

# PO Terms and Conditions

- **Purchase Order Terms and Conditions** – All purchases, regardless of the amount are subject to the Terms and Conditions as stated in this document.
- **Appendix A** – Appendix A is subject to purchases where federal funds are used for said procurement, and funds used are in the amounts of \$5,000.00 to \$9,999.99.
- **Appendix B** – Appendix B is subject to purchases in the amount of \$10,000.00 or greater, regardless of the funding source
- **Indemnification Insurance Form** – The Indemnification and Insurance Form is subject to all purchases where construction, servicing and other needs of purchase have supplier or supplier's contractors working on University of Utah properties

## Purchase Order Terms and Conditions

1. Unless otherwise specifically provided by separate written agreement signed by Buyer, these terms and conditions shall govern with respect to the goods (the "Goods") and/or services (the "Services") identified in this offer to purchase ("Purchase Order"). Buyer reserves the right to revoke or withdraw this Purchase Order in whole or in part prior to receipt by Buyer of Seller's written acceptance. By acceptance of this Purchase Order Seller agrees to comply with the terms and conditions contained herein and, subject to the pricing provisions below, to sell (or lease if so noted) Goods as described herein for the prices or other consideration indicated. Acceptance of this Purchase Order is expressly limited to the terms and conditions contained herein. No other terms and conditions shall apply, including any terms or conditions contained in any Seller quotation, acknowledgment, response hereto, or other form which is in addition to or different than the terms and conditions contained herein. Any such additional or different terms and conditions are hereby objected to by Buyer. Acceptance by Buyer of any Goods or Services provided hereunder shall not constitute Buyer's acceptance of any additional terms and conditions. This Purchase Order shall be accepted by Seller in any manner permitted by law or upon the first of the following to occur: Seller's making or signing any other form or letter of acknowledgment (except that no additional or different terms and conditions thereon shall apply); any performance by Seller hereunder; ten (10) days after Seller's receipt of this Purchase Order.
2. This Purchase Order 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 Buyer and Seller relating to or arising under this Purchase Order shall be exclusively in the State of Utah.
3. All shipments are to be made F.O.B. destination, freight prepaid, to receiving point at University of Utah, Salt Lake City, Utah, unless otherwise indicated on this Purchase Order.
4. Any Goods shipped in excess of the quantity specified in the Purchase Order, will at Buyer's option, be returned at Seller's expense.
5. The prices charged Buyer are to be no higher than prices charged on orders placed by others for similar quantities or similar conditions subsequent to the last general announced price change.
6. Buyer is exempt from Federal Excise Taxes, Utah Sales and Use Taxes. See Tax Exempt ID numbers on front. Do not include taxes when submitting invoices. Federal Excise Tax Exemption Certificates and Utah Sales and Use Tax Exemption Certificates will be furnished upon request. The Seller is responsible for complying with all tax exemption requirements. The Seller is responsible for payment of all tax obligations that arise from the Seller's failure to comply with exemption requirements.
7. Seller is subject to and must comply with applicable state and federal anti-discrimination laws. The University of Utah is a federal contractor and subject to the provisions of Executive Order 11246. We are obligated to inform you that if you employ 50 or more persons and have a federal contract or subcontract in the amount of \$50,000 or more, you are required to develop a written affirmative action program and to annually file a current SF-100 form (EEO-1).
8. Buyer may cancel this Purchase Order, in whole or in part, without liability to Buyer, if deliveries are not made at the time and place and in the quantities or types of Goods or Services specified or in the event of a breach by Seller of any of the other terms or conditions hereof. Buyer may terminate this order in whole or in part at any time for its convenience, by notice to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within sixty (60) days after the effective date of the termination. Any cancellation or termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.
9. Risk of loss or damage to Goods shall be on the Seller until such Goods have been delivered to and accepted by Buyer, notwithstanding any other terms contained herein. All Goods will be received by Buyer subject to its right of inspection and rejection.

Buyer shall be allowed a reasonable period of time to inspect the Goods and to notify Seller of any non-conformance with the terms and conditions of this Purchase Order. Buyer may reject any Goods which do not conform to the terms and conditions of this Purchase Order. Goods so rejected may be returned to the Seller, or held by the Buyer at Seller's risk and expense.

10. Seller expressly warrants that all Goods supplied hereunder shall be merchantable within the meaning of Section 2-314 (2) of the Uniform Commercial Code in effect on the date of this Purchase Order. In addition to all warranties which may be prescribed by law, the Goods shall conform to any specifications, drawings, and other description furnished by Buyer and shall be free from defects in materials and workmanship. Seller also warrants that to the extent the Goods are not manufactured pursuant to detailed designs furnished by Buyer, they will be free from defects in design. Such warranties, including warranties prescribed by law, shall run to Buyer for a period of one year after delivery.
11. To the extent the Goods are not manufactured in accordance with Buyer's designs, Seller shall defend, indemnify and hold harmless Buyer, Buyer's assignees, and other users of the Goods from and against any claim of infringement of any Letters Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any Goods purchased hereunder. Buyer shall promptly notify Seller of any such claim.
12. In filling this Purchase Order, Seller shall warrant and guarantee to Buyer that the Goods or Services are not in violation of Sections 5 and 12 of the Federal Trade Commission Act, the Fair Packaging and Labeling Act, the Federal Food, Drug, and Cosmetic Act, the Consumer Product Safety Act of 1972, The Federal Insecticide, Fungicide and Rodenticide Act, The Federal Hazards and Substances Act, The Fair Labor Standards Act, The Wool Products Labeling Act, The Flammable Fabrics Act, and the Occupational Safety and Health Act of 1970.
13. Seller shall not assign this Purchase Order or any interest herein including any performance or any amount which may be due or may become due hereunder, without Buyer's prior written consent.
14. For good cause and as consideration for executing this Purchase Order, the Seller, through its duly authorized agent, conveys, sells, assigns, and transfers to Buyer all rights, title, and interest in and to all causes of action Seller may now or hereafter acquire under the antitrust laws of the United States and the State of Utah, relating to the particular Goods or Services purchased or acquired by Buyer.
15. With regard to any computer hardware, computer software, or other data processing equipment, materials, supplies or services provided hereunder, Seller shall warrant the error-free performance in the processing of any date and date related data, including but not limited to, calculating, comparing and sequencing of dates, and the manipulation of data with dates prior to, including and beyond January 1, 2000. For purposes of this paragraph, error-free performance shall mean the accurate performance of data processing functions according to all applicable product specifications, in a manner readily apparent to the user and without undue user intervention.
16. FOR FEDERAL REPORTING PURPOSES ONLY: Indicate on invoice if Seller is a small business, or is minority- or woman-owned.
17. The University of Utah is committed to policies of equal opportunity, affirmative action and nondiscrimination. The University seeks to provide equal access to its programs, services and activities for people with disabilities. Reasonable prior notice is needed to arrange accommodations. For further information or questions regarding equal opportunity, contact the University of Utah Office of Equal Opportunity & Affirmative Action: (801) 581-8365 (Voice or TTY).
18. Seller represents that they have not provided, attempted to provide, or offered any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, directly or indirectly to any employee or agent of the Buyer for the purpose of improperly obtaining or rewarding favorable treatment in connection with the award of any procurement contract. Seller further represents that they have not been solicited, accepted, or attempted to accept any kickback from any employee or agent of the Buyer. Incidents of kickback may be reported to the **Ethics & Compliance Hotline** at [https://secure.ethicspoint.com/domain/en/default\\_reporter.asp](https://secure.ethicspoint.com/domain/en/default_reporter.asp) (ente University of Utah in the Organization Name box) or phone 1-888-206-6025.
19. The University of Utah Health Sciences Center is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This transaction may fall under the jurisdiction of HIPAA and seller must comply with applicable state and federal HIPAA laws. If you have any questions, please contact the HIPAA Regulatory Office at (801) 587-9241.
20. Seller certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Purchase Order, by any governmental department or agency. If Seller cannot certify this statement, Seller will submit to Buyer a written explanation for review by Buyer. Seller must notify Buyer's Director of Purchasing within 30 days if debarred by any governmental entity during Purchase Order period.
21. Environmentally Preferable Purchasing: The contractor is encouraged to offer Energy Star certified products, EPEAT (Electronic Product Environmental Assessment Tool) recommended products, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The University of Utah also encourages contractors to offer products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services. Items considered in this comparison may include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal.

22. If this Purchase Order is issued from a Request for Proposal process and provides for the physical performance of Services within the State of Utah, Seller or Seller's service provider is required to register and participate in the Status Verification System (E-verify) to verify the work eligibility status of Seller's or Seller's service provider's employees hired on or after July 1, 2009 and employed in the State of Utah, in accordance with UCA Section 63G-11-103.
23. Export Control Reporting Requirement: Seller acknowledges that providing Goods or Services under this Purchase Order is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Seller agrees to comply with all such laws, regulations and orders as currently in effect or hereafter amended. Seller shall not disclose any export-controlled information, or provide any export-controlled equipment or materials to Buyer without prior written notice. In the event that Buyer agrees to receive such export-controlled information, equipment or materials, Seller shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: [askme@purchasing.utah.edu](mailto:askme@purchasing.utah.edu).
24. Seller warrants and represents that Seller, its officers, directors, and any employees or subcontractors providing goods or services under this Purchase Order (i) are not currently excluded, debarred, or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) or to provide goods to or perform services on behalf of the federal government as either a contractor or subcontractor. This shall be an ongoing representation and warranty during the term of this Purchase Order and Seller shall immediately notify Buyer of any change in the status of the representation and warranty. Buyer may immediately terminate this Purchase Order for cause in the event of a breach of this section or as a result of any material change in status of the representation and warranty. Notwithstanding any other provision in this Purchase Order, Seller shall defend and indemnify Buyer and its officers, employees, and agents in connection with any and all claims, losses, causes of action, judgments, fines, damages, or other similar expenses, including reasonable attorney fees, resulting from a breach of this section."

## Appendix A

**ARTICLE I** – The Board of Trustees of the University of Utah hereinafter called "University" has entered into a contract with the United States of America hereinafter called "Government." This order is entered into in furtherance of the performance of the work provided for in said contract.

The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of services covered by this order, shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made part of the order only to the extent of specifying the nature of the materials, supplies or services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions of this order.

**ARTICLE II – INSPECTION.** The materials, supplies or services furnished shall be exactly as specified in this order, free from all defects in Seller's design, workmanship and materials, and except as otherwise provided in this order, shall be subject to inspection and test by University at all times and places. If, prior to final acceptance any materials, supplies or services are found to be defective or not as specified, University may reject them, require Seller to correct them without charge or require delivery of such materials, supplies or service at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by University, University may terminate the order in whole or in part. Seller shall bear all the risks as to rejected materials, supplies and services and, in addition to any costs for which Seller may become liable to University under other provisions of this order, shall reimburse University for all transportation costs, other related costs incurred or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

**ARTICLE III** – University may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be recognized without written approval of University. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless University waives this condition. Nothing in this Article shall excuse Seller from proceeding with performance of the order as changed hereunder.

#### **ARTICLE IV – TERMINATION.**

- A. University may by written notice stating the extent and effective date terminate this order for convenience in whole or in part at any time. University shall pay Seller as full compensation for performance until such termination: (a) the unit or pro rata order price for the delivered and accepted portion; and (b) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by University, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.
- B. University may by written notice terminate this order for Seller's default, in whole or part, at any time, if seller refuses or fails to comply with the provisions of this 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 deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, University may purchase or otherwise secure materials, supplies or services and, except as otherwise provided herein, Seller shall be liable to University for any excess costs occasioned of University thereby. If, after notice of termination for default, University determines that the Seller was not in default or that failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or the public enemy, acts of University, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of University, unless University shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.
- C. If University determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, University may extend the time for completion of work called for by this order, when promptly applied for in writing by Seller, and if such delay is due to failure of University, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of University to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.
- D. The rights and remedies of University provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
- E. As used in this Article, the word "Seller" includes Seller and his sub-suppliers at any tier.

**ARTICLE V – TITLE.** Title to the material and supplies purchased hereunder shall pass directly from Seller to University or Government at the f.o.b. point shown, subject to the right of the University to reject upon inspection.

**ARTICLE VI – PAYMENT, EXTRA CHARGES, DRAFTS.** Seller shall be paid upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. University will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by transportation receipts, or facsimile, if transportation is payable and charged as a separate item.

**ARTICLE VII – WARRANTY.** Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable .commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services and that the rights and remedies so provided are in addition to and do not limit any rights afforded to University by any other Article of this order.

**ARTICLE VIII – PATENT INDEMNITY.** Seller shall indemnify University and Government and its officers, agents, and employees against liability, including costs, for infringement of Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of Government) resulting from Seller's furnishing or supplying standard parts or components or utilizing its normal practices or methods in the performance of this order to any parts, components, practices, or methods as to which Seller has secured indemnification from liability. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by University or Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof and further, such indemnity shall not apply to a claimed infringement which is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction. Seller shall pay all royalty and license fees relating to the items covered hereby. In the event any third party shall claim that the manufacture, use and sale of these goods covered hereby, infringement of any copyright, trademark or patent, the Seller shall indemnify University and hold University harmless from any cost, expenses, damage or loss incurred in any manner by University on account of any such alleged infringement.

**ARTICLE IX – DECLARED VALUATION OF SHIPMENTS.** Except as otherwise provided on the face of this order, all shipments by Seller under this order for University's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.

**ARTICLE X – ASSIGNMENT.** This order is assignable by University. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of University Purchasing Agent.

**ARTICLE XI – AFFIRMATIVE ACTION.** Unless exempted by rules, regulations or orders of the Secretary of Labor, during the performance of each contract with the University, the contractor agrees as follows:

- i. The contractor will not discriminate in violation of law against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status. The contractor will take appropriate action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status.
- ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status.
- iii. The contractor has filed all equal employment opportunity reports (EEO-6) forms as required by the Civil Rights Act of 1964.
- iv. The contractor will comply with all applicable provisions, rules, regulations, and relevant orders of the Secretary of Labor pursuant to relevant orders and acts.
- v. Contractor will furnish all information reports required by applicable executive orders or acts, and by the rules, regulations, and applicable orders of the Secretary of Labor, and will permit access to books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vi. The contractor has, if required by law, a written compliance program.
- vii. The contractor agrees to post in conspicuous places, available to employees and applicants, required notices relating to the employer's obligation to take affirmative action, and to employ and advance in employment without regard to race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status, and their rights.
- viii. Contractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting office, advising a labor union or workers' representative of the contractor's affirmative action and nondiscrimination commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- ix. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized and such other sanctions may be imposed and remedies invoked as provided in executive orders, or acts, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- x. The contractor agrees that employment openings of the contractor, including those not generated by this contract, shall be listed at an appropriate local office of the state employment service system wherein the opening occurs. The contractor further agrees to revise such reports to such local office regarding employment openings and hires as may be required.
- xi. Nothing herein is intended to relieve the contractor from any requirements in applicable laws, executive orders or regulations regarding nondiscrimination in employment.
- xii. The contractor hereby certifies that it does not or will not maintain segregated facilities nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status.

**ARTICLE XII – OTHER APPLICABLE LAWS.** Any provision required to be included in a contract of this type of any applicable and valid federal, state or local statutes, act, executive order, law, ordinance, rule or regulation will be deemed to be incorporated herein including examination of records by the Comptroller General.

**ARTICLE XIII – KICKBACK PROHIBITIONS.** Seller represents that they have not provided, attempted to provide, or offered any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, directly or indirectly, to any employee or agent of the University for the purpose of improperly obtaining or rewarding favorable treatment in connection with the award of any procurement contract, Seller further represents that they have not been solicited, accepted, or attempted to accept any kickback from any employee or



agent of the University. Incidents of kickback may be reported in writing to the Department of Internal Audit, 407 Park Building, University of Utah, Salt Lake City, Utah 84112 or by calling 1-801-581-5997.

**ARTICLE XIV – ADDITIONAL GOVERNMENT REQUIREMENTS.** The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated herein by reference. For purposes of this Purchase Order, in the following clauses, the term “contract” shall mean “this order,” the term “contractor” shall mean “Seller” and the term “Government” and “Contracting Officer” shall mean “University of Utah” and the “Purchasing Agent” respectively (except with respect to paragraph 52.215-2 in which cases “Government” means United States Government).

Equal Opportunity Clause – FAR 52.222-26

Preference for U.S. Flag Air Carriers – FAR 52.247-63

Restrictions on Subcontractor Sales – FAR 52.203-6

Anti-Kickback Procedures – FAR 52.203-7

Integrity of Unit Prices – FAR 52.215-26

## Appendix B

### Section 1 – Terms and Conditions of Purchase

The Board of Trustees of the University of Utah hereinafter called “U of U” has entered into a contract with the United States of America hereinafter called “Government.” This order is entered into in furtherance of the performance of the work provided for in said contract.

1. **ACCEPTANCE.** The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of services covered by this order, shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made part of the order only to the extent of specifying the nature of the materials, supplies or services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions of this order.
2. **WAIVER.** The failure of U of U to enforce at any time any of the provisions of this contract, or exercise any option herein provided, or to require at any time performance by the seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of U of U thereafter to enforce each and every provision.
3. **WARRANTIES.** Seller warrants the articles delivered hereunder to be free from defects in labor, material and manufacture, and to be in compliance with any drawings or specifications incorporated or referenced herein and with any samples furnished by the Seller. All warranties shall run to U of U, its successors and assigns. Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services and that the rights and remedies so provided are in addition to and do not limit any rights afforded to U of U by any other Article of this order.
4. **DISCOUNT DATE.** The date for calculation of any cash discount offered by the Seller and provided for on the face of this order is (i) the date material is received, (ii) the date material is scheduled to be received under the order or (iii) the date an acceptable invoice is received, whichever is later. Where such date falls within the first 15 days of any month, discount will be taken when payment is made by the 25th of said month. Where such date falls after, discount will be taken when payment is made by the 10th of the following month. If these terms are in conflict with terms on the invoice and a longer term is granted on the invoice, the invoice terms will apply.
5. **INSPECTION.** All work performed and all deliverable items are subject to inspection and acceptance at destination notwithstanding any payments or inspection at source. Final inspection and acceptance shall be conclusive except as to latent defects, fraud, such gross mistakes as amount to fraud, and the Seller’s warranty obligations. Supplies to be furnished hereunder shall be subject to inspection by U of U and/or government inspectors upon the premises of the Seller. Seller, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspections, Seller shall make available to the inspectors copies of all drawings, specifications and process, preservation and packaging data applicable to the articles ordered herein.
6. **ASSIGNMENT.** This order is assignable by U of U. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of U of U. In event such consent is given, it shall not relieve Seller from any of the obligations of this order and

any transferee or subcontractor shall be considered the agent of the Seller and, as between the parties hereto, Seller shall be and remain liable as if no such transfer or subletting had been made.

7. **CHANGES.** U of U may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be recognized without written approval of U of U. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless U of U waives this condition. Nothing in this Article shall excuse Seller from proceeding with performance of the order as changed hereunder.
8. **SHIPPING AND INSTRUCTION.** Shipments must be made as specified on the face of the order unless subsequently modified in writing by U of U. If shipment does not exceed 20 pounds gross weight, or \$100.00 in value, ship Parcel Post uninsured. Shipments in excess of \$100.00 should be insured to supplement carriers maximum responsibility. Originals of all government bills of lading, air bills, and rail and air express receipts shall be mailed to the U of U Receiving Department. Do not ship C.O.D. for goods or freight charges without U of U advance approval.
9. **LABOR DISPUTES.** Seller shall give prompt notice to U of U of any actual or potential labor dispute which delays or may delay timely performance of this order.
10. **TERMINATION FOR CONVENIENCE AND CAUSE.**
  - i. U of U may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part at any time. U of U shall pay Seller as full compensation for performance until such termination: (a) the unit or pro rata order price for the delivered and accepted portion; and (b) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by U of U, with respect to the undelivered or unaccepted portion of this order; provided compensation hereunder shall in no event exceed the total order price.
  - ii. U of U may by written notice terminate this order for Seller's default, in whole or part, at any time, if seller refuses or fails to comply with the provisions of this 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 deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, U of U may purchase of otherwise secure materials, supplies or services and, except as otherwise provided herein, Seller shall be liable to U of U for any excess costs occasioned of U of U thereby. If, after notice of termination for default, U of U determines that the Seller was not in default or that failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or the public enemy, acts of U of U, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of U of U, unless U of U shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.
  - iii. If U of U determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, U of U may extend the time for completion of work called for by this order, when promptly applied for in writing by Seller, and if such delay is due to failure of U of U, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of U of U to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.
  - iv. The rights and remedies of U of U provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
  - v. As used in this Article, the word "Seller" includes Seller and his sub suppliers at any tier.
11. **TITLE.** Title to the material and supplies purchased hereunder shall pass directly from Seller to U of U or Government at the f.o.b. point shown, subject to the right of the U of U to reject upon inspection.
12. **PAYMENT, EXTRA CHARGES, DRAFTS.** Seller shall be paid upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. U of U will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by transportation receipts, or facsimile, if transportation is payable and charged as a separate item.
13. **PATENT INDEMNITY.** Seller shall indemnify U of U and Government and its officers, agents, and employees against liability, including costs, for infringement of Letter patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of Government) resulting from Seller's furnishing or supplying standard parts or components or utilizing its normal practices or methods in the performance of this order to any parts, components, practices, or methods as to which Seller has secured indemnification from liability. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by U of U or Government of the suit or action alleging such infringement, and shall have been given such

opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof and further, such indemnity shall not apply to a claimed infringement which is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction. Seller shall pay all royalty and license fees relating to the items covered hereby. In the event any third party shall claim that the manufacture, use and sale of these goods covered hereby, infringement of any copyright, trademark or patent, the Seller shall indemnify U of U and hold U of U harmless from any cost, expenses, damage or loss incurred in any manner by U of U on account of any such alleged infringement.

14. **DECLARED VALUATION OF SHIPMENTS.** Except as otherwise provided on the face of this order, all shipments by Seller under this order for U of U account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.
15. **ASSIGNMENT.** This order is assignable by U of U. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of U of U Purchasing Agent.
16. **LIABILITY FOR U of U FURNISHED PROPERTY.** Seller assumes complete liability for any tooling, articles or material furnished by U of U to Seller in connection with this order and Seller agrees to pay for all such tooling, articles or material spoiled by it or not otherwise accounted for to U of U's satisfaction. The furnishing to Seller of any tooling articles, or material in connection with this order shall not, unless otherwise expressly provided, be construed to vest title thereto to Seller.
17. **AFFIRMATIVE ACTION.** Unless exempted by rules, regulations or orders of the Secretary of Labor, during the performance of each contract with the U of U, the contractor agrees as follows:
  - A. The contractor will not discriminate in violation of law against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status. The contractor will take appropriate action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status.
  - B. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
  - C. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status.
  - D. The contractor has filed all equal employment opportunity reports (EEO 6) forms as required by the Civil Rights Act of 1964. The contractor will comply with all applicable provisions, rules, regulations, and relevant orders of the Secretary of Labor pursuant to relevant orders and acts.
  - E. Contractor will furnish all information reports required by applicable executive orders or acts, and by the rules, regulations, and applicable orders of the Secretary of Labor, and will permit access to books, records, and accounts by the contracting agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - F. The contractor has, if required by law, a written compliance program.
  - G. The contractor agrees to post in conspicuous places, available to employees and applicants, required notices relating to the employer's obligation to take affirmative action, and to employ and advance in employment without regard to race, color, religion, sex, national origin, age, handicap, veteran of the Vietnam era, or disabled veteran status, and their rights.
  - H. Contractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting office, advising a labor union or workers' representative of the contractor's affirmative action and nondiscrimination commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - I. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized and such other sanctions may be imposed and remedies invoked as provided in executive orders, or acts, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  - J. The contractor agrees that employment openings of the contractor, including those not generated by this contract, shall be listed at an appropriate local office of the state employment service system wherein the opening occurs. The contractor further agrees to revise such reports to such local office regarding employment openings and hires as may be required.



Nothing herein is intended to relieve the contractor from any requirements in applicable laws, executive orders or regulations regarding non-discrimination in employment.

- K. The contractor hereby certifies that it does not or will not maintain segregated facilities nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion, sex, national origin, age handicap, veteran of the Vietnam era, or disabled veteran status.
- **INDEMNIFICATION AND INSURANCE.** In the event the Seller, its employees, agents, or subcontractors, enter premises occupied by or under the control of the Buyer in the performance of this order, the Seller agrees that it will be responsible to, and indemnify and hold harmless, the Buyer, its trustees, officers, employees, from any loss, cost damage, expense, or liability by reason of property damages or personal injury of whatsoever kind or character, arising out of, as a result of, or in connection with such performance occasioned by the negligence or other fault, by act or omission, of the Seller, its agents, employees, or subcontractors; and the Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain worker's compensation coverage (either by insurance or, if qualified pursuant to law, through a self insurance program) covering all employees performing this order on premises occupied by or under the control of the Buyer.
  - **KICKBACK PROHIBITIONS.** Seller represents that they have not provided, attempted to provide, or offered any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, directly or indirectly, to any employee or agent of the U of U for the purpose of improperly obtaining or rewarding favorable treatment in connection with the award of any procurement contract, Seller further represents that they have not been solicited, accepted, or attempted to accept any kickback from any employee or agent of the U of U. Incidents of kickback may be reported in writing to the Department of Internal Audit, 407 Park Building, University of Utah, Salt Lake City, Utah 84112 or by calling 1 801 581 5997.
  - **HIPAA.** The University of Utah Health Sciences Center is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This transaction may fall under the jurisdiction of HIPAA and Seller must comply with applicable state and federal HIPAA laws. If you have any questions, please contact the HIPAA Regulatory Office at (801) 587-9241.
  - **OTHER APPLICABLE LAWS.** Any provision required to be included in a contract of this type of any applicable and valid federal, state or local statutes, act, executive order, law, ordinance, rule or regulation will be deemed to be incorporated herein including examination of records by the Comptroller General.

## Section 2 – Government Subcontract Provisions

If this order is a subcontract under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this order. In the event of any conflict between the terms and conditions of this Section 2 and any other provisions of this order the terms and conditions of this Section 2 shall prevail. The term "FAR" means Federal Acquisition Regulations, including revisions in effect on the date of this order. The terms "Contractor," "Government," and "Contracting Officer," as used in the clauses incorporated by this reference, shall be deemed to refer to the "Seller," "Buyer" and "University of Utah" (U of U) respectively except for clauses FAR 52.215 1, 52.215 2, 52.227 12, and 52.227 1 where "Government" means "United States Government." Any reference to a "Disputes" clause in any of the clauses listed below shall be deemed to refer to the "Disputes" clause contained in the Prime Contract. In no event shall any such reference to a "Disputes" clause be construed to allow the Seller, without the concurrence or approval of the U of U to prosecute an appeal either directly or in the name of the U of U, to the Contracting Officer of such Prime Contract.

The following provisions apply regardless of the amount of this order:

- A. Equal Opportunity FAR 52.222-26
- B. Anti kickback Procedures FAR 52.203-7
- C. Integrity of Unit Prices FAR 52.215-14
- D. Preference for U.S. Flag Air Carriers FAR 52.247-63
- E. Restrictions on Subcontract or Sales FAR 52.203-6
- F. Certification and Disclosure Regarding Payments to Influence Certain federal Transactions FAR 52.203-11
- G. Limitation of Payments to Influence Certain Federal Transactions FAR 52.203-12

The following provisions apply if the amount of this order exceeds \$10,000:

- A. Affirmative Action for Handicapped Workers FAR 52.222-36

The following provisions apply if the amount of this order exceeds \$25,000:

- A. Audit Negotiation FAR 52.215-2

- B. Affirmative Action for Vietnam Era Veterans FAR 52.222-35
- C. Examination of Records FAR 52.215-2(e)
- D. Certification of Nonsegregated Facilities FAR 52.222-21
- E. Utilization of Small Business Concerns and: Small Disadvantaged, Women-Owned, Veteran-Owned, Service Disabled Veteran-Owned, HUBZone, FAR 52.219-8
- F. Employment Reports on Vietnam Era Veterans and FAR 52.222-37

The following provisions apply if the amount of this order exceeds \$25,000:

- A. Notice and Assistance Regarding Patent & Copyright Infringement FAR 52.227-2
- B. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters FAR 52.209-5
- C. Authorization and Consent FAR 52.227.1
- D. Use of U.S. Flag Commercial Vessels FAR 52.247-64

The following provisions apply if the amount of this order exceeds \$100,000:

- A. Subcontractor Cost and Pricing Data FAR 52.215-12 (or FAR 52.215-25 for cost/price modifications)
- B. Limitation on Payments to Influence Certain Federal Transactions FAR 52.203-12

The following provisions apply if the amount of this order exceeds \$500,000:

- A. Small Business Subcontracting Plan FAR 52.219-9

The following provisions apply if the order involves design, development, or research:

- A. Rights in Technical Data and Computer Software DOD FAR Supp. 252.227-7013
- B. Restrictive Marketing on Technical Data DOD FAR supp. 252.227-7018
- C. Patent rights (short form) FAR 52.227-11 or patent rights (long form) FAR 52.227-12 or in the case of an order under a NASA prime contract use NASA new technology clause or in the case of an order under a DOE prime contract use DOE PR9-9 107 s(a) long form.
- D. Acknowledgement of Sponsorship under DOD Prime Contract:

The Contractor agrees that in the release of information relating to this contract such release shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency set forth in the schedule of this contract, and that the content of the information does not necessarily reflect the position or the policy of the government and no official endorsement should be inferred. For the purpose of this clause, "information" includes but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc. Nothing in the foregoing shall effect compliance with the requirements of the clause of this contract entitled "Military Security Requirements." The contractor further agrees to include this provision in any subcontract awarded as a result of this contract.

Publication of results under DOE Prime Contracts:

Research results obtained under this contract shall be made available to all through normal and accepted channels without restriction except that no Restricted Data as defined in the Atomic Energy Act of 1954, as amended, or other classified information shall be disclosed to unauthorized persons. Published results shall indicate that the research was supported by the Commission. A copy of each article submitted by the Contractor for publication shall be promptly sent to the Commission. The Contractor shall also inform the Commission when the article is published and furnish six copies of the article as finally published. It is recognized that during the course of the work hereunder or subsequent thereto, the Contractor, its employees, or its subcontractors, may from time to time, desire to publish, within the limit of security requirements, information regarding technical or scientific developments arising in the course of the contract. In order the public disclosure of such information will not adversely affect the patent interest of the Commission, such information shall be withheld from public disclosure if it discloses an invention, or discovery; such invention or discovery shall be promptly reported to the Commission for patent review and possible filing of a patent application, and such information shall thereafter be withheld from public disclosure for a period of four months unless written authorization provides for earlier release.

The following provisions apply under Other Specific Conditions: 1

- A. Filing Patent Applications FAR 52.227-10
- B. Patent Rights Retention by Contractor (Short Form) FAR 52.227-11/or
- C. Patent Rights Retention by Contractor (Long Form) FAR 52.227-12/or

- D. Patent Rights Retention by U of U FAR 52.227-13
- E. Military Security Requirements FAR 52.204-2
- F. Notice of Government Labor Disputes FAR 52.222-1
- G. Service Contract Act of 1965, as Amended FAR 52.222-41
- H. Contract Hours and Safety Standards FAR 52.222-4

The following provision applies if the contract involves hazardous materials:

- A. Hazardous material identification and Material Safety Data FAR 52.223-3

The following provisions apply to construction contracts:

- A. Davis Bacon Act FAR 52.222-32
- B. Contract Termination Debarment FAR 52.222-12
- C. Apprentices and Trainees FAR 52.222-9
- D. Payrolls and Basic Records FAR 53.222-8
- E. Compliance with Copeland Act Requirements FAR 52.222-10
- F. Withholding of Funds FAR 52.222-7
- G. Subcontracts (Labor Standards) FAR 52.222-11
- H. Disputes Concerning Labor Standards FAR 52.222-14
- I. Compliance with Davis Bacon and Related Act Regulations FAR 52.222-13
- J. Certification of Eligibility FAR 52.222-15

**Financial Services**

