

**Marquette University
Purchase Order Terms and
Conditions – Products (2021)**

These Terms and Conditions will apply to the Purchase Order attached as Exhibit A and to all subsequent transactions (whether or not a Purchase Order is used) between Marquette University (“**Purchaser**” or “**University**”) and the product supplier (“**Seller**”).

PURCHASE ORDER EXPIRATION – 10 DAYS

The Purchase Order will expire ten days after its date unless accepted, amended or revoked in writing.

ACKNOWLEDGEMENT

These Terms and Conditions and the Purchase Order constitute the entire agreement between the parties. This Purchase Order can only be changed by a written instrument signed by an authorized agent of the Purchaser. Each shipment received by the Purchaser from the Seller will be upon the terms and conditions contained herein. Any terms or conditions contained in any acknowledgment, invoice, correspondence, quotations, specifications, discussions or other document or communication from the Seller will not apply. If price, terms, shipping date or any other express condition of this Purchase Order is not acceptable, Purchaser must be notified and must accept in writing any variation before shipment or delivery.

EXTRA CHARGES

No additional charges of any kind, including charges for boxing, packing, transportation or other extras or fees, will be allowed unless agreed to in writing by Purchaser.

COMPLIANCE WITH LAWS AND TAX EXEMPTION

Seller agrees that all material on this Purchase Order will be produced, shipped and priced in compliance with applicable federal, state and local laws and regulations and will be guaranteed to conform thereto. Purchaser is a Wisconsin not-for-profit, tax-exempt organization and is thus exempt from sales tax in Wisconsin under CES #0061.

Purchaser may also be exempt from certain federal excise taxes. Seller will not charge Purchaser for those taxes from which Purchaser is exempt. Proof of exemption is available upon request

AUTHORIZATION

Purchaser will not be responsible for materials delivered or for work done on our account unless duly authorized by Purchaser.

SUBCONTRACTING AND ASSIGNMENT

Seller will not contract, subcontract or assign to a third party any part of the Purchase Order or any rights arising hereunder without first obtaining the express, written approval of Purchaser.

INVOICE AND SHIPMENT

Invoices must be emailed to invoices@marquette.coupahost.com or mailed to P.O. Box 1881, Milwaukee, WI 53201-1881 Attention: Comptroller’s Office.

Upon shipment the Seller must include:

- A SEPARATE Invoice for EACH Purchase Order referencing the Purchase Order number.
- The charged price may NOT be higher than that stated in the Purchase Order.
- Seller's complete remit to NAME and ADDRESS on each invoice.
- A complete description of labor performed and time expended in maintenance contracts.
- All payments are Net 45 days or Net 15 if supplier accepts Virtual Pay (virtual credit card payments).

Each invoice must be mailed not later than the close of the business day following shipment unless other billing terms had been established by separate written Purchase Order. Material received and not covered by an invoice will be held as Seller's risk and expense.

Any cash discount period will date from receipt of properly prepared invoice or material, whichever is later. Any penalty period will be determined from date of receipt of properly prepared invoice or material, whichever is later.

FOB DESTINATION

All shipments hereunder will be FOB Destination, Marquette University "Freight Prepaid," unless otherwise shown by Purchaser on the Purchase Order. C.O.D. shipments will not be accepted.

DELIVERY

Time is of the essence with respect to all Purchase Orders. If the delivery date specified on the face of the Purchase Order cannot be met, Seller must notify Purchaser using electronic mail or telephone. If delivery is not made on time and in the quantities specified, Purchaser will have the right to cancel this Purchase Order and hold Seller liable for any cost of cover or excess cost or damage incurred as a result of the delay. Acceptance by Purchaser of a late delivery will not constitute a waiver of a later claim for damages. Seller agrees to insure the goods during delivery at Seller's expense. If goods delivered by Seller are defective, damaged or not what Purchaser contracted for, Purchaser reserves the right to return the goods to Seller, to terminate the Purchase Order and to seek damages and expense incurred. Acceptance of any part of the Purchase Order will not bind Purchaser to accept remaining parts of the Purchase Order or any future shipments nor deprive it of the right to return goods already accepted.

INSPECTION

Payment for goods or services provided hereunder will not constitute acceptance thereof. Purchaser may inspect and test the goods and reject any or all items that are, in Purchaser's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at Seller's sole expense. Failure by Purchaser to inspect and test the goods or services will not relieve Seller of responsibility.

WARRANTIES

The goods and services are intended for the following described special uses, and are to be warranted suitable:

(This paragraph applicable only if completed.)

Seller expressly warrants all goods and services delivered under the Purchase Order will be merchantable and free from defects in material and workmanship and of the quality, size and dimensions specified in the Purchase Order. This express warranty will not be waived by the acceptance of the goods and services, payment by Purchaser or otherwise. Seller warrants that a) all workmanship will be first class; b) the goods and services purchased will be supplied according to specifications; c) except as otherwise provided in the specifications, all goods and services incorporated in the work will be new and of the most suitable grade of their respective kinds for the purpose, and d) all services will be performed in a good and workmanlike manner. Such warranties together with Seller's sales literature (including brochures, presentations, proposals, and correspondence to Purchaser), service warranties and guarantees will survive inspection tests, acceptance of and payment for the goods and services and will run to Purchaser, its successors and assigns. Within a reasonable time after receipt of written notice, the Seller will make good at its own expense and without cost to the Purchaser any defects in materials or workmanship that may appear during twelve (12) months after delivery unless a different warranty period is provided in the Purchase Order. After notice to Seller, all defective goods will be held at Seller's risk.

Purchaser, may at its option, either return for credit or require prompt correction or replacement of any defective or nonconforming good or part thereof. If Seller is unable to or refuses to promptly correct or replace a defective or nonconforming good or part thereof, Purchaser may: (1) repair or replace the good or part and assess Seller the cost incurred by Purchaser, or (2) cancel the Purchase Order as to all defective goods and services. All defective goods returned to Seller are at Seller's risk, and all

transportation charges to the original destination will be paid by Seller.

The one year warranty will not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.

RISK OF LOSS

Seller assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to the Purchase Order until the same are finally accepted by the individual and University department of Purchaser who ordered them.

INDEMNIFICATION

Seller will indemnify, defend, and hold Purchaser, its trustees, officers, employees, agents, and students harmless from all loss, cost, or expense of any kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Seller, its employees, or its agents; any alleged or actual intellectual property infringement in connection with the services; as well as any breach of applicable law by Seller.

Seller will indemnify and save Purchaser harmless against any and all liens and encumbrances (arising out of or in connection with the Purchase Order) and keep Purchaser's premises free from all liens and encumbrances.

Purchaser will indemnify, defend, and hold Seller, its directors, officers, and employees harmless from all loss, cost, or expense of any kind arising out of or related to personal injury or property damage to the extent caused or alleged to have been caused by the negligence or willful misconduct of the Purchaser, its employees, its agents, or its invitees.

INSURANCE

During the term of the Purchase Order, each party will maintain the following insurance policies from insurers licensed to do business in the State of Wisconsin: (a) Commercial general liability (CGL) insurance of not less than \$1,000,000/occurrence and \$2,000,000 aggregate; (b) Worker's Compensation insurance in

accordance with applicable state statutory limits; (c) Automobile insurance in the amount of \$1,000,000 (including coverage for insured, uninsured, underinsured, owned and non-owned vehicles). Both parties agree that this insurance may not be revoked, reduced or changed in a material way without at least thirty (30) days advance written notice to the other party. Certificates of insurance will be provided upon request.

HAZARDOUS MATERIALS

For each hazardous chemical brought onto the Marquette University campus, contractors must have, at the work site, a Material Safety Data Sheet (MSDS) that is readily accessible to Marquette University employees. MSDS's for Marquette University chemicals used at the work site will be available to contractor's employees. Contractors bringing chemical materials onto the campus may not leave any the chemical materials at project's end; nor dispose of any chemical materials on campus without written permission from the Marquette University project manager.

TERMINATION FOR CONVENIENCE OR CAUSE

Purchaser may terminate the Purchase Order or any part thereof for its sole *convenience*. Upon notice of termination, Seller will immediately stop all work and shipment of goods and cause its suppliers and subcontractors to cease their work against the Purchase Order. Seller will be paid a reasonable termination charge consisting of a pro rata percentage of the Purchase Order price reflecting the percentage of work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller will not be paid for work performed or costs incurred after the receipt of notice of termination, or for costs incurred by Seller's suppliers that Seller reasonably could have avoided.

Purchaser may terminate the Purchase Order or any part hereof for *cause* if Seller defaults, fails to comply with any terms and conditions of the Purchase Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to

the Purchase Order will, be causes allowing Purchaser to terminate the Purchase Order for cause. Purchaser will not be liable to Seller for any amount upon termination for cause; but Seller will be liable to Purchaser for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.

FORCE MAJEURE

Neither party will be considered in default in the performance of its obligations under this Purchase Order and either party may cancel without penalty by notice to the other party without liability if performance is prevented or delayed by Force Majeure. "Force Majeure" means any cause that is beyond the reasonable control of the party affected, including war, hostilities, terrorism, revolution, civil commotion, strike, lockout, epidemic, pandemic, accident, severe weather, fire, wind or flood or any act of God. A party becoming aware of any Force Majeure condition that may affect performance under this Purchase Order will promptly give the other party notice of the condition.

DISPUTES

In case of a dispute, the party will inform the the other party in writing, and the parties will attempt to resolve the dispute within thirty days. If a lawsuit is filed, the unsuccessful party agrees to pay the prevailing party's costs and expenses associated with the lawsuit, including reasonable attorney's fees and costs. Purchaser and Seller hereby agree that any dispute arising out of the Purchase Order or the purchases contemplated hereunder will be resolved in the state or federal courts located in Milwaukee County, Wisconsin. Seller hereby submits to the jurisdiction of these courts and agrees not to challenge the jurisdiction or venue of these courts in the event of a dispute. Any action, suit or proceeding caused by any alleged breach of a Purchase Order by Purchaser must be commenced within one (1) year after the cause of action accrued.

SET-OFF

Purchaser will have the right to set-off any amount owing from the Seller to Purchaser against any amount owing from Purchaser to the Seller.

At Purchaser's option, repayment in lieu of set-off may be requested.

REMEDIES

No remedy provided in these terms will be deemed exclusive of any other remedy allowed by law.

LIMITATIONS OF LIABILITY

Purchaser will not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any lost profits, punitive damages or other special, incidental or consequential damages. Purchaser's liability on any claim for loss, damage or expense arising out of or in connection with a Purchase Order will not exceed the price of the goods or services that give rise to the claim.

PUBLICITY AND PRESS RELEASES

Purchaser will have advance notice of, and the right to approve, all publicity and press releases related to any Purchase Order.

GOVERNING LAW

The validity, interpretation and performance of this Contract will be governed and construed in accordance with the laws of the State of Wisconsin.

CONTRACT

If there is a separate written contract in effect between Purchaser and Seller applicable to this transaction and any term thereof is in direct conflict with these terms and conditions, then the terms and conditions of the separate written contract will govern this transaction, but only to the extent of the direct conflict.

WEAPONS POLICY

Marquette University enforces a no weapons policy, which can be found at www.marquette.edu/weapons-policy. Pursuant to the Weapons Policy, Seller and its employees, subcontractors and subcontractor employees may not:

- Carry any weapons on University property except as expressly permitted by applicable State law.
- Openly carry any weapons on University property.
- Carry any weapons in any University building or leased space or at any University special event marked with signage specifying “WEAPONS ARE PROHIBITED IN THIS BUILDING.”
- Carry or store any weapon in a University owned or leased vehicle.
- Park any personally owned or contractor vehicle on University property that contains a weapon.
- Possess unloaded ammunition on University property.
- Imply possession of, threaten to use, display, brandish, use or discharge a weapon on University property for any purpose or reason except lawful self-defense or lawful defense of others.
- Sell or serve alcohol on University property or at a University event not on University property to any person whom the contractor or contractor employee know or has reason to know is carrying a concealed weapon.
- Fail to report timely to the Marquette University Police Department the presence on University property of any person whom the Seller or its employee has reason to believe is in possession of or carrying a weapon in violation of University policy, unless doing so would subject the Seller or its employee to the threat of physical harm, or take other action in response to the presence of any person whom the Seller or its employee has reason to believe is in possession of or carrying a weapon in violation of University policy except for reporting the presence of the weapon to the Marquette University Police Department.

The University considers this policy to be a material term of the Purchase Order. Seller is responsible for educating its employees on the requirements of this provision. Seller will immediately and permanently exclude from University property any of its personnel or its subcontractor’s personnel who are in violation of this provision. Seller acknowledges that there is no adequate cure for even a single

breach of this provision and hereby waives any right to notice or to cure for violations of this provision in advance of University’s termination of the Purchase Order for default for violation of this policy.

NON-DISCRIMINATION AND EQUAL OPPORTUNITY

All goods and services provided under any Purchase Order will be provided without regard to the race, color, creed, sex, age, disability status, or national origin of participants providing the goods and services. Notices will be posted by Seller in compliance with applicable state and federal laws in conspicuous places, available for employees and applicants for employment of Provider, setting forth the provisions of this nondiscrimination clause, as required by law.

The University believes it is important to support the establishment, preservation and strengthening of emerging businesses, defined as businesses owned by women or minorities. We seek opportunities to involve emerging businesses in the University’s purchasing process, and we also encourage our contractors and vendors to provide for their participation through meaningful partnerships, joint ventures, subcontracts and other contractual opportunities.

The University is an equal opportunity employer and will not engage in discriminatory practices on the basis of age, race, sexual orientation, color, sex, religion, national origin, veteran status, or disability in the performance of this Purchase Order. By accepting this Purchase Order, Seller warrants that it is also an equal opportunity employer, that does not engage in discriminatory practices as described above.

SEVERABILITY

If any part of this Purchase Order is found to be illegal or unenforceable, that part will be severed from the contract and the rest of this Purchase Order will be enforceable as written.