

## GENERAL TERMS AND CONDITIONS

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#### TERMS:

**1. PRICE** -- If no price is specified herein, charges shall not exceed Vendor=s standard price for merchandise of like quality and quantity. Vendor warrants that prices charged to University are based on Vendor=s current catalog or published price list of commercial items sold in substantial quantities to the general public.

**2. PAYMENT** -- Payment shall be made for items accepted by the University that have been delivered to the delivery destinations set forth in this order.

**3. DISCOUNT** -- Discount terms must be stated on the invoice. Discounts will be calculated from the date material or the invoice is received whichever is later. For the purpose of computing the discount earned, payment shall be considered to have been made on the date, which appears on the payment check.

**4. DELIVERY** -- The University reserves the right to cancel this order in whole or in part if any shipment of merchandise covered hereby is not received by the time specified.

**5. QUANTITY** -- The University=s count will be accepted as final and **TERMS:**

conclusive on all shipments not accompanied by a packing list. Unless expressly provided for to the contrary on the face of this order, all shipments are to be made F.O.B. destination, and the Vendor shall bear all cost for cartage, boxing, or containers as required. Goods shipped to the University in excess of the quantities specified on the front page of this Purchase Order may be rejected or returned at Vendor=s expense.

**6. DELIVERY TIME** BB Goods shipped to the University in advance of, or after agreed upon delivery schedules may be rejected or returned at the Vendor=s expense. Time is of the essence.

**7. INVOICING** BB Invoices (in duplicate, one marked ORIGINAL) must be mailed to The Pennsylvania State University, Applied Research Laboratory, P.O. Box 30, State College, PA 16804-0030 (unless otherwise specified) the day shipments are made. Individual invoices will be issued for each shipment and each order, and must include—

(1) Name and address of the Vendor;

(2) Invoice date;

(3) Purchase Order number, line item number and, if applicable, the order number;

(4) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(5) Shipping number and date of shipment including the bill of lading number and weight of shipment;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in the event of a defective invoice.

Vendors are encouraged to assign an identification number to each invoice.

**8. IDENTIFICATION** BB THE UNIVERSITY=S PURCHASE ORDER NUMBER MUST SHOW ON ALL INVOICES, PACKING LIST, AND BILLS OF LADING.

#### CONDITIONS:

**1. ACCEPTANCE OF ORDER** BB This order, when accepted by the Vendor, shall constitute the entire contract between the University and Vendor as agreed to and shall not be changed, altered, amended, supplemented, or canceled without the written approval of the APurchasing Agent@ listed on the front page of the Purchase Order of The Pennsylvania State University (referred to below as the AUniversity@). The Vendor=s written acceptance of this order, commencement of performance hereunder, or the shipment of any conforming article, shall constitute acceptance of this contract. It is a condition of this Order that any provisions printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this Purchase Order, shall have no force or effect, and that Vendor by such acknowledgment thereby agrees that any such provisions therein or any such alterations in this Order shall not constitute any part of this contract of purchase and sale. This contract contains the entire agreement of the parties.

**2. INSPECTION/ACCEPTANCE** -- The Vendor shall only tender for acceptance those items that conform to the requirements of this contract. The University reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The University may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The University must exercise its post-acceptance rights-- (1) Within a reasonable time after the defect was discovered or should have been discovered; and (2) Before any substantial change occurs in the condition of the item, unless the change is due to a defect in the item.

**3. TITLE.** -- Unless this Purchase Order specifically provides otherwise, title to items furnished under this order shall pass to the University upon acceptance, regardless of when or where the University takes physical possession.

**4. RISK OF LOSS** -- unless this Purchase Order specifically provides otherwise, risk of loss or damage to the supplies provided under this order shall remain with the Vendor until, and shall pass to the University upon delivery of the supplies to the University at the destination specified in the order.

**5. CHANGES** BB The University may from time to time, by written instructions or drawings issued by the Purchasing Agent to the Vendor, make changes, issue additional instructions, require additional work, or direct the omission of work

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previously ordered. The provisions of this agreement shall apply to all such written modifications. Any requested increase or decrease in the total cost schedule contained in this Purchase Order shall be expressly approved by Purchasing Agent

**6. ADDITIONS** BB No extra work, additions or alterations will be paid for by the University unless performed pursuant to and in accordance with the written order of the University.

**7. CANCELLATIONS** BB The University may cancel this order at any time, giving notice in writing. In the event of such termination, the Vendor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. An equitable adjustment in price and/or delivery schedule will be negotiated for materials completed or in process at the time of the change. The Vendor shall not be paid for any work performed or costs incurred, which reasonably could have been avoided.

**8. TERMINATION FOR DEFAULT** BB a) The University may by notice in writing direct Vendor to terminate this Purchase Order or work under this Purchase Order in whole or in part at any time for breach of any one or more of its terms. b) In the event of Vendor=s default hereunder, the University may exercise any or all rights accruing to it, both at law including those set forth in Article 2 of the Uniform Commercial Code or in equity. The University shall not be liable to the Vendor for any amount for supplies or services not accepted, and the Vendor shall be liable to the University for any and all rights and remedies provided by law. c) Vendor=s obligations under the warranty, patent and confidentiality provisions of this Purchase Order shall survive such termination. If it is determined that the University improperly terminated this contract for default, such termination shall be deemed a termination for convenience under the provisions of the Cancellation clause.

**9. EXCUSABLE DELAYS.** -- The Vendor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Vendor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Vendor shall notify the University in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the University of the cessation of such occurrence.

**10. WARRANTY AND INSPECTION** BB Vendor warrants all articles sold and materials and work delivered hereunder shall be of good quality and merchantable and fit for use for the particular purpose described in this order and free from any defects and shall at all times be subject to inspection and rejection; but neither the University=s inspection nor failure to inspect or reject shall relieve the Vendor of any obligations hereunder. Such inspection shall not exclude any warranties in respect to such goods.

**11. LIENS, CLAIMS AND ENCUMBRANCES** B Vendor warrants and represents that all the goods and materials delivered herein are free and clear from all liens, claims or encumbrances of any kind.

**12. SAMPLES** BB May be requested for inspection and approval prior to manufacture or delivery.

**13. PATENTS** BB The Vendor warrants that the material delivered, either alone or in combination with other materials, will not infringe on any patents in the United States or any foreign country, or the intellectual property rights of any third parties.

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**14. INDEMNIFICATION** BB The Vendor agrees to indemnify the University and its officers, directors, employees and agents and hold them harmless from and against all liability, loss and expense (including reasonable legal fees) for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, or other intellectual property right arising out of the performance of this order, provided the Vendor is reasonably notified of such claims and proceedings. Vendor shall protect, indemnify and save University harmless from and against any damage, cost or liability for any or all injuries to persons or property arising from acts or omissions of Vendor, his employees, agents or subcontractors, however caused.

**15. BANKRUPTCY** BB In the event of any proceedings in bankruptcy or insolvency by or against the Vendor, or in the event of the appointment (with or without the Vendor=s consent) of an assignee for the benefit of creditors, or of a receiver, the University may cancel this order for default.

**16. PENNSYLVANIA LAW** BB Performance of this order and all other matters pertaining thereto shall be, governed by the laws of the Commonwealth of Pennsylvania.

**17. DISPUTE RESOLUTION** --Any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, shall be reduced to writing, and communicated to the other party pursuant to the notices section hereof. Each party shall appoint a representative to attempt to amicably negotiate a resolution thereof. If the representatives of the

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parties have not been able to resolve the dispute within fifteen (15) business days after of formal notification of the dispute hereunder, the parties shall have the right to pursue any other remedies legally available to resolve such dispute in either the Courts of the Common Pleas of Centre County of Pennsylvania or in the United States District Court for the Middle District of Pennsylvania, to whose jurisdiction for such purposes the University and Vendor each hereby irrevocably consents and submits. Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this order. The Vendor shall proceed diligently with performance of this order, pending final resolution of any dispute arising under the order.

**18. TAXES** BB The University is exempt from all Federal Excise Taxes, The Pennsylvania State University is an instrumentality of the Commonwealth of Pennsylvania, and as such, is exempt from the Pennsylvania Sales and Use

**19. ASSIGNMENT.**B This Purchase Order, and all obligations hereunder, including provisions of monies due under this order, shall only be assignable with prior written consent of University

**20. ORDER OF PRECEDENCE.**-- Any inconsistencies in this order shall be resolved by giving precedence in the following order: (1) These Terms and Conditions, (2) the schedule of supplies/services, exclusive of appendices, specifications, plans of this Purchase Order, (3) appendices, (4) specifications, (5) plans, (6) other documents, exhibits, and attachments of this Purchase Order. Vendor shall immediately bring any inconsistencies to the attention of the University in writing.

#### COMPLIANCES:

As a supplier of materials or services to The Pennsylvania State University, (including its Commonwealth Campuses) suppliers must comply with the following:

**1.OSHA** BB Products shall meet, and be in compliance with, the current applicable prescribed standards of the Federal Occupational Safety and Health of Act of 1970 in effect on the date of this order.

**2 EXECUTIVE ORDER #11246** BB as amended, governing Federal Contractors and Pennsylvania Executive Order 1972-1.

**3. EXECUTIVE ORDER #11246**, as amended, stating that a Federal Contractor with a contract in excess of \$50,000 must require each subcontractor with 50 or more employees and a subcontract of \$50,000 or more to maintain a written affirmative action plan. Therefore, the University requests assurances that a written affirmative action plan has been prepared.

**4. EXECUTIVE ORDER #11246**, as amended, requiring a Federal Contractor to obtain a certificate from all subcontractors with contracts in excess of \$10,000 that the subcontractor does not and will not maintain employee facilities in a segregated manner, or permit its employees to perform services in a facility under the subcontractor's control where segregated facilities are maintained.

**5. THE PENNSYLVANIA HUMAN RELATIONS COMMISSION** regulations in 16 PA Code, Chapter 49, whereby the contractor shall not discriminate against any applicant for employment because of regard to race, color, religious creed, ancestry, handicap or disability, national origin, age or sex.

**6. SECTION 503 VOCATIONAL REHABILITATION ACT** (orders over \$10,000) relating to employment of qualified handicapped individuals, and the applicable rules and regulations (41 C.F.R. 60-741).

**7. VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT** of 1974 for orders over \$10,000 as implemented by Department of Labor Regulations, 41 C.F.R. 60-250, requiring Affirmative Action for disabled veterans and veterans of the Vietnam era.

**8. EXECUTIVE ORDER #11625** for orders over \$10,000 by other than personal service contractors, regarding Utilization of Minority Business Enterprises.

**9. EXECUTIVE ORDER #11625** for orders over \$100,000 regarding Minority Business Enterprises Subcontracting Program.

**10. PUBLIC LAW #95-507** for orders over \$100,000 regarding Small Businesses and Small Disadvantaged Businesses.

**11. WITH RESPECT TO PURCHASE ORDERS** issued under contracts with the government of the United States, Executive Order #12800, which includes the Notification of Employee Rights Concerning Payment of Union Dues or Fees, including specifically the provisions of Section 2 (a), (1), (2), and (3), unless otherwise exempted by rules, regulations, or orders of the Secretary of Labor.

**12. PURCHASE ORDERS IN EXCESS OF \$100,000:** Vendor agrees that the University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment on this Purchase Order, have access to and the right to examine any pertinent books, documents, papers, and records of such Vendor involving transactions related to this purchase order. Vendor certifies that pursuant to Executive Orders 12549 and 12689 and the implementing rules it presently is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency

**13. PURCHASE ORDERS IN EXCESS OF \$100,000:** Vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clear Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as

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amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Regional Office of the Environmental Protection Agency and the appropriate Federal awarding agency. Vendor shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). By submitting a signed proposal or quotation in response to the University's solicitation, and/or acceptance of any Purchase Order, Vendor certifies that Vendor will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Vendor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**14. PURCHASE ORDERS IN EXCESS OF \$2,000** for construction or \$2,500 for repair: Vendor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 674 and 40 U.S.C. 276C) as supplemented by Department of Labor regulations (29 CFR part 3, Contractors and Subcontracts on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).

**15. WALSH-HEALY PUBLIC CONTRACTS ACT:** If this Purchase Order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds, or may expect to exceed, \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act as amended (41 U.S. Code 34-35), there are hereby incorporated reference to all representations and stipulations required by said Act and regulations issued there under by the Secretary of Labor, such representation and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor.

**16. OTHER COMPLIANCES --.** The Vendor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

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