

## **PURCHASE ORDER TERMS AND CONDITIONS**

1. **BUYER.** All reference to the Buyer shall mean MIDWESTERN UNIVERSITY.
2. **ACCEPTANCE.** This purchase order ("order") is for the purchase and sale of goods ("goods") and/or services ("services") described on the front side hereof and is the Buyer's offer to Seller. Acknowledgment hereof by Seller to Buyer constitutes Seller acceptance of the order including all of the terms and conditions herein set out. In the absence of such acknowledgment, commencement of the delivery of the goods and/or services and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others whatsoever (whether contained in Seller's offer, quote, acknowledgment of this order, form of Seller's contract, agreement or similar document, or otherwise in any writing of any nature whatsoever, whether same precedes or comes after the date of this order, with the preceding being sometimes collectively referred to herein as "Seller Documents") unless there is a signed agreement between the parties which specifically, by specific reference to this order, overrides, supercedes or supplements any of the terms and conditions of this order. Without limiting the generality of the preceding sentence, no provision(s) in any Seller Documents which purports to: (i) exclude, limit or modify any Seller warranties, (ii) release the Seller from liability to, or limit the liability of Seller to, the Buyer, or limit the remedies otherwise available to Buyer against Seller, (iii) obligate the Buyer to indemnify or hold harmless the Seller from anything, (iv) permit the Seller to assign any of its rights or obligations under this order or any Seller Document without the express written consent of Buyer, (v) automatically renew or extend the terms of this order or any Seller Document without the prior written agreement of Buyer, or (vi) apply the laws of any jurisdiction other than the Buyer's issuing office to this order or any Seller Document, shall have any force or effect or be binding in any way upon Buyer without the Buyer's prior written consent which, at a minimum, specifically references this order and acknowledges that said provision(s) are binding upon Buyer notwithstanding the terms and conditions of this order.
3. **PACKING, MARKING, SHIPPING AND BILLING.** All goods shall be properly marked, packed and shipped in accordance with the requirements of this order and in a manner which will permit the securing of the lowest transportation rates. Seller shall route shipments in accordance with Buyer's instructions. Seller shall reimburse Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing. No transportation charges will be allowed except as provided herein. Transportation charges, pre-pay and state separately on invoice. Do not ship collect. Packing slips must accompany each shipment. Original bill of lading or other shipment receipt, to be attached to invoice. Send all invoices in duplicate to Buyer's Accounts Payable Department, all other correspondence to the Purchasing Office.
4. **TITLE AND DELIVERY OF GOODS.** Goods are purchased FOB Midwestern University, unless otherwise specifically noted. Goods shall not be considered as delivered and title thereto shall not pass until the goods reach the Buyer's receiving point indicated hereon.
5. **COMPLIANCE WITH LAWS.** Seller guarantees that the articles and/or services comply with and have been manufactured, sold and/or furnished in accordance with all federal, state and local laws, rules, regulations and orders, and any applicable industry standards, and that all electrical goods covered under this purchase order shall meet all applicable electrical code requirements.
6. **INSPECTION AND ACCEPTANCE.** All goods shall be subject to inspection and test by Buyer either at Seller's plant or at the point of destination. In the event any goods are defective in material or workmanship or otherwise fail to meet the requirements of this order, Buyer shall have the right to terminate this contract for Seller's default and/or reject or retain and correct such goods. Seller shall pay Buyer for expenses incurred in correcting defective goods and inspecting, packing, handling and transporting rejected goods. Payment for any goods shall not be deemed an acceptance thereof, nor will acceptance remove Seller's responsibility for latent defects.
7. **EXCESS GOODS.** Except for customary quantity variation recognized by trade practice, goods in excess of those specified will not be accepted but will be held at Seller's risk. Buyer may, and at Seller's direction shall, return such goods at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.
8. **PRICE.** Buyer shall not be billed at prices higher than stated on this order. Seller represents that the price charged for the goods or services covered by this order is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in this order and that prices comply with applicable government regulation in effect at the time of quotation, sale or delivery. Seller agrees that any price reduction made in goods or services covered by this order subsequent to the acceptance of this order will be applicable to this order.
9. **TAXES.** Unless otherwise provided herein the prices stated include all applicable federal, State and local taxes.
10. **WARRANTY.** Seller expressly warrants that all of the goods are merchantable (within the meaning of the Uniform Commercial Code), fit and sufficient for the purposes intended, free from defect in materials and workmanship and design, and conform to specifications, drawings, samples and other descriptions. The warranties and obligations of Seller herein shall survive the acceptance of the goods by Buyer and be in addition to those implied or described by or available at law and shall exist notwithstanding the acceptance by Buyer of all or a part of the goods with respect to which such warranties are applicable.
11. **PATENTS, ETC.** Seller warrants that the manufacture, purchase, use and sale of the goods [alone, or in combinations according to Seller's specifications or recommendations, if any] will not infringe any United States or foreign patent, copyright or other intellectual property right. Seller undertakes and agrees to defend at Seller's own expense, all suits, actions or proceeding in which Buyer or any of Buyer's customers or users of any Buyer's products are made defendants for actual or alleged infringement of any such property right, and Seller shall indemnify and hold Buyer, Buyer's customers and users of Seller's product harmless against any and all claims, demands, damages, judgements or decrees which may be rendered in any such suit, action or proceedings against such defendants therein and against any other costs or expenses, arising as a result therefrom. Without relieving Seller of any of its obligations hereunder, Buyer shall have the right to participate at its own expense in the defense of any such suit or claim.
12. **INDEMNITY AND INSURANCE.** Seller agrees to indemnify and hold Buyer and its officers, directors, trustees, agents, customers and users of the purchased goods harmless from any and all loss, claims, demands, suits, liabilities, judgments, costs and expenses (including but not limited to attorneys fees and court costs) caused by, resulting from, arising out of, or occurring in connection with, whether directly or indirectly, any and all of the following: (a) any breach of any guaranty or warranty of Seller set forth in this order; (b) any other breach of this contract by Seller; (c) any property damage, personal injuries or death arising out of the purchase, delivery, installation and/or use of the goods purchased hereunder and/or arising out of Seller's (or its subcontractor's) work or performance or non performance hereunder. Seller agrees at its own expense to defend Buyer and its customers at Buyer's request against any such claim or demand. If Seller is required by the terms of the order to perform or does perform any work on Buyer's premises, before commencing such work Seller shall furnish to Buyer a certificate of insurance showing that Seller carries adequate Workman's Compensation insurance and public liability and property damage insurance with insurers and in amounts acceptable to Buyer. Seller shall in all instances carry adequate liability insurance, with contractual liability coverage, and furnish to Buyer a certificate of such insurance upon request.
13. **CHANGES.** Buyer reserves the right at any time prior to delivery of the goods or performances of the services to make changes in [a] the drawings, design, specifications and data incorporated into the order, [b] the method of shipment and packing and [c] the time and place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performances hereunder, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claims by Seller for adjustments pursuant to the provisions of this paragraph shall be deemed waived unless notice of such claim is made by Seller to Buyer within ten days after the date of Buyer's notice to Seller of such change.
14. **TERMINATION AT BUYER'S OPTION.** Performance of work under this order may be terminated by Buyer at its option, in whole or in part at any time by delivery of written or telegraphic notice of termination to Seller. Upon receipt of a notice of termination Seller shall immediately cease all work under this order, terminate all orders and subcontracts relating to the performance of the work terminated, settle all claims arising out of such terminations, and transfer title and deliver to Buyer [a] all completed work which conforms in quality to the requirements of this order and does not exceed in quantity the amount ordered herein, and [b] all reasonable quantities [not in excess of amounts ordered herein] of work in process and material produced or acquired in respect of the performance of the work terminated which are of a type and quality suitable for producing goods which conform to the requirements of this order and which cannot reasonably be used by Seller in producing goods for itself or its other customers. Upon terminations by Buyer under the provision of this paragraph, Buyer shall pay to Seller the following amounts without duplication [a] the purchase order price for all goods or services which have been completed and delivered in accordance with this order and not previously paid by Buyer; [b] the actual costs incurred by Seller in accordance with this order to the extent such costs are reasonable in amount and are properly allocable under generally accepted accounting practices to the terminated portion of this order including the actual cost of work in process and materials delivered to Buyer in accordance with the provisions of this paragraph. Seller shall submit its request for such payment to Buyer within thirty days after notice of termination. Payments under this paragraph shall not exceed the aggregate price as specified in this order, less payments otherwise made by Buyer. The provision of this paragraph shall not apply if this order is terminated by Buyer as a result of the default of Seller pursuant to the provisions of paragraph 16.
15. **FABRICATION AND MATERIAL COMMITMENTS.** Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for materials nor fabricate in advance of time necessary to permit shipment on delivery dates.
16. **TERMINATION FOR DEFAULT OF SELLER.** If Seller refuses or fails to make deliveries of the goods within the time specified herein or if Seller fails to perform any other provisions of this order, or if Seller fails to make progress so as to endanger performance of this order in accordance with its terms, Buyer may by notice to Seller terminate the performance of work under this order in whole or in part. Upon such termination Buyer shall be obligated to pay Seller only for the goods or service delivered by Seller as of this date of termination. In addition, Buyer may terminate this contract by notice to Seller in the event that [a] Seller makes an assignment for the benefit of creditors, [b] Seller admits in writing inability to pay debts as they mature, [c] Trustee or receiver of the Seller, or of any substantial part of Seller's assets, is appointed by any court or [d] a proceeding is instituted under any provisions of the Federal Bankruptcy Act by the Seller or against the Seller and is acquiesced in or is not dismissed within sixty days or results in adjudication in bankruptcy.
17. **GENERAL.** The remedies provided for in this order shall be cumulative and additional to any other or further remedies provided or available in law or equity. No waiver of any breach of any provisions of this order shall be deemed a waiver of any other breach. No modification or change in, or departure from, or waiver of the provisions of, this order shall be valid or binding unless approved by Buyer in writing. This order constitutes the entire agreement between the parties.
18. **SPECIAL TOOLS; DRAWINGS AND SPECIFICATIONS.** Unless otherwise provided herein all special facilities, tools, jigs, dies, fixtures, patterns, machinery and equipment needed by Seller for the performance of this order shall be obtained by Seller at its own expense and shall remain the property of Seller. Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller and intended for use in connection with this order; Seller shall use same only in connection with this order, shall not disclose same to third parties, and shall return same to Buyer at its request upon completion of this order. Any drawings, specifications, notes, instructions, engineering notices, or technical data referred to in this order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, refer to Buyer's purchasing department for decision or instructions or for interpretation.
19. **CONSIGNED PROPERTY.** Unless otherwise provided herein all supplies, materials, facilities, tools, jigs, discs, fixtures, patterns, machinery and equipment furnished to Seller by Buyer to perform this order shall remain the property of Buyer, and Seller shall bear the risks of loss and damage to such property, normal wear and tear expected. Such property shall be properly maintained by Seller, shall be deemed to be personality, and shall be marked as being the property of Buyer. Such property shall upon Buyer's request be immediately delivered to Buyer by Seller in conformity with Buyer's instructions. Buyer shall have the right to enter Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.
20. **ASSIGNMENT.** Neither this order nor any interest under it shall be assigned by Seller without the prior written consent of the Buyer, except that the claims for monies due or to become due under this Order may be assigned by Seller without such consent subject to the following: (a) all claims and defenses of Buyer against Seller remain good and fully available against Seller and/or any such assignee; (b) payment to any such assignee shall be subject to set off or recoupment for any present or future claim or claims which Buyer may have against Seller; and (c) notwithstanding any assignment of claims for monies due or to become due hereunder, Buyer reserves the right to deal directly with Seller in all matters pertaining to this order, including but not limited to amendments and modifications, settlements and/or price adjustments.
21. **NOTICES.** All notices provided for herein shall be in writing and served personally, by telegraph or by certified or registered mail, directed to the other party at the addresses shown herein. If a notice is served by mail, it shall be deemed to have been served on its postmark date.
22. **CONTROLLING LAW.** This order and the performance of the parties hereunder shall be subject to and in all respects shall be governed by the laws of the State of the Buyer's location to which the goods are shipped or at which the services are performed. The jurisdiction and venue of any legal proceedings for the resolution of disputes arising under or in connection with this order shall be in the federal or state courts sitting in the county of such State where Buyer is located.