

# Standard Terms and Conditions

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## STANDARD TERMS & CONDITIONS FOR PURCHASE ORDERS

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS

ACTING FOR AND ON BEHALF OF THE

UNIVERSITY OF ARKANSAS - MONTICELLO

1. **GENERAL:** These Standard Terms and Conditions are incorporated by reference in each Purchase Order (PO) issued by the University of Arkansas –Monticello (“UAM” or “the University”), and are agreed to by both vendor and the University, provided that any Special Terms and Conditions included in the University’s PO take precedence over these Standard Terms and Conditions. No additional terms and conditions of this contract shall be accepted without the written consent of the University. In the event of a conflict between the terms and conditions offered by the University, and any terms provided by Vendor, the University terms and conditions shall control.

2. **PRICES:** In case of errors in extension, unit prices shall govern. Unless otherwise specified, all prices are F.O.B. the UAM Campus.

3. **DISCOUNTS:** All cash discounts offered will be taken if earned.

4. **TAXES:** The University of Arkansas –Monticello is NOT exempt from paying sales or use taxes, except on those items and /or purchase transactions that are specifically exempted by law. When applicable, state sales tax must be itemized on invoices.

5. **ANTITRUST ASSIGNMENT:** The Vendor named on this PO, acting herein by the authorized individual, its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

6. **GUARANTY:** All items shall be newly manufactured, in first class condition, latest model and design, including where applicable, containers suitable for the shipment and storage, unless otherwise indicated. Vendor hereby guarantees that everything furnished hereunder will be free from defects in design, workmanship and material; that if sold by drawing, sample or specification, it will conform thereto and will serve the function for which furnished hereunder. Vendor further guarantees that if the items furnished hereunder are to be installed by the Vendor that such items will function properly when installed. Vendor also guarantees that all applicable laws have been complied with relating to construction, packaging, labeling and registration. Vendor’s obligations

under this paragraph shall survive for a period of one (1) year from date of delivery, unless otherwise specified herein. Services provided by Vendor shall be provided in accordance with the standards stated in the agreement between the University and Vendor and shall be of a quality at least equal or greater than the customary standards of quality applicable to Vendor's trade or business.

7. BACKORDERS OR DELAY IN DELIVERY: Backorders or failure to deliver within the time required may, at the sole discretion of the University, be construed as an act of default of the contract. Vendor must give written notice to the University Purchasing Office of the reason for any such delay and the expected delivery date. The University's Purchasing Office has the right to extend the date of delivery if Vendor's reasons for delay appear valid and the Vendor's expected delivery is acceptable. However, if either Vendor's reason for delay or expected delivery date is deemed unacceptable by the University, Vendor shall be in default and the University may exercise any and all remedies available under law, including but not limited to remedies involving the procurement of goods or services from another Vendor.

8. DELIVERY REQUIREMENTS: No substitutions or cancellations are permitted without approval of the Purchasing Office. Delivery shall be made during UAM work hours only, 8:00 a.m. to 4:30 p.m. Central Standard Time (excluding weekends and University Holidays), unless prior approval for other delivery has been obtained. Packing list shall be enclosed with each shipment, listing the UAM Purchase Order number. Items should be shipped to the "Ship-To" address listed on the purchase order.

9. DEFAULT: All commodities furnished will be subject to inspection and acceptance by University after delivery. Default in promised delivery or failure to meet specifications entitles the University to cancel this contract or any portion of same and reasonably purchase commodities elsewhere and charge the full increase, if any, in cost and handling to defaulting Vendor. Furthermore, default in promised delivery or failure to meet specifications authorizes the Purchasing Office to cancel this contract (PO), and by Vendor's acceptance of this PO, guarantees Vendor shall refund all monies paid from this PO to the University.

10. VARIATION IN QUANTITY: The University assumes no liability for commodities produced, processed, or shipped in excess of the amount specified on the UAM Purchase Order.

11. INVOICING: The Vendor shall be paid in a timely manner upon submission of a properly itemized invoice, after delivery and acceptance of commodities or services by the University. All invoices must be sent to the "Bill To" point listed on the University purchase order. All invoices MUST be billed to the University, not to an individual, and must also include the following additional information if applicable:

- a) The complete name and address of the Vendor.
- b) Invoice Date
- c) Invoice Number
- d) Purchase Order Number

e) Itemized listing of purchases. This should include a description of the merchandise and/or services, unit price and extended line total

f) Name and location of department for whom the goods or services were provided.

g) Itemized taxes.

Subject to all other terms and conditions herein, properly submitted invoices will be paid by the University in a timely manner. The University cannot agree to pay interest charges or late fees on any amounts due to Vendor unless incurred 60 days after payment is due per Arkansas Code Ann. §19-4-706.

12. UNIVERSITY PROPERTY: Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the Vendor hereunder or in contemplation hereof or developed by the Vendor for use hereunder shall remain property of the University, be kept confidential, be used only as expressly authorized, and returned at the Vendor's expense to UAM Purchasing Department, properly identifying what is returned. Vendor acknowledges that University's marks and logos are the exclusive property of the University. The parties agree that nothing in its agreement or the University's purchase order transfers, licenses, or allows any use of the University's logos or other marks unless expressly agreed upon in writing by both parties. In the event that such authorization is granted by the University, Vendor must immediately discontinue use of the name, logos, or any other marks of the University upon the expiration or termination of the contract. Under no circumstances may Vendor use University's name, logos, or any other marks in such a manner as to imply or state an endorsement of Vendor by University.

13. PATENTS OR COPYRIGHTS: The Vendor agrees to indemnify and hold the University harmless from all claims, damages, and costs, including attorney's fees, arising from infringement of patents, trademarks, copyrights, or other intellectual property rights.

14. AUTHORIZED DISTRIBUTOR: Vendor must be an authorized distributor of all goods/services procured by the University. Prior to issuance of a purchase order, Vendor may be required to submit a letter from the manufacturer as proof of authorization.

15. DUTIES AND CUSTOMS FEES: All duties and customs fees shall be paid in advance by the Vendor prior to shipping any product for import or export to the University.

16. PERMITS AND LICENSES: Vendor shall, at its own expense, procure and keep in effect all necessary permits or licenses as required by law to fulfill this Purchase Order.

17. ASSIGNMENTS: Any contract entered into pursuant to a UAM Purchase Order is not assignable nor the duties there under delegable by either party without the written consent of the University.

18. LACK OF FUNDS: The University may cancel this contract to the extent the funds are no longer legally available for expenditures under this contract. Any delivered but unpaid for goods will be returned in normal condition to the Vendor by the University. If the University is unable to pay for goods that it retains, the contactor may file a claim with the Arkansas State Claims

Commission. Similarly, if the Vendor has provided services and there are no longer funds legally available to pay for the services, the Vendor may file a claim.

19. DELAYED CLAIMS: Arkansas State Law requires that a claim be filed with the Arkansas State Claims Commission for any invoices or services rendered that are more than two (2) fiscal years old.

20. NON-DISCRIMINATION: Vendor agrees to adhere to any and all applicable Federal and State laws, including laws pertaining to non-discrimination. In particular, consistent with the provisions of Act 954 of 1977, as amended and codified at Ark. Code Ann. § 25-17-101, the vendor agrees as follows: (a) the Vendor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap or national origin; (b) in all solicitations or advertisements for employees, the Vendor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; (c) failure of the Vendor to comply with the statute, the rules and regulations promulgated there under and this nondiscrimination clause shall be deemed a breach of contract and this contract may be canceled, terminated or suspended in whole or in part; (d) the Vendor will include the provisions of items (a) through (c) in every subcontract so that such provisions will be binding upon such subcontractor or Vendor.

21. TECHNOLOGY ACCESS: When procuring a technology product or when soliciting the development of such a product, the State of Arkansas is required to comply with the provisions of Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, which expresses the policy of the State to provide individuals who are blind or visually impaired with access to information technology purchased in whole or in part with state funds. The Vendor expressly acknowledges and agrees that state funds may not be expended in connection with the purchase of information technology unless that system meets the statutory requirements found in 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications), in accordance with the State of Arkansas technology policy standards relating to accessibility by persons with visual impairments.

ACCORDINGLY, THE VENDOR EXPRESSLY REPRESENTS AND WARRANTS to the State of Arkansas through the procurement process by submission of a Voluntary Product Accessibility Template (VPAT) for 36 C.F.R. § 1194.21, as it existed on January 1, 2013 (software applications and operating systems) and 36 C.F.R. § 1194.22, as it existed on January 1, 2013 (web-based intranet and internet information and applications) that the technology provided to the State for purchase is capable, either by virtue of features included within the technology, or because it is readily adaptable by use with other technology, of:

- Providing, to the extent required by Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, equivalent access for effective use by both visual and non-visual means;
- Presenting information, including prompts used for interactive communications, in formats intended for non-visual use;
- After being made accessible, integrating into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired;

- Providing effective, interactive control and use of the technology, including without limitation the operating system, software applications, and format of the data presented is readily achievable by nonvisual means;
- Being compatible with information technology used by other individuals with whom the blind or visually impaired individuals interact;
- Integrating into networks used to share communications among employees, program participants, and the public; and
- Providing the capability of equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

State agencies cannot claim a product as a whole is not commercially available because no product in the marketplace meets all the standards. Agencies must evaluate products to determine which product best meets the standards. If an agency purchases a product that does not best meet the standards, the agency must provide written documentation supporting the selection of a different product.

For purposes of this section, the phrase “equivalent access” means a substantially similar ability to communicate with, or make use of, the technology, either directly, by features incorporated within the technology, or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state and federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands or other means of navigating graphical displays, and customizable display appearance. As provided in Arkansas Code Annotated § 25-26-201 et seq., as amended by Act 308 of 2013, if equivalent access is not reasonably available, then individuals who are blind or visually impaired shall be provided a reasonable accommodation as defined in 42 U.S.C. § 12111(9), as it existed on January 1, 2013.

If the information manipulated or presented by the product is inherently visual in nature, so that its meaning cannot be conveyed non-visually, these specifications do not prohibit the purchase or use of an information technology product that does not meet these standards.

## 22. SAFEGUARDING OF CUSTOMER INFORMATION:

a) Vendor shall implement and maintain “appropriate safeguards,” as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all “customer information” (as that term is defined in 16C.F.R. § 314.2(b)), received by Vendor.

b) Vendor shall implement and maintain commercially reasonable measures to protect any customer information, personal information, student records, protected health information or confidential information of any nature (“protected information”) that may be acquired, used or stored by Vendor. Without limiting the generality of the foregoing, Vendor shall take such measures as are required by applicable law or regulation.

c) Vendor shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of any protected information and (ii) unauthorized disclosure, misuse, alteration, destruction

or other compromise of any protected information. Within 30 days of the termination or expiration of its agreement with the University, Vendor shall destroy all records, electronic or otherwise, in its or its agents' possession that contain such confidential information and shall deliver a written certification of the destruction to the University.

d) Vendor consents, upon reasonable advance notice, to University's right to conduct an on-site audit of Vendor's security program.

e) If Vendor processes personal data of persons located in, or such data obtained from within, the European Union (EU), Vendor will comply with all applicable laws or regulations related to acceptance, transmission, and/or storage of personal data in accordance with the EU's General Data Protection Regulations ("GDPR"). If Vendor acts as a processor it will only act on the written instruction of the University and will assist the University in compliance with GDPR in relation to the security of processing, the notification of personal data breaches, data protection impact assessments, answering data subjects' requests, and allowing data subjects to exercise their rights. Vendor will ensure that individuals processing the data are subject to a duty of confidentiality and only engage sub-processors with the prior consent of the University and under a written contract.

f) Notwithstanding any other provisions of its agreement with Vendor, University may terminate the agreement with Vendor for cause if Vendor has allowed a material breach of its security program, if Vendor has lost or materially altered protected information, or if the University reasonably determines that Vendor's security program is inadequate.

g) Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to any allegations of security breaches, violations of the Safeguard Rule caused by Vendor's negligence, intentional acts or omissions, or any loss or material alteration of customer information.

h) Vendor shall reimburse the University for any damages including, but not limited to any costs required to reconstruct lost or altered information, resulting from any security breach, loss, or alteration of customer information.

23. CONFIDENTIALITY OF STUDENT EDUCATION RECORDS: To the extent that Vendor shall have access to, store or receive student education records, Vendor agrees to abide by the limitations on use and re-disclosure of such records set forth in the Family Educational Rights and Privacy Act (FERPA) and related regulations. Vendor agrees to hold student record information in strict confidence and shall not use or disclose such information except as authorized in writing by the University or as required by law. Vendor agrees not to use the information for any purpose other than the purpose for which the disclosure was made. Upon termination, Vendor shall return or destroy all student education record information within 30 days.

24. HIPAA: To the extent that this contract involves covered use or receipt of Protected Health Information, as defined under the Health Insurance Portability and Accountability Act (HIPAA), vendor agrees to fully comply with all applicable privacy requirements under HIPAA.

25. ETHICAL STANDARDS: It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employee or bona fide established commercial selling agencies maintained by the Vendor for the purpose of securing business.

26. CONFLICT OF INTEREST: Vendor recognizes that University of Arkansas Board of Trustees Policy 330.1 provides that the University shall not, without approval of the Chancellor or Vice President for Agriculture, enter into a contract with a current or former state employee, member of the Arkansas General Assembly, state constitutional officer or board or commission member, or the immediate family member thereof, or any entity in which such a person holds an ownership interest of 10 percent or greater.

27. CONTRACT AND GRANT DISCLOSURE AND CERTIFICATION: Any contract or amendment to any contract, executed by the University which exceeds \$25,000.00 shall require the Vendor to disclose information consistent with the terms of Arkansas Executive Order 98-04, and any amendments or replacements, and the regulations pursuant thereto. Failure of any individual or entity to disclose, or the violation of any rule, regulation or policy promulgated by the Department of Finance and Administration pursuant to this Order, shall be considered a material breach of the terms of the contract, lease, purchase agreement, or grant and shall subject the party failing to disclose, or in violation, to all legal remedies available to the University under the provisions of the existing law. No contract, or amendment to any existing contract, that falls under Order 98-04, will be approved until the Vendor completes and returns the disclosure form.

28. GOVERNING LAW: The parties agree that this contract, including all amendments thereto, shall be construed and enforced in accordance with the laws of the State of Arkansas, without regard to choice of law principles. Consistent with the foregoing, this contract shall be subject to the Uniform Commercial Code as enacted in Arkansas.

29. DISPUTES: The Vendor and the University agree that they will attempt to resolve any disputes in good faith. Subject to the provisions on sovereign immunity herein, the Vendor and the University agree that the State of Arkansas shall be the sole and exclusive venue for any litigation or proceedings that may arise out of or in connection with this contract. The Vendor acknowledges, understands and agrees that any actions for damages against the University may only be initiated and pursued in the Arkansas Claims Commission. Under no circumstances does the University agree to binding arbitration of any disputes or to the payment of attorney fees, court costs or litigation expenses.

30. SOVEREIGN IMMUNITY: Nothing in this contract shall be construed to waive the sovereign immunity of the State of Arkansas or any entity thereof, including the University of Arkansas - Monticello.

31. LIMITATIONS OF LIABILITY: Vendor acknowledges that, under Arkansas law, the University may not enter into a covenant or agreement to hold a party harmless or to indemnify a party from any damages.

32. WAIVER: No waiver of any term, provision or condition of this contract, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed to be a further or continuing waiver of any such term, provisions or condition of the contract.

33. INDEPENDENT PARTIES: Vendor acknowledges that under this contract it is an independent vendor and is not operating in any fashion as the agent of the University. The relationship of the vendor and University is that of independent contractors, and nothing in this contract should be construed to create any agency, joint venture, or partnership relationship between the parties.

34. INDEMNIFICATION BY VENDOR: Vendor shall defend, indemnify, and hold harmless University, its agents, officers, board members, and employees from and against any and all claims, damages, losses, and expenses, including reasonable attorney's fees, for any claims arising out of or in any way relating to the performance of Vendor's obligations under this contract, including but not limited to any claims pertaining to or arising from Vendor's negligence, intentional acts or omissions.

35. EXCUSED PERFORMANCE: In the event that the performance of any terms or provisions of this Agreement shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, either local, state, or federal, or because of riots, war, acts of terrorism, public disturbances, unavailability of materials meeting the required standards, strikes, lockouts, differences with workmen, fires, floods, Acts of God, or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, such party is unable to prevent (the foregoing collectively referred to as "Excused Performance"), the party so interfered with may at its option suspend, without liability, the performance of its obligations during the period such cause continues, and extend any due date or deadline for performance by the period of such delay, but in no event shall such delay exceed six (6) months.

36. TIME IS OF THE ESSENCE: Vendor and University agree that time is of the essence in all respects concerning this contract and performance hereunder.

37. TERMINATION: The University may terminate its agreement with Vendor under the following conditions:

a) In the event that Vendor fails to fully comply with these terms or conditions or with any other provisions of Vendor's agreement with the University, and Vendor does not cure such non-compliance within 10 days of the University's written notice to Vendor, the University may immediately terminate its agreement with Vendor.

b) In the event of a lack of funds, as provided in paragraph 18.

c) The convenience of the University, upon 60 days advance written notice to Vendor.

38. BOYCOTT OF ISRAEL: Pursuant to Arkansas Code Annotated § 25-1-503, a public entity shall not enter into a contract with a company unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage, in a boycott of Israel. Vendor hereby certifies that they do not boycott Israel and will not boycott Israel during the remaining aggregate term of the contract.