

STANDARD TERMS & CONDITIONS FOR PURCHASE ORDERS

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS ACTING FOR AND ON BEHALF OF THE UNIVERSITY OF ARKANSAS – FAYETTEVILLE

1. **GENERAL:** These Standard Terms and Conditions are incorporated by reference in each Purchase Order (PO) issued by the University, and are agreed to by both vendor and the University, provided that any Special Terms and Conditions included in the University's PO take precedence over these Standard Terms and Conditions. No additional terms and conditions of this contract shall be accepted without the written consent of the University. In the event of a conflict between the terms and conditions offered by the University, and any terms provided by vendor, the University terms and conditions shall control.
2. **PRICES:** In case of errors in extension, unit prices shall govern.
3. **DISCOUNTS:** All cash discounts offered will be taken if earned.
4. **TAXES:** The University of Arkansas - Fayetteville ("UAF" or "the University") is **NOT** exempt from paying sales or use taxes, except on those items and /or purchase transactions that are specifically exempted by law. When applicable, state sales tax must be itemized on invoices.
5. **ANTITRUST ASSIGNMENT:** The vendor named on this PO, acting herein by the authorized individual, its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.
6. **GUARANTY:** All items shall be newly manufactured, in first class condition, latest model and design, including where applicable, containers suitable for the shipment and storage, unless otherwise indicated. Vendor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished hereunder. Vendor further guarantees that if the items furnished hereunder are to be installed by the vendor, that such items will function properly when installed. Vendor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. Vendor's obligations under this paragraph shall survive for a period of one (1) year from date of delivery, unless otherwise specified herein.
7. **BACKORDERS OR DELAY IN DELIVERY:** Backorders or failure to deliver within the time required may, at the sole discretion of the University, be construed as an act of default of the contract. Vendor must give written notice to the University Procurement Department of the reason for any such delay and the expected delivery date. The University's Procurement Department has the right to extend the date of delivery if vendor's reasons for delay appear valid and the vendor's expected delivery is acceptable. However, if either vendor's reason for

delay or expected delivery date is deemed unacceptable by the University, vendor shall be in default and the University may exercise any and all remedies available under law, including but not limited to remedies involving the procurement of goods or services from another vendor.

8. **DELIVERY REQUIREMENTS:** No substitutions or cancellations are permitted without approval of the Procurement Department. Delivery shall be made during UAF work hours only, 8:00 a.m. to 4:00 p.m. Central Standard Time (closed Saturday, Sunday and University Holidays), unless prior approval for other delivery has been obtained. Packing list shall be enclosed with each shipment, listing the UAF Purchase Order number. No central receiving is available. Items should be shipped to the "Ship-To" address listed on the purchase order.
9. **DEFAULT:** All commodities furnished will be subject to inspection and acceptance by University after delivery. Default in promised delivery or failure to meet specifications entitles the University to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge the full increase, if any, in cost and handling to defaulting vendor. Furthermore, default in promised delivery or failure to meet specifications authorizes the Purchasing Department to cancel this contract (PO), and by vendor's acceptance of this PO, guarantees vendor shall refund all monies paid from this PO to the University.
10. **VARIATION IN QUANTITY:** The University assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the UAF Purchase Order.
11. **INVOICING:** The vendor shall be paid in a timely manner upon submission of a properly itemized invoice, after delivery and acceptance of commodities or services by the University. All invoices must be sent to the "Bill To" point listed on the University purchase order. All invoices **MUST** be billed to the University, not to an individual, and must also include the following additional information if applicable:
 - a. The complete name and address of the vendor. NOTE: If the vendor name is not **PRINTED** on the invoice, the invoice must be signed by the vendor if the invoice exceeds \$500.00
 - b. Invoice Date
 - c. Invoice Number
 - d. Purchase Order Number
 - e. Itemized listing of purchases. This should include a description of the merchandise and/or services, unit price and extended line total
 - f. Name and location of department for whom the goods or services were provided.
 - g. Discount payment terms.
 - h. Itemized taxes.

Subject to all other terms and conditions herein, properly submitted invoices will be paid by the University in a timely manner. The University does not agree to pay interest charges or late fees on any amounts due to vendor.

12. **UNIVERSITY PROPERTY:** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity

- furnished to the vendor hereunder or in contemplation hereof or developed by the vendor for use hereunder shall remain property of the University, be kept confidential, be used only as expressly authorized, and returned at the vendor's expense to UAF Procurement Department, properly identifying what is returned.
13. **PATENTS OR COPYRIGHTS:** The vendor agrees to indemnify and hold the University harmless from all claims, damages, and costs, including attorney's fees, arising from infringement of patents or copyrights.
 14. **LOGO PRODUCTS:** Merchandise that carries a University logo or trademark must be purchased from vendors that are licensed through the Collegiate Licensing Corporation.
 15. **AUTHORIZED DISTRIBUTOR:** Vendor must be an authorized distributor of all goods/services procured by the University. Prior to issuance of a purchase order, vendor may be required to submit a letter from the manufacturer as proof of authorization.
 16. **DUTIES AND CUSTOMS FEES:** All duties and customs fees shall be paid in advance by the vendor prior to shipping any product for import or export to the University.
 17. **PERMITS AND LICENSES:** Vendor shall, at its own expense, procure and keep in effect all necessary permits or licenses as required by law to fulfill this Purchase Order.
 18. **ASSIGNMENTS:** Any contract entered into pursuant to a UAF Purchase Order is not assignable nor the duties thereunder delegable by either party without the written consent of the University.
 19. **LACK OF FUNDS:** The University may cancel this contract to the extent the funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the vendor by the University. If the University is unable to pay for goods that it retains, the contractor may file a claim with the Arkansas State Claims Commission. Similarly, if the vendor has provided services and there are no longer funds legally available to pay for the services, the vendor may file a claim.
 20. **DELAYED CLAIMS:** Arkansas State Law requires that a claim be filed with the Arkansas State Claims Commission for any invoices or services rendered that are more than two (2) fiscal years old.
 21. **NON-DISCRIMINATION:** Vendor agrees to adhere to any and all applicable Federal and State laws, including laws pertaining to non-discrimination. In particular, consistent with the provisions of Act 954 of 1977, as amended and codified at Ark. Code Ann. § 25-17-101, the vendor agrees as follows: (a) the vendor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap or national origin; (b) in all solicitations or advertisements for employees, the vendor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; (c) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of contract and this contract may be canceled, terminated or suspended in whole or in part; (d) the vendor will

include the provisions of items (a) through (c) in every subcontract so that such provisions will be binding upon such subcontractor or vendor.

22. ARKANSAS TECHNOLOGY ACCESS CLAUSE: The vendor expressly acknowledges that state funds may not be expended in connection with the purchase of information technology unless that system meets certain requirements consistent with State of Arkansas technology policy standards relating to accessibility by persons with visual impairments. Accordingly, the vendor represents and warrants to UAF that the technology provided to UAF for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purpose of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assisting devices or services which would constitute reasonable accommodations under the American with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. If requested, the vendor must provide a detailed plan for making this purchase accessible and/or a validation of concept demonstration.

23. SAFEGUARDING OF CUSTOMER INFORMATION.

(a) Throughout the term of this Agreement, vendor shall implement and maintain "appropriate safeguards", as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all "customer information," as that term is defined in 16 C.F.R. § 314.2(b), received by vendor pursuant to this Agreement.

(b) Vendor shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of any customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of any customer information. Within 30 days of the termination or expiration of this Agreement, vendor shall destroy all records, electronic or otherwise, in its or its agents' possession that contain such customer information and shall deliver a written certification of the destruction to the University.

(c) Vendor consents, upon reasonable advance notice, to University's right to conduct an on-site audit of vendor's security program.

(d) Notwithstanding any other provisions of this Agreement, University may terminate this Agreement for cause if vendor has allowed a material breach of its security program, if vendor has lost or materially altered customer information, or if the University reasonably determines that vendor's security program is inadequate.

(e) Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims,

damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by vendor's negligence, intentional acts or omissions, or any loss or material alteration of customer information. (f) Vendor shall reimburse the University for any damages, including but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

24. HIPAA

To the extent that this contract involves covered use or receipt of Protected Health Information, as defined under the Health Insurance Portability and Accountability Act (HIPAA), vendor agrees to fully comply with all applicable privacy requirements under HIPAA.

25. ETHICAL STANDARDS: It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employee or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.

26. CONFLICT OF INTEREST: Vendor recognizes that University of Arkansas Board of Trustees Policy 330.1 provides that the University shall not, without approval of the Chancellor or Vice President for Agriculture, enter into a contract with a current or former state employee, member of the Arkansas General Assembly, state constitutional officer or board or commission member, or the immediate family member thereof, or any entity in which such a person holds an ownership interest of 10 percent or greater.

27. CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION: Any contract, or amendment to any contract, executed by the University which exceeds \$25,000.00 shall require the vendor to disclose information consistent with the terms of Arkansas Executive Order 98-04, and any amendments or replacements, and the regulations pursuant thereto. Failure of any individual or entity to disclose, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the University under the provisions of the existing law. The Contract and Grant Disclosure and Certification Forms (F-1 and F-2) can be found on the following UAF website: <http://www.uark.edu/admin/busaffrs/purchasing/forms.html>. No contract, or amendment to any existing contract, that falls under Order 98-04, will be approved until the vendor completes and returns the disclosure form.

28. GOVERNING LAW: The parties agree that this contract, including all amendments thereto, shall be construed and enforced in accordance with the laws of the State of Arkansas, without regard to choice of law principles. Consistent with the foregoing, this contract shall be subject to the Uniform Commercial Code as enacted in Arkansas.

29. **DISPUTES:** The vendor and the University agree that they will attempt to resolve any disputes in good faith. Subject to the provisions on sovereign immunity herein, the vendor and the University agree that the State of Arkansas shall be the sole and exclusive venue for any litigation or proceeding that may arise out of or in connection with this contract. The vendor acknowledges, understands and agrees that any actions for damages against the University may only be initiated and pursued in the Arkansas Claims Commission. Under no circumstances does the University agree to binding arbitration of any disputes or to the payment of attorney fees, court costs or litigation expenses.
30. **SOVEREIGN IMMUNITY:** Nothing in this contract shall be construed to waive the sovereign immunity of the State of Arkansas or any entity thereof, including the University of Arkansas – Fayetteville.
31. **LIMITATIONS OF LIABILITY:** Vendor acknowledges that, under Arkansas law, the University may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from any damages.
32. **WAIVER:** No waiver of any term, provision or condition of this contract, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed to be a further or continuing waiver of any such term, provisions or condition of the contract.
33. **INDEPENDENT PARTIES:** Vendor acknowledges that under this contract it is an independent vendor and is not operating in any fashion as the agent of the University. The relationship of the vendor and University is that of independent contractors, and nothing in this contract should be construed to create any agency, joint venture, or partnership relationship between the parties.
34. **INDEMNIFICATION BY VENDOR:** Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to the performance of Vendor's obligations under this contract, including but not limited to any claims pertaining to or arising from Vendor's negligence, intentional acts or omissions.
35. **EXCUSED PERFORMANCE:** In the event that the performance of any terms or provisions of this Agreement shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, acts of terrorism, public disturbances, unavailability of materials meeting the required standards, strikes, lockouts, differences with workmen, fires, floods, Acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, such party is unable to prevent (the foregoing collectively referred to as "Excused Performance"), the party so interfered with may at its option suspend, without liability, the performance of its obligations during the period such cause continues, and extend any due date or deadline for performance by the period of such delay, but in no event shall such delay exceed six (6) months.

36. TIME IS OF THE ESSENCE: Vendor and University agree that time is of the essence in all respects concerning this contract and performance hereunder.

37. TERMINATION:

BREACH

- a) The University may terminate the agreement immediately upon the breach of agreement by the vendor by delivering written notice to the vendor.
- b) In the event that the vendor shall fail to maintain or keep in force any of the terms and conditions of this agreement, the University may notify the vendor in writing of such failure and demand that the same be remedied within 10 days. Should the vendor fail to remedy the same within said period, the University shall then have the right to immediately terminate this agreement.