

Missouri Valley, Inc. Purchase Order Terms and Conditions

This Purchase Order is subject to the following terms and conditions:

1. As used herein, the term "Purchaser" means Missouri Valley, Inc. which issued and executed this purchase order; the term "Seller", or "Supplier" means the party to whom this purchase order is issued; the term "Owner" means the party for whom the Purchaser is performing the contract and for which this purchase order is issued; and the term "Merchandise" means the goods and/or services specifically described on the attached hereto, including the furnishing of any required or specified labor or services.
2. This form of purchase order, when properly executed by Purchaser and bearing its order number, is the only form Purchaser will recognize as authority for charging permanent project materials/services to its account. By accepting this order, or commencing performance or making any deliveries hereunder, Seller agrees to and shall be bound by all of the terms and conditions hereof. This purchase order constitutes the entire agreement between the parties relating to its subject matter, and shall not be modified except by written instrument executed by the parties hereto, or by written change order as hereinafter provided.
3. Purchaser may, by written change order make any changes, including additions, or omissions in quantities ordered, or in the specifications or drawings. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made. Purchaser may at any time by written change order cancel this purchase order as to all or any portion of the merchandise then not shipped, subject to an equitable adjustment between the parties as to any work or materials then in progress; provided that no such adjustment shall be made in favor of Seller with respect to any such merchandise which is Seller's standard stock. No such cancellation shall relieve Seller of any of its obligations as to any merchandise delivered hereunder. Any claim for adjustment hereunder must be asserted in writing within ten (10) days from the date when the change or cancellation is ordered.
4. Seller shall send a shipping notice to Purchaser at the time of shipment, each time any merchandise is shipped, giving Purchaser's number, a description of merchandise shipped, Seller's name and route by which shipment is made. Seller's bills of lading shall contain commodity descriptions which will produce lowest lawful freight charges and Seller shall reimburse Purchaser for any additional freight charges due to use of improper commodity descriptions.
5. If any merchandise delivered to Purchaser by Seller hereunder fails, at any time within one year after delivery or within such longer period as Purchaser of this purchase order, or of the Purchaser's contract with Owner, or is not of the quality specified or warranted herein, then Purchaser, in addition to any other legal remedy available to it hereunder or by law, at its sole option may (1) return such merchandise to Seller whereupon Seller shall repay to Purchaser all amounts paid by Purchaser to Seller on account of the purchase price thereof, together with all costs incurred by Purchaser in connection with the inspection, transportation, handling and return thereof; or (2) may demand that Seller replace at no additional expense or cost to Purchaser any such merchandise with merchandise which meets the requirements of this purchase order and Seller shall thereupon comply with such demand and shall indemnify Purchaser for any damages resulting therefrom; or (3) may procure merchandise elsewhere similar to that which should have been shipped hereunder, and Seller shall be liable to Purchaser for all costs and expenses incurred thereby in excess of the prices specified herein for such merchandise.
6. Seller warrants: (a) That it has a good marketable title to all merchandise sold hereunder, that the same is free and clear of all liens, charges or encumbrances whatsoever, that Purchaser shall have and enjoy quiet possession thereof against any claims to said merchandise existing at the time of such sale and Seller agrees to hold Purchaser free and harmless from and against any and all such claims; and (b) That the merchandise to be furnished thereunder will correspond to the description given on the face of this order, and will conform to the specifications, drawings or samples furnished by Purchaser; and if sale of merchandise hereunder is made by sample and Purchaser has not had a reasonable opportunity to compare the bulk with the sample, that said merchandise will be free from defects not apparent on reasonable examination of the sample, and (c) That the merchandise delivered hereunder will be of the quality specified herein, or if no quality is so specified, will be of the best and merchantable quality, free of defects in design, materials and workmanship, and will be fit and sufficient for the intended purpose thereof and will operate and function satisfactorily and reliably under all conditions.

The merchandise is ordered by Purchaser in reliance on each and all warranties specified herein and on all warranties implied by law, usage or custom, unless otherwise expressly stated herein.

7. Seller agrees that the merchandise covered by this purchase order does not infringe upon any United States patent, trademark or copyright and that Seller will, at its own expense, defend against and hold Purchaser and its successor in interest to the merchandise harmless from any claim, demand, damages or liability asserted against Purchaser or such successor on account of any claimed infringement, together with all costs in connection therewith (including attorney's fees).

8. In the performance of this purchase order, Seller shall strictly comply with all applicable laws, ordinances, rules and restrictions (whether federal, state or local) and, upon request by Purchaser, Seller shall furnish it with such evidence of compliance therewith as Purchaser may require at any time. Without limiting the generality of the foregoing, Seller shall strictly comply with all such laws, ordinances, rules and regulations relating to rates of wages, hours of labor and other pertinent matters which may be binding upon Purchaser in connection with any work or contract for or in connection with which the merchandise to be furnished by the Seller hereunder is intended to be used. Seller warrants that, to the extent that the same are applicable, it will strictly comply with all such laws, ordinances, rules and regulations relating to the eligibility of the merchandise for use on public contracts.

9. The price or prices of the merchandise to be furnished hereunder shall, unless otherwise provided, include also all federal, state and local taxes applicable hereto. State and local sales taxes shall be stated separately on all invoices.

10. This Purchase Order, or any moneys payable hereunder, shall not be assigned, transferred or sublet, in whole or in part, by Seller voluntarily, or by operation of law, without Purchaser's written consent thereto first had and obtained; and any such assignment, transfer or subletting without such consent by Purchaser shall be void.

11. Failure of Purchaser to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law, or the acceptance of or payment for any merchandise hereunder, or approval of design, shall not release Seller from any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any rights of Purchaser to insist upon strict performance hereof or any of its rights or remedies hereunder or by law as to any such merchandise, regardless when shipped, received or accepted, or as to any subsequent default hereunder.

12. Purchaser may terminate this purchase order in whole or in part at any time prior to delivery or shipment of the merchandise, or any part thereof, without incurring any liability or obligation to Seller and without waiving any other right or remedy hereunder or by law by reason of such termination, if Seller (a) Fails in any respect to use due diligence in proceeding with or delays in the performance of this purchase order, time being of the essence hereof; or (b) Fails to perform any of the covenants on its part to be performed hereunder, or to comply with any of the warranties specified herein; or (c) Shall have a receiver of its property appointed or shall become subject to any proceeding in bankruptcy, file a petition to take advantage of any involuntary statute, or become involved in any labor difficulty or dispute; or (d) Fails to pay when due any charge for labor, materials or services incurred in connection with the performance of this purchase order; or (e) Fails to deliver in whole or in part merchandise of the quality or quantity specified, or within the time specified.

In the event of any such termination, Purchaser may procure merchandise elsewhere similar to that which should have been shipped hereunder and Seller shall be liable for all costs and expenses incurred thereby in excess of the prices specified herein for such merchandise. Purchaser may withhold any moneys otherwise payable to Seller and apply the same to the payment of any sums which Seller may owe Purchaser.

13. Any notice hereunder may be served by certified or registered mail directed to the address of the party to whom notice is to be given, as shown on the face of this purchase order.

14. In the event this purchase order requires the performance of installation or other work by Seller upon any property or project of Purchaser or Owner the following conditions shall also be applicable:

- (a) Seller shall take all necessary precautions to protect all property and persons from damage or injury arising out of its work and shall observe and comply with all fire, safety and other regulations heretofore or hereafter prescribed by Purchaser or Owner and shall be responsible for the observance thereof by all subcontractors and all employees, agents or representatives of Seller and of any such subcontractors.
- (b) Seller will indemnify, defend and hold harmless Purchaser and Owner from and against any and all losses, damages, liabilities and claims of any kind which may arise out of or in connection with the performance of this purchase order, including but not limited to claims for damage to property and for injury to persons, including death.
- (c) Seller shall keep the promises and work free and clear of all mechanic's and other liens and claims and shall furnish Purchaser with such affidavits, waivers and releases with respect thereto as Purchaser may require.
- (d) The work shall remain at Seller's risk prior to written acceptance by Purchaser and Owner and until such acceptance Seller shall replace at its own expense all work damaged or destroyed by any cause whatsoever.
- (e) Seller shall observe and comply with, to the extent required by Purchaser, the wages, hours and working conditions established by Purchaser on the project or required of Purchaser by any applicable labor agreement. If required by Owner's contract, Certified Payroll Reports shall be furnished by Seller to Purchaser on a timely basis.
- (f) Seller shall act as an independent contractor and not as the agent or representative of Purchaser. All rights and remedies reserved to Owner under Purchaser's contract with Owner shall apply to and be possessed by Purchaser as well as Owner, in all dealings with Seller.
- (g) Seller shall perform its work in accordance with the schedule and work programs established by purchaser and shall fully cooperate with Purchaser 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 practice. In case of conflict, Purchaser may direct the necessary coordination.
- (h) 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.

15. SPARES AND REPLACEMENT PARTS: The Supplier shall submit a Recommended Spares and Replacement Parts List(s) if required by this Purchase Order. The list(s) shall provide the name and address of the original supplier of each spare and/or replacement part, the part's drawing and/or specification identity (including change or revision information), the appropriate technical and QA data, the part's estimated procurement lead time, and any quantity price breaks.

16. RIGHT OF ACCESS: Purchaser and its customer shall have the right of access at any reasonable time to examine all work or products supplied under this Purchase Order, all relevant documents, records, materials, equipment, tooling and goods in the possession or under the control of Seller relating to any of Seller's obligations under this Purchase Order or any other purchase order. Seller agrees to cooperate in any such audit request by the Purchaser. Right of access to any and all Supplier or lower-tier Supplier facilities or work locations shall be afforded to the authorized Purchaser representative at all reasonable times.

17. Where this Purchase Order applies to items purchased subject to **ASME NQA-1, Quality Assurance Requirements for Nuclear Facility Applications** or **DOE O 414.1D, Quality Assurance**, the following shall apply:

- (a) CONTROL OF NON-CONFORMING ITEMS - Supplier: Non-conformances identified by the Supplier shall be controlled to prevent the delivery of non-conforming items to Purchaser or its customer. Any non-conformance which is not corrected by the Supplier shall be reported to Purchaser on Purchaser provided form, prior to delivery to the final destination. Nonconforming items reported shall be segregated and removed from further work or processing pending disposition by Purchaser. NQA-1 Suppliers shall provide notification to Purchaser, if the Supplier becomes aware of a nonconforming safety related item that was previously delivered.
- (b) CONTROL OF NON-CONFORMING ITEMS - Purchaser: Non-conformances identified by the Purchaser shall be controlled to prevent the delivery of non-conforming items to Owner. Any non-conformance which is not corrected by the Supplier shall be recorded on Purchaser provided form, prior to delivery to the final destination. Nonconforming items reported shall be segregated and removed from further work or processing pending disposition. Purchaser shall provide notification to NQA-1 Suppliers, if the Purchaser becomes aware of a nonconforming safety related item that was previously delivered.
- (c) SUSPECT/ COUNTERFEIT ITEMS: Unless otherwise specified, components required by this Purchase Order shall be procured directly from the original manufacturer or an authorized OEM master distributor. Seller will endeavor to ensure items furnished under this purchase order are not suspect or counterfeit. Items delivered under this Purchase Order will be inspected by Purchaser for indications of suspect or counterfeit conditions per DOE O 414.1 D, Quality Assurance, and DOE G 414.1-3, Suspect/Counterfeit Items Guide for Use with 10 CFR 830, Subpart A, Quality Assurance Requirements. Detection by Purchaser of any suspect or counterfeit item leading to evidence of deliberate misrepresentation of any supplied item, may result in an investigation into the validity of certification, fraud, and/or forgery. Purchaser will use the following DOE website for guidance in its review and inspection: <http://energy.gov/ehss/policy-guidance-reports/databases/suspectcounterfeit-and-defective-items>.