

UNIVERSITY OF NOTRE DAME PURCHASE ORDER AGREEMENT

Updated July 1, 2018

1. **ACKNOWLEDGMENT:** This Purchase Order as executed by the University constitutes the entire agreement between the parties. This agreement can only be changed by a written instrument signed by an authorized agent of the University. Each shipment received by the University from the Supplier 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 Supplier and notwithstanding the University's acceptance, payment or performance. If price, terms, shipping date or any other express condition of this Purchase Order is not acceptable, University must be notified and must accept in writing any variation prior to shipment or delivery.
2. **DISPUTES:** In case of a dispute initiated by the Supplier, the Supplier will inform the University 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, 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. University and Supplier 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. Supplier 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.
3. **CONFIDENTIALITY AND USE OF NAME:** Supplier 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 University.
4. **INVOICE:** Upon shipment the Supplier must include:
 - a. A SEPARATE Invoice for EACH Purchase Order referencing the Purchase Order number and, if applicable a BILL OF LADING showing full routing.
 - b. 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.
 - c. Supplier's complete remit to NAME and ADDRESS on each invoice.
 - d. Supplier must provide a complete description of labor performed and time expended in maintenance contracts.
 - e. All payments are net 30 days unless agreed otherwise.
5. **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, Supplier shall notify University 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, University shall have the right to cancel this order and hold Supplier liable for any cost of cover or excess cost or damage incurred as a result of the delay. Acceptance by University of a late delivery will not constitute a waiver of a later claim for damages. Supplier agrees to insure the goods during delivery at Supplier'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 Supplier are defective or not what University contracted for, University reserves the right to return the goods to Supplier, to terminate the contract and to seek damages and expense incurred. Acceptance of any part of the Order shall not bind University to accept remaining parts of the order or any future shipments nor deprive it of the right to return goods already accepted.
6. **FORCE MAJEURE** University will not be liable for contract default or delay due to acts beyond its reasonable control. Supplier shall inform University, in writing, whenever Supplier becomes aware of an event that could delay or prevent Supplier's performance.
7. **SUBCONTRACTING AND ASSIGNMENT:** Supplier 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 University.
8. **AUDITING OF RECORDS:** Supplier hereby grants University and its auditors permission to audit all of Supplier's records related to this Purchase Order and the transactions contemplated hereunder.
9. **STATE AND FEDERAL STATUTES:** Supplier 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.
10. **EQUAL OPPORTUNITY:** University is an equal opportunity, affirmative action employer. Supplier 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. Supplier 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.
11. **SERVICES:** If this Purchase Order is for services to be performed or delivered by or on behalf of Supplier, then it is also subject to the University's Insurance Requirements and Indemnification Agreement.
12. **CODE OF CONDUCT:** Supplier 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.
13. **CONTRACT:** If there is a separate written contract in effect between University and Supplier 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.
14. **TERMINATION FOR CONVENIENCE OR CAUSE:** University may terminate the Order or any part thereof for its sole *Convenience*. Upon notice of such termination, Supplier 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. Supplier 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. Supplier shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred by Supplier's suppliers that Supplier reasonably could have avoided. University may terminate the Order or any part hereof for *Cause* if Supplier 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 University to terminate the Order for cause. In this event, University will not be liable to Supplier for any amount; but Supplier shall be liable to University for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination.
15. **WARRANTIES:** Supplier 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 University or otherwise. Supplier 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. Such warranties together with Supplier's service warranties and guarantees shall survive inspection tests, acceptance of and payment for the goods and shall run to University, its successors and assigns. The Supplier shall within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the University 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. University, may at its option, either return for credit or require prompt correction or replacement of any defective or nonconforming good or part thereof. If Supplier is unable to or refuses to promptly correct or replace such defective or nonconforming good or part thereof, University, may, by contract or otherwise, repair or replace such work or materials and assess Supplier the excess cost occasioned the University 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.
16. **RISK OF LOSS:** Supplier 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 University who ordered them. Supplier also assumes all risk of loss of or damage to any goods, work in process, materials, and other items rejected by University until the same are accepted by University.
17. **INSPECTION:** Payment for goods or services provided hereunder shall not constitute acceptance thereof. University may inspect and test such goods or services and reject any or all items that are, in University's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's sole expense. Failure by University to inspect and test the goods or services shall not relieve Supplier of responsibility.
18. **INDEMNIFICATION:** Supplier shall indemnify, defend and hold harmless University, its officers, trustees, agents and employees against and from any and all claims, liabilities, losses, damages and expenses (including without limitation attorney's 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 Supplier or its employees, agents, servants, suppliers, representatives and subcontractors.
19. **INSURANCE:** Supplier shall maintain adequate insurance in all forms necessary to protect both Supplier and University 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 Supplier'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.
20. **LIMITATIONS:** University shall not be liable to Supplier, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. University'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. University 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 University must be commenced within one (1) year after the cause of action accrued.
21. **PATENTS/COPYRIGHTS:** Supplier agrees to indemnify University and hold University 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. Supplier shall pay to defend any such litigation brought against University. The Supplier's obligations hereunder shall survive acceptance of the goods and payment therefore by University.
22. **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.
23. **TAX EXEMPTION:** University's federal taxpayer ID is 35-0868188. University is an Indiana not-for-profit, tax exempt organization and is thus exempt from sales tax in Indiana under Indiana NFP #00018092450000, as well as many other states. University is also exempt from certain federal excise taxes (Federal exemption certificate 35-91-0070F). Supplier shall not charge University for such taxes. Proof of exemption is available upon request.
24. **FOB DESTINATION:** All shipments hereunder shall be FOB Destination, The University of Notre Dame, "Freight Prepaid", unless otherwise shown by University on this Purchase Order.
25. **CANCELLATION FOR CONFLICT OF INTEREST:** This order is subject to cancellation if the University determines that there is a conflict of interest between a University's employee and Supplier.
26. **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 University.
27. **SET-OFF:** University shall at all times have the right to set-off any amount owing from the Supplier to University against any amount owing from University to the Supplier. At University's option, repayment, in lieu of setoff, may be required.

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28. FEDERAL CONTRACTS AND GRANTS: The Supplier 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. At any time the Supplier becomes debarred or suspended, the Supplier shall notify the University in writing within 30 days. The Supplier agrees to comply with all applicable Federal, state, and local laws and regulations.
29. If this order utilizes Federal funds, the provisions of 2 CFR Part 200 –Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as well as any additional statutory and administrative requirements are incorporated by reference. Supplier is required to comply with all applicable Federal acquisition regulations, these requirements may include, but are not limited to, the following under Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards:

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 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.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal

awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

- a. FAR 52.219-9 – Small Business Subcontracting Plan (Applies to orders over \$700,000)