

Standard Terms and Conditions/State of Oregon/Southern Oregon University
Contract for Purchase of Goods

1. **DEFINITIONS:** Contract means the entire written agreement between the parties, including but not limited to this purchase order and any subsequent change notices; Contractor means a person or organization with whom the State of Oregon has contracted for the purchase of goods. The terms Contractor and Seller as used in the uniform Commercial Code (ORS Chapter 72) are synonymous; ORS means the Oregon Revised Statutes; State means the State agency making the purchase.
2. **AMENDMENTS:** The terms of the Contract shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written approval of the State.
3. **WAIVER:** Failure of the State to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the State of the right to such performance in the future nor of the right to enforce any other provision of this Contract.
4. **ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract, or sublet rights or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the State. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable as between the original parties to the Contract as if no such assignment had occurred.
5. **SUCCESSORS IN INTEREST:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective authorized successors and assigns.
6. **COMPLIANCE WITH ALL GOVERNMENT REGULATIONS:** Contractor shall comply with all federal, state, and local laws, codes, regulations, and ordinances applicable to the goods to be purchased under this Contract. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for Contract cancellation. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.
7. **NONDISCRIMINATION:** Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
8. **SEVERABILITY:** If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular terms or provisions held to be invalid.
9. **ATTORNEY FEES:** In the event a lawsuit of any kind is instituted on behalf of the State to collect any payment due or to obtain performance of any kind under this Contract, Contractor shall pay such additional sums as the court may adjudge as reasonable attorney fees plus all costs and disbursements at trial and on any appeal.
10. **HOLD HARMLESS:** Contractor shall indemnify, defend, and hold harmless the State and its officers, divisions, agents, employees, and members from all claims, suits, or actions of any nature arising out of the activities of Contractor, its officers, subcontractors, agents, or employees under this Contract. Contractor shall have control of the defense and settlement of any claim; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interest, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
11. **WARRANTIES:** Unless otherwise stated, all equipment shall be new and current models and shall carry full factory warranties. Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with bid specifications. All implied or express warranty provisions of the Uniform Commercial Code (ORS, Chapter 72) are incorporated in this Contract. All warranties shall run to the State.
12. **SAFETY AND HEALTH REQUIREMENTS:** Equipment and services supplied shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements including those of the State Workers' Compensation Department.
13. **DELIVERY:** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the State except as to latent defects, fraud, and Contractor's warranty obligations.
14. **INSPECTIONS:** Goods furnished under this Contract shall be subject to inspection and test by the State at

times and places determined by the State. If the State finds goods furnished to be incomplete or not in compliance with bid specifications, the State may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the State, the State may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the State's rights as buyer, including the rights and remedies associated with revocation of acceptance under ORS 72.6080.

15. CASH DISCOUNT: If the State is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

16. PAYMENT: Payment for completion of State of Oregon contracts is normally made within 30 days following the date the entire order is delivered and accepted or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month on the outstanding balance (ORS 293.462).

17. ACCESS TO RECORDS: The State of Oregon and its agencies, the federal government, and their duly authorized representatives shall have access to books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts.

18. TERMINATION: This Contract may be terminated by mutual consent of both parties or by the State at its discretion. The State may cancel an order for goods at any time with written notice to Contractor stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this Contract as directed by the State. If this Contract is so terminated, Contractor shall be paid in accordance with the terms of the Contract for goods delivered and accepted which cannot be mitigated by resale as provided in the Uniform Commercial Code (ORS 72.7060).

19. FORCE MAJEURE: Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The State may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.

20. BREACH OF CONTRACT: Should Contractor breach any of the provisions of this Contract, the State reserves the right to cancel this Contract upon written notice to Contractor. Contractor shall be liable for any and all damages incidental and consequential suffered by the State as a result of Contractor's breach of contract. The State shall have any and all remedies provided under the Uniform Commercial Code (ORS, Chapter 72) in the event of a breach of contract by Contractor.

21. AWARD TO FOREIGN CONTRACTOR: If the amount of this contract exceeds \$10,000 and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to this Contract. The State shall withhold final payment under this Contract until Contractor has met this requirement.

22. REMEDIES: This Contract shall be governed by and construed in accordance with the laws of the State of Oregon as interpreted by the Oregon Courts, and any litigation arising out of this Contract shall be conducted in the courts of the State of Oregon; provided however, if litigation must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any litigation or from the jurisdiction of any court.

23. FEDERAL TAX IDENTIFICATION NUMBER: All Contractors must furnish upon request a federal tax identification number to Southern Oregon University. Failure to provide this information could result in invoice payments being withheld.

24. WORKERS' COMPENSATION: Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in 656.126.

25. TAX COMPLIANCE CERTIFICATION: Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(1), that to the best of Contractor's knowledge Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer payroll Tax, and Tri-Metropolitan District Self-Employment Tax.

EFFECTIVE 2/20/08