

**STANDARD CONDITIONS TO RICE UNIVERSITY PURCHASE ORDER**

The following provisions are made a part of the Rice University Purchase Order as though set forth at length therein:

- 1) EXPENSES OF PERFORMANCE. Unless otherwise specified in this Purchase Order, the Vendor shall provide and pay for all labor, materials, equipment, machinery, tools, transportation, utility services and other costs and expenses necessary or incidental to the proper performance or furnishing of the Work/Materials. The University is exempt from certain federal and state taxes and shall not pay or otherwise be liable, directly or indirectly, for any such taxes in any way related to the Work/Materials. The payment terms for the purchase order are Net 30 days, unless the Vendor offers discount terms for early payment.
- 2) SHIPPING. The Work/Materials shall be delivered F.O.B. Rice University, unless this Purchase Order specifies otherwise. The amount stated on the Purchase Order includes any and all charges for packaging, shipping, handling and insurance. Unless agreed to otherwise in writing, title and risk of loss of the goods shall not pass to the University until the University actually receives the goods at the point or points of delivery.
- 3) REPRESENTATIONS AND WARRANTY. Vendor represents and warrants to the University that any Work/Materials performed or furnished under this Purchase Order shall (a) conform to the terms and provisions of this Purchase Order, (b) be performed or furnished in a good and workmanlike manner and in accordance with standards of care, skill and diligence consistent with recognized applicable industry practices and procedures, (c) be new, unless this Purchase Order provides otherwise, and (d) be of good quality and free from faults and defects in materials, workmanship and design, in each case, for a period of one year (or longer if otherwise specified in this Purchase Order) after final completion of the performance or furnishing of the Work/Materials. The warranty provided for in this Paragraph 3 shall be in addition to, and not in limitation of, any other warranty or remedy required or permitted by law or this Purchase Order, and such warranty shall be interpreted to require the Vendor, at its expense, to replace any defective or faulty Work/Materials that are disclosed to the Vendor within said one year period. Any such correction shall also be warranted for an additional warranty period of one year from the date of such correction.
- 4) INSPECTION AND APPROVALS. All Work/Materials shall be subject to inspection by, and final approval of, the University or the University's designated agent.
- 5) WITHHOLDING OF PAYMENTS. The University may, in its sole discretion, withhold all or part of any payment otherwise to become owing to Vendor as a result of Vendor's failure (a) to complete the performance or furnishing of the Work/Materials in accordance with the requirements of this Purchase Order or (b) to address any reasonable concerns of the University regarding any pending or threatened claim or lien, including any mechanic's or materialman's lien claim, arising out of or related to the performance or furnishing of the Work/Materials. When the basis for any such withholding has been resolved to the University's satisfaction, the amounts withheld, less any costs and expenses incurred by the University as a result of any occurrence described in the immediately preceding clauses (a) or (b), shall be paid to Vendor.
- 6) TERMINATION FOR CONVENIENCE. The University may by notice in writing direct Vendor to terminate this Purchase Order or work under this Purchase Order in whole or in part, at any time, and such termination shall not constitute default. In such event, unless Vendor shall have defaulted or been in default in performance hereof, (a) the University and Vendor shall have all rights and obligations accruing to it both at law or in equity, including the University's rights to title and possession of goods paid for and (b) Vendor shall be reimbursed for actual, reasonable, substantiated and allowable costs, plus a reasonable profit for work performed to date of termination. The University may take immediate possession of all work so performed upon notice of termination.
- 7) RIGHTS IN EVENT OF DEFAULT. In the event that Vendor fails to comply with any of the terms or provisions of this Purchase Order, declares bankruptcy, makes a general assignment for the benefit of its creditors, has a receiver appointed on account of its insolvency, or is not generally paying its debts when due, then, in any such event, the University shall have all rights available to it as a result thereof at law or in equity, including, without limitation, the right to cancel, by written notice to Vendor, all or any part of this Purchase Order without liability to the University.
- 8) TIME OF THE ESSENCE. Any and all time limits stated in this Purchase Order, including the Completion Date, are of the essence and no acts of the University, including without limitation modifications of this Purchase Order or acceptance of late deliveries, shall constitute waiver of this provision.
- 9) INDEMNIFICATION. Vendor shall indemnify, hold harmless, protect and defend the University and its trustees, officers, employees, representatives, agents and affiliates for, from and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, without limitation, court costs and attorneys' fees, directly or indirectly arising out of or in connection with the performance or furnishing of the Work/Materials. Vendor's indemnification obligations under this Section shall apply whether the Indemnified Matters are due in part to the concurrent fault or negligence of the Indemnified Parties or others, but shall not extend to such concurrent fault or negligence. Vendor's defense obligations under this Section shall be with attorneys approved by the University, which approval shall not be unreasonably withheld.
- 10) COMPLIANCE WITH LAW. The Vendor shall be responsible and liable for complying with all applicable University policies, federal, state and local statutes, rules, regulations, codes, ordinances, orders and other requirements in connection with the performance or furnishing of the Work/Materials. Without limiting the foregoing, the Vendor specifically agrees to comply with all applicable Laws regarding non-discrimination, equal employment opportunity and affirmative action.
- 11) RETURNS. The University reserves the right to return merchandise to Vendor. Merchandise will be returned freight prepaid by the University only if a mistake is made by the University in the order process. In no instance will the University pay a restocking charge if merchandise is sent to the University by mistake not of the University. If merchandise is represented in marketing materials as merchandise that the Vendor normally stocks for sale in its business, the University will not pay a restocking charge. If merchandise is determined to be special order, the University will pay Vendor's customary restocking charge not to exceed 15% if a mistake is made by the University in the order process. Upon receipt of merchandise, Vendor will issue credit to the University in the amount of the price thereof, less any agreed upon applicable charges.
- 12) PROPRIETARY RIGHTS. Unless otherwise expressly agreed in writing to the contrary, all specifications information, data, drawings, software, and other items which are (i) supplied to Vendor by the University or (ii) obtained by Vendor and paid for by the University in the performance of this Purchase Order shall be maintained as proprietary to the University by Vendor, shall be used only for purposes of providing goods or services to the University pursuant to this Purchase Order, and shall not be disclosed to any third party without the University's express written consent. All such items supplied or paid for by the University shall be and remain the property of the University shall be promptly returned to it on request or upon completion of the performance or furnishing of the Work/Materials under this Purchase Order.
- 13) INTELLECTUAL PROPERTY.
  - a) Vendor warrants that the sale, use, or incorporation into manufactured products of all machines, parts, components, services, devices, material, and rights furnished or licensed hereunder which are not of the University's design, composition or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark, or other proprietary rights. Vendor may replace or modify infringing goods with comparable goods acceptable to the University of substantially same form, fit, and function so as to remove the source of infringement, and shall extend this provision thereto. If the use or sale of any of the above items is enjoined as a result of such claim, suit or action, Vendor, at no expense to the University, shall obtain for the University the right to use and sell said item.
  - b) Any invention or intellectual property first made or conceived by Vendor in the performance of this Purchase Order or which is derived from or based on the use of information supplied by the University shall be considered to be the property of the University; and Vendor shall execute such documents necessary to perfect the University's title thereto.
- 14) CONFIDENTIALITY. Vendor shall not publish any information developed under this Purchase Order nor distribute it nor make any news release about the existence or subject matter of this Purchase Order without prior written approval of the University.
- 15) AUDIT. Throughout the life of this Purchase Order, and for a period of *five (5)* years thereafter, the University or its appointed agent shall reserve the right to conduct audits of Vendor(s) purchasing and accounting records to the extent necessary to verify that costs and amounts invoiced are in accordance with the terms of the purchase order.
- 16) INDEPENDENT CONTRACTORS. The Vendor shall be an independent contractor in the performance of this Purchase Order.
- 17) NO ASSIGNMENT BY CONTRACTOR/SUPPLIER. The Vendor shall not assign its rights or obligations under this Purchase Order, in whole or in part, without the prior written consent of the University.
- 18) FORCE MAJEURE. The University or Vendor shall be absolved from liability for any act, omission, or circumstance occasioned by any cause whatsoever not within the control of the party claiming suspension and which such party could not, by reasonable diligence, have avoided. Such acts, omissions, or circumstances, however, shall not relieve such party of liability in the event of its failure to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch and to give notice and full particulars of the same in writing to the other party as soon as possible after the occurrence of the cause relied on.
- 19) REMEDIES. In no event shall Vendor be entitled to anticipatory profits or to special (including multiple or punitive), incidental or consequential damages.
- 20) SURVIVAL. Any agreements or obligations of Supplier/Contractor that by their nature are to be performed after the expiration or termination of this Purchase Order, including, without limitations, the agreement of indemnity set forth in Paragraph 9) above, shall survive any expiration or termination of this Purchase Order.
- 21) GOVERNING LAW. This Purchase Order shall be governed by and construed under the laws of the State of Texas, without regard to the conflicts or choice of law principles thereof. The parties specifically consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in the County of Harris, State of Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Purchase Order.
- 22) CONSTRUCTION. The headings and captions used in this Purchase Order are for convenience of reference only, and shall not be construed, expressly or by implication, so as to affect the meaning or interpretation of any of the provisions of this Purchase Order.

October  
2009 [End  
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