

Purchase Order – Standard Terms and Conditions

1. **THE ORDER**-Furnish the material or services specified in full accordance with conditions printed on the face and back hereof, and any other attachments made a part of this order.
2. **TERMS OF SALE**-Preferred: F.O.B. Destination, Prepaid with freight included in pricing; Acceptable: F.O.B. Destination, Prepay & Add, and freight added to invoice UNLESS another point has been specified by the University. No unauthorized or collect shipments accepted.
3. **IDENTIFICATION OF ORDER**-The Purchase Order Number must appear on all invoices, correspondence containers, shipping papers, and packing lists.
4. **CORRESPONDENCE**-All correspondence pertaining to this order must be addressed as follows: Purchasing Department, University Name and Buyer Name.
5. **BILLING INSTRUCTIONS**-a. 3-Part Invoice or an electronic invoice, when applicable, within five (5) days after shipment of material; b. Invoice must show cash discounts. Cash discounts when authorized, will be computed from the date correct invoices are received, c. Send SEPARATE invoices for EACH AND EVERY shipment; d. Submit invoices for returnable containers, stating terms and conditions for return thereof.
6. **TAXES**-Do not include Federal Excise or State Sales Tax on your invoices. University is exempt from these taxes. Appropriate certification of exemption will be furnished upon reasonable request.
7. **INVOICE TERMS**-Time in connection with discounts offered will be computed from date of the delivery of the supplies or services to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination when final inspection and acceptance are at the destination point or from date correct invoice is received if the later date is later than the date of delivery.
8. **CONTRACTUAL REMEDIES**-The University shall not be bound by any limitations on remedies available to the University. Any attempt to contractually limit remedies will be void on its face. If the Seller fails to properly perform its obligations in a timely or proper manner, or if the Seller violates any Purchase Order terms, the University shall have the right to immediately terminate the relationship and withhold payments in excess of fair compensation for completed goods or services provided; however, the University shall have the option to give Seller written notice and a specified period of time in which to cure. Notwithstanding the above, the Seller shall not be relieved of liability to the University for damages sustained by virtue of any breach.
9. **MATERIALS/EQUIPMENT**-Unless specifically called for in the Purchase Order, all items shall be new and unused. The Seller warrants that the supplies delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this order for a period of ninety- (90) days from the date such supplies are accepted unless otherwise provided herein.
10. **PACKING LIST**-A detailed packing list showing the purchase order must accompany all shipments.
11. **INSPECTION**-All supplies purchased hereunder are subject to inspection and rejection upon receipt by the University, and rejected supplies will be returned at the Seller's expense. Transportation charges paid by the University in returning rejected supplies shall be reimbursed by the Seller. The University's count shall be final and conclusive on all shipments not accompanied by a packing list. In addition to the right to return rejected supplies, in the event of delivery of supplies not in accordance with the requirements of this order, the University may notify the Seller of such damages or deficiencies and if not repaired or corrected by the Seller within ten (10) days after receipt of such notice, or such additional time as may be mutually agreed to by the University and the Seller, the University shall have the right to correct any damages, defects, insufficiencies or improprieties therein and do any other work necessary to put the supplies in condition for the use intended and the cost of such correction shall be deducted from the monies due the Seller under this order.
12. **CHANGES**-The University may at any time by written instructions make changes, within the general scope of this order, in any one or more of the following: a. Quantity or specifications; b. Method of shipment or packing; and c. Place of delivery. If any such change causes any increase or decrease in the cost of, or time required for, performance of this order, any equitable adjustment shall be made in the order price or delivery schedule, or both and the order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this paragraph must be asserted within thirty (30) days from date of receipt by the Seller of the notification of change, provided however, that the University may receive and act upon such claim asserted at any time prior to final payment under this order.
13. **VARIATIONS IN QUANTITIES**-Unless otherwise specified on the face of this order, any variation in the quantities herein called for, not exceeding 10%, will be accepted as compliance with the order when caused by conditions of loading, shipping, packing or allowance in manufacturing process, and payments shall be adjusted accordingly.
14. **PAYMENT**-The Seller shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered in completion, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act of 1985.
15. **CANCELLATION OF ORDER**-This purchase order or any part thereof may be canceled by either the University or the Seller with the giving of thirty (30) days notice of intent to cancel for reasons including, but not limited to, the following: The University may cancel for costs exceeding the purchase order prices; late delivery, and failure of the Seller to comply with the terms and conditions specified herein. Seller may request cancellation of a purchase order if the Seller is prevented from performance by an act of war, order of a legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the Seller.
16. **ERRORS**-In case of error in calculation or typing, the quoted unit price will be used as the basis for correction of this order.
17. **NONDISCRIMINATION**-The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, gender, age, disability, veteran status or national origin. The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, gender, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.
18. **COMPLIANCE WITH FEDERAL AND STATE LAWS**-The Seller shall comply with all applicable Federal and State Laws and regulations in the performance of the Contract. The Contract shall be governed by and subject to the laws of the State of Tennessee.
19. **SAFETY DATA SHEETS**-An up-to-date Safety Data Sheet (SDS) must accompany all goods requiring one in accordance with current State of Tennessee and Federal laws, rules and regulations. Please remit to Environmental Health & Safety at the University via e-mail to ehas@memphis.edu.
20. **COPYRIGHTED/LICENSED PRODUCTS**-Seller must be an authorized dealer for selling copyrighted/licensed products under this purchase order. Notwithstanding this, Seller assumes responsibility for any and all liabilities associated with the selling of these products or services upon acceptance of purchase order.
21. **ACCEPTANCE OF TERMS**
 - a. The goods and/or services shall be furnished by the Seller subject to and in accordance with this order. Seller's acceptance of this order shall constitute agreement to be bound by and comply with all terms and conditions set forth herein. Written acceptance or shipment of all or any portion of the goods or the performance of all or any portion of the services covered by this order by the Seller shall constitute unqualified acceptance of all its terms and conditions.
 - b. Any additional or different terms and conditions shall not become part of the order, despite the University's receipt thereof unless the University specifically agrees in writing to the inclusion. The Seller's quotation, if any, is incorporated and made a part of this Purchase Order only to the extent of

Purchase Order – Standard Terms and Conditions

specifying the nature and description of the goods or services ordered, and then only to the extent that such items are consistent with the other terms of this Purchase Order and/or the University's Request for Quotation.

22. **INSURANCE**-Seller agrees to furnish Workers' Compensation Insurance in the amounts required by law. Public Liability and Property Damage coverage shall be for all operations under the proposal for at least \$100,000 for one person and \$300,000 for each accident for bodily injury or death; and for property damage at least \$50,000 for each accident, plus coverage for the equipment being moved. Certificate of Insurance is to be on file with the University's Purchasing Department prior to performing any work or service on the University's campus.

23. **FUNDING OUT CLAUSE**-This Purchase Order is subject to the allotment of state and/or federal funds, and may be null and void unless funds have been appropriated and are available for the purchase of the service or item, which forms the basis of the Contract.

24. **SIGNATURE**-Only University Purchase Orders with authorized electronic Signatures may contractually bind the University.

25. **AUDIT** - The Contractor shall maintain documentation for all charges against the TBR and payment made by the University under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by University or the Comptroller of the Treasury or their duly appointed representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.

26. **ILLEGAL IMMIGRANTS** - By acceptance of this purchase order, the vendor is attesting that the vendor will not knowingly utilize the services of illegal immigrants and will not knowingly utilize the services of any subcontractor that does so in delivery of the goods/ services under this order. If the vendor is discovered to have breached this attestation, the vendor shall be prohibited from supplying goods/services to any TBR institution/state for a period of one (1) year from the date of discovery of the breach. Rules of Finance and Administration, 0620.

27. **DEBARMENT CERTIFICATION**. By acceptance of this Purchase Order, the vendor certifies that no principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

28. **SALES AND USE TAX**. By acceptance of this Purchase Order, the vendor certifies that the vendor, and any applicable subcontractor, is registered with the Department of Revenue, or has received a written exemption from the Department of Revenue, for the collection of Tennessee sales and use tax.

29. **SERVICE AND SOFTWARE ACCESSIBILITY STANDARDS**. Unless otherwise disclosed to University in writing, the vendor warrants and represents that the products/services, including any updates, provided to the University will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act.

30. **CLICK-WRAP AGREEMENTS**. By acceptance of this Purchase Order, the vendor agrees that click-wrap agreements shall not be binding upon the University. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the University without the approval of the University's Procurement and Contract Services Office. No employee has the authority to modify, amend or supplement this Purchase Order through a click-wrap agreement. This Purchase Order can only be modified, amended or supplemented under these terms through a written Change Order/Amendment approved in accordance with the University's and TBR's rules, policies, and procedures.

31. **DATA PRIVACY AND SECURITY**. Personal Information (PI) includes but is not limited to that information protected by HIPAA, the HITECH Act, FERPA, or Gramm-Leach-Bliley) or such information which would allow a third party to gain access to the personal, medical or financial records of any of any party. Vendor represents and warrants that its collection, access, use, storage, disposal and disclosure of PI complies with all applicable federal and state privacy and data protection laws. Vendor represents and warrants that Vendor will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Vendor deems necessary to maintain compliance with SSAE16. If PI provided by Customer to Vendor is subject to FERPA. Vendor agrees that in its handling of FERPA data it will perform as a school official as that term is defined by FERPA regulations. Vendor acknowledges that its improper disclosure or re-disclosure of PI covered by FERPA may, under certain circumstances, result in Vendor's exclusion from eligibility to contract with Customer for at least five (5) years. Vendor shall provide Customer with the name and contact information for an employee of Vendor who shall serve as Customer's primary security contact and shall be available to assist Customer twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with any security incident in which it is reasonably suspected that there has been a breach of information security. Vendor shall immediately mitigate or resolve any Security Incident, at Vendor's expense and in accordance with applicable privacy rights, laws, regulations and standards. Vendor shall reimburse Customer for actual costs incurred by Customer in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under applicable law as a result of the Security Incident.

32. **IRAN DIVESTMENT ACT**. By acceptance of this Purchase Order, the Seller and each person signing on behalf of the Seller certifies, and in the case of joint sellers each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Seller is not on the list created pursuant to TCA §12-12-106.

33. **BOYCOTT OF ISRAEL**. Pursuant to TCA Section 12-4-119, Contractor certifies that it is not currently engaged in, and will not for the duration of the agreement, engage in a boycott of Israel, as defined in TCA Section 12-4-119 (a) 1.