



TERMS AND CONDITIONS OF PURCHASE

Applicable if checked:

All material shall comply with specifications and contract documents. You shall be liable for all general and special conditions of our contract, including but not limited to liquidated damages and material delays.
Specification(s): _____
Retention shall be withheld in the percentage retained by our customer.

THIS ORDER contains the final and complete agreement between purchaser and seller. This order, if made by purchaser to fulfill contractual commitments for construction or other services is to be governed by the terms and conditions contained in such contractual commitments. No other agreement in any way modifying any of the terms or conditions of this purchase order or proposing additional terms will be binding upon the purchaser unless made in writing and specifically approved in writing by an authorized representative of the purchaser.

ACCEPTANCE OF ORDER: Acknowledgment of receipt of this order or shipment of goods or performance of services against it constitutes acceptance hereof.

ROUTING, SHIPPING DOCUMENTS AND INVOICES: All goods shall be forwarded by the route resulting in the lowest transportation rate or in accordance with specific shipping instructions issued by purchaser's Traffic Department; otherwise the difference in freight rates and the extra cost of cartage will be charged to seller's account. When the usual terms of the applicable tariffs do not include insurance, shipments shall be properly insured by seller.

Bills of Lading and other shipping documents shall contain the purchaser's name, the purchase order number, a description of the goods, identification of the railroad car (if applicable), and the routing and specific plant or other destination of the goods. Carload shipments shall be tagged to show the name of seller, the purchase order number, and a description of the goods. All goods in less than carload shipments shall be marked or tagged to show shipping instructions and the purchase order number. Three copies of each shipping document and invoice shall be mailed to purchaser on the shipment date.

S.D.S. sheets must accompany all shipments. If an S.D.S. sheet is not received, the invoice for material will NOT be paid until at which time an applicable S.D.S. sheet is received by JWMCD Purchasing.

DELIVERY; RISK OF LOSS: The time for delivery of goods or the performance of services as specified on the order is of the essence of this order. If seller fails to deliver goods or perform the services at the time specified herein, purchaser may cancel this order and purchase elsewhere and charge seller with any loss.

Delivery to the carrier, whether designated by the purchaser or not, shall not be considered delivery to purchaser, and delivery by the carrier to purchaser shall not be considered acceptance of any damaged, defective or other unsatisfactory goods. Goods shipped pursuant to this order, shall remain at the risk of seller until the same are in fact received and accepted by purchaser.

INSPECTION: All goods delivered or work performed shall be subject to the inspection and acceptance of purchaser at any time within (30) thirty days after receipt of goods or completion of the work. Any goods which are rejected will be held for disposition at the risk and expense of seller, and any payment therefor will be promptly refunded by seller to purchaser.

WARRANTIES: In addition to all other warranties, express or implied, made by seller or any other person seller warrants that the goods and (or) services covered by this order will comply with the specifications, drawings, descriptions or samplings furnished or specified by purchaser and that such goods will be merchantable, of good material and workmanship and free from defect and fit for the particular purpose or purposes for which they are to be used. Machinery and equipment ordered by purchaser shall be in acceptable condition, shall operate satisfactorily for a reasonable period of time under normal usage, and shall conform to all applicable Federal and State occupational health and safety standards. Specified warranties/guarantees for Seller's product shall be made out to either JWMCD or Owner at our option.

Seller also warrants that all goods shall be free from any lien or other claim or encumbrance. Payment, by purchaser hereunder may be withheld until receipt by purchaser of satisfactory evidence that all liens, claims and demands of employees, materialmen and subcontractors have been fully satisfied.

The above warranties shall survive any delivery, inspection, acceptance or payment by John W. McDougall Co. Inc. Copies of any and all additional warranties given by seller, manufacturer, or any other person pertaining to the goods or services under this purchase order shall be delivered to the purchaser no later than the date of delivery of goods or the performance of services. Any other payment terms to the contrary notwithstanding, seller shall have the right to withhold final payment until copies of all such warranties are received. Such warranties shall be in the name of the purchaser or such other party as the purchaser shall direct, at the purchaser's option.

REMEDIES OF PURCHASER: No remedy reserved to purchaser hereunder shall be exclusive of any other right or remedy, and purchaser may exercise any other right or remedy available to purchaser at law or otherwise for breach of contract or the breach of any warranty hereunder.

INDEMNITY: Seller shall defend, indemnify and save harmless purchaser and any of its affiliates from and against, and reimburse them for, any loss, damage, liability, cost or expense (including reasonable attorneys' fees and legal expenses) relating to the death of or injury to any person whomsoever (including any property of purchaser or any of its affiliates) arising directly or indirectly from or in connection with any defect in or any breach of warranty with respect to goods covered by this order or from or in connection with any work performed or to be performed hereunder, regardless of whether or not such death, injury, loss or damage is attributable or is alleged to be attributable, in whole or in part, to any negligent act or omission of or the breach of any statutory duty by purchaser or any of its affiliates. Seller further agrees to release, and does hereby release, purchaser and its affiliates from, and does hereby waive any right to claim or ask for, any damages or reimbursements for or on account of any loss of or damage to any property of seller arising directly or indirectly from or in connection with any work performed or to be performed hereunder, regardless of whether or not such loss or damage is attributable or is alleged to be attributable, in whole or in part, to any negligent act or omission of or the breach of any statutory duty by purchaser or any of its affiliates.

Seller shall also defend, indemnify and hold purchaser and any affiliate of purchaser harmless from and against any claim, demand, loss, damage, liability, cost or expense (including reasonable attorneys' fees and legal expenses) relating to the infringement or alleged infringement of patents or patent rights by reason of the use of goods covered by this order.

FORCE MAJEURE: Purchaser shall not be required to accept or pay for any goods or services covered by this order, if prevented from accepting and utilizing the same by reason of any strike, accident, fire, government act, or any other condition beyond the reasonable control of purchaser.

INSURANCE: At purchaser's request, seller agrees to furnish acceptable certificates of insurance evidencing workmen's compensation and employer's liability coverage and comprehensive general liability coverage including both products and contractual liability coverage.

GENERAL LABOR LAWS: All invoices shall contain the following written assurance: "We hereby certify that

these goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

NONDISCRIMINATION: As part of our affirmative action program to insure that Equal Employment Opportunity shall be made available, you shall not discriminate against any applicants for employment or employees because of race, creed, religion, color, ancestry, national origin, sex and age in matters pertaining to hire, tenure, discharge, compensation, promotion, terms, conditions and privileges of employment, and you are to take affirmative action as required by applicable Federal, State and Local Laws.

CERTIFICATION OF NONSEGREGATED FACILITIES: The Seller certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments; that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained; that he will not maintain or provide for his employees any segregated facilities at any of his establishments; and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The undersigned agrees that a breach of this certification is an EQUAL OPPORTUNITY CLAUSE: During the performance of this contract, the seller agrees as follows:

- (1) The seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The seller will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The seller agrees to post in conspicuous places, available to employees and applicants for employment, notices.
- (2) The seller will, in all solicitations or advertisements for employees placed by or on behalf of the seller, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- (3) The seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (Notify Unions of your obligation by a letter).
- (4) The seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules.
- (5) The seller will furnish all information and reports required by Executive Order 22346 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations.
- (6) In the event of the seller's noncompliance with the nondiscrimination clause of this purchase order or with any of such rules, regulations, or orders this purchase order may be canceled, terminated or suspended in whole or in part and the seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and other such sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The seller will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; Provided, however, that in the event the seller becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the seller may request the United States to enter into such litigation to protect the interest of the United States. (Subcontract includes services or supplies).

EMPLOYMENT OF THE HANDICAPPED, EMPLOYMENT OF VETERANS AND UTILIZATION OF MINORITY CONTRACTORS – PURCHASE ORDERS EXCEEDING PRESCRIBED LIMITS: This purchase Order incorporates by reference any applicable clause relating to employment of the handicapped, employment of veterans or utilization of minority contractors which is required under governmental laws, orders or regulations to be included in any such purchase order according to applicable conditions thereof.

ARMED SERVICES PROCUREMENT REGULATIONS: If this Purchase Order indicates that it is placed under a United States Government contract or a subcontract thereunder, the following clauses contained in the Armed Services Procurement Regulations as presently in effect, are hereby incorporated herein to the extent they are required to be:

ASPR Section

- Number
- 6-104.5
- 7-103.13
- 7-103.20
- 7-104.11
- 7-104.12
- 7-104.15
- 7-104.16
- 8-706
- 12-303.1
- 12-605
- 12-802

ASPR Section Title

- Buy American Act
- Renegotiation Act of 1951 for Applicable substitute clause
- Covenant Against Contingent Fees
- Vinson-Trammel Act
- Military Security Requirements
- Examination of Records
- Gratuities
- Subcontract Termination Clause
- Work Hours Act of 1962
- Walsh Healy Public Contracts Act
- Nondiscrimination in Employment

TAXES: Unless otherwise provided in this order, all applicable taxes will be for the account of seller.

SETOFF: Any monies due for goods or services furnished hereunder may at the option of purchaser be applied by purchaser to other invoices from the seller.

ASSIGNMENT: Seller agrees not to assign this order or delegate the performance of its duties hereunder without the expressed written consent of purchaser.

GOVERNING LAW: This order shall be construed under and governed by the law of the State of Tennessee. Seller agrees to all requirements of Buy America or Buy American Act Provisions if so required as part of the purchase order requirement.

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