

Standard Purchase Order Terms & Conditions for Goods and Services

Please note that these Purchase Order Terms and Conditions may be supplemented by additional terms or modified by special instructions included with an Official Purchase Order issued by University System Office (USO). In the event of a conflict between these Purchase Order Terms and Conditions and additional terms or special instructions, the latter shall govern.

A. DEFINITIONS. The following words shall be defined as set forth below:

1. "Board of Regents" or "BOR" means the State of Georgia entity identified as The Board of Regents of the University System of Georgia, the governing body of the University System of Georgia.
2. "Purchase Order" means the agreement between the BOR and the Supplier as defined by BOR Purchase Order Terms and Conditions.
3. "Supplier" means the provider of the goods and/or services under the Purchase Order.
4. "Quote" means the Supplier's submitted written quote.
5. "Net 30" means 30 calendar days from the receipt of good and/or services, or the receipt of invoice by USO Disbursements, whichever occurs later.

B. CONTROLLING TERMS AND CONDITIONS. The terms, conditions, and specifications of the Supplier's Quote are hereby incorporated by reference and made a part hereof just as if they had been fully set out herein. Any inconsistency or conflict among the provisions of the Purchase Order and any incorporated documents shall be resolved as follows: First, by giving preference to the specific provisions of the Purchase Order and Second, by giving preference to the specific provisions of the eRFx. Any pre-printed terms and conditions included on Supplier's forms or invoices shall be null and void.

C. TERM. The term of the Purchase Order between the BOR and the Supplier shall begin on the date of the Purchase Order and end upon completion of all deliverables (the Term), unless terminated earlier in accordance with the controlling terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Purchase Order shall not be deemed to create a debt of University System Office for the payment of any sum beyond the fiscal year in which the appropriations have been made.

D. DELIVERABLES.

1. Specifications. All goods, services, and other deliverables the Supplier is required to provide under the Purchase Order must comply with the specifications contained in the Purchase Order and any description contained in Supplier's written quote.
2. Product Shipment and Delivery. All products shall be shipped F.O.B. Destination, freight prepaid and delivered to the location(s) specified in the Purchase Order. All items shall be at the Supplier's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Supplier to remedy without cost to the BOR, regardless of when the hidden damage is discovered.

E. COMPENSATION.

1. Pricing. The Supplier will be paid for the goods and services sold pursuant to the Purchase Order in accordance with the Purchase Order. Unless clearly stated otherwise in the Purchase Order, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. Billing. The Supplier shall submit an invoice for goods and services supplied to the Board of Regents under the Purchase Order to the billing address identified by the BOR. Payments will be made Net 30 of receipt of invoice or receipt of goods and services, whichever occurs later.
3. Delay of Payment Due to Supplier's Failure. If the BOR in good faith determines that the Supplier has failed to perform or deliver any service or product as required by the Purchase Order, the Supplier shall not be entitled to any compensation under the Purchase Order until such service or product is performed or delivered. In this event, the BOR may withhold that portion of the Supplier's compensation which represents payment for services or products that were not performed or delivered.

F. TERMINATION.

1. Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64, this Purchase Order will terminate immediately and absolutely if the BOR determines that adequate funds are not appropriated or granted or funds are de-appropriated such that BOR cannot fulfill its obligations under the Purchase Order, which determination is at the BOR's sole discretion and shall be conclusive.
2. Termination upon Notice. Following thirty (30) calendar days' written notice, BOR may terminate the Purchase Order in whole or in part without the payment of any penalty or incurring any further obligation to the Supplier.
3. Payment Limitation in Event of Termination. In the event of termination of the Purchase Order for any reason by the BOR, BOR shall pay only those amounts, if any, due and owing to the Supplier for goods and services actually rendered up to and including the date of. Payment will be made only upon submission of invoices and proper proof of the Supplier's claim. This provision in no way limits the remedies available to the BOR under the Purchase Order in the event of termination.
4. Supplier's Termination Duties. Upon receipt of notice of termination or upon request of the BOR, the Supplier shall cease work under the Purchase Order and take all necessary or appropriate steps to limit disbursements and minimize costs. Supplier shall immediately cease using and return to BOR any personal property or materials, whether tangible or intangible, provided by Board of Regents to the Supplier. Further, the Supplier shall immediately return to BOR any payments made by the BOR for goods and services that were not delivered or rendered by the Supplier.

G. PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION. Supplier shall indemnify and hold harmless the State of Georgia, the Board of Regents of the University System of Georgia, and their respective officers, employees, agents and volunteers (collectively, the "Indemnified Parties") against any claim, demand, suit, loss, damage or expense (including attorneys' fees incurred by any Indemnified Party) suffered or incurred by an Indemnified Party based on any claim that any of the goods and/or services constitutes an infringement of any United States Letters Patent, trademark, trade dress, copyright or other intellectual property right, provided BOR gives the Supplier notice in writing of the institution of

such suit (failure to give prompt notice shall not limit Supplier's obligations hereunder except to the extent Supplier is prejudiced thereby), permits Supplier to fully participate in the defense of the same, and gives Supplier available information, assistance and authority to enable Supplier to do so. Subject to approval of the Attorney General of Georgia of the State of Georgia, BOR shall tender defense of any such action to Supplier upon request by Supplier. Supplier shall not be liable for any award of judgment against the Indemnified Parties reached by compromise or settlement unless Supplier accepts the compromise or settlement. Supplier shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon BOR unless approved by the Board of Regents. Supplier's indemnification obligation shall survive termination of the Purchase Order. If of the goods and services are held to constitute infringement and a court of competent jurisdiction enjoins the use thereof, Supplier shall, at its option and expense:

- a. Procure for BOR the right to continue using the goods and/or services;
- b. Replace or modify the same so that it becomes non-infringing; or
- c. Remove the same and cancel any future charges pertaining thereto.

Supplier shall have no liability to BOR for infringement based upon or arising out of:

- a. Compliance with designs, plans or specifications furnished by or on behalf of the BOR as to the goods and/or services;
- b. Use of the goods and/or services in combination with apparatus or devices not supplied by Supplier;
- c. Use of the goods and/or services in a manner for which the same was neither designed nor contemplated; or
- d. The claimed infringement of any patent or copyright in which BOR or any affiliate or subsidiary of BOR has any direct interest by license or otherwise.

H. INSURANCE AND BONDS. Supplier shall provide all insurance and all required bonds in accordance with the Purchase Order.

I. WARRANTIES.

1. Warranties. The Supplier represents and expressly warrants that all aspects of the goods and services provided or used by it are merchantable and shall at a minimum conform to the standards in the Supplier's industry. The warranties expressed in the Purchase Order are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Supplier. Acceptance by BOR shall not relieve the Supplier of its warranty or any other obligation under the Purchase Order.

2. Originality and Title to Concepts, Materials, and Goods Produced. Supplier represents and warrants that all the concepts, materials, goods and services produced, or provided to BOR pursuant to the terms of the Purchase Order shall be wholly original with the Supplier or that the Supplier has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Supplier represents and warrants that title to any property assigned, conveyed or

licensed to BOR is good and that transfer of title or license to BOR is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

3. Authority to Enter into Purchase Order. The Supplier represents and warrants that it has full authority to enter into the Purchase Order and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to BOR.

J. PURCHASE ORDER ADMINISTRATION

1. Compliance with the Law. The Supplier, its employees, agents, and sub-Suppliers shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Purchase Order. The provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Purchase Order.

2. Drug-free Workplace. The Supplier hereby certifies as follows:

a. Supplier will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Purchase Order; and

b. If Supplier has more than one employee, including Supplier, Supplier shall provide for such employee(s) a drug-free workplace, in accordance with Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Purchase Order; and

c. Supplier will secure from any sub-Supplier hired to work on any job assigned under this Purchase Order the following written certification: "As part of the sub-Purchase Ordering agreement with (Supplier's Name), (Sub-Supplier's Name) certifies to the Supplier that a drug-free workplace will be provided for the sub-Supplier's employees during the performance of this Purchase Order pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3." Supplier may be suspended, terminated, or debarred if it is determined that Supplier has made false certification hereunder or if Supplier has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

3. No Boycott of Israel. Contractor certifies that it is not currently, nor will it during the term of this Agreement, engage in a boycott of Israel as defined in O.C.G.A. § 50-5-85.

4. Amendments. The Purchase Order may be amended in writing by mutual consent of the parties. All amendments to the Purchase Order must be in writing and fully executed by duly authorized representatives of the parties.

5. Third Party Beneficiaries. There are no third-party beneficiaries to the Purchase Order. The Purchase Order is intended only to benefit BOR and the Supplier.

6. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Purchase Order without regard to the choice of law provisions of law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Purchase Order, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the Board of Regents.

7. Integration. The Purchase Order represents the entire agreement between the parties.

8. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Purchase Order on behalf of BOR.

9. Severability. If any provision of the Purchase Order is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Purchase Order.

10. Time is of the Essence. Time is of the essence with respect to the performance of the terms of the Purchase Order.

11. Debarred, Suspended and Ineligible Status. Supplier certifies that neither it nor any of its sub-Suppliers have been debarred, suspended or declared ineligible by any agency of the State of Georgia. Supplier will immediately notify BOR if Supplier is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Suppliers by a federal entity.

12 Taxes. The BOR is exempt from certain sales and use taxes. By executing the Purchase Order Supplier certifies it is either (a) registered Department of Revenue, collects, and remits BOR sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2.

13. Force Majeure. Neither party will be liable to the other party for nonperformance resulting from labor strikes, riots, wars, acts of governmental authorities preventing performance, pandemics or other health emergencies, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of the party.

14. Obligations Beyond Purchase Order Term. The Purchase Order shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Purchase Order. All obligations of the Supplier incurred or existing under the Purchase Order as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Purchase Order.

15. Transition Cooperation and Cooperation with other Suppliers. Supplier agrees that upon termination of this Purchase Order for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to BOR or another Supplier. The Supplier shall provide full disclosure to BOR and the third-party Supplier about the equipment, software, or services required to perform services for BOR. The Supplier shall transfer licenses or assign agreements for any software or third-party services used to provide the services to BOR or to another Supplier.

16. Certification of Non-collusion. By accepting and acting on a Purchase Order, Supplier warrants that the Supplier's Quote is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. The supplier understands and agrees that collusive bidding is a violation of state and federal law and may result in fines, prison sentences, and civil damage awards.

17. Software Licenses. Software licenses required for use of any or all goods or services provided on the Purchase Order shall not be valid or enforceable until and unless they have been reviewed and approved

by BOR Department of Legal Affairs, and if required, fully executed by authorized representatives of both BOR and the software Licensor.

18. Tobacco and smoke-free campus policy. The use of all forms of tobacco products on property owned, leased, rented, in the possession of, or in any way used by the BOR or its affiliates is expressly prohibited. "Tobacco Products" is defined as cigarettes, cigars, pipes, all forms of smokeless tobacco, clove cigarettes and any other smoking devices that use tobacco such as hookahs or simulate the use of tobacco such as electronic cigarettes.

19. When required by the Davis Bacon Act, the Department of Labor's (DOL) government-wide implementation of the Davis-Bacon Act, or by Federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (40 USC 276a to 276a-7).

20. Certification Regarding Georgia Security and Immigration Compliance Act. Contractor certifies that it has complied, and will comply, with the Georgia Security and Compliance Act (O.C.G.A. § 13-10-90 et seq.). Contractor agrees to sign and comply with Attachment 1, Immigration and Security Affidavit.

21. Ethics. Offeror shall comply with the University System of Georgia Board of Regents Ethics Policy. The University prohibits any form of discrimination, harassment or retaliation against or by any member of the faculty, staff, administration, student body, volunteers, or visitors based upon race, color, religion, sex, national origin, age, whistle-blower status, disability, gender identity or expression, genetics, or any other characteristic protected by state or federal law. Offeror and Offeror's employees will be required to know and adhere to the Title IX policy. To review the policy in its entirety, click on the following link:

https://www.usg.edu/organizational_effectiveness/ethics_compliance/ethics_policy