

## PURCHASE ORDER TERMS AND CONDITIONS

GENERAL. The Purchase Order together with these Purchase Order Terms and Conditions constitute an agreement between Utah State University (“USU”) and the Contractor named on the face of the Purchase Order associated herewith (together, the “Agreement”). Contractor agrees to provide USU with the goods and/or services purchased (hereinafter, “Goods”) as set forth in the Purchase Order. Contractor hereby accepts and agrees to the terms and conditions set forth herein, without any modification, addition, or alteration. No terms or conditions in any sales form issued by Contractor shall bind USU or constitute a variance, modification, amendment, alteration, or addition to any of the terms and conditions set forth herein or as otherwise outlined in the Agreement or be a waiver or exception thereto unless specifically agreed to in writing by USU.

PAYMENT TERMS. This Agreement shall not be filled at higher prices than specified herein. If price terms are omitted from the face hereof, the price of the goods shall be the lower of (a) the price last quoted or paid (whichever is later), or (b) the prevailing market price for buyers similar to USU at the time of shipment. Unless otherwise provided herein, prices shown on this Agreement are deemed to include all costs and expenses of delivering goods to the shipment point designated herein. Invoices shall be furnished to the satisfaction of USU's designated representative and shall be payable as provided. Before making payment, USU may require evidence that any third parties furnishing labor and materials for the work have been paid. The payment term for all invoices is the greater of net thirty (30) days from date of invoicing or as otherwise indicated on the invoice by Contractor. Any cash/payment discount period shall commence upon receipt of Contractor's correct invoice or upon receipt of the Goods, whichever is later.

SHIPMENT AND INSPECTION. The terms and routing of shipment shall be as provided as indicated in the Purchase Order, or as USU otherwise directs in writing. USU may revise shipping instructions as to Goods not then shipped. USU reserves the right to inspect all the Goods at Contractor's facilities or upon USU's receipt of said Goods. This right shall be exercisable notwithstanding USU having paid for the Goods prior to inspection. USU, by reason of its' failure to inspect the Goods, shall not be deemed to have accepted any Goods that are defective, or which do not conform to the stated specifications, or to have waived any of its' rights or remedies arising by virtue of such defects or non-conformance. USU reserves the right to return any Goods that are defective or non-conforming and Contractor agrees to refund USU for any such returned Goods. Title to, and risk of loss of the Goods shall remain with Contractor until the Goods are delivered to the F.O.B. point specified in the Purchase Order, or if no such point is specified, then, when the Goods are delivered to USU. If the Goods are of an explosive, flammable, toxic, or otherwise dangerous nature, then Contractor shall hold USU harmless from and against all claims asserted against USU on account of any personal injuries and/or property damages caused by the Goods, or by the transportation thereof, prior to the completion of unloading at USU's point of delivery.

RECORDS. Contractor shall maintain or supervise the maintenance of all records necessary to properly account for the payments made to Contractor for costs authorized by this Agreement. These records shall be retained by Contractor for at least four years after the Agreement terminates, or until all audits initiated within the four years, have been completed, whichever is later. Contractor agrees to allow USU, State, and Federal auditors, and USU and State Agency Staff, access to all the records to this Agreement, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

TAXES. USU's sales and use tax exemption number is 11895815-002-STC. The Goods being purchased are being paid from USU funds and used in the exercise of USU's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of USU, unless otherwise stated in the Agreement. Contractor shall be responsible for the payment of all income tax and social security amounts due because of payments received from USU for these Contract services. Contractor shall not include within the price any sales, use or excise tax from which USU is exempt.

COMPLIANCE WITH LAW. Contractor warrants that it is in compliance with all federal, state, and local law ordinances, rules, regulations, and orders applicable to its performance under this Agreement, including, but not limited to applicable equal employment clauses of the Civil Rights Act of 1964, Executive Order 11246, the Americans with Disabilities Act of 1992, and, when relevant, those laws prescribed for performance under federal contracts, subcontracts, and grants with educational institutions (e.g., FAR, Subpart 31.3).

EQUAL OPPORTUNITY. Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42 USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, Contractor agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the workplace.

CONFLICT OF INTEREST. Contractor represents that none of its officers or employees are officers or employees of USU, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended, and USU Personnel Policy 307.

DEBARMENT. Contractor warrants and hereby certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement, by any state or federal government department or agency. Contractor agrees to notify USU in writing within seven (7) days if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any governmental entity during the period of performance designated in the Agreement.

EXPORT CONTROL. All activities and/or transactions contemplated or hereby agreed to within this Agreement shall be strictly predicated on full compliance with all U.S. and international export control regulations including but not limited to restricted party prohibitions; export license requirements; and compliance with all U.S. Office of Foreign Assets Control license requirements and sanctions.

GOODS AND SERVICES. The Goods shall be delivered free from all claims, liens, encumbrances, and charges whatsoever. All right, title, and interest in and to any Goods delivered in connection with this Contract shall be held and owned solely by USU, unless otherwise specifically designated in the Agreement. All right, title, and interest in and to any intellectual property resulting from or associated with the Goods (collectively the "Intellectual Property") shall be held and owned solely by USU, unless otherwise specifically designated in the Agreement. The Parties agree that any such Intellectual Property shall be a "work made for hire." If Intellectual Property is not deemed to constitute a work made for hire, or if Contractor should otherwise, by operation of law, be deemed to retain any rights (whether moral rights or otherwise) to any Intellectual Property, then Contractor agrees to assign, and does hereby assign, to USU, without further consideration, Contractor's entire right, title, and interest in and to such Intellectual Property.

WARRANTIES. In addition to all other warranties expressed or implied in law, Contractor warrants that the Goods and their packaging delivered hereunder will conform to all applicable specifications, drawings, samples, symbols, or other descriptions provided by USU and will be merchantable, of good material and workmanship, free from defects and sufficient for the particular purposes intended. Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, Contractor warrants that: (1) the Goods will do what Contractor (including its salespeople) said they would do, (2) the Goods will live up to all specific claims that Contractor makes in its advertisements, (3) the Goods will be suitable for the ordinary purposes for which such products are used, (4) the Goods will be suitable for any *special purposes* that USU has relied on Contractor's skill or judgment to consider when it advised USU about the Goods, (5) the Goods have been properly designed and manufactured, and (6) the Goods are free of significant defects or unusual problems about which USU has not been warned in writing. Unless otherwise agreed to in writing, the Goods shall be new and not used or reconditioned. Contractor further warrants that Goods delivered hereunder will be free and clear of all security interests, liens, charges, restrictions, or encumbrances whatsoever and that Contractor will convey to USU good and marketable title to the Goods. USU is relying upon Contractor's skill and judgment in selecting and providing the Goods specified hereunder. Warranties hereunder shall survive acceptance and run to USU, its successor, assigns, and users of the Goods

INDEMNIFICATION. Contractor agrees to indemnify, hold harmless, and release USU, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, deficiencies, injury, liability, suits, claims, actions, judgments, settlements, proceedings, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and attorneys' fees arising out of or associated in any way with Contractor's performance under this Contract, including, but not limited to, any third-party claim alleging (a) breach or non-fulfillment of any representation, warranty, or covenant in this Agreement by Contractor or its employees; (b) any

negligent, or more culpable act, or omission of Contractor or its employees (including any reckless or willful misconduct) in connection with the performance of the obligations under the Agreement; (c) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent, or more culpable acts, or omissions of Contractor or its employees (including any reckless or willful misconduct); (d) any failure by Contractor to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement; or (e) infringement of any patent, trademark, trade name, or copyright associated with USU's use of the Goods. USU shall not be liable for any special, consequential, lost profit, expectation, punitive or other indirect damages in connection with any claim arising out of or relating to this Agreement, whether grounded in tort (including negligence), strict liability, contract, or otherwise. If this Agreement covers the performance of labor or services by Contractor for USU, then Contractor shall procure liability insurance in amounts acceptable to USU insuring against any claims and losses associated with the labor or services and shall provide USU with a certificate of insurance evidencing such insurance if requested to do so. These certificates shall provide that the coverage evidenced thereby shall not be canceled except upon 30 days prior notice to USU.

**REMEDIES.** In the event of Contractor's breach of this Agreement, USU may take any or all of the following actions, without limiting any other rights or remedies available to USU by law: (a) require Contractor to repair or replace such Goods, and upon Contractor's failure to do so, repair or replace the same at Contractor's expense; (b) reject any shipment or delivery containing defective or non-conforming Goods and return for credit or replacement at USU's option - said return to be made at Contractor's expenses and risk; (c) return quantities in excess of variation specified on this Agreement at Contractor's expense and risk; (d) cancel any outstanding deliveries hereunder, and treat such breach by Contractor as Contractor's repudiation of this Agreement. USU reserves the right to terminate this Agreement, without cause, in advance of the specified expiration date, upon 30 days prior written notice being given Contractor. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination. In the event of any breach of this Agreement by Contractor, Contractor shall pay all costs of enforcing it, including attorney's fees.

**FORCE MAJEURE.** USU shall not be liable or responsible to Contractor, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from a Force Majeure Event (as defined herein). A "*Force Majeure Event*" is an event outside of the control of USU that results in USU's failure or delay in fulfilling or performing any term of this Agreement. Such events specifically include war, pandemic, epidemic, natural disaster, weather, fire, act of God, airline strike, riots or other civil unrest, shortage of adequate power or transportation facilities, act of terrorism, federal or state governmental restrictions (including travel or event restrictions or recommendations), and other similar or dissimilar events. If a Force Majeure Event occurs, then USU may terminate this Agreement by sending notice of termination to Contractor. Under such circumstances, termination will be effective upon Contractor's receipt of the notice of termination.

**INCORPORATION BY REFERENCE.** The following are incorporated by reference in their entirety, though not attached to this Agreement: (a) All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this Agreement; and (b) USU Purchasing Rules and Regulations and the State of Utah Procurement Code, Rules, and Regulations.

**CHOICE OF LAW AND VENUE.** The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.

**GOVERNMENT RECORDS AND MANAGEMENT ACT.** Contractor acknowledges that USU is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended ("*GRAMA*"); that certain records within USU's possession or control, including without limitation, the Agreement (but not including (i) proprietary software or (ii) materials to which access is limited by the laws of copyright or patent), may be subject to public disclosure; and that USU's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential information provided to USU that Contractor believes should be protected from disclosure must be accompanied by a written claim of confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, USU may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to USU's employees, attorneys, accountants,

consultants, and other representatives on a need-to-know basis; provided, that such representatives shall be subject to confidentiality obligations no less restrictive than those set forth in the Agreement.

**GOVERNMENTAL IMMUNITY.** Contractor further acknowledges that USU is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended ("*Immunity Act*"). Nothing in the Agreement shall be construed as a waiver by USU of any protections, rights, or defenses applicable to USU under the Immunity Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of USU to incur by contract any liability for the operations, acts, or omissions of Contractor or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of USU contained in the Agreement are subject to the Immunity Act and are further limited only to claims that arise directly and solely from the negligent acts or omissions of USU. Any limitation or exclusion of liability or remedies in the Agreement for any damages other than special, indirect, or consequential damages, shall be void and unenforceable.

**USU INSURANCE.** USU carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager and applicable law. Nothing in the Agreement shall require USU to carry different or additional insurance, and any obligations of USU contained in the Agreement to name a party as additional insured shall be limited to naming such party as additional insured with respect to USU's negligent acts or omissions.

**NOTICE.** Any payment, notice, or other communication required or permitted to be given to either party hereto shall be in writing and shall be deemed to have been properly given and effective: (a) on the date of delivery if delivered in person during recipient's normal business hours; or (b) on the date of attempted delivery if delivered by courier, express mail service or first-class mail, registered or certified. Such notice shall be sent or delivered to the respective addresses listed in the opening clause of this Agreement.

**ASSIGNMENT.** Neither party may assign, transfer, or otherwise dispose of its rights, interests, or duties hereunder, in whole or in part, to any third party without prior written approval from the other Party.

**WAIVERS** The waiver of any term or condition hereof shall not be construed to be a waiver of any other term or condition, nor shall such waiver be deemed a waiver of a subsequent breach of the same term or conditions.

**RELATIONSHIP OF PARTIES.** In assuming and performing the obligations of this Agreement, the Parties are each acting as independent parties, and neither shall be considered or represent itself as a joint venture, partner, agent, or employee of the other.

**AMENDMENT AND SUPPLEMENT.** Any amendment and/or supplement of this Agreement shall come into force only after a written agreement is signed by both Parties. The amendment and supplement duly executed by both Parties shall be part of this Agreement and shall have the same legal effect as this Agreement.

**MERGER.** The Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter thereof.

**SEVERABILITY.** The provisions of this Agreement are severable, and if any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions herein.