



## **THE UNIVERSITY OF AKRON PURCHASE ORDER TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Seller's commencement of work, or acceptance of this Purchase Order in any manner, shall conclusively evidence acceptance of this Purchase Order as written. The University Purchase Order, together with any specifications, schedules, exhibits, riders, or other writings that may be attached thereto or incorporated by reference, sets forth the complete and final agreement between the University and Seller in respect of the subject matter of the purchase. No amendments, modifications of, or supplements to the provisions of the Purchase Order will be valid and binding upon the University unless in writing and signed by an authorized representative of the University. Seller is deemed on notice that the University objects to any additional or different terms and conditions contained in any quotation, acknowledgment, invoice, or other communication from Seller, notwithstanding University's acceptance of, or payment for any delivery of goods and/or services, or any similar act by University. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties. In the event of any inconsistency between these Terms and Conditions and the provisions on the face of the Purchase Order or on any supplement attached thereto, the provisions contained on the face of the Purchase Order or on such supplement shall control.
2. **CHANGES:** University may at any time, by written order, request changes in or additions to the goods and/or services, issue additional instructions, require additional work or direct the omission of work covered by this Purchase Order, and Seller shall proceed with the work as so changed. However, such changes shall be within the general scope of the Purchase Order. If any changes cause a material increase or decrease in the amount or character of the work required under this Purchase Order or in the time required for its performance, an equitable adjustment in the price and time for performance shall be made and the Purchase Order modified in writing accordingly. Any claim for adjustment under this paragraph must be asserted within thirty (30) days from the date the change is ordered or within such further time prior to the date of final settlement as may be agreed to in writing by the parties. The quantity of goods, as indicated on the face of the Purchase Order, must not be exceeded without specific authority in writing being first obtained from the University's Department of Purchasing. Any quantity of goods delivered to the University in an amount in excess of the quantity of goods indicated on the face of the Purchase Order may be returned to Seller at Seller's cost.
3. **DELIVERY:** Unless otherwise specified in the Purchase Order, delivery shall be F.O.B. The University of Akron, freight prepaid and allowed, to the address indicated. Seller shall bear all costs for packing, crating, and cartage unless otherwise specifically stated in the Purchase Order. Where freight charges are to be the responsibility of the University, the Seller agrees to ship in the most economical manner, consistent with the delivery needs of the University. Seller shall retain title and bear the risk of loss or damage to the items purchases until they are delivered in conformity with the Purchase Order at the specified F.O.B. point. Passing of title upon delivery shall not constitute acceptance by the University. Should Seller fail to deliver materials within the time specified, University may terminate this Purchase Order in whole or in part and may buy elsewhere and charge Seller any additional expense incurred thereby. University expressly retains all its rights and remedies under this Purchase Order and provided by law in the case of such default, and no action on the part of University shall constitute a waiver of

any right or remedy. Seller shall not be liable by reason of any failure to deliver or delay in delivery due to any cause beyond Seller's reasonable control and without the fault or negligence of Seller. Unless otherwise provided in the Purchase Order, no invoices shall be issued, nor payments made prior to delivery.

4. **PERFORMANCE OF WORK:** If this Purchase Order calls for work to be performed by Seller, all work performed and all materials used in connection therewith shall be at the risk and expense of, and shall be replaced by Seller in the event of any damage or destruction thereof prior to delivery to and acceptance by University. If this Purchase Order calls for work to be performed by Seller upon any premises owned or controlled by the University, Seller will keep the premises and the work free and clear of all mechanics' liens and will furnish University with certificate and waiver as provided by law. Whenever any property belonging to University is in the possession of Seller or Seller's suppliers, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to University. Seller will indemnify, hold harmless and defend University from any and all claims, demands or suits made or brought under the Worker's Compensation Law of the state in which any work is performed hereunder and will, if requested, furnish to University a certificate showing that Seller is complying with Worker's Compensation Law of such state.
5. **WARRANTY:** Seller expressly warrants that all goods and services, including any articles, materials, and designs supplied by Seller, will conform to the specifications, drawings, samples, or other descriptions set forth in the Purchase Order or furnished by the University, and will be merchantable, suitable for the purposes intended, of good material and workmanship, and free from defects in material, workmanship, design, and title. Any work which is found to be defective either before or after acceptance may be rejected and returned to Seller at Seller's risk and expense for repair or replacement, or, if Seller cannot make the repair or replacement in the time required by University, University may, in its sole discretion, reject such defective goods and/or work for credit. If University finds it impractical to return defective work for repair or replacement within a reasonable time, it may perform necessary repairs at its own facility and charge the reasonable cost thereof to the Seller. Any payments made on any rejected work shall be immediately refunded to University. To the extent that the Purchase Order requires a series of performances by the Seller, University prospectively reserves the right to cancel the entire remainder of the Purchase Order if the goods and/or services provided early in the term of the Purchase Order are non-conforming or otherwise rejected by the University.
6. **INTELLECTUAL PROPERTY:** All custom work produced during the performance of this Purchase Order by Seller, whether individually or jointly with University faculty, staff, or students (collectively "Work Product"), will be deemed to be owned by University. All Work Product that constitutes patentable subject matter is irrevocably assigned to University by this Purchase Order, together with all patent rights with respect to such Work Product. All Work Product that constitutes copyrightable subject matter under the copyright laws of the United States will be deemed to be a "work made for hire" under the United States copyright laws, and all right, title and interest in and to such Work Product will vest in University. If any Work Product is determined not to be a "work made for hire" under the United States copyright laws, this Purchase Order will operate as an irrevocable assignment by Seller to the University of the copyright in and to such Work Product. Notwithstanding the foregoing, Seller does not convey nor does University obtain any ownership of materials proprietary to Seller and not developed under this Purchase Order, which Seller may utilize or provide pursuant to the Services (collectively "Seller Materials"), except as otherwise agreed upon in writing by the parties. Prior to incorporating any Seller Materials in any Work Product hereunder, Seller will first notify University and obtain University's prior written consent to such use or incorporation. To the extent that Seller Materials are incorporated in whole or in part into any Work Product or other deliverable hereunder,

Seller grants to University, subject to the terms and conditions of this Purchase Order, a royalty-free, irrevocable, worldwide, non-exclusive, perpetual right to use, distribute, reproduce, modify and prepare derivative works of such Seller Materials.

7. **ADA AND SOFTWARE:** If this Purchase Order involves software that a student(s) will use, the Seller as Licensor acknowledges and understands that its software is being licensed by the University to be provided to its students. Seller acknowledges and understands that as a public institution of higher education that receives federal funding, the University is required to comply with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. and Section 504 of the Rehabilitation Act 29 USC 701 et. Seq. Seller agrees that its software will comply with the Americans with Disabilities Act, 4 U.S.C. 12101 et seq. and Section 504 of the Rehabilitation Act, 29 USC 701 et seq. as those laws apply to the University, will be accessible to individuals with disabilities, and will meet current Web Content Accessibility Guidelines. Seller agrees that failure to provide an accessible product is a breach of this Purchase Order.
8. **COMPLIANCE WITH LAWS:** Seller shall, in the performance of work or services under this Purchase Order, fully comply with all applicable Federal, State, and local laws, ordinances, regulations, and rules, including all University Rules.
9. **PERMITS AND CERTIFICATIONS:** Seller shall be responsible for obtaining all permits, certificates of inspection, and approvals necessary for Seller to perform its obligations under this Purchase Order and shall pay all charges connected therewith.
10. **CONTINGENT UPON APPROPRIATION:** Seller acknowledges that expenditures of University funds are contingent upon availability of lawful appropriations by the Ohio General Assembly. In the event that sufficient appropriate funding is unavailable to assure full performance of the terms of this Purchase Order, the University may terminate this Purchase Order at its option with respect to goods and/or services not yet provided by Seller. The Seller shall be notified in writing of such non-appropriation at the University's earliest opportunity.
11. **TERMINATION FOR CAUSE:**
  - (a) If Seller commits a material breach of this Purchase Order, the University may terminate this Purchase Order for cause, so long as the University first provides Seller with a written notice of the breach and the Seller fails to cure the breach within ten business days of receipt of the notice (or, if the breach by its nature cannot reasonably be cured within ten business days, then University may terminate if the Seller fails to begin to cure the breach within ten business days of receipt of the notice and works diligently thereafter to cure the breach). Such termination will be without prejudice to any other rights, recourses and remedies that may be available to the University, including the right of the University to terminate and procure replacement goods without the obligation to provide a ten-day cure opportunity, as detailed in Section 3 of these Terms and Conditions.
  - (b) The Seller, upon receipt of suspension or termination, will comply with the following: cease work on the suspended or terminated activities; suspend or terminate all subcontracts relating to the suspended or terminated activities; take all necessary or appropriate steps to limit disbursements and minimize costs; and, if requested by the University, furnish a report, as of the date of receipt of notice of suspension or termination describing the status of all Services under this Purchase Order, including without limitation, results accomplished, conclusions resulting from its Services to date plus all other matters as the University may require.

(c) The University will not be liable for any further claims, and the claims submitted by the Seller will not exceed the total amount of consideration stated in this Purchase Order. In the event of suspension or termination, Seller will return to the University within 15 days any payments made by the University, where the Seller has not provided the goods or services under the Purchase Order.

12. **TERMINATION FOR CONVENIENCE:** University may terminate this Purchase Order for its convenience and without cause at any time upon thirty days prior written notice to Seller. Upon receipt of such notice of termination for convenience, Seller will immediately cease work and follow other instructions from University. University will pay Seller for services rendered and/or goods provided before the date of termination. Termination under this section will not affect the rights or remedies of either party then-existing or that may thereafter accrue.
13. **FORCE MAJEURE:** Neither University nor Seller shall be responsible for any delay or failure in performance, and the University shall not be liable for failure to accept delayed performance, if such delay or failure is due to causes beyond the reasonable control of Seller or the University, as the case may be, including, but not limited to: acts of God, force majeure, fire, civil disturbance, pandemic or epidemic, accident, transportation impediments, riot, strike, slowdown or labor stoppage of any kind, civil orders, or act of any government, foreign or domestic. When either party has knowledge of any actual or potential force majeure or other condition that will delay, threaten to delay, or prohibit timely performance of the Purchase Order, that party shall give timely notice thereof, including all relevant information with respect to the steps that the party is taking to complete performance. Any such delay or failure shall give the University the right, at its option, to cancel all or such portion of the Purchase Order as it may elect.
14. **INVOICES:** An invoice indicating the proper University Purchase Order Number **MUST BE PROVIDED IMMEDIATELY AFTER SHIPMENT OF GOODS**. Unless written notice to the contrary is given to the University by the Seller prior to shipment, all invoices for goods shipped on the Purchase Order shall be rendered by and payable to Seller. When prepaid transportation charges are incurred upon direction of the University, the prepaid receipted transportation bill must support the invoice. Invoice payment dates will be computed from the date of shipment or from the date a valid invoice is received by the University, whichever is later.
15. **INDEMNIFICATION:** Seller agrees to indemnify, save harmless and defend the University from and against any and all liability, loss, and expense (including reasonable attorney's fees) resulting from patent infringement, damage to property, or injury to or death of persons caused by Seller in the performance of this Purchase Order, including those claims that arise by reason of any defect in material, workmanship, and/or design of any goods furnished, or services performed hereunder
16. **EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION:** Seller and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

17. **REMEDIES AND WAIVER:** All rights and remedies of the University specifically set forth in Purchase Orders shall be cumulative and in addition to any other or further rights and remedies provided in law or equity. Failure of the University to insist upon strict performance of any term or condition of a Purchase Order shall not be deemed to be a waiver of the University's rights and remedies. No waiver by the University of any default by Seller of any term or condition of a Purchase Order shall be effective unless in writing and signed by an authorized representative of the University, nor shall any such waiver constitute a waiver of any other default or of the same default on a future occasion.
18. **CHOICE OF LAW:** University Purchase Orders shall be governed by the applicable laws of the State of Ohio in all instances, including but not limited to terminations bearing a reasonable relation to this state, to another state or nation.
19. **FINDINGS FOR RECOVERY:** Seller warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. Seller further agrees that if this warranty is found to be false, this Purchase Order is void ab initio and the Seller immediately shall repay to the University any funds paid under this Purchase Order.
20. **BANKRUPTCY:** In the event, Seller becomes insolvent or makes a transfer for the benefit of creditors in bankruptcy or any other insolvency proceedings are instituted by or against Seller, The University shall have the right to immediately terminate the Purchase Order.
21. **CONFLICTS OF INTEREST AND ETHICS COMPLIANCE:** Seller represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Purchase Order are aware of, and understand the requirements of the Ohio Ethics and Conflicts of Interest laws. Seller further represents and warrants that neither seller nor any of its employees will do any act that is inconsistent with such laws.
22. **CAMPAIGN CONTRIBUTIONS:** Seller certifies that all applicable parties listed in in Ohio Revised Code Section 3517.13 are in full compliance with the requirements of Ohio Revised Code Section 3517.13.
23. **EXECUTIVE ORDER GOVERNING THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES:** Seller affirms that in the performance of any obligations under this Purchase Order, that Seller has read and understands the requirements of Executive Order 2019-12D, issued by Governor DeWine, <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>, and shall abide by those requirements.
24. **TAXES:** The University is an instrumentality of the state of Ohio, and as such, is exempt from all Federal excise taxes and State of Ohio sales and use taxes. The person whose signature appears on University Purchase Orders hereby certifies that he/she is authorized to execute tax exemption certificates and that the article or articles purchased by the University is/are for the exclusive use of the University.
25. **NOTICES:** All notices under this Purchase Order shall be sent to the respective addresses on the face page of the Purchase Order by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. In the event an addressee refuses to accept delivery, notice shall be deemed to be have been served on the date of said refusal of delivery.

**NOTE: The Vendor must support all individual sales made to the University with a separate invoice or record, showing a description of article or articles, price for each item, and total amount involved in each transaction.**