

UNIVERSITY OF NOTRE DAME PURCHASE ORDER AGREEMENT

Updated November 1, 2016

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 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 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. The Supplier 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 and Appendix A, 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:
- a. **Equal Employment Opportunity** – E.O. 11246, "Equal Employment Opportunity," as amended. Notre Dame also prohibits, and Supplier agrees to prohibit, discrimination against veterans or disabled qualified individuals; further, Notre Dame requires affirmative action by covered contractors to employ and advance veterans and qualified individuals with disabilities in compliance with 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a).
 - b. **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.
 - c. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)**
 - d. **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.
 - e. **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.
 - f. **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
 - g. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**
 - h. **FAR 52.219-9 – Small Business Subcontracting Plan** (Applies to orders over \$700,000)