



STANFORD UNIVERSITY
Purchase Order Terms and Conditions

1. DEFINITIONS

"Buyer" means the Board of Trustees of the Leland Stanford Junior University ("Stanford University"). "Seller" means the person, firm or corporation supplying the goods or services under the purchase contract, and includes all sales or other agents, subcontractors, employees and distributors thereof. However, specific Federal government clauses referenced below, concerning the U.S. Government's right to patents or to audit or inspect records mean both the U.S. Government or Stanford University.

2. ACCEPTANCE OF THE PURCHASE CONTRACT BY SELLER

The purchase contract may be accepted only on the terms set forth herein. Terms in any acceptance by Seller which are in addition hereto or not identical with the terms hereof will not become a part of any contract unless Buyer specifically and expressly agrees in writing that such other terms are accepted. By accepting this contract or any part hereon, Seller agrees to and accepts all the provisions of the purchase contract.

3. ACCEPTANCE BY BUYER

Buyer shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Seller. Buyer at its option may reject all or any portion of such goods or services which do not in Buyer's sole discretion comply in every respect with each and every term and condition of this purchase contract. Buyer may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.

4. RISK OF LOSS

Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss or damage results solely from the active negligence of Buyer.

5. SALES AND OTHER TAXES

Unless otherwise specified herein, Seller agrees that the price quoted herein includes all federal, state and local sales, use, excise, transaction, and other taxes.

6. CASH DISCOUNT PERIOD

The cash discount period available to Buyer shall commence on the later of Buyer's receipt of all goods and services or receipt of the invoice.

7. ASSURANCE

If at any time Buyer in good faith determines that it is insecure with respect to Seller's ability or intent to fully perform, then Seller agrees to provide Buyer with written assurance fully satisfactory to Buyer in Buyer's sole discretion of Seller's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by Buyer. Seller immediately shall notify Buyer of any circumstance, which may cause Seller to fail to fully perform. Upon Buyer's good faith determination that Seller cannot or will not perform, then Buyer may deem this contract to be breached by Seller (unless performance is excused as provided below) and may procure from other sources.

8. ASSIGNMENT

Seller shall neither assign any right nor delegate any duty without the prior written consent of Buyer. Notwithstanding any notice of assignment, Buyer's tender of payment to the Seller named herein, or to any

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person reasonably believed by Buyer to be entitled to payment, shall fully satisfy Buyer's obligation to pay, and in no event shall Buyer be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

9. EXCUSE

Seller shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods or services necessary for Seller's performance, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier, or any other person.

10. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Seller shall immediately notify Buyer in writing, presenting all relevant information concerning the dispute and its background.

11. WARRANTY

Seller warrants that the goods and services set forth herein (a) are of merchantable quality; (b) are fit for the particular needs and purposes of Buyer as may be communicated to Seller; (c) comply with the highest warranties, representations and options expressed by Seller orally or in any written advertisement, correspondence or other document provided to or in the possession of Buyer; (d) comply with all applicable laws, codes and regulations as published by any national or statewide association or group; and (e) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties. If any of the foregoing warranties is breached, Seller agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential and other damages suffered by Buyer and any other persons, and to defend and indemnify Buyer from any claim asserted by any person resulting in whole or in part from such breach.

12. DEFAULT.

Buyer may, by written notice, terminate this purchase contract, in whole or in part, for failure of Seller to perform any of the provisions hereon, including failure to deliver as and when specified. If so terminated, Seller shall be liable for all damages, including, without limitation:

- (a) the excess cost of reprocurring similar goods or services;
- (b) shipping charges for any items Buyer may at its option return to Seller, including items already delivered, but for which Buyer no longer has any use because of Seller's default; and
- (c) amounts paid by Buyer for any items Buyer has received but returns to Seller.

13. CHANGE OR CANCELLATION FOR CONVENIENCE

Buyer by written notice may change or terminate all or any part of this purchase contract for Buyer's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this contract, then Buyer and Seller will make a fair and equitable modification of their rights and obligations under this agreement, provided however that Buyer will not compensate Seller for any services not performed or goods not shipped by the date of such change or termination. If such goods are standard items of Seller's inventory, Seller's claim for an equitable adjustment under this paragraph must be submitted to Buyer in writing within 30 days of receipt of notice of change or termination, otherwise all such claims of Seller shall be deemed to have been waived.

14. CONFLICT OF INTEREST

- a. Buyer's policy requires avoidance of real or apparent conflict of interest. No employee, officer or agent of Buyer shall knowingly participate in the selection, award or administration of a contract with Seller if Buyer or any member of Buyer's immediate family has a material financial interest in Seller, or is negotiating or has any arrangement concerning prospective employment with Seller.
- b. No officer, employee or agent of Buyer shall either solicit or accept gratuities, favors or anything of monetary value from Seller, including any contingent fee.

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c. If Seller has reason to believe any officer, employee or agent of Buyer has violated any provision of this paragraph, Seller immediately shall notify Buyer of the suspected violation by sending notice thereof to Internal Audit, Stanford University, Stanford, CA 94305, explaining the situation in full. Seller's failure to so notify Buyer shall be a material breach of this agreement and Buyer, at its option, may terminate this agreement.

15. RECITALS AND INTERPRETATION

Seller acknowledges the following facts and agrees that this contract will be executed and interpreted with due regard thereto: that Buyer is a nonprofit charitable trust and therefore does not accept risks that normally would be acceptable to a commercial enterprise, that Buyer is wholly or partially self-insured for liability and property damage, that time is of the essence for Buyer and that delays can cause multi-million dollar losses due to loss of contract funds and/or inability to conduct or complete academic courses and/or research projects and/or patient care activities. This contract shall not be modified, supplemented, qualified or interpreted by any usage of trade unless actually known to the personnel of Buyer who are involved in this contract.

16. INDEMNITY

Seller agrees to forever indemnify, defend and save harmless Stanford from and against, and to waive any and all claims against Stanford for, any and all claims, suits and demands of liability loss or damage whatsoever, including attorneys fees, whether direct or consequential, on account of any loss, injury, death or damage to any person or persons of property (including without limitation all agents and employees of Seller and Stanford and all property owned by, leased to or used by either Seller or Stanford or both) on or account of any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from Seller's performance hereunder or in any way connected therewith or in any way related thereto, and regardless of whether such loss, injury, death or damage results in whole or in part from (a) the negligence or omission of Stanford or (b) any product liability of Stanford or any person or (c) any strict liability of Stanford or any person.

There are excluded from the above indemnity and waiver provisions any such claims, suits and demands of liability, loss or damage resulting solely from Stanford's gross recklessness, active negligence, or willful intent to injure. As used in this indemnity and waiver provision, and for purposes of Seller's insurance, "Stanford" shall be deemed to include Stanford University, its Trustees, Directors, officers, employees, faculty, students, agents, affiliated organizations and their insurance carriers, if any.

17. INSURANCE

Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance hereunder Seller shall obtain and keep in force general liability insurance including coverage for death, bodily injury, property damage, including products liability and automobile coverage's, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall be primary insurance, and any liability or insurance of Stanford shall be excess only. Such insurance shall waive any right of subrogation against Stanford and shall specifically cover Seller's obligations to defend, indemnify and hold Stanford harmless as provided herein.

18. USE OF BUYER'S NAME

Seller agrees not to use the name of Buyer or any related organization or to quote the opinion of any of Buyer's agents or employees in any advertising, promotion or other written or oral disclosure without the prior written consent of Buyer.

19. APPLICABLE LAW, ETC.

This contract and the performance hereunder shall be construed according to the law of California as applied to contracts made and performed within California. The parties hereto agree that any dispute arising under this contract shall be resolved in the courts of Santa Clara County or in the Federal District Court for the Northern District of California, and Buyer and Seller hereby submit themselves to the personal jurisdiction of said courts. All rights and remedies of Buyer and Seller shall be cumulative.

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20. COMPLETE AGREEMENT

This purchase contract (including these Terms and Conditions), any specifications or additional terms and conditions attached or referenced, and the material described in paragraph 11 above ("Warranty") constitute the entire agreement between Buyer and Seller. Seller's quotation is incorporated only insofar, as is specifically so stated in the purchase contract hereof. No other terms or conditions are binding on Buyer unless accepted by it in writing.

21. PURCHASE ORDER NUMBER

Seller will use best efforts to include Buyer's 8-character purchase order number as part of the delivery address on all goods and services delivered to Buyer. Failure to do so will cause Buyer significant delivery difficulties and delays.

22. ANTI-TRUST VIOLATIONS

Buyer and Seller recognize that in actual economic practice, overcharges, resulting from antitrust violations are in fact usually borne by the Buyer. Therefore, Seller hereby assigns to the Buyer any and all claims for such overcharges as to goods and services purchased in connection with this order, except as to overcharges not passed on to the Buyer resulting from antitrust violations commencing after the date of this contract or other event establishing the price under this contract.

23. ACCESS TO RECORDS

If this agreement is for the provision of services with a value of \$10,000 or more within a 12-month period, then until the expiration of four years after the furnishing of any services pursuant to this agreement, Seller shall make available, upon written request from the Secretary of the U.S. Department of Health and Human Services or from the U.S. Comptroller, such books, documents and records of Seller as are necessary to certify the nature and extent of the reasonable cost of services to Buyer. If Seller enters into an agreement with any related organization to provide services pursuant to this agreement with a value of \$10,000 or more within a 12-month period, such agreement shall contain a clause identical in content to the first sentence of this paragraph. This paragraph shall be of force and effect only to the extent required by P.L. 96-449.

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24. GOVERNMENT REQUIRED CLAUSES. All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland “Anti-Kickback” Act. In addition the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and Contract shall be interpreted as necessary to apply to the U.S. Government or the Buyer and Seller, respectively.

FAR Number Title of Clause

Regardless of Amount:

52.203.11 Certification & Disclosure Re: Payments to Influence Certain Federal Transactions

52.222.4 Contract Work Hours and Safety Standards Act

52.225.13 Restrictions on Certain Foreign Purchases

52.227.10 Filing of Patent Applications-Classified Subject Matter

52.227.11/12/13 Patent Rights

52.247.63 Preference for U.S. Flag Air Carriers

52.247.64 Preference for Privately Owned U.S. Flag Commercial Vessels

252.227.7034 DFAR Patents- Subcontracts DOD only

252.227.7039 DFAR Patents Reporting Subject Inventions DOD only

52.222.21 Prohibition of Non-Segregated Facilities

52.222.26 Equal Opportunity

52.222.35 Affirmative Action for Disabled Veterans of the Vietnam Era

52.222.36 Affirmative Actions for Workers with Disabilities

52.222.37 Employment Reports on Disabled Veterans of the Vietnam Era

Orders over \$100,000 all of the above clauses plus:

52.203.6 Restrictions on Subcontractor Sales to the Government

52.203.7 Anti-Kickback Procedures

52.203.12 Limitation on Payments to Influence Certain Federal Transactions

52.215.2 Audit and Records- Negotiation, Alternative II

52.219.8 Utilization of Small Business Concerns

52.227.1 Authorization and Consent Alternative I

52.227.2 Notice and Assistance Regarding Patent and Copyright Infringement

42 U.S.C. 7401, et. seq Clean Air Act

33 U.S.C. 1251, et. seq Federal Water Pollution Control Act

Orders over \$500,000 all of the above clauses plus:

52.219.9 Small Business Subcontracting Plan

Orders over \$550,000 all of the above clauses plus:

52.215.12/13 Subcontractor Cost or Pricing Data- Modifications

25. CONFIDENTIALITY

Seller affirms that it is in compliance with the Gramm-Leach-Bliley Act and 16 CFR Part 314 providing safeguards to confidential financial information (CFI) according to commercially acceptable standards and no less rigorously than it protects its own CFI.

(Rev 01/11/2008)