



## The University of Toledo

### Standard Purchase Order Terms and Conditions

---

1. Absence of Sanctions:

Contractor represents that neither it nor any of its owners, officers or employees have been sanctioned by or excluded from participation in any federal or state health care program, including Medicare and Medicaid. Contractor agrees that if it or any such individual associated with it should become the subject of an investigation relating to health care fraud, abuse or misconduct, or should be sanctioned by or excluded from participating in any federal or state health care program, including Medicare and Medicaid, it will immediately notify the University of such event and the University will have the right to immediately terminate this Agreement without penalty or cost.

2. Acceptance:

Acknowledgment of Purchase Order, shipment of any goods or commencement of work pursuant to the Purchase Order or agreement shall be deemed an acceptance of these Terms and Conditions. No modification of or release from this Purchase Order shall be binding unless agreed to in writing by the University and Contractor and specifically labels as a modification or release. Unless specifically agreed to otherwise by University and Contractor, these Terms and Conditions supersede any others submitted by Contractor in any proposal or acknowledgment.

3. Advertising:

Contractor will not appropriate or make use of the University's name or other identifying marks or property in its advertising without prior written consent of the University's Office of Marketing and Communications.

4. Assignment:

Neither party may assign this Agreement or any rights, duties or obligations under this Agreement without the prior written consent of the other party.

5. Audits:

During performance of this Agreement and for a period of seven years after its completion, Contractor will maintain auditable records of all charges pertaining to this Agreement and will make such records available to University as University may reasonably require. All audits of Contractor by the University will be conducted in a manner that does not unreasonably interfere with the conduct of a Contractor's business. If any such audit discloses a deficiency, Contractor will promptly pay to the University any deficiency and, if the deficiency is material, the cost of the audit.

6. Authority to Contract:

Each party represents that it has the full power and authority to enter into this Agreement and to convey the rights herein conveyed.

7. Changes:

No substitutions, alterations or additions are authorized to this Purchase Order without the written consent of the University. The University reserves the right to return goods at Contractor's expense if the order is billed at a higher price than specified or the goods are non-conforming, unless prior written approval for the modification has been obtained by Contractor from the University.

8. Charges/increases:

Charges to the University identified in this Agreement are complete and no additional charges or price increases of any type will be added without the University's express written consent.

9. Compliance with Law and University Policies

- Contractor hereby covenants and agrees that in the course of Contractor's performance of its duties hereunder, Contractor will comply with all applicable federal, state and local government laws, statutes, ordinances and regulations, and University policies and procedures.
- If professional licensing or certification constitutes a qualification for Contractor's performance under this Agreement, Contractor will make immediately available, at the University's request, a copy of said certification or licensure.
- The Contractor warrants that it has complied with all federal, state and local laws regarding business permits and licenses of any kind.
- The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and ensure that all its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

10. Confidentiality:

Pricing information in this Agreement or information provided by Supplier marked confidential will be maintained by the University as confidential information, except that this information may be subject to disclosure under the Ohio Public Records Law, *See Ohio Revised Code §149.43*. The University will have the right to disclose all pricing or information marked confidential relating to this Agreement to any University attorneys, accountants, consultants, group purchasing organizations, or other third parties retained by the University with respect to the University's business purposes under this Agreement. If the University receives a public records request for any information related to the pricing in this Agreement or information marked by Supplier as confidential, the University will notify Supplier and Supplier will have fifteen (15) calendar days from the date of the notice to obtain an order to prevent said disclosure. Supplier waives any claim it may have against the University for release of said information after the fifteen (15) calendar day notice period has passed.

11. Conflict of Interest:

No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under this Agreement is being carried out, and who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, will, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.

Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, will immediately disclose his or her interest to Agency in writing. Thereafter, he or she will not participate in any action affecting the work under this Agreement, unless Agency will determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws and Executive Order.

12. Contingent upon Appropriation:

It is understood that any and all expenditures of State funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments and/or other obligations that may be due hereunder, then the State of Ohio's obligations under this Agreement are terminated as of the date that the funding expires without further obligation of the State.

13. Customer Service:

- It is expected that all Contractors working with University associates maintain a professional and courteous nature and that phone calls and order confirmations be promptly returned.
- It is the desire of the University that a dedicated Customer Service Representative, or team thereof, be placed on the University account during regular business hours with e-mail capabilities.
- It is the Contractor's responsibility to communicate changes in representatives and coordinate introductions to key personnel at the University. This includes sales and internal customer service reps.

14. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization (D.M.A.):

Contractor hereby represents and warrants to University that it has not provided any material assistance, as that term is defined in O.R.C. Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." Contractor further represents and warrants that it has provided or will provide such to University prior to execution of this Agreement. If these representations and warranties are found to be false, this Agreement is void ab initio and Contractor will immediately repay to University any funds paid under this Agreement

- If required as indicated in the Attachments/Exhibits, the Respondent is responsible for reviewing, completing, signing, and including **Attachment C** within their Proposal to certify that they have not provided "material assistance" to a terrorist organization.
- The DMA was created to provide the state with an additional tool to deter and prosecute acts of terrorism within the state. The Declaration is a part of Senate Bill 9, which is Ohio's homeland security and anti-terrorism legislation. The revised version of the bill was signed into law by Governor Taft on January 11, 2006. Sections 2909.32, 2909.33, and 2909.34 of the Ohio Revised Code officially defined and created the DMA. Compliance with the DMA will take effect on Friday, April 14, 2006.

Additional information is available at [http://www.homelandsecurity.ohio.gov/DMA\\_forms.asp](http://www.homelandsecurity.ohio.gov/DMA_forms.asp)

15. Defense/Authority to Defend or Settle a Claim:

To the extent University is named party in such claim, University will have the right to approve all legal counsel used in the defense of such claim and the right to approve any settlement regarding the claim.

16. Entire Agreement:

This Agreement supersedes any and all agreements, both oral and written between the parties, and contains all of the covenants and agreements between the parties. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

17. Ethical Conduct:

It is expected once an agreement or Purchase Order is issued, Contractors (awarded or not awarded) will not undertake any actions that might interfere with, or be detrimental to, the contractual obligations of The University of Toledo. The University reserves the right to take any and all actions deemed appropriate in response to unethical conduct by a Contractor. Such actions include, but are not limited to: establishing guidelines for campus visits by Contractor, and/or removal of a Contractor from University's supplier list.

18. Force Majeure:

Neither party will be liable or deemed in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fires, explosions, earthquakes, floods, the elements or any other cause beyond the reasonable control of such party.

19. Freight Terms:

All goods will be shipped to the University's designated destinations as F.O.B. Destination. No charge for packing or cartage will be allowed except as approved in writing by the University's Purchasing Department prior to shipment. International INCOTERMS, if applicable, are DDP (delivered duty paid). As such, Contractor should include all applicable storage, labor, packing, freight/cartage/delivery, insurance, duty, taxes and custom related documentation charges necessary, as the University will not be responsible for any additional fees or activities associated with goods or commencement of work listed on University Purchase Order. All packages, shipping units, bills of lading or shipping memorandums must clearly be marked with University Purchase Order number.

20. Governing Law:

All questions relating to the validity, interpretation, performance or enforcement of this Agreement, and any claims arising from or related to this Agreement, will be governed by and construed in accordance with the laws of the State of Ohio, without regard to the principle of conflict of laws. Any litigation arising from or related to this Agreement may be brought only in the federal or state courts of Ohio with appropriate jurisdiction, and the parties irrevocably consent to the jurisdiction and venue of such courts.

21. HB694 Campaign Contributions:

The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of ORC Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of ORC Section 3517.13.

22. Indemnification:

Supplier agrees to indemnify the University, its governing board, officers, employees, agents, students and the State of Ohio from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs, and attorney's fees, which may arise out of Supplier's performance of this Agreement, or suffered by failure to perform this Agreement according to its provisions and in accordance with the Statement of Services.

23. Intellectual Property Indemnification (for agreements including software):

Supplier at its own expense will defend and hold harmless University from (i) any judgment against University to the extent that such judgment is based on a claim that software used within the scope of this Agreement infringes any patents, copyrights, license or other property rights of a third party. University will promptly notify Supplier in writing of any such claims. To the extent University is named in such claim, University will have the right to approve all legal counsel used in the defense of such claim and the right to approve any settlement regarding the claim.

18. Independent Contractor:

1. The Contractor agrees that it is an independent contractor, and not an agent, partner or employee of the University. The Contractor understands that it does not have the authority to sign agreements, notes or obligations or to make purchases or dispose of property for or on behalf of the University.
2. The Contractor's personnel are not employees or agents of the University at any time or for any purpose.

This includes application of the Fair Labor Standards Act, Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, state worker's compensation laws and state unemployment insurance laws.

3. The Contractor accepts full responsibility for payment of all taxes including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by the Contractor in the performance of the Services authorized by this Agreement.

19. Insurance:

Contractor ("Contractor") shall purchase and maintain liability insurance which will protect the Contractor from claims which may arise out of or result from the Contractor's performance or obligations under the contract, whether due to action or inaction by the Contractor, or any person for whom the Contractor is responsible.

Refer to the following website for information:

[http://www.utoledo.edu/depts/risk/rm/policies/contractor\\_insurance\\_frontpage.html](http://www.utoledo.edu/depts/risk/rm/policies/contractor_insurance_frontpage.html)

20. Invoicing:

Hard copy invoices are to be mailed to The University of Toledo, Accounts Payable, MS 451, 2801 W. Bancroft St. Toledo, OH 43606. Invoices may also be sent electronically to [accountspayable@utoledo.edu](mailto:accountspayable@utoledo.edu) referencing 'email processing' in the subject line with name of Contractor and invoice number. Invoices must reference Purchase Order number and match Purchase Order on a line by line basis to ensure prompt payment. University shall have the option of using any method of payment including credit card, ACH, or check. Any cash discounts offered will be accepted.

21. Limitation of Liability:

- The University's liability for damages, whether in contract or in tort, will not exceed the total amount of compensation payable to Contractor under this Agreement.
- IN NO EVENT WILL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, EVEN IF THE UNIVERSITY IS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
- NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, THE CONTRACTOR WILL BE LIABLE FOR ANY PERSONAL INJURY OR DAMAGE TO THE UNIVERSITY IN PERFORMING THE SERVICES, INCLUDING DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, CAUSED BY ITS FAULT OR NEGLIGENCE.

22. Meetings:

The Contractor is required to meet with the University to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the University in the performance of their respective obligations, at no additional cost to the University.

23. Non-Discrimination:

Contractor acknowledges and agrees that Contractor does not discriminate in employment or educational programs on the basis of race, color, religion, sex, age, ancestry, national origin, sexual orientation, gender identity and expression, military or veteran status, disability, familial status, political affiliation, or participation in protected activity.

24. Non-Waiver:

The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof will not be deemed to be a waiver of such rights, nor will the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

25. Notices:

Any notice to either party hereunder must be in writing signed by the party giving it, and will be served personally or by registered or certified mail addressed as follows:

To the University:

The University of Toledo  
Attn: \_\_\_\_\_  
Mail Stop #: \_\_\_\_\_  
2801 W. Bancroft St.  
Toledo, OH 43606

To Contractor:

(fill in address)

or to such other addressee as may be hereafter designated by written notice. All such notices will be effective only when received by the addressee.

26. Paragraph Headings:

The paragraph headings in this Agreement are inserted only as a matter of convenience as a reference, and in no way define, limit or describe the scope or intent of this Agreement.

27. Payment Terms:

University standard payment terms are NET30 days and will be calculated by the date goods are received; the date the invoice is received; or the date of installation or acceptance, whichever is later.

28. Public Records:

The parties acknowledge that the University, as an instrumentality of the State of Ohio, is required to disclose public records. When the University receives a request involving Contractor's information, including this Agreement, the University will notify Contractor immediately of the request. Contractor will have 15 days to obtain an order prohibiting the disclosure or a protective order to protect the disclosure of any information. Contractor's failure to obtain an order prohibiting the disclosure within the 15 day period constitutes a waiver of any claim Contractor may have against the University for disclosure of the information.

29. Record Keeping Requirements:

1. The Contractor will keep all financial records in a manner consistent with generally accepted accounting procedures. The Contractor will file all documentation to support each action in a manner allowing it to be readily located.
2. The Contractor will keep separate business records for this project, including records of disbursements made and obligations incurred in the performance of this Agreement. The Contractor will support these records with contracts, invoices, vouchers and other data as appropriate.
3. The Contractor agrees to provide the University, its duly authorized representatives or any person, agency or instrumentality providing financial support to the Services undertaken under this Agreement, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Agreement. This right will continue during the term of this Agreement plus 3 years after termination or expiration of this Agreement.

30. Rights in Data, Patents and Copyrights, Public Use:

1. If applicable, the Contractor will deliver and assign to the University all rights, title and interest to: documents, data, materials, information, processes, studies; reports, surveys, proposals, plans, codes; scientific information, technology information, regulations; maps, equipment, charts, schedules, photographs, exhibits; software, software source code, documentation and other materials and property prepared or developed or created or discovered under or in connection with this Agreement (the "Deliverables").
2. If applicable, the Deliverables provided by the Contractor in rendering the Services will become the property of the University. The University, and any person, agency or instrumentality providing financial assistance for the Services performed under Article 1 will have the unrestricted right to reproduce, distribute, modify, maintain and use the Deliverables.
3. The Contractor will not obtain copyright, patent or other proprietary protection for the Deliverables, provided, however, that the Contractor will reserve its rights in all methods, pre-existing work, software and data used to prepare such Deliverables.
4. The Contractor will not include in any Deliverable any copyrighted matter, unless the copyright owner and any person, agency or instrumentality providing financial assistance to the Services under this Agreement gives prior written approval to use such copyrighted matter in the manner provided herein.
5. Neither the Contractor nor any of its employees, agents, subcontractors or assigns will make a disclosure for securing a patent in the United States or any other country for any of the Deliverables unless the University approves this disclosure in writing prior to application for the patent.
6. In the event that the Contractor does obtain this patent, the Contractor will, at the request of the University, provide the University written authorizations for the University and any other person, agency or instrumentality contributing financial support to the Services contemplated under this Agreement to make use of the subject of the said patent disclosure without any payment.
7. The Contractor agrees that all Deliverables will be freely available to the public to the extent required by law.

31. Right of Inspection/Rejection:

All goods shall be received subject to University's right of inspection and rejection on non-conforming or defective goods. Those goods rejected as a result of inspection will be held for Contractor's inspection at Contractor's risk and, if Contractor directs, will be returned at Contractor's expense. Freight to and from original destination for excess goods, except for customary quantity variations recognized by trade practice, will be paid by Contractor. Payment for goods on an order prior to inspection shall not constitute acceptance.

32. Right of Person, not Parties:

Nothing contained in this Agreement will be deemed to create rights in persons not parties to actual Agreement.

33. Rules of Construction:

The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring any party by virtue of authorship of any specific provisions of this Agreement.

34. Severability of Terms:

The provisions of this Agreement are divisible. If any such provision will be deemed invalid, illegal, or unenforceable in any respect, by a court of competent jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained herein, unless such severance would cause this Agreement to fail of its essential purpose.

35. Suspension or Debarment:

Contractor certifies that Contractor is not currently now and during the term of this Agreement suspended or debarred by the Federal Government or State of Ohio from participating in Federal or State funded projects.

36. Termination:

- The University reserves the right to terminate this Agreement for any reason and at any time upon 10 days written notice to Contractor. In the event of termination prior to completion of all Services described in ( \_\_\_\_\_), the amount of the total fee to be paid the Contractor will be determined by the University on the basis of the portion of the total Services actually completed up to the time of such termination.
- If either party fails to perform any of the requirements of this Agreement, or is in violation of a specific provision of this Agreement, then the non-breaching party may suspend or terminate this Agreement if the breaching party fails to cure such non-performance or violation within ten (10) business days following delivery of written notice of the breach.
- The Contractor, 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 Agreement including without limitation, results accomplished, conclusions resulting from its Services to date plus all other matters as the University may require.
- The University will not be liable for any further claims, and the claims submitted by the Contractor will not exceed the total amount of consideration stated in this Agreement. In the event of suspension or termination, Contractor will return to the University within 15 days any payments made by the University where the Contractor has not rendered Services.

37. Taxes:

The University, as an instrumentality of the State of Ohio, is exempt from Ohio sales tax and Federal excise tax, including Federal transportation tax. An exemption certificate is available, upon request, from the University Purchasing office.

38. Unresolved Findings:

Contractor warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. If the warranty is deemed to be false, the Agreement is void ab initio and the Contractor must immediately repay to the State any funds paid under this Agreement.

39. Warranty:

Contractor warrants that the work performed and equipment supplied hereunder will be of first quality, in full compliance with the requirements of the Agreement, and free from defects in material, workmanship and design for one year from initial operations. If any aspect of the above warranty will be breached, Contractor shall, upon receipt of notice thereof from University and at Contractor's sole cost and expense, promptly repair or replace the defective materials, workmanship, or design or pay the University the costs and expenses incurred by University in conducting such repair and replacement.

40. Accessibility:

Contractor acknowledges and understands that the Software and/or Hardware under Agreement must comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq. and Sections 504 and 508 of the Rehabilitation Act 29 U.S.C. 701 et seq. as those laws apply to the University and meet current Web Content Accessibility Guidelines set forth by the World Wide Web Consortium (W3C). Contractor will indemnify, defend and hold the University and their respective trustees, employees, students, agents and servants harmless from all fines, penalties, expenses or awards related to any claims, including requests for accommodations concerning administration of the Software and/or Hardware under Agreement including but not limited to ADA compliance. Contractor agrees to promptly address and resolve any



complaint related to compliance with ADA accessibility requirements of the Software and/or Hardware under Agreement that has been identified and brought to the attention of the Contractor. Contractor agrees that Contractor's failure to comply with this Section is a material breach of Agreement.