

CONTRACT/PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE; TERMS AND CONDITIONS CONSTITUTES ENTIRE AGREEMENT.** These Contract and/or Purchase Order Terms and Conditions ("Terms and Conditions") constitute Oral Roberts University's ("Buyer") offer and may be accepted by seller, contractor or other party to transaction with Buyer (hereinafter collectively referred to as "Seller") only in accordance with the terms hereof. A Purchase Order shall be deemed accepted by Seller by commencement of work, shipment of goods, or furnishing of services hereunder. The Terms and Conditions constitute the entire understanding between Buyer and Seller with respect to the subject matter hereof. No amendment, modification or term contrary to these Terms and Conditions shall be valid or binding unless made in writing and executed on behalf of each Buyer and Seller by its duly authorized representative. Any proposal for additional or different terms or any attempt to vary the Terms and Conditions is hereby objected to and rejected by Buyer. The Terms and Conditions shall control over any contrary or additional terms contained in any other document such as a request for proposal, bid, invoice, Purchase Order Acknowledgment or any exhibit or attachment to thereto.
2. **CHANGES.** Buyer shall have the right at any time to make changes in a Purchase Order by written notice to Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's costs or time of performance, Seller shall notify Buyer within seven (7) days and the parties shall endeavor to negotiate a written adjustment signed by the parties, otherwise the price shall be as stated herein.
3. **PRICE.** If a Purchase Order is not priced, it shall not be filled at prices higher than the last quoted price charged Buyer for the same articles. Charges for boxing, packaging or cartage will not be allowed or paid by Buyer unless otherwise expressly stated in the Purchase Order. Goods are purchased on a delivered basis. Freight is included in the purchase price of the materials. All freight charges are to be paid by the Seller to the carrier without further liability to Buyer.
4. **SHIPPING.** Buyer reserves the right to route all shipments. Delays in shipment shall be reported immediately by Seller to Buyer. Every package or other shipping unit, bill of lading, shipping memorandum and invoice must be marked with Buyer's Purchase Order Number. Seller's serial numbers must be shown on all shipping papers and invoices.
5. **TIME OF THE ESSENCE.** Time of shipment and other aspects of performance hereunder is of the essence of this Purchase Order.
6. **DELIVERY/TITLE.** Delivery shall be FOB Buyer location and title shall pass to Buyer upon acceptance at the final delivery to its location. Risk of damages or loss following shipment and prior to acceptance by Buyer shall be the responsibility of Seller.
7. **RIGHT OF INSPECTION AND REJECTION.** Material and equipment supplied by Seller shall be received subject to Buyer's right of inspection and approval within a fourteen (14) days after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Seller's expense. No material or equipment returned to Seller as defective shall be replaced except upon Buyer's formal authorization. Buyer shall not pay any restocking fees.
8. **ASSIGNMENT.** No Contract or Purchase Order, nor any interest therein nor any claim arising hereunder shall be transferred or assigned by Seller without the prior written consent of Buyer. Buyer may transfer or assign the benefits of this the Contract or Purchase Order, in whole or in part, including without limitation the warranty, without the approval of Seller.
9. **GOVERNING LAW** – The Terms and Conditions, and the rights and obligations of the parties thereto that arise out of or relate to the transaction, shall be determined in accordance with the laws of the State of Oklahoma. Any action or proceeding arising out of or related to the Terms and Conditions or transaction must be brought in a court with jurisdiction and venue in Tulsa County, Oklahoma.
10. **INVOICES AND PAYMENT.** All invoices shall be emailed to the Oral Roberts University Accounts Payable Office at invoices@oru.edu and shall state the Purchase Order Number clearly on the Invoice. If email is not possible, all invoices shall be mailed to the Accounts Payable Office at the address indicated on the face of the Purchase Order and will state the Purchase Order Number clearly on the Invoice. No invoice shall be delivered by Seller to any employee of Buyer. An itemized delivery ticket, bearing Buyer's Purchase Order Number as shown hereon, must be left with the goods to insure their receipt. If delivery is made by carrier, an itemized delivery ticket must be attached to the package or other shipping unit. The payment discount period will date from receipt of the invoice and not from the date of the invoice. In case of errors on an invoice, the payment discount period will date from the receipt of corrected invoices. Seller shall submit invoices for services, reimbursable expenses and additional services not more often than once per month. Each invoice shall contain a summary of the total amount of previous invoices, the current invoice amount, and the unbilled balance of any pending Purchase Order. All payments by Buyer shall be net thirty (30) days of the date the invoice is received by Buyer. Invoices shall not be delivered to Buyer until after delivery and inspection has occurred.
11. **PATENT INDEMNITY.** Seller shall indemnify, save harmless and defend Buyer from and against any and all suits, claims, damages, costs, and attorney's fees arising out of or in connection with any infringement or claimed infringement of any United States patent, trademark or copyright in the manufacture, use or sale of the equipment or materials furnished under this Purchase Order. In case said equipment or material is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using said equipment or material, or at the option of Buyer either replace same with equally efficient noninfringing equipment or material, or modify it without impairing its efficiency so it becomes noninfringing, or remove said equipment or material and refund the purchase price and the transportation and installation costs thereof.
12. **INDEMNITY AND INSURANCE.** Seller shall defend, indemnify and hold harmless Buyer from any claims, suits, judgments, fees and costs (including attorney's fees) based on or arising out of the Seller's products, services and/or the resale or use of the products purchased hereunder including death, personal injury, or damage to property. Seller agrees to procure and maintain the minimum following insurance coverages: (a) Commercial General Liability insurance with limits not less than \$1,000,000 per occurrences used by Seller (including all owned, hired and non-owned vehicles) and (b) Worker's Compensation with statutory limits and a waiver of subrogation in favor of Buyer. Evidence of such coverage, in the form of a Certificate of Insurance and providing for thirty (30) days' notice to Buyer prior to cancellation, shall be sent to Buyer upon request. Seller shall list Buyer as an additional insured on its policies.
13. **COMPLIANCE WITH LAWS.** Seller, in the performance of this Purchase Order, shall comply with applicable Federal, state, and local laws, regulations, rules and ordinances.
14. **CHEMICAL SUBSTANCE IDENTIFICATION.** By acceptance of this Purchase Order, Seller certifies that any chemical substance(s) furnished pursuant to this Purchase Order has been properly labeled, and that proper information on the substance(s), e.g., material safety data sheets, have been provided to Buyer, pursuant to all federal, state or local laws and regulations.
15. **CONFIDENTIALITY/TRADE SECRETS.** All specifications, data and other information furnished by Buyer, or its agents, to Seller in connection with this Purchase Order remain the exclusive intellectual property of Buyer and shall be treated by the Seller as proprietary and shall not be disclosed or used, outside the limitation of this Purchase Order, without prior written approval of the Buyer. In addition, the purchase of the Seller's product does not authorize the Seller to use the name of or make reference to Buyer for any purpose in any releases for public or private dissemination, nor shall the Seller divulge or use in any advertisement or publication any specifications, data, or other information pertaining to or relating to this usage without prior written approval of the Buyer.
16. **TERMINATION FOR CONVENIENCE OF BUYER.** Buyer reserves the right to terminate this Purchase Order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller shall deliver to Buyer all goods, materials and equipment for which partial termination payment has been made by Buyer.
17. **TERMINATION FOR CAUSE.** Buyer may also terminate this Purchase Order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this Purchase Order, and failure to provide Buyer, upon request, reasonable assurances of future performance shall all be causes allowing Buyer to terminate this Purchase Order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages

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- sustained by reason of the default which gave rise to the termination.
18. **WARRANTY.** Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so. Seller shall assign all rights and interest in manufacturer warranty for goods covered by this Purchase Order to Buyer.
 19. **PRICE WARRANTY.** Seller warrants that the prices for the articles sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this Purchase Order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Purchase Order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.
 20. **FORCE MAJEURE.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Buyer's request. Causes beyond Buyer's control shall include governmental action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.
 21. **SETOFF.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
 22. **WAIVER.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges whether of the same or similar type.
 23. **LIMIT ON BUYER'S LIABILITY-STATUTE OF LIMITATIONS.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.
 24. **WEBSITE INCORPORATION.** Buyer expressly states that it will not be bound by any content on the Seller's website, even if the Seller's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the Buyer has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the Buyer.
 25. **SPONSORED PROJECT.** If this Purchase Order is a subcontract under an externally funded sponsored project award, the applicable clauses of the award are incorporated herein.
 26. **EXPORT CONTROLS.** Seller is responsible for complying with all applicable export control regulations. Any such export controlled items, equipment, or information MUST be properly handled and labeled by the Seller as part of the Seller's responsibility. The burden shall be on Seller to prevent such export controlled information from being improperly disclosed to the Buyer and shall obtain the appropriate license or approval from the relevant authorities or to invoke an available exception, exemption, or exclusion before disclosing any export controlled materials to the Buyer. In the event that the Seller seeks to provide the Buyer with any such controlled disclosures, the Seller will so inform the Buyer in writing, and shall NOT forward or provide ANY export controlled information to the Buyer without the express written permission of the Buyer official in charge of such matters. The name of such official shall be provided upon request.
 27. **COMPLIANCE.** Seller shall coordinate all labor, materials and equipment with Buyer and all Contractors on site. Seller's employees, agents and representatives on Buyer's premises shall comply with all Buyer's policies and procedures including those regarding conduct at a private Christian institution of higher education including (check-in with Buyer's Security office, prohibition of swearing, offensive language and use of alcohol and tobacco products, etc.). Firearms and weapons are prohibited on Buyer's premises and Buyer employs video surveillance equipment for security purposes which may or may not be monitored at any time.
 28. **APPLICABLE REFERENCE NUMBERS:**
 - A. Buyer's FEIN Number: _____
 - B. Buyer's Tax Exempt ID Number:
 1. Oklahoma: _____
 2. Other States: _____
 29. **INTELLECTUAL PROPERTY RIGHTS.** All right, title and interest in and to Intellectual Property Rights of whatever nature arising out of or related to any services or the deliverables shall vest in, and be the sole and exclusive property of, Buyer, whether or not specifically recognized or perfected under applicable law. For purposes of all copyright and similar laws, it is expressly agreed upon between Buyer and Seller that the services and deliverables shall be deemed "works for hire" to be owned by Buyer. Buyer will own all Intellectual Property Rights in any copies, translations, modifications, adaptations or derivatives of any services or deliverables, including any improvements or developments thereof. For the avoidance of doubt, the parties hereby affirm that Buyer shall have the sole right to copy, distribute, amend, modify, develop, sublicense, sell, transfer and assign the services and deliverables, associated documentation, or any enhancements thereof. Intellectual Property Rights are defined as the collective worldwide intellectual property rights now held or hereafter filed, issued, created or acquired by a Party arising under statutory or common law or by contract, for (i) all classes or types of patents and patent applications, (ii) all works of authorship, including all copyrights and moral rights in both published and unpublished works and all registrations and applications; (iii) all mask works and all registrations and applications; and (iv) all inventions, know-how, trade secrets, and confidential and proprietary technical and non-technical information. The term Intellectual Property Rights shall include, but is not limited to, proprietary rights in any invention, discovery, development, improvement, design, idea, suggestion, writing, computer software, sound recording, pictorial reproduction, schematic, drawing, or other graphic representation, and works of any similar nature, whether or not protectable by statute or common law. Seller shall not reproduce, publish or supply any such material to any person other than the Buyer without the Buyer's prior written consent. Seller represents that none of the goods or services will infringe any Intellectual Property Rights of any third party. All Intellectual Property Rights (including ownership of copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Seller by Buyer shall remain vested solely in the Buyer and the Seller shall not (except to the extent necessary for the implementation of this contract or Purchase Order without prior written consent of the Buyer use or disclose any such specification, plans, drawings, patterns, models or designs or any information.
 30. **SURVIVAL.** The obligations imposed by these Terms and Condition shall continue to apply after the performance, expiration or termination.