

## Western Washington University Standard Terms and Conditions Rev 07/03

THIS PURCHASE ORDER CONTRACT INCORPORATES THE FOLLOWING TERMS AND CONDITIONS AND INCLUDES, BUT IS NOT LIMITED TO, THE INVITATION TO BID, REQUEST FOR QUOTATIONS, SPECIFICATIONS, PLANS AND PUBLISHED RULES AND REGULATIONS OF THE DIVISION OF PURCHASING AND THE LAWS OF THE STATE OF WASHINGTON, WHICH ARE HEREBY INCORPORATED BY REFERENCE.

- (1) **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this order will be effective without written consent of the Supervisor of the Division of Purchasing
- (2) **HANDLING:** No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, containers or reels, unless otherwise stated herein.
- (3) **DELIVERY:** For any exception to the delivery date as specified on this order, Vendor shall give prior notification and obtain written approval thereto from the Supervisor of the Division of Purchasing. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time. The acceptance by Purchaser of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor.
- (4) **PAYMENTS AND ASSIGNMENTS:** All payments to Vendor shall be remitted by mail. Purchaser shall not honor drafts, nor accept goods on a sight draft basis. Furthermore, the provisions or monies due under this contract shall only be assignable with prior written consent of the Supervisor of the Division of Purchasing.
- (5) **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where shipping addresses indicate room numbers, it will be up to the vendor to make delivery to that location at no additional charge. Where specific authorization is granted to ship goods FOB Shipping Point, Vendor agrees to prepay all shipping charges, route cheapest common carrier, and to bill Purchaser as a separate item on the invoice for said charges, if routing instructions are not included on Purchase Order. Each invoice for shipping charges shall contain the original or a copy of the bill indicating that the payment for shipping has been made. It is also agreed that Purchaser reserves the right to refuse COD Shipments.
- (6) **INSPECTION AND REJECTON:** The Purchaser's inspection of all materials and equipment upon delivery is for the sole purpose of identification. Such inspection shall not be construed as final acceptance, or as acceptance of the materials or equipment, if materials or equipment does not conform to contractual requirements. If there are any apparent defects in the materials or equipment at the time of delivery, the Purchaser will promptly notify the Vendor thereof. Without limiting any other rights, the Purchaser and/or the state at its option, may require the Vendor to:
  - Repair or replace, at Vendor's expense, any or all of the damaged goods, or
  - Refund the price of any or all of the damaged goods, or
  - Accept the return of any or all of the damaged goods.
- (7) **ACCEPTANCE:** THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY VENDOR ARE OBJECTED TO AND ARE HEREBY REJECTED, UNLESS OTHERWISE PROVIDED IN WRITING BY THE SUPERVISOR OF THE DIVISION OF PURCHASING
- (8) **IDENTIFICATION:** All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written documents affecting this contract shall be identified by the applicable purchase order or field order number. Packing lists shall be enclosed with each shipment, indicating the contents therein.
- (9) **INFRINGEMENTS:** Vendor agrees to protect and save harmless purchaser against all claims, suits or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchase, installation, or use of goods and materials ordered, and to assume all expenses and damages arising from such claims, suits or proceedings.
- (10) **NON-WAIVER BY ACCEPTANCE OF VARIATION:** No provision of this order, or the right to receive reasonable performance of any act called for by the terms shall be deemed waived by a waiver by Purchaser of a breach thereof as to any particular transaction or occurrence.
- (11) **WARRANTIES:** Vendor warrants that articles supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, except if stated in a Special Condition, the material must then fit that particular purpose.
- (12) **TERMINATION:** In the event of a breach by Vendor of any of the provisions of this contract, Purchaser reserves the right to cancel and terminate this contract forthwith upon giving oral or written notice to Vendor. Vendor shall be liable for damages suffered by Purchaser resulting from Vendor's breach of contract.
- (13) **PAYMENT:** Invoices will not be processed for payment nor will the period of cash discount commence until receipt of a properly completed invoice and until all invoiced items are received and satisfactory performance of Vendor has been attained. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. Under "Chapter 39.76 RCW," if purchaser fails to make timely payment(s), Vendor may invoice for 1% per month on the amount overdue or a minimum of \$1.00.

Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with contract terms shall fully compensate the Vendor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Vendor.

- (14) TAXES: Unless otherwise indicated, Purchaser agrees to pay all State of Washington sales or use tax. No charge by Vendor shall be made for federal excise taxes, and Purchaser agrees to furnish Vendor, upon acceptance of articles supplied under this order, with an exemption certificate.
- (15) LIENS, CLAIMS, AND ENCUMBRANCES: Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
- (16) RISK OF LOSS: Regardless of FOB point, Vendor agrees to bear all risks of loss, injury or destruction of goods and materials ordered herein which occur prior to delivery and acceptance by Purchaser as outlined in Paragraph (6); and such loss, injury or destruction shall not release Vendor from any obligation hereunder.
- (17) INDEMNIFICATION AND HOLD HARMLESS: Vendor shall indemnify, defend and hold harmless Western Washington University, its trustees, officers, directors, employees and volunteers from and against any damage, cost or liability for any injuries to persons or property arising out of or resulting from the Vendor's performance or non-performance of this contract, including any goods, services, or products advertised, manufactured, sold, handled, distributed, or disposed of by or on behalf of Vendor, to the extent caused in whole or in part by the acts or omissions of Vendor, its agents, employees, representatives, or any subcontractor or its employees.
- (18) INSURANCE: The Vendor shall maintain in full force and effect a business insurance program, including, but not limited to, commercial general liability (CGL) insurance, auto liability insurance and, if necessary, professional liability (E&O) insurance, that insures the Vendor's obligations set forth in Paragraphs (16) and (17) at a minimum. Upon request from the Purchaser, the Vendor shall submit a Certificate of Insurance evidencing such insurance specified herein.
- (19) PRICES: If price is not stated on this order, it is agreed that the goods shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
- (20) EQUAL OPPORTUNITY/NON-DISCRIMINATION: Discrimination on the basis of race, color, religion, national origin, sex, age, status as a Vietnam Era veteran or disabled veteran, and disability is prohibited by federal statute. In addition to the above prohibitions, except religion, Washington State law prohibits discrimination based on marital status, creed and the use of a trained dog guide or service animal by a disabled person. A Western Washington University policy prohibits discrimination based on sexual orientation. Western is committed to providing equal employment opportunity and prohibiting illegal discrimination in the recruitment and admission of students, the employment of faculty and staff and the operation of Western programs, activities and services.

The contractor (vendor) agrees not to discriminate against any client, employee, or applicant for employment or services in administering personnel actions such as employment, upgrading, demotion, transfer, recruitment, layoff, termination, compensation and training opportunities, on the basis of race, color, religion, creed, national origin, sex, age, status as a Vietnam-era veteran or disabled veteran, marital status, disability and the use of a trained dog guide or service animal by a disabled person.

Affirmative Action - Western Washington University develops and implements an effective and defensible affirmative action compliance program for the following affected groups: American Indians and Alaska Natives, Asians and Pacific Islanders, Blacks, Hispanics women, persons 40 and older, individuals with disabilities, special disabled veterans and Vietnam Era veterans.

Any contractor (vendor) who also contracts with the federal government will comply with the affirmative action requirement as mandated by the Office of Federal Contract Compliance Programs.

Sexual Harassment - Western Washington University policy prohibits sexual harassment. Sexual harassment is a form of sex discrimination prohibited by federal and state laws. When Western becomes aware of allegations of sexual harassment, it must investigate those allegations, stop the harassment if it is found to exist, and take measures to ensure a working and learning environment that is free of sexual harassment. Acts of sexual harassment by the contractor's personnel or agents may result in actions by the University to remove the contractor from the qualified bidders list, suspend the contract until such time as acts are remedied, or to terminate the contract.

Violation - Any contractor (vendor) who is in violation of this equal opportunity and nondiscrimination clause shall be barred from receiving awards of any contract or purchase order from Western unless a satisfactory showing is made that discrimination practices have terminated and that a recurrence of such acts is unlikely. Any violation of this

provision shall be considered a material violation of this Agreement and shall be grounds for cancellation or suspension, in whole or in part, of this Agreement by Western.

- (21) ANTI-TRUST: Vendor and Purchaser recognize that in actual economic practice overcharges resulting from anti-trust violations are in fact borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges.
- (22) DEFAULT: The Vendor covenants and agrees that in the event suit is instituted by the buyer for any default on the part of the vendor, and the vendor is adjudged by a court of competent jurisdiction to be in default, he shall pay to the buyer all costs, expenses expended or incurred by the buyer in connection therewith and reasonable attorney's fees.
- (23) BRANDS: When special brands are named it shall be construed solely for the purpose of indicating the standards of quality, performance or use desired. Brands of equal quality, performance and use shall be considered, provided vendor specifies the brand, model and submits descriptive literature, when available. Any bid containing a brand which is not of equal quality, performance, or use specified must be represented as an alternate and not as an equal, and failure to do so shall be sufficient reason to disregard the bid.
- (24) ADVERTISING: Vendor shall not advertise or publish information concerning this contract in any form or media without prior written consent from the University.