

UNIVERSITY OF PITTSBURGH

GENERAL TERMS & CONDITIONS AND INSTRUCTIONS

Unless otherwise specifically provided by separate written agreement signed by the University of Pittsburgh, these terms and conditions shall govern with respect to the Goods and/or Services (as such terms are defined below) identified in this Purchase Order (as printed on, attached to or otherwise incorporated herein by reference) (this "Order").

1. **DEFINITIONS:** Wherever used throughout this Order, the term(s):

- a) "Buyer," the "University," or the "University of Pittsburgh" shall each mean the University of Pittsburgh – Of the Commonwealth System of Higher Education.
- (b) "Goods" shall mean all goods, equipment, materials or other articles which are the subject of the University's Order.
- c) "Seller" shall mean the firm (individual person and/or entity) supplying the Goods and/or Services (as defined below) to the University.
- d) "Services" shall mean the service or services to be provided or tangible material produced or delivered in connection with the performance of the services as specified in the University's Order.
- e) "University Authorized Representative" shall mean the University Buyer as set forth on the face of this Order.

2. **ADDITIONAL/DIFFERENT TERMS:**

- a) If this Order has been issued by University in response to an offer by Seller, and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by the University shall constitute an acceptance of such offer, subject to the express condition that the Seller accept such additional and different terms herein and acknowledge that this Order shall prevail with respect to the subject matter of any such offer.
- b) The University hereby gives notice of its objection to any different or additional terms (including any general terms which Seller may have incorporated in any of Seller's documents provided to the University in connection with this Order). No such additional or different terms or conditions contained in any printed form of Seller shall become part of this Order despite acceptance of this Order and any Goods and/or Services provided hereunder, unless the University specifically assents in writing to their inclusion herein.

3. **MODIFICATIONS:** An Order is valid only as written. The terms and conditions of this Order may be modified only by written instrument executed by a University Authorized Representative. Any handwritten changes on the face of this Order shall be ignored and have no legal effect unless initialed by authorized representatives of both parties.

4. **OBJECTIONS:** Seller shall be deemed to have accepted the terms and conditions of this Order unless Seller notifies University to the contrary in writing delivered to the University Authorized Representative within ten (10) days of the date of this Order. Such notification shall state the specific provisions of this Order to which Seller objects.

5. **ACCEPTANCE:** This Order shall be deemed to have been accepted on the earlier of:

- a) Seller's making or signing any other form or acknowledgment (except that no additional or different terms and condition thereon shall apply except as otherwise permitted herein);
- b) ten (10) days after Seller's receipt of this Order so long as there is no written notification of non-acceptance by the Seller as specified in Paragraph 4 above;
- c) the shipment by Seller of any goods (or lots thereof) ordered hereby;
- d) the furnishing or commencement of any services called for hereunder;
- e) the acceptance of any payment by Seller hereunder; or
- f) any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof.

6. **REVOCATION/CANCELLATION:**

- a) Prior to Seller's acceptance of this Order, the University shall have the right to revoke or withdraw this Order, in whole or in part,

without liability to the University by giving written notice as provided herein to Seller.

b) The University may for its convenience cancel this Order, in whole or in part, at any time as to all or any portion of the Goods then not shipped or Services then not performed, by giving written notice of such termination to Seller. Seller shall immediately stop all work and/or shipment of Goods hereunder and cause its suppliers and/or subcontractors to cease their work against the Order. Seller shall be paid an amount equal to the pro rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination plus actual direct costs resulting from the termination. Seller shall not be paid for work performed after receipt of notice of termination nor for any costs incurred by Seller's suppliers and/or subcontractors which Seller could reasonably have avoided. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Seller's receipt of notice of termination. In no event shall the amount to be paid by the University in connection with such termination exceed the price of this Order. No termination for convenience shall relieve Seller or University of any of its obligations as to any Goods or Services delivered hereunder prior to any such termination.

7. CHANGES: The University may, from time to time, unilaterally order work suspension, or make changes within the general scope of this Order, or in drawings, designs, specifications, statements of work, place of delivery, methods of shipment and packaging, and services furnished by the University. If any such change causes an increase or decrease in the price of this Order or in the time required for its performance, Seller shall promptly notify the University thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated. Seller's failure to advise the University in writing within the ten (10) days of the effect of any change shall constitute Seller's consent to conform to the change on the terms and conditions specified by the University. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, the University shall have the right to prescribe the manner of disposition of such property. Information, advice, approvals, or instructions by the University's technical personnel or other representatives of the University shall be deemed expressions of personal opinions only and shall not affect the parties' rights and obligations hereunder unless it satisfies the requirements of a modification as set forth in Paragraph 3 above.

8. WARRANTIES: Seller expressly warrants that:

- a) all Goods furnished hereunder shall be new and unused (unless otherwise specified or agreed to in this Order);
- b) all Goods and Services furnished hereunder shall conform to all requirements, specifications and appropriate standards,
- c) all Goods and Services shall be free from defects, including, where applicable and without limitation, defects in material, workmanship and title. In addition, to the extent that the Goods and Services are not rendered pursuant to detailed designs or instructions furnished by University, the Goods and Services shall be free from defects in design;
- d) all Goods and Services furnished hereunder shall be merchantable and will be safe and appropriate for the purposes for which Goods and Services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which the University intends to use the Goods or Services, Seller also warrants that such Goods and Services will be fit for such particular purpose;
- e) all Goods and Services furnished will conform in all respects to samples, advertisements and other forms of representation made to the University regarding the Goods or Services purchased;
- f) in connection with Services or technical data to be provided by Seller hereunder, such Services and/or technical data shall be performed or prepared in a professional and workmanlike manner; and
- g) in performance of this Order, Seller shall comply, and all Goods or Services furnished hereunder shall be produced or furnished in full and complete compliance, with all applicable federal, state and local laws, rules, ordinances and regulations.

These warranties are in addition to warranties offered by Seller and any manufacturer and shall not be construed as restricting or limiting any warranties of Seller or such manufacturer, expressed or implied, which are provided or exist by operation of law. Inspection, test, acceptance or use of the Goods or Services furnished hereunder shall not affect Seller's obligations under this Paragraph 8, and such obligations shall survive inspection, test, acceptance and use. Seller's warranty shall run to the University, its successors, assigns and users of Goods or Services.

9. INSPECTION: The University reserves the right to inspect the work and activities of the Seller and its suppliers and subcontractors at all reasonable times and places before, during and after delivery of the Goods and/or Services. All materials or services are subject to final inspection and acceptance by the University at destination, notwithstanding any prior payments or inspections by the University. Such final inspection shall take place within thirty (30) days from the date of delivery, installation or completion of Services, whichever is latest. The University reserves the right to reject and refuse acceptance of any or all portions of the Goods and/or Services which are nonconforming or defective. In addition to other remedies which may be available at law or in equity, the University, at its option, may return to Seller any nonconforming or defective Goods and/or Services at Seller's expense a) for a credit or refund, or b) for correction or replacement. In the event of failure of Seller to correct defects in or replace

nonconforming Goods or Services within ten (10) days, the University may without prejudice to any other remedy it may have, make such corrections or replace such Goods and Services and charge Seller with the cost incurred by the University in doing so. If University elects to accept nonconforming or defective Goods and Services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the University for the nonconformity or defect.

10. TITLE AND RISK OF LOSS: With respect to any Goods provided under this Order, title and risk of loss shall not pass to the University until such Goods have been received, inspected and accepted by University in accordance with the terms and conditions set forth in this Order, Seller assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement in this Order by the University to pay freight, express or other transportation charges.

11. COMPLIANCE WITH DELIVERY SCHEDULE: Wherever this Order sets a date or time for the delivery of Goods and/or Services, time is of the essence. Seller, at its own expense, shall exert every effort including, but not limited to, overtime or expedited routing to meet the specified delivery schedule. The University reserves the right to refuse any Goods or Services and to cancel all or any part of this Order if Seller fails to deliver all or any part of the Goods or Services in accordance with the terms and conditions of this Order. If upon receipt of this Order or at any time thereafter it is found that the Goods and/or Services cannot be delivered within the time specified in this Order, written notice thereof must be given immediately to the University Authorized Buyer as provided herein, as to the reason(s) for the delay along with the anticipated date of delivery. Any notice to the University as to possible delay shall not constitute a waiver of the University's rights under this Order, nor shall such actions in any way affect the responsibility of Seller to deliver Goods or perform specified Services in accordance with the delivery schedule prescribed by this Order.

12. RIGHT TO ASSURANCE: Whenever one party to this Order acting in good faith has reason to question the other party's intent to perform, that party may demand in writing that the other party give written assurance of such party's intent to perform. In the event that a written demand is made and no assurance given with five (5) days of receipt thereof, the demanding party may treat such failure as an anticipatory repudiation of the contract formed by this Order.

13. TERMINATION FOR DEFAULT: The University may, without prejudice to any other rights or remedies provided by law or equity, by written notice to Seller terminate this Order in whole or in part if:

- a) If Seller has been declared bankrupt, makes an assignment for the benefit of creditors or is in receivership; or
- b) If Seller fails to comply with any of the terms and conditions of this Order, including, without limitation, late delivery of performance, the delivery of defective or nonconforming Goods or Services, or the failure to provide the University with reasonable assurances of future performance.

In the event of termination for default pursuant to this Paragraph 13, the University shall not be liable to Seller for any amount, and Seller shall be liable to University for any and all losses, damages and expenses (including costs of cover) sustained by reason of the default and subsequent termination of this Order. If a determination is made that the University improperly terminated this Order pursuant to this Paragraph 13, then such termination shall be deemed to have been for the University's convenience as permitted pursuant to Paragraph 6(b) above.

14. FORCE MAJEURE: Neither party shall be held responsible for delay or default under the terms and conditions of this Order or any losses relating thereto if the fulfillment of any terms or provisions of this Order is delayed or prevented by any cause which is beyond a party's reasonable control. Such causes may include, but are not restricted to, acts of God or of a public enemy, acts of a government in either is sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes; but in every case the failure to perform must be without the fault or negligence of the claiming party.

15. PRICE WARRANTY: Seller warrants that the price(s) for the articles or services sold the University hereunder are not less favorable than those extended to any other customer for the same or similar Goods or Services in similar quantities or scope of work. In the event Seller reduces its price(s) for such Goods or Services during the term of this Order, Seller agrees to reduce the prices hereof accordingly effective as of the date of such price reduction. Seller warrants that prices shown on this Order shall be complete, and no additional charges of any type shall be added without the University's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

16. PAYMENT TERMS: The University shall process and issue a payment in US dollars a) in accordance with the "Payment Terms" on the face of this Order and after receipt of an undisputed invoice that is received at the address indicated in the "Bill To" field on the face of this Order and b) on the condition that the invoiced Goods have been delivered to the destination specified in the

“Ship To” field on the face of this Order and accepted by the University or Services have been completed. If the University is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date of the invoice, whichever is later. The University may withhold payment in whole or in part for Goods or Services found by the University to be defective, untimely, or otherwise not conforming to this Order. All amounts due and payable by the University to Seller shall be subject to deduction or setoff by the University by reason of any claims the University may have against Seller whether arising out of this Order or any other transaction with the University.

17. AUDIT AND RETENTION OF RECORDS: The University shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Seller, its agents, suppliers and subcontractors to verify Seller’s performance and all expenses submitted pursuant to the terms of this Order. Seller shall make such items available for inspection at Seller’s place of business. All such items shall be retained by Seller for a minimum of three (3) years after the delivery of the Goods and/or Services.

18. PROPRIETARY INFORMATION AND DISCLOSURE: Seller agrees that any information disclosed by the University to Seller for the purpose of this Order shall be used only in the performance of this Order. Seller will keep the information confidential, will not disclose it to any third party, except as authorized by the University, and will only disclose it to those within its organization who need to use it in performance of this Order. Upon completion or termination of this Order, Seller shall return all such information to the University, or make such other disposition thereof as may be directed or approved by the University. No item furnished under this Order, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by the University, shall be duplicated or used by Seller. Seller agrees that it will not, without prior written approval of the University, publicize this Order or disclose, confirm or deny any details thereof to third parties, or use the University's name in connection with Seller's sales promotion or publicity without prior written approval from the University. Nothing in this provision shall restrict Seller's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Seller, or is rightfully obtained without restriction from other sources.

19. PROPERTY RIGHTS: All materials, tools, plans, designs, specifications, equipment, and other property either furnished by the University to Seller or individually paid for by the University, shall remain the property of the University, but the Seller assumes the risks of, and shall be responsible for, any loss thereof or damage thereto, until returned in good order to the University. Such property shall, at all times, be safely stored and properly maintained by Seller. Seller, in accordance with the provisions of this Order, but in any event upon completion thereof, shall return such property to the University or to any other person as the University may direct, in the condition in which it was received, manufactured or procured by Seller except for reasonable wear and tear and except to the extent that such property has been incorporated in the items delivered or has been reasonably consumed in performance of work under this Order.

20. RIGHTS IN DATA OR OTHER INTELLECTUAL PROPERTY: Unless otherwise agreed in writing, Seller agrees: a) that any computer program, software, documentation, copyrightable work, discoveries, inventions or improvements developed by Seller resulting from any performance of Services or delivery of Goods pursuant to this Order are the property of the University, and b) to assign all rights therein to the University. Seller further agrees to provide the University with any assistance which the University may require to obtain patents or copyright registrations, including the execution of any documents submitted by the University.

21. INDEMNIFICATION: The Seller shall defend, indemnify and hold harmless the University, its officers, employees, trustees, agents and representatives from and against any and all demands, claims, damages, liabilities, expenses, losses of every nature and kind, including, but not limited to, attorney's fees and costs, sustained or alleged to have been sustained in connection with or arising out of: i) actions or omissions of Seller resulting in any personal injury or death of any person or the damage to or destruction of any property in connection with the Services or Goods to be delivered under this Order, (ii) the breach by Seller of any of the terms and conditions set forth in this Order, (iii) defective, unsafe or non-conforming Goods supplied by Seller, or (iv) any infringement of any patent, copyright, or trademark arising out of the Services and/or the Goods covered by this Order except where such infringement results from Seller’s compliance with specific written instructions provided by the University. For purposes of this Paragraph 21, Seller shall include Seller, its directors, officers, employees, agents, suppliers and subcontractors.

22. **INSURANCE:** Unless more specific insurance provisions are attached, Seller shall procure and maintain during the term of this Order, at its own expense, the following insurance coverage:

Commercial General Liability

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$1,000,000 Products and Completed Operations
\$1,000,000 Personal and Advertising Injury
\$100,000 Fire Damage (any one fire)
\$10,000 Medical Expense (any one person)

Including coverage for but not limited to contractual, products, broad form property damage, personal injury, host liquor, and independent Sellers liability.

and

Automobile Liability

\$1,000,000 Combined Single Limit for Bodily Injury and Property Damage per Accident. Coverage shall include hired car and non-owned automobiles.

Workers' Compensation

Statutory

Employer's Liability

\$1,000,000 Each Accident
\$1,000,000 Disease - Policy Limit
\$1,000,000 Disease - Each Employee

The University is to be named as an additional insured on the insurance policies listed above. The policies described herein, and Seller's compliance with the terms and conditions of this Paragraph 22, shall be subject to approval by the University's Office of Risk Management. Seller shall provide certificates of insurance evidencing the insurance coverage required in this Order prior to commencement of Services or delivery of Goods to the Authorized University Representative.

23. LIMITATION ON UNIVERSITY LIABILITY: IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THIS ORDER. THE UNIVERSITY'S TOTAL OBLIGATION UNDER THIS ORDER IS SET FORTH IN THE "TOTAL" FIELD SET FORTH ON THE FACE OF THIS ORDER.

24. ETHICAL STANDARDS OF CONDUCT: Seller hereby represents that it has neither received or given gifts or gratuities to any member of the University community, nor participated in any other unethical conduct in connection with this Order. Seller recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the buyer. As such, Seller hereby assigns to the University, as the buyer of Goods and/or Services under this Order, any and all claims for such overcharges as to the Goods and/or Services purchased in connection with this Order.

25. FEDERAL AGENCY REGULATIONS: If this Order indicates on its face that it is placed under a United States Government Contract or Grant, then the Order is subject to all applicable requirements of 2 CFR § 215 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," Grant General Conditions (GC-1) 01/09, Federal Acquisition Regulations (FAR), and Defense Department Supplement to the Federal Acquisition Regulations (DFARS), each being incorporated herein by reference with the same effect as if they were fully set forth. **(If applicable, see Supplement A attached hereto and incorporated herein by this reference.)**

26. **ASSIGNMENTS AND SUBCONTRACTING:** Neither this Order nor any interest herein nor claim hereunder may be assigned or delegated by Seller; nor may all or substantially all of this Order be further subcontracted by Seller without the prior written consent of the University. Notwithstanding the above, Seller may, without the University's consent, assign monies due or to become due hereunder, provided that the University shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to this Order, without notice to or consent of the assignee. The University shall be given notice of any assignment and all invoices shall refer to the assignment.

27. **SAMPLES:** The University retains ownership and control of all biological specimens or samples ("Samples") sent to Seller for any type of analysis. Seller shall only use the Samples in order to provide Services requested in this Order. In addition to the indemnification set forth in Section 21, INDEMNIFICATION, of this Order, Seller shall indemnify the University for any third-party claim arising from Seller's use of the Samples outside the scope of this Order. Seller understands and agrees that all deliverables as required by this Order, including verbal support and analysis, shall be the sole and exclusive property of the University.

28. **MISCELLANEOUS:**

a) This Order, including all attachments or any documents incorporated herein by reference, constitutes the complete and entire agreement by and between the University and Seller and supersedes all prior representations, understandings, and communications relating hereto. If this Order was made pursuant to a Request for Proposal ("RFP"), Request for Quotation ("RFQ"), or Request for Bid ("RFB"), the following order of precedence shall apply: 1) this Order; 2) the University's RFP, RFQ, or RFB; and 3) Seller's response to University's RFP, RFQ, or RFB.

b) The invalidity in whole or in part of any provision of this Order shall not affect the validity of other provisions.

c) The University's failure to insist, in any one or more instances, upon the performance of any term of this Order, shall not be construed as a waiver or relinquishment of the University's right to such performance or to future performance of such a term or terms, and Seller's obligation in respect thereto shall continue in full force and effect.

d) The parties hereby agree to exclude the application of the UN Convention on the International Sale of Goods (CISG) to any contract made pursuant to this Order. This Order shall be governed by the laws of the Commonwealth of Pennsylvania. Any controversy, claim or dispute arising out of or relating to this Order or the breach thereof, shall be adjudicated in the Court of Common Pleas of Allegheny County or the United States District Court for the Western District of Pennsylvania.

e) Except as otherwise provided in this Order, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth on the face of this Order.

The University of Pittsburgh, as an educational institution and as an employer, values equality of opportunity, human dignity, and racial/ethnic and cultural diversity. Accordingly, the University prohibits and will not engage in discrimination or harassment on the basis of race, color, religion, national origin, ancestry, age, sex, marital status, familial status, sexual orientation, disability, or status as a disabled veteran or a veteran of the Vietnam era. Further, the University will continue to take affirmative steps to support and advance these values consistent with the University's mission. This policy applies to admissions, employment, access to and treatment in University programs and activities. This is a commitment made by the University and is in accordance with federal, state and/or local laws and regulations. For information on University equal opportunity and affirmative action programs and complaint/grievance procedures, please contact: University of Pittsburgh, Office of Diversity and Inclusion, 2nd Floor Webster Hall, 4415 Fifth Avenue, Pittsburgh, PA 15260 (412) 648-7860. The University of Pittsburgh actively and diligently promotes the effective use of Minority and Women-owned business enterprises in its contracting and purchasing efforts. For information regarding the University's Diverse Business Enterprise program, contact the Supplier Diversity and Sustainability Coordinator, 3309 Cathedral of Learning, Pittsburgh, PA 15260, (412) 624-5261.

INSTRUCTIONS

DELIVERY: Delivery is to be made only to the destination stated in this Order and must be made between 8:30 A.M. and 4:00 P.M., Monday through Friday, Eastern time, legal and University holidays excluded, unless otherwise stated on the face of this Order. The quantity term set forth in this Order shall be complied with strictly as stated. Seller is responsible for maintaining and providing proof of delivery.

FREIGHT: The University's freight terms are F.O.B. Destination, Freight Prepaid and Allowed. If shipment is indicated on this Order as F.O.B. Seller's plant, the Seller will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Freight charges of \$25 and over require supporting receipt for reimbursement. Collect shipments will be returned at Seller's expense.

SHIPPING INSURANCE: Unless otherwise instructed on the face of this Order, **Seller shall not declare any value for carriage or insurance.** If not directed otherwise, shipments shall be released to minimum value of governing classification or tariff, or insured for minimum value for traceability. No shipment exceeding \$10,000 shall be sent Parcel Post. No shipment exceeding \$50,000 shall be sent via courier service. Seller will provide advance notice to the University of shipments exceeding \$50,000.

CONSOLIDATION: Except where limited by the insurance clause above, Seller shall consolidate all shipments to the delivery point specified herein, for any one day, on one Bill of Lading.

P.O. NUMBER(S): **The University's Purchase Order Numbers must appear on all invoices, shipping documents and labels.**

PACKING, PACKAGING AND PACKING SHEETS: Seller shall use best commercial practice for packing and packaging of items to be delivered under this Order, unless otherwise specified herein. **Seller is to provide a packing sheet with the shipment.**

HAZARDOUS MATERIAL, PACKING, LABELING AND SHIPPING: Seller shall: a) package, label, transport and ship hazardous material, items containing hazardous materials, and any other regulated materials, in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations, and b) furnish any appropriate Material Safety Data Sheets. Seller, prior to each hazardous or regulated material shipment, shall notify the University of: a) every article ordered or supplied under this Order or stored or to be used by Seller on University property that contains hazardous materials or any other regulated materials for which the law requires a Material Safety Data Sheet, and b) its nature and shipment data by such means of communication as will allow for the proper preparation for acceptance of delivery by the carrier of the material and shall identify same on all shipping documents.

INVOICES: Seller shall render invoices as instructed on the face of the Purchase Order immediately upon delivery or completion of order.

REFUNDS: Seller will make a prompt cash refund to the University of all payments received for goods properly rejected by the University, and for any material not received but paid for.

TAXES: The University is exempt from the payment of State Sales and Use taxes on most transactions. The University shall establish the tax status on the purchase order or contract document. Tax exemption certificates will be provided to Sellers who request such documentation. The University does *not* have, nor is it required to have, a tax exemption identification number.

Supplement A

FEDERAL FLOWDOWN CLAUSES

APPLICABLE TO PURCHASES FUNDED BY FEDERAL CONTRACT OR GRANT

If this Order involves funds from a Federal government contract or grant (or funds from a subcontract at any tier relating to a Federal government contract or grant), then the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this Order. The term “FAR” means the Federal Acquisition Regulations, including revisions in effect on the date of this Order. The term “DFAR” means the Department of Defense Supplement to the Federal Acquisition Regulations, including revisions in effect on the date of this Order. Any reference to a “Disputes” clause in any of the clauses listed below shall be deemed to refer to the “Disputes” clause contained in the Prime Contract. In no event shall such reference to a “Disputes” clause be construed to allow the Service Provider, without the concurrence or approval of the University, to prosecute and appeal either directly or in the name of the University to the Contracting Officer for such Prime Contract or grant. The full text of the clauses may be found at <http://www.acquisition.gov/far/current/pdf/FAR.pdf>.

The following provisions of the Federal Acquisition Regulations apply regardless of the amount of the Order:

- FAR 52.211-15, Defense Priority and Allocation Requirements: applies in contracts that are rated orders
- FAR 52.222-10, Compliance with Copeland Act Requirements; Copeland “Anti-kickback” Act – 18 U.S.C. 874 and 40 U.S.C. 3145: applies where the order is financed in whole or in part by loans or grants from the United States, and where the contractors and subcontractors are engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works
- FAR 52.222-17, Nondisplacement of Qualified Workers: applies in all service contracts that succeed contracts for performance of the same or similar work at the same location and that are not exempted by 22.1203-2 or waived in accordance with 22.1203-3
- FAR 52.223-3, Hazardous Material Identification and Material Safety Data: applies if the contract will require the delivery of hazardous materials
- FAR 52.225-13, Restrictions on Certain Foreign Purchases: for use in all contracts, unless an exception applies
- FAR 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement: applies in all solicitations and contracts that include the clause at 52.227-1, Authorization and Consent
- FAR 52.227-11, Patent Rights – Ownership by the Contractor: applies unless an alternative patent rights clause is used in accordance with section 27.303(c), (d), or (e)
- FAR 52.230-5, Cost Accounting Standards—Educational Institution: applies to negotiated contracts awarded to educational institutions, unless the contract is exempted, the contract is to be performed by an FFRDC or the provision at 48 CFR 9903.201-2(c)(6) applies
- FAR 52.244-6, Subcontracts for Commercial Items: does not apply in contracts for commercial items
- FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels: applies in contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954, codified at 46 U.S.C.A. § 55305
- DFAR 252.227-7013, Rights in Technical Data: applies to noncommercial technical data
- DFAR 252.244-7000, Subcontracts for Commercial Items: applies to purchases of commercial items
- DFAR 252.247-7023, Transportation of supplies by Sea: applies in all contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services
- DFAR 252.247-7024, Notification of Transportation of Supplies by Sea: applies in all contracts, including contracts using FAR part 12 procedures for the acquisition of commercial items, for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea
- 31 U.S.C. 1352, “Byrd Anti-Lobbying Amendment”: applies in all federal contracts and grants, but reporting requirement does not apply where value of the contract or grant is below 100,000
- Executive Order 11246, “Equal Employment Opportunity,” as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60 — Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor
- 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements”: applies to contracts and grants
- 40 CFR Parts 247-254, Resource Conservation and Recovery Act; Executive Order 13101; 42 U.S.C. 6962

The following provision of the Federal Acquisition Regulations applies if the amount of the order exceeds \$2,000 and is for

construction within the United States:

FAR 52.222-13, Compliance with Construction Wage Rate Requirements and Related Regulations

The following provision of the Federal Acquisition Regulations applies to service contracts if the amount of the order exceeds \$2,500 and the contract is subject to the Service Contract Act, codified at 41 U.S.C. 351, et seq.:

FAR 52.222-41, Service Contract Labor Standards: applies unless either of the following are included in the solicitation – 1) FAR 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements; 2) FAR 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements

The following provision of the Federal Acquisition Regulations applies if the amount of the order is in excess of \$10,000:

29 U.S. Code § 793, “Employment under Federal Contracts”

The following provision of the Federal Acquisition Regulations applies if, during any 12-month period, including the 12 months preceding the award of this contract, the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000:

FAR 52.222-26, Equal Opportunity

41 CFR § 60-741.5(a), Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities: **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

The following provisions of the Federal Acquisition Regulations apply if a contract is contemplated that will include the clause at 52.222-26:

FAR 52.222-21, Prohibition of Segregated Facilities

FAR 52.222-22, Previous Contracts and Compliance Reports

The following provision of the Federal Acquisition Regulations applies if the amount of the order is in excess of \$15,000:

FAR 52.222.36, Affirmative Action for Workers with Disabilities: does not apply where contract is performed totally outside of the U.S., or where Director of OFCCP or agency head has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause

The following provision of the Federal Acquisition Regulations applies if the contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$15,000, and is subject to 41 U.S.C. Chapter 65:

FAR 52.222-20, Walsh-Healey Public Contracts Act

The following provision of the Federal Acquisition Regulations applies if the amount of the order is in excess of \$25,000:

FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations: applies in solicitations and contracts for the provision, service, or sale of food in the U.S.

The following provision of the Federal Acquisition Regulations applies where the amount of the order exceeds \$30,000:

FAR 52.209-6, Debarment and Suspension; Executive Orders 12549 and 12689: these also apply to grants

The following provisions of the Federal Acquisition Regulations apply if the amount of the order exceeds \$100,000:

FAR 52.222-35, Equal Opportunity for Veterans

41 CFR §§ 60-300.5(a), Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans and Armed Forces Service Medal Veterans:
This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

FAR 52.222-37, Employment Reports on Veterans: does not apply where work is performed outside of the U.S.

40 U.S.C. 327-333, "The Contract Work Hours and Safety Standards Act": applies to federal service contracts and federal and federally assisted construction contracts over \$100,000

The following provisions of the Federal Acquisition Regulations apply if the amount of the order exceeds the simplified acquisition threshold, or \$250,000:

FAR 52.203-6, Restrictions of Subcontractor Sales to the Government

FAR 52.203-7, Anti-Kickback Procedures: does not apply where contract is for the acquisition of commercial items

FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions

FAR 52.215-2, Audit and Records: applies if order was entered into by negotiation, but does not apply where order is for the acquisition of commercial items exempted under 15.403-1

FAR 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns: does not apply where personal services contract is contemplated or work will be performed entirely outside of the U.S.

FAR 52.222-4, Contract Work Hours and Safety Standards — Overtime Compensation: applies in noncommercial contracts when the contract may require or involve the employment of laborers or mechanics and when the contracts do not involve the transportation or transmission of intelligence

FAR 52.222-54, Employment Eligibility Verification: does not apply where work is performed entirely outside of the U.S. or is for a period of performance of less than 120 days; this provision is not applicable to COTS

FAR 52.223-6, Drug-Free Workplace: applies where contractors are not individual and if the contract is not for the acquisition of a commercial item/commercial items

FAR 52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors pursuant to Executive Order (E.O.) 14042, which was signed by the President on September 9, 2021 and published in the Federal Register at 86 FR 50985 on September 14, 2021. The E.O. requires agencies to include the above clause requiring contractors and subcontractors at any tier to comply with all guidance for contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

FAR 52.225-8, Duty-Free Entry: applies in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained, if the value of the acquisition exceeds the simplified acquisition threshold/\$150,000; alternatively applies if the value of the acquisition does not exceed the simplified acquisition threshold/\$150,000, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty

FAR 52.227-1, Authorization and Consent: this is optional when using simplified acquisition procedures (see FAR 13.003(a)), and is prohibited when both complete performance and delivery are outside the U.S.

FAR 52.246-16, Responsibility for Supplies: applies in solicitations and contracts for supplies, services involving the furnishing of supplies, or research and development, when a fixed-price contract is contemplated; optional when value of the contract is below the simplified acquisition threshold/\$150,000 and inclusion of the clause is authorized under agency procedures

FAR 52.249-8, Default (Fixed-Price Supply and Service): applies when a fixed-price contract is contemplated; optional below the acquisition threshold/\$150,000

The following provision of the Federal Acquisition Regulations applies if the amount of the order is in excess of \$650,000 (or, \$1.5 million for construction of any public facility):

FAR 52.219-9, Small Business Subcontracting Plan (does not apply to small business concerns): applies in solicitations and contracts that offer sub-contracting possibilities and that are required to include the clause at 52.219-8, Utilization of Small Business Concerns

The following provisions of the Federal Acquisition Regulations apply if the amount of the order is in excess of \$700,000:

FAR 52.215-10, Price Reduction for Defective Cost or Pricing Data – Modifications: applies when contracting by negotiation, in solicitations or contracts where it is contemplated that certified cost or pricing data will be required from the contractor or any sub-contractor; the threshold for obtaining certified cost or pricing data is \$700,000

FAR 52.215-12, Subcontractor Cost or Pricing Data: applies in solicitations and contracts where FAR 52.215-10 applies

FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications: applies when contracting by negotiation, in solicitations and contracts where it is contemplated that certified cost or pricing data will be required from the contractor or any sub-contractor, and FAR 52.215-11 has been included but FAR 25.215-10 has not been included

The following provision of the Federal Acquisition Regulations applies if the amount of the order is expected to exceed \$5,000,000 and the performance period is 120 days or more:

FAR 52.203-13, Contractor Code of Business Ethics and Conduct