Ohio University Purchase Order Standard Terms and Conditions (120513)

These Purchase Order Terms and Conditions (“Terms and Conditions”), and the Purchase Order (with any and all appendices, statements of work, and/or exhibits attached hereto) shall constitute the entire agreement between Ohio University (“University”) and Vendor and shall supersede all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the Purchase Order and these Terms and Conditions, these Terms and Conditions shall govern, unless the Purchase Order expressly references and modifies these Terms and Conditions. These Terms and Conditions may not be modified except with the written consent of the University’s Procure to Pay Services department.

1. **Taxes.** Goods and services used or consumed by University are exempt from Ohio sales tax (Ohio Revised Code Section 5739.02), federal excise tax and sales tax in other states that have reciprocal agreements with Ohio. Goods acquired for resale are subject to appropriate resale documentation. University will provide tax exemption certificates to the Vendor upon request.

2. **Time.** Time for delivery of goods and performance of services under the Purchase Order is of the essence. If delivery or completion dates cannot be met, Vendor shall inform University immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of the Purchase Order unless University modifies the Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the University, at its option and without prior notice to Vendor, may either approve a revised date or cancel this Purchase Order. Vendor shall be liable to the University for any resulting loss incurred by the University. Vendor’s sole remedy for a delay caused by University shall be an extension in the time for Vendor’s performance equal to the duration of University’s delay.

3. **Title and Shipping.** The FOB point shall be as designated in the Purchase Order. Unless otherwise specified in the Purchase Order, title shall pass to University upon acceptance. Vendor shall pack, mark and ship all Deliverables in a manner to secure the lowest reasonable transportation cost and to comply with the shipping instructions contained in the Purchase Order and the requirements of common carriers. Vendor shall be liable for any difference in shipping charges arising from (i) its failure to follow the carriers’ or University’s shipping instructions and requirements; and (ii) the necessity to ship by a more expensive method than specified to meet the delivery date.

4. **Inspection and Approval.** Payment for goods provided under the Purchase Order shall not constitute acceptance. University shall have the right to inspect goods and reject any or all such goods that are defective. Rejected goods and goods supplied in excess of quantities required by University may be returned to Vendor at its expense, including the expense of unpacking, examining, repacking, and reshipping such goods. In the event University receives goods whose defects or nonconformities are not apparent on examination and that result in deterioration of its finished product, University reserves the right to require the replacement, as well as payment of damages.
5. **Invoicing and Purchase Order Number.** After each shipment made or service provided under this Purchase Order, Vendor shall send a separate invoice that reflects the Purchase Order number, item numbers, quantities, description, unit of measure and pricing that matches the descriptions on the face of the Purchase Order.

6. **Payment Terms.** Unless otherwise agreed in writing by Vendor and University, payment terms are Net 30 from the date of the invoice. University does not agree to pay late fees, penalties, or interest charges.

7. **Changes, Additions and Cancellations.** All changes, modifications, and deletions shall be confirmed through the issuance of an amended purchase order.

8. **Warranties.** Vendor expressly warrants all (i) goods delivered under this Purchase Order are free from defects in material and workmanship and are of the quality, size and dimensions ordered; and (ii) work performed under this Purchase Order is in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. Notwithstanding any limitation of warranty, Vendor further represents and warrants that the supply, quality and fitness for the purpose of the goods or services will not be impaired, disrupted or interrupted in whole or in part by the occurrence of any leap year. Vendor further represents and warrants that all goods sold and services provided under this Purchase Order are (i) in compliance with applicable laws; (ii) do not infringe any patent, trademark, copyright or trade secret; and (iii) do not constitute unfair competition. These express warranties shall not be waived by reason of acceptance or payment by the University.

9. **Indemnification.** Vendor shall indemnify and hold University harmless from and against any loss, cost, damage, judgment, expense, claim and liability of every kind and description, including reasonable attorneys’ fees and disbursements and court costs, arising from Vendor’s breach of any provision of the Purchase Order or these Terms and Conditions or injury, death or property damage caused by the goods or services provided hereunder. Without limiting the foregoing, Vendor shall indemnify, hold harmless and defend University against any loss, cost, damage, expense, judgment, claim and liability arising from a breach of any warranty described in Section 8, with Vendor’s defense being subject to the Ohio Attorney General’s right to appoint counsel and approve settlements. As a public institution, University cannot (and does not) agree to indemnify Vendor for any reason.

10. **Safety.** Vendor warrants that the good sold or service rendered to University conforms to the standards and/or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678). In the event the good sold does not conform to the OSHA standards and/or regulations, University may return the good for correction or replacement at University’s option and at Vendor’s expense. Services performed by Vendor that do not conform to OSHA standards and/or regulations must be corrected at Vendor’s expense.

11. **Hazardous Materials.** Any goods that are deemed hazardous must be packaged, marked, and shipped by Vendor to comply with all federal, state, and local regulations and common carrier requirements.
12. **Use of Name.** Neither Party may use the name or other identifying marks of the other Party in any advertisement, promotional materials, press release or other public statement unless it first obtains the express written permission of the other Party.

13. **No Assignment.** The Purchase Order may not be assigned by Vendor without the University’s prior written consent.

14. **Confidentiality.** Vendor shall not discuss or disclose any information, documents or material obtained in connection with its work for University without the prior written consent of University. Vendor acknowledges that University is a state university subject to the Ohio Public Records Act and that records exchanged between the Parties may be required to be disclosed pursuant to a public records request without prior notice to Vendor.

15. **Nondiscrimination.** Pursuant to Ohio Revised Code Section 125.111, Vendor agrees that Vendor, any subcontractor and any person acting on behalf of Vendor or any subcontractor, will not discriminate by reason of race, color, religion, sex, age, disability, military status, national origin or ancestry against any citizen of the State of Ohio in the employment of any person qualified and available to perform the work under the Purchase Order. Vendor further agrees that it, any subcontractor, and any person acting on behalf of Vendor or subcontractor shall not discriminate against, intimidate, or retaliate against any employee hired for the performance of work under the Purchase Order on account of race, color, religion, sex, age, disability, military status, national origin or ancestry.

16. **Ethics.** The Parties agree to act in accordance with applicable conflict of interest and ethics laws including Ohio Revised Code Sections 102.02, 102.03, 102.04, 102.05, 2921.01 and 2921.42.

17. **Drug-Free Workplace.** Vendor shall comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

18. **No Finding for Recovery.** Vendor warrants that it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24. If this warranty is determined to be false, this agreement is void and Vendor must immediately repay to University any funds paid under the Purchase Order.

19. **Independent Contractor.** Vendor is an independent contractor of University, and Vendor’s employees are not employees of University. Neither this Purchase Order, these Terms and Conditions nor the work performed by Vendor convert Vendor’s employees to public employees or entitle them to membership in the Ohio Public Employees Retirement System.
20. **Ohio Law.** This Purchase Order and these Terms and Conditions shall be governed by, construed and enforced in accordance with the laws of the State of Ohio, without regard to its conflicts of law principles.