

## **KVCC PURCHASE ORDER TERMS AND CONDITIONS**

1. The terms and conditions set forth in this Purchase Order are the sole terms and conditions between the parties, and operate to the exclusion of any other terms and conditions, either written or oral. Acceptance of the Purchase Order by the Seller is expressly made conditional upon acceptance of these terms and conditions. If there should be any inconsistency between the terms and conditions of this Purchase Order and the Seller's acceptance (whether oral or written), the provisions of the Purchase Order shall govern and control.
2. There is no oral understanding or agreement between the parties that differs from the terms and conditions of this Purchase Order. This Purchase Order constitutes the entire agreement between the parties. No amplification, modifications or variation of these terms and conditions will be effective or operable unless accepted in writing in advance by Kalamazoo Valley Community College (KVCC).
3. Time is of the essence. It is acknowledged by the parties that late or partial delivery by Seller impairs the value of the whole contract to KVCC. Upon the occurrence of threatened occurrence of any late or partial delivery, KVCC may, without waiving any other rights it may have, approve a revised delivery schedule and require at Seller's expense an alternate method of transportation and delivery. Acceptance of late or partial delivery shall not be deemed a waiver by KVCC of its rights to cancel this order, or refuse further deliveries, or insist upon alternate methods of delivery, or recover damages from Seller. Should KVCC agree to accept partial or late deliveries in lieu of timely deliveries, Seller shall pay all additional expenses, losses, or costs (including lost profits) reasonably incurred by KVCC as a result of the failure of the Seller to accomplish delivery in a timely manner.
4. All goods sold by Seller to KVCC shall be delivered by the Seller to KVCC's location in Kalamazoo, Michigan, unless a different delivery location is specified in writing by KVCC. The Seller shall be responsible for any loss, damage or injury which results from or occurs during shipment of goods. The risk of loss during shipment shall be with the Seller, and all goods shall be delivered FOB KVCC's place of business. Unless otherwise agreed in writing by KVCC, no separate charges shall be made by the Seller for containers, crating, boxes, packaging, shipping, or any other transportation or delivery related expenses.
5. Goods delivered by Seller are subject to KVCC's inspection and approval or rejection whether or not there has been prior payment. If goods are rejected as non-conforming, or are found before or after acceptance not to be as warranted, KVCC may hold or return such goods at Seller's risk and expense, or KVCC may cancel this order, in whole or in part, and avail itself of any remedies provided for by law or this Agreement. Seller shall reimburse KVCC for all reasonable expenses, losses or costs resulting from rejection or revocation of acceptance. The acceptance of any goods by KVCC shall not be deemed a waiver of KVCC's rights to cancel this Purchase Order, or to refuse further deliveries, or to seek or collect any damages permitted by law or this Agreement.

6. Seller warrants that all goods and services delivered pursuant to this Purchase Order shall be free from defects in materials, workmanship and design, shall comply with all specifications, drawings, samples or other descriptions furnished by either party, shall comply with all applicable laws, orders, regulations or standards, shall be suitable for KVCC's intended purposes, shall comply with all industry and trade standards, and shall otherwise be of high quality and in good working condition. The express warranties set forth in these terms and conditions are not intended, and shall not be construed, as a limitation or exclusion of any warranty implied by law or by the parties' conduct.
7. Seller shall indemnify, protect and save harmless KVCC, its officers, directors, successors, assigns, licensees, customers and users against all losses or damages approximately caused by the Seller's goods, against all royalties, costs, or alleged infringement of any patent, copyright, design rights or other proprietary rights, and against any other loss or damage of any kind or description. Seller agrees to provide KVCC with prompt notice of any communication it receives from any person or company that the goods fail to conform with, or have breached, any warranty of any kind or description, including but not limited to any warranty of non-infringement.
8. KVCC may cancel this Purchase Order at any time, with or without cause, prior to tender of delivery by Seller. If Seller has already effectuated delivery, in whole or in part, then any costs of delivery incurred by the Seller shall, in the event of termination without cause, be paid by KVCC. Seller hereby waives any damages it may have against KVCC for lost profits or other consequential or incidental damages caused by the termination of this Agreement with or without cause.
9. In the event Seller breaches this Agreement, by failing to make timely deliveries, or by delivering non-conforming goods, or by breaching the Agreement in any other material respect, then KVCC shall be entitled to collect from the Seller, in addition to the damages otherwise allowed by law, all costs and attorneys' fees incurred by KVCC in connection with any negotiations or litigation to recover such damages.
10. Both substantive and procedural laws of the State of Michigan shall control this agreement. Any lawsuit initiated to enforce any provision in this Agreement, whether filed by KVCC or the Seller, shall be initiated solely and exclusively in the state courts in the County of Kalamazoo, State of Michigan. In the event there is any claim between KVCC and the Seller for which the state courts do not have subject matter jurisdiction, then such lawsuit shall be initiated solely and exclusively in the United States District Court for the Western District of Michigan, Southern Division.