

01. **ACCEPTANCE:** This Order is an offer to purchase. Acceptance of this Purchase Order is limited to terms contained on this reverse side and those additional terms of either Buyer or Seller referred to on the face of this Order not in conflict with those set forth herein. This Purchase Order becomes a written, binding agreement between Taunton Municipal Lighting Plant (TMLP), hereinafter referred to as Owner, Buyer or Purchaser, and the Seller (a) upon receipt by Purchaser of the duplicate copy of this Order accepted as acknowledged by Seller; or (b) commencement of performance of work and/or shipping goods. Additional terms on Seller's form are hereby objected to and are rejected as a material alteration hereof. This Order and contract arising upon its acceptance shall be deemed to have been made at Taunton, Massachusetts and shall be interpreted solely in accordance with Massachusetts Law.
02. **ENTIRE AGREEMENT - MERGER:** Seller agrees that this Purchase Order constitutes the final and entire understanding between Buyer and Seller and there are merged herein all prior negotiations, representations, covenants and agreements, whether written or oral. Prior dealings between Buyer and Seller and trade usage shall not be relevant to, nor supplement or explain this Agreement. Any representation, warranty, promise or condition not incorporated herein shall not be binding upon either party. No modification, alteration, rescission, or waiver of any of the terms and conditions contained herein, shall be binding unless in writing and agreed to in writing by Purchaser.
03. **SHIPMENT AND TRANSPORTATION CHARGES:** Shipment shall be made in accordance with instructions from Buyer on the face hereof. Seller shall properly identify each shipment by Purchase Order. Unless otherwise specified, title to goods, irrespective of risk of loss, shall pass to Purchaser at F.O.B. point set forth herein. In addition: (a) freight or express charges must be prepaid by Seller when price is F.O.B. destination; (b) Seller must pay transportation charges both ways on rejected material; (c) original Bill of Lading must accompany invoice for shipments F.O.B. point of origin; (d) when no routing specified, Seller to forward by most economical route.
04. **DELIVERY - TERMINATION FOR CAUSE - FORCE MAJEURE:** Time is of the essence. In event of Seller's default by reason of failure to deliver goods and/or services as and when specified, or to prosecute work covered hereunder with promptness and diligence, Purchaser may cancel this Order in its entirety, or any part thereof, and/or issue a Stop Work Order if for services, all for cause without prejudice to Purchaser's other rights and all without liability to itself. In such event, Purchaser shall not be liable to Seller for any amounts and Seller shall be liable for, and hold Purchaser harmless from, any damages occasioned by Seller's default or breach. Purchaser shall be the sole determinant in all termination for cause issues. Seller shall not be entitled to any claim for loss of anticipated revenue, including overhead and profit, due to abandonment or termination of this Order, or any part hereof, by Purchaser for cause. If it should be determined that Purchaser has improperly terminated this contract for such, it shall be deemed to be termination for Purchaser's convenience. Purchaser may hold delivery or acceptance of goods and/or services due to any unforeseen event. Seller shall hold goods and/or delay performance of services pending Purchaser's direction, and Purchaser shall be liable only for direct increased costs incurred by Seller by reason of Purchaser's instructions. Notwithstanding, however, neither party shall be responsible for any delay or failure to perform under this Order to the extent that such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, act or omission of carriers or similar causes beyond either party's control.
05. **CHANGES:** Purchaser reserves the right to make changes in this order at any time and Seller agrees to accept such changes. In the event such changes result in additional costs, Purchaser shall make an equitable adjustment in the purchase price provided such additional costs are itemized for Purchaser by Seller within thirty (30) days of the change.
06. **RISK OF LOSS:** Notwithstanding any shipping, F.O.B., or other terms or rights of Purchaser specified herein, risk of loss and/or liability for damages for goods and/or services provided hereunder shall remain with Seller until such are delivered and accepted by Purchaser at delivery address indicated on the face hereof. Whenever Seller shall have in its possession any property of Purchaser, Seller shall be deemed an insurer thereof and responsible for its safe return to Purchaser.
07. **APPROVAL OF DESIGNS, DRAWINGS, AND PROCEDURES:** When machinery, equipment, or other articles to be furnished under this Purchase Order are to be produced in accordance with design plans, drawings, or procedures to be furnished by Seller, approval of plans, drawings and/or procedures by Owner shall in no way reduce or modify Seller's obligation to meet performance and other requirements of the Order. By such approval, Purchaser in no way assumes any part of Seller's responsibility for acceptable design or procedures, or satisfactory performance of resulting machinery, equipment, or other items manufactured in accordance with such design or procedures.
08. **WARRANTY:** Whether or not Seller is a merchant of goods and/or services provided, Seller warrants that all goods and/or services provided by it: (a) shall be of good quality and workmanship and free from defects, latent or patent; (b) shall conform to all specifications, drawings, descriptions furnished, specified or adopted by Buyer; (c) shall be merchantable, suitable and sufficient for their intended purposes; and (d) shall be free of any claim of any third party. Seller shall indemnify and save Purchaser harmless from any breach of this Warranty and no limitations on Purchaser's remedy in Seller's documents shall operate to reduce this indemnification. Seller shall extend all warranties it receives from its vendors to Purchaser and Seller's warranties shall extend to Purchaser's customers. This Warranty is in addition to all warranties contained under the law. All rights and remedies of Purchaser hereunder are cumulative.
09. **PATENT WARRANTY:** Seller agrees, at its own expense, to hold Purchaser and its customers harmless from any patent or similar proceedings which are based on products sold by Seller hereunder. Purchaser shall have the right to have such litigation monitored by its own counsel.
10. **INSPECTION:** Buyer's inspection and/or acceptance of and/or payment for goods and/or services shall not constitute a waiver by it of any warranties. Buyer's prior approval of any sample or acceptance of any goods shall not relieve Seller from responsibility to deliver goods and/or to perform services conforming to specifications, drawings and descriptions. When Purchaser's inspection is specified before shipment, Seller will promptly notify Purchaser in writing when material is ready for inspection, and in no case ship the material without first obtaining Purchaser's written approval or release. Goods shall only be deemed accepted when actually counted, inspected, and tested by Buyer and found to be in conformance with this Order. Notwithstanding, however, Buyer's failure to inspect or test shall not relieve Seller of any responsibility hereunder.
11. **PAYMENT-COMPLETION:** Payment for goods and/or services delivered under this Order shall not be deemed acceptance of such. This Order will not be considered complete until all specifications and requirements have been satisfied and accepted by Purchaser. These requirements include, but not limited to Owner's acceptance of all documentation, drawings, manuals and similar. Whenever Purchaser has the right to demand of Seller adequate assurance of due performance, Purchaser shall be the sole judge of adequacy of such assurance given by Seller.
12. **COMPLIANCE WITH LAW:** Seller shall comply with all applicable Federal, State and local laws, regulations, ordinances, and orders which govern this Purchase Order Agreement whether or not specifically referenced. Seller also agrees to indemnify and hold Purchaser harmless from any and all damages and liabilities assessed against Purchaser as a result of Seller's non-compliance.
13. **PRICE, QUANTITIES AND INVOICES:** If no price is stipulated herein, the goods and/or services shall be charged at prices not exceeding those last previously quoted or charged to Buyer for goods and/or services of like kind or quality. Seller warrants that prices so named herein are as low as any net price now given by Seller to any other customer of same class for goods and/or services of like kind or quality. Ship only quantity ordered. Over or under shipments may be returned at option of Buyer and at Seller's expense. Submit original invoice in duplicate to Attn: Accounts Payable with P.O. number referenced.
14. **SUBCONTRACTING - ASSIGNMENT:** Seller may not subcontract or assign this Order or any portion thereof without the express written consent of Buyer. Any subcontracting or assignment of this Order or any of its obligations and/or rights hereunder by Seller without such written consent of Buyer shall be void. Should Buyer agree to subcontracting or assignment, Seller shall indemnify and hold Buyer harmless from any and all loss and expense arising out of such event.
15. **TAXES:** Owner, such under Exemption No. E-046-001-320, is exempt from payment of Massachusetts state and local taxes on tangible property and services and will not reimburse Seller for such taxes incurred by Seller, except as otherwise specifically provided for in this Order. Seller shall be liable for and shall pay any sales, use, excise or other tax which may be imposed upon any of the goods or their sale, use or delivery.
16. **AUDIT:** Buyer shall have the right to inspect work being performed for Buyer by Seller and to inspect Seller's equipment, facilities, and records of cost and expense applicable solely to this Order during Seller's regular business hours.
17. **CONFIDENTIALITY:** Seller shall not disclose to third parties any detail connected with this Order without prior written consent of Buyer, except to the extent required by law, including without limitation, Massachusetts Public Records Law.
18. **ACCIDENTS, RESPONSIBILITY AND LIABILITY:** If it is necessary for Seller, either as principal, agent, or employee to enter upon Owner's premises to construct, erect, inspect, or make delivery hereunder, Seller, convene and agrees to take all measures necessary to protect against accident, injury (including bodily and/or personal injury) or damage to any person or property during progress of work covered hereunder and to be responsible for all losses, liability, costs and expenses, resulting from or arising out of all or any such accidents, injuries (death included) or damages that may happen or occur through acts or omissions of Seller, its employees, agents, subcontractors or other for whose acts any of them may be legally responsible. All work to be performed by Seller hereunder shall be performed entirely at Seller's risk. Insurance coverage required to be maintained by Seller (as indicated in 20.) shall be primary to any other coverage available to Buyer and shall not be deemed to limit Seller's liability under this Order. Seller shall be liable for all deductible amounts from such insurance and shall indemnify and hold Buyer harmless therefrom.
19. **INDEMNIFICATION - HOLD HARMLESS:** Seller, its employees, agents, subcontractors, or other for whose acts any of them may be legally responsible, shall defend, indemnify and hold harmless, the Owner, its agents, officers, administrators, commissioners, employees, customers and assigns, (the "Indemnitees") from and against any and all claims, losses, penalties, liens, costs, damages, expenses, (including attorney's fees), or other liabilities, all of whatsoever nature and all without limitation, on account of any damage, loss or destruction of property (including property of Owner) or personal injury (including accidental death) to any person (including personnel furnished by Seller), third party or otherwise, (including employees of Owner) arising out of or resulting from Seller's performance or non-performance of work covered hereunder, caused by Seller, its employees, agents, subcontractors, or other for whose acts any of them may be legally responsible either directly or indirectly; or caused by or sustained on its facilities, which arise out of, or are related to the acts (intentional or unintentional), errors, omissions or negligence of Seller while on the property of Owner regardless of whether the loss, damage or injury resulting from same occurs after Seller has left such property; or the presence of equipment, tools, machinery or goods used or supplied by Seller in the performance of services under this Agreement on the property of Owner; or use by Seller of Owner's equipment, tools, machinery or facilities whether or not any claims are based upon the condition of such equipment, tools, machinery or facilities, or Owner's alleged negligence in permitting its use. Permission by Owner to use such equipment, tools, machinery or facilities shall be gratuitous; provided that this indemnity shall be null and void to the extent such loss, liability, damage, claim or expense results solely from the negligence of the "Indemnitees."
20. **INSURANCE:** Without limiting any other obligation or liability of Seller, Seller or any of its subcontractors or anyone employed by them directly or indirectly, agrees to obtain and maintain during the term of this contract at its own expense, as is commercially available at reasonable cost with companies acceptable to Owner, insurance coverage of such type and amount to contractually protect them and the interests of TMLP from all hazards, risk of loss, liability and damage arising from Seller's performance or failure of performance hereunder. These would include, but are not limited to, the following insurance coverages: Public Liability, General Liability (to specifically include contractual liability), Automobile Liability, Property, Damage, Worker's Compensation, Employer's Liability, Excess Liability (Umbrella), Products Liability (with vendor's endorsement favoring Buyer), and Professional Liability (as applicable). Certification of such insurance shall be provided to Owner upon request. All policies shall contain: waiver(s) of insurers' subrogation rights against Buyer, endorsement of liability portions (except excess) naming Buyer as an additional insured and specifically include contractual coverage of the indemnification - Hold Harmless undertaking set forth in paragraph 19. above. Seller shall indemnify and hold Buyer harmless for failure to effect such waiver(s). All insurance coverage afforded, in either Limits of Liability or General Aggregate, shall not be cancelled, terminated, reduced, eroded, impaired or materially changed without at least sixty (60) days prior written notice to Owner of such action. Such notices shall be mailed via Certified mail, return receipt requested to: Taunton Municipal Lighting Plant, 65 West Street, P. O. Box 870, Taunton, MA 02780-0870, Attn: Administrator - Purchasing & Materials. Failure of Seller or any of its subcontractors or assigns to maintain coverage shall not relieve any of them of any liability arising out of performance or non-performance of this Order.
21. **INDEPENDENT CONTRACTOR:** Seller shall perform work hereunder as an independent contractor and all persons furnished by Seller shall be considered Seller's employees or agents.
22. **TERMINATION FOR CONVENIENCE:** Purchaser upon written notice may terminate or abandon this Order or any part hereof and such action shall not be deemed a breach. Such termination may come about for the sole convenience of Buyer. Upon receipt of written notification from TMLP that this Order, or any part hereof, is to be terminated under this provision, Seller shall immediately cease work on this Order. Seller shall be entitled to payment for goods already delivered and accepted by Buyer and for work which has been satisfactorily performed prior to such notice. Purchaser shall determine the amount of work satisfactorily performed by Seller and compensation due Seller. In so determining, Seller shall not be entitled to loss of anticipated revenues) including overhead and profit Seller might have expected.
23. **ANTI-COLLUSION CERTIFICATION:** The parties to this Purchase Order Agreement warrant that it is, in all respects, bona fide, fair and made without collusion or fraud with any other person and that it is for the benefit of the parties thereto and not for any other person. Under M.G.L. c.40, s. 4B 1/2, "Person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.
24. **NON-WAIVER:** In event Purchaser fails to insist on strict performance of any terms or conditions or fails to exercise any of its rights and privileges hereunder, such failure shall not constitute a waiver of such terms, conditions, rights or privileges.
25. **SEVERABILITY:** If any portion of this Purchase Order is held invalid or unenforceable by a court of competent jurisdiction, the validity of remaining portions shall be unaffected and be interpreted as if the invalidated portion never existed.
26. **MISCELLANEOUS:** In event of conflict between any provision of this Order and any attachment to this Order, the terms and conditions of this Purchase Order shall prevail, unless the attachment is initialed as approved by an authorized representative of TMLP. Provisions of this Order that by their sense and context are intended to survive performance hereof shall also survive completion or cancellation of this Order. Paragraph headings are for convenience only and not for use in constructing or interpreting this Purchase Order Agreement.