Purchase Order Terms and Conditions

Office of Research

This offer is subject to immediate acceptance and unless so accepted, BUYER reserves the right to cancel.

**Definition:** As used in this order the term FAR means the Federal Acquisition Regulations and appropriate agency supplements in effect on the date of this order.

Notify purchasing agent immediately in the event of any discrepancy or delay. For resolution call the BUYER or Purchasing Department at 614-292-6871 or fax 614-292-6870.

**Order number** and **project number** must appear on every invoice and shipping container.

1. **Acknowledgement**

This Purchase Order as executed by BUYER constitutes the entire agreement between the parties which can be changed only by a written instrument duly executed by an authorized representative of BUYER. Each shipment received by BUYER from the SELLER shall be deemed to be only upon the terms and conditions contained in this agreement notwithstanding any terms and conditions contained in any acknowledgement, invoice or other communication from the SELLER and notwithstanding BUYER's acceptance or payment for any shipment or any similar act of BUYER. Performance by the SELLER in the absence of written acceptance of any changes by the BUYER shall be deemed to be performance in accordance with the terms and conditions of this purchase order.

2. **Quantities**

The quantity of materials or services specified on this order must not be exceeded without first obtaining written consent of BUYER. BUYER will not be responsible for any materials or services furnished without a written order.

3. **Packing and Shipping**

All items must be suitably packed and prepared for shipment to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by BUYER for packing, crating or cartage unless stated in the order. All shipments to be forwarded on one day via one route must be consolidated. Each container must be consecutively numbered and marked to show this purchase order and project number and the container and order numbers must be indicated on bill of lading. Packing sheets, showing this order number and the bill of lading or express receipt showing actual weight, must be included in each package of LCL shipments and with each carload shipment. Items sold f.o.b. shipping point must be shipped prepaid and with the cost added to the invoice. Vendor to be mutually responsible in settling any claims should they occur. Damaged goods will not be accepted. SELLER agrees to declare to the carrier as the value of any shipment made under this order the full invoice value of such shipment.

4. **Delivery**

Delivery time is of the essence and delivery or performance shall be strictly in accordance with the schedules, terms and conditions and exact quantities as specified in this order. The failure of SELLER to meet delivery schedules, or to deliver within reasonable time, as interpreted by the BUYER; failure to make replacement of rejected goods or services as directed by the BUYER, or non-performance or violation of contract provisions shall permit the BUYER, at his discretion, to rescind or cancel the contract without any liability and purchase in open market goods or services of comparable grade to replace those rejected or not delivered. On all such purchases, the SELLER agrees to reimburse The Ohio State University Research Foundation for any expense incurred in excess of contract price. The SELLER further agrees that undiscovered delivery of nonconforming goods or services is not a waiver of the right of the BUYER to insist upon further compliance with these specifications. Whenever SELLER has knowledge that any situation or condition will delay or threaten the time performance of this order, SELLER shall immediately give notice thereof, including all relevant information with respect thereto, to BUYER. Neither BUYER nor SELLER shall be liable for any default due to Acts of God, war, fire, flood, epidemic, strikes or freight...
5. Non-Waiver of Default

Waiver by BUYER of any default hereunder by SELLER shall not be deemed waiver of any subsequent default nor will it be deemed to be evidence of a course of conduct implying waiver of defaults of SELLER on any other transaction.

6. Invoices and Payment

This order number and project number must appear on each invoice. This order must not be invoiced at prices higher than those appearing hereon without authority in writing from the BUYER. Unless otherwise provided in this order, no invoices shall be issued for payments to be made prior to delivery. Individual invoices must be issued for each shipment under this order. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. Payment is contingent upon acceptance of material. All payments are subject to adjustment for shortage or rejection. Cash discount period shall be calculated from date of receipt of acceptable materials or services or acceptable invoice whichever is received the later.

7. Specifications and Warranties

SELLER agrees and expressly warrants that all articles, material and work covered by this order will conform to BUYER'S specifications and to any drawings, designs, samples or other description given to SELLER, or, if not ordered to specifications, will be fit and sufficient for the purpose intended, and that all goods will be merchantable, of good material and workmanship and free from defect and in either case, that all goods and services will be free of any rightful claim of any third party and of any impediment to their use or disposition based upon any patent, copyright, or trade secret or the like or upon any right of privacy or publicity. SELLER’S warranties shall run to BUYER and to The Ohio State University. Without limitation of any rights which BUYER may have at law by reason of any breach of warranty, goods which are not as warranted may be returned at SELLER’S expense or held for SELLER’S instructions at SELLER’S risk, and credit therefore shall be given or the goods replaced as BUYER may direct.

8. Inspection

All goods and services delivered hereunder shall be received subject to BUYER’S inspection and approval and payment therefore, shall not constitute acceptance thereof. After inspection and acceptance SELLER’S liability under this and the preceding paragraph shall be limited to liability for latent defects, fraud or such gross mistakes of the SELLER as amount to fraud.

9. Changes

BUYER may at any time by written notice make changes within the general scope of this order to drawings and specifications, shipping instructions, quantities and delivery schedules. Should any such change increase or decrease the cost of, or the time required for, performance of the order, an equitable adjustment in the price and/or delivery schedule will be made. Any claims for adjustments by SELLER must be made within thirty days from the date the change is ordered or within such additional period of time as may be agreed upon.

10. Responsibility for Property

Unless otherwise provided in this order, SELLER, upon delivery to it or manufacture or acquisition by it, of any materials, parts, tooling or other property the title to which is in BUYER or the government, assumes the risk of and shall be responsible for any loss thereof or damage thereto. SELLER, in accordance with the provisions of this order, but in any event upon completion thereof, shall return such property to BUYER in the condition in which it was received except for reasonable wear and tear and except to the extent that such property has been incorporated in items delivered under this order, or has been consumed in normal performance of work under this order. If SELLER is furnished government owned property for use in connection with this order, SELLER shall comply with the provisions of FAR 52.245-2 Or 52.245-5 And/or the appropriate agency supplemental clause.
11. Indemnity

SELLER agrees to indemnify and save harmless BUYER and The Ohio State University, their officers, agents, employees, successors, and assigns from any loss, damage or liability and all costs and expenses, including but not restricted to attorneys’ fees and costs, arising from, caused by or incident or related to injuries or damages to property including property of BUYER or persons, of the death of any person or persons, including but not restricted to employees and agents of SELLER in the performance of their duties or otherwise which may arise out of or be incident or related in any way to any of the work or things to be performed hereunder, provided further however that nothing here shall require indemnification as to any claims against BUYERS arising under the Ohio Workers’ Compensation Law. SELLER also agrees that any product sold or service rendered hereunder is asserted to infringe any patent, trademark, copyright or the like or to constitute unfair competition to SELLER will indemnify and save BUYER harmless from and against any and all loss, damage or liability resulting from claims asserted or suit instituted against BUYER by any persons whomever, including all judgments rendered and all costs and reasonable attorneys' fees incurred in connection therewith on account of the use or sale of such product or the acceptance and use of such service by BUYER and the SELLER further agrees to defend at SELLER’S expense all such suits.

12. Assignment

SELLER may not assign this order nor any moneys due nor to become due hereunder without the prior written consent of the BUYER, and any assignment made without such consent shall be void as to the BUYER.

13. Subcontracting

SELLER shall not procure or contract for the procurement of any item covered by this order in completed or substantially completed form without first securing the written approval of the BUYER.

14. Title and Risk of Loss

Unless otherwise provided in this order, SELLER shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this order at the f.o.b. point specified on the face hereof and upon such delivery title shall pass from SELLER and SELLER’S responsibility for loss or damage shall cease except for loss or damage resulting from SELLER’S negligence or failure to comply with this order. Passing of title upon such delivery shall not constitute acceptance of the items by BUYER.

15. Cancellation

BUYER may cancel this order, without liability for damages or otherwise, in the event that SELLER becomes insolvent or makes an assignment for the benefit of creditors, or a petition is filed to declare SELLER bankrupt, or notwithstanding the provision hereof headed “Delivery,” if delivery is not made within the time specified or within a reasonable time if no time is specified, or if the quantity or quality of the goods or services delivered hereunder is not as specified herein.

16. Termination

BUYER shall have, in addition to the right to cancel set forth in the paragraph hereof headed “Cancellation,” the right to terminate the performance of work under this contract in whole or in part from time to time depending upon the circumstances and with the effect set forth in the appropriate subpart prescribed in FAR 49.5 Contract Termination Clauses. The provisions contained in FAR 49.5 shall not limit or affect the rights or remedies of BUYER stated in other clauses of this order or provided by law in the event of default or breach by SELLER.

17. Compliance with Federal, State and Local Laws

SELLER warrants that in the performance of this order, it has complied with or will comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, including but not by way of limitation, the applicable provisions of the Fair Labor Standards Act of 1938 as amended (29 U.S.C. Sec. 201-219), The Walsh-Healey Public Contracts Act as amended (41 U.S.C. Sec. 35-45), The Eight-Hour Law of 1912 as amended (40 U.S.C. Sec. 324-326), all laws restricting the use of convict labor and all lawful rules and regulations thereunder. SELLER agrees that this warranty may be considered as the written assurance contemplated by the Fair Labor Standards Act of 1938 as amended that all items delivered hereunder were produced in compliance with said Act.

18. Copyright

Copyright or mask work rights in any material delivered to BUYER shall, to the extent such material was developed or modified for BUYER, be assigned to BUYER.
19. Use of Designs, Data, etc.

SELLER agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data, computer software, chemical compositions, biological specimens or other technical or proprietary information furnished by BUYER and use such items only in the production of items under this order or other orders from BUYER and not otherwise unless BUYER'S written consent is first obtained. Upon completion or termination of this order, SELLER shall return all such items to BUYER or make such other disposition thereof as may be directed or approved by BUYER.

To the extent SUPPLIER shall have access to, use of, disclosure of BUYER'S Data, it agrees to the provisions of this Section. “Data” means any and all electronic or other information that is in BUYER'S possession and control, and any and all such Data that has been disclosed to SUPPLIER. Data may include but is not limited to, information that is: (i) identified with a specific individual (e.g., “personally identifiable information” or “PII”); (ii) subject to proprietary rights under patent, copyright, trademark, or trade secret law; (iii) privileged against disclosure in a civil lawsuit (e.g., data subject to attorney-client or doctor-patient privileges); (iv) subject to laws, regulations, rules, or standards that prohibit or limit disclosure (e.g., the family Educational Rights and Privacy Act (FERPA), the Export Administration Act (EAR), the International Traffic in Arms Regulations (ITAR), or the Health Insurance Portability and Accountability Act (HIPAA), the Genetic Information Nondiscrimination Act (GINA)); or (v) ought in good faith to be treated as sensitive, proprietary, or confidential.

1. Prohibition of Unauthorized Use of Data.
SUPPLIER agrees to hold Data in strict confidence. SUPPLIER shall not use or disclose Data received from or on behalf of BUYER except as required by law, or as otherwise authorized in writing by BUYER. Similarly, SUPPLIER agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of SUPPLIER, or passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by BUYER.

2. Security Standards.
SUPPLIER agrees that it shall protect the Data it receives from or on behalf of BUYER at all times under the following standards:

**Network Security.**
SUPPLIER shall at all times maintain network security that includes, at a minimum: network firewall provisioning, and intrusion detection.

a. Those standards that BUYER applies to its own network, as found at [ocio.osu.edu/itsecurity/framework](icio.osu.edu/itsecurity/framework)
b. Current standards set forth and maintained by the National Institute of Standards and Technology, at: [web.nvd.nist.gov/view/ncp/repository](web.nvd.nist.gov/view/ncp/repository) or;
c. Any generally recognized comparable standard that SELLER applies to its own network

**Data Security.**
SUPPLIER shall protect and maintain the security of Data. These security measures include maintaining secure environments that are patched and up to date with all appropriate security updates as designated, for example, by Microsoft notification.

**Data Transmission.**
SUPPLIER shall ensure that any and all transmission or exchange of Data with BUYER and/or any other parties expressly designated by BUYER shall take place via secure means, e.g. HTTPS or FTPS.

**Data Encryption.**
SUPPLIER shall store all backup Data as part of its designated backup and recovery processes in encrypted form, using no less than 128 bit key.

**Return or Destruction of Data.**
Upon cancellation, termination, expiration, or other conclusion of the Agreement, SUPPLIER shall erase, destroy, and render unreadable all Data, including copies, in possession of SUPPLIER, its subcontractors and agents and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of BUYER, whichever shall come first.
Notification of Network or Data Breach.
SUPPLIER shall immediately report in writing to BUYER any network breach and/or use or disclosure of Data not authorized by the Agreement, including any reasonable belief that unauthorized access to the Data has occurred. SUPPLIER shall make the report to BUYER not less than two (2) business days after SUPPLIER reasonably believes there has been such unauthorized use or disclosure. SUPPLIER's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the network element(s) and/or Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what SUPPLIER has done, or shall do, to mitigate any negative effect of the unauthorized disclosure; and, (v) what corrective action SUPPLIER has taken, or shall take, to prevent future unauthorized use or disclosure. SUPPLIER shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information, any other event requiring such notification (“Notification Event”). BUYER may, in its sole discretion, choose to provide notice to any or all parties affected by a Network or Data Breach.

20. Notice of Labor Dispute
Whenever SELLER has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, SELLER shall immediately give notice thereof, including all the relevant information with respect thereto, to BUYER. SELLER shall insert substance of this clause, including this sentence, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this order, except that any subcontractor need give the required notice and information only to its next higher-tier subcontractor.

21. Advertisement/Acknowledgement of Sponsorship
a. The SELLER agrees that it will release no information relating to this order without the prior written approval of the BUYER, and further agrees that unless directed otherwise, any approved release of information relating to this order shall include a statement to the effect that the project or effort depicted was or is sponsored by the agency with respect to whose contract with the BUYER this order is a subcontract.
b. For the purpose of this clause, “information” includes but is not limited to, news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association meetings, symposia, etc.
c. Nothing in the foregoing shall affect compliance with the Security Requirements Clause, FAR 52.204-02.
d. The SELLER may not advertise the fact that his/her firm has contracted with The Ohio State University Research Foundation for goods and/or services without written permission from the executive director of the Research Foundation.

22. Liability
It is agreed that in the conduct of the work under this subcontract, the SELLER is acting in the capacity of an independent contractor and not as an agent or employee of the BUYER.

23. Equal Opportunity and Affirmative Action in Employment
In fulfilling the terms of this Purchase Order, the SELLER agrees that only if applicable, Executive Order 11246, 29 C.F.R. Part 471, Appendix A to Subpart A, and 41 C.F.R. Parts 60-1.4, 60-1.7, 60-4.3 are incorporated. Only if applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). Only if applicable, these regulations prohibit discrimination against qualified protected veterans and against qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

24. No Findings for Recovery
SELLER warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24. SELLER further agrees that if this warranty is deemed to be false, this Purchase Order shall be void ab initio as between the parties and the SELLER must immediately repay to the PURCHASER any funds paid under this Purchase Order, or an action for recovery may be immediately commenced by PURCHASER for the recovery of said funds.

25. Purchase Order Placed Under United States Government Grant
If the Purchase Order indicates it is placed under a United States government grant, this order is subject to provisions contained in CODE of FEDERAL ACQUISITION REGULATIONS: 45 CFR part 74 or 45 CFR Part 92 as applicable; Office of...
Management and Budget (OMB) Circular A-110 Subpart C, - Post-Award Requirements: Procurement Standards sections 40-48; Reports and Records sections 50-53; Termination and Enforcement sections 60-62 and Appendix A are incorporated by reference with the same effect as if they were fully set forth here in. These standards are in compliance with the provisions of applicable federal statutes and executive orders.


If the Purchase Order indicates it is placed under a United States government contract, this order is subject but not limited to the following Federal Acquisition Regulations and/or appropriate equivalent agency supplemental regulations or attachments hereto hereby incorporated by reference with the same effect as if they were fully set forth:

A. Examination of Records - FAR 52.215-02
B. Utilization of Small Business and Small Disadvantaged Business Concerns - FAR 52.219-08
C. Convict Labor - FAR 52.222-03
D. Walsh-Healey Act - FAR 52.222-20
E. Contract Work Hours - FAR 52.222-04
F. Equal Opportunity - FAR 52.222-26
G. Patent and Copyright Infringement - FAR 52.227-02
H. Patent Rights as Prescribed - FAR 27.2 and 27.3
I. Audit - FAR 52.214-26/FAR 52.215-02
J. Affirmative Action for Special Disabled and Vietnam Era Veterans - FAR 52.222-35/FAR 52.222-37
K. Affirmative Action for the Handicapped Workers - FAR 42.222-36
L. Utilization of Women Owned Small Business - FAR 52.219-13
M. Price Reduction for Defective Cost or Pricing Data - FAR 52.215-22
N. Subcontractor Cost or Pricing Data - FAR 52.215-12 and Subcontractor Cost or Pricing Data - Modifications - FAR 52.215.13
O. Restriction on Certain Foreign Purchases (Mar 2005) - FAR 52.225-13
P. Integrity of Unit Prices - FAR 52.215-26
Q. Rights in Data and Copyrights as Prescribed - FAR 27.4
R. Small Business Subcontracting Plan (Jan 2002) FAR 52.219-9
S. Hazardous Material, Identification and Material Safety Data - FAR 52.223-3
T. Restrictions on Subcontract and Sales to the Government - FAR 52.203-6
U. Required Sources for Jewel Bearings and Related Items - FAR 52.208-1
V. Priorities, Allocations, and Allotments - FAR 52.212-08
W. Anti-Kickback Procedures - FAR 52.203-7
X. Requirements for Certificate of Procurement Integrity - FAR 52.203-8/52.203-9
Y. Remedies for Illegal or Improper Activity - FAR 52.203.10
Z. Limitation on Payments to Influence Certain Federal Transactions (June 2003) - FAR 52.203-12

Where necessary to the context of the referenced FAR clauses, the term “contractor” shall mean “SELLER”, the term “contract” shall mean this “Purchase Order”, and the term “contracting officer” and equivalent phrases shall mean “BUYER.” Copies of the clauses will be made available to the SELLER upon written request.

27. Ohio Law

Any questions arising under this order shall be decided in accordance with the laws of the State of Ohio.

28. Conflict of Interest

By acceptance of and/or performance under this Purchase Order the vendor certifies and warrants that no Ohio State University employee and/or public servant, member of his/her family or any of his/her business associate(s) has an unlawful interest in this Purchase Order, per section 2921.42 of the Ohio Revised Code.

29. Tax Exemption

Material on this order exempt from federal excise tax and Ohio sales tax, per section 5739.02 of the Ohio Revised Code and from federal excise tax.
30. Campaign Contributions

By SELLER’S acceptance of this Purchase Order, SELLER hereby certifies to PURCHASER that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. §3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. §3517.13.

31. Personal Services

All individuals employed by SELLER who provide personal services to BUYER are not public employees for purposes of Chapter 145 of the Ohio Revised Code, as amended.

32. Prohibition for Companies Boycotting Certain Jurisdictions

Pursuant to R.C. 9.76(B) SELLER warrants that SELLER is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the contract period.