

## **UMUC PURCHASE ORDER TERMS AND CONDITIONS greater than \$200K**

1. **Maryland Law Prevails.** The laws of Maryland shall govern the interpretation and enforcement of this Purchase Order.
2. **Contractor's Invoices.** Contractor agrees to include on the face of all invoices billed to the University, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations. If a Purchase Order document is issued, the Purchase Order Number must be included. Contractor shall send a separate invoice, in triplicate, for this purchase order.
3. **Compensation.** Contractor shall be paid only for items or services that are specifically named in this purchase order. No additional costs for items or services will be paid by the University without its prior express written consent.
4. **Tax Exemption.** The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a purchase order, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.
5. **Payment of University Obligations.** Payments to the Contractor pursuant to this Purchase Order shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities as applicable, are prohibited.
6. **Changes.** This Purchase Order may be amended with the written consent of both parties. Amendments may not change significantly the scope of the Purchase Order.
7. **Incorporation by Reference.** All terms and conditions of the solicitation (if applicable), and any changes thereto, are made a part of this purchase order.
8. **Specifications.** All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation (if applicable).
9. **Delivery.** Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The Contractor agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrance, from any cause whatsoever, during the progress of any portion of the work specified in this purchase order.
10. **Acceptance of Goods and/or Services** The materials listed in the bid or proposal shall be delivered FOB Destination to the point or points specified on this purchase order. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The University reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

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11. **Termination for Default.** If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the University may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the University's option, become the University's property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the University can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of USM Procurement Policies and Procedures.
12. **Termination for Convenience.** The performance of work under this contract may be terminated by the University in accordance with this clause in whole, or from time to time in part, whenever the University shall determine that such termination is in the best interest of the University. The University will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of the USM Procurement Policies and Procedures.
13. **Disputes.** This purchase order shall be subject to USM Procurement Policies and Procedures. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the purchase order in accordance with the procurement officer's decision.
14. **Multi-Year Purchase Orders.** If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the University's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the University from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The University shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.
15. **Intellectual Property.** Contractor agrees to indemnify and save harmless the University, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this purchase order.
16. **Conflicting Terms.** Any proposal for terms in addition to or different from those set forth in this purchase order or any attempt by the Contractor to vary any of the terms of this offer by Contractor's acceptance shall not operate as a rejection of this offer, unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof, and this offer shall be deemed acceptable by the Contractor without the additional or different terms. If this purchase order is an acceptance of a prior offer by the Contractor, the acceptance is expressly conditioned upon Contractor's assent to any additional or different terms contained herein. The Contractor understands and agrees that the terms and conditions of this purchase order may not be waived.

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17. **Retention of Records.** The Contractor shall retain and maintain all records and documents relating to this Purchase Order for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.
18. **Equal Employment Opportunity.** If federally funded, the Contractor warrants that the contractor shall comply with E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.
19. **Non-Discrimination in Employment.** The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
20. **Non-Hiring of Employees.** No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.
21. **Rights to Inventions Made Under a Purchase Order or Agreement.** If federally funded, any inventions created by the contractor in performance of this purchase order's experimental, developmental, or research work, if applicable, will become the property of the Federal Government and the University of Maryland in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Purchase Orders and Cooperative Agreements", and any implementing regulations issued by the awarding agency. With respect to any subject invention in which the Contractor retains title, the Federal Government and the University shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice on behalf of the United States the subject invention throughout the world.
22. **Contract Work Hours and Safety Act.** If federally funded and the order involves the employment of mechanics or laborers, the contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standard Act (40 USC 327-333) as supplemented by Dept. of Labor regulations (29 CFR part 5).
23. **Contingent Fee Prohibition.** The Contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect, or engineer, to solicit or secure this Contract, and that it, has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

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24. Delays and Extensions of Time. The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.
25. Suspension of Work. The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the University.
26. Pre-existing Regulations. In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of this Contract are applicable to this Contract.
27. Financial Disclosure. The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.
28. Political Contribution Disclosure. The Contractor shall comply with Article 14, Election Law, Sections 14-101 through 14-108 of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws:
- a. before a purchase or execution of a lease or contract by the University, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
  - b. if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6-month period ending July 31.
29. Compliance with Laws.  
The Contractor hereby represents and warrants that:
- a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
  - b. It is not in arrears with respect to the payment of any moneys due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
  - c. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

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d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

30. **Cost and Price Certification.** The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- a. A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
  - b. A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

The price under this Contract and any change order or modification hereunder, including profit or, fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

31. **Family Educational Rights and Privacy Act (“FERPA”).** The selected Contractor may have access to, may obtain, or be given confidential information, including without limitation information concerning the University’s business strategies, political and legislative affairs, students, faculty, employees, vendors, contractors, student records or student financial information, customer lists, finances, properties, methods of operation, computer and telecommunication systems, and software and documentation. Certain confidential information may be protected under the Family Educational Rights and Privacy Act (“FERPA”), the Gramm-Leach-Bliley Act, and the Maryland Public Information Act. The selected firm must have administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the University’s and borrower’s confidential information. The Contractor further agrees that it is subject to the requirements governing the use and re-disclosure of personally identifiable information from education records as provided in FERPA.
32. **Indemnification.** The University shall not assume any obligation to indemnify, hold harmless, or pay attorney’s fees that may arise from or in any way be associated with the performance or operation of this Contract.
33. **Ethics.** This Contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the Contractor or any UMUC employee in connection with this procurement.
34. **Certification Regarding Investments in Iran.** The Contractor certifies that, in accordance with State Finance & Procurement Article, §17-705: (i) it is not identified on the list created by the Board of Public Works at <http://bpw.maryland.gov/publications/2013-iai-list.pdf> as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and (ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702. If Contractor is unable to make the aforementioned certification regarding its investment activities in Iran, it shall immediately notify the University and provide the details of such activities.