

PLEASE READ: CONDITIONS OF PURCHASE ORDER

1. **1. SELLER'S ACCEPTANCE:** Provision to Buyer of any part of the goods, or Seller's performance of any of the services, ordered hereunder will be deemed an acceptance by Seller of this Purchase Order (the "PO") and all of the terms, conditions and instructions contained herein (the "Terms"), which Terms constitute an integral part of this PO. Shipment of goods must arrive, and/or performance of services must occur, by or on the delivery date specified herein. Time is of the essence with respect to each of Seller's obligations set forth in this PO.
If this PO contains language to the effect that it is a blanket purchase order, it is only an estimate of Buyer's possible requirements, and not a firm or binding commitment by Buyer to purchase any specified quantity. By accepting this PO, Seller will provide up to the specified quantity at the specified price but only as, if, and when Seller receives shipping instructions from Buyer. Seller's failure to reject this PO in writing within ten days of receipt will be deemed acceptance by Seller thereof.
2. **CHANGES:** Changes in the Terms are not binding upon Buyer unless made in writing and signed by Buyer.
Buyer's acceptance of any goods or services not conforming to this PO, or upon terms, conditions or instructions varying from the Terms, will not constitute: a) authority for subsequent shipments of such non-conforming goods or services; b) Buyer's waiver of Terms with respect to subsequent shipments or performance; or c) Buyer's waiver of its right to reject any part or all of the non-conforming goods or services or to reject or return, at any time and at Seller's cost and risk, any part or all of any subsequent shipment; i) not conforming to this PO; ii) not as represented to Buyer; or iii) shipped to Buyer on terms, conditions or instructions varying from the Terms. Neither a waiver of any Term, nor any waiver with respect to any prior purchase order(s) will constitute a waiver of any Term. Interpretation of the Terms will not be determined by acceptance or acquiescence in a course performed or rendered pursuant to this PO even though Buyer has knowledge of the nature of the performance and opportunity for objection.
3. **ENTIRE AGREEMENT:** Except for provisions in existing agreements which provide Buyer with rights not herein provided or which are greater than Buyer's rights hereunder, this PO: a) is intended as final expression of the mutual agreement of the parties hereto; b) supersedes all prior agreements between the parties, whether written or oral; c) contains all the terms to which the parties have agreed; and d) will not be modified, controlled or affected in any way by any prior dealings or usage of trade not expressly included in this PO. Whenever a term defined by the Uniform Commercial Code applied by the State of Minnesota is used herein, the definition contained in such Code will control.
4. **ASSIGNMENT:** Seller may not assign, subcontract or otherwise transfer this PO or any interest herein, including performance or any amounts due hereunder, without Buyer's prior written consent.
5. **CANCELLATION:** Buyer may cancel this PO in whole or in part, at any time, with or without cause, and without further obligation or liability as to all or any goods or services which Buyer has not then received, except that: a) Buyer will pay the reasonable pro-rated cost of services properly performed in accordance with this PO before Seller's receipt of Buyer's notice of cancellation (the "Cancellation Notice"), which cost will not exceed the price specified herein; and b) for goods which are substantially unique due to Buyer's specifications and, for that reason alone, are not resellable for at least Seller's cost, Buyer will, at its option, either accept the goods, at the price specified herein, which have been completed before Seller's receipt of the Cancellation Notice, or reimburse Seller for the difference between Seller's cost and the fair market value for the cost of making the goods salable.
Upon receipt of the Cancellation Notice, Seller will, to the extent specified therein, stop all work hereunder and take any necessary action to protect any property in Seller's possession in which Buyer has or may acquire an interest. Seller will immediately deliver to Buyer all goods ordered and services in process through the cancellation date. In addition, upon cancellation, any Buyer data and information in Seller's possession will be returned to Buyer and removed from Seller's systems. Any cancellation by Buyer will be without prejudice to any claims or rights of Buyer against Seller.
6. **WARRANTY:** Seller warrants that no goods and services provided hereunder will infringe any third party patent, copyright, trade secret, trade name, trademark, service mark or other proprietary right. Seller warrants that it possesses any licenses, qualifications and registrations necessary to produce the goods and/or perform the services described in this PO. Additionally, Seller warrants that: a) the goods ordered herein are free from defects in material, design and workmanship, and suitable for the use intended by Buyer or its customer(s); b) all weights, measures, and sizes are accurate and conform to applicable state and federal standards; c) the goods covered by this PO, purchased by Buyer for resale locally and in interstate commerce, are merchantable and conform to all representations, descriptions, specifications, labels, advertising material and the like supplied by Seller or its representatives with reference thereto; and d) all goods sold to Buyer hereunder have been manufactured in accordance with, comply with, and are not violative of or misbranded within the meaning of, any applicable laws and regulations.
Seller further warrants that the services ordered herein will: a) be performed to Buyer's satisfaction; b) meet all requirements of this PO; c) be performed in accordance with the highest standards prevalent in the Seller's market with design, materials and workmanship proper and sufficient for the purpose contemplated and be free from defects due to faulty design, materials or workmanship.
All warranties will be construed as conditions as well as warranties. Inclusion herein of express warranties and representations by Seller will not be deemed a waiver of such other warranties as may be implied or expressly set forth in law or fact. Any warranties, express or implied, will survive inspections, acceptance and payment by Buyer and Buyer's customers and/or agents. Inclusion in these Terms of expressed warranties and representations will not be deemed a waiver of any other warranties as may be implied or expressly set forth in law or fact.
If at any time Supplier incurs any indebtedness that has or will become a lien upon goods or services or any part thereof of which may become a claim against Buyer, Seller will immediately pay such claim or cause such lien to be released and discharged by giving bond or otherwise at its expense.
7. **INVOICING/PRICE:** All invoices submitted to Buyer must be itemized as shown on the PO. Buyer is not obligated to pay for any goods or services for which Seller has not invoiced Buyer within 120 days after the provision of the goods or services. The parties agree that the prices recorded herein are not subject to any additional charges whatsoever for packing or preparation for shipment, any demurrage charges, or because of increased costs of operation. Buyer is not obligated to purchase any dies, tools, molds, engravings, drawings, or similar items unless specifically agreed to by Buyer in writing. Buyer will receive a two (2%) discount on invoices paid within thirty (30) days of receipt of invoice.
8. **INDEMNIFICATION:** Seller will defend, hold harmless and indemnify Buyer, its customers, and their respective affiliates, directors officers and employees (the "Indemnified Parties") from and against any and all claims, actions, liabilities, losses, costs, damages, demands and expenses including, but not limited to, attorney's fees, (collectively "Losses") arising out of, or caused in whole or in part by: the actual or alleged infringement of any patents, copyrights, trade secrets, trade names, trademarks, service marks or other proprietary right in connection with the goods and services sold to Buyer hereunder; any actual or alleged defect of or injury to any person; damage to or destruction of property including loss of use thereof; any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defect in such goods, whether latent or obvious, including actual or alleged improper construction or design of said goods or defects under the law or the failure of said goods to comply with specifications or with any of Seller's express or implied warranties; or any actual or alleged violation by such goods, or their manufacture, possession, use or sale, of any law, statute or ordinance or any government or administrative order, rule or regulation.
Further, Seller will defend, hold harmless and indemnify the Indemnified Parties from and against any and all Losses arising out of or caused by Seller's performance of any services.
Buyer will advise Seller if Buyer receives notice that a claim has been or will be filed with respect to a matter covered by this indemnification provision. Buyer may give Seller the opportunity to assume the defense thereof. If Seller does not assume the defense, Buyer may defend the action in the manner it deems appropriate, and Seller will pay to Buyer all costs, including reasonable attorneys' fees, incurred by Buyer in effecting such defense and any subsequent legal appeal, in addition to any Losses. This right to indemnify hereunder exists notwithstanding that joint or several liabilities may be imposed upon Buyer or its affiliates by statute, ordinance, regulations or judicial decision.
Seller's agreements and obligations will not be affected or limited in any way by Buyer's extension of express or implied warranties to its customers.
All warranties and obligations of insurance, indemnification and confidentiality in this PO will survive Buyer's inspection, delivery, acceptance of or payment for the goods or services.
9. **INSURANCE:** Seller will obtain and maintain, at its own expense, the following types of insurance policies: Commercial General Liability Insurance covering liability arising from premises, operations, independent contractors, products-completed operations, and blanket contractual liability with minimum limits of \$1,000,000 per occurrence, Workers' Compensation and Employers Liability in an amount not less than statutory limits for the state(s) in which services are to be performed and Auto Liability (if automobiles are used) with minimum limits of \$1,000,000. All policies except workers' compensation will include Seller's endorsement naming Buyer and its customers as additional insureds. Each insurance policy will be with companies and containing such other provisions which are satisfactory to Buyer, covering services and goods provided hereunder. If a professional service is the subject of this PO, errors and omissions coverage with a limit of at least \$1,000,000 per occurrence is required. All such policies will provide that the coverage thereunder may not be terminated without at least 30 days' prior written notice to Buyer. Certificates of insurance evidencing such covers will be provided to Buyer at Buyer's request. Failure of Buyer to request such certificates does not excuse Seller from fully complying with this Section 9.
10. **RIGHTS AND WORK PRODUCT:** Buyer owns, without limit, reservation or encumbrance and not subject to the rights of any third party, all materials and the ideas embodied therein resulting from this PO, including, but not limited to, plates, negatives, transparencies, screens, zinc engravings, dyes, prototypes, working and composite film, artwork and documents. Such materials are "works for hire" made for Buyer, but are not "fine art", within the meaning of any law, including without limitation the Copyright Act. Seller does not have the right to publish any information, conclusions or developments resulting from its work hereunder without obtaining Buyer's specific prior written approval. Copyrights and any and all other ownership and publication rights in and to any of the draft and final materials produced by Seller hereunder will vest in Buyer simultaneously with the creation thereof. Seller will do and sign everything required by Buyer to enable Buyer or its nominees to protect Buyer's rights in such materials. The services may include innovations in the form of ideas or tangible items developed either by Seller or its employees or representatives. By accepting this PO, Seller assigns to Buyer, and Buyer owns, all proprietary rights therein whether developed by Seller or its employees or representatives alone or in the cooperation with Buyer's employees or contractors. Buyer may decide to keep such innovations confidential or apply for patent or copyright protection. In either instance, Seller and its employees or representatives will take whatever action requested by Buyer to protect these property rights. Seller will not destroy any property of Buyer as referenced above without Buyer's prior written approval.
11. **CONFIDENTIALITY:** Seller acknowledges that all information, including but not limited to records, lists, artwork, music and documents, marketing data, methods and plans for carrying out business, customer and supplier information, operations data, analyses, compilations, studies, financial data, costs, margins, software, computer programming, customer lists, sources of supply, salaries and other information concerning employees, any advertising, promotion, any product or program concepts, plans or proposals, the terms of this PO or any other information of a proprietary or non-public nature, furnished by Buyer to Seller or which come to Seller's attention in connection with or because of this PO (the "Information"), constitutes a valuable asset and is proprietary to Buyer. Seller represents and warrants that it will keep all Information confidential, and that all information will be used solely to the extent necessary to provide the goods or perform the services described in this PO. Seller, without Buyer's prior written approval, will not, and will instruct its employees and representatives not to, disclose or provide a copy of any information to any person within or outside its organization, except to the extent such disclosure is necessary for performance of this PO. Any such persons receiving information will be held to the same confidentiality requirements as described above.
If any program, script, soundtrack, print or audio visual media, computer software, component, plan, design or other item or any specification for producing same (the "Media") has been furnished by Buyer or at Buyer's request to Seller or has been specifically designed, developed or modified by Seller or any other person or party for Buyer or in connection with this PO, then Seller, its employees, officers or representatives may not, without Buyer's prior written approval, copy or furnish a copy of the Media to any person or entity, in any form or manner.
Seller will not use Buyer's name or Buyer's customers' names or refer to Buyer or Buyer's customers directly or indirectly in any solicitation, presentation, advertisement, news release, press release or in any publication without receiving Buyer's specific prior written approval.
12. **BUYER'S REMEDIES:** Buyer may reject and, at its sole option, return or hold at Seller's expense and risk, any and all goods: a) not fully up to standard; b) not in compliance with the specifications herein; c) shipped contrary to instructions; d) in excess of the quantities herein provided; e) substituted for goods herein described; f) not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications, not shipped in recognized standard containers conforming to carrier specifications); g) allegedly violating any statute, ordinance or administrative order, rule or regulation; h) not packaged, tagged, labeled, invoiced or stamped in compliance with any applicable law, rule, ordinance, regulation, or administrative order; i) allegedly infringing any patent, copyright, trade secret, trade name, trademark, service mark or other proprietary right; or j) with observable defects. Buyer may charge Seller all expenses of unpacking, examining, repackaging, storing, and reshipping any rejected goods. Buyer's right to reject will, without limiting such right, extend to goods sold to Buyer hereunder which are returned by Buyer's customers for any reason entitling Buyer to reject. With respect to any item(s) rejected by Buyer hereunder, Buyer may at its sole option require Seller to promptly replace or remedy any such rejected item(s), or grant a full refund or credit to Buyer in lieu of replacement. In emergencies or if Seller fails to do so, Buyer may remedy such defects or replace defective goods or services, and Seller will reimburse Buyer upon demand for the cost of doing so.
13. **RIGHT OF INSPECTION:** Upon request, Seller will submit to Buyer in accordance with the schedule approved by Buyer, appropriate quantities of work product for review and approval. Buyer and its customer(s) will also have access at all reasonable times to Seller's facilities for the purpose of inspecting, testing and expediting the work product. No such review, approval, inspecting, testing and/or expediting, or failure to do so, will in any way relieve Seller of any obligations under this PO.
14. **COVER (ALTERNATIVES):** If Seller is unable to supply goods or services in accordance with this PO, Seller must notify Buyer in writing within twenty-four (24) hours of the occurrence of each deficiency. Seller must use its best efforts to provide substitute goods or services that strictly comply with the specifications (unless Buyer agrees otherwise in writing) and are deemed acceptable by Buyer in its sole discretion. If Seller is unable to provide substitute goods or services acceptable to Buyer as necessary, Buyer may secure substitute goods or services from other sources. If the prices of any substitute goods or services (whether obtained by Seller or Buyer) are greater than contracted with Seller, Seller will reimburse Buyer the difference in price until Seller is able to resume supply of the goods or services under the terms of this PO. This section does not affect Buyer's right to cancel this PO or to seek other damages.
15. **INDEPENDENT CONTRACTORS:** Buyer and Seller are independent contractors. This PO is not intended to create, nor does it create and will not be construed to create, a relationship of partner, employer, joint venture or any association for profit between Buyer and Seller. Neither party will have any authority to obligate or bind the other party, except as specifically provided herein.
16. **NOTICE OF DEFECTS:** Seller will, on becoming aware of a defect in the design, construction or functioning of a product that affects or is likely to affect the safety of any person, or upon notice of a recall from federal or state authorities, cause notice of the defect to be given in the prescribed manner to: (a) the appropriate government office, as required by law; (b) Buyer; (c) each person who has obtained the product from Buyer as notified by Buyer; and (d) each current owner of such product as determined: (i) from any warranty issued by the Seller; or (ii) from federal, state or corporate records.
In addition, as required by law, Seller will give notice of the defect by publication in the form and for the period prescribed by law, including a description of the defect, an evaluation of the safety risk arising from it and directions for correcting it.
17. **COMPLIANCE WITH LAWS:** Seller certifies that it is in compliance with all federal, state and local laws and regulations. Any provision which is required to be part of this PO by virtue of any law, regulation, rule or order is incorporated herein by reference, including but not limited to nondiscrimination and affirmative action in employment, Executive Order 11246 as amended, 41 C.F.R. 60.1.4 (Equal Opportunity Clause), Section 503 of the Rehabilitation Act of 1973 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 as amended, and all of their respective implementing regulations.
18. **GOVERNING LAW AND VENUE:** This PO will be interpreted according to the laws of the State of Minnesota. Any suit of either party against the other in connection with or related to this PO will be brought in a state or federal court of competent jurisdiction in Hennepin County, Minnesota, except that if Buyer is sued by a third party in another jurisdiction, Buyer will be entitled to join Seller in such suit, if the suit concerns any goods or services relating to this PO.
19. **INSOLVENCY:** Seller will notify Buyer if Seller becomes insolvent, files a petition for bankruptcy, makes an assignment for the benefit of creditors or if a receiver or trustee is appointed of or for any of Seller's business.
20. **TAXES:** The price specified herein includes all applicable federal, state and local taxes in effect on the date of this PO except as otherwise specified herein. Buyer will not be charged any taxes levied at any time on processors, manufacturers, wholesalers or otherwise. If any such tax is included in or added to the prices paid to Seller for the goods sold to Buyer hereunder and such tax, or any part thereof, is hereafter refunded to Seller, Seller will immediately pay Buyer the amount of such refund.
21. **TITLE AND RISK OF LOSS:** Unless otherwise agreed in writing, title to the goods and risk of loss will remain with Seller until delivery and acceptance (pending right to inspect) by Buyer at Buyer's requested destination. However, the risk of loss of, or damage to, goods which fail to conform to this PO as to give a right of rejection will remain with Seller until cure or acceptance.
22. **SETOFFS AND COUNTERCLAIMS:** All claims for money due or to become due from Buyer will be subject to deduction by Buyer for any setoff or counterclaim arising out of this PO or any other of Buyer's purchase orders with Seller or from any amount due from Supplier by Buyer.
23. **DATA TRANSFER:** If Seller is located outside of the United States, Seller specifically consents to the transfer of data to the United States.
24. **RELEASES:** Seller warrants that it has obtained and has on file all appropriate releases (including but not limited to, model and property releases) for any materials delivered hereunder sufficient to allow commercial use of such materials, including but not limited to, product promotion and advertising. All such releases will accompany the materials delivered to Buyer.
25. **SECURITY BREACH NOTIFICATION:** If Seller suspects an unauthorized access, use, or disclosure of Buyer information, Seller will immediately notify Buyer of the known and unknown details of the situation.
26. **AUDIT:** Buyer may audit, and Seller will provide Buyer's employees or representatives with access to Seller's and its subcontractors', premises, personnel, data, records, systems, controls, processes and procedures relating to the goods or services to be provided by Supplier, for the purpose of determining, among other things: (i) whether the goods or services comply with Buyer's requirements; (ii) whether the goods or services comply with any agreed upon quality levels, service levels or other performance obligations under this PO (including those relating to applicable confidentiality and security requirements); and (iii) to verify that Buyer is being charged in accordance with agreed upon rates. If errors or deficiencies are identified by an audit or otherwise, Seller will take prompt action to correct any deficiencies and, in the case of error in charges paid by Buyer, refund Buyer overages paid. In addition, if an error or deficiency is discovered, Seller will pay the cost associated with the audit. This audit provision will be applicable during the term of this PO and for a period of two (2) years thereafter.