

Wilkes University Terms and Conditions

1. **CONTRACT.** The parties hereto agree that this order and the acknowledgement thereof shall be a contract made in the State of Pennsylvania and governed under its laws. Upon acknowledgement of this order by Seller, or when the Seller enters into performance thereof, this purchase order including the pertinent drawings and specifications, if any, shall constitute the entire agreement between the parties hereto, and shall supercede all prior offers, negotiations and agreements relating to the subject matters hereof. No "customs or usages" of any trade or business shall apply.
2. **PRICES.** Seller agrees and/or represents that the prices of the items covered by this order are not in excess of Seller's lowest prices in effect at the date of shipment for comparable items.
3. **CHANGES.** Buyer shall have the right from time to time by written revision to make changes in drawings, specifications, instructions in connection with the work, place of delivery, time or method of shipment, or require additional work or to direct the omission of work, and the Seller agrees to comply with such revisions. If such changes cause any increase or decrease in the Seller's cost or in the time of performance of this purchase order, equitable adjustments in the price and time for performance will be made and this purchase order will be modified in writing accordingly; provided that any claim for increase in price or time shall be asserted by Seller within thirty days after the change is ordered. No change whatsoever is to be made except upon written revision issued by the Buyer.
4. **DEFAULT.** Buyer reserves the right to cancel all or any part of the undelivered portion under this and any other purchase order between the Buyer and the Seller if the Seller does not make delivery as specified or if the Seller breaches any of the terms hereof or in the event of the insolvency of the Seller. Filing by or against the Seller any petition in bankruptcy, appointment of a receiver or trustee for the Seller, execution by the Seller of an assignment for the benefit of creditors, or discontinuance of business by the Seller. Such cancellation shall not constitute a waiver of any of the Buyer's rights for damages arising from such default.
5. **WARRANTY-INSPECTION.** Seller warrants the merchantability and fitness of the goods furnished hereunder and that they shall be in accordance with the requirements of this order and shall be free from all defects in design, workmanship, and materials. Seller agrees that this warranty shall survive the acceptance of and payment for such goods. All materials shall be in accordance with the latest revision of the specifications appearing in this order and may be subject to inspection at Buyer's plant or at source by Buyer's or customer's representative, who shall be entitled to access to the extent practicable at any and all times during manufacturing and any and all places where such manufacturing is carried on. Seller will provide without additional charge all reasonable facilities and assistance for any inspection or tests made on its premises. Inspection of the material furnished does not relieve the Seller from its responsibility hereunder for any inferior material furnished or workmanship done or defects which become manifest in service. Any rights, under the warranties or undertakings set forth in this purchase order shall extend without exception to any company upon whose behalf this order is issued by the Buyer as the interest of such company shall appear.
6. **DEFECTIVE WORK.** If the materials supplied by the Seller or work performed by it is found to be defective, Buyer shall notify Seller and Buyer shall have the right to require the prompt correction thereof by the Seller at Seller's expense and risk, or, Buyer may return the same at Seller's expense. Seller shall bear all risk after notice of rejection and will if requested in writing by Buyer to so do promptly replace the entire item or such work or the part or parts thereof which are defective at Seller's expense, or, if Seller fails to replace promptly. Buyer may make replacements and charge to Seller the excess cost occasioned thereby.
7. **DELAYS.** Delays in delivery beyond the time specified in this purchase order due to causes beyond the control and without fault or negligence of Seller may be excused in writing by Buyer if Seller notifies Buyer in writing of the cause of such delay within reasonable time after such delay commenced and the Buyer may request deferment of delivery in writing because of conditions beyond its control.
8. **SHIPMENTS.** Seller agrees to carefully observe the shipping instructions contained on this order; and, unless otherwise specifically stated, ship the most economical way. No charges shall be allowed for boxing, packing, or carriage unless authorized by the Buyer. On the date of shipment the Seller shall mail the bill of lading and invoices showing order numbers for each shipment, F.O.B. point cash discount terms, purchase order number, and item numbers must be shown on all invoices. A complete packing list must be sent with each shipment. Charges for prepaid transportation must be substantiated by attaching to the invoice original transportation bills received by the carrier. C.O.D. shipments will not be accepted except by express agreement to the effect. No drafts will be honored. Buyer reserves the right to return or reject overages at Seller's expense.
9. **TAXES.** The Buyer is a not-for-profit, tax-exempt organization and is not required to pay taxes on many of its transactions. However, when buying certain items, taxes must be paid. Therefore, this purchase order shall not impose on the Buyer any liability for payment or reimbursement of any tax or taxes now or hereafter imposed by Federal, State, municipal or other governmental authority, including political subdivisions of the foregoing, upon the transactions herein, unless the Seller in its acceptance of the purchase order and price quotation expressly specifies the nature and amount of the tax to be added thereto and such additional amount is further agreed to by the Buyer.
10. **NON-WAIVER.** Any failure on Buyer's part to insist upon the strict performance of any term or condition of this purchase order shall not be deemed a waiver of any of the Buyer's rights or remedies hereunder nor of its right to insist upon the strict performance of the same or of any other term of this purchase order in the future. No waiver of any condition of this purchase order shall be valid unless in writing, signed by Buyer.
11. **TERMINATION.** The Buyer may at its option terminate performance of the work under this order in whole at any time or from time to time in part by written notice to the Seller. Such termination shall be effective in the manner and upon the date specified in said notice. Upon receipt of such notice the Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with the performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this contract. Upon the termination or work under this order, full and complete settlement of all claims of the Seller with respect to the terminated work shall be made.
12. **BUYER'S EQUIPMENT.** All dies, tools, patterns, drawings, fixtures, etc., furnished or specifically paid for by the Buyer are to become the property of the Buyer and are subject to removal upon the Buyer's request. The Seller is not permitted to use the same directly or indirectly for its own or for the use of any of its customers without Buyer's written approval.
13. **COMPLIANCE WITH LAWS.** By acceptance of this order, the Seller warrants and certifies that goods covered by this order are produced or will be produced in compliance with all applicable State, Federal, and local laws, rules and regulations, including but with limitation all applicable requirements of Sections 6, 7, 12, and 14 of the Fair Labor Standards Act, as amended and agrees to place the following on invoices sent to the Buyer.

"We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of the regulations and orders of the United States Department of Labor issue under Section 14 thereof."

The Seller further warrants and certifies that if this order is for supplies or services required under a U.S. government contract, all applicable governmental regulations and/or public laws are incorporated herein. Seller shall assist Buyer in compliance therewith, and Seller agrees to be bound by any governmental regulations that the Buyer is bound by.
14. **FOR WORK ON BUYER'S OR BUYER'S CUSTOMERS PREMISES.** If Seller's work under the order involves operations by Seller on the premises of the Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to Buyer's or its customer's negligence, as the case may be, shall indemnify Buyer's against all loss which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors, and the Sellers shall maintain and furnish proof of such public liability, property damage, and employee's liability and compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workmen's Compensation and Occupational Disease Act.
15. **PATENT IDENTIFICATION.** Seller agrees to indemnify and save harmless Buyer, its successors, assigns, customers and users of the items manufactured and supplied under this purchase order from any and all loss, damage, liability, claims demands and suits of law or in equity for acts or alleged infringement of any patent, trademark or copyright rights arising from the purchase, use or sale of items covered by this purchase order as well as to pay all royalty and license fees required for the continued use and/or sale of said items, except insofar as the order calls for items to be manufactured and supplied in accordance with Buyer's drawings and specifications.
16. **TEST DATA.** If samples are required by the specifications, payments to Seller shall be withheld until receipt of such samples are specified in acceptable form.
17. The vendor agrees that in the completion of this order, there will be no discrimination against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin. The firm shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to religion, sex, handicap, or national origin. Such action shall include, but not be limited to, the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity Clause.