

PURCHASE ORDER TERMS AND CONDITIONS



ACCEPTANCE-AGREEMENT. Supplier's execution of this purchase order, commencement of work on the goods, articles or services (collectively, "goods") subject to this purchase order or shipment of such goods, acceptance of partial or full payment, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on any purchase order submitted by H.E. Williams, Inc. ("Buyer") and those terms contained herein. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this offer in Supplier's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Supplier without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Supplier, whether in a quotation or otherwise, such acceptance is limited to the express terms contained on the face and on any purchase order submitted by Buyer and those terms contained herein. These terms may not be modified or amended except by written agreement which specifically references these terms and which is signed by an officer of Buyer.

DELIVERY. Time is of the essence in the performance of this purchase order, and if delivery of goods is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to (a) direct expedited routings of goods (the cost of expedited routing shall be paid by Supplier); (b) terminate this purchase order by notice to Supplier as to goods which were not received by Buyer or services which were not rendered at the time notice is sent to Buyer and to purchase substitute goods or services elsewhere and charge Supplier with any loss incurred; or (c) in the event that the delivery for reasons imputable to the Supplier (without limitation, when delivery is cancelled less than 48 hours before the time specified) creates a stock out situation, the Buyer shall be entitled to claim penalty to the Supplier; the penalty shall be two percent (2%) of the portion of the purchase price due on the delayed goods for each day of the delay. The total amount of the penalty under clause (c) shall not exceed twenty percent (20%) of the total purchase price. In addition to the percentage penalty, Supplier shall reimburse Buyer for all costs incurred by Buyer as a result of late delivery on the part of Supplier, including, without limitation, cost of downtime and production stoppage (assessed on incident basis), or the amount of any delivery penalties assessed by Buyer's customers based on Supplier's unexcused delay. The penalty amount shall be automatically deducted from the due payment. Supplier shall be liable for transportation charges, delays or claims resulting from Supplier's deviation from Buyer's routing instructions. Supplier shall not be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence; provided, however, that when Supplier has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay together with a plan for corrective action will be given immediately to Buyer and no later than 48 hours before scheduled delivery. Such data shall be informational only and shall not be construed as a waiver by Buyer of any delivery schedule or of any rights or remedies.

If Supplier's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Supplier and subcontractor and without the fault or negligence of either of them and the goods to be furnished were not obtainable from other sources in sufficient time to permit Supplier to meet the required delivery or performance schedule.

TERMINATION FOR CONVENIENCE OF BUYER. Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Supplier shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Supplier shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Supplier shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. Goods fabricated in anticipation of Buyer's purchase order will be at Supplier's risk.

TERMINATION FOR CAUSE. Buyer may also terminate this order or any part hereof for cause in the event of any default by the Supplier, or if the Supplier fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to Supplier for any amount, and Supplier shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.

PROPRIETARY INFORMATION-CONFIDENTIALITY-ADVERTISING. Supplier shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order, unless Supplier obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Supplier for Buyer in connection with this order. Supplier shall not advertise or publish the fact that Buyer has contracted to purchase goods from Supplier, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Supplier to Buyer shall be deemed secret or confidential and Supplier shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

WARRANTY. Supplier expressly warrants that all goods furnished under this purchase order shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Supplier warrants that all such goods will conform to any statements made on the containers or labels or advertisements for such goods, and that any goods will be adequately contained, packaged, marked, and labeled. Supplier warrants that all goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which Buyer intends to use the goods, Supplier warrants that such goods will be fit for such particular purpose. Supplier warrants that goods furnished will conform in all respects to samples. Inspection, test, acceptance, or use of the goods furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. Supplier's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer. Supplier agrees to replace or correct defects of any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Supplier, may make such corrections or replace such goods and charge Supplier for the cost incurred by Buyer in doing so.

PRICE WARRANTY. Supplier warrants that the prices for the goods sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event Supplier reduces its price for such goods during the term of this order, Supplier agrees to reduce the prices hereof correspondingly. Supplier warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

FORCE MAJEURE. Buyer may delay delivery or acceptance occasioned by causes beyond its control. Supplier shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Supplier's direct additional costs in holding the goods or delaying performance of this purchase order at Buyer's request. Causes beyond Buyer's control shall include governmental action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

PATENTS. Supplier agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder, and Supplier further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Supplier.

INSURANCE. In the event that Supplier's obligations hereunder require or contemplate performance of services by Supplier's employees, or persons under purchase order to Supplier, to be done on Buyer's property, or property of Buyer's customers, Supplier agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Buyer. Supplier shall maintain all necessary insurance coverages, including public liability and Workmens' Compensation insurance. Supplier shall indemnify and save harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.

INDEMNIFICATION. Supplier shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods purchased hereunder, or from any act or omission of Supplier, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Supplier.

CHANGES. Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this purchase order shall be modified in writing accordingly. Supplier agrees to accept any such changes subject to this paragraph.

INSPECTION/TESTING. Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods that are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Supplier at its expense and, in addition to Buyer's other rights, Buyer may charge Supplier all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Supplier from the obligation of testing, inspection and quality control.

AUDIT RIGHT. Where appropriate, Buyer shall have the right to audit product quality at Supplier's premises.

ENTIRE AGREEMENT. This purchase order, and any documents referred to herein, constitute the entire agreement between the parties.

ASSIGNMENTS AND SUBCONTRACTING. No part of this order may be assigned or subcontracted without the prior written approval of Buyer.

REMEDIES. The remedies provided for herein shall be cumulative and in addition to any other or further remedies provided by law or equity. Buyer shall have the right to set off against any amounts payable by Buyer to Supplier under this purchase order or otherwise. In the event of any disputes arising under this purchase order, Buyer and Supplier shall proceed diligently with the performance required hereunder pending resolution of any such dispute. If any portion of this purchase order is invalid or unenforceable, the remaining portions of this purchase order shall remain valid and enforceable.

SHIPMENT. If in order to comply with Buyer's required delivery date it becomes necessary for Supplier to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Supplier unless the necessity for such rerouting or expedited handling has been caused by Buyer.

WAIVER. Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver or any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

LIMIT ON BUYER'S LIABILITY - STATUTE OF LIMITATIONS. In no event shall Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this purchase order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods delivered hereunder must be commenced within one year after the cause of action has accrued.

COMPLIANCE WITH LAWS. In performing its obligations under this purchase order, Supplier shall comply with all statutes, ordinances, and regulations of all federal, state, county and municipal or local governments, and of any and all of the departments and bureaus thereof, applicable to the carrying on of its business and the production and distribution of the goods. Buyer may, upon notice, inspect Supplier's plant and facilities at reasonable times to determine compliance with the provisions set forth herein. In addition to any other remedies contained herein, Buyer shall have the right to immediately terminate this purchase order and any other agreements with Supplier if it determines that Supplier is in violation of this section.

CHOICE OF LAW. This purchase order, and any contract formed hereunder, shall be governed by, and construed under the internal laws of the State of Missouri, without regard to principles of conflict of law, as the same may be from time to time in effect, including, without limitation, the Uniform Commercial Code as in effect in the State of Missouri.

