

## NORTHWESTERN CORPORATION d/b/a NorthWestern Energy - TERMS AND CONDITIONS - PURCHASE ORDERS

This purchase order is limited to the terms and conditions contained on the face and the back hereof. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given."

The Seller agrees –

**1. Acknowledgement of Order and Billing Particulars:**

- a. Seller shall acknowledge this order promptly, specifying date of shipment.
- b. The order shall not be filled at prices higher than those quoted without first securing authority of the Purchaser. No charges will be allowed for boxing, packing or crating unless otherwise agreed.
- c. Payment shall be made upon receipt of goods. Where cash discount is allowed, the discount period shall be calculated from the date goods are received by Purchaser.
- d. Terms of payment must be shown on all invoices.

**2. Delivery:**

Delivery and performance must be effected within the time stated on the purchase order, and the documents attached hereto, or if not stated explicitly within the documentation, within a commercially reasonable time. No acts of the Purchaser, including without limitation, acceptance of partial late deliveries shall operate as a waiver of this provision. In the event of any material delay, the Purchaser shall have in addition to other legal and equitable remedies provided herein, the option of placing this order elsewhere and holding the Seller liable for the difference in price. However, the Seller shall not be liable for damages as a result of delays due to causes not reasonably foreseeable which are beyond its reasonable control and without its fault or negligence, such as acts of God, acts of civil or military authorities, governmental priorities, fires, strikes, floods, epidemics, war or riot, provided that notice of the conditions causing such delay is given to the Purchaser within five days of the time when Seller first received knowledge thereof. In the event of any such delay, the date of delivery shall be extended for the period equal to time actually lost by reason of the delay.

**3. Warranty:**

Seller warrants that all goods, articles, material and work covered by this order will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, of first class quality, and unencumbered, and Seller agrees to hold the Purchaser harmless from any loss, damage or expense which Purchaser may suffer or incur on account of Seller's breach of warranty. Seller shall replace, repair or make good without cost to the Purchaser any defects or faults arising within one year from the date of shipment. Acceptance or use of goods by the Purchaser shall not constitute a waiver of any claim under this warranty. Except as otherwise provided in this purchase order, Seller's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use. **NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.**

**4. Patents:**

Whenever the Seller is required to use any design, device, material or process covered by letters patent, trademark or copyright, the Seller shall indemnify and save harmless the Purchaser from any and all claims for infringement by reason of the use of such patented design, device, material or process in connection with the contract and shall indemnify the Purchaser for any costs, expenses and damages which it may be obliged to pay by reason of such infringement at any time during the prosecution or after the completion of the work. In case said equipment, or any part thereof, or the intended use of the goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall, at its own expense, and at its option, either procure for the Purchaser the right to continue using said equipment or parts; or replace the same with substantially equal but not noninfringing equipment, or modify it so it becomes noninfringing.

**5. Compliance with Law:**

Seller warrants it shall comply with all applicable laws and regulations. This is legal and acceptable Seller shall execute and deliver such documents as may be required to effect or evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. The Seller agrees to indemnify and hold the Purchaser harmless from all costs and damages suffered by the Purchaser as a result of the Seller's failure to comply with such law.

**6. Assignment:**

The Seller shall not assign, transfer or convey this order or any monies due or to become due hereunder without the prior written consent of the Purchaser.

**7. Insolvency:**

If the Seller shall become insolvent or bankrupt or shall make an assignment for the benefit of creditors, or if a receiver or trustee shall be appointed for any of the Seller's property or business, this order may forthwith be cancelled by the Purchaser's without liability.

**8. Changes - Terminations:**

Purchaser may by written change order make any changes, including **QUANTITIES, SPECIFICATIONS, DRAWINGS, PACKAGING DELIVERY OR SHIPPING.** 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 terminate this agreement as to all or any portion of the goods then not shipped, subject to an equitable adjustment between the parties as to any work or materials then in progress; provided that the Purchaser shall not be liable for any claims for anticipated profits on the uncompleted portion of the goods and/or work for incidental or consequential damages and that no such adjustment be made in favor of Seller with respect to any goods which are Seller's standard stock. No such termination shall relieve Purchaser or Seller of any of their obligations as to any goods delivered hereunder. Any claim for adjustment hereunder must be asserted within ninety (90) days from the date when the change or termination is ordered.

**9. Inspecting and Expediting:**

For purposes of inspection and expediting of the materials, equipment and apparatus covered by this order, or work thereon, the Seller shall give the Purchaser's representative reasonable access to its work and will use its best efforts to provide for such access to the work of his subcontractor, but any approval by such representative shall not release the Seller from his obligation to comply with the requirements of this order in every respect.

**10. Complete Agreement:**

This purchase order, including these terms and conditions, the specifications hereto and any additional terms and conditions incorporated into and attached hereto, constitutes the sole and entire agreement between the parties hereto. The Seller's quotation is incorporated in and made a part of this purchase order only to the extent of specifying the nature and description of the goods ordered, and then only to the

extent that such items are consistent with the other terms of this purchase order. No other terms or conditions shall be binding upon Purchaser unless accepted by it in writing. In the event of a conflict in these modified terms and additional terms and conditionals, these modified terms shall control.

**11. Nonwaiver:**

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 to promptly notify Seller in the event of breach, or the acceptance of or payment for any goods hereunder shall not release Seller of any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any right of Purchaser to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this purchase order by Purchaser operate as a waiver of any of the terms hereof.

**12. Applicable Law:**

The definitions of terms used, interpretation of this agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Montana.

**13. Equal Employment Opportunity:**

**THE SELLER SHALL BE IN COMPLIANCE WITH THE TERMS OF THE EQUAL EMPLOYMENT CLAUSE. ATTACHED HERETO AS EXHIBIT A OR ACKNOWLEDGED TO BE ON FILE WITH SELLER. (SEE EXHIBIT A - ATTACHED.)**

**14. Purchaser's Performance of Seller's Obligations:**

If the Purchaser directs the Seller to correct nonconforming or defective goods by a date to be agreed upon by the Purchaser and the Seller, and the Seller thereafter indicates its inability or unwillingness to comply, Purchaser may cause the work to be performed by the most expeditious means available to it, and the Seller shall pay all costs associated with such work.

Seller shall release Purchaser and its contractors of any tier from all liability and claims of any nature resulting from the performance of such work. This release shall apply even in the event of fault or negligence of the party released and shall extend to the directors, officers, and employees of such party.

Seller's contractual obligations, including warranty, shall not be deemed to be reduced, in any way, because such work is performed or caused to be performed by Purchaser.

The following Additional Conditions apply only in cases where the Seller (**AN INDEPENDENT CONTRACTOR**) is to perform work hereunder, including the services of Seller's Representative(s), on the premises of others.

**15. Liens:**

That, if any time during the progress of the work, the Seller shall allow any indebtedness to accrue for labor, equipment and/or materials, which indebtedness has become or may become a lien or liens upon said work, equipment and/or materials, or which may become a claim against the Purchaser, the Seller shall immediately, pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond, or otherwise, and in case of its failure to do so, the Purchaser may withhold any money due the Seller until such claim or indebtedness is paid; or in such event the Purchaser may, at its absolute discretion, declare this order to be cancelled, take possession and control of the work, and complete the same or cause the same to be completed according to the specifications.

**16. Seller's Responsibility:**

That the Seller shall carry on said work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before its final completion and acceptance, repair or replace forthwith the work and/or materials so injured, damaged and destroyed, at its own expense and to the satisfaction of the Purchaser. When materials and equipment are furnished by others for installation or erection by the Seller, the Seller shall receive, unload, store and handle same at site and become responsible therefore as though such materials and/or equipment were being furnished by the seller under the order.

**17. Insurance:**

That the Seller shall, at its own expense, provide for payment of Workers' Compensation, including Occupational Disease, benefits to its employees employed on or in connection with the work covered by this contract order and/or to their dependents, in accordance with the laws of the State in which the work is to be done. The Seller shall also carry Comprehensive General Liability including but not limited to, Contractual and Automobile Public Liability Insurance with Bodily Injury and Death limits of at least **\$500,000** for any one person and **\$1,000,000** for any one accident and Property Damage limit per accident of **\$500,000**. The Seller shall likewise require his contractors, if any, to provide for such compensation and insurance. Before any of the Seller's or his contractors' employees shall do any work upon the premises of others, the Seller shall furnish the Purchaser with a certificate in duplicate that such compensation and insurance have been provided. Such certificates shall specify the date when such compensation and insurance expire. The Seller agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted.

**18. Protection Against Accidents and Damages:**

That the Seller hereby assumes entire responsibility and liability for any and all damage, loss or injury of any kind or nature whatever to persons or property caused by or resulting from the execution of the work provided for in this order, or in connection therewith, and the Seller agrees that the Seller will indemnify and hold harmless the Purchaser and any or all of the Purchaser's officers, agents and servants from and against any and all claims, loss, damage, charge or expense, whether direct or indirect and whether to persons or property, to which the Purchaser, may be put or subject by reason of any act, action, neglect, omission or default on the part of the Seller, any of his contractors, or any of the Seller's or contractors' officers, agents, servants or employees. In case any suit or other proceedings shall be brought against the Purchaser, the Purchaser's officers, agents or servants at any time on account or by reason of any act, action, neglect, omission or defaults by the Seller or any of his contractors, or any of the Seller's or contractors' officers, agents, servants or employees as aforesaid, the Seller hereby agrees to assume the defense thereof and to defend the same at the Seller's own expense and to pay any and all costs, charges, attorneys' fees and other expenses and any and all judgments that may be incurred by or obtained against the Purchaser, or any of its or their officers, agents or servants in such suits or other proceedings, and in case any judgment or other lien be placed upon or obtained against the property of the Purchaser, or said parties in or as a result of such suits or other proceedings, the Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise. The Seller and his contractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents and comply with all laws and regulations with regard to safety, including without limitation the Occupational Safety & Health Act of 1970 and all rules and regulations issued pursuant thereto.