

## PURCHASE ORDER TERMS AND CONDITIONS

1. **GENERAL.** This Purchase Order ("Order") constitutes the entire agreement between the contractor/vendor named on the face hereof and Utah State University (USU) covering the goods and/or services, described herein as the "goods", unless a separate USU contract is attached. Contractors acceptance must be limited to the terms and conditions stated herein, without any modification, addition or alteration. No terms or conditions in any sales form issued by the Contractor shall bind the Utah State University or constitute a variance, modification, alteration or addition to any of the terms, conditions and provisions in this Order or be a waiver or exception thereto unless specifically agreed to in writing by an authorized agent of USU.
2. **PRICE.** This Order 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 (I) the price last quoted or paid (whichever is later), or (II) the prevailing market price for buyers similar to Utah State University at the time of shipment. Unless otherwise provided herein, prices shown on this Order are deemed to include all costs and expenses of delivering goods to the shipment point designated herein.
3. **SHIPMENT AND INSPECTION.** The terms and routing of shipment shall be as provided on the face hereof, or as Utah State University otherwise directs. USU may revise shipping instructions as to any goods not then shipped. Utah State University shall have the right to inspect any or all of the goods at Contractor's plant or upon USU's receipt of said goods or at the University's election. This right shall be exercisable notwithstanding USU having paid for the goods prior to inspection. The University, by reason of its' failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods 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.
4. **PAYMENT TERMS/CASH DISCOUNT PERIOD.** The payment terms for all transactions is net 30 days from date of invoicing, unless otherwise indicated on the invoice by the Contractor. Any cash/payment discount period shall commence upon receipt of the Contractor's correct invoice or upon receipt of the goods, whichever is later.
5. **AUDIT OF RECORDS.** The Contractor agrees to allow the University, State and Federal auditors' access to all the records to this contract, for audit and inspection and monitoring of services. Such access will be during normal business hours, or by appointment.
6. **RISK OF LOSS.** Title to, and risk of loss of the goods shall remain with the Contractor until the goods are delivered to the F.O.B. point specified in the Order, or if no such point is specified, then, when the goods are delivered to Utah State University. However, if the goods are of an explosive, flammable, toxic or otherwise dangerous nature, the Contractor shall hold USU harmless from and against any and all claims asserted against the University 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 Utah State University's point of delivery.
7. **WARRANTIES.** In addition to all other warranties expressed or implied in law, the Contractor warrants that the goods and their packaging delivered hereunder will conform to all applicable specifications, drawings, samples, symbols or other descriptions furnished by Utah State University and will be merchantable, of good material and workmanship, free from defects and sufficient for the particular purposes intended. Unless otherwise specified in this Order, 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 the Contractor will convey to the University good and marketable title to the goods. USU is relying upon the Contractor's skill and judgment in selecting and providing the goods specified hereunder. Contractor shall indemnify and hold the University harmless from and against any claims for damages (personal, property or other), losses, demands, costs and expenses, including attorneys' fees, arising from the Contractor's negligence or breach of its obligations under this Order. Warranties hereunder shall survive acceptance and run to Utah State University, its' successor, assigns and users of the goods.
8. **REMEDIES.** In the event of the Contractor's breach of this agreement, Utah State University may take any or all of the following actions, without limiting any other rights or remedies available to the University by law: (I) require the Contractor to repair or replace such goods, and upon Contractor's failure to do so, repair or replace the same at the Contractor's expense; (II) 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 the Contractor's expenses and risk; (III) return quantities in excess of variation specified on this Order at the Contractor's expense and risk; (IV) cancel any outstanding deliveries hereunder, and treat such breach by the Contractor as the Contractor's repudiation of this agreement.
9. **PATENTS.** It is anticipated that the goods will be possessed, used and/or sold by Utah State University. If by reason of any of these acts a claim or action is brought or threatened for infringement of any patent, trademark, trade name or copyright with regards to the goods, their manufacture or use, the Contractor shall at its' own expense indemnify and hold USU harmless from any such claims or actions and any damages or expenses whatsoever resulting there from.
10. **INDEMNITY:** If this Order covers the performance of labor or services by the Contractor for Utah State University the Contractor shall indemnify and hold the University harmless from and against all claims and losses, and shall procure liability insurance in amounts acceptable to USU insuring against said claims and losses, and shall furnish Utah State University with insurers' certificates 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 the University. Unless otherwise agreed in writing when labor or services are performed or furnished under this Order, the Contractor shall perform such work as an independent contractor and not as an agent or employee of Utah State University.
11. **TAXES.** The University certifies that the purchase made by this Order is exempt from Utah state sales and use tax and from federal excise tax. Utah State University certifies that goods are to be paid, in whole or in part, with government funds and will be used in the exercise of essential government functions. If the goods purchased are construction materials and unless otherwise indicated on the face hereof, USU certifies that these materials will be installed or converted to real property by employees of the University and are, therefore, exempt from Utah state sales and use tax. Contractor shall not include within the price any sales, use or excise tax from which the University is exempt. The USU tax-exempt number is 11895815-002-STC.
12. **GOVERNING LAW AND VENUE.** This Order and the agreement between the parties evidenced hereby are deemed to be made in the State of Utah and shall in all respects be construed and governed by the laws of that State. Venue for resolution of any dispute arising hereunder shall be within a Utah court of competent jurisdiction selected by Utah State University.
13. **COMPLIANCE WITH LAW.** Contractor warrants that it will comply with all federal, state and local law ordinances, rules and regulations applicable to its performance under this Order, including applicable equal employment clauses of the Civil Rights Act of 1964, Executive Order 11246 dated September 25, 1965, the Americans with Disabilities Act of 1992, and, when relevant, those laws prescribed for performance under federal contracts, subcontracts and grants with educational institutions (FAR, Subpart 31.3).
14. **WAIVERS AND ASSIGNMENT.** 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. This Order may be assigned by the Contractor only upon prior written approval of Utah State University.
15. **DEBARMENT.** The contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any government department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the University. The Contractor must notify the USU Director of Purchasing Services within 30 days if debarred by any governmental entity during the Contract period.