July 10, 1992

PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE.** ACCEPTANCE OF THIS ORDER BY SELLER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED IN THIS ORDER. ANY TERM OR CONDITION STATED BY THE SELLER IN ANY PRIOR PROPOSAL, ON SELLER'S ACKNOWLEDGEMENT FORM, OR IN OTHERWISE ACKNOWLEDGING OR ACCEPTING THIS ORDER IS DEEMED BY BUYER TO BE A MATERIAL ALTERATION OF THIS ORDER AND IS HEREBY OBJECTED TO BY BUYER. ANY SUCH TERM OR CONDITION SHALL BE TOTALLY INAPPLICABLE TO THIS ORDER UNLESS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER. ACCEPTANCE OF THE GOODS OR SERVICES COVERED BY THIS ORDER WILL NOT CONSTITUTE ACCEPTANCE BY BUYER OF SELLER'S TERMS AND CONDITIONS. ANY OF THE FOLLOWING ACTS BY SELLER SHALL CONSTITUTE ACCEPTANCE OF THIS ORDER AND ALL OF ITS TERMS AND CONDITIONS SIGNING AND RETURNING A COPY OF THIS ORDER; DELIVERY OF ANY OF THE GOODS ORDERED; INFORMING THE BUYER IN ANY MANNER OF COMMENCEMENT OF PERFORMANCE; OR RETURNING SELLER'S OWN FORM OF ACKNOWLEDGEMENT.

2. **PRICE.** If price (either fixed price or hourly rate[s] in case of a time and material order) and/or delivery is not specified by Buyer on the face of this orders, Seller shall immediately submit its best price, delivery date and/or schedule which shall be subject to Buyer's approval and acceptance. Seller warrants that the prices and other terms for the articles sold to Buyer under this order are not less favorable than those extended to all other customers for the same or like articles in equal or less quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof accordingly. If this order is on a time and material basis, the following shall apply; price shall be (a) material at Seller's cost, less scrap, without any charge for handling or otherwise, plus (b) time at agreed hourly rate(s). If both engineering work and manufacturing work are involved, separate hourly rates shall be specified for each thereof. No overtime shall be employed in the performance of this order without Buyer's prior consent and unless separate overtime hourly rate(s) have been specified and agreed upon. No substantial portion of the order shall be subcontracted by Seller without Buyer's written consent. Seller shall maintain adequate accounting records in accordance with generally accepted accounting practice to substantiate all costs, which records shall be open to examination by Buyer at all reasonable times.

3. **PACKING AND SHIPPING.** If Goods are to be delivered under this order, the cost and fee negotiated for this order are deemed to include all packaging and/or storage cost. All Goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain lowest shipping rates. On containers, Seller shall mark handling and loading instructions, shipping information, order number, item and account number, shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment. Overshipments shall be returned to Seller at Seller's risk and expense. Early shipments may, at option of Buyer, be returned to Seller at Seller's risk and expense or may be retained by Buyer and Buyer shall not be liable for payment until the time originally scheduled hereon.

4. **F.O.B. AND RISK OF LOSS.** Unless otherwise specified on the face of this order, the F.O.B. point shall be Buyer's location designated on the face of this order. If transportation is F.O.B. Seller's location, Seller shall bear all risk of loss or damage to the Goods until delivery of the Goods to the carrier. If transportation is F.O.B. Buyer's location, Seller shall bear all risk of loss or damage to the Goods until delivery of the Goods to Buyer's location.

5. **INVOICING.** All invoices shall be rendered in duplicate unless otherwise specified and shall be rendered within 24 hours after each shipment. Taxes, freight and similar charges shall be shown separately. Each invoice shall be accompanied by bill of lading or express receipt. Payments shall be subject to adjustment for errors, shortages, rejections and other causes. Discount period, if any, shall commence on the date invoice is received or goods are received, whichever is later. Buyer secures blanket coverage on all inbound freight. Invoice charges for additional insurance will not be honored unless otherwise specified.

6. **INSPECTION.** All material and workmanship shall be subject to inspection and test by Buyer, both at plant of Seller and of Buyer. Payment shall be subject to final inspection at Buyer's plant. Buyer shall have the right to reject all goods not conforming to specifications or containing defective material or workmanship. Rejected goods shall be returned at Seller's expense and risk, including transportation both ways, promptly after notification of rejection. Buyer may elect to retain defective goods and to remedy defects and deduct cost of remedying same from amount due Seller. Seller warrants that goods shall be produced under a quality control system that provides at a minimum for the prevention and ready detection of discrepancies and for timely and positive corrective action. Seller warrants that he has or is able to obtain the best facilities necessary to meet the technical and regulatory requirements specified. Seller warrants that quality control records are maintained on file for a minimum of one year from date of shipment or as otherwise specified by contract. Buyer reserves the right, upon 72 hours notice, to audit the Seller's facilities and inspection records in connection with this order.

7. **WARRANTY.** In addition and without prejudice to all other warranties expressed or implied by law, Seller warrants that all material or goods covered by this order shall conform to drawings, specifications and other defects. All warranties, both expressed and implied, also constitute conditions and shall survive inspection, acceptance and payment and shall inure to the benefits of Buyer and its customers. Without limitation of any rights by reason of any breach of warranty or otherwise, material or goods which are not as warranted may at any time be returned to Seller at Seller's expense for credit, correction or replacement as Buyer may direct.

8. **COMPLIANCE WITH LAWS.** Seller shall comply with all federal, state, and local laws, ordinances, rules and regulations in the manufacture and sale of the Goods and performance of the Services, including but not limited to the Occupational Safety and Health Act, the Truth in Negotiation Act, the Resources Conservation and Recovery Act and all applicable requirements of the Fair Labor Standards Act. Seller will defend and hold Buyer harmless from any loss, damages, or costs arising form or caused in any way by any actual or alleged violation of any federal, state, or local law, condition, rule, or regulation, or failure by the Seller to (i) have any chemical substances sold hereunder included in the list of approved chemical substances published by the Environmental Protection Agency pursuant to the Toxic Substances Control Act or (ii) provide a completed Material Safety Data Sheet (OSHA Form 20 equivalent) for any chemical substances sold hereunder as required by any federal, state or local law, ordinance, rule or regulation.

9. **CHANGES.** Buyer may, at any time by written order, make changes in drawings, designs, specifications, method of shipment or packing, time or place of delivery, require additional work, or direct the omission of work covered by this order. If any such change causes an increase or decrease in the price under this order, or in the time required for performance, an equitable adjustment shall be made and this order shall be modified in writing accordingly. Any claim for adjustment under this provision must be asserted within 10 days from date this change is ordered and the amount of such claim must be stated in writing within 30 days thereafter.

10. **BUYER'S PROPERTY, MATERIALS, AND EQUIPMENT.** If Buyer furnishes Seller material or "equipment" ("Equipment" is defined as special dies, molds, jigs, tools, gages, test equipment, masks, etc), or pays for such material or "equipment", title thereto shall remain or vest in Buyer, and Seller shall identify, maintain and preserve such material and "equipment" and shall dispose of it (including scrap) in accordance with Buyer's direction. Such material and "equipment", and whenever practical such individual item thereof shall be plainly marked or otherwise adequately identified by Seller as "property of the City of Duluth" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property. Unless otherwise authorized in writing by Buyer, Seller shall use such material or "equipment" only in the performance of purchase orders for Buyer. Seller shall be responsible for any loss, damage, or destruction to such material or "equipment" but Seller shall not include any insurance costs therefore in the cost changed under this order. Also, the "equipment" required to produce the supplies under this order is for the exclusive use of the City of Duluth and is subject to recall upon written notice.

11. **ASSIGNMENT.** Seller shall not assign this order or any rights under this order without the prior written consent of Buyer, and no purported assignment by Seller shall be binding on Buyer without such written consent.

12. **NOTICE OF LABOR DISPUTES.** Whenever an actual or potential labor dispute delays, or threatens to delay, the timely performance of this order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.

13. **TERMINATION.** (a) Termination Without Cause. Buyer shall have the right, without cause, at any time to terminate all or any part of the undelivered portion of this order by written notice. If Seller has and desires to assert any claim on account of any such termination, Seller shall submit its termination claims to Buyer, in form and with evidence satisfactory to Buyer, promptly, but no later than 90 days after the effective date of the termination. If Seller fails to submit a termination claim within that time, Buyer shall have no liability to Seller on account of the termination. If Seller's termination claim is not acceptable to Buyer and cannot be settled by negotiation, the claim shall be submitted to arbitration. (b) Termination With Cause. If Seller fails to make any delivery in accordance with the agreed delivery date or schedule or terms or conditions applicable to this order. Buyer shall have the right (in addition to any other right or remedy at law or under this agreement) by written notice to terminate all or any part of the undelivered portion of this order without any liability to Seller on account thereof, in the articles elsewhere on such terms and in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for all excess costs occasioned Buyer thereby.

14. **PATENTS AND COPYRIGHTS.** Seller shall defend, at its own expense, any suit or claim that may be instituted against Buyer or any customer of Buyer for alleged infringement of patents or copyrights relating to the maintenance, sale, or use of the Goods, except for any such infringement resulting from Seller's compliance with detailed designs provided by Buyer, and Seller shall indemnify Buyer and its customers for all costs and damages arising out of such alleged infringement.
Buyer shall have the right, at no additional charge, to use and/or reproduce the Seller's applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals, and other similar supporting documentation and sales literature. Seller shall advise Buyer of any updated information relative to the foregoing literature and documentation with timely notification in writing.

15. **PUBLIC LIABILITY INSURANCE.** Seller shall hold Buyer and its customer harmless from all injuries, damages and claims arising from performance of work or services covered by this order. Seller shall maintain such insurance as will protect the Seller, the Buyer and his customer from claims under Worker's Compensation Acts and from all other claims for damages, personal injury, or death to employees of the Seller, the Buyer or his Customer, or any other persons which may arise from performance of work or services covered by this order whether performed by the Seller or any Subcontractor or any one directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Buyer and shall be subject to Buyer's approval for adequacy of protection.

16. **DELAYS.** Time is of the essence. All actual or potential delays of whatever nature must be reported to the Buyer when and as they occur if the event can be expected to result in a delivery later than that shown on the face of this order. Seller agrees to indemnify Buyer for all losses, costs and damages resulting from Seller's delay or failure to deliver.

17. **GENERAL.** This order is formed under and shall be interpreted according to, and governed by, Minnesota law. No waiver by Buyer of any of its rights or remedies hereunder shall be construed as a waiver of any other rights or remedies.

DOCUMENT 00 45 19

NON-COLLUSION AFFIDAVIT

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth Non-Collusion Affidavit Form.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT

AFFIDAVIT AND INFORMATION REQUIRED OF BIDDERS

Affidavit of Non-Collusion:

I hereby swear (or affirm) under penalty of perjury:

1) That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the bidder is a corporation);

2) That the attached bid or bids have been arrived at by the bidder independently and have been submitted without collusion with and without agreement, understanding, or planned common course of action with any other vendor or materials, supplied, equipment or services described in the invitation to bid, designed to limit independent bidding or competition;

3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids and will not be communicated to any such person prior to the official opening of the bid or bids; and

4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed:_____

Firm Name:_____

Subscribed and sworn to me before this____ day of _____, _____

NOTARY PUBLIC_____

My commission expires:_____

Bidder=s E.I. Number_____

(Number used on employer=s quarterly Federal Tax return)

DOCUMENT 00 45 36

EQUAL EMPLOYMENT OPPORTUNITY AFFIDAVIT

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth Equal Employment Opportunity Affidavit Form.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT

EQUAL EMPLOYMENT OPPORTUNITY EEO AFFIRMATIVE ACTION

POLICY STATEMENT & COMPLIANCE CERTIFICATE

TO: City of Duluth, MN

PROJECT NUMBER & DESCRIPTION _____

_____

FROM: _____

_____

(FIRM=s name, address, telephone number)

A) **Employment:** It is the policy of the above named FIRM to afford equal opportunity for employment to all individuals regardless of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance and/or disability. The FIRM will take affirmative action to ensure that we will: (1) recruit, hire, and promote all job classifications without regard to race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability, except where sex is a bona fide occupational qualification; (2) base decisions on employment so as to further the principle of equal employment opportunity; (3) ensure that promotion decisions are in accord with the principles of equal employment opportunity by imposing only valid requirements for promotional opportunities; (4) ensure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, FIRM sponsored training, education tuition assistance, social and recreational programs will be administered without regard to race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, and/or disability. The FIRM also intends full compliance with Veteran affirmative action requirements. Additionally, minority and female employees shall be encouraged to participate in all FIRM activities and refer applicants.

I have designated (name) _____to direct the establishment of and to monitor the implementation of personnel procedures to guide the FIRM=s affirmative action program. Where PROJECTS exceed $500,000, this official shall also serve as the liaison officer that administers the FIRM=s AMinority Business Enterprise Program.@ This official is charged with designing and implementing audit and reporting systems that will keep management informed on a monthly basis of the

status of the equal opportunity area.

Supervisors have been made to understand that their work performance is being evaluated on the basis of their equal opportunity efforts and results, as well as other criteria. It shall be the responsibility of the FIRM and its supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

B) **Reports:** Unless exempted by law and regulation, the FIRM shall make available and file those reports related to equal opportunity as may be required by the City of Duluth and State and Federal compliance agencies. Requirements and Reports are defined in 41CFR60 ACompliance Responsibility for Equal Opportunity@ published by the U. S. Department of Labor which is incorporated herein by reference. Additional requirements are defined in various State and Federal Civil Rights Legislation and Rules promulgated thereunder.

C) **Nonsegregated Facilities:** The FIRM certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM certifies that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The FIRM agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this certificate. As used in this Certification, the term Asegregated facilities@ means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation for entertainment area, transportation, and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.

D) **Affirmative Action Compliance Program:** Unless exempted by regulation and law, the FIRMBif the FIRM has 50 or more employees and if the value of current contracts with the City of Duluth exceeds $50,000Bshall prepare and maintain a written affirmative action compliance program that meets the requirement as set forth in 41CFR60.

E) **Non-Compliance:** The FIRM certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of non-compliance with EEO Laws and

Regulations.

F) **Employment Goals - AConstruction@ Projects:** It shall be the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the on-site workforce will be minority employees and that no less than 7% of the on-site workforce will be female employees. Further, it is the goal of the FIRM if the PROJECT is of a construction nature that in all on-site employment generated that no less than 3% of the work hours generated shall be worked by minority employees and that no less than 7% of the work hours generated shall be worked by female employees.

G) **Subcontractors:** The FIRM will for all its PROJECT subcontractors regardless of tier (unless exempted by law and regulation) that received in excess of $2,500 require that: (1) the subcontractor shall execute an AEEO Statement and Certification@ similar in nature to this AStatement and Certification@, (2) said documentation to be maintained on file with the FIRM or subcontractor as may be appropriate.

Executed this _____ day of _____, 20__ by:

_____

Printed name and title

_____

Signature

NOTE: In addition to the various remedies prescribed for violation of Equal Opportunity Laws, the penalty for false statements is prescribed in 18 U.S.C. 1001.

DOCUMENT 00 61 13

PAYMENT BOND FORM

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth Payment Bond Form.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT

CITY OF DULUTH

PAYMENT BOND

LET IT BE KNOWN THAT: We:

_____
(contractor's name)

(hereinafter called the "Contractor") located at: _____

_____
(contractor's address)

and _____
(surety's name)

(a corporation holding a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety, hereinafter called the "Surety") located at:

_____
(surety's address)

are held and firmly bound unto the City of Duluth (hereinafter called the "Owner"), for the benefit of persons furnishing labor and materials for the contract set forth below, in the penal sum of

_____

Dollars ($_____) for the payment of which we bind ourselves, our heirs, executors and administrators, successors and assigns, for the payment of all labor and materials supplied by any person in the performance of a written contract for the purpose of:

_____

_____

according to plans, profiles, and specifications thereto annexed. A copy of that contract is incorporated herein by reference and is made a part hereof as if fully copied herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH That,

A) If the Contractor shall make payments, as they may become due, to all persons supplying "labor and materials," as defined in Minnesota Statutes Section 574.26, used directly or indirectly by the Contractor, or his Subcontractor, in the prosecution of the work provided for in the contract,

B) If the Contractor shall indemnify the owner or other claimant for all costs that may accrue on account of the enforcing of the terms of the bond, if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained,

Then, this obligation shall be void; otherwise it shall remain in full force and effect.

And, the said Contractor and Surety agree that in accordance with Minnesota Statutes Section 574.26 not only said City, but any person furnishing "labor and materials," as defined in Minnesota Statutes 574.26, may sue on this bond for their use on account of any sums due them for anything so furnished.

The Contractor and the Sureties do hereby expressly waive any objection that might be interposed as to the right of the Owner to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either and any of them might interpose to an action brought hereon by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor, services, supplies or material performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the Owner to require the foregoing provisions to be placed in this bond.

And the Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety does hereby waive notice of any and all such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors and other transferees, shall have the same effect as to said Surety as though done or omitted to be done by and in relation to the Contractor.

Signed this _____ day of _____, 20___.

_____
Name of Principal

_____
By

_____
Name of Surety

By _____
Attorney-in-Fact

ACKNOWLEDGEMENTS

State of Minnesota)
) ss. Principal – Individual
County of St. Louis)

This instrument was acknowledged before me on _____
by _____.

Notary Seal

_____
Notary Public

State of Minnesota)
) ss. Principal – Corporate or Partnership
County of St. Louis)

This instrument was acknowledged before me on _____
by _____ as _____
of _____.

Notary Seal

_____
Notary Public

State of Minnesota)
) ss. Surety
County of St. Louis)

Be It Known, That on this _____ day of _____ A. D., 20___, came before me personally _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ (title) of _____

the above named corporation which executed the foregoing bond as surety; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was executed in behalf of said corporation, by authority of its Board of Directors; that said corporation hold a certificate of the Insurance Commissioner of the State of Minnesota showing that it is authorized to contract as a surety; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Seal

_____
Notary Public

APPROVED AS TO FORM, CORRECTNESS AND VALIDTY HEREOF

Dated this _____ day of _____, 20 ___

_____
City Attorney Duluth MN

Dated this _____ day of _____, 20 ___

_____
Finance Director Duluth MN

DOCUMENT 00 72 00

GENERAL CONDITIONS

PART 1 GENERAL

1.1 DOCUMENT INCLUDES

A. Attached City of Duluth General Conditions.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END OF DOCUMENT