



## PURCHASE ORDER TERMS AND CONDITIONS

The Terms and Conditions posted here apply and are incorporated into all purchase orders.

This Purchase Order by Monarch Welding & Engineering, Inc. (hereinafter referred to as "Purchaser") becomes a binding contract, subject to the terms and conditions hereof, upon confirmation of this Purchase Order by Seller or upon the commencement of performance by Seller (the party accepting this Purchase Order). ANY CHANGE, ADDITION OR MODIFICATION TO THIS PURCHASE ORDER SHALL BE AGREED TO IN WRITING BY BOTH PARTIES.

1. **INVOICING.** Seller agrees to submit an invoice with each shipment if goods are supplied, monthly or promptly at the completion of work if services are provided. The Purchase Order number and Job number must be on the invoice and all packing slips. All invoices shall be issued to Purchaser c/o Accounts Payable and emailed to the appropriate email address. The period of any cash discount available to Purchaser shall date from the date of the invoice. When freight is prepaid for account, Seller shall show freight charges separately, and sales tax, if any, shall be computed before adding freight charges, and a copy of the freight bill shall be submitted with the invoice. No allowance will be made for boxes, reels, drums, or other returnable containers unless so stated in order and invoiced separately.
2. **TITLE.** Title to goods, materials, and/or items ("goods") purchased by the Purchase Order, and the obligation to insure such goods, shall remain with Seller until they are off-loaded at Purchaser's facility, or the site otherwise specified on the face of this Purchase Order. In all cases Seller shall bear all risks of loss or damage in transit.
3. **FREIGHT.** Shipper shall comply with the shipping terms and instructions as stated on the face of this Purchase Order. Failure to accurately follow the shipping terms and instructions as stated may result in one of the following: (1) a chargeback for the freight cost difference; (2) a chargeback for the freight cost difference plus an administrative charge; or (3) a chargeback for the full cost of the freight.
4. **INSPECTION.** Notwithstanding prior payment and/or inspection by Purchaser, all shipments of goods and/or all services rendered hereunder shall be subject to inspection by and approval of Purchaser after arrival of such goods at the delivery point specified on the face hereof and/or after such services have been rendered. Purchaser, without limitation to its other rights under this Purchase Order, may reject any goods and/or services that contain defective goods or workmanship, do not meet the specifications, or otherwise do not conform to this Purchase Order. Defective goods, or goods and/or services not in accordance with Purchaser's specifications, will be held for Seller's instructions and at Seller's risk and expense. Acceptance of any goods and/or services shall not be deemed to alter or affect the obligations of Seller or the rights and remedies of Purchaser under any other provision of this Purchase Order. Purchaser reserves the right, at Seller's expense, to inspect before shipment, or during the process of manufacture, any goods and/or services on this order.
5. **OVERSHIPMENT.** Quantities in excess of that shown in this Purchase Order, if rejected, will be returned at Seller's expense. Any excess quantities that Purchaser accepts shall be at the Purchase Order price.
6. **CHANGES.** Purchaser 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 changes cause an increase or decrease in the costs, or the time required for performance, an equitable adjustment shall be made, and this agreement shall be so modified in writing and evidenced by a Change Order. Seller agrees to accept any such changes subject to this paragraph.
7. **INTELLECTUAL PROPERTY.** Seller warrants that there has been no violation or infringement of any United States, Canadian or other copyright, trade name, patent, trademark, or related property right, as a result of manufacturing, producing, importation or selling the goods or other performance under this Purchase Order. Seller shall defend, indemnify, and hold harmless Purchaser, its officers, agents, and employees from and against all claims, lawsuits, expenses, liabilities, and loss which Purchaser may incur (including, but not by way of limitation, attorneys fees and court costs) by reason of, or arising from, the assertions of any actual or alleged violation or infringement with respect to the goods or services furnished hereunder whether by reason of Purchaser's purchase, use or otherwise.
8. **WARRANTY.** Seller expressly warrants that all goods and/or services furnished pursuant to this Purchase Order shall comply with this Purchase Order and shall be free from defects in material, workmanship, and title. Further, Seller warrants all goods and/or services will conform to all applicable specifications, drawings, and shall be fit for its intended use and service. If it appears, within one year of the date of delivery, that goods and/or services delivered hereunder do not meet the warranty specified above, Purchaser shall promptly notify Seller; Seller shall thereupon correct any defect either by repair or replacement of the defective goods and/or services subject to the approval of Purchaser, at Seller's expense, provided that Purchaser's continued use of said defective goods and/or services pending repair or replacement shall not constitute a waiver by Purchaser under this Purchase Order. Seller further warrants that all articles and services covered by this Purchase Order meet or exceed the safety standards established and promulgated under the United States Federal Occupational Safety and Health Law (Public Law 91-956) and its regulations in effect as of the date of this order and all other applicable laws and regulations.
9. **DEFAULT.** Seller's time of delivery is the essence of this Purchase Order. Purchaser may, by a written notice of default to Seller, cancel the whole or any part of this Purchase Order if Seller fails to: (1) Make delivery of the goods or to perform the services within the time specified herein, or any extension thereof by change notice; (2) Replace or correct defective goods and/or services in accordance with the provisions of this agreement; or (3) Perform any of the other provisions of this Purchase Order or fails to make progress so as to endanger performance of this Purchase Order.
10. **TERMINATION.** Purchaser reserves the right to cancel this Purchase Order or any part thereof without penalty if Seller breaches any of the terms hereof.
11. **COMPLIANCE WITH LAWS.** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered, imported and furnished in strict compliance with all applicable laws and regulations of which they are subject (including Equal Employment Opportunity and Fair Labor Standards Act). Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, and 12086, as amended and any subsequent executive orders relating to equal opportunity for employment on government contracts. If Seller is required by this purchase order to employ workers on Purchaser's premises, conditions of such employment shall be consistent with Purchaser's labor agreements, or personnel policies and practices, and shall not interfere with Purchaser's operations. The labeling of goods furnished hereunder shall comply with applicable industry guides specified by the Federal Trade Commission.
12. **INDEMNIFICATION.** To the fullest extent permitted by law, Seller agrees to indemnify and hold harmless Purchaser from and against all demands, claims, suits, costs of defense, liabilities, and other expenses (including attorney fees and costs) for damage or damage to property or for injury or injuries to or death of any person or persons in any way arising from or relating to the furnishing of any goods and/or services provided under this Purchase Order. This indemnification shall be in addition to the warranty obligations of Seller. Seller also agrees to waive any rights of subrogation that it or its insurance carrier may have against Purchaser or its insurance carrier.
13. **ASSIGNMENT.** Nothing in this Purchase Order, or any interest under it, shall be assigned by Seller without the prior written consent of Purchaser.
14. **JURISDICTION AND VENUE.** For any suit or proceeding to enforce the provisions of this agreement or any other claim or action arising out of or in connection with this agreement, Seller irrevocably consents to the exclusive jurisdiction of the state and federal courts sitting in the State of Michigan. Furthermore, Seller agrees that this agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Michigan, without giving effect to its principles of conflict of law, and the United States of America. The warranties set forth in this agreement, and any remedies to Purchaser specified in connection therewith, are in addition to those provided by law, and nothing herein shall narrow or lessen the warranties and remedies available to Purchaser by applicable law.
15. **COMPLETE AGREEMENT.** This Purchase Order and its executed attachments (if any) constitutes the complete and exclusive statement of the agreement among the parties with respect to its subject matter and replaces and supersedes all prior written and oral agreements among the parties. If a Master Subcontract Agreement (MSA) is in place between Purchaser and Seller, the terms of the MSA are incorporated into this Purchase Order. In the event of conflict between this Purchase Order and the MSA, the terms of the MSA shall govern.
16. **SELLER BOUND BY SAME OBLIGATIONS AS PURCHASER.** With respect to the goods and/or services provided by Seller to Purchaser, Seller assumes toward Purchaser all duties, responsibilities, and obligations that Purchaser has obligated itself to the Project's Owner pursuant to Purchaser's contract with the Project's Owner or general contractor. Likewise, with respect to any claims of whatsoever kind or nature, including, but not limited to, delay, acceleration and/or differing site conditions, Seller shall only be entitled to compensation to the extent of and to the actual amount paid to Purchaser on the account thereof pursuant to Purchaser's contract with Owner or general contractor. Seller shall provide Purchaser any and all notices to preserve any claims in the form required in adequate time so that Purchaser may supply such notice to Owner or general contractor.
17. **PROVISION FOR PAYMENT.** It shall be an express condition precedent to Purchaser's obligation to pay Seller that Purchaser shall have received payment from Owner or general contractor for the goods and/or services supplied by Seller. In agreeing to supply goods and/or services hereunder, Seller is relying upon the credit worthiness of Owner or general contractor and not that of Purchaser. In payment for amounts due hereunder, Purchaser may setoff amounts due Purchaser from Seller.