

**Willwork Inc.**  
**PPE Procurement Program**  
**Terms and Conditions of Sale**  
**Version Date: July 27, 2020**  
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Every quotation submitted by Willwork Inc. (“Seller”), and every acceptance by Seller of a purchase order submitted by a buyer (“Buyer”) for purchase of products are governed by these terms and conditions. Buyer and Seller are sometimes referred to in these terms and conditions as the “Parties.”

Any proposal that includes different or additional terms that vary from these terms and conditions are objected to and disallowed.

- 1. Formation of Contract.** If Seller submits a quotation to Buyer that incorporates these terms and conditions of sale by reference, then the quotation will be deemed an offer, and Buyer’s subsequent purchase order will be deemed an acceptance. If Seller does not submit a quotation to Buyer that incorporates these terms and conditions of sale by reference, then the purchase order will be deemed an offer, and Seller’s subsequent communication of acceptance will be deemed an acceptance. Seller may make an offer or accept an offer only by a written instrument, or in case of acceptance of an offer, by delivery of the products ordered (and acceptance by delivery will only be binding as to the portion of the order actually delivered by Seller). Any automatic or computer-generated response to an order by Seller’s internal electronic data exchange system or otherwise will not be deemed acceptance.
- 2. Credit.** Seller may, but will not be obligated to, grant credit terms to Buyer. Offer or acceptance of any credit terms is subject to final credit approval by Seller. Seller reserves the right to cancel any sale incorporating credit terms if Seller deems Buyer unable to pay for any products. Seller reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Buyer, either generally or with respect to a particular purchase order, and may require cash payments in advance or security satisfactory to Seller.
- 3. Seller’s Procurement.** Unless otherwise agreed in writing, Seller does not maintain stock of the products. Rather, Seller’s obligation under any contract for sale is to procure the products with clean title from a supplier and cause the products and title therein to be delivered to Buyer. In most cases, Seller will procure the products to be delivered to Logan Airport, Boston Massachusetts, from one or more international suppliers.
- 4. Taxes and Other Charges.** Buyer will pay all sales, use, excise or similar taxes, or other charges that Seller is required to pay or collect and remit to any Government (national, state or local) and that are imposed on or measured by the sale.
- 5. Transfer of Title.** Buyer will obtain title in the products once both (a) the products have been fully delivered to Buyer according to the relevant trade term and (b) Seller is paid in full for the products.
- 6. No Set-Off.** Buyer will have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller will be made without Seller’s prior, express written approval.

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- 7. Disclaimer of Warranties.** In the event of a claim by Buyer with respect to any defect or non-conformity, so long as the claim otherwise is not foreclosed by the terms hereof, Seller will assign all rights that it has with respect to a supplier's warranties in the products to Buyer. Seller provides no warranties in the products, express or implied. Specifically, but without limitation, Seller provides no warranty of merchantability or fitness for particular purpose.
- 8. Limitation of Liability.** No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, may be greater in amount than the purchase price for the products in respect of which damages are claimed. Except as described in Paragraph 14, in no event will a Party be liable to the other for any incidental, consequential, indirect, statutory, special, exemplary, or punitive damages, including, but not limited to, lost profits, loss of use, loss of time, inconvenience, loss of business opportunities, damage to good will or reputation, or loss of data, arising out of, or as a result of, the sale, delivery, servicing, use or loss of the products sold hereunder, regardless of whether such liability is based on breach of contract, tort, strict liability or otherwise, and even if advised of the possibility of such damages or such damages could have been reasonably foreseen. Furthermore, Seller will not be liable for any failure of a supplier or a logistics service provider to perform a contractual obligation or for any tort committed by any of them.
- 9. Inspection and Notice.** Buyer will inspect the products promptly upon receipt for defect or non-conformity. If Buyer intends to bring a claim against a supplier for any alleged defect or non-conformity, Buyer must deliver notice of the claim in writing to both Seller and the supplier within ten calendar days following delivery of the products. Buyer's failure to provide such notice will result in waiver of the claim.
- 10. Excuses for Non-Performance.** If the manufacture, transfer, or receipt by either Party of any products covered hereby is prevented, restricted, or interfered with by reason of any event beyond the reasonable control of the Party so affected, the affected Party will be excused from performance to the extent of such prevention, restriction, or interference, and neither Party will be liable to the other for default or delay in performing, except with respect to Buyer's payment obligations.
- 11. Seller's Rights.** If Buyer fails in any manner to fulfill these terms and conditions, Seller may defer further shipments until the default is cured. Remedies provided herein are in addition to, and not in lieu of, other remedies that may be available to Seller. If for any reason, the quantities of the products covered hereby or of any materials used in the production of the products reasonably available to Seller are less than Seller total needs for its own use and for sale, Seller may allocate its available supply of products among its existing or prospective purchasers and/or its own departments, divisions and affiliates in any manner Seller deems proper in Seller's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform this Agreement.

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**12. Disputes.**

- (a) **Arbitration.** If any controversy or claim, whether based on contract, tort, statute, or other legal or equitable theory (including any claim of fraud, misrepresentation, or fraudulent inducement), arising out of the contract of sale, (a “Dispute”), the Parties will resolve the Dispute by arbitration. The arbitration will be pursuant to the then-current rules and supervision of the American Arbitration Association. The arbitration will be held in Suffolk County, Massachusetts, before a single arbitrator who is knowledgeable about the laws and practices relating to trade. If the contract is for an international sale, the arbitrator must be knowledgeable about the laws and practices relating to international trade.
- (b) **Governing Law.** This Agreement will be construed and governed in accordance with the laws of the State of Massachusetts. The United Nations Convention on Contracts for the International Sale of Goods will not apply.
- (c) **Discovery in Arbitration.** The arbitrator may order the Parties to exchange copies of non-rebuttal exhibits and copies of witness lists in advance of the arbitration hearing. The arbitrator has no other power, however, to order discovery or depositions.
- (d) **Arbitrator’s Decision.** The arbitrator’s decision and award are final and binding and may be entered in any court having jurisdiction.
- (e) **Attorneys’ Fees.** Each Party will bear its own attorneys’ fees associated with arbitration, and other costs and expenses will be borne as provided by the rules of the American Arbitration Association. If court proceedings to stay litigation or compel arbitration are necessary, the Party against whom the proceedings are brought must pay all associated costs, expenses, and attorneys’ fees reasonably incurred by the other party.
- (f) **Confidentiality.** Neither a Party, witness, nor the arbitrator may disclose the facts of the underlying dispute or the contents or results of any negotiation, mediation, or arbitration without the prior unanimous written consent of the Parties, except as necessary (and then only to the extent required) to enforce or challenge a settlement agreement or arbitration award or to comply with legal, financial, or tax reporting requirements.
- (g) **Limitations on Actions.** No Party may bring a Dispute more than six months after the later of (a) the date the cause of action accrues, or (b) the date that the Party could have reasonably discovered the basic facts supporting the claim.

**13. No Assignment.** The contract between Buyer and Seller is not transferable by either Party without the prior written consent of the other Party, except that Seller may assign this Agreement without Buyer’s consent if the assignment is to a to an affiliate or if the assignment is carried out as part of a merger, restructuring, or reorganization, or sale or transfer of all or substantially all of Seller’s assets.

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- 14. Price Gouging.** Buyer represents that the price negotiated between Buyer and Seller for the sale of the products is reasonable and fair, given the expense, risk, and efforts expended by Seller in procuring the products from overseas suppliers in a volatile market. Buyer covenants that in no case will it allege in any Dispute, or in any communication to any third party, that the price is unreasonably high or constitutes price gouging. Buyer acknowledges that any such allegation would be defamatory.
- 15. Compliance with Laws; Export Laws.** Buyer and Seller will comply with all applicable international, national, state, regional and local laws and regulations with respect to their performance of this Agreement. Buyer agrees to adhere to all applicable US Export laws and regulations with respect to the products.
- 16. Miscellaneous.** These term and conditions, together with the offer and acceptance, are the sole and exclusive statement of the parties' understanding and agreement with respect to the transactions contemplated by this sale and supersede all prior and contemporaneous agreements, representations, promises, and understandings. The contract of sale may be modified or changed only in a writing signed by authorized representatives of both Parties. No waiver by a Party of the contract of sale will constitute or be deemed to be a waiver in any other case. No waiver will be deemed to occur as a result of the failure to enforce any term or condition of the contract of sale. If any clause or portion of the contract of sale is held to be illegal, invalid, or unenforceable, the remaining clauses or portions will remain in full force and effect.