

## TERMS AND CONDITIONS

1. **ACCEPTANCE:** The Contractor, by accepting this contract, agrees to all of the conditions and terms specified herein, on attachments hereto, on the reverse hereof, and on any bid inquiry that may have preceded this award. Direct all correspondence relative to this contract to the Procurement Department, University of Massachusetts, 140 Hicks Way, Goodell Building, Amherst, MA 01003. Prices cannot be altered during the term unless that was a condition of Contractor's bid. Unless otherwise stated, unit prices are inclusive of all costs.
2. **SHIP TO:** To insure that delivery is made to the correct location, please address all shipments as noted on the face of this order. All correspondence, packages, and invoices must indicate the purchase order number, departmental name, and delivery address as indicated on this order.
3. **DELIVERY:** Deliveries shall be strictly in accordance with the schedule set out or referred to in the order and in exact quantities ordered. Notwithstanding the foregoing, Contractor shall not be liable for delay in delivery due to causes beyond Contractor's control and without Contractor's fault or negligence, provided Contractor exercises due diligence in promptly notifying University of conditions which will result in delay, and provided further, if Contractor's delay is caused by the default of a subcontractor or supplier, such default arises out of causes beyond the control of both Contractor and subcontractor or supplier, and without the fault or negligence of either of them, and the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule. Freight Terms shall be as noted on the face of this order.
4. **INSPECTION OF GOODS:** The University shall have a reasonable time after delivery to inspect the goods delivered or services rendered under this contract and to reject or revoke acceptance of any not conforming with the terms of this agreement. Rejected goods will be returned to Contractor at Contractor's expense. Rejected services will be reworked and all costs associated with the rework will be charged to Contractor.
5. **SUBSTITUTION OF GOODS:** Goods not conforming with this contract will not be accepted. The University must approve, in writing, any substitution of non-conforming goods prior to shipment.
6. **MATERIAL SAFETY DATA SHEETS:** Contractor shall submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance (pursuant to M.G.L. C.111F s 8,9 and 10 and the regulations contained in 441 OMR s 21.06) that is shipped against this order.
7. **CONTRACTOR'S WARRANTY:** Contractor herein warrants and covenants that the subject merchandise complies with all applicable federal, state and local statutes, rules and regulations for the installation and use of said merchandise for the purpose for which said merchandise is being purchased or rented.
8. **PAYMENT:** All invoices must be submitted to the **BILL TO ADDRESS** referenced on the front of this purchase order and must indicate the University's purchase order number and the name of the department listed in the **SHIP TO ATTENTION** line. Note that in order to effect payment, a W-8 or W-9 form, as appropriate, executed by the Contractor, which reflects the Contractor's current legal and remittance address or addresses, must be on file at the campus. Payment shall be made in accordance with M.G.L. C.29, s.29c and 815 CMR 4.00.
9. **DEFAULT:** In the event of default by Contractor, including failure to deliver any item ordered within a reasonable time after acceptance of this contract, or if the University rightfully rejects the goods or services or revokes acceptance, the University may without waiving any other remedy permitted by law, make covering purchases of goods or services and hold Contractor liable for all additional costs incurred. Further, in such event, the University, at its option, may be relieved of any duty to accept such items as are subsequently delivered pursuant to this contract.
10. **CANCELLATION:** University may cancel this order without liability for damages or otherwise, in the event that Contractor becomes insolvent or makes an assignment for the benefit of creditors, or a petition is filed to declare Contractor bankrupt or notwithstanding the provision thereof headed "Delivery," if delivery is not made within the time specified or within a reasonable time if no time is specified, or if the quantity or quality of the articles delivered hereunder is not as specified herein.
11. **TERMINATION:** If the purchase order indicates that it is placed under a Federal Grant or Contract, the University shall have the right to cancel set forth in the paragraph hereof headed "Cancellation", and the right to terminate the performance of work under this contract in whole or from time to time in part in the circumstances and with the effect set forth in the "Termination Clause" contained in Section 52.249-1 of the Federal Acquisition Regulation (FAR). The provisions of this clause shall not limit or affect the rights or remedies of University stated in other clauses of this order or provided by law in the event of default or breach by Contractor.
12. If this contract does not agree with Contractor's quotation, contact the University before performance begins. Prior to performance, the University may require additional information from the Contractor in order to insure that the firm is qualified and that the product or service offered will meet the need for which it is intended.
13. **BID RESULTS AND THE RIGHT TO SPLIT AWARDS:** Bid results will not be automatically transmitted to every bidder. It is the bidder's responsibility to contact the Procurement Department to review the bid results and award. The University reserves the right to split awards, if deemed by the Director of Procurement to be in the best interest of the University. If a split award is unacceptable to the bidder, it must be so stated in his/her bid.
14. **FEDERAL ACQUISITION REGULATIONS:** If the purchase order indicates it is placed under a United States Government Contract or Grant, this order is subject to the following FAR or DFARS regulations hereby incorporated by reference with the same effect as if they were fully set forth:  
(A) Competitive Acquisitions - FAR 52.215-1; (B) Audit and Records Negotiations - FAR 52.215-2; (C) Contract Work Hours - FAR 52.222-4; (D) Equal Opportunity - FAR 52.222-26; (E) Patent and Copyright Infringement - FAR 52.227-2; (F) Equal Opportunity for Disabled Veterans and Veterans of the Vietnam Era - FAR 52.222-35; (G) Affirmative Action for the Handicapped Workers - FAR 52.222-36; (H) Rights in Technical Data, Noncommercial - DFARS 52.227-7013; (I) Women Business Enterprise Program, Executive Order 12138; (J) Restrictions on Subcontractors Sales to the Government - FAR 52.203-6; (K) Anti-Kickback Act of 1986 Procedures are Observed - FAR 52-203-7  
If the purchase order exceeds the total noted below, the following FAR or DFARS regulations shall apply:  
(L) Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and other Eligible Veterans - FAR 52.222-37 - \$10,000; (M) Authorization and Consent - FAR 52.227-1 - \$25,000; (N) Certification and Disclosure Regarding Payments to Influence Certain Transactions - FAR 52.203-11 - \$100,000; (O) Limitation on Payments to Influence Certain Federal Transactions - FAR 52.203-12 - \$100,000; (P) Prohibition on Persons convicted of Fraud or other Defense Contract Related Felonies- DFARS 252.203-7001 - \$25,000  
Contractor shall not accept purchase orders in excess of \$25,000 if Contractor has been debarred, suspended, or proposed for debarment under FAR Clause 52.209-6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.  
In all of the above clauses, "contractor" shall mean "seller" and "contract" shall mean "purchase order." The Federal Government retains its right to audit under FAR 52-215-1 and 2, and its right to license patents under FAR 52-227-11 AND 12.
15. **NON-DISCRIMINATION:** The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
16. **FEDERAL CONTRACT PROVISIONS:** The Contractor shall comply with provisions of Executive Order 11246 as amended by Executive Order 11375 as supplemented by Department of Labor Regulation 41 CFR Part 60. The Copeland Anti-Kickback Act (18 USC 874) as supplemented in Department of Labor Regulation 29 CFR Part 3. The Davis-Bacon Act (40 USC 276a et seq.); Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented by Department of Labor Regulation 29 CFR Part 5. The Clean Air Act of 1970 (42 USC 7401 et seq.), and the Federal Water Pollution Control Act (33 USC 1251 et seq); and the Americans with Disabilities Act of 1990, to the extent that they are applicable.
17. **SOCIAL SECURITY ACT:** The Contractor may be audited by a federal sponsoring agency or the Controller General of the United States if the purchase is affected by certain federal requirements. Section 1861 (V)(1) of The Social Security Act as amended, requires the University as Medicare providers, to notify contractors to University's Medical Divisions (who receive awards of \$10,000 or more in any twelve-month period), that their books, documents and records must remain available for verification of cost by the Comptroller General for a period of four years following performance of the Contract.
18. The Contractor agrees to protect, defend, and save the University harmless against any demand for payment for the use of any patented material, process, article or device that may enter into the manufacture, construction, or form a part of the work covered by this agreement.
19. **Data Protection Controls: Data Security and Breach Notification** - The Vendor shall protect data and information provided by the University to Vendor ("University data") to commercially acceptable standards and no less rigorously than it protects its own confidential information. The Vendor shall develop, implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentiality, integrity, and availability of University data.  
The Vendor will not provide any University data to any Sub-contractor or agent without the prior express written permission of the University or as otherwise provided under the agreement. Vendor returns University data, and does not retain a copy, to the University upon termination, cancellation, expiration, or other conclusion of the agreement, unless the University requests that the data be destroyed. The Vendor shall retain any University data only as long as needed for the specified purpose and to securely dispose of any University data when there is no longer a business need to retain that data. The Vendor agrees to notify the University immediately if any breach of the security, confidentiality, or integrity of University data occurs; assist the University in any subsequent investigation and notification processes; and to otherwise comply with all applicable Massachusetts and federal laws and regulations regarding data security and breach notifications, such as M.G.L. c. 93H and the Health Information Technology for Economic and Clinical Health Act (HITECH Act).
20. **PCI-DSS (Payment Card Industry-Data Security Standard)** - If, in the course of its engagement by University, Contractor has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, Contractor shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") and if applicable, Payment Application Data Security Standard ("PA DSS") requirements, including remaining aware at all times of changes to these standards and promptly implementing all procedures and practices as may be necessary to remain in compliance with these standards, including promptly notifying the University of its non-compliance, in each case, at Contractor's sole cost and expense. Both parties are responsible for the security of the cardholder data that is in such party's control or possession, as mandated by PCI Security Standards Council ("PCI SSC") in the performance of their individual and mutual responsibilities under this Agreement. At the time of engagement, and annually thereafter, the Contractor must submit to the University their Attestation of Compliance.
21. **CHOICE OF LAW:** This Contract shall be construed under and governed by the Laws of the Commonwealth of Massachusetts.
22. M.G.L. C.62C, s.49A and C.151A, s.19A: Each Contractor must certify under penalties of perjury that they have filed all state returns and paid all state taxes as required under law.
23. The terms of this contract cannot be modified, altered, or changed without the specific written approval of the University.