



# PURCHASE ORDER

CITY OF FULLERTON

PURCHASING DIVISION  
(714) 738-6565

**PURCHASE ORDER NO.**

**B255223**

**\*\*BLANKET\*\***

ALL PURCHASES AND TRANSPORTATION CHARGES ARE EXEMPT FROM FEDERAL EXCISE TAX - SEE CERTIFICATE OF REGISTRY NO. A197863.

**TO:**

ANDERSONPENNA PARTNERS INC  
ATTN: BETH MCCOMBS  
3737 BIRCH ST, STE 250  
NEWPORT BEACH, CA 92660

**SHIP TO:**

CITY OF FULLERTON - PUBLIC WORKS  
\*\*SEE BELOW/SPECIAL INSTRUCTIONS\*\*  
303 W. COMMONWEALTH AVE.  
FULLERTON, CA 92832-1775

(HEREIN REFERRED TO AS SELLER)

(HEREIN REFERRED TO AS BUYER)

<b>ACCOUNT NUMBER</b> 10324 - 6999	<b>DEPARTMENT</b> Public Works - Engin	<b>REQ. NO.</b> R0026978	<b>DATE PROMISED</b> See Below	<b>PLUS FREIGHT</b> NO	<b>FOB DEST.</b> YES
<b>ORDER DATE</b> 11/13/23	<b>CONFIRMING</b> N	<b>VENDOR NO.</b> V0016883	<b>TELEPHONE</b> 949/482-0028	<b>TERMS</b> NET 30	

ITEM	QUANTITY	UNIT	DESCRIPTION	UNIT PRICE	AMOUNT
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SENT BY EMAIL TO DDEMILIA@ANDPEN.COM

PROVIDE PROFESSIONAL ON-CALL SERVICES FOR CONSTRUCTION INSPECTION AND MANAGEMENT SERVICES FOR LOCATIONS CITY-WIDE AS DIRECTED BY THE CITY OF FULLERTON.

REF: AGREEMENT DATED 9/19/2023

REF: ON-CALL PROPOSAL DATED 5/18/2023

PER CITY COUNCIL SEPTEMBER 19, 2023

\*

P.O. TOTAL NOT TO EXCEED. . . . \$200,000.00

\*

EFFECTIVE: 11-01-2023 THROUGH 10-31-24

CONTRACT EXPIRES 9/30/26

CITY CONTACT: DAVID GRANTHAM, 714/738-6853

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NOTE: INSURANCE CERTIFICATES MUST BE KEPT CURRENT AND REMAIN IN FORCE FOR THE DURATION OF THIS CONTRACT WITH THE CITY OF FULLERTON NAMED AS "ADDITIONAL INSURED."

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NOTE: VENDOR SHALL COMPLY WITH ALL CITY CODES, STATE AND LABOR CODES, AND THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, PUBLIC LAW 99-603.

Total Amt: 0.00  
Total Taxes: 0.00  
Total Extended Amt: 0.00

-- TIME IS OF THE ESSENCE ON THE PURCHASE ORDER --  
ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS HEREIN

PURCHASING MANAGER

**BILLING INSTRUCTIONS**

**BILL TO:**

CITY OF FULLERTON | ACCOUNTS PAYABLE  
AP@cityoffullerton.com  
303 W Commonwealth Ave  
Fullerton, CA 92832-1775  
Phone: (714) 738-6803

1. INVOICES MUST BE REFERENCED TO THIS OF MERCHANDISE, UNIT AND UNIT PRICES
2. NOTE: WHERE APPLICABLE ALL SHIPMENTS ARE TO BE FREIGHT PREPAID.

# TERMS AND CONDITIONS

1. THERE IS NO ACKNOWLEDGMENT COPY OF THIS PURCHASE ORDER. ANY DISCREPANCIES IN PRICE, QUANTITIES, ITEMS OR DELIVERY, MUST BE PHONED TO BUYER'S PURCHASING DEPARTMENT WITHIN 48 HOURS OF SELLER'S RECEIPT OF THIS PURCHASE ORDER. ANY CORRESPONDENCE REFERRING TO THE TERMS, PRICES AND CONDITIONS OF THIS ORDER MUST BE DIRECTED TO BUYER'S PURCHASING AGENT. INQUIRIES RELATIVE TO PAYMENT OF INVOICES SHOULD BE DIRECTED TO BUYER'S ACCOUNTS PAYABLE.
2. **COMPLIANCE WITH LAW:**  
SELLER SHALL COMPLY WITH ALL APPLICABLE FEDERAL, STATE, COUNTY, AND LOCAL LAWS, ORDINANCES, RULES, REGULATIONS AND ORDERS (COLLECTIVELY, 'LAWS') PERTAINING TO THE SUBJECT MATTER HEREOF; AND SHALL OBTAIN ALL NECESSARY LICENSES AND PERMITS RELATED TO THE ITEMS, WORK, OR SERVICES AT SELLER'S SOLE EXPENSE.
3. **GOVERNING LAWS:**  
THIS PURCHASE ORDER SHALL BE DEEMED TO BE MADE IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA AND SHALL IN ALL RESPECTS TO BE CONSTRUED AND GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. IN THE EVENT OF ANY LEGAL ACTION TO ENFORCE OR INTERPRET THIS CONTRACT, THE SOLE AND EXCLUSIVE VENUE SHALL BE A COURT OF COMPETENT JURISDICTION LOCATED IN ORANGE COUNTY, CALIFORNIA, AND THE PARTIES HERETO AGREE TO AND DO HERBY SUBMIT TO THE JURISDICTION OF SUCH COURT, NOTWITHSTANDING COD OF CIVIL PROCEDURE SECTION 394. FURTHERMORE, THE PARTIES SPECIFICALLY AGREE TO WAIVE ANY AND ALL RIGHTS TO REQUEST THAT AN ACTION TO BE TRANSFERRED FOR ADJUDICATION TO ANOTHER COUNTY.
4. **NON-BINDING COUNTEROFFER:**  
IN THE EVENT OF SELLER DOES NOT ACCEPT THE TERMS OF THIS ORDER, AND SUBMITS A COUNTEROFFER TO BUYER IN WRITING, SELLER ACKNOWLEDGES AND AGREES THAT A BINDING CONTRACT DOES NOT EXIST BETWEEN THE PARTIES ON THE COUNTER-OFFERED TERMS PROFFERED BY SELLER UNLESS AND UNTIL BUYER ACCEPTS SUCH COUNTEROFFER IN WRITING. ANY PERFORMANCE BY SELLER PRIOR TO RECEIPT OF BUYER'S WRITTEN ACCEPTANCE OF THESE TERMS OF A COUNTEROFFER SHALL BE UNDER THE TERMS OF THIS ORDER.
5. **BUYER FURNISHED OR PAID FOR ITEMS:**  
ALL ARTWORK, SPECIFICATIONS, TOOLS, EQUIPMENT AND OTHER ITEMS FURNISHED TO SELLER, OR PAID FOR BY BUYER FOR THIS PURCHASE ORDER SHALL (A) REMAIN BUYER'S PROPERTY, OR UPON ACQUISITION BY SELLER, SHALL BECOME BUYER'S PROPERTY; (B) BE SAFELY KEPT BY SELLER IN GOOD AND USABLE ORDER; (C) BE PROMPTLY RETURNED TO BUYER UPON REQUEST; AND (D) BE DISPOSED IF REQUESTED BY BUYER'S INSTRUCTION.
6. **PROPRIETARY INFORMATION:**  
ALL DOCUMENTS, MATERIALS, INFORMATION AND DATA PROVIDED BY CITY TO SELLER PURSUANT TO THIS ORDER ('PROPRIETARY INFORMATION') SHALL BE CONSIDERED PROPRIETARY AND REMAIN THE PROPERTY OF THE CITY. SELLER IS LICENSED TO USE PROPRIETARY INFORMATION ONLY FOR THE PURPOSE OF FULFILLING ITS OBLIGATIONS UNDER THIS ORDER AND MAY NOT RELEASE THIS INFORMATION TO ANY PARTY WITHOUT THE PRIOR WRITTEN CONSENT OF THE CITY. SELLER SHALL NOT USE CITY'S NAME, SYMBOL, TRADEMARK OR SERVICE MARK WITHOUT PRIOR WRITTEN CONSENT OF CITY.
7. **INDEPENDENT CONTRACTOR:**  
SELLER IS PERFORMING AS AN INDEPENDENT CONTRACTOR AND, THUS, SHALL HOLD BUYER, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS HARMLESS FROM LIABILITY OF ANY NATURE OR KIND, ON ACCOUNT OF USED INVENTION, ARTICLES, PROCESS, FOR WORK OR LABOR PERFORMED UNDER THIS PURCHASE ORDER. SELLER ALSO GUARANTEES AND AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER AGAINST ANY OR ALL LOSS, LIABILITY, DAMAGES, DEMANDS, CLAIMS OR COSTS ARISING OUT OF DEFECTIVE MATERIAL AND PRODUCTS, FAULTY WORK PERFORMANCE, NEGLIGENT OR UNLAWFUL ACTS, AND NON-COMPLIANCE WITH ANY APPLICABLE LOCAL, STATE OR FEDERAL CODES, ORDINANCES, ORDERS, REGULATIONS OR STATUTES INCLUDING BUT NOT LIMITED TO THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA) AND THE CALIFORNIA INDUSTRIAL SAFETY ACT. THIS GUARANTEE IS IN ADDITION TO AND NOT INTENDED AS A LIMITATION ON ANY OTHER WARRANTY, EXPRESS OR IMPLIED. IN ADDITION, SELLER AND BUYER AGREE TO THE TERMS CONTAINED IN THE DOCUMENT ENTITLED 'INDEMNIFICATION CLAUSE' SEPARATELY ACKNOWLEDGED BY SELLER AND INCORPORATED HEREIN BY THIS REFERENCE. IN THE EVENT OF ANY CONFLICT BETWEEN THE INDEMNIFICATION CLAUSE AND THESE TERMS AND CONDITIONS, THE INDEMNIFICATION CLAUSE SHALL GOVERN. THIS PARAGRAPH SHALL APPLY TO ALL PURCHASE ORDERS BETWEEN BUYER AND SELLER.
8. **FREIGHT:**  
EXCESSIVE CHARGES FROM INCORRECT DESCRIPTION OR FROM ROUTING OTHER THAN GIVEN WILL BE CHARGED TO SELLER'S ACCOUNT. PACKING LIST MUST ACCOMPANY EACH CASE OR PARCEL, SHOWING BUYER'S ORDER NUMBER. NO CHARGES FOR TRANSPORTATION, CONTAINERS, OR ANY OTHER PURPOSE, ETC., WILL BE ALLOWED UNLESS SO SPECIFIED IN THIS ORDER. FREIGHT CHARGES ALLOWABLE PURSUANT TO THE TERMS FOB POINT OF ORIGIN OR FOB DESTINATION PLUS FREIGHT SHALL BE PREPAID BY THE SELLER AND MUST BE ITEMIZED ON THE INVOICE, AND A COPY OF THE PAID EXPRESS OR FREIGHT BILL SHALL BE ATTACHED TO THE INVOICE. COD SHIPMENTS WILL NOT BE ACCEPTED.
9. **REJECTIONS:**  
IF ANY OF THE GOODS ARE FOUND AT ANY TIME TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP, OR OTHERWISE NOT IN CONFORMITY WITH THE REQUIREMENTS OF THE ORDER, BUYER, IN ADDITION TO ANY OTHER RIGHTS WHICH IT MAY HAVE UNDER WARRANTIES OR OTHERWISE, SHALL HAVE THE RIGHT TO REJECT AND RETURN SUCH GOODS AT SELLER'S EXPENSE, SUCH GOODS NOT TO BE REPLACED WITHOUT WRITTEN AUTHORIZATION FROM BUYER. THIS ORDER MUST BE FILLED EXACTLY AS SPECIFIED, NO EXCEPTIONS. ALTERNATES OR SUBSTITUTES WILL NOT BE ACCEPTED UNLESS AUTHORIZED BY BUYER'S PURCHASING AGENT. WHERE QUALITY IS QUESTIONED ON ANY DELIVERY, ANY COST OF INSPECTION WILL BE AGAINST THE ACCOUNT OF THE SELLER.
10. **RESPONSIBILITY FOR SUPPLIES:**  
SELLER SHALL BEAR THE RISK OF LOSS OR DAMAGE TO THE ARTICLES COVERED BY THIS ORDER UNTIL DELIVERY OF SAID SUPPLIES AT THE LOCATION DESIGNATED BY BUYER OR AT SUCH OTHER PLACE AS MAY BE DESIGNATED HEREIN, REGARDLESS OF FOB POINT OR THE POINT OF INSPECTION. SELLER SHALL ALSO BEAR THE RISK OF LOSS OR DAMAGE TO SUPPLIES AFTER BUYER GIVES SELLER NOTICE OF REJECTION.
11. **CHANGES:**  
BUYER MAY BY WRITTEN ORDER OR AT ANY TIME PRIOR TO FINAL DELIVERY AND WITHOUT NOTICE TO SURETIES, MAKE CHANGES WITHIN THE GENERAL SCOPE OF THIS ORDER, IN ANY OF THE FOLLOWING: APPLICABLE DRAWINGS, DESIGNS, OR SPECIFICATIONS, METHOD OF SHIPMENT OR PACKING AND PLACE OR TIME OF DELIVERY, TO THE EXTENT SUCH CHANGE CAUSES AN INCREASE OR DECREASE IN THE COST OF OR TIME REQUIRED FOR THE PERFORMANCE OF THIS ORDER AN APPROPRIATE EQUITABLE ADJUSTMENT IN THIS ORDER SHALL BE MADE, ANY CLAIM BY SELLER FOR ADJUSTMENT MUST BE ASSERTED WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THE CHANGE. FAILURE TO AGREE TO AN ADJUSTMENT SHALL NOT EXCUSE THE SELLER FROM PROCEEDING WITH THIS ORDER AS CHANGED.

**12. CANCELLATION:**

TIME IS OF ESSENCE IN THE PERFORMANCE AND/OR DELIVERY OF SERVICES AND/OR ITEMS PROCURED BY THIS PURCHASE ORDER. BUYER SHALL HAVE THE RIGHT TO CANCEL AT ANY TIME FOR SELLER'S BREACH OF ANY PROVISIONS OF THIS ORDER, INCLUDING FAILURE TO MEET THEIR STATED DELIVERY SCHEDULE. ALL OR ANY PORTION OF THIS ORDER MAY BE CANCELLED BY BUYER IF SELLER, IN BUYER'S JUDGMENT, IS FAILING TO MAKE SUFFICIENT PROGRESS SO AS TO ENDANGER PERFORMANCE OF THIS ORDER IN ACCORDANCE WITH ITS TERMS. BUYER RESERVES THE RIGHT TO TERMINATE THE CONTRACT WITHOUT PENALTY, WITHOUT CAUSE OR WITH CAUSE IMMEDIATELY, 10 DAYS AFTER WRITTEN NOTICE THEREOF IF DELIVERED TO SELLER EITHER PERSONALLY OR BY MAIL ADDRESSED AS SHOWN ON THE PURCHASE ORDER FORM.

**13. RESPONSIBILITY FOR REPLACEMENT COSTS:**

IF SELLER BREACHES THIS AGREEMENT AND FAILS TO DELIVER THE GOODS, SERVICES OR MATERIALS PROVIDED HEREIN WITHIN THE TIME ABOVE SET FORTH, OR BY FAILING TO MAKE SUFFICIENT PROGRESS SO AS TO ENDANGER PERFORMANCE OF THIS ORDER, THEN BUYER MAY TERMINATE THIS CONTRACT AND PURCHASE THE GOODS, SERVICES OR MATERIALS FROM WHATEVER SOURCE AND SELLER SHALL BE LIABLE TO BUYER FOR THE DIFFERENCE IN PRICE WHICH BUYER IS OBLIGATED TO PAY PLUS ALL OF ITS COSTS AND EXPENSES IN ENFORCING ITS RIGHTS HEREUNDER, INCLUDING REASONABLE ATTORNEY'S FEES. FURTHER, BUYER MAY OFFSET ANY SUCH COSTS OR EXPENSES INCURRED AGAINST ANY OF THE MONIES WHICH MAY BE OWING TO SELLER.

**14. ANTI-DISCRIMINATION CLAIM:**

IT IS THE POLICY OF BUYER THAT IN CONNECTION WITH ALL WORK PERFORMED UNDER PUBLIC WORKS AND PURCHASING CONTRACTS, THERE BE NO DISCRIMINATION AGAINST ANY PROSPECTIVE OR ACTIVE EMPLOYEE ENGAGED IN THE WORK BECAUSE OF RACE, COLOR, SEX, ANCESTRY, NATIONAL ORIGIN, OR RELIGIOUS CREED, AND THEREFORE, SELLER AGREES TO COMPLY WITH APPLICABLE FEDERAL AND CALIFORNIA LAWS INCLUDING, BUT NOT LIMITED TO, THE CALIFORNIA FAIR EMPLOYMENT PRACTICE ACT BEGINNING WITH LABOR CODE SECTION 1410, AND LABOR CODE SECTION 1735. IN ADDITION, SELLER AGREES TO REQUIRE LIKE COMPLIANCE BY ALL SUB-CONTRACTORS EMPLOYED.

**15. ARBITRATION:**

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION AT ELECTION OF EITHER PARTY IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

**16. PURCHASE ORDER NUMBER REQUIRED:**

BUYER'S PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES AND CORRESPONDENCE.

**17. DELIVERY REQUIREMENTS:**

DELIVERIES FOR ALL DEPARTMENTS MUST BE MADE AS DIRECTED. NON-PAYMENT MAY RESULT FOR MERCHANDISE DELIVERED IN ANY OTHER MANNER. CASH TERMS SHALL BE PREDICATED ON THE DELIVERY DATE OF THE MATERIAL AS SPECIFIED, OR FROM DATE CORRECT INVOICES ARE RECEIVED IN BUYER'S ACCOUNTS PAYABLE OFFICE, IF THE LATTER DATE IS LATER THAN THE DATE OF DELIVERY.

**18. PROVISION OF MANUALS:**

SELLER AGREES TO FURNISH BUYER WITH TWO SHOP MAINTENANCE AND TWO OPERATION MANUALS (WHICH WILL INCLUDE WIRING SCHEMATICS, PART DIAGRAMS, ALIGNMENT DATA, AND PARTS LIST) ON ALL PURCHASES OF EQUIPMENT.

**19. WARRANTY:**

UNLESS OTHERWISE SPECIFIED ON REVERSE SIDE OF THIS PURCHASE ORDER, WARRANTY ON QUOTED EQUIPMENT SHALL BE ONE YEAR DEFECTIVE PARTS AND/OR WORKMANSHIP.

**20. REPLACEMENT PARTS:**

SELLER AGREES TO MAKE AVAILABLE SPECIAL REPLACEMENT PARTS REQUIRED TO MAINTAIN THE PURCHASED EQUIPMENT UNLESS OTHERWISE STIPULATED AT TIME OF EQUIPMENT ORDER.

**21. ASSIGNMENT:**

NO ASSIGNMENT BY SELLER OF THE PURCHASE ORDER OR ANY PART HEREOF, OR OF FUNDS TO BE RECEIVED HEREUNDER, WILL BE RECOGNIZED BY BUYER UNLESS SUCH ASSIGNMENT HAS HAD PRIOR WRITTEN APPROVAL AND CONSENT OF BUYER.

**22. INSURANCE:**

PRIOR TO PERFORMING ANY SERVICES UNDER THIS PURCHASE ORDER, SELLER SHALL SUBMIT TO THE CITY PROOF OF INSURANCE TO THE CONDITIONS IDENTIFIED UNDER THE PURCHASE ORDER ADDENDUM PROVIDED UNDER SEPARATE COVER AND INCORPORATED INTO THE PURCHASE ORDER BY THIS REFERENCE. SELLER SHALL MAINTAIN INSURANCE ACCEPTABLE TO BUYER IN FULL FORCE AND EFFECT AT SELLER'S EXPENSE THROUGHOUT SELLER'S PERFORMANCE UNDER THIS PURCHASE ORDER.

**23. PREVAILING WAGE:**

ALL PUBLIC WORKS PROJECTS THAT ARE SUBJECT TO PREVAILING WAGE REQUIREMENTS SHALL ALSO BE SUBJECT TO COMPLIANCE MONITORING AND ENFORCEMENT BY THE DEPARTMENT OF INDUSTRIAL RELATIONS (DIR). NO CONTRACTOR OR SUB-CONTRACTOR MAY BE LISTED ON A BID PROPOSAL FOR A PUBLIC WORKS PROJECT UNLESS REGISTERED WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS PURSUANT TO SECTION 1725.5. NO CONTRACTOR OR SUB-CONTRACTOR MAY BE AWARDED A CONTRACT FOR PUBLIC WORK ON A PUBLIC WORKS PROJECT UNLESS REGISTERED WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS PURSUANT TO SECTION 1725.5. CONTRACTORS ARE PROHIBITED FROM WORKING ON ANY PUBLIC WORKS CONTRACT WITH A SUBCONTRACTOR WHO IS INELIGIBLE TO PERFORM WORK PURSUANT TO SECTION 1777.1 OR 1777.7 OF THE LABOR CODE. ALL CONTRACTORS AND SUBCONTRACTORS MUST ALSO COMPLY WITH SECTIONS 1777.5, 1777.6 AND 1777.7 OF THE CALIFORNIA LABOR CODE CONCERNING THE EMPLOYMENT OF APPRENTICES. THE CONTRACTOR SHALL ALSO COMPLY WITH SECTIONS 1771, 1774, 1775, 1776, 1777.5, 1810, 1813, AND 1815 AS REQUIRED BY THE CALIFORNIA LABOR CODE.

**24. FORCE MAJEURE:**

EACH PARTY HERETO SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER RESULTING FROM DELAYS CAUSED BY AN ACT OF GOD, WAR, CIVIL DISTURBANCE, COURT ORDER, GOVERNMENTAL ACTION, LAWS, ORDERS, REGULATIONS, DIRECTIONS OR REQUESTS, OR AS A RESULT OF EVENTS SUCH AS PUBLIC ENEMIES, FIRES, EARTHQUAKES, FLOODS, PANDEMIC, STRIKES OR OTHER LABOR DISTURBANCES OF THE OTHER PARTY OR ANY THIRD PARTY, OR OTHER CAUSE BEYOND ITS REASONABLE CONTROL (FINANCIAL INABILITY EXCEPTED) AND WHICH IT COULD NOT HAVE PREVENTED BY REASONABLE PRECAUTIONS, AND, SUCH NON-PERFORMANCE SHALL NOT BE A DEFAULT HEREUNDER OR A GROUND FOR TERMINATION THEREOF. IN THE EVENT THAT SELLER IS EXCUSED FROM PERFORMANCE UNDER THIS PARAGRAPH, SELLER SHALL TAKE ALL REASONABLE ACTIONS TO RESUME OR PROVIDE ALTERNATIVE PERFORMANCE OF ITS OBLIGATIONS AT NO ADDITIONAL CHARGE TO THE CITY. IF ANY SUCH DELAY EXCEEDS THIRTY (30) DAYS, THEN CITY MAY TERMINATE THIS PURCHASE ORDER.