



A Touchstone Energy® Cooperative 

PURCHASE ORDER TERMS AND CONDITIONS

- ACCEPTANCE OF TERMS AND CONDITIONS** These Terms and Conditions and the documents referred to herein govern all Purchase Orders (“Order”) issued by Purchaser to the Seller identified on each Order. Fulfillment of any part of an Order, or any other conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of such Order, shall constitute acceptance by Seller of such Order and all of the terms and conditions included or referenced in this document. Purchaser objects to any terms proposed in Seller’s proposal, sales note, acknowledgement or other form of acceptance of Purchaser’s offer which add to, vary from, or conflict with the Order’s terms and conditions unless specifically noted on this Order. Any such proposed terms shall be void and the terms and conditions of the Order constitute the complete and exclusive statement of the terms and conditions between Seller and Purchaser. The Order’s terms and conditions may be modified only by a written instrument executed by authorized representatives of both Seller and Purchaser.
- TITLE** Seller warrants that the Goods furnished pursuant to this Order shall be free and clear of any and all liens, restrictions, reservations, security interests or encumbrances and, further, Seller warrants it is transferring full, clear and unrestricted title to the same.
- SHIPPING** All Goods are to be shipped in accordance with instructions of the Order. Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags and containers which will be in accordance with prudent commercial practice unless Order specifically noted otherwise. Goods shall be suitably packed to conform with requirements of common carriers and any applicable specifications. Seller agrees to mark all containers with necessary lifting, handling, and shipping information and also Order numbers, date or dates. A packing list must be enclosed in all shipments showing the Order number and exact quantity and description of the goods shipped. Purchaser’s count or weight shall be final and conclusive on shipments not accompanied by a packing list.
- PROPERTY RIGHTS** All plans, drawings, specifications and the subject matter contained there in and all other information given to Seller in connection with performance of the Order involve valuable property rights of Purchaser and shall be held confidential by Seller and shall not be used or disclosed by Seller for any purposes other than those for which they have been supplied or prepared.

All data, notes, drawings, designs, sketches, specifications, reports, and memoranda of every description relating to the Order or any part thereof as Seller shall produce and all copies of the foregoing, shall be the property of Purchaser, shall be subject to inspection by Purchaser at all reasonable times and shall be delivered to Purchaser or otherwise disposed of by Seller as Purchaser may direct from time to time.
- INSPECTION, ACCEPTANCE OR REJECTION OF GOODS** The Goods (all equipment, materials, supplies or other items furnished by the Seller) shall be subject to inspection and tests by Purchaser and inspection and acceptance or rejection of the Goods shall be made as promptly as practicable after delivery. Failure to promptly inspect, accept or reject the Goods shall, nonetheless, not release the Seller from the responsibility of providing the Goods in accordance with the terms of this order. If Purchaser rejects the Goods for whatever reason, including but not limited to Goods received in excess of quantity ordered and/or at higher price than quoted, said Goods shall be held, transported and/or stored at Seller’s sole expense. Seller agrees that it shall promptly reimburse Purchaser for any such expenses.
- PAYMENTS** Payment will be made based upon invoices of Seller for Goods furnished unless otherwise specified in this Order. Payment otherwise due may be withheld on account of defective Goods not remedied, claims made or liens filed, damages by Seller to Purchaser or others not resolved, failure to make payments properly to sub suppliers for material or labor, failure to submit required documentation, or any other failure by the Seller to perform in accordance with this Order. No payments made will in any respect be taken as approval as to quality of the Goods or any part thereof relieve the Seller of its obligations hereunder.

7. **WARRANTY** Seller warrants to Purchaser that the Goods will conform with the specifications, drawings and other descriptions supplied or adopted by Purchaser, if any, and will, unless otherwise specifically called for, be new and will be of good materials, design and workmanship and free from defects. At Purchaser's request, Seller shall promptly, at no cost to Purchaser, either repair or replace (including payment of all removal, packing and transportation costs) any Goods, which within one year after being placed in regular use by Purchaser shall fail in normal use and service and under proper operation, to conform to the foregoing warranties of Seller. In the event that Seller fails to promptly undertake to so repair or replace, Purchaser shall be entitled to correct the same at whatever means are available to Purchaser and to charge the Seller for the cost of the same. All manufacturers' guarantees of Goods, if any, shall be transferred and assigned to the Purchaser upon delivery of Goods and before final payment is made for such Goods. Such guarantees shall be in addition to those required of the Seller in this Order. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this Order voidable at the option of the Purchaser.

8. **DELIVERY** Time of delivery is of the essence of this Order. Purchaser's acceptance of late shipments or partial shipments shall not constitute a waiver of any of Purchaser's rights to collect damages for goods not delivered or for late delivery. Seller shall report to Purchaser any delays in a schedule immediately as they become known to Seller. Purchaser reserves the right to cancel the Order and effect cover if Seller cannot comply with the schedule(s) indicated on the Order. Seller shall ship all goods in accordance with Purchaser's instructions and shall ship the goods in accordance with Seller's normal shipping practices in the absence of such shipping instructions. Seller shall package the goods in accordance with standard commercial practice, shall mark each container with the Order number stated on the Order and shall include a packing list therein with the Order number.

9. **CONSEQUENTIAL DAMAGES** Seller shall not be liable to Purchaser for consequential or indirect damages for lost production and revenues as a result of Seller's performance under this Order.

10. **INFRINGEMENT** Seller warrants that Purchaser's purchase, installation and/or use of the Goods will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise or other intellectual property right. Seller agrees to indemnify and hold harmless the Purchaser from all claims arising out of any infringement of patents in the purchase of goods covered by this order, and to defend at the Seller's expense and all actions based on such claims of patent infringement.

11. **INDEMNITY** Seller agrees to defend, indemnify and hold harmless Purchaser and its members, shareholders, directors, managers, partners, officers, employees, agents and contractors from and against, and shall promptly reimburse each said party with respect to any claim, demand or cause of action, including any actual loss, cost expense, liability, fine or damage incurred or suffered by the said party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expense) related to any bodily or personal injury, death or property damage resulting from Seller's breach of this Order, Seller's violation of any law, rule or regulation or Seller's negligence or willful misconduct.

Neither the coverage nor the limits of Insurance required by this Order shall in any way restrict the foregoing indemnity obligation of Seller.

12. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION**

Minnkota is an Equal Opportunity Employer and complies with Executive Orders 11246, as amended, and 13496 and hereby provides notice of its compliance with FAR 52-222-26, 29 CFR Part 471, Appendix A to Subpart A, 41 C.F.R. 60-1.4, 41 C.F.R. 60-300.5(a), and 41 C.F.R. 60-741.5, which are hereby incorporated by reference.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

13. **GOVERNING LAW** This Order shall be subject to and governed in all respects, including issues of validity, interpretation, performance and enforcement, by the laws of the State of North Dakota. The venue for any dispute will be in the Northeast Central Judicial District Court of North Dakota.

14. **PLACE OF DELIVERY** The place of delivery is as set forth in the Order.

15. **ASSIGNMENTS/DELEGATION/SUBCONTRACTING** Seller may not assign, delegate, subcontract or transfer any Order, the work required to be done or any payments to be made hereunder without Purchaser's prior written approval. In the event of agreed delegation, Seller shall continue to be liable with respect to all of the obligations or liabilities assumed by it hereunder and hereby guarantee satisfactory performance of the Order, if any, by its delegate.

16. **CONFLICTS** In the event of an express conflict between the Order, or any other documents which are a part of this Order, Seller shall notify the Purchaser immediately and shall comply with the Purchaser's resolution of the conflict.

17. **FORCE MAJEURE** Neither Party shall be liable for a delay in performance of its obligations and responsibilities under this Order due to causes beyond its control, and without its fault or negligence, such as but not limited to war, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood or other natural disaster, provided that said party has taken reasonable measures to notify the other promptly in writing, of delay. Failure of sub-suppliers or inability to obtain materials shall not be considered as a force majeure delay.

18. **LIMITATION OF LIABILITY** IN NO EVENT WILL PURCHASER BE LIABLE TO SELLER OR ANY THIRD PARTY, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS OR BUSINESS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING FROM OR AS A RESULT OF THESE ORDER TERMS, ANY ORDER OR ANY ORDER BETWEEN THE PARTIES RELATING TO THE PRODUCTS, SERVICES OR DELIVERABLES SELLER PROVIDES, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. **LAWS AND REGULATIONS** The Seller shall comply with all applicable state and federal laws, rules, regulations, standards and ordinance pertaining to the work for this Order.

20. **HEADINGS** Headings used in this Order are provided for convenience only and shall not be used to construe meaning or intent.

21. **ENTIRE ORDER** This Order and associated documents referenced herein constitute the entire Order between the parties with respect to the subject matter hereof; all prior agreements, representation, statements, negotiations and undertakings, whether oral or written, are superseded hereby.

22. **CHANGES** Purchaser may at any time change drawings, designs, specifications, methods of shipment and packaging, schedules and/or the Delivery Point. Any difference in price or schedule resulting from such changes shall be equitably adjusted and Purchaser will issue a written revision to the Order. Seller shall not suspend work while Purchaser and Seller are in the process of changing the Order.