

## Purchase Order Terms and Conditions

All purchases, regardless of the amount of payment, are subject to the Terms and Conditions stated in this document.

### Terms and Conditions:

- General.** Unless otherwise specifically provided by a separate written agreement signed by the University of Utah (“Buyer”), these Purchase Order Terms and Conditions shall govern with respect to the sale of goods (the “Goods”) and/or provision of services (the “Services”) identified in this offer to purchase (“Purchase Order”) by the entity identified on the Purchase Order (“Seller”) to Buyer. Buyer reserves the right to revoke or withdraw this Purchase Order in whole or in part prior to receipt by Buyer of Seller’s written acceptance. By acceptance of this Purchase Order, Seller agrees to comply with the terms and conditions contained herein to sell (or lease if so noted) Goods and/or provide Services as described herein for the prices or other consideration indicated. Acceptance of this Purchase Order is expressly limited to the terms and conditions contained herein. No other terms and conditions shall apply, including any terms or conditions contained in any Seller quotation, acknowledgment, response hereto, or other form which is in addition to or different than the terms and conditions contained herein. Any such additional or different terms and conditions are hereby objected to and rejected by Buyer. Acceptance by Buyer of any Goods and/or Services provided hereunder shall not constitute Buyer’s acceptance of any additional terms and conditions. This Purchase Order shall be accepted by Seller in any manner permitted by law or upon the first of the following to occur: (i) Seller’s making or signing any other form or letter of acknowledgment (except that no additional or different terms and conditions thereon shall apply), or (ii) any performance by Seller hereunder.
- Governmental Entity.** Seller acknowledges that Buyer is a governmental entity subject to the Utah open records law known as the Government Records Access and Management Act, Utah Code §§ 63G-2-101 to -901, as amended (“GRAMA”). Certain records within Buyer’s possession or control, including without limitation, this Purchase Order (but not including, by way of example only, (i) proprietary software or (ii) materials to which access is limited by the laws of copyright or patent), may be subject to public disclosure. Buyer’s confidentiality obligations, if any, shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, in the event Seller provides Buyer with records Seller believes should be protected from disclosure for business reasons, Seller must provide Buyer with a written claim of business confidentiality and a concise statement of reasons supporting such claim at the time Seller provides the applicable record. Buyer may disclose any information or record to the extent required by GRAMA or as otherwise required by law, and to University’s attorneys, accountants, consultants and purchasing agents and representatives on a need-to-know basis. Seller further acknowledges that Buyer is a governmental entity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to -904, as amended (the “Act”). Nothing in this Purchase Order shall be construed as a waiver by Buyer of any protections, rights, or defenses applicable to Buyer under the Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of Buyer to incur by contract any liability for the operations, acts, or omissions of Seller or any third party and nothing in the Purchase Order shall be so interpreted or construed.
- Governing Law and Venue.** This Purchase Order will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. The venue for any lawsuits, claims, or other proceedings between Buyer and Seller relating to or arising under this Purchase Order shall be exclusively in Salt Lake County, Utah.
- Shipping.** Unless otherwise indicated in this Purchase Order, all shipments are to be made F.O.B. destination, freight prepaid, to receiving point, and all shipments by Seller under this Purchase Order for Buyer’s account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.
- Inspection and Risk of Loss.** The Goods and/or Services furnished shall be exactly as specified in this Purchase Order, free from all defects in Seller’s design, workmanship, and materials and shall be subject to inspection and test by Buyer. All Goods and/or Services will be received by Buyer subject to its right of inspection and rejection. Buyer shall be allowed a reasonable period of time to inspect the Goods and/or Services and to notify Seller of any non-conformance with the terms and conditions of this Purchase Order. If, prior to final acceptance, any Goods and/or Services are found to be defective or not as specified, Buyer may elect any or all of the following remedies: (i) reject the Goods and/or Services, (ii) require Seller to correct the Goods and/or Services without charge or (iii) require delivery of such Goods and/or Services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by Buyer, Buyer may terminate the Purchase Order in whole or in part. Seller shall bear all the risks as to rejected Goods and/or Services and, in addition to any costs for which Seller may become liable to Buyer under other provisions of this Purchase Order, shall reimburse Buyer for all transportation costs, other related costs incurred or payments to Seller for unaccepted Goods and/or Services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or gross negligence. Goods shipped in excess of the quantity specified in the Purchase Order will, at Buyer’s request, be returned at Seller’s expense. Risk of loss or damage to Goods shall remain with the Seller until such Goods have been delivered to and accepted by Buyer, notwithstanding any other terms contained herein. Title to

Goods will pass directly from Seller to Buyer at the designated F.O.B. destination point subject to Buyer's right to reject upon inspection.

6. *Price and Payment.* The prices charged to Buyer by Seller are to be no higher than prices Seller charges on orders placed by other customers for similar quantities of Goods and/or Services after Seller's last announced price change. Seller shall be paid within 30 days of Buyer's receipt of acceptable invoices for Goods delivered and accepted or Services rendered and accepted. Buyer will not be responsible for any fees, interest, or surcharges Seller wishes to impose. To the extent Buyer agrees to reimburse Seller for any expenses, such reimbursement will be subject to Buyer policies governing expense reimbursement. Buyer will not pay cartage, shipping, packaging, or boxing expenses unless specified in this Purchase Order. Drafts will not be honored. Invoices must be accompanied by transportation receipts, or facsimile, if transportation is payable and charged as a separate item.
7. *Tax.* Seller acknowledges that Buyer, as a governmental entity and recognized organization under I.R.C. § 501(c)(3), is exempt from sales and use taxes. Buyer will provide tax exemption certificates upon request. Buyer's obligation to pay taxes is limited to taxes for which Buyer is directly liable under applicable law. Seller is responsible for complying with all tax exemption requirements, and shall defend, indemnify, and hold harmless Buyer and its trustees, officers, employees, and agents against any liability and financial obligations that arise from Seller's failure to comply with exemption requirements.
8. *Anti-Discrimination.* To the extent applicable, Seller will comply with the requirements set forth in Executive Orders 11246, 11375, as well as 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a), which are incorporated by reference with this statement: "This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability." Buyer is committed to policies of equal opportunity, affirmative action and nondiscrimination. Buyer seeks to provide equal access to its programs, services and activities for people with disabilities. Reasonable prior notice is needed to arrange accommodations. For further information or questions regarding equal opportunity, contact the University of Utah Office of Equal Opportunity & Affirmative Action: (801) 581-8365 (Voice or TTY).
9. *Termination.* By providing written notice stating the extent and effective date, Buyer may terminate this Purchase Order for convenience in whole or in part at any time. In such an event, Buyer shall pay Seller as full compensation the pro rata price for accepted Goods and/or Services through the later of the date upon which Buyer provided notice of termination or the date upon which Seller's provision of Goods and/or Services will terminate as specified in any such termination notice. Buyer may also terminate this Purchase Order, by providing written notice, for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this Purchase Order and does not cure such failure within thirty (30) days, or fails to make deliveries of Goods or perform the Services within the time specified. In such circumstances, Buyer may purchase or otherwise secure materials, supplies, or services and Seller shall be liable to Buyer for any excess costs occasioned thereby. On receipt by Seller of any notice of termination from Buyer, Seller shall, and to the extent specified therein, stop work hereunder, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any Seller claim arising from the Purchase Order must be submitted to Buyer within sixty (60) days after the effective date of the termination. Any cancellation or termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller.
10. *Records and Audits.* Seller will maintain accurate accounting records for all Goods and Services provided pursuant to this Purchase Order. Upon reasonable notice and during normal business hours, University, or any of its duly authorized representatives, will have access to and the right to audit any records or other documents pertaining to this Purchase Order. Seller will retain all such records for a period of at least six (6) years following the day on which Seller receives final payment under this Purchase Order, or audits initiated by Buyer within such 6-year period have been completed, whichever is later. Buyer's audit rights will extend through the term of this Purchase Order and for a period of at least six (6) years following the day on which Seller receives final payment pursuant to this Purchase Order.
11. *Term.* Buyer is subject to Utah laws governing procurement of Goods and Services ("Utah Procurement Laws"). To the extent Utah Procurement Laws apply to the procurement of Goods and/or Services pursuant to this Purchase Order, in no event shall the total term of the Purchase Order exceed five (5) years, including any renewal terms, without the prior written approval of Buyer's Purchasing Department.
12. *Representations and Warranties.* Seller expressly represents and warrants as follows: (i) all Goods supplied hereunder shall be merchantable within the meaning of Section 2-314 (2) of the Uniform Commercial Code in effect on the date of this Purchase Order; (ii) In addition to all warranties which may be prescribed by law, the Goods shall conform to any specifications, drawings, and other description furnished or made available by Seller and shall be free from defects in materials and workmanship; and (iii) to the extent the Goods are not manufactured pursuant to detailed designs furnished by Buyer, the Goods will be free from defects in design and manufacture. Such warranties, including warranties prescribed

by law, shall run to Buyer, for a period of one year after delivery unless Seller specifies a longer warranty period, in which case the longer period will apply. In addition, Seller represents and warrants that: (i) it is not, and will not become, subject to any restrictions that might restrict or prohibit it from performing the Services or providing the Goods supplied hereunder; (ii) Services will be performed in a professional and competent manner by competent personnel; (iii) all Goods and any work product resulting from Services that are not manufactured or otherwise created in accordance with Buyer's designs and instructions, and Buyer's use thereof in accordance with this Purchase Order, will not infringe upon any third-party intellectual or proprietary rights; (iv) the Goods and/or Services comply with all applicable local, state and federal laws and regulations; (v) Seller has not provided, attempted to provide, or offered any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, directly or indirectly to any employee or agent of Buyer for the purpose of improperly obtaining or rewarding favorable treatment in connection with the award of any procurement contract; and (vi) Seller has not been solicited, accepted, or attempted to accept any kickback from any employee or agent of Buyer (incidents of kickback may be reported to the Ethics & Compliance Hotline at <https://fbs.admin.utah.edu/controller/controller-ethics-compliance-hotline/> or phone 1-888-206-6025); and (vii) Seller, its officers, directors, and any employees or subcontractors providing goods or services under this Purchase Order are not excluded, debarred, or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) or to provide goods to or perform services on behalf of the federal government as either a contractor or subcontractor. Seller shall immediately notify Buyer's Director of Purchasing of any change in the status of any of the foregoing representations or warranties. Buyer may immediately terminate this Purchase Order for cause in the event of a breach of this section or as a result of any material change in status of any representation and warranty. Notwithstanding any other provision in this Purchase Order, Seller shall defend, indemnify, and hold harmless Buyer and its trustees, officers, employees, and agents in connection with any and all claims, losses, causes of action, judgments, fines, damages, or other similar expenses, including reasonable attorney fees, resulting from a breach of this section. In the event Buyer receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, Buyer will provide Seller with notice of such claim or threat and Seller will either (i) procure for Buyer the right to continue to use the Goods and/or Services, or (ii) replace or otherwise modify the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute for the Goods and/or Services, provided that any replacement, modification, or substitution does not effect a material change in the functionality of the Goods and/or Services. If none of the foregoing options is reasonably acceptable to Buyer, Buyer will have the right to terminate the Purchase Order without damage, penalty, cost, or further obligation.

13. **Indemnification.** Seller will defend, indemnify, and hold harmless Buyer and its trustees, officers, employees, and agents from and against any and all third-party claims, losses, causes of action, judgments, damages, expenses, including but not limited to attorney fees, or any other injury or damage ("Claims") resulting from or arising out of (i) Seller's performance or breach of this Purchase Order, (ii) Seller's use of Buyer's premises, or (iii) any act, error, or omission on the part of Seller, or its agents, employees, invitees, participants, or subcontractors except where such Claims result solely from the negligent acts or omissions or willful misconduct of Buyer.
14. **Insurance.** Seller shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. Seller shall also maintain, if applicable to Seller's operations or performance pursuant to this Purchase Order, Business Automobile Liability insurance covering Seller's owned, non-owned and hired motor vehicles and/or Professional Liability insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by Buyer. Seller will maintain worker's compensation and employer's liability insurance in the statutory amounts, for its employees involved in performing services pursuant to this Purchase Order. Seller will also maintain "special form" property insurance at replacement cost applicable to Seller's property or its equipment and that contains a waiver of subrogation endorsement in favor of Buyer. Seller's insurance carriers and policy provisions must be acceptable to Buyer and remain in effect for the duration of Seller's performance obligations. The University of Utah shall be named as an additional insured on the Commercial General Liability insurance policy by endorsement. Seller will cause any of its subcontractors, who provide materials or perform services relative to this Purchase Order, to also maintain the insurance coverages and provisions listed above. Upon request, Seller shall promptly submit to Buyer certificates of insurance as evidence of the above required insurances. PO # should be referenced on all documents. Such insurance certificates shall indicate that Buyer will be given thirty (30) calendar days written notice prior to any change or cancellation of coverage.
15. **Use of Name and Trademarks.** Seller will not use the name of the University of Utah or any of its operating units, affiliates, trade names and/or trademarks or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public without Buyer's advance written approval in each instance, which approval Buyer may grant or withhold in its sole discretion.
16. **Assignment.** Seller shall not assign this Purchase Order or any interest herein including any performance or any amount which may be due or may become due hereunder, without Buyer's prior written consent, to be provided in its sole discretion. For good cause and as consideration for executing this Purchase Order, Seller, through its duly authorized agent, conveys, sells, assigns, and transfers to Buyer all rights, title, and interest in and to all causes of action Seller may now or

hereafter acquire under the antitrust laws of the United States and the State of Utah, relating to the particular Goods and/or Services purchased or acquired by Buyer.

17. *Waiver.* The failure of Buyer to enforce at any time any of the provisions of this Purchase Order, or exercise any option herein provided, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Purchase Order or any part thereof, or the right of Buyer thereafter to enforce each and every provision. No waiver of any provision of this Purchase Order shall be valid unless made in writing and signed by a duly authorized representative or Buyer.
18. **FOR FEDERAL REPORTING PURPOSES ONLY:** Seller shall indicate on the invoice if Seller is a small business or is minority- or woman-owned.
19. *Software.* To the extent any of the Goods constitutes software or is bundled with or integrates any software to facilitate intended features or functionality of such Goods, Seller hereby grants University a royalty-free, non-exclusive, worldwide, perpetual license to use, execute, reproduce, and distribute internally such software. Seller represents that the software will perform in a manner consistent with any published description of features of functionality as of the date of this Purchase Order and that any medium on which such software is delivered shall be in good working condition. Seller further represents and warrants that the software will not contain (i) any code, lock, authorization key, disabling code, or similar device or code that is intended to impair, disable, or otherwise impede the operation of the software or hardware, (ii) any virus, "back door," "trojan horse," or other software or routines or code components designed to permit unauthorized access by or send information to any third party with user consent, or erase or contaminate, corrupt, or damage any software, hardware, data, or information systems, or perform any similar actions. Seller represents and warrants that it has the right to grant the license offered hereunder and that University's use of the software will not infringe the intellectual property rights of any third party.
20. *Data Privacy and Security.* To the extent applicable to its performance, Seller will comply with Family Educational Rights and Privacy Act, 20 USC § 1232g, ("FERPA") and its implementing regulations (34 C.F.R. Part 99). With respect to any Personally Identifiable Student Data (as defined in Utah Code § 53B-28-501) Seller may generate or receive, Seller will: (i) limit the use of such data strictly to the purpose of providing the Goods and/or Services, (ii) not disclose any such data to any other party without the prior written consent of Buyer and the student(s) to whom the data pertains (unless the disclosure is otherwise permitted by FERPA), and (iii) at the request of Buyer either return or certify destruction of such data in a manner consistent with industry standards. Buyer is subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Unless Seller has already entered into a Business Associate Agreement with Buyer, to the extent Seller meets the definition of a Business Associate under HIPAA and its implementing regulations, Seller agrees to comply with HIPAA and provide Goods and/or Services in compliance with the most current version of Buyer's form of Business Associate Agreement, which is available at: <https://uofuhealth.utah.edu/documents/business-associate-agreement-uuh-0>, and incorporated herein by reference.
21. *Environmentally Preferable Purchasing.* Seller is encouraged to offer Energy Star certified products, EPEAT (Electronic Product Environmental Assessment Tool recommended products, or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. Buyer also encourages contractors to offer products or services that have a lesser or reduced negative effect on human health and the environment when compared with competing products or services. Items considered in this comparison may include raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal.
22. *E-verify.* If this Purchase Order is issued from a Request for Proposal process and provides for the physical performance of Services within the State of Utah, Seller and/or any Seller subcontractor is required to register and participate in the Status Verification System (E-verify) to verify the work eligibility status of Seller and/or any Seller subcontractor's employees hired on or after July 1, 2009 and employed in the State of Utah, in accordance with Utah Code Section 63G-12-302.
23. *Export Control Reporting Requirement.* Seller acknowledges that providing Goods and/or Services under this Purchase Order is subject to compliance with all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data or equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"). Seller agrees to comply with all such laws, regulations, and orders as currently in effect or hereafter amended. Seller shall not disclose any export-controlled information or provide any export-controlled equipment or materials to Buyer without prior written notice. In the event that Buyer agrees to receive such export-controlled information, equipment or materials, Seller shall: (i) include the Export Control Classification Number (ECCN) on the packing documentation, and, (ii) send an electronic copy of the ECCN number and packing documentation to: [askme@purchasing.utah.edu](mailto:askme@purchasing.utah.edu).
24. *Boycott Actions.* As applicable, Seller agrees that during the term of this Purchase Order, it will not engage in a boycott of the State of Israel or an economic boycott in accordance with Utah Code §§ 63G-27-101 et seq., as may be amended.
25. *Federal Requirements.* For commercial transactions involving funds from a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
  - a. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;

- b. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
- c. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
- d. FAR 52.219-8, Utilization of Small Business Concerns;
- e. FAR 52.222-17, Non-displacement of Qualified Workers;
- f. FAR 52.222-21, Prohibition of Segregated Facilities;
- g. FAR 52.222-26, Equal Opportunity;
- h. FAR 52.222-35, Equal Opportunity for Veterans;
- i. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
- j. FAR 52.222-37, Employment Reports on Veterans;
- k. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
- l. FAR 52.222-41, Service Contract Labor Standards;
- m. FAR 52.222-50, Combating Trafficking in Persons;
- n. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
- o. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
- p. FAR 52.222-54, Employment Eligibility Verification;
- q. FAR 52.222-55, Minimum Wages Under Executive Order 13658; FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
- r. FAR 52.224-3, Privacy Training;
- s. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
- t. FAR 52.233-1, Disputes; and
- u. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

For transactions involving funds from a federal grant or cooperative agreement (federal awards governed by CFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:

- a. Rights to Inventions. If Seller is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Seller must comply with the requirements of 3 CFR Part 401, "Rights to Inventions Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements".
- b. Clean Air Act. Seller agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency ("EPA").
- c. Byrd Anti-Lobbying. Seller certifies that it 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.
- d. Procurement of Recovered Materials. If Seller is a state agency or agency of a political subdivision of a state, then Seller must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- e. Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, Seller should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

In addition to the foregoing, Seller agrees to abide by any federal or state regulatory or contractual requirement imposed by law or agency direction to the extent applicable to Seller's provision of Goods and Services.