

NEW MEXICO STATE UNIVERSITY STANDARD TERMS AND CONDITIONS

1. **INSPECTION.** The University may inspect, at any reasonable time, any part of Seller's plant or place of business, which is related to performance of this Purchase Order. Final Inspection will be made at the destination upon completion of delivery of goods and services. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final Inspection shall include any testing or inspection procedures required by the specifications.
2. **WARRANTIES.** Seller warrants the good and/or services furnished to be exactly as specified in this Purchase Order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications Incorporated herein and with any samples furnished by Seller. All applicable UCC warranties express and implied are incorporated herein.
3. **ACCEPTANCE AND REJECTION.** If prior to final acceptance, any goods or services are found to be defective or not as specified, or if the University is entitled to revoke acceptance of them the University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at the University's option. Seller shall reimburse the University for all incidental and consequential costs related to unaccepted goods or service.
4. **PAYMENT TERMS.** Upon written request from Seller for payment, the University shall, within thirty (30) days, issue a written certification of complete or partial acceptance or rejection, with payment to follow within thirty (30) days after certification of acceptance. Late payment charges shall be ½ of 1% per month.
5. **DISCOUNTS.** If prompt payment discounts apply to this Purchase Order any discount time will not begin until the materials, supplies, or services have been received and accepted and a correct invoice received by the appropriate University Department. In the event testing is required prior to acceptance the discount time shall begin upon the completion of the tests.
6. **TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to the University upon acceptance at the FOB point specified, subject to the right of the University to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from the University's Purchasing Department. Time is of the essence and the Purchase Order is subject to termination for failure to deliver on time.
7. **FOB.** Unless stated otherwise, the price for goods is F.O.B. the place of destination, and the place of destination is the University's designated campus address.
8. **ASSIGNMENT.** This Purchase Order is assignable by the University. Except as to any payment due hereunder, this Purchase Order is not assignable by Seller without written approval from the University.
9. **AGREEMENT.** This Purchase Order is the sole and entire agreement between the parties; any documents incorporated into this agreement are listed explicitly on the

front side of this Purchase Order, or are incorporated by implication by the terms of this Purchase Order. Any terms inconsistent with or in addition to this Purchase Order proposed by Seller are deemed rejected unless agreed to in writing by an appropriate University official.

10. **CHANGES.** The University may make changes within the general scope of this Purchase Order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this Purchase Order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of Seller for adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such charge. Nothing in this Paragraph shall excuse Seller from proceeding with the performance of the Purchase Order as changed hereunder.

11. **TERMINATION AND DELAYS.** The University may by written notice stating the extent and effective date terminate this Purchase Order for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) incidental damages, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of this Purchase Order provided compensation hereunder shall in no event exceed the total Purchase Order price. Such amount will be limited to Seller's actual cost, and may not include anticipated profits. The University shall not be liable for consequential damages. The University may by written notice terminate this Purchase Order in whole or in part for Seller's default if Seller refuses or fails to comply with the provisions of this Purchase order or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, the University may otherwise secure the materials, supplies or service ordered, and Seller shall be liable for damages suffered by the University hereby, including incidental and consequential damages. If after notice of termination, the University determines Seller was not in default or if Seller's Default is due to failure of the University, termination shall be deemed for the convenience of the University. The rights and remedies of the University provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order as used in this paragraph, the word "Seller" includes Seller and his sub-suppliers at any tier.

12. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.** In performing the services required under this purchase order, each party shall be an equal opportunity employer and shall conform to all affirmative action and other applicable requirements; accordingly, each party shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons in the basis of race, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, sexual preference, prior military involvement or in any other manner prohibited by law.

13. **PATENT AND COPYRIGHT INDEMNITY.** Seller shall Indemnify, defend and hold harmless the University against all losses, liabilities, lawsuits, claims. Expenses (including attorneys' fees), costs, and judgments incurred through third party claims of infringement of any copyright, patent, trademark or other intellectual property rights.

14. **INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the goods delivered by Seller or the performance of the work by Seller its agents, employees, subcontractors, or consultants, except to the extent or liability arising out of the negligent performance of the work by or willful misconduct of the University. Seller shall indemnify, defend and hold harmless the University, its officers, agents and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damages and shall pay any damage costs and expenses including attorney's fees, in connection with or resulting from such suit or action. Seller will also indemnify, defend and hold harmless the University against any joint and several liabilities as imposed against the University with respect to strict products liability claims attributable to the fault of the Seller. Seller agrees that it and its subcontractors will maintain general liability, product liability and property damage insurance in reasonable amounts (at least equal to the New Mexico Tort Claims Act limits) covering the above obligation and will maintain workers' compensation coverage covering all employees performing under this Purchase Order on premises occupied by or under the control of the University. The liability of the University will be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41 -4-1 et seq. NMSA 1978, as amended.

For Purchase Orders requiring any change to real property or construction, the contractor shall purchase and maintain statutory limits of Worker's Compensation, and Public Liability and Automobile Liability Insurance as approved by the Regents at the time of signing of the contract. The Regents shall be included as a loss payee and/or additional insured. Certificate of Insurance shall be sent to and filed in the Central Purchasing & Risk Management Administration Office, main campus of NMSU. The certificate holder shall be Board of Regents, New Mexico State University. Public Liability and Automobile Liability Insurance shall include at least the following coverage:

\$400,000 - Bodily Injury, each person, excluding medical and medically-related expenses

\$300,000 - Medical and medically-related expenses

\$750,000 - Bodily Injury, each occurrence, excluding medical and medically-related expenses

\$300,000 - Medical and medically-related expenses

\$100,000 - Property Damage, each occurrence

Contractor shall furnish Owner with certificates of insurance with the contract documents and prior to the commencement of work.

15. **PAYROLL OR EMPLOYMENT TAXES.** No federal, state, or local income, payroll or employment taxes of any kind shall be withheld or paid by the University with respect to payments to Seller or on behalf of Seller its agents or employees. Seller shall withhold and pay any such taxes on behalf of its employees as required by law. The payroll or employment taxes that are subject to this paragraph include but are not limited to FICA, FUTA, federal personal income tax, State personal income tax, state disability insurance tax, and state unemployment insurance tax. If Seller is not a corporation, Seller further understands that Seller may be liable for self-employment (social security) tax, to be paid by Seller according to law.

16. **WORKERS COMPENSATION.** No workers compensation insurance has been or will be obtained by NMSU on account of Seller or its employees or agents. Seller shall comply with the workers compensation laws with respect to Seller and Seller's employees and agents

17. **INDEPENDENT BUSINESS.** Neither Seller nor any of its agents shall be treated as an employee of the University for any purpose whatsoever. Seller declares that Seller is engaged in an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind.

18. **SELLERS EMPLOYEES AND AGENTS.** Seller shall have complete charge and responsibility for persons employed by Seller and engaged in the performance of the specified work. The Seller, its agents and employees state that they are independent contractors and not employees of the University. Seller, its agents and employees shall accrue leave, retirement, insurance, bonding or any other benefit afforded to employees of the University as a result of this Purchase Order.

19. **PENALTIES.** The Procurement Code, Section 13-1 -38 et seq. NMSA 1978, as amended imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose criminal penalties for bribes, gratuities and kickbacks.

20. **CONFLICT OF INTEREST.** Seller shall disclose to the University Purchasing Department the name(s) of any University employee or member of the Board of Regents who has a direct or indirect financial interest in the Seller or the proposed transaction. A university employee (or Regent) has a direct or indirect financial interest in the Seller or in the proposed transition if presently or in the proceeding twelve (12) months the employee/regent or a close relative has an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, has received grant, travel, honoraria or other similar support from the Seller or has a right to receive royalties from the Seller. Seller shall file a Conflict of Interest Disclosure form with the University Purchasing Department.

21. **OTHER APPLICABLE LAWS.** Any provision required to be included in an agreement of this type by any applicable and valid executive order, federal state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

22. RIGHT TO AUDIT: The University reserves the right to audit the contractor's records associated with this contract at any time during the contract period and for a period of up to three years following the expiration or termination of the agreement. Such audit may be conducted by University personnel or a third party under the contract with the University. The University shall give the contractor reasonable notice prior to the conduct of any audit and upon receiving the notice from the University the contractor agrees to fully cooperate with the auditors.