

Purchase Order – Standard Terms and Conditions

1. **THE ORDER-** Furnish the items specified in accordance with conditions printed on this Purchase Order and any attachments to this Purchase Order
2. **TERMS OF SALE-** Items shall be shipped F.O.B. Destination, Prepaid with freight included in pricing; or F.O.B. Destination, Prepay & Add, and freight added to invoice UNLESS another point has been specified by the Institution. No unauthorized or collect shipments accepted.
3. **IDENTIFICATION OF ORDER-**The Purchase Order Number must appear on all invoices, correspondence containers, shipping papers, and packing lists.
4. **CORRESPONDENCE-**All correspondence pertaining to this Purchase Order must be addressed as follows: Purchasing Department, Institution Name and Buyer Name.
5. **BILLING INSTRUCTIONS-** Invoices must: a. Be provided within five (5) days after shipment of items; b. Show cash discounts. Cash discounts when authorized, will be computed from the date correct invoices are received, c. Be sent as SEPARATE invoices for EACH AND EVERY shipment; d. If applicable, include invoices for returnable containers, stating terms and conditions for return thereof.
6. **TAXES-** Do not include Federal Excise or State Sales Tax on invoices. Institution is exempt from these taxes. Appropriate certification of exemption will be furnished upon reasonable request.
7. **INVOICE TERMS-**Time in connection with discounts offered will be computed via one of the following (i) from date of the delivery for items provided electronically, (ii) from date of delivery at destination when final inspection and acceptance are at the destination point, or (iii) from date a correct invoice is received if the date a correct invoice is received is later than the date of delivery.
8. **CONTRACTUAL REMEDIES-**The Institution shall not be bound by any limitations on remedies available to the Institution or other TBR Institutions. Any attempt to contractually limit remedies will be void on its face.
9. **MATERIALS/EQUIPMENT-**Unless specifically called for in this Purchase Order, all items shall be new and unused. The Seller warrants that the items delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this Purchase Order for a period of ninety (90) days from the date such items are accepted unless otherwise provided herein.
10. **PACKING LIST-**A detailed packing list showing the items included in the shipment must accompany all shipments.
11. **INSPECTION-**All items are subject to inspection and rejection upon receipt by the Institution and rejected items will be returned at the Seller's expense. Transportation charges paid by the Institution in returning rejected items shall be promptly reimbursed by the Seller. The Institution's count shall be final and conclusive on all shipments not accompanied by a packing list. In addition to the right to return rejected items, in the event of delivery of items not in accordance with the requirements of this Purchase Order, the Institution may notify the Seller of such damages or deficiencies and if not repaired or corrected by the Seller within ten (10) days after receipt of such notice, or such additional time as may be mutually agreed to by the Institution and the Seller, the Institution shall have the right to correct any damages, defects, insufficiencies or improprieties therein and do any other work necessary to put the items in condition for the use intended and the cost of such correction shall be deducted from the monies due the Seller under this Purchase Order.
12. **CHANGES-**The Institution may at any time by written instructions make changes, within the general scope of this Purchase Order, in any one or more of the following: a. Quantity or specifications; b. Method of shipment or packing; and c. Place of delivery. If any such change causes any increase or decrease in the cost of, or time required for, performance of this Purchase Order, any equitable adjustment shall be made in the order price or delivery schedule, or both and this Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this paragraph must be asserted within thirty (30) days from date of receipt by the Seller of the notification of change, provided however, that the Institution may receive and act upon such claim asserted at any time prior to final payment under this Purchase Order.

Purchase Order – Standard Terms and Conditions

13. VARIATIONS IN QUANTITIES-Unless otherwise specified on the face of this Purchase Order, any variation in the quantities herein called for, not exceeding 10%, will be accepted as compliance with this Purchase Order when caused by conditions of loading, shipping, packing or allowance in manufacturing process, and payments shall be adjusted accordingly.

14. PAYMENT-The Seller shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for items delivered and accepted or services rendered in completion, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act of 1985. The Seller agrees that Institution shall issue payment for all items under this Purchase Order via ACH Payment and Seller agrees that no payment shall be made prior to the Seller's completion of the Substitute W-9/ACH Authorization Form.

15. CANCELLATION OF ORDER-The Purchase Order or any part thereof may be canceled by either the Institution or the Seller with the giving of thirty (30) days notice of intent to cancel for reasons including, but not limited to, the following: The Institution may cancel for costs exceeding the prices on this Purchase Order; late delivery, and failure of the Seller to comply with the terms and conditions specified herein. Seller may request cancellation of this Purchase Order if the Seller is prevented from performance by an act of war, order of a legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the Seller.

16. ERRORS-In case of error in calculation or typing, the quoted unit price will be used as the basis for correction.

17. NONDISCRIMINATION-The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, gender, age, disability, veteran status or national origin. The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, gender, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

18. COMPLIANCE WITH FEDERAL AND STATE LAWS-The Seller shall comply with all applicable Federal and State Laws and regulations in the performance of this Purchase Order. The Purchase Order shall be governed by and subject to the laws of the State of Tennessee.

19. MATERIAL SAFETY DATA SHEETS-An up-to-date Material Safety Data Sheet (MMSDS) must accompany all items requiring one in accordance with current State of Tennessee and Federal laws, rules and regulations.

20. COPYRIGHTED/LICENSED PRODUCTS-Seller must be an authorized dealer for selling copyrighted/licensed products under this Purchase Order. Notwithstanding this, Seller assumes responsibility for any and all liabilities associated with the selling of these products or services upon acceptance of Purchase Order.

21. ACCEPTANCE OF TERMS

a. The items shall be furnished by the Seller subject to and in accordance with this Purchase Order. Seller's written acceptance of this Purchase Order or shipment of all or any portion of the items or the performance of all or any portion of the services covered by this Purchase Order shall constitute unqualified acceptance of all its terms and conditions.

b. Any additional or different terms and conditions shall not become part of this Purchase Order, despite the Institution's receipt thereof unless the Institution specifically agrees in writing to the inclusion. The Seller's quotation, if any, is incorporated and made a part of this Purchase Order only to the extent of specifying the nature and description of the items ordered, and then only to the extent that such items are consistent with the other terms of this Purchase Order and/or the Institution's Request for Quotation.

Purchase Order – Standard Terms and Conditions

22. **INSURANCE**-Seller agrees to furnish Workers' Compensation Insurance in the amounts required by law. Public Liability and Property Damage coverage shall be for all operations under the proposal for at least \$100,000 for one person and \$300,000 for each accident for bodily injury or death; and for property damage at least \$50,000 for each accident, plus coverage for the equipment being moved. Certificate of Insurance is to be on file with the Institution's Purchasing Department prior to performing any work or service on the Institution's campus.

23. **FUNDING OUT CLAUSE**-The Purchase Order is subject to the allotment of state and/or federal funds, and may be null and void unless funds have been appropriated and are available for the purchase of the service or item, which forms the basis of this Purchase Order.

24. **SIGNATURE**-Only Institution Purchase Orders with authorized signatures may contractually bind the Institution.

25. **AUDIT**- The Seller shall maintain documentation for all charges against the Institution and payment made by the Institution under this Purchase Order. The books, records and documents of the Seller, insofar as they relate to work performed or money received under this Purchase Order, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed representatives. The Seller's financial statements shall be prepared in accordance with generally accepted accounting principles.

26. **CONFLICT OF INTEREST**- By acceptance of this Purchase Order, the Seller warrants that they do not have a conflict of interest, are not an employee or official of the State of Tennessee and are not receiving wages or compensation from a state entity other than the potential award of this solicitation.

27. **ILLEGAL IMMIGRANTS** - By acceptance of this Purchase Order, the Seller is attesting that the Seller will not knowingly utilize the services of illegal immigrants and will not knowingly utilize the services of any subcontractor that does so in delivery of the goods/ services under this order. If the Seller is discovered to have breached this attestation, the Seller shall be prohibited from supplying goods/services to any TBR institution/State for a period of one (1) year from the date of discovery of the breach. Rules of Finance and Administration, 0620.

28. **DEBARMENT CERTIFICATION**- By acceptance of this Purchase Order, the Seller certifies that none of its principals are presently disbarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

29. **SALES AND USE TAX**- By acceptance of this Purchase Order, the Seller certifies that the Seller, and any applicable subcontractor, is registered with the Department of Revenue, or has received a written exemption from the Department of Revenue, for the collection of Tennessee sales and use tax.

30. **Service and Software Accessibility Standards** - The Contractor warrants and represents that the service and software, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.1 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub 3 and Section 508 of the Vocational Rehabilitation Act. To the extent that the products fail to meet the WCAG 2.1 AA, EPub 3 and Section 508 standards, the Contractor will provide Institution with a fully completed Accessibility Statement and Conformance and Remediation forms. The Contractor shall indemnify and hold the Institution harmless in the event of claims arising from inaccessibility related to the Contractor's product and/or services.

31. **DATA PRIVACY AND SECURITY**- Personal Information (PI) includes but is not limited to that information protected by HIPAA, the HITECH Act, FERPA, or Gramm-Leach-Bliley) or such information which would allow a third party to gain access to the personal, medical or financial records of any of any party. Seller represents and warrants that its collection, access, use, storage, disposal and disclosure of PI complies with all applicable federal and state privacy and data protection laws. Seller represents and warrants that Seller will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Seller deems necessary to maintain compliance with SSAE16. If PI provided by Institution to Seller is subject to FERPA. Seller agrees that in its handling of FERPA data it will perform as a school official as that term is defined by FERPA regulations. Seller acknowledges that its improper disclosure or re-disclosure of PI covered by FERPA may, under certain circumstances, result in Seller's exclusion from eligibility to contract with

Purchase Order – Standard Terms and Conditions

Institution for at least five (5) years. Seller shall provide Institution with the name and contact information for an employee of Seller who shall serve as Institution's primary security contact and shall be available to assist Institution twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with any security incident in which it is reasonably suspected that there has been a breach of information security. Seller shall immediately mitigate or resolve any Security Incident, at Seller's expense and in accordance with applicable privacy rights, laws, regulations and standards. Seller shall reimburse Institution for actual costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation incurred under applicable law as a result of the Security Incident.

32. CLICK-WRAP AGREEMENTS- By acceptance of this Purchase Order, the Seller agrees that click-wrap agreements shall not be binding upon the Institution. No employee has the actual or apparent authority to enter into click-wrap agreements on behalf of the Institution without the approval of the Institution's Procurement and/or Contracts Office. No employee has the authority to modify, amend, or supplement this Purchase Order through a click-wrap agreement. The Purchase Order can only be modified, amended, or supplemented under these terms through a written Change Order/Amendment approved in accordance with the Institution's and TBR's rules, policies, and procedures.

33. IRAN DIVESTMENT ACT- The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Purchase Order. Seller agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

34. BOYCOTT OF ISRAEL- The requirements of Tenn. Code Ann. § 12-4-127, addressing contracting with sellers who engage in and will not for the duration of the contract engage in, a boycott of Israel shall be a material provision of this Purchase Order. Seller agrees, under penalty or perjury, that to the best of its knowledge and belief that currently not engaged in a boycott of Israel. This provision shall not apply to contracts with a total value of less than two hundred fifty thousand dollars (\$250,000) or to contractors with less than ten (10) employees.