

UNIVERSITY OF VERMONT PURCHASE ORDER TERMS AND CONDITIONS

1. **GENERAL** This purchase order and any continuation pages constitute the University of Vermont's ("UVM" or the "Buyer") offer to Seller and will become a binding contract upon Seller's written acceptance or commencement of performance. This purchase order may be revised or supplemented only by a writing signed by Buyer's authorized representative.
2. **QUANTITY** Buyer will not be liable for and may reject any excess goods or services beyond those ordered.
3. **PRICE; PAYMENT** This purchase order must not be filled at higher prices than last quoted or charged without notice. If no price is stated on this order, Seller agrees to invoice at the lowest prevailing market price. If Seller reduces its price of goods supplied or services furnished of the same quantity, grade and quality, Seller agrees to give Buyer the benefit of that reduction. Payment terms are Net thirty (30) days from receipt of (i) invoice or (ii) all goods and/or services at Buyer's destination, whichever is later.
4. **DELIVERY** Buyer may reject goods and services not delivered or furnished on the dates specified in this order. If no date is specified, Buyer may purchase elsewhere if delivery is not completed within a reasonable time. Title to goods and risk of loss will transfer to Buyer upon receipt at Buyer's destination.
5. **CONFORMING GOODS** Acceptance of all or any part of the goods shall not be a waiver of Buyer's right either to cancel or return all or any portion of the goods if they fail to conform to order or warranty, or contain latent or patent defects. Seller warrants that all material, work, and goods will (a) conform to specifications, drawings, samples, or other descriptions furnished by UVM, (b) be fit and serviceable for the purpose intended, (c) be of good quality and workmanship and free from defect, and (d) not infringe upon the intellectual property rights of any third party.
6. **LICENSE PROGRAM** UVM permits use of its registered Trademarks on products and services only through the licensing approval process described in Policy V. 3.4.11.1 (http://www.uvm.edu/policies/general_html/licensing.pdf)
7. **INSPECTION AND REJECTION** Goods and services are subject to Buyer's inspection and approval within a reasonable time after delivery. Whether or not paid for, Buyer may reject or return at Seller's expense defective materials, goods, work or services furnished in excess of the requirements of this purchase order, or inadequate services not meeting the Buyer's specifications and standards.
8. **INDEMNIFICATION; LIMITATION OF LIABILITY** Seller agrees to indemnify, defend and hold harmless Buyer, its trustees, officers, employees and agents from and against any and all claims, actions, damages, liabilities, losses, costs and expenses (including costs of litigation, settlement and attorney's fees) arising out of any act or omission by Seller, its agents, employees or subcontractors ("Seller"). This indemnity/hold harmless applies but is not limited to claims related to (1) bodily injury, death or property damage resulting from Seller's acts or omissions in the course of performance of this contract; (2) intellectual property rights and/or infringements related to the Services, Products and/or Software provided to Buyer by Seller; (3) Seller's violation of applicable law; or (4) Seller's breach of any representation or warranty, including but not limited to those related to confidentiality, storage, security and/or return or destruction of data. Seller's liability shall not be limited in terms of any type or amount of damages with regard to its indemnification obligations stated herein.
9. **PROPERTY OF BUYER** All original drawings, models, engravings, plates, dyes, progressive color proofs, electro-types, positives, negatives, and other similar materials created, furnished, or used in connection with the fulfillment of this purchase order will become and remain the exclusive property of Buyer unless otherwise specified in this purchase order. Seller will hold those items without charge, maintain them in good condition, and deliver them to Buyer upon request. Seller will use Buyer's drawings, information, and data only for Buyer's purposes under this order and will return them promptly.
10. **TERMINATION** If the goods covered by this order are standard stock merchandise, Buyer may cancel all or any part of the unshipped portion at any time by written notice to Seller, and Buyer will have no further obligation for cancellation charges or otherwise except to pay for conforming goods actually shipped or in transit at termination. If Seller ceases to conduct its normal business operations for any reason (including inability to meet its obligations as they mature), or if any proceedings under bankruptcy or insolvency laws are brought by or initiated against Seller, or if a receiver for Seller is applied for, or if Seller makes an assignment for the benefit of creditors, then Buyer may terminate this order without liability.
11. **ENTIRE AGREEMENT** These Purchase Order Terms and Conditions and any other documents between Buyer and Seller to which they relate, contain the entire agreement of the parties. In the event of conflicting terms, the terms of this document will prevail. Buyer will not be bound by any other terms absent a separate agreement signed by both parties.
12. **NON DISCRIMINATION** The Seller shall abide by all applicable federal, state, and local laws respecting non-discrimination in employment and non-segregation of facilities, including the requirements set out at 41 CFR §§ 60-1.4, 60-300.5(a), and 60-741.5(a), which equal opportunity clauses are hereby incorporated by reference. The latter two regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability. These regulations also require affirmative action by covered sellers to employ and advance in employment qualified protected veterans and qualified individuals with disabilities. Additionally, the Seller will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant.
13. **UVM POLICIES** The Seller shall abide by all applicable UVM policies, including but not limited to its (i) *Background and Reference Checks Policy* (V.7.15.1)(see policy for applicability); and (ii) *Tobacco-Free Policy* (V.3.17.2)(which applies to all individuals providing goods or services on UVM-owned or leased property and vehicles, and all vehicles parked on UVM property). These and other UVM policies are available at: <http://www.uvm.edu/policies>.
14. **INSURANCE** Sellers performing, selling, or distributing products and services with UVM shall maintain the following minimum insurance standards. If a product or service, in the opinion of UVM's Department of Risk Management & Safety, represents an unusual or exceptional risk, Risk Management & Safety may establish additional insurance requirements for that product or service.

Commercial General Liability Insurance: Including Bodily Injury and Property Damage Liability, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$1,000,000 annual aggregate.

Workers Compensation and Employers Liability Insurance: For any sellers with employees, standard workers compensation as required by Vermont State statute and employers' liability insurance in an amount not less than \$100,000 per accident, \$500,000 annual aggregate. Sole proprietors may be required to carry workers' compensation if the nature of their work is inherently dangerous, with such determination to be made by Risk Management & Safety.

Automobile Liability: If Seller will drive on UVM's premises or utilize a vehicle in the course of business, Automobile Liability in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, hired, and non-owned vehicle coverage.

The following insurance is required as applicable:

Crime: with a third party endorsement to protect the University of Vermont in an amount not less than \$250,000 per claim.

Cyber-risk Liability: in an amount not less than \$5,000,000 per occurrence.

Professional Liability: in an amount not less than \$1,000,000 per claim.

Liquor Liability: in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage.

Seller shall name UVM as additional insured on its liability policies and should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. UVM does not need to be named additional insured on the Seller's workers compensation policy. A copy of the Certificate of Insurance verifying the above coverages should be submitted to UVM's Purchasing Services Office 20 days prior to selling or distributing products and services at UVM. Any liability coverages on a "claims made" basis should be designated as such on the certificate. Failure of the Seller to take out and/or maintain any required insurance shall not relieve the Seller from any liability, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligation of the Seller concerning indemnification. The Seller's policies shall be considered primary insurance and exclusive of any insurance carried by UVM. Questions concerning these insurance requirements may be directed to Risk Management & Safety at (802) 656-3242.

15. **LICENSURE** Seller represents and warrants that it has and will maintain any licensure or certification necessary to do business in the State of Vermont. It further agrees that it will defend and indemnify UVM, its trustees, officers, employees and agents for and in connection with any claims or demands, including governmental enforcement proceedings, arising out of any failure to obtain or maintain required licensure or certification. Seller's defense and indemnification will include UVM's reasonable attorney's fees. Seller will also make UVM whole for any financial losses it may incur as a result of any delay in or failure to complete contracted services caused by a lack of licensure or certification.
16. **SUSPENSION & DEBARMENT** By accepting this purchase order, Seller certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Seller will immediately report to UVM any change in its debarred or suspended status.
17. **ASSIGNMENT** Seller shall not assign or subcontract this purchase order or any right or obligation thereunder without Buyer's prior written approval.
18. **GOVERNING LAW** This purchase order shall be deemed made in the State of Vermont and governed by the laws thereof.
19. **INDEPENDENT CONTRACTOR** In the performance of its duties under this purchase order, Seller is an independent contractor and not an agent, employee, partner or joint venturer of UVM.
20. **COMPLIANCE WITH LAWS** Seller agrees that all products provided or services performed are in compliance with all applicable federal, state, and local laws. This includes, as applicable and without limitation, Seller's (i) provision of equally effective, substantially integrated and substantially equivalent ease of use for persons with disabilities, as required by the Americans with Disabilities Act, and the requirements of Section 504 of the Rehabilitation Act; and (ii) safeguarding of confidential, sensitive or statutorily-protected information or data.
21. **PUBLIC RECORDS ACT** UVM is subject to the Vermont Public Records Act. Any final contract between Seller and UVM is subject to disclosure upon request.
22. **FORCE MAJEURE** UVM may delay or cancel delivery, performance, or acceptance of the goods or services ordered hereunder without liability, if causes beyond its control make it inadvisable, including but not limited to: acts of God, storm, fire, flood, earthquake, damage or destruction to facilities, health and/or public safety hazards, disease (including but not limited to any declared or undeclared quarantine, outbreak, epidemic or pandemic), travel or other restrictions (or restrictions based on UVM protocol, directive or policy), labor disturbance, war, civil commotion, shortage or unavailability of labor, governmental law, ordinance, order or regulation, or for any other cause pursuant to UVM policy. If delayed, payment obligations will be delayed accordingly. If cancelled, Seller shall promptly refund any prepayments for goods or services not yet delivered as of date of cancellation.
23. **ELECTRONIC SIGNATURE** The Parties agree that to the extent they sign electronically, their electronic signature (i) is legally binding under Vermont and federal law; (ii) is equivalent to their handwritten signature; and (iii) shall be considered an original signature on an original document, including when transmitted as a "pdf" file. Neither party will claim that a Party's electronic signature is not legally binding, or object to the admissibility of this Agreement in any legal proceeding.
24. **WEBSITE INCORPORATION** Buyer shall not be bound by any content on Seller's website, even if Seller's documentation specifically references that content and attempts to incorporate it into any other communication, unless UVM expressly agrees to be bound by it in writing signed by an authorized representative.

FLOW-DOWN CLAUSES APPLICABLE TO PURCHASE ORDERS INVOLVING FUNDS FROM A **FEDERAL GRANT**

If this purchase involves the use of funds from a Federal government grant or cooperative agreement—or funds from a subcontract at any tier relating to a Federal government grant or cooperative agreement—then the following clauses from the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (“Uniform Guidance”), Appendix II are incorporated into and form a part of the purchase order terms and conditions. The full text of the Uniform Guidance may be found at 2 CFR Part 200. Seller/Vendor agrees to flow down all applicable clauses from the Uniform Guidance to lower-tier subcontractors.

Seller/Vendor further agrees to comply with all applicable agency-specific terms and conditions, which may be found by selecting the applicable agency’s procurement website at [Acquisition.gov](https://www.acquisition.gov), and shall flow down all applicable clauses to lower-tier subcontractors.

1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, for all Orders that qualify as “federally assisted construction contracts” as defined in 41 CFR Part 60–1.3, Seller agrees to comply with the equal opportunity clause under 41 CFR 60-1.4(b), incorporated herein by reference, and E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
2. **Davis Bacon Act, as amended (40 U.S.C. 3141—3148).** If the Order is in excess of \$2,000 and pertains to construction or repair, and further, if required by Federal program legislation, Seller shall comply with the Davis- Bacon Act (40 U.S.C. 3141 - 3144 and 3146-3148) and as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, Seller is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week.
3. **Copeland “Anti-Kickback” Act (40 U.S.C. 3145).** If the Order is in excess of \$2,000 and pertains to construction or repair, Seller shall comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides in part that Seller shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which it is otherwise entitled.
4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** If the Order is in excess of \$100,000 and involves the employment of mechanics or laborers, Seller shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Seller shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. **Bayh-Dole Act (35 U.S.C. 200-212).** If the Order is for the performance of experimental, developmental, or research work, under a “funding agreement” under 37 CFR 401.2(a) Seller shall provide for the rights of the Federal Government and the University of Vermont and State Agricultural College in any resulting invention in accordance with 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and comply with the requirements of 37 CFR Part 401 and any implementing regulations issued by the awarding agency.
6. **Clean Air Act (42 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251— 1387), as amended.** If the Order is in excess of \$150,000 Seller shall 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 shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. **Energy Policy and Conservation Act (42 U.S.C. 6201).** Seller agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
8. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** If the Order is for \$100,000 or more, Seller and its subcontractors shall file the certification required by this statute and associated regulations. Each tier certifies to the tier above 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the University of Vermont and State Agricultural College.

- 9. Debarment and Suspension (E.O.s 12549 and 12689).** Seller represents and warrants that it is not listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Seller must comply with 2 CFR Part 180, Subpart C and must include a requirement to comply with this regulation in any lower tier covered transaction it enters into.

Seller shall have an ongoing duty during the term of this Agreement to disclose to the University of Vermont and State Agricultural College on an ongoing basis any occurrence that would prevent Seller from making the certifications contained in this Section 9. Such disclosure shall be made in writing to the University of Vermont and State Agricultural College within five (5) business days of when Seller discovers or reasonably believes there is a likelihood of such occurrence.

This certification is a material representation of fact relied upon by the University of Vermont and State Agricultural College. If it is later determined that Seller did not comply with 2 CFR Part 180, Subpart C, in addition to remedies available to the University of Vermont and State Agricultural College, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment.

- 10. Procurement of recovered materials.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. If applicable, Seller shall comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 11. Domestic preferences for procurements (2 CFR 200.322).** As appropriate and to the extent consistent with law, the Seller should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section 11 must be included in all subawards including all contracts and purchase orders for work or products under this Order.

For purposes of this section:

- i. “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.
 - ii. “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.
- 12. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms (2 CFR 200.321).** Vendor shall take affirmative steps to include minority businesses, women’s business enterprises, and labor surplus area firms when possible by:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in steps a. through e. of this Section 12.

13. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216).

Seller shall not obligate or expend funding provided under this Order to:

- i. Procure or obtain;
- ii. Extend or renew a contract to procure or obtain; or
- iii. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - Telecommunications or video surveillance services provided by such entities or using such equipment.
 - Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

CONFLICTS AMONG CLAUSES APPLICABLE TO THE ORDER

In the event of any conflict among the requirements of clauses applicable to the Order, the most stringent requirements of the clauses will apply.