

Auburn University General Terms and Conditions

1.1 - Auburn University (the “University”) authorizes the Supplier to solicit the University for business transactions on the express condition that the Supplier agrees to accept and be bound by the terms and conditions set forth herein. Where Supplier has provided a bid, quote, proposal, or similar offering instrument to the University, these terms and conditions are hereby incorporated into said offering and apply in like force to any subsequent contract order resulting from this bid quote/bid. Some conditions listed herein may not apply due to the nature of the product or service, or the manner in which it is procured, as determined solely by the University. Any provisions contained in any document issued by Supplier which are contrary to these terms and conditions are expressly rejected. Supplier’s commencement of the provision of goods or services shall constitute Supplier’s acceptance of these terms. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by an authorized representative of University’s Procurement and Business Services. University’s failure to object to terms contained in any subsequent communication from Supplier will not be a waiver or modification of the terms set forth herein.

1.2 - Whenever and wherever items of materials or equipment have been identified by describing a proprietary product, the identification is intended to be descriptive, but not restrictive, and is used to indicate the quality and characteristics of products that will be satisfactory to the University. Bids offering equal or alternate materials and equipment will be considered for award provided such items are clearly identified in the bids, and are determined by Auburn University to be of equal value in all material respects to the proprietary items specified. Unless the firm submitting the bid has clearly indicated in its bid that it is offering an “equal,” or “alternate” items the bid shall be considered as

offering the items as specified in the invitation for bids/ quotations. If the firm submitting the bid plans to furnish an equal or alternate items, the brand name and identifying numbers and/or letters are to be inserted in the spaces provided or shall be otherwise clearly identified in the bid. The evaluation of the bids and the determination as to quality of the product offered shall be the responsibility of University. The bid award shall be based on the information furnished by the bidder or identified in the bid, as well as information reasonably available to Procurement and Business Services.

1.3 - The University will consider acceptable substitutes that meet, or exceed the quality of materials and workmanship of the items specified in the bid/quotation. Substitutions shall be of the same general design, size and style. All proposed substitutes submitted must be accompanied by illustrations showing the design and style. Each illustration is to have on it, or attached to it, the item number of the specified piece to which it is an alternate. Sizes shall also be included. All substitutes shall be listed in the spaces provided. Should additional space be required, the bidder shall use separate sheet of paper to list alternates. Any additional list should be prepared in like form to the bid document. Auburn University will consider all proposed; however, it is not bound to any which, in the University’s opinion, is not in the University’s best interest.

1.4 - Any deviation from these general terms and conditions or exceptions taken shall be described fully and appended to the bid form on the bidder’s letterhead and over the signature of the person authorized to sign the bid form. Such appendages shall be considered part of the bidder’s bid form. In the absence of any statement of deviation or exception, the bid shall be accepted as being in strict compliance with all terms and conditions.

1.5 - There are no Federal or State laws that prohibit Suppliers from submitting bids/quotes lower than a price or bid given to the U. S. Government.

1.6 - The Supplier may be required to furnish a monthly or quarterly summary of purchases made under the provision of the contract. The format and frequency of the report will be determined by the University.

1.7 - Auburn University reserves the right to require a performance bond from the Supplier at the discretion of the University's Procurement Professional. Unless specifically stated otherwise in the bid documents, the cost of the bond shall be paid for entirely by the Supplier. When required, the proper and timely submission of any performance and payment bonds is a material condition for award/performance of this order. Supplier is not authorized to proceed with work and/ or deliveries unless all required bonds have been obtained, are acceptable to and received by the University.

1.8 - Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Supplier liable for the difference between the "open market" and the quoted price where emergency purchases become necessary.

1.9 - Any and all items received under a resulting contract will be subject to inspection and testing to determine the quality and to ascertain that they meet specifications.

1.10 - Samples, when required, must be furnished free of expense after the opening of the bid and if not destroyed, will upon request, be returned at the Supplier's expense. Request for the return of samples must be made within ten days following the opening of bids/quotations, unless otherwise stated. Each individual sample must be labeled with the Supplier's name and item number.

1.11 - Deliveries shall be F.O.B. Auburn University (destination). Delivery by the Supplier to the common carrier will not constitute delivery to the University.

1.12 - Supplier must agree to replace, free of charge, all defective items delivered under contract. All transportation charges covering return and replacement of items is to be done by the Supplier.

1.13 - Payment for any item delivered may be withheld until all items and conditions have been complied with in full.

1.14 - It is agreed and understood that bidders may attend the bid opening and may inspect the bid tabulation. However, no information will be given out as to opinion concerning the ultimate outcome while consideration of the award is in progress. Information regarding disposition will be available after an award is made and upon request.

1.15 - The Supplier shall maintain, or have available for his own use, an inventory sufficient to make delivery within the time specified in this bid/quotation, provided that no default shall occur to deliver in less than the number of days stated in 2 this bid/quotation from the date of receipt of notice to ship/deliver.

1.16 - Auburn University is not necessarily bound to accept the lowest bid if that bid is contrary to the best interest of the University. In making an award, intangible factors such as the service capability, integrity, facilities, equipment, reputation and past performance of the firm submitting the bid may be weighed. When other factors are clearly stated in the bid document, they will also be used in determining an award. In the case of a tie for low cost, the Procurement Official may use the following: If one of the bidders has an existing contract and performance on an existing contract is satisfactory, this bidder gets the award. Conversely, if performance on an

existing contract is documented as not satisfactory, award goes to the other tie bidder. If one tie bidder is local, preference may be given to that bidder.

1.17 - All additional charges such as shipping, installation, insurance or other cost must be fully itemized with the bid/quote. Charges not specified at the time of the bid/quote will not be honored.

1.18 - It is mutually agreed by and between Auburn University and the Supplier that the University's acceptance of the Supplier's offer by the issuance of a Purchase Order shall create a contract between the two parties. Any exceptions taken by the Supplier, which are not included in the Purchase Order, will not be a part of the contract. Therefore, in the event of a conflict between the terms and conditions of this bid/quote and information submitted by a bidder, the terms and conditions of this bid/quotation and resulting Purchase Order will govern.

1.19 - The Supplier must provide service manuals with full documentation and schematics when applicable and appropriate.

1.20 - The apparent silence of this specification and any supplemental specifications as to any details, or the omission from it of a detailed description concerning any point shall be regarded as meaning that the best commercial practices are to prevail, and that only materials of first quality and correct type, size, and design are to be used. All workmanship is to be first quality. All interpretations of this specification shall be made on the basis of this statement.

1.21 - Should it become necessary in order to evaluate a Supplier's qualifications, the University may require the bidder to furnish information as indicated below:

1. Financial resources
2. Personnel resources

3. Executive or key person resumes
4. Evidence of ability to meet delivery schedule
5. Ability to meet specification quality requirements
6. Availability of production capacity.

1.22 - In the event that the Supplier fails to make delivery of acceptable goods on or before the agreed delivery date and the University expends unreasonable time, effort, telephone calls and correspondence, the University will bill the supplier at a reasonable cost for such and deduct it from the applicable invoice.

1.23 - Any Purchase Order/contract resulting from a bid/quotation can be cancelled without penalty by University immediately, upon written notice, if any of the following conditions exist:

- a. Breach of contract
- b. The Supplier fails to furnish a satisfactory performance bond within the time specified when such a bond is required.
- c. Failure of the Supplier to make delivery within the time specified.
- d. In the event material, supplies or equipment furnished does not meet specifications.
- e. Where the contract was obtained by fraud, collusion, conspiracy or any other unlawful means.

The Purchase Order/contract may also be cancelled by convenience by the University. The effective date of cancellation shall be thirty days of written notice of intent by one of the parties. The Supplier shall be required to honor all orders that were prepared and dated prior to the date of cancellation, if required to do so by the University.

1.24 - The University reserves the right to award as many term contracts for the supply of any class

or type of commodity as may be to the best interest of the University.

1.25 - This section will apply when items in the bid/quotation are requested to be on a “furnish and install” basis. The Supplier will have the complete responsibility for the items or system until it is in place and working. Any special installation preparation and requirement will be submitted to the University after the receipt of a purchase order. All transportation and cooperation arrangements will be responsibility of the Supplier. The delivery of equipment will be coordinated so that items will be delivered directly to the installation site. This will minimize the risk of damage and avoid double handling by University personnel.

1.26 - Any alleged oral agreement made by the Supplier with any university department or employee will be disregarded.

1.27 - Prompt payment discounts (“cash discounts”) will not be considered in determining the lowest bidder.

1.28 – Except as expressly directed by University’s Office of Risk Management, Supplier shall carry and maintain the following basic minimum insurance limits:

(1) Worker’s Compensation

- a. Workers’ Compensation - Statutory
- b. Employer’s Liability - \$1,000,000.00

(2) Comprehensive General Liability

- a. Each Occurrence - \$1,000,000.00
- b. Products-Complete Operations
Aggregate \$2,000,000.00
- c. Personal & Advertising - \$1,000,000.00
injury

(3) Automobile Liability (*Required if Supplier is contemplating any use of an automobile, such as construction projects, premises lease agreements, and service contracts.*)

- a. Bodily injury - \$1,000,000.00 Each Person \$1,000,000.00 Each Occurrence
- b. Property damage or combined single \$1,000,000.00 each occurrence limit of \$1,000,000

Supplier shall furnish policies or certificates of insurance, with Auburn University, its Board of Trustees and Trustees individually, Faculty, Staff, and agents named as additional insured.

Due to the nature of some projects, Auburn University reserves the right to require additional limits of liability coverage. These are minimum limits only, any contracts or agreements that require additional limits, coverage or conditions shall take precedence over these requirements.

Exemptions from these requirements may be granted upon request or as outlined in the university’s basic minimum insurance requirements. Please reference Auburn University’s basic insurance limits requirement’s here:

<https://cws.auburn.edu/rms/pm/minimuminsurance>

1.29 - Supplier agrees to comply with the conditions of all applicable Federal Non-Discrimination and Equal Opportunity laws, the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety Act of 1973 (WISHA), as amended, and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with such applicable standards and regulations. All applicable contracts will comply with the Davis-Bacon Act.

1.30 - ADVERTISING. No advertising or publicity matter having or containing any reference to Auburn University or any of its faculty/staff shall be made by Supplier or any one in Supplier’s behalf unless Supplier has written consent of the University’s Office of Trademark Management and Licensing. No public release of

information, news release, announcement, denial or confirmation of this order or the subject matter hereof, shall be made without the University's prior written approval.

1.31 – LAW/ VENUE. All disputes regarding the construction, interpretation and the parties' obligations under this Agreement will be governed by the laws of the State of Alabama, notwithstanding any of that state's laws to the contrary, regardless of the location of the Engagement. The University does not waive and specifically reserves all immunities to which it is entitled by the laws of the State of Alabama and the United States, including Article I, Section 14 of the Constitution of Alabama, and the Eleventh Amendment to the United States Constitution. Exclusive jurisdiction and venue of any claims not barred by immunity, nor required to be filed before the Alabama State Board of Adjustment shall be in the Circuit Court of Lee County, Alabama.

1.32 - PAYMENT TERMS. Unless otherwise specified in a contract or purchase order executed by an authorized representative of the University, the University's standard terms of payment are: 1) immediate payment upon invoice approval if paid through the University's single-use account virtual credit card program; 2) net 60 days upon receipt of invoice after delivery/performance if paid by ACH; or 3) net 90 days upon receipt of invoice after delivery/performance if paid by check..

1.33 - INSOLVENCY. If Supplier ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws is brought by or against Supplier, or a receiver for Supplier is appointed or applied for, or Supplier makes an assignment for the benefit of creditors, the University may terminate this order, without liability, except for deliveries previously made and for supplies completed and subsequently in

accordance with the terms or the order. In the event of the Supplier's insolvency, the University shall have the right to procure the balance of this order from others without liability.

1.34 - CANCELLATION FOR LACK OF FUNDING. This purchase order/contract may be cancelled without further obligation on the part of Auburn University in the event that sufficient, appropriated funding is unavailable to assure full performance of its terms. The Supplier shall be notified in writing of such non-appropriation at the earliest opportunity.

1.35 - Supplier certifies that neither it, nor any of its employees who will provide or perform services under this contract, have been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation (FAR 48 C.F.R Ch 1 Subpart 9.4). Supplier will immediately notify the University if the Supplier or any of its employees who will provide or perform services under this contract is placed on the Consolidated List of Debarred, Suspended, and Ineligible Suppliers.

1.36 - Where applicable, Supplier and any subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

1.37 - Where applicable, Supplier and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime

1.38 - INDEMNIFICATION: Supplier shall indemnify, hold harmless and defend Auburn University, its affiliated foundations, and each of their respective trustees, directors, officers,

employees, and agents, from and against any and all loss, damage or liability resulting from demands, claims, suits, or actions of any character presented or brought for any injuries, including death, to persons or for damages to property caused by or arising out of any negligent (including strict liability), wanton, reckless, or intentional act or omission of Supplier, any of its contractors, invitees, guests, employees, or agents, or which otherwise arises out of, relates to, or is attributable to, the performance of its operations or services. This indemnity shall apply whether the same is caused by or arises out of the joint, concurrent, or contributory negligence of any person or entity. The foregoing indemnity shall include, but not be limited to, court costs, attorney's fees, costs of investigation, costs of defense, settlements, and judgments associated with such demands, claims, suits or actions. Supplier shall indemnify and hold harmless Auburn University, its agents and employees from and against all claims, damages, losses, and expenses for claims under workers compensation, disability benefits, and other similar employees benefits, including claims arising because of a failure to provide such benefits; for claims for damages because of bodily injury, occupational sickness or disease, or death of Supplier's employees or the employees of any Subcontractor; claims for damages because of bodily injury, sickness, disease or death of any person other than Supplier's employees; claims for damages insured by personal injury liability coverage sustained by any person as a result of an occurrence directly or indirectly related to the employment of such person by Supplier or by any other person for any reason; claims for damages because of injury to or destruction of tangible property including loss of the Work itself and loss of use resulting there from; and claims for damages because of bodily injury or death of any person or property damages arising out of the ownership, maintenance or use of any motor vehicle. Supplier agrees that the insurance

requirements specified in the contract do not reduce the liability the Supplier has assumed in this indemnity clause.

1.39 – RELEASE OF INFORMATION: Supplier shall not make any public announcements concerning the transactions contemplated by this Agreement, except as may be required by law or judicial order, nor issue any press release or make any public announcement, statement or other public disclosure which includes the name of the other party or its affiliates or otherwise uses the name of the other party or its products in any public statement, publicly-released document, or marketing or promotional materials, except with the prior written consent of the other party.

1.40 – REPRESENTATION OF AUTHORITY: The individual registering the Supplier to transact business with Auburn University, as well as the individual submitting any offering instrument, expressly represents and warrants that he/she has authority to execute and thereby bind the Supplier to these general terms and conditions and agrees to indemnify and hold harmless the University from any claim that such authority did not exist.

1.41 – USE OF MARKS. Unless expressly provided for in writing by Auburn University's Office of Trademark Management and Licensing, Supplier is expressly prohibited from utilizing University's trademarks, indicia, or name.

1.40 – PROHIBITED TERMS: As an instrumentality of the State of Alabama, the University is prohibited from subjecting itself to the governing law, jurisdiction, or venue of any state or authority other than the State of Alabama. The University is further prohibited from agreeing to indemnify, defend, or hold harmless another party, and from subjecting itself to arbitration. Supplier acknowledges that no representative of the University has the authority to subject the University to such prohibited terms.