cost nature of arbitration. At the request of a party, the arbitrator may at his or her discretion order the deposition of witnesses; however, depositions shall be limited to a maximum of three (3) depositions per party, each a maximum of six (6) hours duration.

15. **Governing Law.** The validity, interpretation and performance of this contract and any dispute connected herewith shall be governed by and construed in accordance with the laws of the state of Missouri, without regard to its conflicts of law provision.

16. **Subcontract Documents.** No terms and conditions contained in the contract between the Owner and Buyer, if applicable, shall be binding on the Seller unless a copy of such terms and conditions has been furnished to Seller and accepted in writing by Seller.

17. **Entire Agreement.** The Proposal recites the entire agreement between the parties hereto concerning the subjects addressed by the Proposal, and supersedes all prior or contemporaneous negotiations, representations, or agreements, oral or written, between the parties. The Proposal may not be modified except in a writing executed by the parties.

18. **Scope of Work.** The parties agree that Seller's Scope of Work is limited to the items listed on Seller's Proposal.

19. **Prevailing Party.** In the event of any breach or default arising out of or relating to this Proposal, the prevailing party shall be entitled, whether a suit, action, or arbitration proceeding is instituted, to recover all its costs and expenses incurred in connection therewith, including without limitation attorneys' fees and expert witness fees. For these purposes, "prevailing party" shall mean the party who is seeking money damages recovers a judgment or award of not less than 70% of the amount of its claim (not including interest or attorneys' fees).