

**VALDOSTA STATE UNIVERSITY
STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

These Standard Purchase Order Terms & Conditions, as set forth herein, are applicable to Purchase Orders issued by Valdosta State University. In the absence of conflicting Contract and/or RFX terms and conditions, these terms and conditions shall govern the delivery or performance of goods and/or services purchased or acquired pursuant to this Order. By accepting this Order or by delivering or performing the goods and/or services purchased or acquired under this Order, the Contractor indicates its acceptance of these Standard Purchase Order Terms & Conditions.

A. DEFINITIONS

Definitions. The following words shall be defined as set forth below:

- (i) **“And/or”** is interpreted in its most inclusive sense and means *x* or *y* or both, as applicable.
- (ii) **“Contract”** means an established Statewide Contract, State Entity Contract, Contract attached to or included with an RFX, or a Valdosta State University Service Agreement used to purchase or acquire the goods and/or services that are subject to this Order.
- (iii) **“Contractor”** means the provider of the goods and/or services under this Order, the which is specifically identified as “Vendor” on the face of the Purchase Order document, including agents, officers, employees, and subcontractors of the same.
- (iv) **“Order”** means this Purchase Order between Valdosta State University and the Contractor and all incorporated documents.
- (v) **“Good(s) and/or service(s)”** means any and/or all goods, services and other deliverables specifically identified in the “Item/Description” column on the face of the Purchase Order document.
- (vi) **“Response”** means the Contractor’s submitted response to the RFX, including any modifications or clarifications explicitly accepted by Valdosta State University in writing.
- (vii) **“RFX”** means the Request for Quotes, Request for Proposals, or other solicitation document (and any amendments or addenda thereto) that was used to solicit the goods and/or services that are subject to this Order.
- (viii) **“Valdosta State University”** or **“VSU”** means The Board of Regents of the University System of Georgia by and on behalf of Valdosta State University.

B. TRANSFER OF RIGHTS, TITLE AND INTEREST

For good cause and as consideration for placing this Order, the Contractor acting herein by and through its duly authorized agent hereby conveys, sells, assigns, and transfers to the State of Georgia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Georgia relating to the goods and/or services purchased or acquired by Valdosta State University pursuant hereto.

C. INCORPORATED DOCUMENTS

In the event this Order is issued with reference to a Contract, RFX, and/or Contractor’s Response, the terms, conditions, and specifications of such document(s) are hereby incorporated by reference and made a part hereof just as if they had been fully set out herein.

D. ORDER OF PRECEDENCE

In the case of any inconsistency or conflict among the specific provisions of the Order and any incorporated documents, any inconsistency or conflict shall be resolved as follows:

First: by giving preference to the specific provisions of the Contract;

Second: by giving preference to the specific provisions of the RFX;

Third: by giving preference to the terms of this Order; and

Fourth: by giving preference to the specific provisions of the Contractor’s Response.

E. AUTHORITY TO EXECUTE ORDER

Valdosta State University, by and through its delegated signatory, is authorized to execute this Order pursuant to, and in accordance with, Chapter 50-5, Official Code of Georgia Annotated, the policies and procedures of the Board of Regents of the University System of Georgia, the Georgia Procurement Manual, and Valdosta State University's Delegation of Contract Signing Authority.

F. DURATION OF ORDER

This Order between Valdosta State University and the Contractor shall begin and end on the dates specified in this Order (or upon completion of all deliverables), unless terminated earlier in accordance with the applicable terms and conditions of this Order. Pursuant to O.C.G.A. Section 50-5-64, this Order shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year in which the appropriations have been made.

G. DELIVERABLES

- 1. Specifications in Order.** The Contractor shall provide the goods and/or services required in this Order that comply with the specifications contained in the Contract, RFX, Contractor's Response, and/or Purchase Order document.
- 2. Product Shipment and Delivery.** All products shall be shipped F.O.B. destination, freight prepaid and included to the location(s) specifically identified as the "Ship To" address on the face of the Purchase Order document. In the event Valdosta State University, in its sole discretion, provides shipping terms other than F.O.B. destination, the Contractor's invoice shall provide shipping or freight charges as separate line items. All items shall be at the Contractor's risk until they have been delivered and accepted by VSU. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to VSU, regardless of when the hidden damage is discovered. The Contractor shall also include VSU's Purchase Order number on all packing lists and shipping labels.
- 3. Non-Exclusive Rights and No Minimums Guaranteed.** This Order is not exclusive. Valdosta State University reserves the right to select other contractors to provide goods and/or services similar to the goods and/or services described in this Order during the term of this Order. This Order does not guarantee any minimum level of purchases unless stated otherwise in this Order.
- 4. No Substitution.** No substitution of any good and/or service required by this Order will be accepted without the prior written consent of an authorized signatory in the Valdosta State University Department of Procurement.

H. COMPENSATION

- 1. Pricing.** The Contractor will be paid for the goods and/or services sold pursuant to the Order in accordance with the terms, conditions and specifications of this Order. Unless clearly stated otherwise, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to applicable freight, insurance, fuel surcharges and customs duties. In the event prices are stipulated as estimated by this Order, the estimated prices set forth in the Order shall represent the maximum amount of payment or compensation that the Contractor shall be entitled to receive and Valdosta State University shall be obligated to remit under this Order. VSU reserves the right, in its sole discretion and without obligation or penalty, to refuse to pay any invoiced amounts in excess of the firm and fixed prices, or, alternatively, the estimated prices under this Order to which it has not agreed in writing in the form of a duly executed Contract or Contract Amendment, signed by each party's authorized signatory.

Unless otherwise agreed in writing by Valdosta State University and the Contractor, the Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Order.

- 2. Invoice and Billing Requirements.**

Failure to comply with the section may result in delays in payment. Valdosta State University will only accept an itemized invoice for goods and or services that have been delivered in accordance with the terms

and conditions of the purchase order. Invoices shall be delivered to the location specifically identified as the "Bill To" address on the Purchase Order document. Invoices shall contain the following information:

- (i) Vendor's name, address, tax I.D. number,
- (ii) Vendor's assigned invoice number,
- (iii) The date the Invoice was produced,
- (iv) Valdosta State University's Purchase Order number,
- (v) Valdosta State University's address and zip code,
- (vi) Individually for each good and/or service invoiced: the line number (as identified on the Purchase Order), item description, quantity, unit of issue, unit price, and total,
- (vii) A total of all line items invoiced,
- (viii) An itemization of any items back ordered,
- (ix) And, as applicable, any discount for prompt payment offered.

3. **Educational Discounts/State Pricing.** Valdosta State University is a full-time educational institution and is therefore qualified for normal educational discounts. VSU is also an instrumentality of the State of Georgia and shall receive the benefit of state government pricing when such prices are lower than educational pricing.
4. **NET 30.** Valdosta State University will remit payment to the Contractor within thirty (30) calendar days of VSU's receipt and acceptance of an undisputed invoice or receipt and acceptance of the goods and/or services provided under this Order, whichever is later.
5. **Prompt Payment Discount.** Any prompt payment discount must be clearly identified on Contractor's invoice. Time, in connection with any discount offered, will be computed from the date of complete delivery and acceptance of all goods and services ordered by Valdosta State University, or from the date an undisputed invoice is received, whichever is later.
6. **Delay of Payment Due to Contractor's Failure.** If Valdosta State University determines, in its sole discretion, that the Contractor has failed to deliver or perform any good and/or service as required by this Order, the Contractor shall not be entitled to any compensation under the Order until such good and/or service is delivered or performed. In this event, VSU may withhold that portion of the Contractor's compensation which represents payment for goods and/or services that were not performed or delivered.

I. TERMINATION

1. **Immediate Termination.** This Order will terminate immediately and absolutely if Valdosta State University determines, in its sole and conclusive discretion, that adequate funds are not appropriated or granted or funds are de-appropriated such that VSU cannot fulfill its obligations under this Order. If VSU declares a lack of funding pursuant to this paragraph, VSU will not contract for the same goods or services during the remainder of the fiscal year (July 1 – June 30) in which the lack of funding was declared.
2. **Termination Upon Notice.** Following thirty (30) calendar days' written notice, Valdosta State University may terminate this Order in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor.
3. **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for Valdosta State University to declare the Contractor in default of its obligations under this Order:
 - (i) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to VSU's satisfaction, any material requirement of this Order or is in violation of a material provision of this Order, including, but without limitation, the express warranties made by the Contractor;
 - (ii) VSU determines that satisfactory performance of this Order is substantially endangered or that a default is likely to occur;
 - (iii) The Contractor fails to make substantial and timely progress toward performance of this Order;

- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or VSU reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Order;
 - (vi) The Contractor has engaged in conduct that has or may expose VSU or the State of Georgia to liability, as determined in VSU's sole discretion; or
 - (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of VSU, the State of Georgia, or a third party.
4. **Notice of Default.** If there is a default event caused by the Contractor, Valdosta State University shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in VSU's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, VSU may:
- (i) Immediately terminate this Order without additional written notice; and/or
 - (ii) Procure substitute goods or services from another source; and/or,
 - (iii) Enforce the terms and conditions of this Order and seek any legal or equitable remedies
5. **Payment Limitation in Event of Termination.** In the event of termination of this Order for any reason by Valdosta State University, VSU shall pay only those amounts, if any, due and owing to the Contractor for goods and/or services actually rendered up to and including the date of termination of this Order and for which VSU is obligated to pay pursuant to this Order. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to VSU under this Order in the event of termination.
6. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of Valdosta State University, the Contractor shall cease work under this Order and take all necessary or appropriate steps to limit disbursements and minimize costs. Contractor shall immediately cease using and return to VSU any personal property or materials, whether tangible or intangible, provided by VSU to the Contractor. Further, the Contractor shall immediately return to VSU any payments made by VSU for goods and/or services that were not delivered or rendered by the Contractor.

J. PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION

Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State of Georgia, Valdosta State University, and its officers, employees, agents and volunteers (collectively, the "Indemnified Parties") and indemnify the Indemnified Parties against any award of damages and costs made against the Indemnified Parties by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the goods and/or services constitutes an infringement of any United States Letters Patent, trademark, trade dress, copyright or other intellectual property right, provided the State gives the Contractor immediate notice in writing of the institution of such suit (except that failure to give immediate notice shall not limit Contractor's obligations hereunder except to the extent Contractor is prejudiced thereby), permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Contractor shall not be liable for any award of judgment against the Indemnified Parties reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the goods and/or services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- (i) Procure for the State the right to continue using the goods and/or services;
- (ii) Replace or modify the same so that it becomes non-infringing; or

(iii) Remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to the State if any such infringement claim is based upon or arises out of:

- (i) Compliance with designs, plans or specifications furnished by or on behalf of Valdosta State University as to the goods and/or services;
- (ii) Use of the goods and/or services in combination with apparatus or devices not supplied by Contractor;
- (iii) Use of the goods and/or services in a manner for which the same was neither designed nor contemplated; or
- (iv) The claimed infringement of any patent or copyright in which Valdosta State University or any affiliate or subsidiary of VSU has any direct interest by license or otherwise.

The indemnification obligation of the Contractor shall survive termination or expiration of this Order.

K. INSURANCE AND BONDS

Contractor shall provide all applicable insurance and/or bonds as required in this Order.

L. WARRANTIES

1. **Warranties.** The Contractor represents and expressly warrants that all aspects of the goods and/or services provided or used by it are merchantable and shall at a minimum conform to the standards in the Contractor's industry. The warranties expressed in the Order are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and/or services provided by the Contractor. Acceptance by Valdosta State University shall not relieve the Contractor of its warranty or any other obligation under this Order.
2. **Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and/or services produced, or provided to Valdosta State University pursuant to the terms of this Order shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Contractor represents and warrants that title to any property assigned, conveyed or licensed to VSU is good and that transfer of title or license to VSU is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
3. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the contract of this Order and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to Valdosta State University.

M. ORDER ADMINISTRATION

1. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under this Order. The provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Order.
2. **Drug-free Workplace.** The Contractor hereby certifies as follows:
 - (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Order; and
 - (ii) If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
 - (iii) Contractor will secure from any subcontractor hired to work on any job assigned under this Order the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Contractor may be suspended, terminated, or debarred if it is determined that:

- (i) Contractor has made false certification here in above; or
- (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

3. **Amendments.** This Order may be amended in writing by mutual consent of the parties. All amendments to this Order must be in writing and fully executed by duly authorized representatives of the parties.
4. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Order. This Order is intended only to benefit Valdosta State University and the Contractor.
5. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Order without regard to the choice of law provisions of state law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State of Georgia.
6. **Integration.** This Order represents the entire agreement between the parties.
7. **Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, by facsimile (FAX), or by email which shall be addressed to the Contractor's or Valdosta State University's contact person on file now or hereafter during the term of this Order or, alternatively, the person who signed the Contract, if any, on which this Order is based, at the address identified in this Order.
8. **Severability.** If any provision of this Order is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Order.
9. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of this Order unless otherwise stated in this Order.
10. **Debarred, Suspended and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended or declared ineligible by any agency of the State of Georgia. Contractor will immediately notify Valdosta State University if Contractor is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Contractors by a federal entity.
11. **Taxes.** Valdosta State University is exempt from certain sales and use taxes. By executing this Order the Contractor certifies it is either (a) registered with the Georgia State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2.
12. **Force Majeure.** Neither party will be liable to the other party for nonperformance resulting from labor strikes, riots, wars, acts of governmental authorities preventing performance, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.
13. **Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Order, Contractor's liability to Valdosta State University for any claim of damages arising out of this Order shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Order or \$100,000.00, whichever is less. No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor shall only be liable to the extent of Contractor's contribution to the situation giving rise to the claim. Contractor shall have no liability if the situation giving rise to the claim results solely from

the act or omission of VSU. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.

- 14. Rights to Materials.** In the event this Order contemplates the production of printed and/or audio-visual items, all cuts, negatives, positives, artwork, plates, engravings and other materials or content, tangible or intangible, without limitation, furnished by Valdosta State University or otherwise used in or resulting from any the production of printed and/or audio-visual items, are and shall remain VSU property and must be delivered to VSU with the items.
- 15. Assignment and Delegation.** This Order may not be assigned, transferred or conveyed in whole or in part without the prior written consent of Valdosta State University. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
- 16. Use of Name or Intellectual Property.** Contractor agrees it will not use Valdosta State University's name or trademarked properties, including any of its service marks, trade names, seals, symbols, designs, slogans, and logotypes, in any manner, including but not limited to commercial advertising or as a business reference, without the prior express written consent of VSU.
- 17. Waiver.** No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver of renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 18. Obligations Beyond Order Term.** This Order shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Order. All obligations of the Contractor incurred or existing under this Order as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Order.
- 19. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Order for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to Valdosta State University or another contractor. The Contractor shall provide full disclosure to the State, VSU, and the third-party contractor about the equipment, software, or services required to perform services for VSU. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to VSU or to another contractor.
- 20. EOE Statement.** Valdosta State University is an Equal Opportunity Employer.
- 21. Boycott Nonparticipation Certification.** In the event this Order has a total value One Thousand Dollars (\$1,000.00) or more, Contractor hereby certifies that Contractor is not currently engaged in, and agrees for the duration of this Order not to engage in, a boycott of Israel as defined in O.C.G.A. 50-5-85(a)(1).