

Purchase Order



Date: _____
 Purchase Order #: _____
 Shipping Date: _____

Buyer:

<p>Gallatin County, Montana Department/Office: _____ Authorized Representative: _____ Address: _____ City, State, Zip: _____ Phone: _____ E-mail: _____</p>	<p>Ship-to Address (if different from Office) Dept: _____ Address: _____ City, State, Zip: _____ Contact Name/Number: _____</p>
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Seller:

Company Name: _____
 Authorized Representative: _____
 Address: _____
 City, State, Zip Code: _____ Phone: _____
 Signature acknowledges order/terms: _____

Item#	Details	Qty	Unit Price	Total
SUBTOTAL				
TAX EXEMPT				
SHIPPING & HANDLING				
OTHER				
TOTAL				

Additional Notes:

 Signature of Buyer's Authorized Representative

PURCHASE ORDER TERMS AND CONDITIONS

- (1) ACCEPTANCE - This Purchase Order constitutes Buyer's offer to Seller and is not an acceptance by Buyer of any offer to sell by Seller or of any terms and conditions contained in any such offer. Acceptance of this offer by Seller may be made by: (1) executing and returning an acknowledged copy of this Purchase Order; or (2) delivering any of the goods ordered herein. No condition stated by Seller in accepting or acknowledging this order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless accepted by Buyer's written approval. This Purchase Order expressly limits Buyer's acceptance to the terms herein and additional or different terms proposed by Seller are rejected unless assented to in writing by Buyer.
- (2) REVISIONS - No revisions of this Purchase Order or any of the terms or conditions hereof shall be valid unless in writing and signed by an authorized representative of Buyer.
- (3) CHANGES - Buyer may at any time before completion of this order make changes within the general scope of this Purchase Order in any one or more of the following: (1) quantities; (2) drawings, designs, specifications; (3) instructions for work; (4) method of shipment or packing; and/or (5) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, Seller shall promptly notify Buyer in writing and an appropriate equitable adjustment will be made in the price or time of performance or both, by written modification within thirty days after Seller's receipt of notice of the change or within such other period as may be agreed to in writing by the parties.
- (4) DISCREPANCIES - Seller shall refer any discrepancies, omissions, or lack of clarity in drawings, specifications, or descriptions to Buyer for written interpretation before this order is processed.
- (5) PACKING AND SHIPMENT- Deliveries shall be made as specified without additional charge for boxing, crating or storage. Unless otherwise specified, goods shall be suitably packed to secure the lowest transportation cost in accordance with the requirements of common carriers. Buyer's order numbers must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Packing lists shall accompany each box or package shipment showing Buyer's order number and description of materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- (6) DELIVERY- Delivery shall be made strictly in accordance with the delivery schedule set out or referred to in this Purchase Order or, if no time of delivery has been specified, within a reasonable time after acceptance by Seller.
- (7) INVOICING - Invoices shall be sent to the address shown on the face of the Purchase Order. Seller shall issue a separate invoice for each shipment. Unless otherwise specified by this Purchase Order, no payment will be issued prior to receipt of all goods and a correct invoice. Applicable discount periods shall be computed from the date of receipt of the goods. Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice.
- (8) PAYMENT - Payment for undisputed amounts will be made 30 days after acceptance of delivery and receipt of a correct invoice, subject to the examination and investigation required by § 7-6-2407, Montana Code Annotated. Delays in receiving invoices or goods, errors or omissions on invoices, or lack of supporting documentation required by the terms of this Purchase Order will be cause for withholding payment without losing discount privileges.
- (9) INSPECTION & REJECTION- All goods are subject to final inspection and acceptance by Buyer within a reasonable time after receipt at the designated destination, irrespective of prior payment or inspection by Buyer. Buyer may reject any good that contains defective material or workmanship or that does not strictly conform to all specifications, drawings, advertisements, samples, descriptions, and warranties.
- (10) WARRANTIES - Seller expressly warrants that all goods furnished hereunder will: (1) be free from defect in design, material and workmanship; (2) be merchantable, safe, and fit for the intended purposes of Buyer and Buyer's customers; (3) be free of infringement of property rights of third parties including, without limitation, any patent, trademark, tradename, copyright, misappropriation, or violation of any license or other rights; and (4) conform to all requirements of this Purchase Order and to all specifications, drawings, samples, instructions, advertisements, and descriptions. Seller further warrants that the prices for the goods sold to Buyer under this Purchase Order are not less favorable than those currently extended to any other customer for the same or like goods in comparable or less quantities.

These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers and the users of Buyer's products. These warranties may not be limited or disclaimed by Seller. If Buyer experiences any defect, failure, or non-conformity within 12 months from the date of acceptance by Buyer, Buyer shall have the right to take the following actions, at Buyer's option: (1) retain the defective goods in whole or in part with an appropriate adjustment in the price for the goods; (2) require Seller to cure defects in the goods within a reasonable period of time, determined by Buyer in its sole discretion given the urgency of the given situation; (3) require Seller to repair or replace the defective goods in whole or in part at Seller's sole expense, including all shipping, transportation and installation costs; (4) correct or replace the defective items with similar items from a third party and recover the total cost from Seller,

including the cost of product recalls; and (5) exercise all other rights under the Uniform Commercial Code and any other applicable statutes. Notwithstanding the foregoing, Seller agrees to waive the expiration of the 12-month warranty period in the event there are failures or defects discovered thereafter of a material nature or in a significant portion of the goods, or a defect is discovered which, in Buyer's opinion, constitutes a threat of damage to property or to the health and safety of any person.

- (11) **TITLE & RISK OF LOSS** - Title conveyed to Buyer by Seller shall be good and merchantable and its transfer rightful. All goods shall be delivered free and clear of any lien, security interest, claim or encumbrance whatsoever. Seller bears the risk of loss or damages to the goods purchased under this Purchase Order until they are delivered in conformity with this Purchase Order at Buyer's delivery point specified in this Purchase Order or installed, as required pursuant to the Purchase Order, and, upon such delivery or installation, title shall pass to Buyer. Passing of title shall not constitute acceptance of the items by Buyer.
- (12) **ASSIGNMENT** - The assignment of any right or interest in this Purchase Order without the written permission of the Buyer shall be wholly void and totally ineffective.
- (13) **TERMINATION FOR CONVENIENCE** - Without limiting Buyer's right to cancel this Purchase Order for default of Seller, as provided below, Buyer may terminate all or any part of this Purchase Order for convenience. In the event of termination for convenience, Buyer's liability shall be the lesser of: (a) the reasonable price of raw materials, components, works in progress, and any finished units on hand; or (b) the contract price per finished unit, after giving effect to any discount to which Buyer would otherwise be entitled.
- (14) **DEFAULT OF SELLER & CANCELLATION** – Buyer reserves the right to cancel all or any part of this Purchase Order, without liability, if: (1) Seller for any reason fails to perform any of the provisions of this Purchase Order including, but not limited to, strict compliance with the specified times and places for delivery, prices, quality, or quantity; (2) Seller fails to make progress as to endanger performance of this Purchase Order in accordance with its terms; (3) Seller becomes insolvent, institutes bankruptcy proceedings, or a receiver is appointed or applied for by Seller; (4) Seller ceases to conduct its operations in the normal course of business; (5) any assignment is made by Seller for the benefit of creditors; or (6) for any other reason permitted by the Uniform Commercial Code or applicable law.
- (15) **RIGHT TO COVER** - If Buyer terminates this Purchase Order due to Seller's default, or if Buyer rightfully rejects the goods or justifiably revokes acceptance thereof, then, in addition to recovering so much of the price as has been paid, Buyer may "cover" and have from Seller damages as to all goods affected, whether or not they have been identified in this Purchase Order. Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or contract to purchase goods in substitution for those due from Seller. Buyer shall recover from Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.
- (16) **LIMITATION OF LIABILITY** - Buyer's liability to pay any amount to Seller for any reason shall not exceed the amount Buyer has agreed to pay Seller for the goods. **BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES OR COMMERCIAL LOSSES ARISING FROM THE PURCHASE OF GOODS REGARDLESS OF THE CAUSE OF ACTION OR THE FORM OF THE CLAIM FOR DAMAGES, EVEN IF BUYER IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES.**
- (17) **INDEMNITY & INSURANCE** - To the fullest extent allowable by law, Seller shall indemnify, hold harmless, and defend Buyer, its officers, agents, and employees, against all claims, damages, liabilities, losses, expenses, fees, actions and charges, including attorney's fees, arising out of, in the course of, or in connection with the goods purchased hereunder or the performance of Seller in performing the terms of this Purchase Order. In the event of an action filed against Buyer resulting from Seller's performance hereunder, Buyer may elect to represent itself and incur all costs and expenses of suit. This paragraph shall survive termination of the Purchase Order. Seller shall maintain such insurance as will adequately protect Buyer against such claims, damages, liabilities, losses, expenses, fees, actions, and charges (including attorney's fees) as are described in this paragraph. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.
- (18) **COMPLIANCE WITH LAWS AND REGULATIONS** - Seller agrees that the goods will be produced in accordance with all applicable federal, state, and local statutes, laws, and regulations.
- (19) **EQUAL OPPORTUNITY** – Seller agrees that, in the performance of this Purchase Order, all hiring will be on the basis of merit and qualifications and Seller will not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- (20) **FORCE MAJEURE** - Seller shall not be liable for any delay or failure to deliver any or all of the goods covered by this Purchase Order in the event of delay or failure caused by governmental regulations, labor disputes, strikes, war, riots, insurrection, civil commotion, mobilization, explosion, fire, flood, accident, storm or any act of God, failure of crops or supplies, delays of common carriers, embargoes, or other causes beyond Seller's reasonable control.

Similarly, Buyer shall not be liable for failure to take delivery of the goods for any of the above causes, or other causes beyond Buyer's reasonable control if they render it commercially impracticable for Buyer to receive or use the goods on a timely basis. Where either Seller or Buyer claims an excuse of nonperformance under this paragraph, it must give notice in writing to the other party. No goods are to be tendered by Seller after expiration of the terms specified in this purchase order without consent of Buyer.

- (21) PUBLIC ACCESS TO INFORMATION – Seller acknowledges that Buyer is a local government unit and its records are public and subject to disclosure under Montana law, including the terms and conditions of this purchase order.
- (22) VENUE - An action to enforce this Agreement shall be brought in the Eighteenth Judicial District Court of Montana.
- (23) INTERPRETATION – This Agreement shall be governed and interpreted according to the laws of the State of Montana. Section headings are for convenience only and are not intended to define or limit any provisions of this Purchase Order. The provisions of this Purchase Order are independent and severable, and the invalidity, partial invalidity, or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision. Both parties having been given an opportunity to have this Purchase Order reviewed by legal counsel, the Rule of Construction providing that an agreement shall be construed against the drafter will not be used in the interpretation of this Purchase Order. This Purchase Order constitutes the parties' entire contractual agreement and supersedes any previous oral or written representations, including but not limited to provisions in Seller's quotations, proposals, acknowledgments, or other documents. No course of dealing or usage of trade shall be applicable unless expressly incorporated in this Purchase Order.
- (24) NON-WAIVER – No delay or failure by either party to enforce or assert any right, claim, defense, remedy, or provision of this Purchase Order shall operate as any waiver of any such right, claim, defense, or remedy.
- (25) REMEDIES CUMULATIVE - The remedies given in this Purchase Order to either party shall be cumulative, and the exercise of any one remedy by either party shall not be to the exclusion of any other remedy.