

Baylor University
Standard Purchase Order Terms and Conditions

The following Standard Purchase Order Terms and Conditions (“Terms”) only apply to transactions that do not have a written agreement, duly executed by both parties. If there is such an agreement, then those terms shall govern the transaction and relationship of the parties.

In the absence of such a written agreement, duly executed by both parties, these Terms govern the sale of goods or services associated with the purchase order (“P.O.”) issued by Baylor University (“Baylor”) to the supplier (“Supplier”).

ACKNOWLEDGMENT: By agreeing to furnish the materials and/or services hereby ordered, or by its commencement of such performance, Supplier accepts all of the Terms. Any terms or conditions proposed by Supplier inconsistent with or in addition to the Terms shall be void and of no effect unless specifically agreed to in writing by Baylor. Modifications to the Terms must be specifically agreed to in writing by Baylor. The Terms, together with such agreed modifications and with such data relating to price and delivery as are accepted in writing by Baylor, constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreements. Whenever a term defined by Chapter 2 of the Texas Business and Commerce Code, (UCC), is used in the Terms, the definition contained in the Code applies.

SHIPPING INSTRUCTIONS: Supplier shall be responsible for ensuring the proper packaging of materials. Unless otherwise directed, all items shipped in one day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless previously specified in the Supplier’s quote or proposal and the P.O. Unless agreed to otherwise in writing, all shipments shall be FOB Destination, “Freight Prepaid.” Title and risk of loss of the goods shall not pass to Baylor until Baylor actually receives the goods at the point or points of delivery.

Supplier shall at all times comply with Baylor's written shipping instructions. Supplier shall submit all required shipping papers to Baylor prior to final payment. The P.O. number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading and airbills.

DELIVERY: Time is and shall remain a material element of the P.O., and no acts of Baylor shall constitute waiver of this provision. Baylor also reserves the right to refuse or return, at Supplier's risk and expense, shipments made in excess of the P.O. or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Supplier shall notify Baylor in writing immediately of any actual or potential delay to fulfillment of the P.O. and such notice shall include a revised schedule and shall not constitute a waiver of Baylor's rights and remedies related to delays.

FURNISH AND INSTALL: Where appropriate, items purchased will be provided on a supplier furnish and install basis. The Supplier shall have complete responsibility for the items or system until it is in place and working. Any special installation preparation and requirements must be submitted to Baylor. All transportation and coordinating arrangements will be the responsibility of the Supplier. Delivery of equipment will be coordinated so those items will be delivered directly to the installation site. This will minimize risk of damage and avoid double handling.

RETURNS: Baylor reserves the right to return goods to Supplier. All returned goods shall, to the best of Baylor's ability, be returned in the original packaging and shall include all of the manufacturer's documentation received with the goods. If Baylor makes a mistake in the ordering process, such as ordering the incorrect quantity or type of merchandise, the goods will be returned freight prepaid by Baylor. If the Supplier makes a mistake in the ordering and shipping process, such as sending the incorrect quantity or type of merchandise,

then merchandise will be sent freight collect from the Supplier. In no instance will Baylor pay a restocking charge if merchandise is sent to Baylor by mistake or if the goods are damaged upon arrival.

For all other types of returns, if merchandise is represented in sale brochures or catalogs as merchandise that the Supplier normally stocks for sale in their business, Baylor will not pay a restocking charge. Upon receipt of merchandise, Supplier shall issue credit to Baylor in the amount of the price thereof, less any agreed upon applicable charges.

INVOICES & PAYMENT: Invoices shall be rendered upon completion of services or delivery of goods and shall contain the P.O number(s), item numbers, description of goods and/or services, quantities, unit prices, date(s) rendered, and total purchase price. Baylor's obligation is payable only and solely from funds appropriated for the purpose of this P.O. The payment terms for the P.O. are Net 30 days from the date of receipt of the invoice, unless the Supplier offers discount terms for early payment.

SALES AND USE TAXES: Baylor is a 501(c)(3) non-profit educational institution and thus exempt from Texas sales and use taxes pursuant to Chapter 151 of the Texas Tax Code.

EXTRA CHARGES: No additional charges of any kind, including charges for boxing, packing, transportation or other extras or fees will be allowed unless previously specified in the Supplier's quote or proposal and the P.O.

SET-OFF: Baylor shall at all times have the right to set-off any amount owing from the Supplier to Baylor against any amount owing from Baylor to the Supplier. At Baylor's option, repayment, in lieu of set-off, may be required.

CHANGES: Baylor shall have the right by written order to suspend work or change the delivery date associated with the services to be rendered or the goods to be furnished by Supplier. Information, advice, approvals or instructions given by Baylor's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Baylor's and Supplier's rights and obligations hereunder unless set forth in a revised P.O.

RISK OF LOSS: Supplier assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to the P.O. until the same are finally accepted by the responsible individual and Baylor department. Supplier also assumes all risk of loss of or damage to any goods, work in process, materials and other items rejected by Baylor until the same are accepted by Baylor.

PROPERTY RIGHTS: Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to Baylor by Supplier shall be disclosed to Baylor on a non-proprietary basis and may be used and/or disclosed by Baylor without restriction. Unless otherwise expressly agreed in writing to the contrary, all specifications information, data, drawings, software, and other items which are (i) supplied by Baylor or (ii) obtained by Supplier and paid for by Baylor under this P.O. shall be maintained as proprietary to Baylor by Supplier, shall be used only for purposes of providing goods or services to Baylor pursuant to this P.O., and shall not be disclosed to any third party without Baylor's express written consent. All such items supplied by Baylor shall be promptly returned to it on request or upon completion or fulfillment of the P.O.

PROPERTY OF BAYLOR: All information plus all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Baylor shall be and remain the property of Baylor; and Baylor shall have the right to enter Supplier's premises and remove any such property at any time without being liable for trespass or for damages of any sort. All such items shall be used only in the performance of work under this P.O. unless Baylor consents otherwise in writing. Material made in accordance with Baylor's specifications and drawings shall not

be furnished or quoted by Supplier to any other person or concern without Baylor's prior written consent. Supplier shall have the obligation to maintain any and all property furnished by Baylor to Supplier and shall be responsible for all loss or damage to said property except for normal wear and tear.

WARRANTY: Supplier warrants the materials delivered or services rendered under this P.O. to be free from defects in workmanship, materials, and design (when applicable) and to be in accordance with all the requirements of this P.O. These warranties shall survive final acceptance and payment pursuant to UCC 2-601 and 2-608. This warranty entitlement covers both Baylor and Baylor's customers. Supplier shall be liable for and save Baylor harmless from any loss, damage, or expense whatsoever that Baylor may suffer from breach of any of these warranties. Remedies include repair, replacement or reimbursement of the purchase price of nonconforming goods, at Baylor's election. If Supplier is unable to or refuses to promptly correct or replace such defective or nonconforming goods, Baylor may, by contract or otherwise, repair or replace such work or materials and assess the excess costs incurred to Supplier.

INSPECTION: Payment for goods or services provided under the P.O. shall not constitute acceptance. Baylor may inspect and test such goods or services and reject any or all items that are, in Baylor's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier's sole expense. Failure by Baylor to inspect and test the goods or services shall not relieve Supplier of its responsibility to provide conforming goods. If inspection and test are made on the premises of Supplier or Supplier's subcontractors, Supplier shall furnish without additional charge all reasonable facilities and assistance for the safe and convenient inspection and tests required by Baylor.

ASSIGNMENTS AND SUBCONTRACTING: Supplier may not assign any rights or obligations due or to become due under this P.O. without the prior written consent of Baylor. Baylor may assign this P.O. to (i) any affiliates, (ii) any successor in interest, or (iii) Baylor's customer. Baylor shall have the right at any time to set off any amount owing from Supplier to Baylor or Baylor's subsidiaries and/or affiliates against any amount due and owing to Supplier or any of its subsidiaries pursuant to this P.O. or any other agreement between Baylor and Supplier or their respective subsidiaries and/or affiliates. Supplier shall not contract, subcontract or assign to a third party any part of this P.O. or any rights arising hereunder without first obtaining the express, written approval of Baylor.

TERMINATION FOR CONVENIENCE: Baylor may terminate the P.O. for its sole convenience. Upon notice of such termination, Supplier shall immediately stop all work and/or shipment of goods and cause its suppliers and/or subcontractors to cease their work against the P.O. Supplier shall be paid a reasonable termination charge consisting of a pro-rata percentage of the P.O. price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination.

Supplier shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred that reasonably could have avoided. Baylor may terminate the P.O. or any part hereof for cause if Supplier defaults, fails to comply with the P.O. or these Terms, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. Baylor may take immediate possession of all work so performed upon notice of termination. Late delivery of goods or performance of services that are defective or do not conform to the P.O. shall allow Baylor to terminate the P.O. for cause. In this event, Baylor will not be liable to Supplier for any amount; but Supplier shall be liable to Baylor for all losses, damages, and expenses, including costs of cover, resulting from the default that causes the termination.

EQUAL OPPORTUNITY: Supplier and all subcontractors agree, consistent with Baylor policy, not to discriminate on the grounds of race, color, sex, national origin or citizenship status, age, disability, or veteran status and to provide reasonable accommodations to qualified individuals with disabilities upon request.

Supplier certifies and represents that in its performance it will comply with the provisions of all applicable

federal, state and local laws, regulations, rules and orders. Any provision which is required to be a part of the Terms by virtue of any such law, regulation, rule or order is incorporated reference: including but not limited to Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their respective implementing regulations at 41 CFR part 60; and Executive Order 13465 (Employment Eligibility Verification); and Executive Order 13496 (Employee Rights Under National Labor Relations Act).

CONFIDENTIALITY: Supplier agrees that it will not release any information relating to this order, through press releases, advertisements, marketing materials, or other means, without prior written approval by Baylor. Supplier and Baylor shall keep confidential any and all information concerning the assets, properties, business serves trade secrets, organizational structure, philosophy, objectives, financial plans and results and other information relating to each other and shall not use such information for any purpose other than that purpose associated with the P.O.

FORCE MAJEURE: Neither Baylor nor Supplier will incur any liability to the other if performance is prevented or delayed by causes beyond either party's control or without fault or negligence. Causes beyond a party's control may include, but are not limited to, acts of God, acts of war, terrorist acts, government action, natural disasters, or epidemics.

LABOR DISPUTES: Supplier shall give prompt notice to Baylor of any actual or potential labor dispute which delays or may delay its performance.

GOVERNING LAW: This P.O. shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising out of this P.O. will be in McLennan County, Texas.

LIMITATION OF LIABILITY: Baylor shall not be liable to Supplier, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. Baylor's liability on any claim for loss, damage or expense arising out of or in connection with this P.O. shall not exceed the price of the goods or services which give rise to the claim. In no event shall Supplier be entitled to anticipatory profits or to special (including multiple or punitive), incidental, or consequential damages. Baylor shall not be liable for penalties or fines of any kind. Any action, suit or proceeding caused by any alleged breach of the Terms by Baylor must be commenced within one (1) year after the cause of action accrued.

INDEMNIFICATION: Supplier shall defend, indemnify, and hold harmless Baylor and its agents, officers, directors, and employees from any personal injury or property damage claim, suit, action, expense, loss, or damage, together with attorney's fees, arising out of or in any way connected with Supplier's performance or failure to perform under the P.O. or that of Supplier's agents, employees, or subcontractors. Supplier shall be responsible for the actions and failure to act of all parties retained by Supplier in connection with the performance under this P.O. Baylor shall notify Supplier promptly in writing of any claim or action brought against Baylor in connection with the P.O. On such notification, Supplier shall promptly assume responsibility for and defend any and all such claims or actions. Supplier shall notify Baylor promptly in writing of any claim or action brought against the Supplier in connection with the P.O. Baylor shall retain the right to be represented by counsel of its own choosing at Supplier's expense. Supplier shall, without limitation as to time, indemnify and save Baylor and its officers, directors, and employees harmless from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely by Baylor's negligence.

INSURANCE: Supplier shall maintain adequate insurance in all forms necessary to protect both Supplier and Baylor against all liabilities, losses, damages, judgments, claims, settlements, expenses, and reasonable legal fees and costs, arising out of or resulting from performance under this P.O. This coverage shall include, as

applicable, General Liability, Property Damage, Employer's Liability, Workers Compensation, and Motor Vehicle Liability (Personal Injury and Property Damage). Where applicable, all policies will name Baylor as Additional Insured and provide a Waiver of Subrogation in favor Baylor. Although Baylor may request that Supplier provide evidences of certain minimum coverage, neither the existence of such insurance coverage nor anything else contained herein shall limit to available insurance Supplier's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or in connection with performance under this P.O.

COMPLIANCE WITH LAW: Supplier warrants that the materials to be furnished and the services to be rendered under this P.O. shall be manufactured, sold, transported, and used in compliance with all relevant federal, state, local laws and regulations. Additionally, Supplier shall comply with all applicable laws, ordinances, codes, and regulations of any federal, state, county, or municipal government, bureau, or department, including any applicable regulations, relative to all of its activities and shall obtain and maintain all necessary licenses and permits at its sole cost and expense. Baylor shall have no responsibility for fines incurred due to acts or omissions of Supplier, its employees, agents, or subcontractors.

PATENTS/COPYRIGHTS: Supplier agrees to indemnify Baylor and hold Baylor harmless from and against all claims, liability, losses, damages, and expenses, including without limitation, legal fees and costs, arising from or due to any actual or claimed trademark, patent, or copyright infringement with respect to any part of the goods and work covered by the P.O. Supplier shall pay to defend any such litigation brought against Baylor. These obligations shall survive acceptance of the goods and payment by Baylor.

SEVERABILITY: If any part of the Terms is found to be illegal or unenforceable, that part shall be severed from the Terms and the remainder of the Terms shall be enforceable as written.

CANCELLATION FOR CONFLICT OF INTEREST: This P.O. is subject to cancellation if at any time Baylor determines that there is a conflict of interest between a Baylor employee and the Supplier.