

PURCHASE ORDER (PO) TERMS AND CONDITIONS (05/30/2017)

1. **ORDER:** Prices and/or quantities are not to exceed those shown without the approval of the Purchasing Officer. If the dollar amount shown on the PO is just an estimate, prior approval of the Purchasing Officer is required before exceeding that estimate. UNCW will not be responsible for any costs in excess of our estimate without such prior approval.
2. **FREIGHT/TRANSPORTATION/DELIVERY:** All shipments are U.S. F.O.B. Destination for domestic shipping or Incoterms 2010 DDP for international shipments. Shipper must show the UNCW Purchase Order number on all shipping cartons, manifests and invoices to insure prompt identification and payment of invoices. Any freight or postage charges shown on invoices are subject to authentication, and overcharges are refundable to UNCW or deductible from the invoice.
3. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
4. **INSPECTION AND ACCEPTANCE:** All products, supplies and materials ordered are subject to UNCW inspection. If defective or not as ordered, they shall be subject to return shipment at our discretion, and the vendor shall be fully responsible for any applicable postage, freight, and restocking charges. Invoices shall not be paid until the UNCW recipient verifies that the items ordered were received and were acceptable.
5. **INVOICE AND PAYMENT:** Invoices showing the PO number, terms of payment, and routing must be mailed to Accounts Payable upon completion of delivery. If the PO terms are "As Invoiced", UNCW will pay the terms stated on the invoice. If no terms are specified on the invoice, our payment system defaults to Net 30 days. On all invoices subject to a prompt payment discount, the discount period will be calculated from the date a correct invoice is received or the date service is received, whichever is later.
6. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by the University in accordance with General Statute 147-64.7. The Contractor shall retain all records associated with the performance of this contract for a period of three years following completion or termination of the contract.
7. **ACTS OF GOD:** Neither party shall be deemed to be in default of its obligations for failure to perform due to acts of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event, or act of God.
8. **ADVERTISING:** The Contractor agrees not to use the existence of this contract, the name of UNCW, or the name of the State of North Carolina as part of any commercial advertising without prior approval.
9. **AFFIRMATIVE ACTION:** Contractor shall comply with all Federal and State requirements, rules, Executive Orders, and regulations governing fair employment practices and the employment of individuals with disabilities; specifically, contractor shall not discriminate against any applicant for employment by reason of race, color, religion, sex, sexual orientation, age, Vietnam era or disabled veteran status, national origin, marital status, or the presence of any sensory, mental, or physical impairment, handicap, or disability.
10. **AMENDMENTS:** This PO may be amended only by written change order issued by the Purchasing Officer.
11. **ASSIGNMENT:** Contractor shall neither assign nor transfer any rights or obligations associated with this contract. However, upon written request approved by the Purchasing Officer, the University may forward the contractor's payment directly to a contractor designee, or include any person or entity designated by Contractor as a joint payee on contractor's check(s). In no event shall such action give rise to any privity between such third parties and UNCW.
12. **CARE OF PROPERTY:** Contractor shall be responsible for the proper care and custody of any property furnished by UNCW or purchased for contractor use in connection with the performance of this contract. Contractor shall reimburse the University for any loss or damage to such property.
13. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this contract shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the University.

14. **CONTRACT:** Together with and subject to contractor proposal, any written amendments or clarifications thereto signed by UNCW and Contractor, the Purchase Order, and these Terms and Conditions, all documents shall constitute the Contract between contractor and UNCW.
15. **COVENANT AGAINST CONTINGENT FEES:** Contractor warrants that no person or agent has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission or payment of fees, except a bona fide employee or firm established for such legitimate commercial purpose. In the event of contractor breach of this warranty, UNCW shall have the right to annul this contract without any further obligation to contractor. UNCW may also refer the matter for further investigation or prosecution.
16. **DISPUTES:** Contractor expressly agrees as a condition precedent to the pursuit of any claim or dispute in a judicial or quasi-judicial action arising from the performance of this contract, contractor shall first be required to submit its complaints in writing to the Director of Purchasing for resolution. The Purchasing Director shall issue a written decision to contractor, and shall provide a copy of both the complaint and the decision to the Vice Chancellor for Business Affairs (VCBA). If the contractor disagrees with the Purchasing Director's decision, the contractor shall submit a written appeal to the VCBA. The VCBA shall review the documentation and render a final UNCW decision. If the contractor disagrees with this final decision, it may then pursue judicial or other legal recourse.
17. **HOLD HARMLESS AND INDEMNIFICATION:** Contractor shall hold harmless, defend, and/or indemnify UNCW, the state of North Carolina, and/or their respective officers, agents, and employees, from liability of any kind, including all claims, judgments, fines, settlements, losses, or monetary damages of any kind, accruing to or held by any person, firm, or corporation furnishing or supplying work, services, materials, and/or supplies in connection with the performance of this contract. The obligations herein are affirmative duties, and shall survive the termination or expiration of this contract for any reason.
18. **INDEPENDENT CONTRACTOR:** Nothing contained herein shall be construed to create or give rise to an agency relationship. The Contractor is an independent contractor and as such shall remain responsible for the work to be performed and for the control and supervision of its employees or subcontractors.
19. **INSURANCE COVERAGE:** Contractor, at its sole cost and expense, shall be responsible for securing any and all insurance of such type and with such terms and limits as may be reasonably associated with its line of business, including but not limited to commercial general liability, automobile, professional liability, or errors and omissions coverage.
20. **JURISDICTION AND VENUE:** This contract shall be subject to and governed by the laws of the state of North Carolina. Venue for any action arising from the performance of this PO shall be New Hanover County, NC
21. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the university for the purpose set forth in this agreement. Contractor expressly acknowledges and agrees that in the event funds are not appropriated or allocated by state or university for this purpose, UNCW may terminate the order at any time during the period of performance without further obligation to contractor and without contractor recourse of any kind, in law or equity.
22. **SUBCONTRACTING:** The work to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Purchasing Officer.
23. **TAXES:** Effective July 1, 2004, UNCW became exempt from NC state sales tax in accordance with G.S. 105-164.13(52). Our tax exempt number is printed on the front of all Purchase Orders. The eight items below are NOT exempt and UNCW must pay the following taxes:
 - Prepared food and beverage taxes levied and administered by various local governments in the State.
 - Occupancy taxes levied and administered by various local governments in the State.
 - Highway use taxes paid on the purchase, lease or rental of motor vehicles.
 - State sales taxes levied on electricity or local, private or toll telecommunications services.
 - Scrap tire disposal tax levied on new tires.
 - White goods disposal tax levied on new white goods.
 - Dry-Cleaning solvent tax levied on dry-cleaning solvent purchased by a dry-cleaning facility.
 - Excise tax on piped natural gas.

All applicable North Carolina Sales & Use Tax must be shown as a separate item on the invoice.

24. **TERMINATION FOR CAUSE AND CANCELLATION:** UNCW may terminate this contract for cause without further obligation to contractor for any material breach of the terms and conditions governing contractor's performance. UNCW, in its sole discretion and without waiving its rights in law or equity, may grant contractor an equitable adjustment in light of contractor's time, efforts, damages associated with the breach, and prejudice to UNCW's schedule or activities. UNCW reserves the right to cancel this order if delivery is not provided by or before the date agreed upon. UNCW expressly reserves the right to pursue any and all remedies in law or equity due to contractor's breach of contract.
25. **TERMINATION FOR CONVENIENCE:** UNCW may terminate this contract for convenience upon written notice to contractor. At the University's discretion, the Contractor may be compensated pursuant to the PO on a pro-rata basis consistent with any partial deliveries or services completed by the contractor and accepted by the University prior to the date of termination.
26. **PERSONAL IDENTIFYING INFORMATION:** If the University provides the Contractor with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-133.20(b) or any other legally confidential information including "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act (FERPA), 34 CFR §99.3, Contractor hereby certifies that collection of this information from University is necessary for the performance of Contractor's duties and responsibilities on behalf of the University under this Contract. Contractor further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not redisclose personally identifiable information as directed by FERPA, 34 CFR §99.33, or other State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Contractor for a period of at least five (5) years from date of violation. If Contractor experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the Contractor's responsibilities under the NC Identity Theft Protection Act, Contractor shall immediately notify the University with a minimum of information required under N.C.G.S. 75-65 and shall fully cooperate with the University.
27. **IRAN DIVESTMENT ACT CERTIFICATION:** As provided in the North Carolina Iran Divestment Act N.C.G.S. §§ 147-86.55 thru 147-86.69 et seq., any vendor that is identified on a list created by the North Carolina State Treasurer pursuant to N.C.G.S. §147-86.58 as a person engaging in investment activities in Iran is ineligible to contract with UNCW, subject to the Act's specific statutory exceptions. Under N.C.G.S. §147-86.59, prior to contracting with UNCW, Vendor shall certify and the person signing this document on behalf of the Vendor does hereby certify, to the following: 1) that the Vendor is not identified on the Final Divestment List of entities that the North Carolina State Treasurer has compiled and 2) that the Vendor shall not utilize on this contract any subcontractor that is identified on the Final Divestment List. Acceptance of this purchase order or shipment of goods in response to the order constitutes Vendor's certification that Vendor does not appear on the Treasurer's Final Divestment List at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>.
28. **INTELLECTUAL PROPERTY:** Contractor warrants that it has the full legal right to grant to University the necessary intellectual property rights under this Agreement and that the product, when used in accordance with the terms of this Agreement, does not infringe upon any United States patent, copyright, trade secret or other proprietary right of any person or entity. Contractor agrees to indemnify, defend and save UNCW harmless from all liability, loss or expense, including costs of settlement and attorneys' fees, resulting from any claim that UNCW's use, possession or sale of the Goods/Services infringes any copyright, patent or trademark or is a misappropriation of any trade secret. The indemnification provisions in paragraph 17 continue to apply.
29. **CLICKWRAP AGREEMENTS VOID:** "Clickwrap" or "Clickthrough" type agreements or licenses shall be void and shall not be deemed accepted by or binding on UNCW. To the extent any clickwrap or clickthrough agreement terms are determined by a court to apply, the terms of this Agreement shall control and take priority over any conflicting terms contained in the clickwrap or clickthrough agreement.
30. **STRICT COMPLIANCE:** UNCW may at any time insist upon strict compliance with these terms and conditions. No trade usage, prior course of dealing, or course of performance under other contracts shall be a part of this contract; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of this contract.