

Effective Date of 02/2004

Direct all correspondence relative to this order to the Purchasing Department, 2650 Kenny Road, Columbus, Ohio 43210-1060. Fax (614)292-8726. Refer to Purchase Order number.

Correct purchase order and stock numbers must appear on all packages, invoices, shipping papers and correspondences. Invoice must match on line-by-line basis, quantity, unit of measure, description, unit price and total amount used on the purchase order. If invoice must differ, do not ship. Contact the buyer immediately. Packing slips must accompany all shipments. No substitutions, alterations or additions are authorized to this order without consent of the Purchasing Department.

The Ohio State University
Purchase Order Terms and Conditions

1. Offer

This offer is subject to cancellation by PURCHASER without notice if not accepted by SELLER within fourteen (14) days of issuance.

2. Acceptance and Confirmation

This Purchase Order constitutes the entire agreement between the parties, unless otherwise specifically noted by PURCHASER on the face of this Purchase Order. Each delivery of goods and/or services received by PURCHASER from SELLER shall be deemed to be upon the terms and conditions contained in this Purchase Order.

No additional terms may be added and Purchase Order may not be changed except by written instrument executed by PURCHASER. SELLER is deemed to be on notice that PURCHASER objects to any additional or different terms and conditions contained in any acknowledgment, invoice or other communication from SELLER, notwithstanding PURCHASER'S acceptance or payment for any delivery of goods and/or services, or any similar act by PURCHASER.

3. Inspection

All goods and/or services delivered hereunder shall be received subject to PURCHASER'S inspection and approval and payment therefore shall not constitute acceptance. All payments are subject to adjustment for shortage or rejection. All defective or nonconforming goods will be returned pursuant to SELLER'S instruction at SELLER'S expense.

To the extent that a purchase order requires a series of performances by SELLER, PURCHASER prospectively reserves the right to cancel the entire remainder of the Purchase Order if goods and/or services provided early in the term of the Purchase Order are non conforming or otherwise rejected by PURCHASER.

4. Shipping

All goods are FOB destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. No charges will be paid by PURCHASER for packing, crating or cartage unless otherwise specifically stated in this Purchase Order. Unless otherwise provided in Purchase Order, no invoices shall be issued nor payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice.

All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show this Purchase Order number. The container and Purchase Order numbers must be indicated on bill of lading. Packing slips must show Purchase Order number and must be included on each package of LCL shipments and/or with each car load of equipment. PURCHASER reserves the right to refuse or return any shipment or equipment at SELLER'S expense that is not marked with Purchase Order numbers. SELLER agrees to declare to the carrier the value of any shipment made under this Purchase Order and the full invoice value of such shipment.

5. Time Is Of The Essence

Time for delivery of goods or performance of services under this Purchase Order is of the essence. Failure of SELLER to meet delivery schedules or deliver within a reasonable time, as interpreted by PURCHASER alone, shall entitle PURCHASER to seek all remedies available to it at law or in equity. SELLER agrees to reimburse PURCHASER for any expenses incurred in enforcing its rights. SELLER further agrees that undiscovered delivery of nonconforming goods and/or services is not a waiver of the PURCHASER'S right to insist upon further compliance with all specifications.

6. Changes

PURCHASER may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of this Purchase Order . Should any such change increase or decrease the cost of, or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by the PURCHASER and SELLER. Notwithstanding the foregoing, SELLER has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by SELLER must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.

7. Warranties

SELLER expressly warrants that the goods and/or services covered by this Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or specified by PURCHASER, and will be of satisfactory material and quality production, free from defects and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. These warranties shall survive inspection, acceptance, passage of title and payment by PURCHASER.

8. Statutory Conformity

Goods and services provided pursuant to this Purchase Order, and their production and transportation, shall conform with all applicable laws, including but not limited to the Occupational Health and Safety Act, the Federal Transportation Act and the Fair Labor Standards Act, as well as any law or regulation noted on the face of the Purchase Order.

9. University Name

No SELLER providing goods and services to PURCHASER shall advertise the fact that it has contracted with PURCHASER for goods and/or services, or appropriate or make use of PURCHASER'S name or other identifying marks or property without the prior written consent of PURCHASER'S Office of Trademark and Licensing.

10. Indemnification

SELLER shall indemnify and hold harmless PURCHASER from any and all claims, including claims of negligence, costs and expenses, including but not limited to attorneys' fees, arising from, caused by or related to the injury or death of any person (including but not limited to employees and agents of SELLER in the performance of their duties or otherwise), or damage to property (including property of PURCHASER or other persons), which arise out of or are incident to the goods and/or services to be provided hereunder. Nothing herein shall require indemnification as to any claims against PURCHASER arising from under the Ohio Workers' Compensation law, unless the claim arises out of services performed by SELLER'S employees on University property.

11. Warranty of Non Infringement

11.1 SELLER represents and warrants that all goods sold or services performed under this Purchase Order are: a) in compliance with applicable laws; b) do not infringe any patent, trademark, copyright or trade secret; and c) do not constitute unfair competition.

11.2 SELLER shall indemnify and hold harmless PURCHASER from and against any and all claims, including claims of negligence, costs and expense, including but not limited to attorneys' fees, which arise from any claim, suit or proceeding alleging that PURCHASER'S use of the goods and/or services provided under this Purchase Order are inconsistent with SELLER'S representations and warranties in section 11.1. SELLER'S defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.

11.3 If any claim which arises from SELLER'S breach of section 11.1 has occurred, or is likely to occur, SELLER may, at PURCHASER'S option, procure for PURCHASER the right to continue using the goods or services, or replace or modify the goods or services so that they become non infringing, (without any material degradation in performance, quality, functionality or additional cost to PURCHASER).

12. Non Discrimination

In fulfilling the terms of this Purchase Order, SELLER agrees that it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, sex, sexual orientation, handicap or Vietnam veteran era status. This covenant is required pursuant to federal laws and regulations, including Executive Order 11246, State of Ohio laws and regulations, and policy of PURCHASER. Any breach of this provision may be regarded by PURCHASER as a material and substantial breach of the contract arising from this Purchase Order.

13. No Findings for Recovery

SELLER warrants that it is not subject to an 'unresolved' finding for recovery under Ohio Revised Code Section 9.24. SELLER further agrees that if this warranty is deemed to be false, this Purchase Order shall be void ab initio as between the parties and the SELLER must immediately repay to the PURCHASER any funds paid under this Purchase Order, or an action for recovery may be immediately commenced by PURCHASER for the recovery of said funds.

14. Force Majeure

Neither PURCHASER nor SELLER shall be responsible for any delay or failure in performance resulting from any cause beyond their control, including, but without limitation to war, strikes, civil disturbances and acts of god. When SELLER has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of this purchase order, SELLER shall immediately give notice thereof, including all relevant information with respects to what steps SELLER is taking to complete delivery of the goods and/or services to PURCHASER.

15. Confidentiality

SELLER agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by PURCHASER, and will use such items only in the production of goods and/or services under this Purchase Order, or any other Purchase Orders issued by PURCHASER. Upon the completion or termination of this or other Purchase Orders, SELLER shall immediately return all confidential information to PURCHASER or shall make other disposition of the confidential information as directed by PURCHASER.

16. Assignment

SELLER may not assign this Purchase Order, nor any money due or to become due without the prior written consent of the PURCHASER. Any assignment made without such consent shall be deemed void.

17. Taxes

Goods and services procured subject to this Purchase Order are exempt from Ohio sales tax, (Ohio Revised Code Section 5739.02), and from federal excise tax.

18. Termination

This Purchase Order may be terminated at any time by the PURCHASER upon 30 days prior written notice to the SELLER. This Purchase Order may be terminated immediately by the PURCHASER for breach by SELLER of this Purchase Order, provided that PURCHASER has provided SELLER with notice of such breach and SELLER has failed to cure within 10 days of receipt of such notice.

19. General

19.1 This Purchase Order shall be governed by the laws of the State of Ohio, without reference to any choice of laws rules.

19.2 Failure of PURCHASER to act immediately in response to a breach of this Purchase Order by SELLER shall not constitute a waiver of breach. Waiver of PURCHASER by any default by SELLER hereunder shall not be deemed a waiver of any subsequent default by SELLER.

19.3 All notices under this Purchase Order shall be sent to the respective addresses on the face page by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. Postage, delivery and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this section.

Rev. 2/2004

