

City of Watertown, New York – Purchase Order Terms and Conditions

I. Purpose: To provide basic terms and conditions of purchase of goods and services.

II. Scope: The terms and conditions apply to all purchases.

III. Responsibility: The Purchasing Manager is responsible for this procedure and ensures that it is reviewed annually or when deemed appropriate by legal counsel.

A. Acceptance

1. This order is Buyer's offer to purchase the goods and/or services described on the reverse hereof from Seller. Buyer's placement of this order with Seller is expressly conditioned upon Seller's acceptance of all of the terms and conditions of purchase contained on or attached to this order.

2. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or Binding unless specifically agreed to in writing by Buyers' Purchasing Department and no such additional or different terms or conditions in any printed form of Seller shall become part of this contract despite Buyer's acceptance of goods or services, unless such acceptance specifically recognizes and assents to their inclusions.

3. Any objection by Seller to the terms and conditions hereof shall be ineffective unless Buyer is advised in writing thereof within ten days of the date of this order.

B. Identification: All invoices, packages, shipping notices, instruction manuals and other written documents affecting this order shall contain the applicable order number. Packing lists shall be enclosed in each box or package shipped pursuant to this order, indicating the contents therein. Invoices will not be processed for payment until all items invoiced are received.

C. Shipping Instructions: All goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Buyer has so authorized in writing, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the cheapest common carrier, or the carrier specified, and list said charges as a separate item on seller's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. Buyer reserves the right to reject C.O.D. shipments. Seller shall not insure the goods for Buyer's account during shipment except upon Buyer's written request, or where the shipping mode is Parcel Post.

D. Special Charges: Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers, and related matters unless Buyer has assumed an express obligation therefore by notation on the reverse side hereof.

E. Delivery: Time is of the essence, and this order may be terminated if delivery is not made, or services are not performed by the date specified on the reverse side hereof. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof.

F. Payment: Buyer will remit payment to Seller by mail. Seller agrees not to deliver goods on a sight draft basis.

G. Prices: If price is not stated on this order, it is agreed that the goods or services shall be billed at the price last quoted, or paid by customer of Seller, or the prevailing market price, whichever is lower.

H. Taxes: All purchases made for the City of Watertown, New York are tax exempt from sales tax pursuant to New York State Law, Section 1116(A) (1). The City of Watertown is not required to have a sales tax exemption number. You may consider this our statement that we are an exempt organization pursuant to Tax Law Section 1132(C) and that you are, therefore, not required to collect sales tax on purchases made on behalf of the City of Watertown.

I. Assignment: Seller shall not assign this contract or the right to payment due hereunder, without Buyer's prior written consent.

J. Liens, Claims and Encumbrances: Seller warrants and represents that all the goods will when delivered hereunder, be free and clear of all liens, claims or encumbrances of every kind.

K. Rejection: All goods purchased hereunder are subject to Buyer's inspection and approval. Goods rejected by Buyer for whatever reason shall be held, transported and/or stored at Seller's sole expense. Seller shall promptly reimburse Buyer for any such expenses.

L. Default: Buyer may, subject to the provisions of paragraph "Q" by written notice of default to Seller, cancel the whole or any part of this order or exercise any other remedy provided Buyers of goods by law or in equity including any remedy under the Uniform Commercial Code (RCW Chapter 62A), in any of the following circumstances:

1. If Seller fails to make delivery of the goods or to perform services within the time specified herein or any extension thereof:

2. If, in Buyer's good faith judgment, the Seller fails to perform any of the other provisions of this order or fails to make progress as to endanger performance of this order in accordance with its terms and does not cure such failure within a period of ten days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure:

3. Seller is in breach of any of the terms or conditions of this order; or if Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment or debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee in respect to any of Seller's property and such proceeding is not dismissed or cured within 60 days.

M. Remedies: Not by way of limitation, the remedies of the parties include:

1. If Buyer cancels this order in whole or in part as provided in paragraph "L". Buyer may procure upon such terms and in such manner as Buyer may deem appropriate goods or services similar to those cancelled and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of this order to the extent not cancelled under the provisions of this order.

2. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

3. The failure of the Buyer to insist upon strict performance of any of the terms of this order or to exercise any rights hereunder shall not be construed as a waiver of Buyer's rights.

4. The Seller may be excused from performance under this order provides the Seller notifies the Buyer within ten days of discovery of any of the below-named events:

a. Such events are, but not limited to, Acts of God, or of public enemy, acts of Buyer, acts of government with lawful jurisdiction over Seller either in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

b. The Seller's failure to perform is caused by default of a supplier or sub-contractor and is such default arises out of causes beyond the control of both the Seller and the supplier or sub-contractor and without the fault or negligence of either of them.

c. The Seller agrees to make a concerted effort to obtain supplies or services from other sources in time to meet required delivery schedule(s), if such events or causes named above cause a supplier default.

M. Warranties: Seller warrants goods supplied, and work or services performed under this order conform to specifications herein and are MERCHANTABILITY and fit for the purposes for which goods are ordinarily employed.

1. Seller further warrants to the Buyer and to any third party ultimately using any item whether such third party is a customer of Buyer or not, that all items delivered under this order will be free from defects in material and workmanship and will conform to applicable specification, drawings, samples, and descriptions. If Seller is responsible for design of items, Seller warrants that all items delivered under this order will be suitable for use by Buyer, including installation, by Buyer in its ultimate products. Buyer's written approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty.

2. Seller shall be liable for all damages both to Buyer and its customers incurred as a result of any defect or breach of warranty in any item covered by this order.

3. The foregoing express warranties shall be in addition to any warranty customarily made by Seller of its product and any implied warranties and shall be construed as conditions as well as warranties.

4. SELLER'S WARRANTY SHALL EXTEND FOR A PERIOD OF 12 MONTHS AFTER THE ITEM IS DELIVERED AND ACCEPTED BY BUYER AND APPLIED TO ITS INTENDED USE. Where Buyer incorporates that item into a product of Buyer to be delivered to its customer, Seller's obligation under this clause shall be for the benefit of Buyer's customer and shall extend to one year after application of the item to its intended use.

5. The warranties represented and covenants of parties hereto shall survive the delivery of the goods or completion of the work or services provided and is fully enforceable thereafter. Seller's warranty hereunder is part consideration for this order; any payment by Buyer hereunder is conditional upon this warranty remaining in effects; and no modification or other change of this warranty shall be valid unless evidenced by Buyer's written change order.

N.

Inspection and Quality Control

1. All terms furnished under this order by Seller to Buyer shall be subject to inspection and tests by Buyer or by Buyer's representative. To the extent practicable inspection may be made at all times and places, including the period of manufacture and prior to acceptance.

2. If inspections or tests are made by Buyer or Buyer's representative on the premises of Seller, supplier or sub-contractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of Seller, supplier, or sub-contractor, it shall be at the expense of Buyer except as otherwise provided in this order. In case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by Buyer shall be performed in such manner as to not unduly delay the work. Buyer reserves the right to charge Seller any additional cost to inspect and test when supplies are not ready at the time such inspection and test is requested by Seller or when reinspection or retest is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practicable after delivery as may be specified herein, regardless of prior payment. Failure to inspect, accept or reject goods shall neither relieve Seller from responsibility for such supplies as are not in accordance with the order requirements nor impose liability on Buyer.

3. Seller shall provide and maintain inspection and quality control systems acceptable to Buyer covering the items furnished hereunder. Records of all inspection work by both Buyer and Seller shall be kept intact and made available upon request to the other party during the performance of this order and for six years following delivery under this order.

4. Seller shall provide buyer appropriate material certifications as described on the reverse hereof, including but not limited to, American Bureau of Shipping Inspection Certificate, material, physical, and/or chemical analysis certifications, OSHA/WISHA Material Safety Data Sheets, and U.S. Coast Guard acceptance certifications.

O. Infringements: Seller warrants that Buyer's purchase, installation, and/or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation reasonable attorneys' fees (without waiver of Seller's obligation to indemnify Buyer hereunder), arising from or out of any breach of the foregoing warranty.

P. Risk of Loss: Regardless of F.O.B. Point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by Buyer. No such loss, injury, or destruction shall release Seller from any obligations hereunder.

Q. Indemnification: Hold Harmless: Seller shall indemnify and hold Buyer harmless from and against all claims, losses, expenses, damages, causes of actions and liabilities of every kind and nature including without limitation reasonable attorney's fees, without waiver of Seller's obligation to indemnify Buyer hereunder, arising from or out of any alleged breach of any of Seller's obligations or warranties hereunder or from other acts or omissions of Seller, its officers, agents, employees, sub-contractors, and guests, howsoever caused, instituted by persons who purchase from Buyer or use product purchased from Seller.

R. Equal Employment Opportunity: Unless exempted by Presidential Executive Order 11246 and applicable regulations thereunder, Seller:

1. Certifies that it does not, and will not, maintain segregated facilities, nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, national origin, age, or sex.