



Purchase Order: PO

Tax ID:

Order To:

USPS Ship To:

MCNC
P.O. BOX 12889
DURHAM, NC 27709-2889

Courier Non-USPS Ship To:

MCNC
3021 E. Cornwallis Road
Building 3
Durham NC 27709-2889

Contact:

Trans Currency: USD

| Order Date | Buyer | Terms | FOB | Due Date | Ship Via | Deliver To |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-----|---------------|---------------|------------|
| | | | | | | I |
| Line | Item/Description | U/M | Qty | Net Unit Cost | Extended Cost | |
| | CONFIRMATION | | | | | |
| | <p>In addition to the TERMS AND CONDITIONS OF PURCHASE included in this P.O., Seller agrees:</p> <p>MCNC PAYMENT TERMS ARE NET 30 FROM THE DATE OF DELIVERY OR RECEIPT OF INVOICE, WHICHEVER IS LATER.</p> <p>Time is of the essence. Any delays preventing delivery by the due date specified for Each line item of this purchase order should be confirmed in writing as soon as possible. Please keep the authorized signer of this purchase order informed and/or copied on all correspondence to non- purchasing/unauthorized employees. Any freight charges not included on this purchase order or exceeding the included estimate by 10% or more must be approved by MCNC Purchasing prior to shipment. Failure to do so will result in freight charges being the responsibility of the vendor.</p> <p>That Seller's performance of work under this P.O. will comply with all applicable federal, state and local laws, and regulations including requirements of the Department of Commerce, National Telecommunications Information Administration Notice of Funding Opportunity (NOFO) No. NTIA-MMG-2-2022, Middle Mile Grant Program, dated May 13, 2022; the Infrastructure Investment and Jobs Act, 2021, Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA) including the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52 (BABA).</p> <p>https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/MIDDLE%20MILE%20NOFO.pdf</p> | | | | | |
| 1 | | | | | | |



PO2395



Purchase Order: PO

Tax ID:

Bill To: MCNC

PLEASE SUBMIT INVOICES TO AP@MCNC.ORG

BILLING ADDRESS:

P.O. BOX 12889

DURHAM, NC 27709-2889

PO Total Tax:

PO Total Amt:



PO2395

TERMS AND CONDITIONS OF PURCHASE

The only terms and conditions that apply to the purchase of materials, items, products or components (hereinafter Material) and services (hereinafter Services) set forth on the face of this Purchase Order or exhibits hereto are those set forth below, those preprinted on or added by Buyer or with Buyer's consent to the face of this Purchase Order and those which are contained in Buyer's attachments, Buyer's exhibits and/or Buyer's Supplementary Information attached hereto.

1. **DEFINITIONS:** MCNC a 501(c)(3) non-profit corporation, is hereinafter called "Buyer," and the party with whom this Purchase Order is placed is hereinafter called "Seller."
2. **ACKNOWLEDGEMENT AND ACCEPTANCE:** The issuance of this Purchase Order to Seller constitutes an offer expressly limited to the terms contained herein. Seller is hereby notified in advance that Buyer takes exception to any and all changes, additions or deletions which Seller may make to the terms contained herein. Buyer reserves the right to revoke this offer at any time prior to its acceptance. Acceptance shall only be either by the return of an executed acknowledged copy of this Purchase Order or the delivery and acceptance of conforming Material and/or Services to Buyer.
3. **CONFLICTING TERMS AND CONDITIONS:** In the event of a conflict among the terms and conditions of Buyer's Purchase Order, Supplementary Information, Buyer's attachments or Buyer's exhibits, the order of priorities is as follows: (1) typed or handwritten provisions on the face hereof; (2) Supplementary Information: (as defined in Section 5); and (3) the preprinted terms and conditions set forth herein and on the face hereof.
4. **DELIVERY: TIME AND RATE OF DELIVERY ARE OF THE ESSENCE TO THIS PURCHASE ORDER.** Risk of loss shall remain with Seller until receipt of Material by Buyer or Buyer's agent at destination specified by Buyer. In addition, Buyer reserves the right to refuse delivery of Material if that delivery is made more than one week in advance of the delivery schedule included herein and Buyer shall have the option to return such Material to Seller at Seller's expense. Seller shall notify Buyer immediately at such time as Seller has knowledge of any impending material shortage, governmental regulations, labor dispute or other events or impediments which could result in a delay in the delivery.
5. **SUPPLEMENTARY INFORMATION:** All technical specifications, drawings, blueprints, notes, instructions or information referred to on the face of this Purchase Order or contained in attachments or exhibits hereto are incorporated herein by reference and Seller expressly acknowledges that it has received and read such additional information.
6. **PACKAGING AND PACKING:** Seller shall be responsible for proper packing and packaging of the Material purchased hereunder. Seller shall separately number all cases, packages, etc., showing the corresponding part numbers. An itemized packing slip bearing Buyer's order number must be placed on each package.
7. **INSPECTION:** Seller shall inspect all Material prior to shipment to Buyer. Material which fails to pass Buyer's incoming test or inspection may be rejected by Buyer and returned to Seller at Seller's expense. The Buyer, without limitation, may reject any non-conforming Material that does not meet the specifications, or otherwise conform to this Purchase Order without any obligation of payment from Buyer to Seller. If payment has been made before inspection of Material is completed, at Buyer's options, the Buyer can (i) return the non-conforming Material to Seller for a full refund or credit of the purchase price; or (ii) request a replacement of the non-conforming Material. Payment before inspection shall not be deemed acceptance of non-conforming Material or Services.
8. **WARRANTY:** Seller warrants (1) that all Material delivered hereunder is free from defects in design, material and in workmanship; (2) that Seller has good title to the Material and has conveyed such good title to Buyer; (3) that the Material purchased hereunder conforms to applicable specifications, drawings, samples or other description referenced on the face of this Purchase order; (4) Material is new unless otherwise agreed to in writing; and (5) that the Material purchased hereunder will be suitable for the purposes for which intended if such purposes were made known to Seller. If specifications or warranties are not met, Material may be returned at Seller's expense without any payment obligation from Buyer. No Material returned to Seller as defective shall be replaced except upon Buyer's formal authorization. If authorized by Buyer, Seller shall replace defective or non-conforming Material within thirty (30) days or, at Buyer's option, Seller shall credit Buyer's account or issue a rebate to Buyer for Buyer's purchase price for returned, defective or non-conforming Material. Seller warrants that all Services will be performed by knowledgeable and experience professionals. These warranties shall survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Purchase Order and such warranties shall apply to Buyer, its successors, assigns, affiliates, customers and users of its products. These remedies shall not limit Buyer's remedies against Seller, but shall be in addition to all other remedies available at law or equity.
9. **LIMITATION OF LIABILITY AND INDEMNIFICATION:** In no event shall Buyer be liable for any claim of any kind, for any loss, or for any damage, cost or expense arising out of, in connection with, or resulting from this Purchase Order in excess of the price payable by Buyer under this Purchase Order allocable to the Material or Services giving rise thereto. *Notwithstanding anything herein to the contrary, Buyer shall have no liability for any consequential, special, punitive, incidental or indirect damages.* Seller is liable for all injuries caused by the Material or Services. Seller agrees to indemnify, defend and hold harmless Buyer from and against any and all claims, damages (including, without limitation, court costs and reasonable attorney's fees), judgments, expenses and other costs incurred by Buyer, Buyer's affiliates and Buyer's customers arising out of, in connection with, or resulting from Seller's products or services or any misconduct or negligence of Seller. Such indemnification obligations shall survive the cancellation or expiration of the Purchase Order.
10. **INTELLECTUAL PROPERTY:** Seller will defend at Seller's expense any action or allegation based on a claim that the Material or Service purchased hereunder or any of its parts infringes any patent or trademark and will hold Buyer harmless and will pay the costs and damages incurred in any such action. In the event that a final injunction shall be obtained against Buyer's use of the Material or any of its parts by reason of infringement of any patent, trademark, copyright or trade secret or if in Buyer's reasonable opinion, the Material or any of its parts or the Services provided are likely to become the subject of a claim of infringement of any proprietary rights, Seller will, at its expense and as requested by Buyer, either procure for Buyer the right to continue using the Material and/or the Services or replace or modify same so that it becomes non-infringing but functionally equivalent.
11. **PRICE:** Seller expressly agrees that the prices set forth in this Purchase Order are lawful and shall remain fixed until all deliveries have been completed unless otherwise agreed in writing by both parties.
12. **PAYMENTS:** Seller shall issue invoices only upon delivery of Material or completion of Services ordered by Buyer hereunder. Unless different payment terms are specified on the face hereof, Buyer shall issue payment to Seller within 30 days of Buyer's receipt of Seller's correct and conforming invoice. Payment by Buyer is contingent upon delivery by Seller of conforming Material and/or satisfactory completion of Services. Adjustments for payments made for rejected Material or Services or due to discrepancies on paid invoices shall be deducted from subsequent payments due to Seller or, at Buyer's option, promptly refunded by Seller upon request.
13. **COMPLIANCE WITH LAWS:** Seller warrants that in performance of work under this Purchase Order it has complied with or will comply with all applicable federal, state and local laws, regulations and ordinances including, the Fair Labor Standards Act, the U.S. Equal Employment Opportunity Commission, the Walsh-Healey Public Contracts Act, the Federal Food, Drug and Cosmetic Act, and the Clean Air and Water Act. In addition, Seller shall secure and maintain adequate Worker's Compensation in accordance with the laws of North Carolina or states from which Seller shall furnish Material and/or Services for Buyer. Upon Buyer's request, Seller agrees to issue certificates verifying compliance with any laws or regulations, as to Material and/or Services being furnished hereunder. In addition, Seller must fully comply the requirements of the Department of Commerce, National Telecommunications Information Administration Notice of Funding Opportunity (NOFO) No. NTIA-MMG-2-2022, Middle Mile Grant Program, dated May 13, 2022; the Infrastructure Investment and Jobs Act, 2021, Pub. L. No. 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA) including the Build America, Buy America Act, Pub. L. No. 117-58, §§ 70901-52 (BABA).
14. **LIABILITY FOR WORK ON BUYER'S OR ITS CUSTOMER'S PREMISES:** If Seller's work under this Purchase Order involves operations by Seller on the premises of Buyer, its affiliates or its customers, Seller shall prevent the occurrence of any injury to persons or damage to property during the process of such work and except to the extent that any such injury or damage is due solely and directly to Buyer's or Buyer's affiliates or its customer's gross negligence, Seller shall indemnify Buyer, and/or its affiliates and/or its customers against all loss (including costs and attorney's fees) which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors.
15. **RELEASE OF INFORMATION:** Buyer may be required to release information contained in this Purchase Order and/or attached materials, but only if required to do so by State or Federal Law, or pursuant to a subpoena or court order.
16. **CONFIDENTIAL INFORMATION AND ADVERTISING:** Without prior written consent of Buyer, Seller shall neither disclose to any person outside its employment, nor use for purposes other than performance of its duties and obligations under this Purchase Order the terms of this Purchase Order including, but not limited to, any and all supplementary information which is a part of this Purchase Order. Upon termination of this Purchase Order, Seller at Buyer's request shall return to Buyer all written material delivered to Seller or generated by Seller pursuant to the performance of this Purchase Order. This clause shall survive full performance of this agreement for a period of five (5) years from acceptance of conforming Material and/or Services by Buyer.
17. **ASSIGNMENT:** Seller shall neither assign its performance under this Purchase Order or any part thereof nor delegate any obligations hereunder without prior written consent of Buyer. Any purported assignment of performance or delegation of obligations shall be null and void.
18. **GOVERNING LAW:** These Terms and Conditions of Purchase and any supplementary information shall be governed by and interpreted in accordance with the laws of the State of North Carolina. Both parties hereby consent to exclusive jurisdiction of the federal and state courts located in Durham and Wake Counties, North Carolina for the purpose of resolving any and all disputes arising under this Purchase Order, these terms and conditions, and any supplementary information Any failure by Buyer to enforce any provision herein or right or remedy available to it on any one occasion shall not be construed or act as a bar or waiver on any other occasion. .
19. **TERMINATION FOR CAUSE:** Buyer may cancel this Purchase Order in whole or in part at any time by written notice, which notice may be delivered by means of U.S. mail, express courier, facsimile, or electronic mail, in the event the Seller (1) fails to comply with any terms or conditions of this Purchase Order, any supplementary information, or exhibits hereto, including but not limited to delivery terms; or (2) appoints a receiver or trustee in bankruptcy or other similar officer over any or all of its property or assets, files a voluntary or has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days, or (3) merges with or is acquired by a third party without Buyer's prior written consent, or (4) assigns any of its rights or obligations under this Purchase Order to a third party without Buyer's written consent. Upon the occurrence of any one the aforesaid events, and in addition to any remedies which Buyer may have at law or in equity, Buyer may cancel this Purchase Order or any part hereof by notifying Seller in writing of such cancellation and Seller shall thereupon transfer title and deliver to Buyer such work in process or completed Material as may be requested by Buyer. Buyer shall have no liability to Seller beyond payment of any balance owing for Material purchased hereunder and delivered to and accepted by Buyer prior to Seller's receipt of the notice of termination, and for work in process requested by and delivered to Buyer.
20. **SET-OFFS:** Buyer shall have the right at any time to set off any amount owing from Seller to Buyer, or Buyer's affiliates, against any amount due and owing to Seller or any of Seller's affiliates, whether pursuant to this Purchase Order or to any other contractual agreements between Buyer and Seller or their respective subsidiaries or affiliates.
21. **MODIFICATION: Except as provided in Termination for Cause above,** this Purchase Order can be modified or rescinded only by a written document signed by both parties or their duly authorized agents.
22. **ENTIRE AGREEMENT:** The provisions of this Purchase Order, Buyer's Supplementary Information, Buyer's attachments and exhibits contain the entire agreement between Buyer and Seller relating to the purchase of Material or Service.