

Berkshire Corporation's Purchase Order Terms and Conditions

1. This number must appear on all correspondence, invoice, packing slips, shipping documents, and package. Shipping notices and/or invoices in DUPLICATE together with carriers receipt, should be mailed TO PURCHASING DEPT. on date shipment is made.
Terms, prices, and quantities as stated on this order are firm and may not be changed without prior approval in writing from purchaser. If not stated on order, terms and price must be shown on acknowledgment copy before shipment is made.
Purchaser reserves the right to cancel this order without any obligation to it if shipment is not made on date shown on order or acknowledgment and to reject or return for full credit any materials delivered which are not according to specifications.
2. Without prejudice to any other remedy which buyer may have, Seller shall be responsible for, and bear the expense of any necessary correction due to faulty workmanship or materials, or due to faulty design, unless such design was supplied or approved in writing by Buyer.
3. If this order involves the performance of labor or other services by Seller on the premises of Buyer, Seller agrees to pay and discharge all claims and demands asserted against Seller by any employee of Seller for loss of life or personal injury arising out of or resulting from the performance of such labor or services. Seller shall also be liable for loss of life or personal injury to others and property damage when such is due to Seller's negligence. Seller agrees that it will furnish, upon the written request of Buyer, certificates showing the following types of coverage in amounts and by insurance carriers acceptable to Buyer, to be in effect at the commencement of such labor or services workmen's compensation, public liability, property damage, automobile, pressure vessel, and such other special coverage's as conditions may require.
4. ACCEPTANCE. This order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by seller are objected to and hereby rejected unless specifically accepted in writing by Buyer. Acceptance of this order shall be by receipt by buyer of a signed acknowledgment or by seller's commencing performance.
5. PRICE. Purchase prices shall be as stated on the face of this purchase order, and shall not be subject to escalation without buyer's written consent. Notwithstanding the above seller agrees that purchase prices charged shall not be less favorable than those extended to any other customer for the same or like articles in equal or lesser quantities, and that if prices for such articles are reduced prior to delivery, prices hereunder shall be reduced correspondingly. Purchase prices are inclusive of all extra charges, including charges for packing, containers, insurance and transportation, except as otherwise specifically provided on the face of this order. All taxes based upon and measured by sale use or manufacture shall be shown separately on seller's invoice.
6. CHANGES. Buyer shall have the right to make from time to time, changes as to packing, testing, destination, specifications, designs, quantity and delivery schedule. Seller shall promptly notify buyer when such changes affect price or terms and shall request written authorization modifying the order accordingly. Claims for adjustments under this clause must be asserted in writing within 30 days from the date of receipt of notification of the change(s).
7. PAYMENT AND DISCOUNTS. Payment for goods and/or services covered by this order will be made in U.S. dollars. All payment periods and cash discount periods will be computed either from date of delivery of the goods ordered, or date of receipt of correct and proper invoices prepared in accordance with the terms of buyer's order whichever date is later. For purposes of determining whether payment has been made on time or whether the discount has earned, payment is deemed to be made on the date of postmark of buyer's check. Upon reasonable notification to seller buyer may withhold and deduct from any part of the price due under this order all or any part of the damages, including consequential damages resulting from any breach of terms and conditions contained herein or any other amount which seller owes buyer or any of buyer's associated companies arising out of or related to the transaction which is the subject of this order or which is otherwise due from seller to buyer.
8. TIME OF DELIVERY. Time of delivery as stated in this order is of the essence. If seller for any reason does not meet the time of delivery as to all goods ordered, buyer may at its option either approve the revised delivery schedule, reduce the total quantity covered by this order by the amount of omitted shipments reducing the price pro rata, or terminate the order without liability for any such revision, reduction or termination. Deliveries made in advance of the designated schedule are prohibited without buyer's prior written consent.
9. SHIPPING. Except as otherwise expressly provided herein title to and risk of loss on all items shipped by seller to buyer shall pass to buyer upon buyer's inspection and acceptance of such items at buyer's plant. An itemized packing slip referencing this order number must be enclosed with each shipment. Failure to provide packing slips may result in excusable delay in processing seller's invoices. Buyer's count shall be accepted as conclusive on all shipments not accompanied by a packing slip.
10. INSPECTION. Buyer reserves the right to inspect and test goods ordered at any time or place, including the period of manufacture, and to make final inspection and acceptance at buyer's plant, notwithstanding any prior inspections or payments. Payments made to receive cash discounts do not negate buyer's right to final inspection and rejection.
11. QUANTITY. Buyer shall have the option to accept or reject any shipments made in excess of or less than the quantity designated in this order.
12. WARRANTIES, REMEDIES FOR BREACH. In addition to any warranty implied by fact or law, seller expressly warrants all items to be free from defect in design, workmanship, and materials to confirm strictly to applicable specifications, drawings, and approved samples, if any, to be fit and sufficient for the purpose intended and to be merchantable. Such warranties together with all service warranties of seller shall run to buyer, its successors, assigns, and customers. All warranties shall survive inspections, test, acceptance of and payment by buyer. In the event of breach of warranty, buyer may at its option, without waiving its right to damages, either return for credit or require prompt correction or replacement of the defective nonconforming goods on terms satisfactory to buyer. All returns hereunder shall be at seller's expense.
13. INDEMNIFICATION FOR LIABILITY. Seller will indemnify and hold the buyer harmless from any liability, without limitation, for damages or injuries to any person or property by virtue of the goods being defective in workmanship or quality or for any breach of warranty.
14. FORCE MAJEURE. Buyer reserves the right to cancel or reject the whole or any part of the goods covered by this order in case of labor troubles, accidents, fires, invasion, riots, civil commotion, war, acts of God, government regulations or restrictions or any other causes beyond Buyer's reasonable control.
15. CANCELLATION. This order or any contract made pursuant hereto may be canceled by the buyer at his option.
 - A. without liability of any kind and without waiving any other rights or remedies, including any right to damages, which buyer may have at law or in equity upon the occurrence of any one of the following events (1) the seller's insolvency; (2) the filing of a voluntary or involuntary petition of bankruptcy by or against the seller; (3) the appointment of a receiver for the seller; (4) an assignment by the seller for the benefit of creditors; (5) if in the buyer's judgment, the seller will be unable to perform;
 - B. at any time, but in absence of an event described in A supra, or default buyer shall pay seller its reasonable costs incurred in processing the order to the date of termination.
16. WORK ON BUYER'S PREMISES. When work under this purchase order is performed on buyer's premises, seller agrees to indemnify and protect the buyer against all liability for injury or damages to any person or property damage insurance coverage acceptable to buyer.
17. DRAWINGS AND MATERIAL. All information and materials including, but not limited to, drawings, artwork, data or the like furnished by buyer shall be used by seller only for work being done for the buyer and shall be held in strict confidence. All materials, equipment, and other supplies furnished by the buyer on consignment for processing, repairs or other reasons, shall remain the property of the buyer. Seller shall return all such items to buyer at the conclusion of the work in good condition or otherwise dispose thereof on buyer's instructions at his expense.
18. COMPLIANCE WITH LAWS. Seller agrees to comply with, and represents and warrants that it has complied with, all applicable laws, regulation, and ordinances of the United States, all states, and all other governmental bodies, authorities and agencies in the manufacture and shipping of these goods. In addition, seller specifically represents, warrants, and certifies to the following: a. that all 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 regulations and orders of the United States Department of Labor issued under Section 14.b. that for food, drugs devices or cosmetics, it has complied with and will comply with Section 303(c) of the Federal Food, Drug, and Cosmetic Act, that no commodity or article listed on this order, which falls within the scope of said Act or its regulations is adulterated or misbranded within the meaning thereof or is an article or commodity which may not under the provisions of Section 404 or 505 of said Act be introduced into interstate commerce. c. that he has complied with the non-discrimination clauses contained in Section 202 of Executive Order 11246 and Title VII of the Civil Rights Act of 1964 relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin and implementing rules and regulations, which herein are incorporated. d. that all work performed and the equipment and any other property delivered hereunder shall comply with the applicable occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970, and regulations adopted there under. e. that all provisions of the Walsh-Healey Public Contracts Act have been complied with. Seller will indemnify the buyer and its customers and hold them harmless for damages sustained by them as a result of any breach of this paragraph.
19. PATENT INDEMNITY. Seller warrants that the goods sold hereunder, and the use of such goods by buyer or its customers do not infringe any industrial property rights. Seller agrees to indemnify and hold buyer and its customers harmless from any liability for such infringement, including damages, costs, expenses, and lost profits arising from any suit against buyer or its customers alleging such infringement, provided buyer or its customers gives seller notice in writing.
20. ASSIGNMENT. Seller shall not assign under any circumstances, in whole or in part to any person, government agency, partnership, firm or corporation, its rights under this order or any contract entered into based hereon, without first obtaining written permission of buyer. Any such assignment without the written consent of buyer shall, at buyer's option be void.
21. WAIVER. The buyer's exercise of any option or his failure to exercise any rights hereunder shall not constitute a waiver of its rights to damages for breach of contract and shall not constitute a waiver of any subsequent failure, delay, or breach by the seller.
22. CONFIDENTIALITY. This offer and any resulting contract and all of its terms shall be held in strict confidence by the parties.
23. INDEMNITY AND INSURANCE. In consideration of this Order and in the event that all or any portion of the work covered by this Order will be performed on Purchaser's Premises, Seller agrees as a condition hereof:
 - a) To indemnify, save harmless and defend Purchaser from and against any and all loss to Purchaser's property, both real and personal arising or growing out of or in connection with the performance of this Agreement and from and against any and all claims, demands or suits of whatsoever nature, and any expense incidental thereto, which may be made, claimed, or brought by Seller, its employees, or agents, or by any other person including claims by the employees of Purchaser for Workmen's Compensation on account of property damage, personal injury, or death sustained or suffered by any person arising or growing out of or in connection with the performance of this Order, or any act or omission in connection therewith, unless caused by the sole negligence of Purchaser.
 - b) To provide, and maintain the kinds and minimum amounts of insurance prescribed by Purchaser's "Seller's or Contractor's Insurance Certificate" attached hereto and made part hereof as Attachment I, including the insuring of the indemnity set forth in subparagraph (a) hereinabove. The Seller shall not be permitted to perform any work under this Order on Purchaser's premises until and unless three (3) properly completed and executed copies of said "Seller's or Contractor's Insurance Certificate" have been delivered to Purchaser's Purchasing Department, and written authorization to commence work has been given to the Seller by the Purchaser's Purchasing Department.
 - c) That no lien or claim of any kind whatever shall be filed by Seller or subcontractor of Seller, or by any other person, firm or corporation against Purchaser's property for any work performed or for any material furnished, in connection with the performance of this Order, and Seller agrees that if any lien arising out of the performance of this Order remains unsatisfied after all payments are made. Seller shall refund to Purchaser all monies that the Purchaser may be compelled to pay in discharging such lien, including all costs and a reasonable attorney's fee. Seller further agrees at Purchaser's request to execute a no-lien contact in the form prescribed by applicable state law for filing and recording, and to deliver to Purchaser property executed waivers of all mechanics, and/or material men's liens from each of Seller's subcontractors and material suppliers.
24. WAGES AND HOURS. In accepting this Order, Seller agrees that in the manufacture of the goods and/or in the performance of the services ordered, Seller has complied, or will comply with the Fair Labor Standards Act of 1938 as amended and Seller agrees to so certify on all its invoices.
25. GOVERNING LAW. This Order and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the State of Massachusetts II.