

TERMS AND CONDITIONS OF PURCHASE ORDER

The following terms and conditions are hereby made a part of this Purchase Order unless otherwise specified on the face of this order:

1. **ACCEPTANCE OF TERMS:** (a) The goods and services shall be furnished by the Vendor subject to and in accordance with this order. Vendor's acceptance of this order shall constitute agreement to be bound by and to comply with all the 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 Vendor shall constitute unqualified acceptance of all its terms and conditions.

(b) Any additional or different terms and conditions which may appear in any communication from the Vendor are hereby rejected and shall not be effective or binding unless specifically agreed to in writing by the University. No such additional or different terms or conditions shall become part of the order despite the University's receipt thereof unless the University specifically agrees in writing to their inclusion.

2. **SHIPPING INSTRUCTIONS:** (a) Shipments will be prepaid via cheapest common carrier, F.O.B. destination, unless otherwise stated in this order. The University does not accept C.O.D. shipments.

(b) The University Purchase Order number MUST appear on all invoices, packing lists, packages, shipping notices, instruction manuals, and any correspondence. Memorandum of contents shall be enclosed in each box or package. Shipping charges, if allowed, must be supported by copies of bills attached to invoices.

(c) All shipments of hazardous material must be accompanied by Material Safety Data Sheets. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials. The contractor shall comply with applicable federal, state, and local laws, code ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material and are required to comply with the provisions of 8 AAC 15.0101(g).

3. **TIME OF DELIVERY:** Time of delivery is of the essence of this order and the order is subject to cancellation or termination for failure to deliver on time.

4. **VARIATION IN QUANTITY:** No variation in quantity will be accepted unless specifically authorized elsewhere in this order.

5. **PRICE:** (a) The University shall receive the benefit of any general reduction in Vendor's price prior to delivery and in no event shall the University be charged higher prices than Vendor's similar customers who take delivery in substantially the same amounts and in substantially similar circumstances.

(b) Prices shall be inclusive of all federal, state, and local taxes except those taxes from which the University as a purchaser is exempt or immune. The University of Alaska is a constitutional corporation of the State of Alaska.

6. **PAYMENTS:** Payments for good and services furnished under this order will be made after the latter of (1) receipt and acceptance of goods or services, (2) receipt of proper billing for such goods or services, or (3) receipt of all documents required by the order using the following terms: SUA – Net 15 days, ACH – Net 30 days, Check – Net 45 days.

7. **DISCOUNT DATE:** Cash discount periods on any invoice received, shall commence on the date shipment is received or accepted by the University or date of receipt of invoice, whichever is later.

8. **INSPECTION AND ACCEPTANCE OF GOOD:** (a) All work performed and all goods delivered are subject to the University's inspection and acceptance at destination notwithstanding any payments or inspection at source. Final inspection and acceptance shall be conclusive except as to hidden damage found in a timely manner, latent defects, fraud, such gross mistakes as amount to fraud, and exercise of warranties.

(b) Goods rejected by the University for whatever reason may be held, transported and/or stored by the University at Vendor's sole expense. On items delivered in error on in excess of the quantity ordered or authorized, the University reserves the right to return said overages or items at Vendor's expense. Vendor agrees to hold the University harmless for any damages, destruction, or other loss during such return.

(c) Vendor shall promptly reimburse the University for any expenses which the University has advanced on Vendor's behalf in holding, transporting and/or storing, rejected or nonconforming goods or over shipments.

9. **RIGHT TO INSPECT PLANT AND WORK:** The University may, at reasonable times, inspect the part of the plant or place of business and work in progress of a Vendor of any subcontractor which is related to the performance of this order.

10. **WAIVER:** The waiver of any breach of the terms of this order by the University shall not constitute a waiver of any of its terms or any subsequent breach, nor shall any payment for goods delivered or services constitute such waiver.

11. **WARRANTIES:** (a) Vendor warrants that all articles, materials, and equipment supplied under this order conform to the specifications of this order, to be of merchantable quality, and to be free from defect in materials and workmanship.

(b) Vendor shall honor standard commercial guarantees and warranties offered by the manufacturer, and any other specific warranty or guarantee specified elsewhere in this order.

12. **LIENS OR CLAIMS:** Vendor warrants the equipment, articles and/or materials furnished under the terms of this order are unencumbered and not subject to any lien or claim.

13. **ASSIGNMENT:** This order, including the right to receive payment of, is not transferable, or otherwise assignable without the express prior written consent of the University of Alaska Procurement Officer. Requests for transfer or assignment must be in writing, and in advance. An instrument of assignment is subject to prior claims of persons, firms, and corporations for services or supplies provided in the performance of this order.

14. **AUTHORITY:** The procurement officer whose name appears on the face of this order has statutory authority to act as agent for the University. Vendor is cautioned that instructions contrary to the provisions of this order, which are received from University employees not specifically delegated authority to act in this matter, are not valid or binding on the University, and are a violation of Alaska Statute 36.30 and University Regulations 23 AAC 05.

15. **CHANGES:** No modifications of any of the terms or conditions of this order, including, but not limited to, delivery, price, quality, quantities, and specifications, will be effective without the prior written consent of the University.

16. **INDEMNIFICATION:** (a) Vendor agrees to hold harmless the University, its Board of Regents, officers, agents and employees from, and to defend it against, any and all claims arising from the purchase, installation, and/or use of the equipment, articles and/or materials or services which are furnished by the Vendor under this order.

(b) Vendor assumes all risk of damage or injury to Vendor's own employees, property or person acting for or on behalf of Vendor from whatever cause.

(c) Nothing herein shall be construed so as to relieve the University from liability arising solely as a result of its own gross negligence.

17. **TERMINATION, DELAYS, AND EXCUSED PERFORMANCE:** (a) The University may, by written notice stating the extent and effective date, terminate this order for convenience, in whole or in part, at any time. The University shall pay the Vendor as full compensation for performance until such termination: (1) the unit or pro rata price for the delivered and accepted portion; (2) A reasonable amount, as approved by the procurement officer, not otherwise recoverable from other sources by the Vendor with respect to the undelivered, unperformed or unaccepted portion of the order; provided compensation hereunder shall in no event exceed the total order price.

(b) The University may, by written notice, terminate the order for Vendor's default, in whole or in part, at any time, if the Vendor refuses or fails to comply with the provisions of the order or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time or fails to make delivery or perform within the time specified or any written extension thereof. In such event, the Vendor shall be liable for any and all damages incurred by the University including but not limited to cost of inspections, receipt, transportation, care, custody and cover cost. Vendor shall also be liable for any and all consequential damages incurred by the University that are related to such breach.

(c) If performance is delayed through no fault, and for reasons beyond the reasonable control of the Vendor, an extension of time may be granted for completion. If a delay is determined to have been caused by the University, the time for performance, and price of the order may be subject to adjustment.

(d) Vendor shall in any event notify the University without delay when Vendor has reason to believe performance will or may be delayed.

18. **ROYALTIES, LICENSES, AND PERMITS:** Vendor shall pay all royalties and fees to obtain licenses and permits relating to items or services provided in this order.

19. **LIABILITY FOR UNIVERSITY-FURNISHED PROPERTY:** Vendor assumes complete liability for any tools, articles or materials, if any, furnished by the University to Vendor in connection with this order. Vendor agrees to pay for all such items so furnished and spoiled by it or not otherwise accounted for to the University's satisfaction. The furnishing to Vendor of any tools, articles or material in connection with this order shall not unless otherwise expressly provided, be construed to vest title thereto in Vendor.

20. **EEO:** Vendor shall comply with E.O. 11246 (Equal Employment Opportunity) as amended, and applicable order and regulations by the U.S. Secretary of Labor or designee (41 CFR Part 60). If applicable, the parties hereby incorporate the requirements of 41 CFR §§60-1.4(a)(7), and 29 CFR Part 471, Appendix A to Subpart A.

If applicable, this contractor and subcontractor shall also abide by the requirements of 41 CFR § 60-300.5(a) and 41 CFR § 60-741.5 (a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

UA is an AA/EO employer and educational institution and prohibits illegal discrimination against any individual: www.alaska.edu/titleIX/compliance/nondiscrimination.

21. **RETENTION, EXAMINATION AND AUDIT OF RECORDS:** The University and the U.S. Comptroller General or their agents may, at reasonable times and places, examine, copy, and audit the books and records of the Vendor to the extent that the books and records relate to this order or any cost and pricing data related to this order. The Vendor shall maintain books and records that relate to the order for three (3) years after the date of final payment under the order.

22. **OTHER APPLICABLE LAWS:** The University of Alaska is a recipient of federal financial assistance and is also a prime contractor on federal contracts. As a result, provisions of federal agreements and federal law are applicable to University procurements. Therefore, any provision required to be included in an order of this type by any applicable and valid Executive Order, Federal, State, or local law, ordinance, rule or regulation, grant, or contract, including but not limited to the following: Truth in Negotiations (P.L. 87-653), Small Business Act (15 U.S.C. 631 et seq), Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c et seq), Anti-Kickback Act of 1986 (41 U.S.C. 51-58 et seq), Davis-Bacon Act (40 U.S.C. 276a to 276a-7), Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333 et seq), Drug Free Workplace Act of 1988 (P.L. 100-690), Clean Air Act (42 U.S.C. 7401 et seq), Clean Water Act (33 U.S.C. 1251 et seq), and Procurement of Recovered Materials (2 CFR § 200.322), are applicable to and incorporated by references in this order.

23. **PATENTS AND COPYRIGHTS:** Any discovery or invention or copyrightable materials developed in the course of or resulting from work carried on under this order shall be the property of the University and subject to the applicable provisions of the University of Alaska Regulations and Board of Regents Policies. If the source of funds for this order is federal, any applicable federal patent and copyright rules also apply, take precedence, and supersede this provision.

24. **DISPUTES:** (Applicable only if the amount of this purchase order exceeds \$10,000.) Any dispute which may arise between the Vendor and the University, in any manner concerning this contract, shall be resolved in accordance with Alaska Statutes 36.30.620 – 632, AS 36.30.670 – 695, and University of Alaska regulations and procedures.

25. **UTILIZATION OF SMALL AND DISADVANTAGED SMALL BUSINESS CONCERNS AND LABOR SURPLUS AREA FIRMS:** It is the policy of the University of Alaska to actively seek participation of small and disadvantaged small business concerns and labor surplus area firms in its procurements. The Vendor is encouraged to do the same regarding subcontracts or purchase order for any part of the performance of this order.

26. **FERPA:** (a) The Family Educational Rights and Privacy Act (FERPA) limits the use and redisclosure of personally identifiable information from student education records in paper, electronic or other form. Contractor agrees to hold education records of Contracting Agency in strict confidence. Contractor shall not use or disclose information from education records except as permitted or required by this contract. Contractor and its officers, employees, and agents shall use the information only for the purposes for which the disclosure was made. Contractor shall not disclose the information to any other party without the prior consent of the student. Contractor shall conduct the Work in a manner that does not permit personal identification of students by individuals other than representatives of Contractor that have legitimate educational interests in the information. Contractor shall destroy or return the information to the Contracting Agency upon termination, cancellation, expiration or other conclusion of this contract, or when the information is no longer needed by Contractor for the purposes of this contract. If Contractor violates these conditions, the Contracting Agency will not allow Contractor access to education records for at least five years.

(b) Contractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality of information from education records. These measures shall be extended by contract to any subcontractors used by Contractor. Contractor shall, within one day of discovery, report to the Contracting Agency any use or disclosure of information from education records that is not authorized by this contract.