

PURCHASE ORDER TERMS AND CONDITIONS

TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER TRANSACTIONS FOR PRODUCTS, MATERIALS AND/OR SERVICES INTENDED FOR USE BY THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS. THESE TERMS AND CONDITIONS SHALL APPLY TO ALL TRANSACTIONS BETWEEN THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS AND SUPPLIERS OR PROVIDERS EXCEPT WHEN SUPERCEDED BY SEPARATE WRITTEN AGREEMENTS BETWEEN THE PARTIES.

Purchase Order Terms & Conditions

1. ACCEPTANCE, ENTIRE AGREEMENT AND MODIFICATION.

(a) By acceptance of the order, Supplier agrees to the terms and conditions contained herein and incorporated herein by reference, said terms and conditions shall constitute the entire agreement between the parties; provided, however, any Master Agreement shall also apply if executed by authorized representatives of the parties. If there is any conflict between these terms and conditions and said Master Agreement, the Master Agreement shall control. **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** rejects any additional and inconsistent terms and conditions offered by Supplier at any time and irrespective of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** acceptance of or payment for Supplier's items or services, unless **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** explicitly agrees to any such additional terms or changes in terms in advance, in writing. This agreement shall be deemed accepted and agreed to by Supplier upon the commencement of performance by Supplier. These terms and conditions, in concert with any pertinent Master Agreement, constitute the entire agreement between the parties and no change to or modification of this order shall be binding upon **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** unless signed by an authorized representative at **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** purchasing office.

(b) Notwithstanding the above, the Parties acknowledge and agree that in the interest of time certain matters of a practicable business nature, such as material and product releases, minor changes in delivery dates, shipment instructions, or other such minor or generally immaterial variances in orders and the like may be agreed to by the parties via electronic data interchange, e-mail, telefax or telephonic communication. The Parties agree that such communications, or any deliveries thereunder, are subject to these terms and conditions.

(c) Time is of the essence.

2. PRICES, TAXES, CASH DISCOUNTS AND NEW MATERIAL. Unless otherwise provided on the face of this order, the prices appearing herein do not include any Sales taxes but does include all costs associated with handling, packaging, and or crating.

Cash discount periods will be computed from the later of (i) the date of delivery and acceptance of the items ordered or (ii) the date of receipt of correct and proper invoices prepared in accordance with the terms of this order.

Supplier further warrants (unless otherwise explicitly agreed to in writing) that none of the items furnished under this order are government or commercial surplus, used, remanufactured or reconditioned or of such age or otherwise may be so deteriorated as to impair the usefulness or safety thereof.

3. MATERIAL, EQUIPMENT, TOOLING, SERVICE AND FACILITIES. Unless otherwise stated in this order, Supplier shall supply all material, equipment, tools, services, tooling, and facilities required to perform this order.

4. DRAWINGS AND DATA. All drawings, data, designs, engineering instructions, specifications or other technical information, written, oral or otherwise, supplied by or on behalf of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** in connection with performance of this order (hereinafter "Information") shall be and remain the property of **THE TOWN OF WESTERLY/WESTERLY PUBLIC**

SCHOOLS. Supplier shall not use or disclose such Information except in the performance of orders for **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** and, upon **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS'** request, such Information and all copies thereof shall immediately be returned to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS.**

5. CHANGES. **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** may at any time by a written order, make changes in any one or more of the following:

- (i) drawings, designs or specifications where the items to be furnished are to be specifically manufactured for the **TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** in accordance herewith,
- (ii) method of shipment or packing,
- (iii) place or time of inspection, delivery or acceptance, and
- (iv) the amount of any **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** furnished property.

If any such change causes an increase or decrease in the cost of or time required for the performance of this order, an equitable adjustment shall be made in the price or delivery schedule or both. No claim by Supplier for adjustment hereunder shall be allowed unless in writing (setting forth the proposed adjustment amount) and received by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** within twenty (20) days from the date notice of any such change is received by Supplier. Where the cost of property rendered obsolete or excess as the result of a change is included in Supplier's claim for adjustment, **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** shall have the right to take title hereto and to prescribe the manner of disposition thereof. Nothing in this clause shall excuse Supplier from proceeding with performance of this order as changed.

6. DELIVERIES, SHIPMENTS AND PACKING SLIPS. Time is of the essence in making deliveries under this order. Supplier shall, at its expense, ship by express or air shipment or by the most expeditious way if the delivery schedule is endangered. Unless otherwise specified on the face of this order, no variation in the quantity is authorized for shipment. Any quantity overage shall, at **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS'** option, be accepted by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** at no additional charge for such overage unless otherwise agreed in the order or returned to Supplier at Supplier's expense.

Supplier shall be responsible for costs or damages incurred by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** arising directly or indirectly from improper packaging. Items shipped in advance of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS'** delivery schedule may be returned at Supplier's expense. Each shipment and delivery shall be accompanied by an itemized packing slip bearing the **TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS'** purchase order number. In addition, the exterior of each shipping container or package will be clearly marked with **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS'** purchase order number.

7. INSPECTION AND QUALITY CONTROL. Notwithstanding (i) payment, (ii) passage of title or (iii) prior inspection or test, all items (including labor for all service) are subject to final inspection and acceptance or rejection at destination stated herein. All such inspections and testing shall be conducted in such a manner as not to unduly delay the work. Supplier shall provide and maintain commercially reasonable quality control and inspection systems acceptable to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS.**

8. WARRANTY. Supplier warrants labor for all services for 90 days after the work is performed. Unless otherwise stated in this order, Supplier warrants to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** that all items furnished (including all replacement items and all replacement or corrected components which Supplier furnishes pursuant to this warranty) that are manufactured by Supplier or that bears Supplier's name will be free from defects in materials and workmanship for a period which is the greater of the following: (a) twelve (12) months from the date of delivery to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS,** (b) the period specified on this order, or (c) Supplier's standard warranty period; will conform to applicable drawings, specifications, samples and other descriptions furnished or specified by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS;** and to the extent such items are not of a detailed design furnished by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS,** will be merchantable and suitable for the intended purposes and free from all other defects, including defects in design.

In the event Supplier is required to replace or correct any component of any item pursuant to a breach of the foregoing warranty, the running of the warranty period for the term of which the defective component is a part shall be suspended from the date Supplier receives notice of the breach of warranty until the date the component is replaced or corrected. For any item provided hereunder that is neither manufactured by nor bears Supplier's name, Supplier represents and warrants that such item carries a manufacturer's warranty and such warranty shall pass through to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** upon purchase of the item. **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** approval of Supplier's samples or first articles shall not be construed as a waiver by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** of any requirement of the drawings, specifications and/or other referenced descriptions applicable hereto or of any express or implied warranty.

9. DEFECTIVE OR NONCONFORMING ITEMS/BREACH OF WARRANTY. In the event of Supplier's delivery of defective or nonconforming items (including labor related to services) or Supplier's breach of warranty, in addition to any other rights or remedies it may have at law or equity or under this order, **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** may:

- (i), recover from Supplier any costs of removing such items from property, equipment, or products in which such items have been incorporated,
- (ii) recover any additional costs of reinstallation, re-inspection and retesting,
- (iii) return the items at Supplier's risk and expense and recover from Supplier the price paid therefore,
- (iv) purchase or manufacture similar items and recover from Supplier the costs and expenses thereof,
- (v) accept or retain the items and equitably reduce their price, and/or
- (vi) require Supplier, at Supplier's expense, to promptly replace or correct the items.

If Supplier fails to promptly replace or correct such items as directed by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**, **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** may repair them or have them repaired at Supplier's expense or purchase or manufacture similar items and recover from Supplier all costs related thereto.

10. EXCUSABLE DELAYS. Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence, provided that any delay or failure to perform caused by default of a third party supplier of the Supplier must be beyond the control of both Supplier and such supplier and without the fault or negligence of either and the items to be furnished must not be obtainable from other sources in sufficient time to permit Supplier to meet the delivery schedule and provided further, that Supplier furnishes prompt written notice to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** of the occurrence at any such cause which will or may delay Supplier's performance.

11. NOTICE OF LABOR DISPUTES. Whenever Supplier has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Supplier shall immediately give written notice thereof, including all relevant information with respect thereto to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**.

12. INDEMNIFICATION AND INSURANCE. Supplier shall indemnify and hold harmless **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**, its employees, agents and invitees from and against all liability, demands, claims, loss, cost, damage and expenses by reason of or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the performance of this order which is occasioned by the acts or omissions of Supplier or its suppliers. Supplier shall maintain and carry liability insurance which includes but is not limited to employer's liability, workmen's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth in this order, with carriers acceptable to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**. If no amounts are so set forth, then in amounts acceptable to and approved by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** but in no event shall such amounts be less than minimum statutory requirements. Supplier shall, if requested by **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**, furnish certificates of statutory requirements, if any, and certificates of insurance indicating the foregoing coverage.

13. COMPLIANCE WITH LAWS. Supplier shall comply with all applicable federal, state, provincial and local laws, executive orders, rules and regulations during performance of this order, including but not limited to

the Occupational Safety and Health Act of 1970, as amended ("OSHA"), Workplace Hazardous Materials Information System ("WHIMIS"), Toxic Substances Control Act as amended ("TSCA") Resource Conservation and Recover Act at 1976, as amended ("RCRA"), Clean Air Act of 1990, as amended, and Fair Labor Standards Act of 1938, as amended ("FLSA"). Supplier warrants that (1) all items sold or furnished under this order, including any packaging and labeling, will conform to and comply with OSHA standards and regulations, (ii) such items have been manufactured or furnished in accordance with the FLSA and regulations issued thereunder, and (iii) for each chemical product or product containing a chemical substance purchased under this order, Supplier shall furnish **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** a Material Safety Data Sheet ("MSDS") in conformance with applicable OSHA, WHIMIS, state, provincial and local requirements, unless a current MSDS has previously been submitted by Supplier to **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**. Supplier further warrants that all chemical substances delivered under this order will conform to and comply with the TSCA and regulations issued thereunder. Supplier agrees to include on all invoices, "We hereby certify that these goods were produced in compliance with all applicable requirements of orders of the United States Department of Labor issued under Section 14 thereof (29 U.S.C. 206, 207, 212 and 214)". Supplier agrees to indemnify and hold **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** and its customers harmless from and against any loss, damage or expenses sustained because of Supplier's noncompliance with any applicable law.

14. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION. Unless otherwise exempt under rules and regulations of the Secretary of Labor, Supplier agrees to comply during performance of this order with the following clauses as set forth in the indicated Code of Federal Regulations reference: Equal Opportunity/41 CFR Part 60 1.4, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era/41 CFR Part 60 2504, Affirmative Action for Handicapped Workers/41 CFR Part 60 741.4 and E.O. 13201

The Equal Employment Opportunity clauses in Section 202 of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, Executive Order 13201 (29 CFR part 47), where required, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs (41 CFR, Chapter 60) are incorporated herein.

15. DISPUTES, CHOICE OF LAW, AND PARTIAL INVALIDITY. The terms and conditions of this agreement are subject to the laws of the state of Rhode Island.

Except as otherwise specifically provided in this order, any dispute arising under this order shall be resolved amicably through discussions between **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** and Supplier attempting in good faith to negotiate a resolution thereof; provided, however, that either **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** or Supplier may seek injunctive relief from a court of proper jurisdiction where appropriate. If the parties fail to resolve any dispute arising under this order, either party file for arbitration as follows:

- (a) By written notice to the other party stating with sufficient clarity the dispute that needs resolution, if no resolution is attained within twenty (20) days, then either party may file for arbitration.
- (b) The dispute shall be resolved by binding arbitration.
- (c) Pending settlement or final decision of any such dispute, Supplier shall proceed diligently with the performance of this order in accordance with the directions of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**.
- (d) Equitable remedies shall be available from the arbitrator. The arbitrator shall not award consequential, punitive, exemplary, indirect or similar damages, although attorneys' fees and the costs of arbitration may be assessed against either or both parties.
- (e) Any appeal of any determination by the Arbitrator shall be heard by a court of appropriate jurisdiction within the state of Rhode Island.

16. RELEASE OF INFORMATION TO PUBLIC. Supplier shall not, without the prior consent of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS**, make any release of information concerning this order (other than to Supplier's employees and subcontractors which is required for the performance of their duties) or use the name of **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** in any advertising or publicity.

17. WAIVER OF DAMAGES. Anything herein notwithstanding, in no event shall **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** be liable to the Supplier for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost profits, even if **THE TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS** has been advised of the possibility of such damages.