

## GENERAL PROVISIONS FOR COMMODITY AND SERVICE ACQUISITIONS

By accepting a purchase order and providing the commodity and/or performing the work thereon specified Contractor agrees to these General Provisions as well as any other provisions contained in the Contract. In these General Provisions, the Trustees of the California State University are referred to as "CSU" or "University." The terms "Bid" and "Proposal" are synonymous, as are the terms "Contract", "Agreement", "Purchase Order" and "Order". The terms "Proposer", "Contractor", and "Vendor" are also used interchangeably and each shall apply to the business entity which provides the ordered commodity and/or service to the University.

1. Discounts, Invoices, and Payments: In connection with any discount offered, except when provision is made for a testing period preceding acceptance by the University, time will be computed from date of delivery of the commodities as specified, or from date correct invoices are received in the office specified by the University if the latter date is later than the date of delivery. When provision is made for a testing period preceding acceptance by the University, date of delivery shall mean the date the supplies, equipment or services are accepted by the University following the specified testing period. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the University warrant or check.

The Contractor shall submit invoices to the University for payment of goods and services rendered. Payment shall not be due until the latter of: (a) the date of acceptance of goods or performance of services; or (b) receipt of an accurate invoice. Unless otherwise specified, payment will be made in accordance with Government Code Sections 927 et seq., as applicable.

In the event that additional services are performed as authorized, the Contractor shall submit invoices for additional services in accordance with provisions herein.

For work of a continuing nature, the Contractor shall submit invoices in arrears, upon completion of each phase. Contractor shall be reimbursed for travel, subsistence and business expenses necessary for the performance of services only to the extent specifically provided in the Agreement and in accordance with CSU policy.

2. Document Referencing: All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Contract/Purchase Order number. If factory shipment, the factory must be advised to comply.
3. Taxes, Fees, Expenses, and Extras:
  - (a) Articles sold to the University are exempt from certain Federal Excise Taxes. The University will furnish an exemption certificate on request.
  - (b) Unless specified otherwise, prices quoted shall include all required taxes.
  - (c) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the

University unless expressly included and itemized in the bid.

4. All shipments shall be FOB destination, unless otherwise indicated on the Purchase Order or Contract. On "FOB Shipping Point" transactions vendor shall arrange for lowest cost transportation, prepay, add freight to invoice, and furnish supporting freight bills for shipping charges over \$50.

Shipments that are California intrastate in nature and where freight is to be borne by the University shall be tendered to carriers with written instructions that rates and charges may not exceed the lowest lawful rates on file with the California Public Utilities Commission.

On "FOB Shipping Point" transactions, should any shipments under this Purchase Order or Contract be received by the University in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers by wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packing or loading or some inherent defect in the equipment and/or material, vendor on request of the University shall at vendor's own expense assist the University in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

5. Governing Law: All contracts and purchase orders shall be construed in accordance with, and their performance governed by, the laws of the State of California. Further, Contractor shall comply with any State or federal law applicable to Contractor's performance under this Contract. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
6. Assignments: Without written consent of the CSU, the Contract is not assignable by Contractor either in whole or in part.
7. Independent Status: The Contractor, and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of California. While Contractor may (or may not) be required under the terms of this Contract to carry Worker's Compensation Insurance, Contractor is not entitled to unemployment or workers' compensation benefits from the CSU.
8. Conflict of Interest:
  - (a) The Contractor shall not utilize any information, not a matter of public record, which is received by reason of this Contract, for pecuniary gain not contemplated by the terms of this Contract, regardless of whether the Contractor is or is not under Contract with the CSU at the time such gain is realized. Any report, survey, or product developed by the Contractor pursuant to this Contract is the property of the CSU, and shall not be used in any manner by the Contractor unless authorized by the CSU. Breach of this provision will make the Contract voidable at the Trustees' option, and the Contractor shall be liable

for any other damages incurred by the CSU as the result of such breach (Education Code, Section 89006).

- (b) Should the Contractor provide services for preparation or development of recommendations for the actions which are required, suggested or otherwise deemed appropriate, and which include the provision, acquisition or delivery of products or service; then the Contractor must provide full disclosure of any financial interest including but not limited to service Agreements, OEM, and/or remarketing Agreement that may foreseeable allow the Contractor to materially benefit from the adoption of such recommendations.
  - (c) The CSU requires a Statement of Economic Interests (Form 700) to be filed by any Consultant (or Contractor) who is involved in the making, or participation in the making, of decisions which may foreseeably have a material effect on any CSU financial interest [reference G.C. 82019].
9. Time: Time is of the essence of the Contract.
  10. Contract Alterations & Integration: No alteration or variation of the terms of the Contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
  11. Non-Performance by Contractor: The CSU may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the CSU may proceed with the work in any manner deemed proper by the CSU. The cost to the CSU shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.
  12. Personnel: The Contractor shall make every effort consistent with sound business practices to honor the specific requests of the CSU with regard to assignment of its employees; however, the Contractor reserves the sole right to determine the assignment of its employees. If a Contractor employee is unable to perform due to illness, resignation, or other factors beyond the Contractor's control, the Contractor shall make every reasonable effort to provide suitable substitute personnel.
  13. General Indemnity: The Contractor agrees to indemnify, defend and save harmless the University, its officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by the Contractor in the performance of this Contract.
  14. Appropriation of Funds:
    - (a) If the term of the Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to the University under the Contract, and relieve the University of any further obligation therefore.
    - (b) University agrees that if provision (a) above is involved, commodities shall be returned to the Contractor in substantially the same condition in which they were delivered, subject to normal wear and tear. University further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to Contractor for expenses incurred for its assistance in such packing and crating.
  15. Unfair Practices Act: Bidders shall comply and bids shall be in accordance with the Unfair Practices Act (Business and Professions Code Section 17000 et seq.).
  16. Nondiscrimination:
    - (a) During the performance of this Contract, Contractor and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
    - (b) Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5).
    - (c) Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.
    - (d) Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
    - (e) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.
  17. Forced, Convict and Indentured Labor: Contractor agrees that no foreign-made equipment, materials, or supplies furnished to the State pursuant to this Contract have been produced in whole or in part by forced labor, convict labor, or indentured

labor under penal sanction. (Public Contract Code Section 6108).

18. Contractor Compensation: The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.
19. Rights and Remedies of University for Default:
  - (a) In the event any item furnished by the Contractor in the performance of this Contract should fail to conform to the specifications therefor, or to the sample submitted by the Contractor with the bid, the University may reject the same, and it shall thereupon become the duty of the Contractor to reclaim and remove the same forthwith, without expense to the University, and immediately to replace all such rejected items with others conforming to such specifications or samples; provided that should the Contractor fail, neglect, or refuse to do so, the University shall thereupon have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the Contractor the difference between the price named in the Contract and the actual cost thereof to the University.
  - (b) In the event the Contractor shall fail to make prompt delivery as specified of any item, the same conditions as to the right of the University to purchase in the open market and to reimbursement set forth above shall apply, except for force majeure. Except for defaults of subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts (known as "force majeure") shall include but shall not be limited to fire, strike, freight embargo or acts of God and of the Government. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or serves to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.
  - (c) In the event of the cancellation of the Contract, either in whole or in part, by reason of the default or breach thereof by the Contractor, any loss or damage sustained by the University in procuring any items which the Contractor therein agreed to supply shall be borne and paid for by the Contractor.
  - (d) The rights and remedies of the University provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
20. Assignment of Antitrust Actions: The bidder's attention is directed to the following provisions of Government Code Sections 4552, 4553, and 4554, which shall be applicable to the bidder:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the procurement body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the procurement body pursuant to the bid. Such assignment shall be made and become effective at the time the procurement body tenders final payment to the bidder (Government Code Section 4552).

If an awarding body or public procurement body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Government Code Section 4553).

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Government Code Section 4554).

21. Dispute: Any dispute arising under the terms of this Agreement which is not resolved within a reasonable period of time by authorized representatives of the Contractor and The CSU shall be brought to the attention of the Chief Executive Officer (or designated representative) of the Contractor and the Chief Business Officer (or designee) of The CSU for joint resolution. At the request of either party, The CSU shall provide a forum for discussion of the disputed item(s), at which time the Vice Chancellor, Business and Finance (or designated representative) of The CSU shall be available to assist in the resolution by providing advice to both parties regarding The CSU contracting policies and procedures. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this Agreement.

Despite an unresolved dispute, the Contractor shall continue without delay to perform its responsibilities under this Agreement. The Contractor shall keep accurate records of its services in order to adequately document the extent of its services under this Agreement.

22. Covenant Against Gratuities: The Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the University with a view toward securing the Contract or securing favorable treatment with respect to any

determinations concerning the performance of the Contract. For breach or violation of this warranty, the University shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the University in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor.

23. Rights and Remedies: The rights and remedies of the CSU provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law.

24. Patent, Copyright, and Trade Secret Indemnity: A contractor may be required to furnish a bond to the University against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement. In addition:

(a) The Contractor, at its own expense, shall defend any action brought against the University to the extent that such action is based upon a claim that the product supplied by the Contractor or the operation of such product infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the University in any such action. Such defense and payment shall be conditioned on the following:

(1) That the Contractor shall be notified within a reasonable time in writing by the University of any notice of such claim; and,

(2) That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that when principles of government or public law are involved, the University have the option to participate in such action at its own expense.

(b) Should the product, or the operation thereof, become, or in the Contractor's opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the University shall permit the Contractor at its option and expense either to procure for the University the right to continue using the product, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such product by the University shall be prevented by injunction, the Contractor agrees to take back such product and make every reasonable effort to assist the University in procuring a substitute product. If, in the sole opinion of the University, the return of such infringing product makes the retention of other products acquired from the Contractor under this contract impractical, the University shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such product and refund any sums the University has paid Contractor less any reasonable amount for use or damage.

(c) The Contractor shall have no liability to the University under any provision of this paragraph with respect to any claim of patent, copyright or trade secret infringement which is based upon the combination or utilization of the

product furnished hereunder with commodities or devices not made nor furnished by the Contractor.

25. Confidentiality of Data: All financial, statistical, personal, technical and other data and information relating to The CSU's operations which are designated confidential by The CSU and made available to the Contractor or which become available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure by the observance of the same or more effective procedural requirements as are applicable to The CSU. The identification of all such confidential data and information as well as The CSU's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided in writing to the Contractor by the CSU. The Contractor shall not, however, be required, by this paragraph, to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Agreement, or is rightfully obtained from third parties.

26. Violation of Air or Water Pollution Laws: Unless the Contract is less than \$10,000.00 or with a sole-source provider, Government Code Section 4477 prohibits the State from contracting with a person, including a corporation or other business association, who has been determined to be in violation of any State or federal air or water pollution control law. If such determination is final, Government Code Section 4481 requires the State Water Resource Control Board and the Air Resources Board to notify State agencies of such persons.

Prior to an award, the University shall determine whether the intended awardee is a person included in notices from the Boards by reference to notices. No award will be made to a person who is identified either by the published notices or by Board notification as a person in violation of State or federal air or water pollution control laws.

27. Compliance with NLRB Orders: In submitting a bid or signing a contract the Contractor swears under penalty of perjury that no more than one final, unappeasable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.

28. Examination and Audit: For contracts in excess of \$10,000, the Contractor shall be subject to the examination and audit of (a) the Office of the University Auditor, and (b) the State Auditor, for a period of three (3) years after final payment under the contract in accordance with Government Code Section 8546.7 and with Education Code Section 89045(c & d), respectively. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract.

29. Drug-Free Workplace Certification: By accepting a contract or purchase order, the Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8355 et.

seq.) and will provide a drug-free workplace by doing all of that which Section 8355 et seq. require.

30. DVBE and Small Business Participation: The State of California supports statewide participation goals of 3% for disabled business enterprises, (DVBE Program) and requires agencies to provide a 5% preference when awarding contracts to small businesses. Only small businesses certified by the Office of Small and Minority Businesses (OSMB) are eligible to receive the preference. The University encourages all contractors to use the services of DVBE and OSMB-certified small business enterprises whenever possible, and to report their use to the University.
31. Citizenship and Public Benefits: If Contractor is a natural person, Contractor certifies in accepting this Contract that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT.2105, 2268-69).
32. Americans With Disabilities Act (ADA) – General Provisions: Contractor assures the University that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
33. Child Support Compliance Act: For any contract in excess of \$100,000, the contractor acknowledges in accordance with PUBLIC CONTRACT CODE Section 7110, that:
  - (a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
  - (b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
34. Recycling: Contractor hereby certifies under penalty of perjury that a percentage (0% to 100%) of the materials, goods, supplies offered, or products used in the performance of this contract meet or exceed the minimum percentage of recycled material as defined in Sections 12161 and 12205 of the PUBLIC CONTRACT CODE.
35. Contractor's Warranty: The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the University hereunder harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the University under this Contract.
36. Conflict With Existing Law: The Contractor and the University agree that if any provision of the Contract is found to be illegal

or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

- 37 In the event the work of this Order requires the performance of service of any manner, including the delivery, uncrating or installation of material ordered, on University premises, Contractor, prior to the performance of said service, shall provide to the University a certificate of insurance naming the University as an additional insured and demonstrating coverage in a form and amount satisfactory to the University.