

UT Southwestern Medical Center at Dallas

Purchase Order Terms and Conditions

1. **DELIVERY; SUBSTITUTIONS; INVOICES:** Goods shall be delivered and services performed during normal business hours. Goods shall be delivered to University's address identified in this Purchase Order. If delay in delivery or performance is foreseen, Contractor shall give prompt written notice to University's Purchasing Office. Upon notice, University has the right to extend the delivery or performance date in its sole discretion. Contractor shall keep University advised at all times of the status of delivery and performance under this Purchase Order. Contractor shall only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of University. Default in promised delivery or performance or failure to conform to the requirements of this Purchase Order authorizes University to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor shall show this Purchase Order number on all packages, shipments, and invoices.
2. **TITLE AND RISK OF LOSS:** Title to and risk of loss to any goods to be delivered under this Purchase Order shall not pass to University until University actually receives and takes possession of such goods at the point of delivery.
3. **WARRANTIES:** In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:
 - (a) it will comply with all requirements of this Purchase Order.
 - (b) if Contractor is a corporation or a limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.
 - (c) if Contractor is a corporation or a limited liability company, it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*, or is exempt from the payment of such taxes, or is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable, and that if this certification is false or inaccurate, at University's option, this Purchase Order may be terminated and payment withheld.
 - (d) in accordance with Section 2155.004, *Texas Government Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment withheld if this certification is inaccurate.
 - (e) pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, any payments owing to Contractor under this Purchase Order may be applied directly to any debt or delinquency that Contractor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
 - (f) in accordance with Section 231.006, *Texas Family Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.
 - (g) all goods and services covered by this Purchase Order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by University (collectively "specifications"), and shall be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. University shall have the rights of inspection and approval and may reject and return goods or require reperformance of services at Contractor's expense if defective or not in compliance with the specifications. Defects shall not be deemed waived by University's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.
 - (h) no disclosure, description, or other communication of any sort shall be made by Contractor to any third person of the fact of University's purchase of goods or services hereunder, or of the details and characteristics thereof without University's prior written consent. Anything furnished to Contractor by University pursuant to this Purchase Order including without limitation samples, drawings, patterns, and materials shall remain the property of University, shall be held at Contractor's risk, and shall be returned to University upon University's request, and no disclosure or reproduction thereof in any form shall be made without University's prior written consent.
 - (i) all goods delivered or services provided pursuant to this Purchase Order shall conform to standards established for such goods and services by any applicable federal, state, or local laws or regulations, including without limitation those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code*.
 - (j) use or sale of any goods delivered hereunder, except (with respect to patents) goods produced to University's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.
 - (k) the price to be paid by University shall be that contained in Contractor's bid, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches this warranty, the prices shall be reduced to Contractor's current prices on orders by others or, in the alternative, University may cancel this Purchase Order without liability to Contractor.
 - (l) if Contractor will provide services under this Purchase Order, then in accordance with Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Purchase Order, the Contractor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
 - (m) the foregoing representations, covenants, certifications, warranties and agreements shall survive acceptance of goods as well as performance of services hereunder.
4. **TECHNOLOGY ACCESS:** Contractor is not conceding that the technology provided to University under this Purchase Order constitutes an automated information system as defined by Section 2157.001(1), *Texas Government Code*, and used in Section 2157.005, *Texas Government Code*. However, if such technology constitutes an automated information system then, in accordance with Section 2157.005, *Texas Government Code*, Contractor expressly acknowledges that State funds may not expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor represents and warrants to University that the technology provided to University for purchase is capable, either by virtue of features included with the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information use by individuals who are not blind or visually impaired. For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

5. ANTITRUST LAWS; CLAIMS FOR OVERCHARGES: Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to University any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

6. COMPLIANCE WITH LAW AND UNIVERSITY'S RULES: (a) Contractor is fully informed concerning and is in full compliance with its obligations, if any, under the following:

- (1) Equal Employment Opportunities provisions of the Civil Rights Act of 1964, as amended;
- (2) Executive Order 11701, as amended;
- (3) Executive Order 11246, as amended;
- (4) Rehabilitation Act of 1973, as implemented by 41 CFR 60-741, as amended;
- (5) Vietnam Era Veterans Readjustment Act of 1974 as implemented by 41 CFR 60-250, as amended;
- (6) Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended.

(b) If this Purchase Order requires the presence on University's premises of Contractor's employees, agents, subcontractors or suppliers, Contractor shall cause such parties to comply with all applicable rules of University, including without limitation those relative to environmental quality, safety, and fire protection.

(c) Bidder certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a State agency. If Section 669.003 applies, bidder will complete the following information in order for the bid to be evaluated:

Name of Former Executive: _____
Name of State Agency: _____
Date of separation from State agency: _____
Position with bidder: _____
Date of Employment with bidder: _____

7. INDEPENDENT CONTRACTOR: In performing any services hereunder, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, exonerate and hold harmless University.

8. INDEMNITY: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("BOARD") AND THE STATE OF TEXAS AND THEIR OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL ACTIONS, SUITS, DEMANDS, COSTS, DAMAGES, LIABILITIES AND ALL OTHER CLAIMS, INCLUDING REASONABLE ATTORNEYS' FEES (COLLECTIVELY "CLAIMS"), ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED BY THE ACTS, OMISSIONS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS OR SUPPLIERS. IN ADDITION, CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER.

9. INSURANCE: If this Purchase Order requires the presence on University's premises of Contractor's employees, agents, suppliers or permitted subcontractors (if any), Seller agrees to maintain and to cause its agents, suppliers and permitted subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (including contractual liability)	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Auto Liability	\$1,000,000 combined single limit

All policies (except Workers' Compensation) shall name University, the Board of Regents of The University of Texas System ("Board") and their officers and employees as Additional Insureds. A Waiver of Subrogation in favor of University and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements shall be provided to University prior to commencement of any services under this Purchase Order.

10. VENUE; CHOICE OF LAW: Dallas County, Texas, shall be the proper place of venue for suit on or in respect to this Purchase Order. This Purchase Order and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

11. ASSIGNMENT AND DELEGATION: Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without University's prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause shall be void and ineffective for all purposes.

12. ENTIRE AGREEMENT; MODIFICATIONS: This Purchase Order supersedes all prior agreements, written or oral, between Contractor and University and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by University and Contractor.

13. LOSS OF FUNDING: Performance by University under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University shall issue written notice to Contractor and University may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.

14. DISPUTE RESOLUTION: To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Purchase Order and not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The chief business officer of University shall examine Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically agree that (1) neither the issuance of this Purchase Order by University nor any other conduct, action or inaction of any representative of University relating to this Purchase Order constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit; and (2) University has not waived its right to seek redress in the courts.

15. HIPAA Compliance. Contractor agrees to keep private and to secure any information provided by University that is considered either Individually Identifiable Health Information ("IIHI") by the Health Insurance Portability and Accountability Act of 1996, codified at 42 USC § 1320d through d-8 ("HIPAA"), or Protected Health Information ("PHI") as promulgated in 45 CFR Part 164 ("HIPAA Privacy Regulations") and 45 CFR Part 142 ("HIPAA Security Regulations"). Contractor agrees to only use and disclose PHI (i) received from University, (ii) used, created, received, maintained or disclosed by University, or (iii) otherwise associated with University (collectively, "University PHI") as required to perform the services outlined in this Purchase Order, which services may include the proper management and administration of this Purchase Order and data aggregation services for the health care operations of University. Contractor will not use or further disclose University PHI other than as permitted under this Purchase Order and Contractor will use appropriate safeguards to prevent the use or disclosure of University PHI for any reason other than as provided by this Purchase Order. Contractor agrees to promptly notify University of any use or disclosure of University PHI not permitted under this Purchase Order. Contractor agrees to notify University of its corrective actions to cure any breaches of this Section, HIPAA, or the HIPAA Privacy Regulations as soon as possible. Contractor understands that University may terminate this Purchase Order immediately without liability to Contractor if Contractor's actions are not successful in remedying the breach. University may also report the problem to the Secretary of Health and Human Services. Contractor shall require any of its agents or subcontractors who receive University PHI to be bound by the same restrictions and conditions set forth in this Purchase Order. Contractor agrees to comply with §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Regulations. Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of University PHI available to the Secretary of Health and Human Services or University for purposes of determining the Contractor's compliance with the HIPAA Privacy Regulations. After Contractor has completed working with or using University PHI, Contractor agrees to return or destroy all University PHI, if feasible, and if not feasible, Contractor agrees to continue to protect University PHI from wrongful uses and disclosures. If Contractor decides to destroy University PHI under this Purchase Order, Contractor will maintain a record of the proper destruction of University PHI or provide University with notice and certification of proper destruction of University PHI.

16. STATE AUDITORS OFFICE: Contractor understands that acceptance of funds under this Purchase Order constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Sections 51.9335(c), 73.115(c) and 74.008(c), *Texas Education Code*. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.

17. STATE SALES TAX EXEMPTION CERTIFICATE:

The undersigned claims an exemption from taxes under Chapter 20, Title 122A. *Revised Civil Statutes of Texas* for purchase of tangible personal property described in this numbered order purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

18. INVOICING INSTRUCTIONS:

Vendor will submit an invoice with each shipment of goods or within 10 days after the end of any month during which Vendor performs services; provided, however, if Vendor is providing both goods and services with an aggregate value of \$5,000 or less, Vendor will submit only one invoice within 10 days after complete performance of all obligations under this Purchase Order. Each invoice will include University's purchase order number, the Procurement and Support Services Division of the Texas Comptroller's Office order number (if applicable), a valid Texas Vendor Identification Number, and sufficient description of the goods and services to support payment. Mail invoices to Accts. Payable, 5323 Harry Hines Blvd., Dallas TX 75390-9028. Direct invoicing questions to Supervisor, Accts. Payable at (214)648-0803.

19. SHIPPING INSTRUCTIONS:

Show on the exterior of all cartons purchase order number, shippers name and address, vendor name as it appears on order, number of pieces. Packing slip must be on exterior of carton. Perishable shipments must be noted with a label on outside of carton and contain storage requirements. Direct shipping questions to Supervisor, Receiving at (214) 648-6164.

20. CERTIFICATIONS OF NON-SEGREGATED FACILITIES & EQUAL EMPLOYMENT OPPORTUNITIES COMPLIANCE:

If this order exceeds \$10,000.00 or the seller anticipates or has a history of exceeding \$10,000.00 in sales to The University of Texas Medical Center at Dallas within any continuous twelve (12) month period, the acceptance of this document will signify his compliance with the provision of SECTION 202 of EXECUTIVE ORDER No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965; and its amendment, EXECUTIVE ORDER No. 11375, effective October 13, 1967, insofar as Section 202 is affected by changing the word "creed" to "religion" and adding the word "sex". The signing will also serve as written affirmation of the following CERTIFICATION OF NON-SEGREGATED FACILITIES. By the acceptance of this order, the bidder, offerer, applicant or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit *his employees* to perform their services at any location under his control where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The bidder, offerer, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, rest rooms and wash rooms, entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin, because of habit, locale, custom or otherwise. He further agrees that (except where he has contractors prior to the award of subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause) he will retain such certifications in his files and that he will forward the following notice in such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES. A Certification of Non-segregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not exempt from the provision of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statement in offers is prescribed in 18 U.S.C. 1001

21. AFFIRMATIVE ACTION COMPLIANCE:

In addition to the above certification, if this order exceeds \$50,000.00 the seller must have included as part of his bid a copy of his written Civil Rights "Affirmative Action Compliance Program". If a bidder is not required to have such a written program he must have so stated on the bid form indicating the reason he is not required to have such a written program.

22. PAYMENT TERMS:

Net 30 Days from receipt of merchandise/services or invoice, whichever is later, in accordance with the Texas Prompt Payment Act.

23. NOTICES:

Notwithstanding any other requirements for notices given by a party under this Purchase Order, if Contractor intends to deliver written notice to University pursuant to Section 2251.054, Texas Government Code, then Contractor shall send that notice to University as follows:

UT Southwestern Medical Center at Dallas
5323 Harry Hines Boulevard
Dallas, Texas 75235
Fax: (214) 648-3944
E-mail: John.Roan@UTSouthwestern.edu
Attention: John A. Roan
Executive Vice President for Business Affairs

UT Southwestern Medical Center at Dallas
5323 Harry Hines Boulevard
Dallas, Texas 75235
Fax: (214) 648- 9177
E-mail: Kirby.Vahle@UTSouthwestern.edu
Attention: Kirby L. Vahle
Vice President of Facility Services

University shall have the right to change this contact information by written instructions to Contractor.