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Purchasing

**AUXILIARY
& BUSINESS
SERVICES**
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Purchase Terms and Conditions

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INSTRUCTIONS:

- 1. PRICE** – If no price is specified herein, charges shall not exceed Supplier's standard price for merchandise of like quality and quantity.
- 2. DISCOUNT** – Discount terms must be stated on the invoice. Discounts will be calculated from the date material or the invoice is received whichever is later.
- 3. DELIVERY** – The University reserves the right to cancel this order in whole or in part if any shipment of merchandise covered hereby is not received by the time specified.
- 4. QUANTITY** – The University's count will be accepted as final and conclusive on all shipments not accompanied by a packing list. Unless expressly provided for to the contrary on the face of this order, all shipments are to be made F.O.B. destination, and the Seller shall bear all cost for cartage, boxing, or containers as required.
- 5. EARLY DELIVERY** – Goods shipped to the University in advance of delivery schedules may be rejected or returned at the Supplier's expense.
- 6. INVOICING** – Invoices (in duplicate, one marked ORIGINAL) must be mailed to Purchasing Services, 101 Procurement Services Building, University Park, PA 16802-1004 (unless otherwise specified) the day shipments are made. Individual invoices will be issued for each shipment and each order.
- 7. IDENTIFICATION** – THE UNIVERSITY'S PURCHASE ORDER NUMBER MUST SHOW ON ALL INVOICES, PACKING LIST, AND BILLS OF LADING.

SOCIAL RESPONSIBILITY - The University has adapted the Global Sullivan Principles of Social Responsibility. We also encourage our suppliers to adopt and follow these principles. For further information, visit www.globalsullivanprinciples.org.

CONDITIONS:

- 1. ACCEPTANCE** – This order, when accepted by the Supplier, shall constitute the entire contract between the buyer and seller as agreed to and shall not be altered, amended, supplemented, or cancelled without the written approval of The Pennsylvania State University (referred to below as the "University"). Either the Supplier's written acceptance of this order or the shipment of any confirming article or commencement of performance hereunder, shall constitute acceptance of this contract, and no contrary or additional terms or conditions shall apply.
- 2. CHANGES** – The University may from time to time, by written instructions or drawings issued to the Supplier, make changes, issue additional instructions, require additional work, or direct the omission of work previously ordered. The provisions of this agreement shall apply to all such written modifications.
- 3. ADDITIONS** – No extra work, additions, or alterations will be paid for by the University unless performed pursuant to and in accordance with the written order of the University.
- 4. CANCELLATIONS** – The University may cancel this order at any time, giving notice in writing. An equitable adjustment in price and/or delivery schedule will be negotiated for materials completed or in process at the time of the change.
- 5. TERMINATION FOR DEFAULT** – a) The University may by notice in writing direct Seller to terminate this purchase

order or work under this purchase order in whole or in part at any time for breach of any one or more of its terms. b) In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law including those set forth in Article 2 of the Uniform Commercial Code or in equity. c) Seller's obligations under the warranty, patent and confidentiality provisions of this purchase order shall survive such termination.

6. WARRANTY AND INSPECTION – All articles sold and materials and work applied hereunder shall be of good quality and free from any defects and shall at all times be subject to inspection and rejection; but neither the University's inspection nor failure to inspect or reject shall relieve the Supplier of any obligations hereunder. Such inspection shall not exclude any warranties in respect to such goods.

7. SAMPLES – May be requested for inspection and approval prior to manufacture or delivery.

8. PATENTS – The Seller warrants that the material delivered, either alone or in combination with other materials, will not infringe on any patents in the United States or any foreign country.

9. INDEMNIFICATION – The Seller agrees to indemnify the University and hold it harmless from and against all liability, loss and expense (including legal fees) for all damages and/or bodily injuries (including death) resulting from the actions, errors, omissions or negligence of the Seller, its directors, officers, employees, agents, contractors or subcontractors, including, but not limited to, any defect in material, any defect in services, workmanship, design of any goods furnished, patent and/or copyright infringements or violations, and/or failure to follow or abide by any and all governing laws, ordinances, codes and regulations.

10. INSURANCE – The Seller shall maintain the following insurances:

a) Commercial General Liability insurance, including contractual liability and Products – Completed Operations liability, with limits not less than \$1,000,000 per occurrence, written on an occurrence basis, by an insurer rated not less than B++ . The University will be an Additional Insured in such policy.

b) Automobile Liability insurance with limits not less than \$500,000 per accident combined single limit or its equivalent.

c) Statutory Workers' Compensation in accordance with governing law (or qualify as a self-insurer), and \$500,000 per accident of Employers' Liability insurance.

d) Upon the request of the University, the Seller shall provide Certificate of Insurance evidencing the required insurances and providing the thirty (30) days written notice of cancellation to the University.

11. BANKRUPTCY – In the event of any proceedings in bankruptcy or insolvency by or against the Seller, or in the event of the appointment (with or without the Seller's consent) of an assignee for the benefit of creditors, or of a receiver, the University may cancel this order for default.

12. PENNSYLVANIA LAW – Performance of this order and all other matters pertaining thereto shall be governed by the laws of the Commonwealth of Pennsylvania.

13. LEGAL VENUE – The legal venue for any and all claims or other legal matters pertaining to the performance of this order shall be the local courts for the County of Centre, Pennsylvania.

14. TAXES – The University is exempt from all Federal Excise Taxes. The Pennsylvania State University is an instrumentality of the Commonwealth of Pennsylvania, and as such, is exempt from the Pennsylvania Sales and Use Tax.

COMPLIANCES:

As a supplier of materials or services to The Pennsylvania State University, (including its Commonwealth Campuses), suppliers must comply with the following:

1. OSHA – Products shall meet, and be in compliance with, the current applicable prescribed standards of the Federal Occupational Safety and Health of Act of 1970 in effect on the date of this order.

2. EXECUTIVE ORDER #11246, as amended, governing Federal Contractors and Pennsylvania Executive Order 1972-1.

3. EXECUTIVE ORDER #11246, as amended, stating that a Federal Contractor with a contract in excess of \$50,000 must require each subcontractor with 50 or more employees and a subcontract of \$50,000 or more to maintain a written affirmative action plan. Therefore, the University requests assurances that a written affirmative action plan has been prepared.

4. EXECUTIVE ORDER #11246, as amended, requiring a Federal Contractor to obtain a certificate from all subcontractors with contracts in excess of \$10,000 that the subcontractor does not and will not maintain employee facilities in a segregated manner, or permit its employees to perform services in a facility under the subcontractor's control where segregated facilities are maintained.

5. THE PENNSYLVANIA HUMAN RELATIONS COMMISSION regulations in 16 PA Code, Chapter 49, whereby the contractor shall not discriminate against any applicant for employment because of regard to race, color, religious creed,

ancestry, handicap or disability, national origin, age or sex.

6. SECTION 503 VOCATIONAL REHABILITATION ACT (orders over \$10,000) relating to employment of qualified handicapped individuals, and the applicable rules and regulations (41 C.F.R. 60-741).

7. VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT of 1974 for orders over \$10,000 as implemented by Department of Labor Regulations, 41 C.F.R. 60-250, requiring Affirmative Action for disabled veterans and veterans of the Vietnam era.

8. EXECUTIVE ORDER #11625 for orders over \$10,000 by other than personal service contractors, regarding Utilization of Minority Business Enterprises.

9. EXECUTIVE ORDER #11625 for orders over \$100,000 regarding Minority Business Enterprises Subcontracting Program.

10. PUBLIC LAW #95-507 for orders over \$100,000 regarding Small Businesses and Small Disadvantaged Businesses.

11. WITH RESPECT TO PURCHASE ORDERS issued under contracts with the government of the United States, Executive Order #12800, which includes the "Notification of Employee Rights Concerning Payment of Union Dues or Fees, including specifically the provisions of Section 2 (a), (1), (2), and (3), unless otherwise exempted by rules, regulations, or orders of the Secretary of Labor.

12. PURCHASE ORDERS IN EXCESS OF \$100,000: Supplier agrees that the University, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment on this purchase order, have access to and the right to examine any pertinent books, documents, papers, and records of such Supplier involving transactions related to this purchase order.

By submitting a signed proposal or quotation in response to the University's solicitation, Supplier certifies that pursuant to Executive Orders 12549 and 12689 and the implementing rules it presently is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

13. PURCHASE ORDERS IN EXCESS OF \$100,000: Supplier shall comply with all applicable standards, orders or regulations issued pursuant to the Clear Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Regional Office of the Environmental Protection Agency and the appropriate Federal awarding agency. Supplier shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). By submitting a signed proposal or quotation in response to the University's solicitation, Supplier certifies that Supplier 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. Supplier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

14. PURCHASE ORDERS IN EXCESS OF \$2,000 for construction or \$2,500 for repair: Supplier shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 674 and 40 U.S.C. 276C) as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontracts on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

15. WALSH-HEALY PUBLIC CONTRACTS ACT: If this purchase order is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount which exceeds, or may expect to exceed, \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act as amended (41 U.S. Code 34-35), there are hereby incorporated reference to all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representation and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor.

APPLICABLE WHEN SOLICITATION or PURCHASE ORDER IS IN SUPPORT OF A GOVERNMENT CONTRACT:

General Provisions and Certifications for Government Contracts:

The following clauses are applicable on solicitations and awards in support of Government Contracts and are hereby incorporated by reference into solicitations and any purchase orders with the same force and effect as if set forth in full text. To the extent that an earlier version of any such clause is included in the prime contract or subcontract under which solicitation or purchase order is issued, the date of the clause as it appears in such prime contract or subcontract shall be controlling and said version is incorporated herein. Where necessary to make the context of the Federal Acquisition Regulations (FAR) and Department of Defense Federal Acquisition Regulation Supplement (DFARS) clauses set forth in these General Provisions applicable to this solicitation or subcontract, the term "Contractor" shall mean "Subcontractor", "Seller" or "Supplier", the term "Contract" or "Subcontract" shall mean "Purchase Order", the term "Government" shall mean "Buyer" or "University" and the term "Contracting Officer" shall mean "Buyer's Purchasing Representative". It is intended that the referenced clauses shall apply to Seller, the legal entity which contracts with the University under any solicitation or purchase order, in such manner as is necessary to reflect the position of Seller as a Supplier to the University, Buyer and legal entity issuing a solicitation or purchase order; to insure Seller's obligations to the University and the United States Government; and to enable the University to meet its obligations under its prime contract or subcontract.

All of the clauses hereby incorporated by reference may be found in the Federal Acquisition Regulations (FAR) and the DOD Federal Acquisition Regulation Supplement (DFARS). Copies of the Federal Acquisition Regulation and the DOD Federal Acquisition Regulation Supplement may be purchased from the Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402.

FAR/DFARS CLAUSES:

52.202-1	Definitions (Dec 2001)
52.204-2	Security Requirements (Aug 1996) (Alt. I)
52.215-16	Facilities Capital Cost of Money (Oct 1997)
52.215-17	Waiver of Facilities Capital Cost of Money (Oct 1997) (when cost of money is not proposed)
52.227-10	Filing of Patent Applications – Classified Subject Matter (Apr 84)
52.232-8	Discount for Prompt Payment (May 1997)
52.232-25	Prompt Payment (Feb 2002)
52.233-3	Protest After Award (Aug 96) (Alt. I)
52.243-1	Changes – Fixed Price – Alt. II (Apr 84)
52.245-2	Government Property (Fixed Price Contracts) (Dec 89)
52.245-18	Special Test Equipment (Feb 93)
52.249-1	Termination for Convenience of the Government (Fixed Price) (Short Form) (Apr 84)
52.249-8	Default (Fixed-Price Supply and Service) (Apr 84)
52.251-1	Government Supply Sources (Apr 94)
52.253-1	Computer Generated Forms (Jan 91) March 27, 1997
252.225-7001	Buy American Act and Balance of Payments Program (Mar 1998)
252.225-7002	Qualifying Country Sources as Subcontractors (Dec 91)
252.225-7007	Trade Agreements Act (Sep 2001)
252.225-7009	Duty-Free Entry-Qualifying Country End Products and Supplies (Aug 2000)
252.225-7016	Restriction on Acquisition of Ball and Roller Bearings (Dec 2000)
252.227-7013	Rights in Technical Data and Computer Software (Nov 1995)
252.227-7026	Deferred Delivery of Technical Data or Computer Software (Apr 88)
252.227-7027	Deferred Ordering of Technical Data or Computer Software (Apr 88)
252.227-7030	Technical Data - Withholding of Payment (Mar 2000)
252.227-7037	Validation of Restrictive Markings on Technical Data (Sep 1999)
252.227-7039	Patents-Reporting of Subject Inventions (Apr 90)
252.251-7000	Ordering from Government Supply Sources (May 1995)

Applicable when fixed price is greater than \$2,500:

52.222-3	Convict Labor (Aug 1996)
52.222-19	Child Labor – Cooperation with Authorities and Remedies (Dec 2001)
52.222-54	Employment Eligibility Verification (Feb 2009)
52.225-13	Restrictions on Certain Foreign Purchases (Jul 2000)
52.232-23	Assignment of Claims (Jan 86)
52.232-23	Assignment of Claims (Jan 1986)

Applicable when fixed price is greater than \$10,000:

52.222-20	Walsh-Healy Public Contracts Act (Dec 96)
52.222-21	Prohibition of Segregated Facilities (Feb 1999)
52.222-22	Previous Contracts & Compliance Reports (Feb 1999)
52.222-26	Equal Opportunity (Apr 2002)
52.222-36	Affirmative Action for Workers with Disabilities (Jun 1998)

Applicable when fixed price is greater than \$25,000:

By submitting a signed proposal or quotation in response to the University's solicitation, the supplier is providing a negative assurance in accordance with FAR 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. Certification in paragraph (a) of this clause is material representation of fact upon which reliance is placed when making any resulting award.

52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jul 95)
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (Dec 2001)
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Dec 2001)
252.227-7036	Certification of Technical Data Conformity (May 87)
252.231-7000	Supplemental Cost Principles (Dec 91)
252.246-7000	Material Inspection and Receiving Report (Dec 91)
	(Note: Not required for subcontracts for which the deliverable is a scientific or technical report.)

Applicable when price is greater than \$100,000:

By submitting a signed proposal or quotation in response to the University's solicitation, the supplier is providing positive assurance to the best of his or her knowledge and belief that on or after December 23, 1989:

(1) No federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered federal

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transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any resulting purchase order; and

(3) He or she will include the language in this assurance in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and provide disclosure accordingly.

Assurance and disclosure by submission of your signed proposal is a prerequisite for making or entering into any resulting purchase order imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000, for each such failure.

52.203-3	Gratuities (Apr 84)
52.203-5	Covenant Against Contingent Fees (Apr 84)
52.203-6	Restrictions on Sub-Contractor Sales to the Government (Jul 95)
52.203-7	Anti-Kickback Procedures (Jul 95)
52.203-9	Procurement Integrity-Service Contracting (Sep 90)
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity (Jan 1997)
52.203-12	Limitation on Payments to Influence Certain Federal Transactions (Jun 1997)
52.215-2	Audit and Records- Negotiation (Jun 1999) (Alt. II)
52.219-8	Utilization of Small Business Concerns (Oct 2000)
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation (Sep 2000)
52.223-2	Clean Air and Water (Apr 84)
52.223-6	Drug-Free Workplace (Mar 2001)
52.227-1	Authorization and Consent (Jul 95)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement (Aug 96)
52.242-13	Bankruptcy (Jul 1995)
52.244-5	Competition in Subcontracting (Dec 96)
52.246-2	Inspection of Supplies - Fixed Price (Aug 96)
52.246-4	Inspection of Services - Fixed Price (Aug 96)
52.246-24	Limitation of Liability-High Value Items (Feb 97)
52.249-2	Termination for Convenience of the Government (Fixed Price) (Sep 96)
252.203-7000	Statutory Prohibitions on Compensation to Former Department of Defense Employees (Dec 91)
252.203-7001	Prohibition on Persons Convicted on Fraud or Other Defense Contract Related Felonies (Mar 99)
252.209-7000	Acquisitions from Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty (Nov 95)
252.233-7000	Certification of Claims and Requests for Adjustment or Relief (May 94)
252.242-7004	Material Management and Accounting System (Dec 2000)
252.247-7023	Transportation of Supplies by Sea (May 2002)

Applicable when fixed price is greater than \$500,000:

52.219-9	Small Business Subcontracting Plan (Jan 2002)
52.219-16	Liquidated Damages- Subcontracting Plan (Jan 1999)
52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000)
52.230-2	Cost Accounting Standards (Apr 1998)
52.230-3	Disclosure and Consistency of Cost Accounting Practices (Apr 1998)
52.230-5	Cost Accounting Standards - Educational Institutions (Apr 1998)
52.230-6	Administration of Cost Accounting Standards (Nov 1999)
52.244-1	Subcontracts - Fixed Price Contracts (Feb 95)
252.205-7000	Provision of Information to Cooperative Agreement Holders (Dec 91)
252.219-7003	Small Business and Small Disadvantaged Business Subcontracting Plan (DOD Contracts) (Apr 96)
252.219-7005	Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions (Nov 95)
252.249-7001	Notification of Substantial Impact on Employment (Dec 91)

Applicable when fixed price is greater than \$550,000:

52.215-10	Price Reduction for Defective Cost or Pricing Data (Oct 97)
52.215-12	Subcontractor Cost or Pricing Data (Oct 97)
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits other than Pensions (PRB) (Oct 1997)
252.215-7000	Pricing Adjustment (Dec 91)

Applicable when fixed price is greater than \$1,000,000:

52.222-26	Equal Opportunity Preaward Clearance (Apr 2002)
52.243-7	Notification of Changes (Apr 84) (Note: Paragraph (b) - 30 days; paragraph (d) -60 days)

Applicable when fixed price is greater than \$5,000,000:

252.203-7002	Display of DOD Hotline Poster (Dec 91)
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Effective 12/03/09