



TERMS OF MPU PURCHASE ORDER

1. **ACCEPTANCE AND GOVERNING PROVISIONS.** This order is not an acceptance of any offer to sell but is an offer to purchase which may be accepted only by execution of a signed acknowledgment by the Seller and return of the acknowledgment to Manitowoc Public Utilities (“Buyer”) within fifteen (15) days from the date of this order set forth on the attached Purchase Order, or by other expression of acceptance, including shipment hereunder, within such fifteen (15) day period. Upon acceptance this order shall constitute the entire agreement between the parties (except for any additional warranties given by Seller), superseding any and all previous or contemporaneous communications and negotiations. Unless specifically agreed to in writing by Buyer, signed by duly authorized personnel of Buyer, no additional or different term or provision (except additional warranties given by Seller) of any quotations, acknowledgment, invoice or other form supplied by Seller shall become part of the contract. Buyer hereby specifically objects to any such additional or different term or provision. Buyer agrees to purchase the goods described on the face hereof only upon Seller’s complete acceptance of all of the terms and conditions of this order, without modifications or addition as thereto. The agreement or sale resulting from the acceptance of this order shall be construed and interpreted in accordance with the laws of the State of Wisconsin. No agency relationship of any type is created by this agreement.
2. **PAYMENT, PRICES AND SECURITY INTERESTS.** Unless otherwise provided on the face hereof, Buyer will attempt to tender payment to Seller for all conforming goods furnished in accordance with this order by check within thirty (30) days after receipt of such goods or receipt of Seller’s invoice in triplicate, whichever is later.
3. **DOCUMENTS.** Buyer’s Purchase Order Number appearing on the face hereof must be shown on all packing lists, containers, invoices and correspondence relating to this order. Invoice and original bill of lading shall be mailed to Buyer’s address on the face hereof promptly after shipment shall be made. Seller shall include a copy of all applicable Material Safety Data Sheets (MSDS) with Buyer’s Order.
4. **DELIVERY.** Seller shall deliver the items, in the quantities and within the time, which are of the essence in accordance with the specifications (as well as the sample approved by Buyer, if any) and at those prices if specified on the attached Purchase Order or in any document attached hereto or referred to herein. Failure of Seller to comply with such requirements shall entitle Buyer, in addition to any other rights or remedies, to cancel this order and be relieved of all liability for any undelivered portion. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Buyer’s delivery schedule. Items received in advance of Buyer’s delivery schedule may, at Buyer’s option, be returned at Seller’s expense or be accepted and payment withheld until the scheduled delivery date and made net of any storage costs.
5. **SHIPPING AND PACKING.** All items shall be suitable packed, marked with Buyer’s Purchase Order Number and shipped in accordance with shipping instructions specified herein. Buyer shall have the right to route all shipments. No charge shall be made to Buyer for packing boxing or cartage unless separately itemized on the face hereof, but Seller shall be liable to Buyer for any loss or damage resulting from Seller’s failure to act so as to provide adequate protection during shipment. Additional expenses, charges or claims incurred as a result of deviation from the specified route, non-compliance with other shipping instructions or improper description of the shipment in shipping documents shall be Seller’s responsibility. Immediately upon shipment Seller is to notify Buyer, advising of complete shipping and routing information.
6. **INSPECTION.** All goods purchased hereunder shall be subject to count, inspection and testing by Buyer at any reasonable time and from time to time before, during or after manufacture or delivery. Notwithstanding any payment that may be made, no goods are to be deemed accepted until Buyer has had a reasonable opportunity to inspect and test them. If any inspection or test is to be made on the premises of the Seller, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Buyer’s inspection shall never constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect.

7. **WARRANTIES.** In addition to its standard warranty and/or service guaranty, Seller warrants that all goods supplied hereunder shall (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being in the Seller; (b) be free from any defects in design, material or workmanship and of good and merchantable quality; (c) conform to Buyer's specifications or the sample approved by Buyer, as the case may be, or be fit for the known purposes for which purchased hereunder; and (d) comply and have been produced, processed, delivered and sold in conformity with all applicable federal, state and other laws, administrative regulations and orders. The foregoing warranties shall survive inspection, delivery and payment and shall run in favor of Buyer, and its successors, assigns and customers (whether direct or indirect). If any such goods shall be found to be unsatisfactory for any reason, Buyer may, at its option, retain such goods at an adjusted price or return them to Seller for repair, replacement or refund as Buyer shall direct. Buyer shall be reimbursed by Seller for all of its expenses in connection with the handling and transporting of any such unsatisfactory goods, and Seller shall assume all risk of loss or damage in transit to good returned by Buyer pursuant hereto.
8. **NON-ASSIGNABILITY.** Seller shall not assign or sublet the work to be done hereunder without the prior written consent of Buyer, but this provision shall not restrict Seller in the procurement of component parts or materials. To the extent that Seller procures any parts or materials to be furnished hereunder, Seller agrees to require compliance with the provisions of this order, including all warranties, by its manufacturing supplier or suppliers as though such supplier or suppliers were the Seller hereunder, and if this order shall be terminated for Buyer's convenience. Buyer's liability to Seller with respect to such parts or materials shall not exceed the amount for which Seller would be liable to its supplier or suppliers.
9. **TAXES.** Buyer shall not be liable for any taxes, duties, customs or assessments in connection with the purchase and/or delivery of goods ordered hereunder, except such as are expressly set forth on the face hereof.
10. **CHANGES.** Buyer may make changes in drawings, specifications, quantities, delivery schedules or methods of shipment of packaging on any item at any time. If such changes result in an increase or decrease in costs, an equitable adjustment of price and delivery schedules may be made, or Buyer may, at its option, terminate this contract if agreement on an equitable adjustment cannot be reached. Claims for equitable adjustment must be asserted by Seller within ten days of Buyer's change order. This order together with any change orders or instructions shall constitute one contract. Changes are authorized only by properly executed Change Order form.
11. **CANCELLATION BY BUYER.** Buyer shall have the right to cancel this order without cause, and except as otherwise provided in the applicable provisions of a government contract or subcontract, Buyer's liability for cancellation of this order without cause shall be limited to Seller's actual cost for work and materials applicable solely to this order which shall have been expended when notice of cancellation shall be received by Seller. Due allowance shall be made for salvage value.
12. **WRITTEN NOTICE AND WAIVER.** No verbal order, objection, claim or notice by either party to the other shall be of legal effect or binding, and no evidence of such order, objection, claim or notice shall ever be introduced in any suit in law or equity wherein these parties are interested, both parties agreeing to execute and delivery in writing all communications from them under which the other party is to be charged, notified, or affected, and when same are given verbally, they shall be held as not material or binding, and none of the provisions of this order, plans or specification shall be held to be waived or interpreted, by reason of any act whatsoever, or in any manner, other than by an express waiver, or definitely agreed interpretation thereof in writing, and no evidence shall be introduced of any other waiver of interpretation. Any waiver of strict compliance with the provisions of this order shall not be deemed a waiver of any other provision or of the Buyer's right to insist upon subsequent strict compliance with such provision.