

Purchase Terms and Conditions

- 1. Terms and Conditions.** Please read these terms and conditions carefully. Milwaukee Area Technical College ("Buyer") is bargaining for and will do business only under the terms and conditions contained herein, including any terms appearing on the front of this Purchase Order. Any proposal for additional or different terms or any attempt to vary in any degree any of the terms of this offer and Seller's acceptance or acknowledgement hereof is hereby objected to and shall not be binding upon Buyer. **IF FOR ANY REASON THIS ORDER SHALL BE DEEMED AN ACCEPTANCE OF A PRIOR OFFER MADE BY SELLER, SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO THE TERMS CONTAINED HEREIN. BUYER WILL PROCEED WITH THIS TRANSACTION ONLY IF SELLER ASSENTS TO THE TERMS CONTAINED IN THIS ORDER.**
- 2. Delivery & Packing.** Shipment shall be made in the quantities and at the time or times specified in this order or in supplementary schedules furnished by Buyer. Seller shall pack any goods ordered by Buyer in accordance with Buyer's packing instructions and in accordance with good commercial practices to insure no damages shall result from weather or transportation. No extra charges will be allowed for packing or shipping unless specified on the front of this form. Unless otherwise stated herein, time is of the essence. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give Buyer written notice setting forth the cause or causes of the anticipated delay. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall be causes allowing Buyer to terminate this order for cause, and Seller shall be liable for all damages to Buyer by reason of such events that caused termination.
- 3. Inspection, Risk of Loss and Title.** All goods covered by this order shall be received subject to Buyer's right of inspection and rejection. Buyer shall have a reasonable amount of time to inspect goods, depending upon the method of packaging and the quantity purchased. Payment for goods delivered hereunder shall not constitute acceptance of such goods, and all payments shall be made with a reservation of rights by Buyer for defects, including, without limitation, defects apparent on the face thereof. When goods are made to Buyer's instructions, specifications or other requirements, Buyer may inspect such goods at Seller's plant and any other place of manufacture during production without waiving its rights subsequently to reject or revoke acceptance of such goods for undiscovered or latent defects. Seller, at its expertise, shall furnish or cause to be furnished, facilities and assistance reasonably necessary to insure the safety and convenience of each such inspection. Unless otherwise agreed, title to the goods covered by this order and the risk of their loss or damage shall pass from Seller to Buyer upon the completion of unloading of the goods at the destination specified on the front of this order, subject in all cases to Buyer's right of inspection and rejection within a reasonable time after arrival.
- 4. Cancellation.** Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge reflecting the percentage of work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have reasonably avoided.
- 5. Warranties.** Seller expressly warrants that all goods covered by this order will: (a) conform to any and all final specifications, drawings, plans, instructions, samples or other description, whether expressed or implied, furnished by Buyer or by Seller, (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose for which Buyer intends to use such goods, the goods will be fit for such particular purpose, (c) be new and merchantable, and (d) be of good material and workmanship and free from defects, whether latent or patent. The foregoing warranty shall survive Buyer's inspection, acceptance, use and subsequent disposition or sale of the goods. Seller hereby extends to Buyer any and all warranties received from Seller's suppliers and agrees to enforce such warranties on Buyer's behalf. All Seller's warranties shall run to Buyer, its successors, assigns, customers and users of products sold by Buyer. Seller agrees to promptly correct all defects in any goods not conforming to the foregoing warranties, or replace such goods, without expense to Buyer, when notified by Buyer. In the event of Seller's failure to correct or replace such defective or non-conforming goods, Buyer may, after reasonable notice to seller, make such correction or replacement at Seller's expense. The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope herein or otherwise provided by Seller to Buyer or otherwise provided by law, including, but not limited to, any and all warranties provided in the Uniform Commercial Code. Seller shall compensate, indemnify and hold Buyer harmless from and against any and all damages, including incidental and consequential damages, claims, liabilities, and expenses (including court costs and attorneys' fees) arising out of or relating to or resulting in any way from a breach of any warranty, whether express or implied, or from any act or omission of Seller, its officers, agents, employees or subcontractors.
- 6. Price Warranty.** Seller warrants that the prices for the goods delivered or sold hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods prior to final delivery of the goods to Buyer, Seller shall reduce the price or prices in this order in a corresponding manner.
- 7. Intellectual Property.** Seller warrants that manufacture or use of the goods covered by this order and the sale or offer for sale of such goods will not infringe any United States or foreign patent, copyright or trademark of either Seller or any third party. Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, employees, successors, assigns, customers and users of its products, from and against any damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, profits, penalties or punitive damages) arising out of or relating to any actual or alleged infringements of such patent, copyright or trademark, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of the goods covered by this order. Buyer reserves the right to control, actively participate in or monitor, through its own counsel, at Seller's expense, any such claim of infringement or other such action brought against it.
- 8. Buyer's Right to Make Changes.** Buyer shall have the right to make changes to this order at any time in: (a) drawings, designs or specifications; (b) the method of shipment or packing; and (c) the place or time of delivery, including temporary suspension of shipments. If such changes cause an increase or decrease in the cost of performing this order, or in the time required for its performance, an equitable adjustment will be made by the parties and the purchase order shall be modified in writing accordingly.
- 9. Extra Compensation.** Before proceeding with any work or shipping any goods upon or for which it may have a possible claim for extra compensation above the price specified on the reverse side hereof, Seller shall submit to Buyer a detailed statement of such items, together with the prices thereof. If Buyer desires to have the work done or the goods furnished at the prices so stated, its purchasing agent will issue written instructions to the Seller. Claims for compensation above the prices specified in this order shall be allowed by Buyer only upon the presentation of such written instructions of its purchasing agent.
- 10. Indemnity.** Seller agrees to indemnify and hold harmless Buyer and Buyer's directors, officers, employees, successors, assigns, customers and users of its products from and against any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, penalties, or punitive damages) arising out of or relating to resulting in any way from (a) any actual or alleged death or injury to any person, damage to any property or any other damage or loss that results, or is claimed to result, in whole or in part, from any actual or alleged (i) defects, whether latent or patent, in the goods sold to Buyer including, without limitation, actual or alleged improper construction or design; (ii) breach of any express or implied warranty, or (iii) violation by such goods or their manufacturer, possession, use or sale of any law, statute, or ordinance of any governmental or administrative order, rule or regulation, (b) any breach of any covenants and agreements contained in this order, or (c) any act or admission of Seller, its directors, officers, employees, agents or subcontractors.
- 11. Confidentiality.** Seller shall consider all specifications, plans, instructions, samples and other information furnished by Buyer, or prepared by Seller specifically for Buyer in connection with this order to be confidential and shall not (i) disclose any such information to any other persons, or (ii) use such information itself for any purpose other than performing this contract. Without Buyer's prior written permission, Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, disclose information relating to the order, nor use the name of Buyer, or any of its customers, in advertising or other publication.
- 12. Compliance with Laws.** Seller will comply with all applicable law. This includes the requirement that Seller certify in writing that the goods were produced in compliance with and meet all applicable requirements of the Fair Labor Standards Act and the acts and regulations and orders of the United States Department of Labor issued thereunder, the Occupational Health and Safety Act, and applicable Affirmative Action laws.
- 13. Choice of Forum.** The rights of all parties hereunder and the construction of every provision hereof shall be governed by the laws of the State of Wisconsin, without giving affect to principles of conflicts of law. The parties agree that any action arising out of this agreement or in connection with the goods covered hereunder shall be brought in the federal, state, or local court located in or otherwise having jurisdiction over Milwaukee County in the State of Wisconsin and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.