

# AGREEMENT

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, the University of Notre Dame Du Lac and the undersigned Vendor hereby agree that the standard University of Notre Dame Purchase Order Terms and Conditions set forth below shall apply to and govern every request for order, request for proposal, bid, agreement, purchase, sale or transaction of any kind entered into between the University and \_\_\_\_\_ at any time. This Agreement shall remain in effect until terminated in writing by either of the undersigned parties upon at least 60 days written notice to the other party.

**ACKNOWLEDGMENT:** This Purchase Order as executed by the Buyer constitutes the entire agreement between the parties. This agreement can only be changed by a written instrument signed by an authorized agent of the Buyer. Each shipment received by the Buyer from the Seller shall be upon the terms and conditions contained herein, notwithstanding any terms or conditions contained in any acknowledgment, invoice, correspondence, quotations, specifications, discussions or other document or communication from the Seller and notwithstanding the Buyer's acceptance, payment or performance. If price, terms, shipping date or any other express condition of this Purchase Order is not acceptable, Buyer must be notified and must accept in writing any variation prior to shipment or delivery.

**DISPUTES:** In case of a dispute initiated by the Seller, the Seller will inform the Buyer within thirty days of the qualifying event. In case of a lawsuit initiated by either party arising out of this Purchase Order or the transaction contemplated hereunder, the unsuccessful party agrees to pay the prevailing party's costs and expenses associated with the lawsuit, including without limitation, reasonable attorney's fees. This Purchase Order shall be governed by and construed under Indiana law. Buyer and Seller hereby agree that any dispute arising out of this agreement or the purchase contemplated hereunder shall be resolved in the state or federal courts located in St. Joseph County, Indiana. Seller hereby submits itself to the jurisdiction of said courts and agrees not to challenge the jurisdiction or venue of said courts in the event of a dispute.

**CONFIDENTIALITY AND USE OF NAME:** Seller agrees that it will not release any information relating to this order, including, without limitations, press releases, advertisements, or marketing materials, without prior written approval by the Buyer.

**INVOICE:** Upon shipment the Seller must include:

- A SEPARATE Invoice for EACH Purchase Order referencing the Purchase Order number and, if applicable a BILL OF LADING showing full routing.
- A statement of PAYMENT TERMS as stated on the Purchase Order. The charged price may NOT be higher than that stated in the Purchase Order,
- Seller's complete remit to NAME & ADDRESS on each invoice.
- Seller must provide a complete description of labor performed and time expended in maintenance contracts.
- All payments are net 30 days unless agreed otherwise.

**DELIVERY:** Time is of the essence with respect to this order. If the delivery date specified on the face of this order cannot be met, Seller shall notify Buyer using an acknowledgement of receipt of order and intent to perform without delay for instruction. If delivery is not made on time and in the quantities specified, Buyer shall have the right to cancel this order and hold Seller liable for any cost of cover or excess cost or damage incurred as a result of the delay. Acceptance by Buyer of a late delivery will not constitute a waiver of a later claim for damages. Seller agrees to insure the goods during delivery at Seller's expense and to warrant that all goods will be free from defect and will be of good material and workmanship. If goods delivered by Seller are defective or not what Buyer contracted for, Buyer reserves the right to return the goods to Seller, to terminate the contract and to seek damages and expense incurred. Acceptance of any part of the Order shall not bind Buyer to accept remaining parts of the order or any future shipments nor deprive it of the right to return goods already accepted.

**FORCE MAJEURE** Buyer will not be liable for contract default or delay due to acts beyond its reasonable control. Seller shall inform Buyer, in writing, whenever Seller becomes aware of an event that could delay or prevent Seller's performance.

**SUBCONTRACTING AND ASSIGNMENT:** Seller shall not contract, subcontract or assign to a third party any part of this purchase order or any rights arising hereunder without first obtaining the express, written approval of Buyer.

**AUDITING OF RECORDS:** Seller hereby grants Buyer and its auditors permission to audit all of Seller's records related to this Purchase Order and the transactions contemplated hereunder.

**STATE AND FEDERAL STATUTES:** Seller warrants and agrees that it has and will comply with the provisions of the Fair Labor Standards Act and the Walsh-Healey Act and any other applicable state and federal statutes and regulations. For orders issued under U.S. government contracts or grants, seller must comply with all applicable provisions of Buyer's Attachment A and all applicable state and federal statutes and regulations.

**EQUAL OPPORTUNITY:** Buyer is an equal opportunity, affirmative action employer. Seller shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Purchase Order, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Seller warrants and agrees that it has and will comply with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, Section 503 of the Rehabilitation Act and any other applicable state and federal statutes and regulations governing equal opportunity.

**SERVICES:** If this Purchase Order is for services to be performed or delivered by or on behalf of Seller, then it is also subject to the University's Insurance Requirements and Indemnification Agreement.

**CODE OF CONDUCT** Seller hereby represents and warrants that the goods being purchased were not made under working conditions which otherwise would violate the University of Notre Dame Code of Conduct for Licensees.

**CONTRACT:** If there is a separate written contract in effect between Buyer and Seller applicable to this transaction and any term thereof is in direct conflict with these terms and conditions, then the terms and conditions of the separate written contract shall govern this transaction, but only to the extent of the direct conflict.

**TERMINATION FOR CONVENIENCE OR CAUSE:** Buyer may terminate the Order or any part thereof for its sole *Convenience*. Upon notice of such termination, Seller shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work against the Order. Seller shall be paid a reasonable termination charge consisting of a pro rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred by Seller's suppliers that Seller reasonably could have avoided. Buyer may terminate the Order or any part hereof for *Cause* if Seller defaults, fails to comply with any terms and conditions of the Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the Order shall, without limitation, be causes allowing Buyer to terminate the Order for cause. In this event, Buyer will not be liable to Seller for any amount; but Seller shall be liable to Buyer for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.

**WARRANTIES:** Seller expressly warrants all goods delivered under the Order shall be merchantable and free from defects in material and workmanship and of the quality, size and dimensions ordered and/or specified. This express warranty shall not be waived by reason of the acceptance of the goods, payment by Buyer or otherwise. Seller warrants that a) all workmanship shall be first class; b) the goods purchased will be supplied according to specifications; c) except as otherwise provided in the specifications, all goods incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose, and d) all services will be performed in a good and workmanlike manner. These warranties and guarantees shall survive inspection tests, acceptance of and payment for the goods and shall run to Buyer, its successors and assigns. The Seller shall within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the Buyer any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after delivery unless a different warranty period is provided in this Purchase Order. Buyer, may at its option, either return for credit or require prompt correction or replacement of any defective or nonconforming good or part thereof. If Seller is unable to or refuses to promptly correct or replace such defective or nonconforming good or part thereof, Buyer, may, by contract or otherwise, repair or replace such work or materials and assess Seller the excess cost occasioned the Buyer thereby. The one year warranty shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.

**RISK OF LOSS:** Seller assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to this Order until the same are finally accepted by the individual and University department or Buyer who ordered them. Seller also assumes all risk of loss of or damage to any goods, work in process, materials, and other items rejected by Buyer until the same are accepted by Buyer.

**INSPECTION:** Payment for goods or services provided hereunder shall not constitute acceptance thereof. Buyer may inspect and test such goods or services and reject any or all items that are, in Buyer's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at Seller's sole expense. Failure by Buyer to inspect and test the goods or services shall not relieve Seller of responsibility.

**INDEMNIFICATION:** Seller shall indemnify, defend and hold harmless Buyer, its officers, trustees, agents and employees against and from any and all claims, liabilities, losses, damages and expenses (including without limitation attorneys fees and court costs) arising out of or in connection with any goods or services purchased pursuant to this Purchase Order or from any act, omission, negligence, operation, product or service of Seller or its employees, agents, servants, suppliers, representatives and subcontractors.

**INSURANCE:** Seller shall maintain adequate insurance in all forms necessary to protect both Seller and Buyer against all liabilities, losses, damages, judgments, claims, settlements, expenses, including without limitation reasonable legal fees and costs, arising out of or resulting from performance of this Agreement. Although evidence of certain minimum coverage may be required, neither the existence of such insurance coverage nor anything else contained herein shall limit to available insurance Seller's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or in connection with the performance of this Agreement.

**LIMITATIONS:** Buyer shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. Buyer's liability on any claim for loss, damage or expense arising out of or in connection with this Agreement shall not exceed the price of the goods or services which give rise to the claim. Buyer shall not be liable for penalties or fines of any kind. Any action, suit or proceeding caused by any alleged breach of this Agreement by Buyer must be commenced within one (1) year after the cause of action accrued.

**PATENTS/COPYRIGHTS:** Seller agrees to indemnify Buyer and hold Buyer harmless from and against all claims, liability, losses, damages, and expenses, including without limitation legal fees and costs, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by the Purchase Order. Seller shall pay to defend any such litigation brought against Buyer. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefore by Buyer.

**SEVERABILITY:** If any part of this Agreement is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of this Agreement shall be enforceable as written.

**TAX EXEMPTION:** Buyer's federal taxpayer ID is 35-0868188. Buyer is an Indiana not-for-profit, tax exempt organization and is thus exempt from sales tax in Indiana under Indiana NFP #0018092450000, as well as many other states. Buyer is also exempt from certain federal excise taxes (Federal exemption certificate 35-91-0070F). Seller shall not charge buyer for such taxes. Proof of exemption is available upon request

**FOB DESTINATION:** All shipments hereunder shall be FOB Destination, The University of Notre Dame, "Freight Prepaid", unless otherwise shown by Buyer on this Purchase Order.

**CANCELLATION FOR CONFLICT OF INTEREST:** This order is subject to cancellation if the University determines that there is a conflict of interest between a Buyer's employee and Seller.

**EXTRA CHARGES:** No additional charges of any kind, including without limitation charges for boxing, packing, transportation or other extras or fees will be allowed unless specifically agreed to in writing by an authorized purchasing agent of Buyer.

**SET-OFF:** Buyer shall at all times have the right to set-off any amount owing from the Seller to Buyer against any amount owing from Buyer to the Seller. At buyer's option, repayment, in lieu of setoff, may be requested.

In witness whereof, the undersigned parties have entered into this Agreement on the date first recited above.

UNIVERSITY OF NOTRE DAME DU LAC:   VENDOR: \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

Its \_\_\_\_\_

**UNIVERSITY OF NOTRE DAME PURCHASE ORDER  
STANDARD ATTACHMENT FOR PURCHASES OF  
GOODS AND SERVICES USING FEDERAL GRANT MONIES**

FEDERAL GRANTS: The Seller warrants that it is neither debarred nor suspended, and that it has not been proposed or declared ineligible for the award of contracts or grants by any federal agency.

The Seller agrees to comply with all applicable federal, state, and local laws and regulations. If this order utilizes federal grant funds, the provisions of OMB Circular A-110 Appendix A, as well as any additional statutory and administrative requirements apply according to their terms. These requirements may include, but are not limited to, the following:

- **Equal Employment Opportunity** – E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375 and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- **Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)**, as supplemented by Department of Labor regulations at 29 CFR part 3.
- **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)**
- **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)**, as supplemented by Department of Labor regulations at 29 CFR part 5.
- **Rights to Inventions Made Under a Contract or Agreement** – 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)**, as amended
- **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Revised 10/23/03