

Purchase Order Terms and Conditions Agreement

The University of the South (University) is a private, not-for-profit, four year liberal arts institution, founded in 1857, incorporated by the state of Tennessee in 1947, realizing tax exempt status under Internal Revenue Service Code, Section 501(a), as an organization described in section 501(c)(3). Listed below are the terms and conditions of the official University Purchase Order.

Acceptance: These purchase order terms and conditions are deemed to have been accepted by the Vendor if any of the following occur: (a) shipment of the products or any portion thereof, (b) commencement of any work on site or (c) performance of any services hereunder. Any discrepancies in fulfilling the terms of the Purchase Order must be resolved between the University and Vendor prior to the delivery of any service or commodity to the University. Terms and Conditions of existing contracts supersede any conflicting Purchase Order Terms and Conditions that follow. All other Terms and Conditions apply. When the seller accepts this Purchase Order, this Purchase Order becomes a valid and binding contract.

Advertisements: Unless specifically authorized in writing by the University, the Contractor will have no right to use, and will not use, the name or any marks of the University, its regents, trustees, officials or employees, or the Seal of the University a) in any advertising, publicity, promotion, or b) to express or imply any endorsement of vendor's products or services.

Assurance: If at any time, the University in good faith determines that it questions Vendor's ability or intent to perform, and then Vendor agrees to provide the University with written assurance of Vendor's ability and intent to perform. Vendor shall immediately notify the University if the Vendor fails to perform. Upon the University's good faith determination that Vendor cannot or will not perform, then the University may deem this PO breached by the Vendor and the University may cancel this PO, and/or may re-procure from other sources.

Compliance: Vendor will strictly comply with all applicable federal and state laws, rules, codes, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. The Vendor shall indemnify the Owner for all expenses incurred by the Owner for fines, penalties or corrective measures resulting from acts or failures to act of the Vendor, its subcontractors, agents and employees for failure to comply with such laws, rules and regulations.

Conduct of Personnel: While at any University location, Vendor's personnel, agents, and subcontractors are required, comply with all reasonable requests, standard rules, and regulations of the University. Vendor's personnel, agents, and subcontractors will be required to conduct themselves in a professional manner including without limitation any security or privacy requirements, harassment of any nature.

Confidentiality: Proposal submissions are confidential. The University is not required to disclose contracts, RFP documents, proposals or other information to outside parties. The University will decline all requests for access to confidential materials. The University requires all Vendors to maintain the confidentiality of all materials and correspondence with the University regardless of whether or not any actual business occurs. The University assumes no liability for any loss or damage that may result from the University's disclosure of any information provided by the respondent in connection with its proposal. The University and the Vendor will take reasonable steps to protect confidential information.

Conflict of Interest: Vendor represents and warrants that none of its principals, nor any employee or subcontractor of Vendor performing the Services, is a faculty member, employee, student, or agent of the University. Neither Vendor, nor any of its principals, or any of its employees or subcontractors performing the Services, has a personal or other business relationship with any University department participating in this Agreement or authorizing the payment of the Services under this Agreement. The Vendor agrees to comply fully with the applicable provisions of state and local laws related to conflicts of interest. The Vendor agrees to follow the University conflicts of Interest Policy.

Contract Administrator: After award of this Purchase Order, (Individual Responsible for the contract), will be the authorized representative in all matters pertaining to the administration of the terms and conditions of this contract. The Contractor will send all notices and invoices to the Contract Administrator. The University Treasurer, Director of Business Services or Purchasing Office are the only individuals who can make any amendments or financial modifications to a contract. The successful Vendor will be responsible for coordinating all matters pertaining to the resulting contract with the University's Contract Administrator.

Correspondence: Please direct all correspondence in regards to the purchase order referenced to the originator. Please email to jdavis@sewanee.edu or Mail to: University of the South, Attn: Purchasing Manager, 735 University Avenue, Sewanee, TN 37383-1000 or fax to 931-598-3569.

Data and PCard Data Security: Vendor agrees to handle data and other information ("Data") secure. Vendor will not copy, cause to be copied, use or disclose Data received from or on behalf of the University except as permitted or required by the Purchase Order. Vendor will give immediate notice to the University of any actual or suspected unauthorized disclosure of, access to or other breach of the Data. In the event of actual or suspected unauthorized disclosure of, access to, or other breach of the Data, Vendor will comply with all state and Federal laws and regulations related to such breach, and will cooperate with the University in fulfilling its legal obligations.

Definitions:

"Agreement" means the terms and conditions contained in the Purchase Order;

"Purchased Goods/Services" means the good and/or services which are the subject matter of the Purchase Order; and

"University" means the University of the South (University).

Delivery: Vendors ship the products to the University within the time requirements and economically, "F.O.B Destination, Freight Prepaid and Added." The University reserves the right to cancel this order or any portion of the order if delivery does not meet the stated requirements. The University reserves the right to cancel without payment of cancellation charges, all or any part of this purchase order, if not filled within the specified time. The University charges the Vendor for any loss sustained because of such cancellation including, but not limited to, shipping charges. The Contractor is responsible for any loss or expense sustained due to failure to start or deliver as promised.

Documentation: The Vendor maintains documentation for all charges against the University under this Contract. For a period of three (3) full years from the date of the final payment, the Vendor maintains books, records and documents of the Vendor, as they relate to work performed or money received under this Contract. The records are subject to audit, at any reasonable time and upon reasonable notice, by the University or their duly appointed representatives. The Vendor maintains the records in accordance with generally accepted accounting principles. Vendors must maintain maintenance records for a period of seven (7) years and be made available to the University upon request.

Electronic/Facsimile Transmission: The transmission of this purchase order by fax or by other electronic means shall have the legal significance of a duly executed original delivered to the Vendor.

Entire Agreement: This Agreement shall constitute the entire agreement between the parties for the services set forth in the Purchase Order. Together with the terms and conditions on any attached schedules and the attached Purchase Order form the entire agreement between the University and the Vendor. There are no representations, or promises, express or implied, other than those contained in this Agreement. The University is not bound by any other terms, absent a written modification or other agreement signed by the parties. Acceptance of this Purchase Order constitutes acceptance of all conditions herein stated.

Environmental Sustainability: The University is committed to implementing sustainability practices across all facets of campus life and institutional practices. Our University strategic plan calls for us to be a national leader in sustainability and the supply chain is an important aspect of this commitment.

Force Majeure: Neither party will be held responsible for any delay or failure in performance of any part of this Purchase Order to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, pandemic, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected party will notify the other party in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a party's performance is delayed for a period exceeding 30 days from the date the other party receives notice under this paragraph, the non-affected party will have the right, without any liability to the other party, to terminate this Purchase Order.

Gifts: The University will not accept any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind directly or indirectly to any employee, employee family member, or agent of the University for the purpose of improperly obtaining or receiving favorable treatment in connection with any Purchase Order. The Vendor will not accept or try to obtain any special treatment from the University.

Governing Law: The laws of the State of Tennessee, federal, local, regulations, and ordinances applicable to the work performed govern this Purchase Order. The Vendor must at all times observe and comply with such laws, regulations, and ordinances.

Hazardous Materials: Any products deemed hazardous must be packaged, marked, and shipped by the Vendor to comply with all federal, state, and local regulations and common carrier requirements. Up to date Material Safety Data Sheets (MSDS) must accompany all products requiring one in accordance with current State of Tennessee and Federal laws, rules and regulations.

Indemnification: The Vendor agrees to indemnify and hold the University, its regents, trustees, officers, employees, and agents harmless from and against all liability, loss, claims, damages, expenses, or demands, including reasonable attorney's fees, which the University may incur or sustain by reason of the failure of the proposal to fully perform and comply with the terms and conditions of any contract. Further, the University assumes no liability for any damage to the property, or for personal injuries, illness, disabilities or deaths of the Vendor, Vendors employees or any other person subject to the Vendors control, or any other person including members of the general public, caused in whole or in part, by a) Vendors breach of any term or provision of the awarded contract; or b) any negligent or willful act or omission of the Vendor, its employees or subcontractors in the performance of the awarded contract.

Infringement: Vendor, at its expense, shall defend, indemnify and hold harmless the University, its trustees, officers, employees, and students from all claims and demands made based on a claim that any products or Services furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Vendor shall pay all costs, fees, and damages incurred by University for any such claim or action or the settlement thereof. This provision shall survive the expiration of the PO.

Inspection and Acceptance: All materials or services furnished must be as specified, in strict compliance with the Purchase Order and contract documents (if any). All materials and services will be subject to inspection and approval by the University, architect, engineer or any other person or agency mentioned in the documents after delivery. The right is reserved to reject and return at the risk and expense of the Vendor any such portion of any shipment which may be in excess (except for customary quantity variations recognized by trade practice), defective or fail to comply with specifications without invalidating the remainder of the purchase order. In addition, all materials and services must comply with drawings, samples, or specifications and meet the highest professional standards. If the materials or services do not pass inspection, the University will cancel this Purchase Order without further notice and without liability on the part of either the University or the Vendor. All deliverables shall be subject to inspection and acceptance testing. Upon completion of the work or the delivery of the equipment, service or product, the Vendor will deliver a written notice to the University certifying that the work, equipment, service, or product meets the specifications and requirements.

License: The agreement does not grant the Vendor or Contractor a license or other right to duplicate or use any image or intellectual property of the University in any manner other than that which is in connection with the performance of the contract. Any such license to use the University's intellectual property must be contained in a signed writing.

Loss of Risk: Until accepted by the University as provided above, Vendor shall bear all risk of loss and damage, unless such loss or damage results solely from the gross negligence or intentional misconduct of the University.

Minimum Insurance Coverages and Requirements: The University reserves the right to require proof of insurance from Vendors. Proof of Insurance will be required for on-site and construction related service projects. Vendors shall bear the full cost of such insurance. The Vendor is not relieved of any liability or other obligations assumed due to failure to obtain or maintain insurance in sufficient amounts, duration or types. Upon proposal award, Vendor must be able to provide a Certificate of Insurance per the Terms and Conditions below.

1. Workers' Compensation Required: Statutory Limits
2. Automobile: \$1,000,000 Combined Single Limit Liability, \$1,000,000 Hired Car/Non-Owned Liability
3. General Liability: \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations, \$1,000,000 Personal Injury, \$1,000,000 Each Occurrence, \$50,000 Fire Legal Liability, \$5,000 Medical Payments

4. Excess Liability: \$1,000,000 Each Occurrence, \$1,000,000 Aggregate

Worker's Compensation insurance and employer's liability insurance must cover all persons whom the Vendor may employ in carrying out the required services. Worker's compensation insurance will be in accordance with the Worker's Compensation Law of the State of Tennessee. Every Certificate must specifically state that the University is an additional insured, and every certificate must specify a thirty (30) day notice for cancellation.

Modify or Change in Agreement: The University and the Vendor by written notice can modify or change an agreement if both parties agree to the change.

Non-Collusion: Signing of this proposal affirms that the Vendor has not been in any agreement, deception, improper conduct or collusion among Vendors. The Vendor nor any business represented by this Vendor has received compensation for preparation related to this contract. The Vendor refrains from proposing or hinders the process and freedom of competition. The Vendor commits to provide a sincere and authentic bid that meets the University's requirements.

Non-Discrimination: The University does not discriminate against Vendors based on any category protected by law, whether federal, state, or local ordinance. The University conducts business with sustainable small businesses in and around the community. The Vendor must comply with all applicable federal and state employment laws.

Order Changes: The University must approve, in writing, changes, substitutions, alterations, additions, or deletions. Change Orders shall specify the amount of additional compensation or credit on the Purchase Order and describe the related modification to the work

Payment Discounts: The University will attempt to use cash discounts for prompt payment. The discount period will start from the date of delivery or date of receipt of correct invoice based on whichever is later.

Payment Terms & Invoices: The Vendor records the complete purchase order number prominently on all invoices, bills of lading and all packing lists to ensure timely processing. Terms of payment unless otherwise stated in the Contract will be for one hundred percent (100%) of the Contract amount payable within thirty (30) days of the Owner's receipt of the Contractor's invoice upon completion of the work and acceptance of the work by the Owner. If Vendor fails to complete the work, it shall not be entitled to receive any payment under this Contract until the performance of the Contract has been completed by Owner or others, at which time if the unpaid balance due the Vendor exceeds the cost of completion said amount shall be paid the Vendor in full payment of any and all claims of the Vendor under this Contract. However, in the event the costs and expenses to complete the work exceed such unpaid balance of the Vendor, the Vendor (a) agrees that it is not entitled to any further payments hereunder of for any other claims it may have under this Contract and (b) agrees to assume entire responsibility and liability for and to indemnify and save harmless the Owner from such excess costs and expenses which shall include any and all costs and damages incurred through the default of the Vendor as well as consequential damages for delay or otherwise. The Vendor, as a condition precedent to any payment hereunder, furnishes all necessary releases, lien waivers, affidavits and other documents required by the Owner to keep the Owner's premises free from liens or claims for liens on all materialmen, subcontractors or laborers as well as complete waivers and releases of any and all claims of any party connected with or related to the performance of this Contract. Acceptance of final payment shall not be construed to be an acceptance by the Owner of defective work or improper materials. Mail or Email all invoices to: The University of the South, Attn: Accounts Payable, 735 University Avenue, Sewanee, TN 37383-1000.

Resolutions: If any product or service fails to conform to any warranties specified or otherwise applicable, the Vendor will replace or refund to the University any payment already made or at the University's option, repair or replace such item at Vendor's expense. The University has the right to reject a portion of the items purchased. A partial acceptance of the balance is not a waiver of any of the University's rights, claims or resolutions to additional claims available by law.

Right to Terminate: The University or Vendor may terminate the contract if either party breaches the approved provisions. The non-breaching party must give a 30 day written notice detailing the breach in reasonable detail. The non-breaching party has the right to terminate the contract by giving a 30 day written notice thereof to the party in breach. Termination of the contract will go into effect immediately upon receipt. For reasons other than a breach of this Agreement by the Vendor, the University will compensate the Vendor for services performed prior to the effective date of termination. In the event of termination due to the failure of the Vendor to perform in accordance with the terms of this Agreement, the Vendor shall be compensated only for those services performed in accordance with this Agreement that were provided prior to the termination date, less any damages that may have been sustained by the University.

Amendment: A written amendment is required in order to amend this Purchase Order. The written amendments require the approval from the authorized officials of both parties.

Safety: The Vendor guarantees that the design and performance of all items purchased conform to the requirements of application and government health and safety regulations, including regulations administered by OSHA and the EPA. The Vendor must take all necessary precautions for the safety of the employees at work and must comply with all applicable provisions of Federal, State, and Municipal Safety Laws and Building Codes to prevent accidents or injury to persons on, or about, or adjacent to the premises where the work is being performed.

Standard Warranties: Vendor hereby guarantees all labor, materials and work furnished hereunder against all defects that may develop within one (1) year from the date of acceptance by the Owner or within the guarantee period set forth in the Contract Documents, whichever is longer. All products provided shall be of good quality within the description given by the University. The products are fit for their ordinary purpose, adequately contained and packaged within the description given by the University. The products conform to the agreed upon specifications, and conform to the affirmations of fact made by the Vendor or on the container or label. When Vendor has reason to know or knows any particular purpose for which the products are required and the University is relying on the Vendor's skill or judgement to select or furnish suitable products, there is a warranty that the products are fit for the application. Vendors provide good title in those products, whose transfer is right and lawful. Vendor delivers products free from any security interest, lien, or encumbrance of which the University, at the time of contracting, has no knowledge. The Vendor delivers products that are free of any rightful claim of any third person by/of infringement or the like. The Vendor agrees to replace without charge to the University any defective materials. The Vendor agrees to pay all costs including labor charges in connection with such replacement to remedy any defects, latent, patent except those due to ordinary wear and tear or improper use or maintenance. If this Purchase Order is for the provision of services, Vendor warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Vendors shall be responsible for the professional quality, timeliness, coordination and completeness

of the services. Vendor personnel assigned to perform the services shall be as proposed by Vendor and approved by the University. Vendor utilizes only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Vendor agrees to replace any of its employees whose work is unsatisfactory or contrary to the requirements of the services agreement. The University shall not supervise nor control the details of the Vendor's services, but rather be interested only in the results of the Vendor's services.

Tax Exemption: The University is exempt from Federal and State income, sales, and use taxes. The Vendor will ensure that the University receives the benefit of its tax exemption where applicable to the purchases. The University will provide a Tax Exemption Certificate to the Vendor or contractor. The State of Tennessee ID number is 100141464 and the Federal Tax ID number is 62-0475697.

Title: The University acquires the legal title to the products based on "FOB Destination" unless otherwise specified in the Purchase Order.

Transfer: Neither party shall assign, transfer or sublet a University Purchase Order without the prior written approval of the University. Any assignment made without consent is invalid.

Use of the University of the South Trademarks and Name: The University owns and controls its names, marks, logos, colors, insignias, seal, designs, symbols, depictions of campus buildings and landmarks. Unless specifically authorized in writing by the University, the Vendor will have no right to use, and will not use, the name or any marks of the University, its regents, trustees, officials or employees, or the Seal of the University a) in any advertising, publicity, promotion, or b) to express or imply any endorsement of the Vendors products or services.

Waivers: Vendor shall furnish as a condition precedent to payment hereunder, all necessary releases, lien waivers, affidavits or other documents required by the University to keep the Owner's premises and property free from liens or claims for liens, arising out of the furnishing of the materials or services provided by this Purchase Order.

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