

TERMS AND CONDITIONS
APPLICABLE TO ALL PURCHASE ORDERS

1. **INVOICES** must be rendered in triplicate not later than the day following shipment. In accordance with Sections 1.6047-1.6050 of the IRS Code, the vendor shall provide the University of Hawaii (UH) with its Federal Taxpayer Identification Number and its 1) Hawaii General Excise/Use Identification Number or 2) its Social Security Number on the invoice.
2. **EXTRA CHARGES.** No additional charges of any kind, including charges for boxing, packing, cartage, or other extras will be allowed unless specifically agreed to in writing, in advance by UH.
3. **PAYMENT, C.O.D.** shipments will not be accepted. Drafts will not be honored. In accordance with Section 103-10, Hawaii Revised Statutes, payment to vendors shall be made no later than 30 calendar days following receipt of invoice or satisfactory receipt of goods and services.
4. **PRICE.** If price is not stated in this order, it is agreed that the goods shall be billed at the price last quoted, or billed at the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without UH's specific authorization.
5. **APPLICABLE LAWS.** Vendor represents that the merchandise covered by this order was not manufactured and is not being sold or priced in violation of any federal, state or local law.
6. **FAIR LABOR STANDARDS ACT.** Vendor agrees that goods shipped to UH under this order will be produced in compliance with the Fair Labor Standards Act.
7. **WARRANTY SPECIFICATIONS.** Vendor expressly warrants that all the materials and articles covered by this order or other description or specification furnished by UH will be in exact accordance with such order, description or specification and free from defects in material and/or workmanship, and merchantable.
8. **CANCELLATION.** UH reserves the right to cancel all or any part of the undelivered portion of this order if Vendor does not make deliveries as specified, time being of the essence for this P.O., or if Vendor breaches any of the terms hereof including, without limitation, the warranties of Vendor.
9. **ACCEPTANCE.** The items or services covered by this order shall be furnished by Vendor subject to all the terms and conditions set forth in this order including the following, which Vendor in accepting this order agrees to be bound by and to comply with all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the items or services covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made part of the order only to the extent of specifying items, the nature of the items, the services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions of this order.
10. **WAIVER.** The failure of the UH to enforce at any time any of the provisions of this order, or to exercise any option herein provided, or to require at any time performance by the Vendor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right of the UH thereafter to enforce each and every such provision.
11. **WARRANTIES.** Vendor warrants the articles delivered hereunder to be free from defects in labor, material and manufacture, and to be in compliance with any drawings or specifications incorporated or referenced herein and with any samples furnished by the Vendor. All warranties shall run to the UH, its successors, and assigns.
12. **DISCOUNT DATE.** The date for calculation of any cash discount offered by the Vendor and provided for on the face of this order is (i) the date material is received or (ii) the date an acceptable invoice is received, whichever is later.
13. **INSPECTION.** All work performed and all deliverable items are subject to inspection and acceptance at destination notwithstanding any payments or inspection at source. Final inspection and acceptance shall be conclusive except as to latent defects, fraud, such gross mistakes as amount to fraud, and the Vendor's warranty obligations. Supplies to be furnished hereunder shall be subject to inspection by the UH and/or government inspectors upon the premises of the Vendor. Vendor, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspections, Vendor shall make available to the inspectors copies of all drawings, specifications and process, preservation and packaging data applicable to the articles ordered herein.
14. **ASSIGNMENT.** This order is assignable by the UH. Except as to any payment due hereunder, this order is not assignable by Vendor without written approval of the UH. In case such consent is given, it shall not relieve Vendor from any of the obligations of this order and any transferee or subcontractor shall be considered the agent of Vendor and, as between the parties hereto, Vendor shall be and remain liable as if no such transfer or subletting has been made.
15. **CHANGES.** The UH may make changes within the general scope of this order by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Vendor shall be recognized without written approval of the UH. Any claim of Vendor for an adjustment under this article must be made in writing within THIRTY (30) days from the date of receipt by Vendor of notification of such change unless the UH waives this condition. Nothing in this article shall excuse Vendor from proceeding with performance of the order as changed hereunder.
16. **SHIPPING INSTRUCTION.** Shipments must be made as specified on the face of the order unless subsequently modified in writing by the UH.
17. **LABOR DISPUTES.** Vendor shall give prompt notice to the UH of any actual or potential labor dispute which delays or may delay timely performance of this order.
18. **TERMINATION AND DELAYS.** The UH may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. The UH shall pay Vendor as full compensation for performance under such termination: (1) the unit or pro rata order price for the delivered and accepted portion and (2) a reasonable amount, not otherwise recoverable from other sources by Vendor as approved by the UH with respect to the undelivered or unaccepted portion of this order; provided compensation hereunder shall in no event exceed the total order price. The UH may, by written notice, terminate this order for Vendor's default, in whole or in part, at any time, if Vendor refuses or fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the items or services or perform the services within the time specified or any written extension thereof. In such event, the UH may purchase or otherwise secure items or services and, except as otherwise provided herein, Vendor shall be liable to the UH for any excess costs occasioned the UH thereby. If, after notice of termination for default, the UH determines that the Vendor was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Vendor (including, but not restricted to, acts of God or of the public enemy, acts of the UH, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of the UH, unless the UH shall determine that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule. If the UH determines that Vendor has been delayed in the work due to causes beyond the control and without the fault or negligence of the Vendor, the UH may extend the time for completion of the work called for by this order, when promptly applied for in writing by Vendor; and if such delay is due to failure of the UH, not caused or contributed to by Vendor, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the changes article. Sole remedy of Vendor in event of delay by failure of the UH to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits. The rights and remedies of the UH provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this article, the word "Vendor" includes Vendor and Vendor's suppliers at any tier.
19. **LIABILITY FOR UH FURNISHED PROPERTY.** Vendor assumes complete liability for any tools, articles or material furnished by the UH to Vendor in connection with this order and Vendor agrees to pay for all such tools, articles, or material spoiled by it or not otherwise accounted for to the UH's satisfaction. The furnishing to Vendor of any tools, articles, or material in connection with this order shall not, unless otherwise expressly provided, be construed to vest title thereto to Vendor.
20. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION.** The Vendor (contractor or subcontractor) agrees that the equal opportunity clause prohibiting discrimination on the basis of race, color, religion, sex or national origin, and the affirmative action requirements of Executive Order 11246, as amended, and implementing regulations at 41 CFR 60 are incorporated by reference in each non-exempt contract, subcontract, or purchase order, which is presently existing or may be entered into hereafter, between the Vendor and the University of Hawaii. The Vendor agrees to perform the applicable obligations of the equal opportunity clauses, as amended, covering race, color, religion, sex or national origin, (41 CFR 60-1.4), protected veterans [41 CFR 60-300.5(a)] and individuals with disabilities [41 CFR 60-741.5(a)]. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.** In addition, each contract, subcontract, or purchase order shall also prohibit discrimination on the basis of gender identity and expression, age, ancestry, citizenship, genetic information, marital status, breastfeeding, income assignment for child support, arrest and court record, sexual orientation, national guard absence, and domestic or sexual violence victim status as required by federal and state laws. The Vendor agrees to comply with 29 CFR Part 471, Appendix A to subpart A. The Vendor agrees to indemnify and hold harmless from any claims or demands with regard to the Vendor's compliance with these provisions.
21. **INDEMNIFICATION.** The Vendor shall indemnify, defend and hold harmless the UH and the State of Hawaii, and their officers, employees, agents, or any person acting on their behalf from and against: (1) any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission of Vendor, its officers, employees, or agents connected with the performance of this order, except liability arising out of the negligence of the UH or its employees; (2) all claims, suits and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments. Furthermore, the Vendor shall reimburse the UH and the State of Hawaii, and their officers, employees, agents, or any person acting on their behalf for all attorneys' fees, costs, and expenses incurred in connection with the defense of any such claims.
22. **PATENT INDEMNITY.** Vendor shall pay all royalty and license fees relating to the items covered hereby; in the event any third party shall claim that the manufacture, use and sale of the goods covered hereby, infringe any copyright, trademark or patent, the Vendor shall indemnify the UH and hold the UH harmless from any cost, expenses, damage or loss incurred in any manner by the UH on account of any such alleged infringement.
23. **DISPUTES.** All disputes arising under or related to this order shall be resolved in accordance with this clause.
 - a. A claim by the Vendor shall be made, in writing, and submitted to the UH Director of Procurement and Property Management for a written decision.
 - b. The UH Director of Procurement and Property Management shall make a finding of fact and render a decision within 60 days of the request, provided all the necessary investigations can be made. The finding and decision shall be written and shall be mailed or otherwise furnished to the Vendor.
 - c. If the UH Director of Procurement and Property Management cannot decide the claim within 60 days, the Vendor will be notified of the date when the decision will be made. The decision of the UH Director of Procurement and Property Management shall be final.
24. **INTERPRETATION OF CONTRACT AND ASSIGNMENTS.** This order shall be construed according to the laws of the State of Hawaii.