



## **PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

**1. Terms and Orders.** These Purchase Order Standard Terms and Conditions (the "Terms") are applicable to and incorporated by reference into any Purchase Order (the "Order") between the supplier identified on the face of the Order ("Supplier") and The University of Puget Sound ("Purchaser"). Any Order becomes binding upon the earlier of (a) when written acknowledgement is received by Purchaser, or (b) when shipment is made according to schedule of all or any portion of the goods or provision of any of the services pursuant to the Order. Except as provided above, it is a condition of the Order that any provisions printed or otherwise contained in any acknowledgement hereof or in Supplier's invoice, inconsistent with or in addition to these Terms, and any alteration in the Order, shall have no force or effect, and that the Supplier by such acknowledgement hereby agrees that any such provisions therein or any such alterations in the Order shall not constitute any part of these Terms. The Order(s) and these Terms shall constitute the complete and exclusive statement of the agreement between Supplier and Purchaser with respect to the subject matter hereof. However, if the Order is issued under or in connection with an existing written agreement between Supplier and Purchaser, then such agreement will remain in full force and effect and will not be superseded by these Terms, and if there is any inconsistency or conflict between the existing agreement and these Terms, the terms in the existing agreement will govern. The failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder.

**2. Modification.** No modification of the Order shall be binding on Purchaser unless Purchaser agrees to such modification in writing. Purchaser may, at any time by written notice to Supplier, change the Order, including without limitation changing the method of shipment, packing, or place or time of delivery. Supplier shall proceed immediately to perform the Order as changed. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be subsequently modified in writing accordingly. Any claim for adjustment under this paragraph must be asserted within 30 days from the date of receipt by Supplier of the notification of change. Nothing in this paragraph shall excuse Supplier from proceeding with the Order as changed.

**3. Cancellation.** Purchaser may for any reason cancel any unshipped goods. In the event of such cancellation, Purchaser is only obligated to pay for accepted goods prior to such cancellation.

**4. Inspection, Warranty.** Goods delivered are subject to inspection, testing, and approval by Purchaser before acceptance and payment by Purchaser. Supplier expressly warrants that all articles, materials, goods and services will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be: of merchantable quality; free from defects in material or workmanship; and free and clear of any and all claims, liens, and encumbrances whatsoever. This warranty shall survive any inspection, delivery, acceptance, or payment by Purchaser. All of Supplier's warranties set forth in these Terms shall be enforceable by Purchaser, Purchaser's customers and any subsequent owner or operator of the goods purchased by Purchaser. Any inspection or acceptance of such goods by Purchaser shall not be deemed to alter, waive, extinguish or otherwise affect the obligation of Supplier or the rights of Purchaser, its customers or subsequent owners or operators under these warranties. All specifications, drawings, samples, descriptions, or other materials and plans referenced in the Order or related to the goods or services are incorporated into these Terms by this reference.

**5. Nonconforming Goods/Rejection.** Any goods that are damaged on arrival may be exchanged by Purchaser for a period of 30 days. All goods not fully up to standard and not in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities specified in the Order, or substituted for goods described, or not shipped in containers conforming to Purchaser's specifications (or, in the absence of such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, may be rejected by Purchaser and returned or held at Supplier's expense and risk. Purchaser may charge to Supplier all expenses of reshipping any goods rejected as aforesaid. The remedies hereinabove afforded to Purchaser shall not be exclusive, but Purchaser may hold Supplier liable for any and all damages arising from any breach or default hereinabove set forth. If Purchaser rejects any goods, Purchaser shall then be relieved of any obligation related thereto, including, without limitation, any obligation to pay therefor and, in such event, Supplier shall immediately return any amount previously paid by Purchaser in prepayment of the sales price for such goods and related services, if any. Without limiting the foregoing, in the event Purchaser rejects any goods, Purchaser shall be entitled to require the Supplier to provide other goods that comply with the terms of the Order, including (without limitation) specifications for such goods and the delivery schedule stated in the Order. Without limiting the foregoing, Purchaser may elect to accept defective goods, subject to an equitable reduction in price.

**6. Price.** Prices specified in the Order are not subject to increase for a minimum of 90 days from the date of the Order. No additional amount shall be chargeable to Purchaser because of taxes or excises, presently or hereafter levied on Supplier. Proposed quoted prices will be valid for 90 days from the date of the proposal, unless the parties mutually agree on a longer period. However, if Supplier's quoted prices for the goods or services covered by the Order are reduced (whether in the form of a price reduction, closeout, rebate, allowances, or additional discounts offered to anyone) at the time of any shipment or service activity, Supplier agrees that the price to Purchaser for such goods or services will be reduced accordingly, and that Purchaser will be billed at such reduced prices. Supplier certifies that the prices in the Order are not higher than prices being charged to other organizations purchasing identical goods or goods in smaller quantities at this particular time and do not discriminate against Purchaser.

**7. Payment.** Unless otherwise agreed to by Purchaser in the Order, Purchaser will pay Supplier's correct and undisputed invoices for goods or services received and accepted by Purchaser within 30 days of Purchaser's receipt of such invoices. However, Purchaser shall have the option to pay correct and undisputed invoices for all goods or services received and accepted by Purchaser in the previous month within 30 days of the end of such month. Individual invoices must be issued for each shipment applying to the Order. Such invoices must state the (a) Order number, (b) quantity of each ordered item shipped, and (c) description of each ordered item shipped. Any applicable sales tax, duty, excise tax, use tax or other similar tax or charge for which Purchaser has not furnished an exemption certificate must be itemized separately on each invoice. Supplier shall submit a statement of account monthly. Purchaser shall have the right to make payment either by check or electronic means. Such electronic payment shall be in accordance with procedures agreed to by the parties, with or without paper confirmation or receipt for each such payment. Payment of Supplier's invoices is subject to adjustment for over shipment, shortage and rejection. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's Order(s) with Supplier.

**8. Delivery/Time of the Essence.** Purchaser's schedules are based upon the agreement that the goods and services will be delivered no later than the date specified in the Order. Time shall be of the essence in connection with Supplier's performance of its obligations under these Terms. Purchaser may reject the shipment or provision of the goods or services if received after the delivery date specified in the Order. The acceptance of later or defective deliveries shall not be deemed a waiver by Purchaser of its right to cancel the Order or to

refuse to accept further deliveries. Supplier shall notify Purchaser of any delay and the reasons therefor. In such event, Supplier shall, upon request by Purchaser, avoid such delay (or such portion thereof as Purchaser requires) by appropriate methods, including (without limitation) incurring expenditures for overtime and expedited shipment by air or other means of expedited transport. Any costs incurred by Supplier to avoid such delay shall be borne by Supplier.

**9. Packing, Marking and Shipping.** Each package shall be appropriately labeled using the "Ship To" address in the Order, shall contain an itemized packing slip referencing the Purchaser's Order number, and shall be properly prepaid for shipment. Purchaser is not obligated to pay any charges for packaging, breaking, freight, express, or cartage unless stated herein or on the Order. Supplier shall secure transportation service and rates most advantageous to Purchaser as long as procurement thereof shall be consistent with Supplier's foregoing obligations.

**10. Compliance with Applicable Law.** Supplier and the goods and services will comply with all applicable laws, rules and regulations, whether local, state, federal or foreign.

**11. Indemnification by Supplier.** Supplier will indemnify, hold harmless and defend Purchaser from all liability for loss, damage, expenses (including legal expenses), or injury to person or property in any manner arising out of or incident to the performance under the Order and these Terms, the goods or services provided under the Order, or any other acts or omissions of Supplier, including without limitation claims related to or arising from patent, copyright, trade secret or trademark infringement or misappropriation.

**12. Taxes.** For services rendered by Supplier, Supplier accepts liability for payment of all payroll and social security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.

**13. Delegation, Assignment.** Supplier shall not subcontract the services or assign the Order without Purchaser's prior written consent, and any assignment in violation of this paragraph shall be void and of no effect. The Order is binding on Supplier and Purchaser and their respective successors, assigns and legal representatives.

**14. Governing Law.** These Terms and the Order shall be governed by and construed in accordance with the laws of the State of Washington. Supplier consents to personal jurisdiction in that State. Venue for any dispute arising out of the Order, these Terms, the subject matter hereof, or related directly or indirectly to the foregoing, shall be in Pierce County, State of Washington.

**15. Costs and Attorneys' Fees.** If any litigation is brought to enforce, or arises out of, the Order or any term, clause, or provision of these Terms, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including fees, costs, and expenses incurred on appeal or in a bankruptcy or similar action.

**16. Partial Invalidity.** If any provision of the Order or these Terms is or becomes void or unenforceable by force or operation of law, the other provisions shall remain valid and enforceable.

**17. Risk of Loss and Title.** The designated delivery point for the Order is FOB Destination, which is Purchaser's designated address, unless otherwise indicated on the Order. Risk of loss (used in this paragraph to include damage, destruction, theft or other loss of the goods ordered) shall pass to Purchaser only upon delivery of the items to Purchaser. Supplier shall be responsible for asserting any claims against the carrier and for maintaining any required insurance against loss in transit. Supplier shall bear all risk of loss as to properly rejected goods after timely written notice of rejection has been given. Title shall pass on final acceptance of goods shipped under the Order.

**18. Termination.** In addition to Purchaser's cancellation rights under paragraph 3, Purchaser has an unrestricted right to immediately cancel and terminate the Order without cost or

liability to Purchaser if Supplier breaches the Order or these Terms, if Supplier is otherwise unable to meet its obligations as they become due, or if, in Purchaser's reasonable judgment, a force majeure event has occurred affecting the performance of either party hereunder. The acceptance of goods or performance after Supplier's breach shall not affect the right of Purchaser to cancel its additional obligations.

**19. Limitation of Damages.** IN NO EVENT SHALL PURCHASER BE LIABLE UNDER THE ORDER OR THESE TERMS FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS.

**20. Licenses.** Supplier hereby grants to Purchaser a nonexclusive license to use any third-party or packaged software which is ordered or contained in the goods ordered and its related documentation under these Terms and the Order. The license hereunder is granted as of the effective date of the Order and continues until Purchaser discontinues the use of such software. Purchaser shall not disassemble, reverse engineer or decompile any part of such software unless Supplier's prior written consent is either obtained or not required by law. Supplier represents and warrants that title to and all rights and interests in such software and the documentation are Supplier's or its suppliers' proprietary property and that the software and documentation will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, unfair trade practice, or otherwise.

**21. Works.** Purchaser shall own all right, title and interest in and to any software, printed materials or other works, products or deliverables which result from services rendered by Supplier to Purchaser under the Order and these Terms ("work(s)"). The works shall be deemed works made for hire of Purchaser for all purposes of copyright law, and copyright shall belong solely to Purchaser. In the event that any such work does not qualify as a work made for hire, Supplier assigns all copyright and other rights in such work to Purchaser. Supplier shall, at the expense of Purchaser, assist Purchaser or its nominees to obtain copyrights, trademarks, or patents for all such works in the United States and any other countries. Supplier agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to Purchaser all the right, title and interest in and to such works. Supplier represents and warrants that the works will be free of any rightful claim of any third person or entity based on patent or copyright infringement, trade secret misappropriation, or otherwise.

**Supplier Acceptance**

Because the university's purchase orders may be transmitted electronically to suppliers, the Purchase Order Standard Terms & Conditions will not be included on each purchase order issued. Prior to issuing the first purchase order to you as a supplier, the university must have on file a copy of these terms and conditions signed by an authorized agent of the supplier. These terms and conditions are available on the university's website at [www.pugetsound.edu](http://www.pugetsound.edu). Suppliers will be notified if changes are made. Acceptance of purchase orders following notification of changes will be deemed as acceptance of the amendments.

Supplier Name: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_