

Middle Tennessee State University - Purchase Order Standard Terms and Conditions

- 1. PURCHASE ORDER /ACCEPTANCE OF TERMS** - Seller shall furnish material/services specified in full accordance with these Purchase Order (PO) terms and conditions, and any attachments made a part hereof. Contract documents in order of precedence: PO and attachments, if any; Seller's bid (if applicable); and the bid request (if applicable). Seller's acceptance of this PO shall constitute agreement to be bound by and comply with all terms and conditions set forth herein. Written acceptance or shipment of any goods or performance of any services covered by this PO by Seller shall constitute unqualified acceptance of all terms and conditions. Any additional or different Seller terms shall not become part of this PO. Without limiting the foregoing or waiver of any rights, Institution shall not hold harmless/indemnify another party, pay any costs of, or defend another party. Reference or attachment of Seller terms and conditions to PO shall not be binding on Institution unless Institution specifies on the PO its intention to be so bound. Seller's quotation, if any, is incorporated and made a part of this PO only to the extent of specifying the nature and description of the goods or services ordered, and then only to the extent that such items are consistent with the terms of this PO and/or the ITB/RFP.
- 1A. CONTRACT PRECEDENCE** - If a separate written contract, agreement, or memorandum of understanding has been duly executed between Middle Tennessee State University ("Institution") and the Seller for the same goods or services described in this Purchase Order, the terms and conditions of that contract shall govern and supersede any conflicting or inconsistent provisions contained in this Purchase Order. This Purchase Order shall serve solely as an administrative and payment mechanism and shall not modify, amend, or alter the executed contract unless expressly agreed to in writing and signed by authorized representatives of both parties.
- 2. REQUIRED TERMS OF SALE** - FOB Destination- Institution may accept: Prepay & Add to the invoice if so specified in the Bid or Quote, UNLESS Institution has specified another point of delivery. No unauthorized or collect shipments accepted.
- 3. PACKING LIST/IDENTIFICATION OF ORDER** - A detailed packing list showing the PO number must accompany all shipments. PO number must appear on all invoices, correspondence, containers, shipping papers, and packing lists. Drop Shipments without this information clearly displayed will be refused.
- 4. CORRESPONDENCE**- All correspondence pertaining to this order must be addressed as follows: Procurement Department, MTSU, and Buyer Name.
- 5. BILLING/INVOICE**- (a.) Seller Invoice within five (5) days after shipment of material, (b) Invoice must show cash discounts, if any, computed from date of delivery of goods or services to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination when final inspection and acceptance are at destination, or from date correct invoice is received if date is later than date of delivery. (c.) SEPARATE invoice for EACH shipment, (d.) Submit invoices for returnable containers with terms and conditions for return.
- 6. TAXES** - Do not include Federal Excise or State Sales Tax on invoices. Appropriate certification of exemption shall be furnished upon request.
- 7. CONTRACTUAL REMEDIES** - Institution shall not be bound by any limitations on remedies available to Institution. Any attempt to contractually limit remedies will be void on its face.
- 8. MATERIALS/EQUIPMENT**- Unless specified otherwise in the PO, all items shall be new and unused. Seller warrants that the supplies delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this PO for a period of ninety (90) days from the date such supplies are accepted unless otherwise provided herein.
- 9. INSPECTION** - All supplies purchased hereunder are subject to inspection and rejection upon receipt by Institution. Rejected supplies will be returned at Seller's expense. Transportation charges paid by Institution in returning rejected supplies shall be reimbursed by Seller. Institution's count shall be final and conclusive on all shipments. In addition to the right to return rejected supplies, in the event of delivery of supplies not in accordance with the requirements of this order, Institution may notify Seller of such damages or deficiencies and if not repaired or corrected by Seller within ten (10) days of notice, or such additional time as may be mutually agreed upon, Institution shall have the right to correct any damages, defects, or deficiencies and do any other work necessary to put the supplies in condition for the use intended and the cost deducted from the monies due Seller under this order.
- 10. CHANGES** - Institution may at any time by written instructions make changes, within the general scope of this order, in any one or more of the following: (a.) Quantity or specifications; (b.) Method of shipment or packing; and (c.) Place of delivery. If any such change causes an increase or decrease in the cost of, or time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this paragraph must be asserted within thirty (30) days from date of receipt by Seller of notification of change; provided, however, that Institution may receive and act upon such claim asserted at any time prior to final payment.
- 11. VARIANCES IN QUANTITIES** - Unless otherwise specified on the face of this order, any variation in the quantities called for, not exceeding 10%, will be accepted as compliant with the order when caused by conditions of loading, shipping, packing, or allowance in manufacturing process, and payments shall be adjusted accordingly.
- 12. PAYMENT** - Seller shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act.
- 13. CANCELLATION OF ORDER** - This PO or any part thereof may be canceled by either party with the giving of thirty (30) days' notice of intent to cancel for reasons including, but not limited to: Institution may cancel for costs exceeding the PO prices, late delivery, or failure of Seller to comply with these terms and conditions. Seller may request cancellation of a PO if Seller is prevented from performance by an act of war, order of a legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of Seller.
- 14. ERRORS** - In case of error in calculation or typing, quoted unit price will be used as the basis for correction of this order.
- 15. NONDISCRIMINATION** - The Institution and Seller agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.
- 16. GOVERNING LAW** - This PO shall be governed by and construed in accordance with Tennessee law. Any claims against Institution shall be brought before the Tennessee Claims Commission.
- 17. MATERIAL SAFETY DATA SHEETS** - An up-to-date Material Safety Data Sheet (MSDS) must accompany all goods requiring one in accordance with applicable law.
- 18. COPYRIGHTED/LICENSED PRODUCTS** - Seller must be an authorized dealer for selling copyrighted/licensed products under this PO. Notwithstanding, Seller assumes responsibility for any and all liabilities associated with the selling of these products or services upon acceptance of PO.
- 19. INSURANCE/HOLD HARMLESS** - Seller agrees to provide and maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. Seller shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law including Employers' Liability limits. Seller shall deliver to Institution a certificate of insurance no later than the effective date of the contract. If any policy providing insurance required by the contract is cancelled prior to the policy expiration date, Seller shall give immediate notice to Institution. Certificate of Insurance is to be on file with the Institution's Procurement Department prior to performing any work or service on Institution's campus. Seller shall indemnify and hold Institution harmless for any claims, liabilities or costs based on the goods or services provided by Seller under this PO.
- 20. FUNDING OUT CLAUSE** - This PO is subject to the allotment of state and/or federal funds, and may be null and void unless funds have been appropriated and are available for the purchase of the service or item which forms the basis of this Contract.
- 21. SIGNATURE** - Only Institution PO with authorized Electronic or Written Signatures may contractually bind Institution.
- 22. AUDIT** - Seller shall maintain documentation for all charges against Institution and payment made by Institution under this PO. The books, records and documents of Seller, insofar as they relate to work performed or money received under this PO, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their authorized representatives. Seller's financial statements shall be prepared in accordance with generally accepted accounting principles.
- 23. ILLEGAL IMMIGRANTS** - Seller hereby attests that Seller will not knowingly utilize services of illegal immigrants and will not knowingly utilize services of any subcontractor that does so in delivery of the goods/services under this PO. Breach of this attestation may disqualify Seller supplying goods/services to the State for a period of one year.

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24. TENNESSEE SALES AND USE TAX - By acceptance of this PO, Seller certifies that Seller is registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax, if applicable to Seller.

25. CONFLICT OF INTEREST - Seller warrants that no payment shall be made directly or indirectly to any officer or employee of the State as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Seller in connection with any goods supplied or work contemplated or performed relative to this PO.

26. DEBARMENT CERTIFICATION - By acceptance of this PO, Seller certifies that none of its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal department or agency.

27. SERVICE AND SOFTWARE ACCESSIBILITY STANDARDS - Unless otherwise disclosed to Institution in writing, the Seller warrants and represents that the Products/Services, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), E Pub 3 and Section 508 of the Vocational Rehabilitation Act.

28. COMPLIANCE WITH LAWS AND MTSU POLICIES - Seller will comply with all applicable international, foreign, and U.S. federal, state and local laws, rules and regulations, including, but not limited to, all applicable laws and regulations pertaining to privacy and confidentiality, including the EU General Data Protection Regulation ("GDPR"), the Family Educational Rights and Privacy Act of 1974, and any other applicable data protection laws, enactments, directives, regulations, guidelines, orders or industry codes applicable to any part of the Goods and/or Services and/or any party relating to the processing, privacy or use of "Personal Information" as defined below ("DATA PRIVACY AND SECURITY"); and Seller will comply with all applicable MTSU policies, procedures, and instructions in connection with this Purchase Order.

29. CLICK-WRAP AGREEMENTS - By acceptance of this PO, the Seller agrees that click-wrap agreements shall not be binding upon the Institution. This PO can only be modified, amended, or supplemented through a written Change Order/Amendment approved in accordance with Institution's rules, policies, and procedures.

30. DATA PRIVACY AND SECURITY - Personal Information (PI) includes but is not limited to that information protected by HIPAA, the HITECH Act, FERPA, or Gramm-Leach-Bliley or such information which would allow a third party to gain access to the personal, medical or financial records of any of any party. Seller represents and warrants that its collection, access, use, storage, disposal and disclosure of PI complies with all applicable federal and state privacy and data protection laws. Seller represents and warrants that Seller will maintain compliance with the SSAE 16 standard, and shall undertake any audits and risk assessments Seller deems necessary to maintain compliance with SSAE16. If PI provided by Institution to Seller is subject to FERPA, Seller agrees that in its handling of FERPA data it will perform as a school official as that term is defined by FERPA regulations. Seller acknowledges that its improper disclosure or re-disclosure of PI covered by FERPA may result in Seller's ineligibility to contract with Institution.

31. IRAN DIVESTMENT ACT – Seller hereby certifies, under penalty of perjury, that to the best of its knowledge and belief that Seller is not on the list created pursuant to §12-12-106.