

UNIVERSITY OF THE PACIFIC
PURCHASE ORDER
TERMS AND CONDITIONS

These Terms and Conditions (“**Terms**”) are hereby incorporated into the accompanying Purchase Order (“**Order**”) by this reference. The Order and these Terms (collectively, the “**Agreement**”) comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communication, both written and oral. These Terms prevail over any of Vendor’s general terms and conditions. This Agreement expressly limits Vendor’s acceptance of the terms of this Agreement and fulfillment of this Order constitutes Vendor’s acceptance of these Terms.

CHANGES No changes to the Terms, conditions, or other specifications of the Agreement may be made without the mutual agreement of the parties in writing. Any expense incurred by unauthorized changes without Buyer’s written consent will be charged back to the Vendor.

ASSIGNMENT Vendor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Order without the prior written consent of the Buyer. Any permitted assignee must assume all obligations of the Order and these Terms.

PRICE AND INVOICING The price of the goods and services is the price stated in the Order (“**Price**”). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs, insurance, customs duties, and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs, without the prior written consent of Buyer. Vendor may not invoice Buyer until order is shipped. Invoices must: (1) Itemize all charges separately and show unit cost for each item; (2) include Purchase Order number; and (3) Catalog or style numbers must be supplemented by proper description of items to permit prompt identification. Mail all invoices in duplicate and statements to:

University of the Pacific
Attn: Accounts Payable
3601 Pacific Avenue
Stockton, CA 95211
With copy by e-mail to: accountspayable@pacific.edu

PAYMENT TERMS Payment will be made on undisputed invoices within forty-five (45) calendar days (excluding holidays) after receiving the invoice. Payment under this Order does not constitute final acceptance of goods or other charges or waiver of any rights regarding defects and will be subject to deduction of any valid claim arising from this Order. The parties shall seek to resolve any payment disputes expeditiously and in good faith. Vendor shall continue performing its obligations under this Agreement notwithstanding any such dispute.

INSPECTION, REJECTION OF NONCONFORMING GOODS, AND ACCEPTANCE The goods delivered or services performed are subject to inspection on or after the Delivery Date and are subject to approval by the Buyer prior to final acceptance. All goods not in compliance or otherwise nonconforming with applicable specifications or warranties may at Buyer’s option be rejected and returned at Vendor’s expense. If Buyer requires replacement of the goods, Vendor shall at its expense, promptly replace the nonconforming or defective goods and pay for all related expenses (such as transportation charges). If Vendor fails to timely deliver replacement goods, Buyer may replace them with goods from a third party and charge Vendor the cost thereof and terminate this Agreement for cause. For goods delivered in excess or less than the quantity ordered or services performed that are not to specification, payment may be withheld until the Buyer and the Vendor can reach an agreement regarding such matter. Any inspection or other action by Buyer shall not reduce or otherwise affect Vendor’s obligations under this Agreement.

WARRANTIES Vendor warrants that goods furnished under this Order will: (1) conform to the specifications provided to Buyer; (2) will be produced and delivered in accordance with all applicable federal, state and local laws and regulations; (3) be free from any defects in workmanship, material and design, including

WARRANTIES (continued)	<p>latent defects; and (4) be free and clear of all liens, security interest or other encumbrances. These warranties survive any delivery, inspection, acceptance or payment by Buyer.</p> <p>Vendor warrants that any services furnished under this Order will: (a) comply with all applicable laws, rules and regulations and policies of Buyer, and general health and safety practices and procedures; and (b) be performed by persons who are properly licensed, certified, or accredited as required by applicable law who are suitably skilled, experienced and qualified to perform the services.</p>
DEFECTIVE ITEMS AND ITEMS NOT SPECIFIED	<p>Defective items or items not specified shall be returned for credit, replacement, repair, or refund as designated by the Buyer at Vendor's expense including all transportation/shipping costs incurred.</p>
SUBSTITUTIONS	<p>Unauthorized substitutions will be made entirely at the Vendor's risk and if not accepted by Buyer will be returned without authorization at Vendor's expense including all transportation/shipping and other costs incurred.</p>
DELIVERY	<p>Vendor shall deliver the goods and/or services specified in the Order: (1) in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties ("Delivery Date"); (2) to the address specified in the Order ("Delivery Point") during Buyer's normal business hours or as otherwise instructed by Buyer.</p> <p>Vendor acknowledges that time is of the essence with respect to Vendor's obligations under this Agreement and the timely delivery of the goods and services. Goods put in transit after the Delivery Date without Buyer's prior consent, at Buyer's discretion may be refused or returned at Vendor's expense including all transportation costs incurred.</p>
SHIPPING, ROUTING AND PACKING	<p>Delivery shall be made to FOB (Delivery Point) and any packing list must include the Purchase Order number. Vendor shall pack all goods for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the goods are delivered in undamaged condition. Shipment by freight of goods which may be damaged by excessive heat or cold shall be so declared to provide proper protection in transit, otherwise loss will be assumed by Vendor.</p> <p>Goods must be shipped under proper description to take the lowest possible transportation rate and shall be packed to conform with carrier requirements. Excessive transportation charges resulting from improper description of goods, and/or loss or damage from sub-standard packing will be assumed by Vendor. Declarations of value made on freight shipments shall cover actual value of content, otherwise Vendor will assume all loss in excess of declared valuation</p>
TITLE AND RISK OF LOSS	<p>Title and risk of loss passes to Buyer upon delivery of the goods to the Delivery Point.</p>
CANCELLATION OF ORDER AND TERMINATION OF AGREEMENT	<p>In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Vendor, either before or after the acceptance of the goods or the seller's delivery of the services, if Vendor has not performed or complied with any of these Terms, in whole or in part. Specifically, Buyer reserves the right to cancel this Order if the goods are not delivered in full by the Delivery Date and may return goods (all or part) for failure to comply with any one or more of these provisions. If Buyer terminates the Agreement for any reason, Vendor's sole and exclusive remedy is payment for the goods received and accepted and services accepted by Buyer prior to the termination.</p>
INDEMNIFICATION	<p>Vendor agrees to indemnify, hold harmless, and defend Buyer from any and all liability and expense (including reasonable attorneys' fees and costs) for losses, penalties, damages, and injury to persons (including death) or property (real or personal) in connection with: (1) the goods and/or services provided under this Order; (2) Vendor's negligence, willful misconduct or breach of these Terms; and (3) any claim that Buyer's possession or use of the goods or services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.</p>
LIMIT ON LIABILITY	<p>NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT VENDOR'S LIABILITY FOR: (1) VENDOR'S BREACH OF ITS OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION; (2) DAMAGES TO THE EXTENT CAUSED BY THE FRAUD, GROSS</p>

NEGLIGENCE OR WILLFUL MISCONDUCT OF VENDOR'S EMPLOYEES, DIRECTORS, OFFICERS OR SUBCONTRACTORS; OR (3) VENDOR'S DEFENSE AND INDEMNITY OBLIGATIONS AS STATED IN THIS AGREEMENT.

CONFIDENTIALITY At all times after receiving confidential or proprietary Buyer information (“**Confidential Information**”), Vendor will keep in confidence and trust and not disclose, reveal or divulge any such Confidential Information, directly or indirectly, intentionally or negligently to any person, company or other entity, for any purpose or reason, that Vendor learns of or receives during the Term of this Agreement. Vendor will not use, reproduce, or disclose to others any Confidential Information without the Buyer’s advance written consent, except (i) as may be directly necessary in the ordinary course of performance of this Agreement, or (ii) as permitted by law or otherwise in accordance with a judicial or other governmental order, provided however, that, to the extent reasonably possible, Vendor shall give Buyer reasonable notice prior to making any such disclosure in sufficient time so the Buyer may object to such disclosure if it so chooses, and provided further, that Vendor shall disclose only that portion of the Confidential Information that it is legally required to disclose. Vendor may also disclose Confidential Information to the personnel within its organization, affiliates, and its legal and accounting advisors who require it in connection with the Vendor’s business, provided, however that Vendor shall require such recipients to use the Confidential Information solely for these purposes and keep the Confidential Information strictly confidential.

COMPLIANCE WITH APPLICABLE LAWS Vendor shall comply with all applicable federal, state, and local laws, regulations and orders, including without limitation, all requirements of the Occupational Health and Safety Act, and any applicable safety requirements of other relevant authorities having proper jurisdiction. Vendor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

NON-DISCRIMINATION **If the Order exceeds \$10,000, the parties 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 individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, national origin, disability, or veteran status.**

SUBCONTRACTORS Vendor shall obtain Buyer’s written consent before engaging any subcontractor to provide services to Buyer under this Agreement. Buyer’s approval of any subcontractor shall not relieve Vendor of its obligations under this Agreement and Vendor shall remain fully responsible for the performance of such subcontractors. Nothing contained in this Agreement shall create any contractual relationship between Buyer and the Vendor subcontractor.

INSURANCE Vendor will secure and maintain insurance providing coverage for liabilities to (a) Buyer and its affiliates and (b) any third parties, in each case for bodily injury (personal injury) and damage to property in amounts sufficient to protect Buyer in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Vendor further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Vendor in the jurisdiction or jurisdictions in which Vendor’s operations take place.

FORCE MAJEURE Neither party shall be liable for any failure or delay in performing any provision of this Agreement to the extent such failure or delay results from acts beyond the affected party’s reasonable control, without such party’s fault or negligence, and which by its nature could not have been foreseen or if it could have been foreseen, was unavoidable (“**Force Majeure Events**”). Force Majeure Events include without limitation, acts of God, flood, fire, earthquake, explosion, war, hostilities (whether war is declared or not), riot or other civil unrest, government order or law or other governmental action, embargoes or blockades, labor strikes, pandemics, epidemics, shortage of adequate power or transportation facilities. The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the Force Majeure Event is expected to continue and shall use diligent efforts to end the failure or delay promptly and minimize the effect of such Force Majeure Event to recommence performance as promptly as possible. If a Force Majeure Event prevents Vendor from

carrying out its obligations under this Agreement for a continuous period of more than thirty (30) calendar days, Buyer may terminate this Agreement immediately by giving written notice to Vendor.

RELATIONSHIP OF THE PARTIES

Vendor is an independent contractor of Buyer. No provision of this Agreement is intended to create nor shall be construed to create a partnership, joint venture, agency, or any other relationship between Vendor and Buyer other than that of independent entities contracting with each other solely for the purpose of effectuating the provisions of this Agreement. Neither Vendor nor its employees or subcontractors are authorized to bind Buyer or make any representations on its behalf in any matter.

GOVERNING LAW

This Agreement, and any dispute between the parties arising out of this Agreement, shall be governed by, construed and enforced in accordance with the laws of the State of California, excluding its conflict of laws rules that would impose the laws of any other jurisdiction.

DISPUTES

In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the parties shall, as soon as reasonably practicable after one party gives written notice of a Dispute to the other party (“**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the parties. If any Dispute is not resolved to the mutual satisfaction of the parties within thirty (30) days (excluding holidays) after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the parties may choose any other available legal means to resolve the Dispute. Each party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies. Any and all legal action that is initiated to enforce or interpret any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court presiding over San Joaquin County, California. In the event there is any controversy or claim arising out of or relating to this Agreement, or to the interpretation, breach or enforcement thereof, the prevailing party may recover the reasonable attorneys’ fees and costs incurred by the prevailing party in addition to any other relief to which it may be entitled.

NOTICES

All notices or other communications given hereunder shall be in writing and shall be deemed to have been duly given (i) on the date delivered if delivered by personal delivery, email or by overnight delivery service (such as FedEx); or (ii) on the third (3rd) business day after mailing via U.S. registered or certified mail, first class, postage prepaid. Any notices or other communications given hereunder by Vendor must include reference to the Vendor’s name. Either party may specify a different address by written notice to the other party in accordance with this section. Notices to Vendor shall be sent to the address set forth in the Order; and notices to Buyer shall be addressed as follows:

University of the Pacific
Attn: Contracts Management Office
3601 Pacific Avenue
Stockton, CA 95211
With a copy by e-mail to: contracts@pacific.edu

MISCELLANEOUS PROVISIONS

This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective permitted successors, heirs, and assigns. Except as expressly stated herein, no provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement. All section captions and headings in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement. This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby. This Agreement may be executed in several counterparts, each of which so executed shall constitute one and the same instrument. A signed copy of this Agreement delivered electronically (e.g. by email or facsimile) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. A copied, scanned, electronic, or faxed signature shall be treated the same as an original signature.
