

## TERMS OF PURCHASE

1. The order may be accepted only upon the terms and conditions set forth herein. Buyer's bid specifications and Seller's bid proposal, if any, are incorporated into this order by this reference. When accepted, this order and any such bid specifications and bid proposal constitute the complete and final agreement and understanding of the Buyer and Seller respecting the goods and services specified, notwithstanding anything to the contrary or different provisions contained in any other document submitted by Seller; provided, however, that in the event of any conflict, ambiguity, or inconsistency exists between any terms or conditions of this order, the bid specifications and/or the bid proposal, the interpretation resulting in the greater quality of goods or services shall govern and the Seller shall provide such greater quality of goods or services. Further, any term or condition contained in any bid proposal, estimate, confirmation, invoice, or other document submitted by Seller that is of lesser quality than, or otherwise is less than what is required by, any term or condition on the front of this order or specified in Buyer's bid specifications, shall not be or become a part of this order unless specifically expressly agreed to in a writing signed by Buyer and Seller. In addition, any such term or condition proposed by Seller is hereby objected to and any acceptance containing any such term or condition or any additional or different term or condition is hereby rejected and without force or effect. Any term or condition of this order that requires any continuing or ongoing obligation or performance of Seller beyond delivery of goods or services shall survive and continue after delivery.
2. It is understood that time is of essence under this order. Buyer, in addition to other rights and remedies it may have, shall have the option to, by written notice, terminate this order in whole or in part if Seller fails to make delivery of the goods or services by or within the time specified herein (or any extension thereof by written amendment to this purchase?). Seller shall make no partial deliveries hereunder unless Buyer shall consent thereto in writing.
3. All shipments are to be made F.O.B. destination, freight prepaid by Seller at its sole cost and expense, to the receiving point at Northeast Community College, Norfolk, Nebraska, unless otherwise indicated on the front of the purchase order. Seller shall have title and risk of loss until goods and services are delivered by Seller and inspected and accepted by Buyer. Payment shall be made no later than 45 days after the date of delivery, which payment shall be contingent on Seller providing such documentation or other information as Buyer deems necessary or appropriate. The purchase price shall be the full and final consideration for all goods and services delivered hereunder, and Buyer shall not be liable for any additional charges or amounts. Delivery shall occur when all manufacture, assembly, training, and testing have been completed in accordance with the bid specifications, title and possession are given, without any shortage, defect, or nonconformance, to the satisfaction of Buyer, and Buyer accepts the same. Buyer shall have the option to accept delivery, notwithstanding any shortage, defect, or

nonconformance, to the satisfaction of Buyer, and to offset an appropriate amount against the purchase price for Seller to correct the same.

4. All goods and services purchased hereunder shall be subject to inspection by the Buyer at all times and places, including, but not limited to, the periods of manufacture. Notwithstanding any prior or partial inspection or payments hereunder, items shall also be subject to final inspection prior to acceptance by Buyer. No inspection or test shall relieve the Seller from responsibility for defects or other failure to meet the requirements of this purchase order unless otherwise agreed to in writing and signed by Buyer.
5. (A) Seller warrants that all goods and services delivered hereunder shall be of new, good quality, and in good and working condition, free from any defects in workmanship, material, design, or manufacture, and shall comply with the requirements of this purchase order, including all drawings and specifications incorporated herein and all samples furnished by the Seller. Seller further warrants that all items purchased hereunder shall be of merchantable quality and shall be fit and suitable for the intended purpose(s). The foregoing warranties are conditions to this purchase order and are in addition to all other warranties expressed or implied, and shall survive any delivery, inspection, acceptance, or payment by the Buyer.  
  
(B) Seller further warrants that normal warranties of manufacturers shall fully apply to all materials and equipment and shall inure to and be enforceable by the Buyer, which warranties shall be cumulative to, and not in lieu of, any separate warranty or guarantee provided hereunder or in the bid proposal, or required by the bid specifications. If any warranties specified herein or otherwise applicable are breached by the Seller, Buyer may at its election: (1) require the Seller to correct the breach, defect, or nonconformance at Seller's sole expense by repair or replacement; or (2) return any defective or nonconforming goods to the Seller at the Seller's expense and recover from the Seller the price thereof. The foregoing remedies are in addition to all other remedies at law or equity or as contained in this purchase order and shall not be deemed to be exclusive. In the event of any discrepancy, ambiguity, inconsistency, or conflict in or among any warranty terms herein or in any bid specifications or any bid proposal, the interpretation that results in the greater warranty protection to the Buyer shall prevail, and Seller shall provide such greater warranty protection.
6. The failure of the Buyer to enforce any of the provisions of this purchase order at any time shall in no way be construed as a waiver of such provisions; and shall not in any way affect the right of the Buyer thereafter to enforce each and every provision of this purchase order.
7. Buyer may, by written notice to Seller, terminate this order in whole or in part if the Seller fails to perform any of the provisions of this purchase order or so fails to make progress so as to endanger the performance in accordance with its terms. In the event

of termination pursuant to this provision, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods and services similar or substantially similar to those so terminated; and the Seller shall be liable to Buyer for any excess costs incurred by Buyer thereby; provided, however, that the Seller shall continue the performance of this purchase order to the extent not terminated. The rights and remedies of the Buyer under this paragraph shall not be exclusive and are in addition to any other rights or remedies provided by law or equity or provided in this purchase order.

8. If litigation arises out of or under this purchase order, the Seller agrees to submit to the jurisdiction of the State of Nebraska, and agrees that the Laws of Nebraska shall control this purchase order.
9. Seller guarantees that the design and production of goods and/or services purchased hereunder conform to NFPA, UL, ANSI, OSHA, and any other applicable safety standards in effect at the time of shipment.
10. Seller shall indemnify and save Buyer harmless from and against any and all loss, damage, or expense whatsoever (including attorneys fees and court costs) arising out of claims of (i) infringement of patent or copyright or misappropriation of trade secrets; (ii) defective design, workmanship or material of any good or service hereunder; or (iii) Seller's violation of any federal, state, or local law, rule or regulation related to the design, manufacture, delivery, or sale of any such good or service. In addition to, and not in limitation of, the foregoing, Seller shall maintain insurance in an amount equal to the maximum potential liability of Buyer under the Nebraska Political Subdivisions Tort Claims Act, as the same may be from time to time amended. Said insurance shall be maintained in continuous effect for the maximum periods of limitations and repose for instituting suit in Nebraska under any products liability or tort law, and Buyer shall be an additional named insured on any such policy. Buyer reserves the right to ask Seller to provide Buyer with a Certificate of Insurance showing the coverages set forth above prior to Seller's delivery to Buyer of any of the goods or services provided under the purchase order. Seller further agrees to notify Buyer of any changes in coverage or insurance carriers during the period that Seller is required to maintain continuous insurance coverage hereunder.
11. Seller represents and agrees that (i) it is complying with, and will continue to comply with, fair labor standards in its business and performance of this purchase order; (ii) it will not discriminate against any employee or applicant for employment to be employed in performance of this order, on the basis of race, color, religion, sex, disability, or national origin; (iii) it is an Equal Opportunity Employer in accordance with Executive Order 11246, including Part II, Subpart B, Section 6 thereof, as the same may be amended and in effect from time to time; (iv) it will comply with Section 503 of the Rehabilitation Act of 1973, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, and implementing regulations in 41 CFR section 60-1 through 60-

741, as the same may be amended and in effect from time to time; (v) incorporate into each contract and purchase order a clause that is within the scope of following regulations: Equal Opportunity contained in 41 CFR section 60-1.4; Employment of the Handicapped contained in 41 CFR 60-741.4; and Vietnam Era Veterans Readjustment Assistance, 41 CFR Part 60-250,3; and (vi) comply with all other applicable federal, state and local laws, rules, orders and regulations. The foregoing requirements shall apply to, and a similar provision will be incorporated into, any agreement with any subcontractor resulting from this purchase order.