

Marquette University
Terms and Conditions – 9/2006

PURCHASE ORDER

These Terms and Conditions shall apply to this Purchase Order attached hereto as Exhibit A and to all subsequent transactions (whether or not a Purchase Order is used) between Marquette University (hereinafter referred to as “Purchaser”) and Seller.

PURCHASE ORDER EXPIRATION – 10 DAYS

Unless sooner amended or revoked, or sooner acknowledged unqualifiedly in writing, this Purchase Order will expire ten days after its date. No commencement of performance or shipment thereafter shall constitute acceptance unless Purchaser expressly assents.

ACKNOWLEDGEMENT

This Purchase Order as executed by the Purchaser constitutes the entire Purchase Order between the parties. This Purchase Order can only be changed by a written instrument signed by an authorized agent of the Purchaser. Each shipment received by the Purchaser from the Seller shall be upon the terms and conditions contained herein, notwithstanding any terms or conditions contained in any acknowledgment, invoice, correspondence, quotations, specifications, discussions or other document or communication from the Seller and notwithstanding the Purchaser's acceptance, payment or performance. If price, terms, shipping date or any other express condition of this Purchase Order is not acceptable, Purchaser must be notified and must accept in writing any variation prior to shipment or delivery.

EXTRA CHARGES

No additional charges of any kind, including without limitation charges for boxing, packing, transportation or other extras or fees will be allowed unless specifically agreed to in writing by Purchaser.

TAXES AND TAX EXEMPTION

Seller agrees that all material on this Purchase Order will be produced, shipped and priced in

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compliance with applicable federal, state and local laws and regulations and shall be guaranteed to conform thereto. However, notwithstanding the preceding sentence, Purchaser is a Wisconsin not-for-profit, tax exempt organization and is thus exempt from sales tax in Wisconsin under CES #0061. Purchaser may also exempt from certain federal excise taxes. Seller shall not charge Purchaser for those taxes from which Purchaser is exempt. Proof of exemption is available upon request.

AUTHORIZATION

Purchaser will not be responsible for materials delivered or for work done on our account unless duly authorized by Purchaser. No contract arising out of this Purchase Order can be modified, altered, or rescinded except in writing signed by the parties.

SUBCONTRACTING AND ASSIGNMENT

Seller shall not contract, subcontract or assign to a third party any part of this Purchase Order or any rights arising hereunder without first obtaining the express, written approval of Purchaser.

INVOICE AND SHIPMENT

Invoices must be sent to P.O. Box 1881, Milwaukee, WI 53201-1881 Attention: Comptroller's Office.

Upon shipment the Seller must include:

- A SEPARATE Invoice for EACH Purchase Order referencing the Purchase Order number.
- The charged price may NOT be higher than that stated in the Purchase Order
- Seller's complete remit to NAME and ADDRESS on each invoice.
- Seller must provide a complete description of labor performed and time expended in maintenance contracts.
- All payments are net 30 days unless agreed otherwise.

Each invoice bearing this Purchase Order number must be mailed not later than the close of the business day following shipment unless

other billing terms had been established by separate written Purchase Order. Material received and not covered by an invoice will be held as Seller's risk and expense.

Cash discount period will date from receipt of properly prepared invoice or material, whichever is later. C.O.D. shipments will not be accepted.

Penalty period will be determined from date of receipt of properly prepared invoice or material, whichever is later.

FOB DESTINATION

All shipments hereunder shall be FOB Destination, Marquette University "Freight Prepaid", unless otherwise shown by Purchaser on the Purchase Order.

DELIVERY

Time is of the essence with respect to all Purchase Orders. If the delivery date specified on the face of this Purchase Order cannot be met, Seller shall notify Purchaser using electronic mail or telephone. If delivery is not made on time and in the quantities specified, Purchaser shall have the right to cancel this Purchase Order and hold Seller liable for any cost of cover or excess cost or damage incurred as a result of the delay. Acceptance by Purchaser of a late delivery will not constitute a waiver of a later claim for damages. Seller agrees to insure the goods during delivery at Seller's expense and to warrant that all goods will be free from defect and will be of good material and workmanship. If goods delivered by Seller are defective or not what Purchaser contracted for, Purchaser reserves the right to return the goods to Seller, to terminate the contract and to seek damages and expense incurred. Acceptance of any part of the Purchase Order shall not bind Purchaser to accept remaining parts of the Purchase Order or any future shipments nor deprive it of the right to return goods already accepted.

INSPECTION

Payment for goods or services provided hereunder shall not constitute acceptance thereof. Purchaser may inspect and test such goods or services and reject any or all items that

are, in Purchaser's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at Seller's sole expense. Failure by Purchaser to inspect and test the goods or services shall not relieve Seller of responsibility.

WARRANTIES

The goods and services are intended for the following described special uses, and are to be warranted suitable:

(This paragraph applicable only if completed.)

Seller expressly warrants all goods and services delivered under the Purchase Order shall be merchantable and free from defects in material and workmanship and of the quality, size and dimensions ordered and/or specified. This express warranty shall not be waived by reason of the acceptance of the goods and services, payment by Purchaser or otherwise. Seller warrants that a) all workmanship shall be first class; b) the goods and services purchased will be supplied according to specifications; c) except as otherwise provided in the specifications, all goods and services incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose, and d) all services will be performed in a good and workmanlike manner. Such warranties together with Seller's sales literature (including, but not limited to brochures, proposals, correspondence to Purchaser), service warranties and guarantees shall survive inspection tests, acceptance of and payment for the goods and services and shall run to Purchaser, its successors and assigns. The Seller shall within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the Purchaser any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after delivery unless a different warranty period is provided in this Purchase Order. After notice to Seller, all such goods and services will be held at Seller's risk. Purchaser may, and at Seller's direction shall,

return such goods and services to Seller at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.

Purchaser, may at its option, either return for credit or require prompt correction or replacement of any defective or nonconforming good or part thereof. If Seller is unable to or refuses to promptly correct or replace such defective or nonconforming good or part thereof, Purchaser, (1) may, by contract or otherwise, repair or replace such work or materials and assess Seller the excess cost occasioned the Purchaser thereby, or (2) may cancel this Purchase Order as to all such goods and services and cancel this Purchase Order as to all such goods and services.

The one year warranty shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.

RISK OF LOSS

Seller assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to this Purchase Order until the same are finally accepted by the individual and University department or Purchaser who ordered them. Seller also assumes all risk of loss of or damage to any goods, work in process, materials, and other items rejected by Purchaser until the same are accepted by Purchaser.

INDEMNIFICATION

Seller shall indemnify, defend and hold harmless Purchaser, its officers, trustees, students, agents and employees against and from any and all claims, liabilities, losses, damages and expenses (including without limitation attorneys fees and court costs) arising out of or in connection with any goods or services purchased pursuant to this Purchase Order or from any act, omission, negligence, operation, product or service of Seller or its employees, agents, servants, suppliers, representatives and subcontractors.

Seller shall indemnify and save Purchaser harmless against any and all liens and encumbrances (arising out of or in connection with this Purchase Order) and to keep Purchaser's premises free from all such liens and encumbrances.

INSURANCE

During the term of the Purchase Order, each party shall maintain the following insurance policies from insurers licensed to do business in the State of Wisconsin: (a) Commercial general liability (CGL) insurance of not less than \$1,000,000/occurrence and \$2,000,000 aggregate; (b) Worker's Compensation insurance in accordance with applicable state statutory limits; (c) Automobile insurance in the amount of \$1,000,000 (including coverage for insured, uninsured, underinsured, owned and non-owned vehicles). Both parties agree that such insurance may not be revoked, reduced or changed in a material way without at least thirty (30) days advance written notice to the other party. Certificates of insurance shall be provided upon request.

HAZARDOUS MATERIALS

For each hazardous chemical brought onto the Marquette University campus, contractors must have, at the work site, a Material Safety Data Sheet (MSDS) which is readily accessible to Marquette University employees. MSDS's for Marquette University chemicals used at the work site will be available to contractor's employees. Contractors bringing chemical materials onto the campus may not leave any such materials at project's end; nor dispose of any such materials on campus without written permission from the Marquette University project manager.

TERMINATION FOR CONVENIENCE OR CAUSE

Purchaser may terminate the Purchase Order or any part thereof for its sole *Convenience*, including but not limited to Seller's change of control or ownership. Upon notice of such termination, Seller shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease

their work against the Purchase Order. Seller shall be paid a reasonable termination charge consisting of a pro rata percentage of the Purchase Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by Seller's suppliers that Seller reasonably could have avoided.

Purchaser may terminate the Purchase Order or any part hereof for *Cause* if Seller defaults, fails to comply with any terms and conditions of the Purchase Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the Purchase Order shall, without limitation, be causes allowing Purchaser to terminate the Purchase Order for cause. In this event, Purchaser will not be liable to Seller for any amount; but Seller shall be liable to Purchaser for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.

FORCE MAJEURE

Neither party shall be considered in default in the performance of its obligations under this Purchase Order and/or either party may cancel without penalty by notice to the other party without liability if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected, including but not limited to, war, hostilities, terrorism, revolution, civil commotion, strike, lockout, epidemic, accident, severe weather, fire, wind or flood or any act of God. A party becoming aware of any Force Majeure condition that may affect an performance under this Purchase Order shall seek to promptly give the other party notice of such condition.

DISPUTES

In case of a dispute initiated by the Seller, the Seller will inform the Purchaser within thirty

days of the qualifying event. In case of a lawsuit initiated by either party arising out of this Purchase Order or the transaction contemplated hereunder, the unsuccessful party agrees to pay the prevailing party's costs and expenses associated with the lawsuit, including without limitation, reasonable attorney's fees. This Purchase Order shall be governed by and construed under Wisconsin law. Purchaser and Seller hereby agree that any dispute arising out of this Purchase Order or the purchase contemplated hereunder shall be resolved in the state or federal courts located in Milwaukee County, Wisconsin. Seller hereby submits itself to the jurisdiction of said courts and agrees not to challenge the jurisdiction or venue of said courts in the event of a dispute.

SET-OFF

Purchaser shall at all times have the right to set-off any amount owing from the Seller to Purchaser against any amount owing from Purchaser to the Seller. At Purchaser's option, repayment, in lieu of setoff, may be requested. In witness whereof, the undersigned parties have entered into this Purchase Order on the date first recited above.

REMEDIES

No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.

LIMITATIONS

Purchaser shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. Purchaser's liability on any claim for loss, damage or expense arising out of or in connection with this Purchase Order shall not exceed the price of the goods or services which give rise to the claim. Purchaser shall not be liable for penalties or fines of any kind. Any action, suit or proceeding caused by any alleged breach of this Purchase Order by Purchaser must be commenced within one (1) year after the cause of action accrued.

GOVERNING LAW

Seller shall comply with all applicable laws, rules and regulations relating to the goods and services described herein. The validity, interpretation and performance of this Contract shall be governed and construed in accordance with the laws of the State of Wisconsin.

CONTRACT

If there is a separate written contract in effect between Purchaser and Seller applicable to this transaction and any term thereof is in direct conflict with these terms and conditions, then the terms and conditions of the separate written contract shall govern this transaction, but only to the extent of the direct conflict.

SEVERABILITY

If any part of this Purchase Order is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of this Purchase Order shall be enforceable as written.

MARQUETTE UNIVERSITY:

By _____
Its _____

EQUAL OPPORTUNITY

Marquette University believes it is important to support the establishment, preservation and strengthening of emerging businesses, defined as businesses owned by women or minorities. We seek opportunities to involve such emerging businesses in the University's purchasing process, and we also encourage our contractors and vendors to provide for their participation through meaningful partnerships, joint ventures, subcontracts and other contractual opportunities.

Marquette University is an equal opportunity employer and will not engage in discriminatory practices on the basis of age, race, sexual orientation, color, sex, religion, national origin, veteran status, or disability in the performance of this Purchase Order. By accepting this Purchase Order, Seller warrants that it is also an equal opportunity employer, that does not engage in discriminatory practices as described above.

SELLER: _____
By _____
Its _____