

PORTLAND STATE UNIVERSITY
STANDARD TERMS & CONDITIONS FOR GOODS

1. DEFINITIONS:

"Contract" means the entire written agreement between the parties, including but not limited to the Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation addenda and contract amendments, if any; and the purchase order or price agreement document;

"Contractor" means a person or organization with whom Portland State University (PSU) has contracted for the provision of goods pursuant to this Contract. The terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous;

"OARS" means the Administrative Rules adopted by the State of Oregon Board of Higher Education and PSU.

"ORS" means the Oregon Revised Statutes;

"PSU" means the State of Oregon, acting by and through the State Board of Higher Education, on behalf of Portland State University and is synonymous with "Buyer" as used in ORS chapter 72. "PSU" also means other parties to the Contract if the purchase is being made under a cooperative agreement;

2. AMENDMENTS: The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of PSU.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS; ORDER OF PRECEDENCE: These Standard Terms and Conditions are for contracts for the purchase of goods. PSU may also provide "special terms and conditions" elsewhere in the Contract which apply only to this Contract. Whenever possible, all terms and conditions are to be integrated. In the event of a conflict between the standard and "special terms and conditions", the "special terms and conditions" take precedence, unless the standard terms in question are required by law. In the event of any other conflict: 1) the special terms and conditions, 2) these Standard Terms and Conditions, 3) the Invitation to Bid or Request for Proposal, and 4) the proposal or response thereto shall be interpreted in the foregoing order of precedence. By signing this Contract, the Contractor agrees that, in the event of a conflict, all the terms and conditions of this Contract supersede all preprinted terms and conditions on any forms used by the Contractor.

4. PAYMENT: Payment of PSU contracts or Purchase Orders is normally made within 30-45 days following the date the entire order is delivered or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent per month (8% per annum) on the outstanding balance (ORS 293.462).

5. CASH DISCOUNT: If PSU 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.

6. DELIVERY: All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to PSU except as to latent defects, fraud and Contractor's warranty obligations.

7. INSPECTIONS: Goods furnished under this Contract shall be subject to inspection and test by PSU at times and places determined by PSU. If PSU finds goods furnished to be incomplete or not in compliance with the Contract, PSU, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to PSU at a reduced price, whichever PSU deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by PSU, PSU may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit PSU's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

8. WAIVER: Failure of PSU to enforce any provisions of this Contract shall not constitute a waiver or relinquishment by PSU of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

9. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the PSU Procurement and Contracting Department. 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 to PSU under the Contract as if no such assignment, transfer, or subcontract had occurred.

10. 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 permitted successors and assigns.

11. COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act, 42 USC §12100 et seq., ORS 659.425 and all regulations and administrative rules established

pursuant to those laws. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of this Contract.

12. **PAYMENT OF CONTRACTOR'S OBLIGATIONS:** Contractor agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the provision of the work provided in this Contract; pay all contributions or amounts due the industrial accident insurance provider from such Contractor incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate PSU official may pay such claim and charge the amount of the payment against funds due or to become due to the Contractor under this Contract. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety, if any, of obligations with respect to any unpaid claims.

13. **SEVERABILITY:** If any provisions of this Contract are declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provision 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 provision held to be invalid.

14. **INDEMNITY, RESPONSIBILITY FOR DAMAGES:** (a) Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this Contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless the State of Oregon, the State Board of Higher Education, PSU, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this Contract. (b) Without limiting the generality of Section 15(a), Contractor expressly agrees to defend, indemnify, and hold PSU, the State of Oregon and their agencies, subdivisions, officers, directors, agents, and employees harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the goods or any other tangible or intangible items delivered to PSU by Contractor that may be the subject of protection under any state or federal intellectual property law or doctrine, or PSU's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that PSU shall provide Contractor with prompt written notice of any infringement claim. (c) Contractor shall have control of the defense and settlement of any claim that is subject to Sections 15 (a) or (b); 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 interests, or that an important governmental principle is at issue and the state of Oregon desires to assume its own defense.

15. **WARRANTIES:** Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied or expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this Contract. All warranties shall run to PSU.

16. **SAFETY AND HEALTH REQUIREMENTS:** Goods supplied under this Contract shall comply with all federal Occupational Safety and Health Admin. (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division.

17. **ACCESS TO RECORDS:** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all cost of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of the Contract. The Oregon State Board of Higher Education, Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for three years from the date of Contract expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by PSU.

18. **TERMINATION:** This Contract may be terminated at any time by mutual consent of both parties, or by PSU at its discretion. If sufficient funds are not provided in future legislatively approved budgets of PSU (or from applicable federal, state or other sources) to permit PSU, in the exercise of its reasonable administration discretion, to continue this Contract, or if PSU or the program from which this Contract was executed is abolished, PSU may terminate this Contract without further liability upon delivery of notice to Contractor. This Contract may also be terminated by PSU for default (including breach of contract) if (a) Contractor fails to provide goods called for by this Contract within the time specified, or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of the Contract in accordance with these terms, and after receipt of written notice from PSU, fails to correct such failures within ten days. The rights and remedies of PSU provided in the above clause related to defaults (Including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by or under this Contract. Contractor shall be liable for any and all damages incidental and consequential, as provided in ORS 72.7110 to 72.7170, suffered by PSU as the result of Contractor's breach of contract. PSU 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. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification as bidder on PSU contracts.

19. **FORCE MAJEURE:** Neither PSU nor Contractor shall be held responsible for delay or default caused by fire, riot, act of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, PSU's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract.
20. **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 and Secretary of State Corporation Division, all information required by those agencies relative to this Contract. PSU shall withhold final payment under this Contract until Contractor has met this requirement.
21. **GOVERNING LAW:** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, or suit between PSU and Contractor that arises out of or relates to performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Multnomah County, for the State of Oregon. Provided, however that if any such claim, action, or suit may be brought only in federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of said courts.
22. **AVAILABILITY OF FUNDS:** PSU certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of the Contract or any extension after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this Contract.
23. **NOTICE:** Any notice pursuant to this Contract shall be validly given if in writing and sent by registered or certified mail, postage prepaid, to the respective addressees of Contractor and PSU.
24. **WORKERS' COMPENSATION:** All employers, including Contractor, that employ subject workers, who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
25. **RECYCLABLE PRODUCTS:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of this Contract. Contractor shall specify the minimum percentage of recycled product in the goods provided.
26. **TAX COMPLIANCE CERTIFICATION.** Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(6), that to the best of Contractor's knowledge, Contractor is not in violation of any of the tax laws described in ORS 305.380(4). The tax laws described in ORS 305.380(4) are those imposed by ORS chapters 118, 314, 316, 317, 318, 320, 321, and 323, and sections 10 to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.
27. **MERGER:** THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.