

STANDARD TERMS & CONDITIONS

1. **DEFINITIONS.** Seller is the supplier or vendor of goods or services. Buyer is Arizona State University.
2. **SELLER TO PACKAGE GOODS.** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked with the following: (a) Seller's name and address; (b) Buyer's name, address, and purchase order number; (c) Container number and total number of containers, e.g. box 1 of 4 boxes and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless specifically otherwise provided.
3. **SHIPMENT UNDER RESERVATION PROHIBITED.** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.
4. **TITLE AND RISK OF LOSS.** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives the goods at the point or points of delivery.
5. **PAYMENT.** Payment shall be subject to the provisions of Title 35 of Arizona Revised Statutes relating to time and manner of submission of claims. The Buyer's obligation is payable only and solely from funds appropriated for the purpose of this Agreement.
6. **RIGHT OF INSPECTION.** Buyer shall have the right to inspect the goods at delivery before accepting them.
7. **REMEDIES AND APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Buyer and Seller shall have all remedies afforded each by said laws.
8. **NO REPLACEMENT OF DEFECTIVE TENDER.** Every tender of goods must fully comply with all provisions of this contract as to time of delivery, quantity, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender.
9. **FORCE MAJEURE.** Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this contract are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.
10. **ANTI-KICKBACK.** In compliance with FAR 52.203-7, the Buyer has in place and follows procedures designed to prevent and detect violations of the Anti-Kickback Act of 1986 in its operations and direct business relationships.
11. **GRATUITIES.** Buyer may, by written notice to the Seller, cancel this contract if it is found by Buyer that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the State of Arizona with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
12. **WARRANTIES.** In addition to any implied warranties, Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed herein, and to the sample or samples, if any, furnished by the Seller. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
13. **MODIFICATIONS.** This Agreement can be modified or rescinded only by a writing signed by both parties or their duly authorized agents.
14. **ASSIGNMENT-DELEGATION.** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
15. **INTERPRETATION-PAROL EVIDENCE.** This writing is intended by the parties as a final expression of their Agreement and is intended also as a complete and exclusive statement of the terms of their Agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this Agreement, the definition contained in the Code is to control.
16. **NONDISCRIMINATION.** Proposer shall operate as an equal opportunity employer and shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, or national origin, or because he or she has a physical or mental disability or because he or she is a disabled veteran or a veteran of the Vietnam era, including, without limitation, with respect to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Proposer shall conform to all state and federal laws, executive orders and rules and regulations relating thereto.
17. **EQUAL OPPORTUNITY CLAUSE.** The Provisions of Section 202 of Executive Order 11246.41 C.F.R. 60-1.4.41 C.F.R. 60-250.4 and 41 C.F.R. 60-741.4 are incorporated herein by reference and shall be applicable to this Agreement unless this Agreement is exempted under the rules, regulations or orders of the Secretary of Labor.
18. **TERMINATION FOR DEFAULT.** In the event that the Seller shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the Buyer may notify the Seller in writing of such failure and demand that the same be remedied within 10 days. Should the Seller fail to remedy the same within said period, the Buyer shall then have the right to terminate this Agreement.

19. **NO WAIVER.** No waiver by Buyer of any breach of the provisions of this Agreement by the Seller shall in any way be construed to be a waiver of any future breach or bar the Buyer's right to insist on strict performance of the provisions of the Agreement.
20. **TERMINATION.** Buyer may by written notice, stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. Buyer 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) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by Buyer, with respect to the undelivered or unacceptable portion of this order, provided compensation hereunder shall in no event exceed the total order price.
21. **CANCELLATION OF STATE CONTRACT.** In accordance with ARS 38-511, this order may be canceled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Buyer is, at anytime while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.
22. **LABOR DISPUTES.** Seller shall give prompt notice to Buyer of any actual or potential labor dispute which delays or may delay performance of this order.
23. **CONTRACT CLAIMS AND CONTROVERSIES.** All contract claims and controversies arising under this contract shall be resolved pursuant to the University Procurement Code, as published in the Arizona Board of Regents' Policy Manual, section 3-809, and in particular section 3-809C.
24. **CANCELLATION FOR LACK OF FUNDING.** This contract may be canceled without any further obligation on the part of Buyer in the event that sufficient appropriated funding is unavailable to assure full performance of its terms. Seller shall be notified in writing of such non-appropriation at the earliest opportunity.
25. **ASSIGNMENT OF ANTITRUST OVERCHARGE CLAIMS.** The parties recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by the ultimate purchaser; therefore, Seller hereby assigns to the Arizona Board of Regents for and on behalf of Buyer any and all claims for such overcharges.
26. **INSPECTION AND AUDIT.** All books, accounts, reports, files and other records relating to this contract shall be subject at all reasonable times to inspection and audit by the Arizona Board of Regents, Arizona State University or the Auditor General of the State of Arizona, or their agents for five (5) years after completion of this contract. Such records shall be produced at Arizona State University, or such other location as designated by Arizona State University, upon reasonable notice to the contracting party.
27. **PAYMENT TERMS.** Unless otherwise stated on the face of this document, the payment terms for this Agreement are Net 30 days. The University's payment system operates as follows: The requesting department enters a requisition in to the University's financial management system. These requisitions are routed to the appropriate buyer who generates a purchase order through the financial management system. When the order is received in satisfactory condition at the requesting department, the requesting department enters a receiver into the financial management system. The supplier submits an invoice directly to the University's Payables and Reimbursements Department. They enter the invoice data into the University's financial management system. The financial management system schedules a payment to the supplier when there is a three way match between the purchase order, the receiver, and the invoice. Checks are generated each Wednesday and Saturday evening. In the event that a department fails to enter a receiver, seven (7) days after an invoice is entered into the financial management system, the system generated a reminder notice to the requesting department so that they will enter a receiver. If a receiver is still not entered by the requesting department, a second notice is generated fifteen (15) days after an invoice is entered into the financial management system. Any delays in payment are usually attributable to one of the following: failure of the supplier to submit an invoice to Payables and Reimbursements, dissatisfaction of the requesting department with the order delivered by the supplier, and a variance of the dollar amounts on the purchase order, the receiver, and the invoice. The interest rate on overdue payments is eighteen (18) percent APR. Such interest will begin accruing on the thirty-first (31) day after the latest date of: the date of valid purchase order, the date a correct supplier invoice is received at Payables and Reimbursements, and the date of delivery of an order that satisfactory to the requesting department. Any claims for interest must be substantiated by copies of documents that show the date of the valid purchase order, the date a correct invoice was delivered to Payables and Reimbursements, and the date an order was delivered to the requesting department. The University may adjust the interest period, or deny the interest claim, based upon their documentation that there was no valid purchase order, that an incorrect invoice was submitted, that the order delivered was not satisfactory, or that the dates of any event were other than as claimed.
28. **INSOLVENCY.** The University shall have the right to terminate this contract at any time in the event Seller files a petition in bankruptcy, or in adjudicated bankrupt; or if a petition in bankruptcy is filed against Seller and not discharged within thirty (30) days; or if Seller becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement pursuant to any bankruptcy law; or if a receiver is appointed for Seller or its business.
29. **ADVERTISING.** Seller agrees that it will not use Arizona State University or any of its names or trademarks in any Seller advertising.
30. **SALES TAX PROCEDURE.** ASU's accounts payable system calculates sales tax based on tax rates expressed as percentage. The actual payment amount calculated may differ slightly from the invoiced amount, in the magnitude of a few cents. ASU is not to be re-billed for any such rounding differences; instead, the vendor needs to adjust the balance due from ASU for any such rounding differences.

PROVISIONS UNDER GOVERNMENT CONTRACT

For purchases funded with Federal Government funds, the following provisions of the Federal Acquisition Regulations (FAR) apply as applicable:

<u>FAR CIT.</u>	<u>TITLE</u>
52.202-1	Definitions
52.202-2	Officials Not to Benefit
52.202-3	Gratuities
52.203-5	Covenant Against Contingent Fees
52.203-6	Restrictions on Subcontractor Sales to the Government
52.203-7	Anti-Kickback Procedures
52.208-1	Requires Sources for Jewel Bearings
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment
52.212-13	Stop Work Order, Alternate I
52.215-1	Examination of Records by Comptroller General
52.215-2	Audit-Negotiation. Alt II
52.215-22	Price Reduction for Defective Cost or Pricing Data
52.215-23	Subcontractor Cost or Pricing Data
52.215-25	Integrity of Unit Prices (non-construction)
52.217-1	Limitation of Price and Contractors Obligations
52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (all personal services)
52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (over \$500,000)
52.219-13	Utilization of Woman-owned Small Business (all personal services)
52.220-1	Preference for Labor Surplus Area Concerns
52.220-3	Utilization of Labor Surplus Area Concerns (all personal services)
52.220-4	Labor Surplus Area Subcontracting Program (over \$5K)
52.222-1	Notice to the Government of Labor Disputes
52.222-4	Contract Work Hours and Safety Standards Act Overtime Compensation
52.222-20	Walsh Healey Public Contracts Act
52.222-21	Certification of Nonsegregated Facilities
52.222-25	Affirmative Action Compliance
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222-36	Affirmative Action for Handicapped Workers
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.223-1	Clean Air and Water Certification
52.223-2	Clean Air and Water
52.223-3	Hazardous Material Identification and Material Safety Data
52.223-6	Drug-Free Workplace
52.225-3	Buy American
52.225-11	Restrictions on Certain Foreign Purchases
52.227-1	Authorization and Consent (Alt I in all R&D)
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement
52.227-11	Patent Rights – Retention by the Contractor (Short Form)
52.227-12	Patent Rights – Retention by the Contractor (Long Form)
52.227-13	Rights in Data – General
52.232-23	Assignment of Claims
52.233-1	Disputes
52.242-1	Notice of Intent to Disallow Costs
52.243-1	Changes – FFP (43.205(a)(1)alts may apply)
52.243-2	Changes – Cost (43.205(b)(1)alts may apply)
52.244-1	Subcontracts (Fixed Price Contracts)
52.244-2	Subcontracts (Cost Reimbursement and Letter Contracts)(alts)
52.244-5	Competition in Subcontracting
52.245-2	Government Property – FFP
52.245-5	Government Property – Cost (alt I for non profit)
52.246-15	Certificate of Conformance
52.247-63	Preference for U.S. Flag Air Carriers
52.247-64	Preference for U.S. Flag Commercial Vessels
52.249-5	Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions)
52.249-6	Termination (Cost Reimbursement)
52.249-14	Excusable Delays
52.252-2	Clauses Incorporated by Reference

<u>DFAR CIT.</u>	<u>TITLE</u>
252.225-7000	Buy American Act and Balance of Payments program
252.227-7013	Rights in Technical Data and Computer Software
252.227-7018	Restrictive Markings on Technical Data
252.227-7037	Validation of Restrictive Markings on Technical Data
252.243-7001	Pricing of Contract Modifications