

## THE UNIVERSITY OF TAMPA PURCHASE ORDER GENERAL TERMS AND CONDITIONS

FLA. SALES TAX EXEMPTION #85-8012620811C-7

FED ID #59-0624459

DUNS Number 00-411-5770

**PURCHASE ORDER TERMS AND CONDITIONS**— The University of Tampa's (the University's) Purchase Order Terms and Conditions apply to and are a part of this order, and are incorporated herein by reference, unless different terms and conditions are otherwise agreed to in writing as part of a separate agreement between the University and Seller. These terms and conditions shall govern the sales of products/services set forth on the attached quotation and apply to all quotations, purchase orders, or other documents sent to the University by Seller. In the event there are conflicts or inconsistencies with any term or condition of this Agreement and those in Seller's documents, such then these terms and conditions shall apply and govern. Any terms or conditions contained in any Seller quotation, purchase order, or other document which is inconsistent with, different from, the terms and conditions herein, are hereby rejected. This Purchase Order will be deemed accepted by Seller either upon: 1) Seller's written acknowledgement of the Purchase Order; 2) shipment of goods; or 3) commencement of performance hereunder.

1. **GOVERNING LAW, JURISDICTION, AND VENUE.** This order shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflicts of law principles. With respect to any action instituted by Seller or the University relating to this order, the parties accept the exclusive jurisdiction of the courts of the State of Florida, and agree that venue shall lie exclusively in Hillsborough County, Florida.

2. **PACKING.** The products and materials shall be packed and shipped by Seller in accordance with the University's instructions and good commercial practice so as to ensure that no damage shall result from weather or transportation. Seller shall secure the lowest transportation cost.

3. **INSPECTION.** Products and materials hereunder are subject to inspection and approval at the University's destination. The University may return any products and materials which are defective, unsatisfactory, or of inferior quality or workmanship, or which fail to meet the specifications or other requirements of this order. Such products and materials shall, unless used by the University, remain the property of Seller and may be returned at Seller's risk and expense; and Seller shall reimburse the University for all prior payments thereof and/or costs incurred in connection with delivery or return of such products and materials.

4. **WARRANTY.** In addition to any statutory warranties or any warranty implied by law, Seller expressly warrants to the University that all products and materials covered by this order (i) do not violate any patent, trademark, copyright or other intellectual property right, (ii) shall strictly conform with all specifications, drawings, models, dimensions, statements on containers or labels, descriptions, and samples furnished to or by the University, (iii) shall strictly conform to all industry standards, (iv) shall be new and free from defects in design, materials used, and workmanship, (v) shall be merchantable and fit for the purposes intended, and (vi) shall be adequately contained, packaged, marked, and labeled. Seller also expressly warrants to the University that (i) Seller has the right, power, and authority to sell and transfer the products and materials to the University, and that the sale and transfer will not conflict with, be a violation of, or be prohibited in any way by any agreement under which Seller is subject to or bound by, and (vi) good title to such products and materials shall be conveyed to the University as the sole owner, free and clear of all liens, encumbrances, pledges, charges, security interests, and claims. All of the above mentioned warranties shall survive delivery, inspection, testing, acceptance, use, and payment by the University, and shall inure to the benefit of the University, its successors, assigns, and users. These warranties may not be limited or disclaimed. Seller shall provide to The University all manufacturers' warranties which shall inure to the benefit of the University.

5. **WORK AND SERVICES.** All work and services performed by Seller hereunder shall be done in a skillful, workmanlike, competent, and professional manner, in accordance with all applicable industry standards and all applicable laws, regulations, ordinances, and codes. Seller shall perform its work and services in accordance with any applicable specifications. Seller warrants to the University that (i) Seller has the right, power, and authority to perform the work and services, and (ii) Seller's performance of the work and services will not conflict with, be a violation of, or be prohibited in any way by any agreement under which Seller is subject to or bound by.

6. **CHARGES.** Unless specified on the front side hereof to the contrary, the prices charged to the University are F.O.B. the University's premises. Seller warrants that the prices charged the University on this order, which shall not be higher than shown on the front side hereof, are no higher than prices charged on orders placed by others for similar quantities on similar conditions subsequent to the last general announced price change. Unless otherwise specified on the front side hereof, the contract price includes all applicable federal, state, and local taxes, charges, or duties.

7. **INDEMNITY.** Seller shall defend, indemnify and hold harmless the University and all of the University's officers, agents, and employees from and against all claims, liability, loss and expense, including reasonable costs, collection expenses, attorneys' fees, and court costs which may arise because of the negligence (whether active or passive), misconduct, or other fault, in whole or in part (whether joint, concurrent, or contributing), of Seller, its officers, agents or employees in performance or non-performance of its obligations under the Agreement. Seller recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the University when necessary, and voluntarily makes this covenant and expressly acknowledges the receipt of such good and valuable consideration provided by the University in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve Seller of its liability and obligation to defend, hold harmless and indemnify the University as set forth in this article of the Agreement.

8. **INSURANCE.** Seller shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement, Comprehensive General Liability and Worker's Compensation insurance, including Employer Liability insurance, with minimum policy limits of \$ 1,000,000 Combined Single Limits, or to the extent and in such amounts as required and authorized by Florida law, and will provide endorsed certificates of insurance generated and executed by a licensed insurance broker, brokerage or similar licensed insurance professional evidencing such coverage, and naming the University of Tampa as a named, additional insured, as well as furnishing The University with a certified copy, or copies, of said insurance policies. Said insurance coverages procured by Seller as required herein, including but not limited to any excess and/or umbrella coverages, shall be considered, and Seller agrees that said insurance coverages it procures as required herein shall be considered, as primary insurance over and above any other insurance, or self-insurance, available to Seller, and that any other insurance, or self-insurance available to the University shall be considered secondary to, or in excess of, the insurance coverage(s) procured by Seller as required herein. Certificates of Insurance require the endorsement "The School and its employees, officers and agents are additional insureds on the above listed insurance policies, excepting professional liability and workers' compensation policy." The certificate holder should state "The University of Tampa, 401 W Kennedy Blvd, Tampa, FL 33606.

9. **ASSIGNMENT OF CLAIMS.** Seller shall not assign this order or any interest herein, including any performance or any amount which may be due or may become due hereunder, without the University's prior written consent.

10. **SUBCONTRACTORS.** Seller shall not subcontract the performance of any work or services without the prior written consent of the University.

11. **PAYMENTS.** Seller shall submit proper invoices for payment. Payment shall be due and payable within thirty (30) days after (i) acceptance of such products, materials, work and/or services, or (ii) receipt of properly completed invoice, whichever is later.

12. **TERMINATION FOR CONVENIENCE.** The University may terminate this order in whole or in part, with or without cause, at any time by written notice to Seller. Such notice shall state the extent and effective date of such termination. Upon receipt thereof, Seller shall, as and to the extent directed by the University, stop work under this order. If this order is so terminated, Seller shall be paid in accordance with the terms of the order for materials or supplies delivered and accepted.

13. **ADVERTISING AND/OR PUBLICITY AUTHORIZATION.** Without prior written consent of the University, Seller shall not publish the fact that the University has placed this order with Seller and shall not otherwise publicize the relationship established by this order.

14. **COMPLIANCE WITH LAWS.** Seller represents and warrants to the University that Seller is in compliance with all applicable laws, regulations, orders, ordinances, and codes including, without limitation, those relating to discrimination. Seller further represents and warrants to the University that the products and materials furnished to the University under this order are in compliance with all applicable laws, regulations, ordinances, and codes. Seller shall indemnify, defend, and hold the University harmless from any action, claim, loss, damage, fine, penalty, cost or expense (including, without limitation, attorneys' fees) alleged against or incurred by the University arising out of, resulting from or in any way connected with Seller's violation of or failure to comply with, or the products or materials furnished by Seller hereunder violating or failing to comply with, any applicable law, rule, regulation, ordinance, or code.

15. **DEBARMENT, SUSPENSION, AND CRIMINAL PROCEEDINGS:** Seller represents and warrants to the University that neither Seller nor any of its agents, employees, contractors or subcontractors (performing services hereunder) are presently (i) debarred or suspended, (ii) under investigation for debarment or suspension, or (iii) otherwise excluded from participation, with respect to any federal, state or local government program or any federal, state or local government entity. Seller further represents and warrants to the University that neither Seller nor any of its agents, employees, contractors or subcontractors (performing services hereunder) has ever been convicted of any criminal offense, nor is there any criminal proceeding pending against any of them, relating to any federal, state or local government program or relating to any federal, state or local government entity. The Seller's representations and warranties set forth in the preceding two (2) sentences are hereinafter referred to as the "Seller's Government Representations". Seller's Government Representations shall be ongoing during the entire period that Seller is doing business with the University. Seller shall immediately notify the University in writing if Seller's Government Representations are no longer true in any manner. If Seller's Government Representations are not at any time true in all respects, then the University may immediately terminate its business arrangement with Seller by written notice to Seller, and pursue any other remedies available to the University at law or in equity.

16. **TAX.** The University is exempt from Federal Excise Taxes, Florida Sales and Use Taxes. Seller should exclude taxes when submitting invoices.

17. **INTELLECTUAL PROPERTY RIGHTS.** Seller represents and warrants to the University that Seller owns the products and materials being provided to the University under this order or has all licenses and other rights to enable it to sell to the University the products and materials hereunder. Seller shall indemnify, defend, and hold the University, its agents, employees, officers, and trustees (collectively, the Indemnities) harmless from any action, claim, liability, damage, loss, cost or expense (including, without limitation, attorneys' fees) alleged against or incurred by any of the Indemnities arising out of, resulting from or in any way connected with any claim to the effect that any of the products or materials provided by Seller infringes upon any patent, copyright, trademark or other intellectual property right of a third party. In the event of any such action or claim against any of the Indemnities, then in addition to any other remedies available to the University, upon the University's request Seller shall refund to the University all monies paid by the University to Seller for the products and materials subject to this order, and Seller shall remove the products and materials from the University's premises without any cost to the University and without causing any damage to the premises.

18. **ITEMS FURNISHED BY THE UNIVERSITY.** All designs, tools, patterns, drawings, information, and equipment supplied by the University in connection with this order are the proprietary rights of the University. Consequently, Seller shall not disclose, copy, reproduce, or use any such item without first obtaining the University's written consent, which consent may be granted or withheld in the University's sole discretion.

19. **SEVERABILITY.** If any provision or part thereof of this order is held invalid or unenforceable by a court of competent jurisdiction, then the remainder of the order shall not be affected thereby and shall remain valid to the maximum extent permitted by law.

20. **RIGHTS IN DATA.** Seller agrees to and does hereby grant to the University the right to reproduce, use, and disclose for any purpose all or any part of the reports, drawings, blueprints, data, and technical information developed under this order, and Seller agrees that it will not use or disclose the same without the University's written consent.

21. **SELLER STATUS.** Seller will supply the University with an accurate W-9 or W8 (Foreign Seller); if Seller fails to supply the University with a complete and accurate W-9 or W8, the invoice will be deemed insufficient for payment until such information has been provided.

22. **AUDIT & RECORD KEEPING.** The Seller agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. The University or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to the University.

23. **CHANGES.** At any time by written notice, the University may make changes within the general scope of a PO to drawings and specifications, shipping instructions, quantities, and delivery schedules. Should any such change increase or decrease the cost of, or the time required for performance of the PO, an equitable adjustment in the price and/or delivery schedule will be made. Any claims for adjustment by Seller must be made in writing within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties. Any changes to the scope of this Agreement can only be instituted through a written Change Order processed and approved by the Purchasing Department prior to commencement thereof.

24. **BACKGROUND CHECKS.** If Seller is providing any service or any program, activity or event that involves direct contact with or access to students for or on behalf of the University, Seller shall ensure that pre-employment or pre-contracting reference and background checks are conducted on all personnel directly performing services under this Agreement (which shall include but not be limited to, all such persons who shall come on to the premises of the University in the performance of their duties or tasks). Supplier will be responsible for insuring that federal, state and county of residence criminal background checks are conducted on all personnel so employed or contracted and shall exclude from any direct participation in the

performance of the Services any dishonest, unreasonably dangerous or otherwise unqualified persons. Supplier will abide by all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting act and/or any equal opportunity laws, rules, regulations or ordinances.

25. **FORCE MAJEURE.** The performance of the University and the Seller under this Agreement shall be subject to events of force majeure. Upon the occurrence of any such force majeure event, the University may terminate this Agreement, and if it does terminate this Agreement pursuant to this section, that termination will be without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded. For purposes of this Agreement, force majeure events include, but are not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulations or advisories, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrences beyond the control of the University, where any of those factors, circumstances, situations, or conditions, or where any of these events make it illegal, impossible, inadvisable, or commercially impracticable for the University or the Seller to fully perform the terms of the Agreement.

26. **SELLER EQUIPMENT:** The University is not responsible for damage or theft of any construction equipment, tools owned or rented by Seller, or materials supplied by contractor.