

# Purchase Order



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

PURCHASE ORDER NO.  
**ALCOHOL06A**

PAGE  
**1**

BLANKET RELEASE  
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CORRECT PURCHASE ORDER NUMBER  
 MUST APPEAR ON ALL PACKAGES  
 INVOICES AND SHIPPING PAPERS  
 QUESTIONS CONCERNING THIS PUR-  
 CHASE ORDER SHOULD BE DIRECTED  
 TO THE BUYER AS NOTED BELOW

CHANGE ORDER

SEE REVERSE SIDE FOR  
 TERMS AND CONDITIONS

INVOICE TO

ALL STATE AGENCIES  
 AND POLITICAL SUBDIVISIONS  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

VENDOR

\*709063243                      502 633 0650  
 AAPER ALCOHOL & CHEMICAL CO  
 PO BOX 339  
  
 SHELBYVILLE KY              40066

SHIP TO

**AGENCY COPY**

ALL STATE AGENCIES  
 AND POLITICAL SUBDIVISIONS  
 VARIOUS LOCALES AS INDICATED  
 BY ORDER

DATE PRINTED		TERMS OF SALE		FEIN/SSN		FUND	
01/29/2006		NET 30		611328204			
SHIP VIA		F.O.B.		FREIGHT TERMS		ACCOUNT NUMBER	
BEST WAY		DESTINATION		PREPAID		MUL - MUL	
LINE	QUANTITY	UOP	VENDOR ITEM NO		UNIT PRICE	AMOUNT	
	DELIVERY DATE	CAT NO	ITEM NUMBER				
			AGREEMENT				
	THIS AGREEMENT IS TO SUPPLY ETHYL ALCOHOL TO THE STATE OF WEST VIRGINIA PER THE ATTACHED LETTER FROM VENDOR DATED 1-23-06.						
	ORDERS IN EXCESS OF \$250.00 WILL BE PRE-PAID AND FREIGHT IS COVERED BY THE PRICE SHOWN FOR THAT LINE ITEM. ORDERS LESS THAN \$250.00 WILL BE SHIPPED PRE-PAID AND THE COST OF THE SHIPPING WILL BE ADDED TO THE INVOICE. LESS THAN 4 CASES WILL BE CHARGED \$50.00 HAZARDOUS MATERIALS FEE.						
	ORDERS SHALL BE DELIVERED WITHIN 30 DAYS AFTER RECEIPT OF ORDER.						
	AAPER ALCOHOL SHALL REQUIRE THE SUBMISSION OF AN EXECUTED ABC FORM PRIOR TO RELEASE OF ALCOHOL.						
	FORM 5150.9 IS REQUIRED TO PURCHASE TAX FREE ALOCHOL. THIS FORM IS REQUIRED TO AVOID THE						
						WV STATE PURCHASING DIVISION ADMINISTRATION UNIT CERTIFIED ENCUMBERED  FEB 06 2005  <i>Beverly Toliver</i>	

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE  *1-30-06*

OPEN END  
 TOTAL

APPROVED FOR  
 ONE FISCAL YEAR  
*Samuel Wayfield*

BY *Betty Francisco*  
 BETTY FRANCISCO  
 304-558-0468  
 PURCHASING DIVISION AUTHORIZED SIGNATURE

APPROVED AS TO FORM BY  
 ASSISTANT ATTORNEY GENERAL

**GENERAL TERMS & CONDITIONS  
PURCHASE ORDER/CONTRACT**

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: {a} conform to the specifications, drawings, samples or other description furnished or specified by the Buyer {b} be merchantable and fit for the purpose intended and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The Director or Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor / contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum -** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR ü160.103) and will be disclosing Protected Health Information (45 CFR ü160.103) to the vendor.

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LINE	QUANTITY	UOP	VENDOR ITEM NO.		UNIT PRICE	AMOUNT	
	DELIVERY DATE	CAT NO	ITEM NUMBER				
0001		DR	000-01		335.00000		
	01/31/2006		190-25-01-001				
ALCOHOL: ETHYL, 190 PROOF, 55 GALLON DRUM							
BILLING OF THE FEDERAL EXCISE TAX. IT IS THE RESPONSIBILITY OF THE AGENCY TO VERIFY THAT AAPER HAS THIS FORM ON FILE WHICH WILL EXEMPT THEIR PURCHASES FROM THIS FEDERAL EXCISE TAX ON ALCOHOL PURCHASES.							
PRICES ARE FIRM FOR ONE YEAR FROM THE DATE OF THE CONTRACT. AT RENEWAL, THE VENDOR SHALL BE PERMITTED TO REQUEST PASS-THROUGH COST CHANGES.							
EXHIBIT 3							
LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON FEBRUARY 1, 2006 AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.							

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE

TOTAL

BETTY FRANCISCO

304-558-0468

BY \_\_\_\_\_  
 PURCHASING DIVISION AUTHORIZED SIGNATURE

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LINE	QUANTITY	UOP	VENDOR ITEM NO	UNIT PRICE	AMOUNT
	DELIVERY DATE	CAT NO	ITEM NUMBER		
<p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN</p>					
					TOTAL

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<p>CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p>					

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BETTY FRANCISCO

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THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.  REV. 04/11/2001							
0002	01/31/2006	DR	190-25-01-001	190-25-01-002	47.50000		
ALCOHOL, ETHYL, 190 PROOF, 5 GALLON DRUM							
0003	01/31/2006	DR	190-25-01-002	190-25-04-001	48.50000		
ALCOHOL, ETHYL, 200 PROOF, 5 GALLON DRUM							
0004	01/31/2006	CS	190-25-04-001	190-25-04-002	65.00000		
ALCOHOL, ETHYL, 200 PROOF, 24 - 16 OZ. BOTTLES							
0005	01/31/2006	DR	190-25-01-001		39.20000		
ALCOHOL, ETHYL, 190 PROOF, 1 GAL DR. (4 X 1 GAL/CS)							
						TOTAL	

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BETTY FRANCISCO

304-558-0468

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0006	01/31/2006	DR	190-25-01-001		40.00000		
	ALCOHOL, ETHYL, 200 PROOF, 1 GAL DR. (4 X 1 GAL/CS)						
						TOTAL	

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State of West Virginia  
Department of Administration  
Purchasing Division  
Ms. Betty Francisco  
PO Box 50130  
Charleston, WV 25305-0130

1-23-06

Dear Ms Francisco,

This letter briefly describes the terms regarding the sale and transportation of Ethyl Alcohol to the State of West Virginia.

1. The term is one year with the option of two-one year renewals;
2. Prices are firm for a period of one year, reviewing the prices at the end of that period and allowing for pass-through costs,
3. Orders in excess of \$250.00 will be pre-paid and included in the prices shown; orders less than \$250.00 will be shipped pre-paid and the cost of shipping added, Less than 4 case goods will be charged \$50.00 hazardous materials fee
4. Delivery shall be within 30 days after receipt of order;
5. AAAPER Alcohol and Chemical Co will require the submission of an executed ABC form prior to release of alcohol. Form 5150.9 is required to purchase tax free alcohol, purchases will be billed for Federal Excises Tax unless this permit is on file.

Pricing is as follows for ethyl alcohol 190 & 200 proof.

<u>Package</u>	<u>Proof</u>	<u>Price</u>
55 Gal. Drum	190	335.00
5 Gal. Drum	190	47.50
5 Gal. Drum	200	48.50
24x1 Pint	200	65.00
4x1 Gal Bottle	190	39.20
4x1 Gal. Bottle	200	40.00

Enclosed is a signed copy of the Agreement Addendum as required.

Sincerely,

Ross W. Hoffmann

RECEIVED  
2006 JAN 25 A 9:27  
PURCHASING DIVISION  
STATE OF WV

**AGREEMENT ADDENDUM**

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **ARBITRATION** - Any references to arbitration contained in the agreement are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any clause requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Should the agreement include a provision for interest on late payments, the Agency agrees to pay the maximum legal rate under West Virginia law. All other references to interest or late charges are deleted.
7. **RECOUPMENT** - Any language in the agreement waiving the Agency's right to set-off, counterclaim, recoupment, or other defense is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **ATTORNEY FEES** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages or limiting the Vendor's liability under a warranty to a certain dollar amount or to the amount of the agreement is hereby deleted. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is hereby deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to insure equipment or property of any kind and name the Vendor as beneficiary or as an additional insured is hereby deleted.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

**ACCEPTED BY:  
STATE OF WEST VIRGINIA**

Spending Unit: State Purchasing Div.

Signed: Karen Beyal

Title: Assistant Director

Date: 11/30/06

**VENDOR**

Company Name: AAPER Account & Chem. Co.

Signed: [Signature]

Title: J.P.

Date: 1-23-06

