

## **PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

**Egan Company Purchase Orders are for the purchase by Egan of goods/materials only. Contracts for services or labor only must be placed on the appropriate Egan contract.**

**1.** The acceptance of this Purchase Order is expressly limited to the terms herein and any additional or different terms suggested by Seller are hereby rejected unless expressly agreed to in writing by Purchaser. None of the terms of this order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an officer of Purchaser, and each shipment received by Purchaser shall be deemed to be only upon the terms and conditions contained herein this Purchase Order, notwithstanding any terms and conditions contained in any acknowledgment, invoice or other form of Seller and notwithstanding Purchaser's acceptance of or payment for any shipment or similar act of Purchaser.

**2.** Invoices must not be dated prior to specified shipping date. Purchase order numbers must be placed on all invoices and shipping papers and two (2) itemized packing slips must be enclosed in each package.

**3.** The Seller warrants that materials furnished hereunder will not infringe any valid patent or trademarks and that the Seller will at his expense indemnify and defend any and all actions or suits charging infringements and will save us, our customers, and those for whom we may act as agent in the purchase of materials, harmless from all expenses and recoveries.

**4.** Your acceptance of this order shall constitute your assurance and warranty that the merchandise ordered has been produced in compliance with all applicable federal, state and local laws, government orders and regulations, including, but not limited to, the requirements of the Fair Labor Standards Act of the United States as amended, and all federal and state occupational safety and health standards and building codes. Any variance from code will be corrected at Seller's expense. The nondiscrimination cause contained in Section 202 of the Executive Order No. 11246 relative to EEO for all persons without regard to race, creed, color, or national origin is incorporated herein.

**5.** Seller shall not assign or transfer this order, or any part thereof, or any amount due and payable or to become due and payable hereunder, without the written consent of the Purchaser. Any such assignment or transfer without written consent shall be null and void. If Purchaser grants any such consent, such consent shall not be deemed to have released Seller from any of its warranties, agreements or other obligations hereunder.

**6.** Substitution, changes or delays will not be allowed unless approval is received from Purchaser. Purchaser shall have the right at any time to change any item of this order by written notice to Seller. If any such change results in a delay or an increase or decrease in expense to Seller, Seller shall notify Purchaser immediately and negotiate an equitable adjustment, provided however, that Seller shall in all events proceed diligently to perform the work or services or supply the item contracted for under this order as so changed. Any claim by Seller for adjustment must be submitted to Purchaser within ten days from the date of the change notice and any such claim must be accompanied by an estimate of the increase or decrease in expenses resulting from such change.

**7.** This order must not be filled at prices higher than those quoted and appearing on the face of this order without prior authority from Purchaser, nor are the prices of this order subject to any surcharges resulting from the imposition now or in the future of any sales taxes, federal, state, municipal or otherwise.

**8.** By acceptance of this order, it is agreed that your regular cash discount, if any, will be allowed on remittances made on 45 days, net 60.

**9.** All materials and equipment furnished under this order shall be guaranteed by the Seller against defects and without limitation of any other remedy available to Purchaser, Seller agrees to replace without charge to Purchaser said material and equipment, or remedy any difficulties latent or patent not due to ordinary wear and tear or due to improper use of maintenance, which may develop within one year from date of acceptance by the Owner, or within the guarantee period set forth in the applicable plans and specifications, whichever is longer.

**10.** All materials and equipment contemplated under this order shall be subject to the approval of the Owner, and/or his Architects, Engineers, or other parties designated by the Owner. Purchaser has the right but not the obligation to inspect and test all material and equipment actually furnished under this order to

determine compliance with the requirements of this order. Seller shall furnish the required number of submittal data or samples for said approval. At the Purchaser's option, inspection may be made at either the Purchaser's or Seller's location. In the event approval is not obtained and/or Purchaser determines the goods or services are nonconforming, defective of inferior quality or workmanship, not as warranted or guaranteed or fail to meet any other requirement of this other then, in addition to all other rights or remedies available at law or in equity, Purchaser shall have the right to cancel this order and return the goods, or reject the services, or any part thereof, and recover from Seller all amounts paid by Purchaser to Seller on account of the purchase price of such goods or services, together with any costs incurred by Purchaser in connection with the original delivery or return or rejection of such goods or services.

**11.** All materials and equipment furnished hereunder shall be in strict compliance with plans, specifications, and general conditions of the contract of Purchaser with the Owner and with any other contractor, and Seller shall be bound thereby in the performance of this contract. Seller expressly warrants that all material and equipment covered by this Purchase Order shall produce capacities or meet design specifications and function as called for in the applicable plans and specifications, as herein set forth, as published and warranted by the manufacturer for the equipment involved, and that it will be merchantable and fit the purpose intended. Seller further warrants the goods and services covered by this Purchase Order are free and clear of all liens and encumbrances whatsoever and Seller has a good and marketable title to same. In the event the equipment does not meet the foregoing requirements, Seller shall immediately, on notice, replace same or remedy any deficiency without expense to the Purchaser, and further shall pay to the Purchaser all consequential loss and damages resulting therefrom to the extent the Purchaser is liable. Purchaser agrees to make available to Seller, upon request, all applicable contract documents with the Owner or another contractor.

**12.** The materials and equipment covered by this order, whether in a deliverable state or otherwise, shall remain the property of the Seller until delivered to a designated site and actually received by the Purchaser, and any damage to the material and equipment or loss of any kind occasioned in transit shall be borne by the Seller, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs. Seller shall promptly notify Purchaser of any shipment made. Purchaser shall notify Seller as soon as is reasonable and practical of any damage to materials or equipment, or of any loss caused in transit. Seller shall carry sufficient insurance on the goods, insuring Seller and Purchaser as their interests may appear, so that any losses will be covered by insurance. No shipment under reservation is authorized. No shipment of non-conforming materials as an accommodation is authorized without Purchaser's written consent.

**13.** Time of delivery is of the essence of this order, and Purchaser reserves the right to cancel without cancellation charges all or any part of this order if not filled within the specified time. No partial shipments will be accepted unless agreed upon by both parties.

**14.** Seller shall furnish all necessary lien waivers, affidavits, or other documents required to keep the Owner's premises free from liens or claims to liens, arising out of the furnishing of material or equipment herein, as payments are made from time to time under this order.

**15.** The Purchaser reserves the right to return all "stocked" items to Seller at the invoice price.

**16.** Seller shall furnish maintenance, instruction, operation and/or installation manuals for all equipment which Seller is to supply hereunder. The order shall not be considered complete until Purchaser has obtained and approved copies of the appropriate maintenance, instruction, operation and/or installation manuals.

**17.** Seller agrees to assume responsibility and liability, to the fullest extent permitted by law, for all damages or injury to all persons, whether employees or otherwise, and to all property arising out of it, resulting from or in any manner connected with the furnishing, installation, erection, repair, adjustment, testing or operation of the materials and services provided for in this Purchase Order. Seller, to the fullest extent permitted by law, agrees to indemnify and save harmless the Purchaser, its agents and employees from all such claims, including without limited the generality of the foregoing, claims for which the Purchaser may be or may be claimed to be, liable and legal fees and disbursements paid or incurred to enforce the provision of this paragraph. Seller shall provide and maintain comprehensive general liability

insurance (including product liability and completed operations coverage), employer's liability and automobile liability insurance as shall insure the Seller for the materials and services provided hereunder. Such insurance shall be in an amount not less than \$1,000,000 for injury to or death of persons or property damage arising out of any one occurrence and shall contain a contractual liability endorsement insuring the liability of the Seller to the Purchaser under this paragraph, and unless waived by Purchaser such insurance shall name the Purchaser as an additional insured.

**18.** In any case where it is necessary for employees or representative of Seller to go upon the premises of Purchaser or Owner, Seller agrees to assume full responsibility for the proper conduct of such employees and representatives while on said premises and to comply with all applicable Workmen's Compensation Laws and other applicable government regulations and ordinances and with all plant rules and regulations, particularly as to safety precautions and fire hazard. If this order requires Seller to furnish labor in connection with the furnishing, erection, installation, repair, adjustment, testing or operation of any materials at the site, Seller shall furnish Purchaser with a certificate or other evidence satisfactory to Purchaser, indicating that such labor is adequately covered by Workman's Compensation Insurance and Employer's Liability Insurance with limits acceptable to Purchaser. Seller hereby accepts exclusive liability for, and agrees to indemnify Purchaser and/or Owner against, liability for the payment of any and all contributions or taxes for unemployment insurance, old age pensions or annuities or other purposes now or hereafter imposed by Government of any State of the United States, which are in whole or in part measured by and/or based upon the wages, salaries, or other remuneration paid to persons employed by Seller on work in performing this order.

**19.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS PURCHASE ORDER TO THE CONTRARY, IN NO EVENT SHALL PURCHASER BE LIABLE IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, LOSS OF PROFITS OR PRODUCTION, LOSS OF REVENUE OR USE OF REVENUE, PLANT DOWN-TIME, PROPERTY DAMAGE, OR EXPENSES OR DAMAGES INCURRED IN RELIANCE ON PURCHASER'S PERFORMANCE, OR NON-PERFORMANCE HEREUNDER, WHETHER SUFFERED BY SELLER OR ANY THIRD PARTY, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE SELLER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.

**20.** The Purchase Order and the relationship between the parties shall be governed by the laws of the State of Minnesota

**21.** There are no collateral agreements between Seller and Purchaser, and the written terms of the Purchase Order constitute the entire and integrated agreement between them.