



TERMS AND CONDITIONS

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 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 Buyer's 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 within ten days of the date of this order.
4. Actual delivery by the Seller of conforming goods ordered herein shall constitute acceptance by the Seller of this order and the terms and conditions contained herein. Delivery of nonconforming goods shall be considered a rejection 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, 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 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 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 a customer of Seller, *or* the prevailing market price, whichever is lower.
- H. CASH DISCOUNT:** If Buyer is entitled to a cash discount, the period of computation will commence on the date of acceptance or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date on which an agreed adjustment of price is reached. If a cash discount is made part of the contract, but the invoice does not reflect the existence thereof, Buyer is entitled to a cash discount with the period commencing on the date Buyer determines that a cash discount applies.
- I. TAXES:** Buyer is a tax-exempt educational institution. Federal Excise Tax Exemption No. 52-730056-F. District of Columbia Exemption No. 350000006433
- J. ASSIGNMENT:** Seller shall not assign this contract, *or* the right to payment due hereunder, without Buyer's prior written consent.
- K. LIENS, CLAIMS AND ENCUMBRANCES:** Seller warrants and represents that all the goods will, when delivered, be free and clear of all liens, claims, or encumbrances of every kind.
- L. 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.
- M. DEFAULT:** Buyer may, subject to the provisions of paragraph "N", 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 Title 62A) in any of the following circumstances:
1. If Seller fails to make delivery of the goods or to perform the services within the **time specified herein or any extension;**
 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
 4. 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 of 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.
- N. REMEDIES:** Not by way of limitation, the remedies of the parties include:
1. **If** Buyer cancels this order in whole or in parts as provided in paragraph "M," 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 cost 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 into 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 constructed as a waiver of Buyer's rights.
4. The Seller may be excused from performance under this order provided 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 the government with lawful jurisdiction over Seller in either 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 supplier or sub-contractor and if 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.

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

1. Seller further warrants to the Buyer that all items delivered under this order will be free from defects in material, and workmanship and will conform to applicable specifications, 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. 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 to Buyer 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.
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 be 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 effect; and no modification or other change of this warranty shall be valid unless evidenced by Buyer's written change order.

P. 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.

Q. RISK OF LOSS: Regardless of F.O.B. Point, Seller agrees to bear all risks 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.

R. 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 omission of Seller, its officers, agents, employees, and sub-contractors.

S. EQUAL EMPLOYMENT OPPORTUNITY: Unless exempted by Presidential Executive Order 11246 and applicable regulations hereunder, Seller 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.

T. SERVICE OR INSTALLATION OF WORK: In the event this order requires the performance of work or installation of goods by Seller upon any property or project of Buyer, the following conditions shall also be applicable:

1. Seller shall take precautions to protect all property and persons from damage or injury arising out of its work and shall comply with all fire, safety and other applicable regulations prescribed by any governmental agency and by Buyer and/or owner of the project upon which work is being performed, and shall be responsible for the observance thereof of all sub-contractors, employees, agents, and representatives of Seller and its sub-contractors. Seller shall also obtain at its own expense and provide Buyer with proof of insurance coverage satisfactory to Buyer for workmen's compensation and property damage, public liability, personal injury, employer's liability and other applicable insurance.
2. Seller shall keep the premises and work free and clear of all mechanic's and material men's liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so Buyer without waiving any rights or remedies against Seller for or by reason of such failure may, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller hereunder; and Buyer may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Buyer may require.
3. The work shall remain at Seller's risk prior to written acceptance by Buyer and/or the owner of the project and Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.
4. Seller shall act as an independent contractor and not as the agent or representative of Buyer.
5. Seller shall perform its work in accordance with the schedules and work programs established by Buyer and shall fully cooperate with Buyer and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices. In case of conflict, Buyer may direct **the necessary coordination.**
6. Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project; clean up all refuse and debris and leave the site of the work clean, orderly and in good condition.
7. Seller shall require Seller's employees, agents, contractors, or sub-contractors to abide by Buyer's Work and Safety rules when work or services are performed at Buyer's premises. Buyer has the right to exclude personnel from Buyer's premises who do not abide by such rules, and at Buyer's election to declare a default under the **order.**

8. Seller is solely liable for its employees, agents, contractors, or sub-contractors and their action while on Buyer's premises and the Seller indemnifies and will protect Buyer from all loss, claims, expenses, damages arising from or out of the presence or activity of Seller's employees while at Buyer's premises.

U. ADVERTISING: No advertising or publicity matter having or containing any reference to Buyer or any of its staff members shall be made by Seller or anyone in Seller's behalf unless Seller has written consent of Buyer.

V. DISCLOSURE OF INFORMATION: All data and information not already in the public domain, developed or disclosed during the life of this order, will be the property of the Buyer and will be classified in secrecy and confidence by the Seller. Seller will keep confidential of all such data and information until it comes into the public domain or until Buyer's Purchasing Agent **consents in writing to disclosure.**

W. ATTORNEYS' FEES: In any suit or action brought to enforce any term, condition, or covenant herein, or recover damages arising from any breach of this contract, the Seller shall pay to the Buyer reasonable attorney's fees and all other costs and expenses which may be incurred by the Buyer in any such suit or action and in any reviews thereof and appeals there from.

X. GOVERNING LAW: Unless otherwise specified this order is governed by the laws of the District of Columbia.