

The University of Alabama at Birmingham

PURCHASE ORDER TERMS AND CONDITIONS

SECTION 1: ACCEPTANCE:

This Purchase Order provides an offer to purchase that is given for immediate acceptance by the Seller. The full or partial performance by Seller constitutes an acceptance expressly limited to the terms herein and any additional or different terms suggested by Seller are hereby rejected unless expressly agreed to in writing by Purchaser. For purposes of clarity, Purchaser hereby gives notice that it objects to any terms or conditions contained in any document which has been or may in the future be supplied by Seller to Purchaser which are in addition to, different from, inconsistent with, or attempt to vary any of the terms or conditions of this Purchase Order, including those which appear in any quotation, acceptance or acknowledgment or written confirmation by Seller or by reference to a website, link in a “click-through” agreement or similar document or agreement, and Purchaser hereby rejects them, unless Purchaser expressly agrees in a duly executed writing to such term(s) or conditions. Unless Seller promptly notifies Purchaser to the contrary, Seller will make prompt delivery on or before the date specified in the Purchase Order.

SECTION 2: PROVISION OF GOODS AND/OR SERVICES:

2.1 **GOODS AND SERVICES.** Seller agrees to provide to Purchaser the materials, supplies, equipment or other goods (“Goods”) and/or services (“Services”) specified in the Purchase Order.

2.2 **COMPLIANCE WITH LAWS AND POLICIES.** Seller’s supply of the Goods and/or performance of the Services shall be in compliance with all applicable standards and industry codes and all applicable federal, state and local laws, ordinances and regulations. Seller shall possess or obtain all licenses and permits necessary for the supply of the Goods and/or performance of the Services at its expense. If Seller or its agents, subcontractors or employees will visit Purchaser’s campus in the performance of this Purchase Order, Seller agrees that they will comply with Purchaser’s policies while present on campus.

2.3 **INSPECTION AND REJECTION.** The Goods and/or Services provided will be exactly as specified in the Purchase Order, free from all defects in Seller’s performance, design, workmanship and materials, merchantable, and, except as otherwise provided herein, will be subject to inspection and test by Purchaser. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, Purchaser may reject them, require Seller to correct them without charge, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. Inspection by Purchaser prior to shipment does not relieve Seller of full responsibility for furnishing Goods and Services strictly in accordance with specifications. Quantities furnished in excess of those specified in this Purchase Order will not be accepted and will be held at Seller’s risk.

2.4 **OCCURRENCE.** In the event of any occurrence which is expected to result in the Goods being provided or the Services being performed in a timeframe different from the timeframe specified in this Purchase Order, or any occurrence which will result in the Goods and/or Services failing to conform to the terms of this Purchase Order, Seller shall inform Purchaser of this occurrence in writing within forty-eight (48) hours of becoming aware of the occurrence, and shall state the steps being taken to minimize the effect of the occurrence on the supply of the Goods and/or performance of the Services. In such event, Seller shall take all steps necessary to expedite the performance of the Services and/or cause the Goods to conform with the terms of this Purchase Order.

2.5 SHIPPING INSTRUCTIONS AND PAPERS. Unless otherwise specified, Seller shall ship the Goods prepaid via the cheapest common carrier F.O.B. Destination. If terms must be F.O.B. Shipping Point, Seller shall prepay and list shipping charges on invoices. Substantiation of prepaid freight and express must be attached to Seller's invoices. Purchaser cannot accept C.O.D. shipments. A copy of each packing slip, bill of lading, freight and expense bills applicable to this Purchase Order must be mailed to the consignee. All shipping papers must show the declared value.

2.6 PACKING AND CARTAGE. No extra charge will be allowed for packing, cartage or containers unless so specified in the Purchase Order.

2.7 CANCELLATION. The Purchaser reserves the right to cancel the entire Purchase Order or any portion thereof if Seller fails to make delivery accordance with specifications.

2.8 CHANGES. No change in quantities, price, specifications, terms or shipping instructions as set forth in this Purchase Order will be allowed except on written authority of the Purchasing Agent. The Purchaser reserves the right to cancel any unshipped portion of this Purchase Order. Time of delivery is part of the essence of this Purchase Order and the Purchase Order is subject to cancellation for failure to deliver on time.

SECTION 3: PAYMENT; PAYMENT SCHEDULE:

3.1 PAYMENT FOR WORK. Purchaser will pay Seller for the Goods and/or Services based on the fees and prices stated on the Purchase Order. Unless otherwise contested by Purchaser, Purchaser shall make payment(s) to Seller within thirty (30) days of receipt of invoice from Seller. Total compensation shall not exceed the designated amount set forth in the Purchase Order without additional written agreement of the Parties. Cash discount period on all invoices shall commence on the date on which the correctly completed invoice or shipment is received by Purchaser, whichever is later. If an adjustment or damage occurs on a shipment subject to cash discount, discount will be taken effective on date final approval for payment is authorized. Seller and its officers, employees, and agents will adhere to Purchaser's policies for reimbursement of travel expenses found at <https://www.uab.edu/financialaffairs/traveling/independent-contractor>.

3.2 LOSS OF FUNDING. Performance by Purchaser under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Alabama State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, then Purchaser will issue written notice to Seller, and Purchaser may terminate this Purchase Order without further duty or obligation hereunder. Furthermore, to the extent the Goods and/or Services are being funded by a third party such as a federal granting agency, performance by Purchaser under this Purchase Order may be dependent upon its receipt of funds from that third party. If funding is not received, Purchaser will issue written notice to Seller, and Purchaser may terminate this Purchase Order without further duty or obligation hereunder. Seller acknowledges that receipt of funds is beyond the control of Purchaser.

SECTION 4: DATA; COMPLIANCE AND CONFIDENTIALITY:

4.1 OWNERSHIP OF PURCHASER DATA. The Parties agree and acknowledge that any data provided by Purchaser to Seller in connection with the Goods and/or Services or data originating with Purchaser to which Seller has access shall remain the exclusive property of the Purchaser. Seller will not share any data obtained from Purchaser, or any Goods or Services created by Seller with the use of Purchaser data, with other entities for any reason without first obtaining express, written consent from Purchaser authorizing such specific disclosure. Upon the expiration or earlier termination of this Purchase Order, or any portion thereof, Seller shall provide Purchaser promptly with a copy of all data owned by Purchaser in a format to be designated in Purchaser's reasonable discretion.

4.2 COMPLIANCE AND CONFIDENTIALITY. Seller will keep confidential and safeguard the security of any information relating to personal, financial, or other non-public data of Purchaser it receives during the course of its performance pursuant to this Purchase Order. Seller will comply with all applicable state and federal laws relating to data privacy and security of Purchaser's data, including, without limitation, the Gramm-Leach-Bliley Act; the Health Insurance Portability and Accountability Act; the Family Educational Rights and Privacy Act; and the Payment Card Industry Security Standards Council requirements. Seller will assist and cooperate in Purchaser's efforts to confirm Seller's compliance with the terms of this section, including the execution of separate agreements which may be required by applicable law. Seller will promptly notify Purchaser, in writing, of each instance of unauthorized access, attempted unauthorized access, or use of confidential information that could result in harm or inconvenience to the owner of the information or Purchaser; or of any unauthorized disclosure, misuse, alteration, destruction or other compromise of the confidential information. Within thirty (30) days of the termination or expiration of this Purchase Order, Seller will destroy all records in its possession that contain confidential information, and will deliver to Purchaser a written certification of the destruction.

SECTION 5: INTELLECTUAL PROPERTY INFRINGEMENT AND PURCHASER MARKS:

5.1 INFRINGEMENT. Seller warrants the Goods and Services do not infringe any letters patent, copyrights, or other intellectual rights granted by the United States and Seller shall defend, indemnify and hold harmless Purchaser, its employees and agents from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other intellectual property rights of a third party arising out of, in connection with or resulting from this Purchase Order or the Goods or Services provided under this Purchase Order.

5.2 PURCHASER MARKS/LOGOS AND OTHER INDICIA. Seller acknowledges and agrees that Purchaser owns the rights to its name and the other symbols, domain names, trademarks, service marks, logos, and graphics associated with or referring to Purchaser (collectively the "Indicia"). Seller shall not have any right to use any of the Indicia without the prior express written consent of Purchaser. Seller hereby irrevocably assigns any domain name, trademark, or service mark registration it obtains or applies for utilizing the Indicia to Purchaser without compensation.

SECTION 6: INSURANCE AND INDEMNIFICATION:

6.1 INSURANCE. Seller shall carry and maintain the following insurance policies or self-insurance coverage with the following basic minimum insurance limits:

Worker's Compensation

Workers' Compensation – Statutory
Employer's Liability - \$1,000,000.00

Comprehensive General Liability

Each Occurrence - \$1,000,000.00
Products-Complete Operations Aggregate -
\$2,000,000.00
Personal & Advertising -\$1,000,000.00 injury

Automobile Liability

(Required if Seller uses an automobile during the performance of the Purchase Order)

Bodily injury: \$1,000,000.00 Each Person; \$1,000,000.00 Each Occurrence

Property damage: Each occurrence limit of \$1,000,000; \$1,000,000.00 Combined Single Limit

Due to the nature of some projects, Purchaser reserves the right to require additional limits of liability coverage. **Prior to any activity commencing under this Purchase Order, Seller shall deliver to Purchaser, a Certificate of Insurance or Coverage evidencing that all such policies or coverage are in force, and naming The Board of Trustees of The University of Alabama for The University of Alabama at Birmingham, and its respective trustees, directors, officers, employees, agents, and representatives as additional insureds thereon.** Unless precluded by law, all policies shall waive the right to recovery or subrogation against Purchaser and its respective

trustees, directors, officers, employees, agents, and representatives. If any of the above-based insurance coverage is written on a claims-made form, it will continue for three (3) years following termination of this Purchase Order.

6.2 **INDEMNIFICATION.** Unless caused by the negligence or willful misconduct of Purchaser, its affiliates or their employees, Seller agrees to defend, release, discharge, indemnify, and hold harmless Purchaser, its affiliates, and their respective trustees, directors, officers, employees, agents, and representatives (the “Purchaser Indemnitees”), from any and all allegations or claims for personal injury, death, or property damage, and any other losses, damages, claims, suits, rights of action, costs, liabilities, charges or expenses, including attorney’s fees, that arise out of, are caused by, in connection with, or are related to the Goods and/or Services or this Purchase Order.

In the event that Seller is a state or federal public entity that cannot agree to indemnify and defend pursuant to the laws applicable to it, the Parties agree to delete the requirement for Seller to indemnify and defend. Instead, Seller agrees to be responsible for any liability resulting from the negligent acts and omissions or willful misconduct of its employees, directors, agents and subcontractors.

SECTION 7: SELLER’S REPRESENTATIONS, WARRANTIES, CERTIFICATIONS AND OTHER COVENANTS:

7.1 **REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants, as an inducement to Purchaser to execute this Purchase Order (such representations and warranties shall survive any termination of the Purchase Order), that: (a) Seller is financially solvent, able to pay all debts as they mature, and has sufficient working capital to provide the Goods and/or Services and perform all obligations required of it under this Purchase Order; (b) Seller’s performance of this Purchase Order, is within its duly authorized powers; (c) Seller possesses a high level of experience and expertise in providing goods and services such as the Goods and/or Services to be provided pursuant to this Purchase Order; and (d) Seller will provide the Goods and/or Services with the care, skill and diligence in accordance with such experience and expertise.

7.2 **COMPLIANCE.** To the extent not exempt, Seller shall abide by the requirements of 41 CFR §§60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individual with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. Seller represents that Goods and Services covered by this Purchase Order meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of 1970 NO. 2006 and its regulations in effect or proposed as of the date of this Purchase Order. When applicable, all Goods and Services must also meet or exceed other United States federal requirements including but not limited to those promulgated under the Americans with Disabilities Act and the Omnibus Reconciliation Act of 1980, and requirements promulgated by the Food and Drug Administration, etc.

7.3 **TECHNOLOGY ACCESSIBILITY:** For web-based technology, Seller warrants that Goods and Services provided pursuant to this Purchase Order conform to the W3C Web Content Accessibility Guidelines, version 2.0 (WCAG 2.0) at conformance levels A and AA. In the event Goods and Services provided under this Purchase Order are not capable of being made to fully conform to WCAG 2.0 A and AA, such Goods and Services shall be made to conform to WCAG 2.0 A and AA as fully as possible, and Purchaser shall be promptly notified of such lack of conformance and the reason therefor.

For non-web based technology, Seller warrants that the Goods or Services to be provided under this Purchase Order comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended

(29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Seller agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Failure to comply with the requirements of this section, "Technology Accessibility," shall constitute a breach and be grounds for termination of the Purchase Order and rejection of the Goods and Services provided hereunder.

7.4 THIRD PARTY SOFTWARE: If the Purchase Order contemplates or requires the use of third-party software, Seller represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Purchase Order or that it has authority to modify such third-party software's terms and conditions to be subordinate to this Purchase Order.

7.5 BOYCOTTING ACTIVITIES. By entering into this Purchase Order, in accordance with *Ala. Code § 41-16-5*, Seller represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

7.6 DEBARMENT AND SUSPENSION. Seller warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts, or participation in federal assistance programs or activities.

7.7 DISCLOSURE STATEMENT. By accepting payments agreed to in this Purchase Order, Seller certifies that, to its actual knowledge, no Purchaser employee or official, and no family members of a Purchaser employee or official, will receive a benefit from these payments, except as has been previously disclosed, in writing, to Purchaser on the Vendor Disclosure Statement Seller provides to the Purchaser.

7.8 CERTIFICATION PURSUANT TO ALABAMA CODE § 41-4-116. Alabama law (*Ala. Code § 41-4-116 (1975)*) provides that every proposal submitted and agreement executed shall contain a certification that vendors, contractors, and all of their affiliates that make sales for delivery into Alabama or leases for use in Alabama are registered, collecting, and remitting Alabama state and local sales, use, and/or lease tax on all taxable sales and leases into Alabama. Seller hereby certifies that, to the extent applicable, it is in full compliance with *Ala. Code § 41-4-116*; it is not barred from entering into this Purchase Order pursuant to *Ala. Code § 41-4-116*; and it acknowledges that Purchaser may declare the Purchase Order void if the certification is false.

7.9 COMPLIANCE WITH ALABAMA CODE § 31-13-1, ET SEQ. By entering into this Purchase Order, in compliance with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, *Ala. Code § 31-13-1, et seq.*, Seller affirms, for the duration of this Purchase Order, that it will not violate federal immigration law, or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, if Seller is found to be in violation of this provision, Seller shall be deemed in breach of this Purchase Order, and shall be responsible for all damages resulting therefrom. Furthermore, Seller certifies that it will provide its one-page E-Verify Company Profile Document to Purchaser. During the performance of this Purchase Order, Seller shall participate in the E-Verify Program, and shall verify every employee that is required to be verified according to applicable federal rules and regulations.

7.10 PRESS RELEASES. Seller will not issue any press releases, advertise, nor post information concerning its relationship with Purchaser, the Goods and/or Services provided under this Purchase Order or this Purchase Order, without the prior written approval of Purchaser. Purchaser approvals can only be given by the Purchaser's Office of Marketing and Communications.

SECTION 8: GOVERNING LAW; DISPUTE RESOLUTION; VENUE:

8.1 GOVERNING LAW, DISPUTE RESOLUTION AND VENUE. Alabama law, without regard to its conflicts of law provisions, shall exclusively apply to this Purchase Order, its terms, questions of immunity related to Purchaser, and any disputes between the Parties. Any claim against Purchaser must be made through the State of Alabama Board of Adjustment. Exclusive jurisdiction and venue of any claims that are not barred by immunity, nor required to be filed before the State of Alabama Board of Adjustment, shall lie in the United States District Court for the Northern District of Alabama or the Circuit Court of Jefferson County, Alabama. In the event that Seller is a state or federal public entity that cannot agree to Alabama governing law or Alabama venue and jurisdiction pursuant to the laws applicable to it, the Parties agree to remain silent with regard to provisions of governing law, jurisdiction and venue.

8.2 NO WAIVER OF SOVEREIGN IMMUNITY. Purchaser does not waive, and specifically reserves, all immunities to which it is entitled under the constitution, laws, and statutes of the United States and the State of Alabama, including, without limitation, the immunities contained within *Article I, §14* of the Constitution of Alabama. Seller, if Seller is a governmental entity with sovereign immunity, specifically reserves all immunities to which it is entitled under the constitution, laws, and statutes of the United States and the state in which it is located. Any provision of this Purchase Order that may be considered a consent to suit or a waiver of immunity by Purchaser or Seller, if Seller is a governmental entity with sovereign immunity, is hereby stricken and rendered null and void.

8.3 ATTORNEY AND COLLECTION FEES. Each Party shall be responsible for its own attorney's fees in regard to enforcement or breach of this Purchase Order and its terms or fees for collection of any amounts due.

SECTION 9: MISCELLANEOUS:

9.1 ASSIGNMENT. The rights of Seller under this Purchase Order may not be assigned, and its obligations hereunder may not be delegated, without the prior written consent of Purchaser, which consent may be withheld for any reason. Notwithstanding the foregoing, this Purchase Order shall inure to the benefit of both Seller's and Purchaser's successors and assigns.

9.2 INDEPENDENT CONTRACTOR. Nothing in this Purchase Order, nor its terms, shall be deemed to make either Party, or any employee, agent, or representative of either Party, an employee, agent or representative of the other Party. The Parties acknowledge that Seller is an independent contractor and has sole responsibility for and control over the design, content, accuracy, and quality of the Goods and/or Services.

9.3 THIRD-PARTY BENEFICIARY. This Purchase Order shall inure to the benefit of and be binding upon the Parties, their successors and assigns. No third-party beneficiary rights or benefits whatsoever are expressly or impliedly provided herein.

9.4 LEGAL NOTICES. A copy of any legal notice sent by Seller regarding Purchaser or received by Seller from a third party and related to Purchaser, will also be sent to: University Procurement, University of Alabama at Birmingham, 801 Financial Services Building, 801 5th Avenue South Birmingham, AL 35233.

9.5 SURVIVAL. Notwithstanding termination of this Purchase Order or Purchaser's acceptance of the Goods and/or Services, any duty or obligation of Seller which has not been fully observed, performed and/or discharged, and any right, unconditional or conditional, which has been created for the benefit of Purchaser and which has not been fully enjoyed, enforced and/or satisfied, shall survive such termination or acceptance until such duty or obligation has been fully observed, performed and/or discharged and such right has been fully enjoyed, enforced and/or satisfied, including, without limitation, Section 4; Data, Compliance and Confidentiality; Section 4.2:

Compliance and Confidentiality; Section 5.1: Infringement; Section 5.2: Purchaser Marks/Logos and Other Indicia; Section 6.1: Insurance; Section 6.2: Indemnification; and Section 7.1: Representations and Warranties.

9.6 SEVERABILITY. All of the terms, provisions, and conditions of this Purchase Order, and its terms, shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable to any extent, then, to the extent that such provisions are valid and enforceable, a court or tribunal of competent jurisdiction shall construe and interpret this Purchase Order, and its terms, to provide for maximum validity and enforceability.

9.7 CAPTIONS. The captions and headings in this Purchase Order are for convenience of reference only, and in no way define, limit, or describe the scope or intent of any provision or sections.