

The Ohio State's Standard Purchase Order Terms and Conditions

1. **Offer:** The written offer sent by PURCHASER to SELLER is subject to cancellation by PURCHASER without notice if not accepted by SELLER within fourteen (14) days of issuance.
2. **Acceptance and Confirmation:** The written offer sent by PURCHASER to SELLER and The Ohio State University's Standard Purchase Order Terms and Conditions (Rev. 11/2007) (collectively hereinafter referred to as "Purchase Order") constitutes the entire agreement between the parties, unless otherwise specifically noted by PURCHASER on the face of the Purchase Order. Each delivery of goods and/or services received by PURCHASER from SELLER shall be deemed to be upon the terms and conditions contained in the Purchase Order. No additional terms may be added and the Purchase Order may not be changed except by written instrument executed by PURCHASER. SELLER is deemed to be on notice that the PURCHASER objects to any additional or different terms and conditions contained in any acknowledgement, invoice, or other communication from SELLER, notwithstanding PURCHASER'S acceptance or payment for any delivery of goods and/or services, or any similar act by PURCHASER.
3. **Inspection:** All goods and/or services delivered hereunder shall be received subject to PURCHASER'S inspection and approval and payment therefore shall not constitute acceptance. All payments are subject to adjustment for shortage or rejection. All defective or non-conforming goods will be returned pursuant to the SELLER'S instruction at SELLER'S expense. To the extent that the Purchase Order requires a series of performances by SELLER, PURCHASER prospectively reserves the right to cancel the entire remainder of the Purchase Order if goods and/or services provided early in the term of the Purchase Order are non-conforming or otherwise rejected by PURCHASER.
4. **Shipping:** All goods are FOB destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. No charges will be paid by PURCHASER for packing, crating or cartage unless otherwise specifically stated in the Purchase Order. Unless otherwise provided in the Purchase Order, no invoices shall be issued nor payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice.

All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show the Purchase Order number. The container and Purchase Order numbers must be indicated on bill of lading. Packing slips must show Purchase Order number and must be included on each package of LCL shipments and/or with each carload of equipment. PURCHASER reserves the right to refuse or return any shipment or equipment at the SELLER'S expense that is not marked with the Purchase Order numbers. SELLER agrees to declare to the carrier the value of any shipment under the Purchase Order and the full invoice value of such shipment.

5. **Purchaser's Data:** To the extent SELLER Shall have access to, use of, disclosure of PURCHASER'S Data, it agrees to the provisions of this Section. "Data" means any and all electronic or other information that is in the Purchaser's possession and control, and any and all such Data that has been disclosed to SELLER. Data may include but is not limited to, information that is: (i) identified with a specific individual (e.g., "personally identifiable information" or "PII"); (ii) subject to proprietary rights under patent, copyright, trademark, or trade secret law; (iii) privileged against disclosure in a civil lawsuit (e.g., data subject to attorney-client or doctor-patient privileges); (iv) subject to laws, regulations, rules, or standards that prohibit or limit disclosure (e.g., the family Educational Rights and Privacy Act (FERPA), the Export Administration Act (EAR), the International Traffic in Arms Regulations (ITAR), or the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act (GINA)); or (v) ought in good faith to be treated as sensitive, proprietary, or confidential.
 - a. **Prohibition of Unauthorized Use of Data.** SELLER agrees to hold Data in strict confidence. SELLER shall not use or disclose Data received from or on behalf of the PURCHASER except as required by law, or as otherwise authorized in writing by the PURCHASER. Similarly, SELLER agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of SELLER, or passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by PURCHASER.
 - b. **Security Standards.** SELLER agrees that it shall protect the Data it receives from or on behalf of the PURCHASER at all times under the following standards:
 - i. **Network Security.** SELLER shall at all times maintain network security that includes, at a minimum: network firewall provisioning, intrusion detection, and regular third party penetration testing of the network and all relevant computer/data storage devices. Upon Purchaser's request, SELLER agrees to provide Purchaser access to its penetration test results and documentation of its network standards. SELLER shall also maintain network security that conforms to one of the following:

- A. Those standards that PURCHASER applies to its own network, as found at <http://www.buckeyesecure.osu.edu>;
- B. Current standards set forth and maintained by the National Institute of Standards and Technology, including those at <http://checklists.nist.gov/repository/1023.html> and <http://checklists.nist.gov/repository/>; or
- C. Any generally recognized comparable standard that SELLER applies to its own network.

ii. **Data Security.** SELLER shall protect and maintain the security of Data with protection that is at least good as or better than that maintained by PURCHASER. These security measures include maintaining secure environments that are patched and up to date with all appropriate security updates as designated, for example, by Microsoft notification.

iii. **Data Transmission.** SELLER shall ensure that any and all transmission or exchange of Data with PURCHASER and/or any other parties expressly designated by PURCHASER shall take place via secure means, e.g. HTTPS or FTPS.

iv. **Data Storage.** SELLER shall ensure that any and all Data will be stored, processed, and maintained solely on designated target servers and that no Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the SELLER's designated backup and recovery processes.

v. **Data Encryption.** SELLER shall store all backup Data as part of the its designated backup and recovery processes in encrypted form, using no less than 128 bit key.

vi. **Return or Destruction of Data.** Upon cancellation, termination, expiration, or other conclusion of the Agreement, SELLER shall erase, destroy, and render unreadable all Data, including copies, in possession of SELLER, its subcontractors and agents and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of the PURCHASER, whichever shall come first.

vii. **Notification of Network or Data Breach.** SELLER shall immediately report in writing to the PURCHASER any network breach and/or use or disclosure of Data not authorized by the Agreement, including any reasonable belief that unauthorized access to the Data has occurred. SELLER shall make the report to the PURCHASER not less than two (2) business days after SELLER reasonably believes there has been such unauthorized use or disclosure. SELLER's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the network element(s) and/or Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what SELLER has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and, (v) what corrective action SELLER has taken, or shall take, to prevent future unauthorized use or disclosure.

SELLER shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information, any other event requiring such notification ("Notification Event"). The PURCHASER may, in its sole discretion, choose to provide notice to any or all parties affected by a Network or Data Breach, but the SELLER shall reimburse the PURCHASER for the cost of providing such notification. SELLER further agrees to provide, or to reimburse PURCHASER for its costs in providing, any credit monitoring or similar services that are necessary as a result of any Network or Data Breach.

6. **Time Is Of The Essence:** Time for delivery of goods or performance of services under the Purchase Order is of the essence. Failure of SELLER to meet delivery schedules or deliver within a reasonable time, as interpreted by PURCHASER alone, shall entitle PURCHASER to seek all remedies available to it at law or in equity. SELLER agrees to reimburse PURCHASER for any expenses incurred in enforcing its rights. SELLER further agrees that undiscovered delivery of non-conforming goods and/or services is not a waiver of the PURCHASER'S right to insist upon further compliance with all specifications.
7. **Changes:** PURCHASER may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of the Purchase Order. Should any such changes increase or decrease the cost of, or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by the PURCHASER and SELLER. Notwithstanding the foregoing, SELLER has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by SELLER must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.
8. **Warranties:** SELLER expressly warrants that the goods and/or services covered by the Purchase Order will conform to the specifications, drawings, samples or other descriptions furnished or specified by PURCHASER, and will be of satisfactory material and quality production, free from defects and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. These warranties shall survive inspection, acceptance, passage of title and payment by PURCHASER.

- 9. Statutory Conformity:** Goods and services provided pursuant to the Purchase Order, and their production and transportation shall conform with all applicable laws, including but not limited to the Occupational Health and Safety Act, the Federal Transportation Act and the Fair Labor Standards Act, as well as any law or regulation noted on the face of the Purchase Order.
- 10. University Name:** No SELLER providing goods and services to PURCHASER shall advertise the fact that it has contracted with PURCHASER for goods and/or services, or appropriate or make use of PURCHASER'S name or other identifying marks or property without the prior written consent of PURCHASER'S Office of Trademark and Licensing.
- 11. Indemnification:** SELLER shall indemnify and hold harmless PURCHASER from any and all demands, causes of action, losses, liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees, and costs related to Data breaches and Notification events as noted in Section 5), arising from, caused by or related to the injury or death of any person (including, but not limited to, employees and agents of SELLER in the performance of their duties or otherwise), or damage to property (including property of PURCHASER or other persons), which arise out of or are incident to the goods and services to be provided hereunder. Nothing herein shall require indemnification as to any claims against PURCHASER arising from under the Ohio Worker's Compensation law, unless the claim arises out of services performed by SELLER'S employees on PURCHASER'S property. SELLER'S defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.
- 12. Warranty of Non-Infringement:**
- 12.1** SELLER represents and warrants that all goods sold or services performed under the Purchase Order are: a) in compliance with applicable laws; b) do not infringe any patent, trademark, copyright or trade secret; and c) do not constitute unfair competition.
- 12.2** SELLER shall indemnify and hold harmless PURCHASER from and against any and all demands, causes of action, losses, liabilities, judgments, damages, claims (including but not limited to claims of negligence), costs and expenses (including but not limited to attorney's fees), which arise from any claim, suit or proceeding alleging that PURCHASER'S use of the goods and/or services provided under the Purchase Order are inconsistent with SELLER'S representations and warranties in section 11.1. SELLER'S defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.
- 12.3** If any claim which arises from SELLER'S breach of section 11.1 has occurred, or is likely to occur, SELLER may, at PURCHASER'S option, procure for PURCHASER the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing, (without any material degradation in performance, quality, functionality or additional cost to PURCHASER).
- 13. Non Discrimination:** In fulfilling the terms of the Purchase Order, SELLER agrees that it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, sex, sexual orientation, handicap or Vietnam veteran-era status. This covenant is required pursuant to federal laws and regulations, including Executive Order 11246, State of Ohio laws and regulations, and policy of PURCHASER. Any breach of this provision may be regarded by PURCHASER as a material and substantial breach of the contract arising from this Purchase Order.
- 14. No Findings for Recovery:** SELLER warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. SELLER further agrees that if this warranty is deemed to be false, the Purchase Order shall be void ab initio as between the parties and the SELLER shall immediately repay to the PURCHASER any funds paid under this Purchase Order, or an action for recovery may be immediately commenced by PURCHASER for the recovery of said funds.
- 15. Force Majeure:** Neither PURCHASER nor SELLER shall be responsible for any delay or failure in performance resulting from any cause beyond their control, including, but without limitation to war, strikes, civil disturbances and acts of God. When SELLER has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to

delay timely performance of the Purchase Order, SELLER shall immediately give notice thereof, including all relevant information with respects to what steps SELLER is taking to complete delivery of the goods and/or services to PURCHASER.

- 16. Confidentiality:** Except as otherwise noted in Section 5, SELLER agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by PURCHASER, and will use such items only in the production of goods and/or services under the Purchase Order, or any other Purchase Orders issued by PURCHASER. Upon the completion or termination of the or other Purchase Orders, SELLER shall immediately return all confidential information to PURCHASER or shall make other disposition of the confidential information as directed by PURCHASER.
- 17. Assignment:** SELLER may not assign the Purchase Order, nor any money due or to become due without the prior written consent of the PURCHASER. Any assignment made without such consent shall be deemed void.
- 18. Taxes:** Goods and services procured subject to the Purchase Order are exempt from Ohio sales tax, (Ohio Revised Code Section 5739.02), and from federal excise tax.
- 19. Termination:** Except as otherwise provided in Section 1 above, the Purchase Order may be terminated at any time by the PURCHASER upon 30 days prior written notice to the SELLER. The Purchase Order may be terminated immediately by the PURCHASER for breach by SELLER of the Purchase Order, provided that PURCHASER has provided SELLER with notice of such breach and SELLER has failed to cure within 10 days of receipt of such notice.
- 20. General:**
 - 20.1** The Purchase Order shall be governed by the laws of the State of Ohio, without reference to any choice of laws rules.
 - 20.2** Failure of PURCHASER to act immediately in response to a breach of this Purchase Order by SELLER shall not constitute a wavier of breach. Wavier of PURCHASER of any default by SELLER hereunder shall not be deemed a wavier of any subsequent default by SELLER.
 - 20.3** All notices under the Purchase Order shall be sent to the respective addresses on the face page of the Purchase Order by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. In the event an addressee refuses to accept delivery, however, then notice shall be deemed to have been served on the date of said refusal of delivery. Postage, delivery charges and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this section.
- 21. Campaign Contributions:** By SELLER'S acceptance of this Purchase Order, SELLER hereby certifies to PURCHASER that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. §3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. §3517.13.
- 22. DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO TERRORISM:** By SELLER'S acceptance of this Purchase Order, SELLER hereby represents and warrants to PURCHASER that SELLER, and those persons set forth in O.R.C. Section 2909.33(C), have not provided any material assistance to any organization identified by and included on the United States Department of State Terrorist Exclusion List, and that SELLER, and those persons set forth in O.R.C. Section 2909.33(C), have truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." SELLER further represents and warrants that SELLER, and those persons set forth in O.R.C. Section 2909.33(C), have filed said Declaration pursuant to O.R.C. Section 2909.33. If these representations and warranties are found to be false, this Purchase Order is void *ab initio* and SELLER shall immediately repay to PURCHASER any funds paid under this Purchase Order without liability to PURCHASER, or an action for recovery may be immediately commenced by PURCHASER for the recovery of said funds.

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