**TERMS AND CONDITIONS**

Creighton University is deemed to be the purchaser under these Terms and Conditions and shall be referred to as “University”. “Seller” shall mean the party named on the Purchase Order and may alternatively be referred to as “Vendor” or “Contractor”. “Purchase Order” shall refer to this Purchase Order and all amendments and exhibits hereto.

PERFORMANCE AGAINST THIS PURCHASE ORDER CONSTITUTES ACCEPTANCE OF ALL TERMS AND CONDITIONS.

1. **Agreement:** In consideration of Seller agreeing to sell, and University agreeing to buy, the Seller agrees as follows: The terms and conditions of this Purchase Order together with the terms and conditions of any other document prepared by University and sent to Seller constitute the agreement between the parties (the "Agreement"). Seller agrees to each and every term contained in the Agreement as a precondition to University’s performance. Any term or condition in any invoice, acknowledgment, or other form or document issued by Seller, regardless of the materiality of the term or condition, that differs from or is contrary to the terms and conditions contained in the Agreement are objected to and excluded unless expressly agreed to in a written acknowledgment issued by University. No other terms or conditions not set forth in the Agreement shall apply unless expressly agreed to in a written acknowledgment issued by University.

2. **Seller’s Acceptance:** Acceptance of this Purchase Order is expressly limited to the terms and conditions contained herein. Any additional or different terms or conditions proposed by Seller shall constitute a counteroffer. Seller accepts this Purchase Order by signing and returning an acknowledgment copy of this Purchase Order, other written notice of acceptance which expressly refers to this Purchase Order and accepts the terms hereof, or commencement of performance. Acceptance of the Purchase Order must be received by University within the time period specified on the Purchase Order.

3. **Purchase Order Changes:** Neither party shall have the right to make changes to this Purchase Order without acceptance by the other party.

4. **Delivery:** Time is of the essence in this Purchase Order. Seller is responsible for all costs of delivery of goods and/or performance of services. Should Seller fail to comply with the delivery or performance terms of this Purchase Order, University may terminate this Purchase Order in whole or part and may buy elsewhere and charge Seller any additional expense incurred thereby. University expressly retains all its rights and remedies provided by law in the case of such default, and no action on the part of the University shall constitute a waiver of any right or remedy. Neither University nor Seller shall be liable by reason of any failure to deliver or delay in delivery due to any cause beyond reasonable control without fault or negligence.

5. **Risk of Loss:** Risk of Loss shall be upon the Seller until receipt of the goods by University at the location identified on this Purchase Order or at such other location identified by University.

6. **Seller Warranties:**

* Seller warrants that the goods and/or services subject to this Purchase Order will conform to all applicable specifications and samples furnished or accepted by University, will conform to any representations or statements made by Seller to University, will consist of only first-class workmanship and materials (all of which materials shall be new unless otherwise specifically allowed by notation by University on the Purchase Order), and will be free from any defects, latent or patent, in material, design, or workmanship; Seller acknowledges that University has relied on representations or statements made by Seller to University, and that University is relying on Sellers’ expertise, knowledge, skill, and judgment.
* Seller warrants that it has complied, and the goods and/or services covered by this Purchase Order will comply, with all applicable federal, state and local laws, rules, regulations and orders, which directly or indirectly regulate or affect the manufacture and/or sale of such goods or services. Seller will furnish University with guarantees and assurances in accordance with the applicable provisions of any such law, rule, regulation or order which provide a specific written guarantee or assurance to be given by Seller with respect to such goods or services.
* Seller warrants that it has, or will have, at the time of delivery, good title to the goods covered by this Purchase Order, and that it has a right to transfer such goods, free from any security interest, lien or encumbrance. Before final payment, Seller shall, if requested, satisfy University by affidavits or otherwise, that there is no outstanding security interest, lien or encumbrance for labor or material against the goods delivered to University.

7. **Price:** The price of the goods and/or services covered by this Purchase Order shall be the amount specified on the Purchase Order. In the event of an estimated price, the price last quoted or paid, or the prevailing market price, whichever is lower, shall prevail. Orders filled at prices in excess thereof may, at the University’s option, be retained at invoice price or returned to Seller, at Seller’s expense.

8. **Invoices and Payment:** The amount due to the Seller shall be the pricing structure agreed upon by the Seller and the University. In the absence of any discount payment terms the University will pay the Seller via a check within forty-five (45) days after the receipt of a correct invoice for reasonable work allocable to the Agreement or after the date of acceptance of work that meets agreement requirements, whichever event occurs later; provided, however, if Seller has registered to participate in ACH/Direct Deposit payments, the University will pay the Seller within twenty-five (25) days after the receipt of a correct invoice for reasonable work allocable to the Agreement or after the date of acceptance of work that meets agreement requirements, whichever event occurs later. The University shall not be responsible for payment of taxes, expenses, or other charges of any kind to the Seller or anyone else regarding the goods and services for which the Seller is responsible. All invoices should be submitted within ninety (90) days of completion of the Purchase Order. Submitting invoices in such 90 day period is solely the Seller’s responsibility and failure to do so may result in non-payment of invoices.

9. **Right of Inspection:** University shall have the right to inspect the goods and/or services at the time and place of delivery or performance before paying for or accepting them.

10. **E- Commerce:** Seller agrees to implement E-commerce as an electronic means of trading business documents with University. The electronic business documents may include, but are not limited to, purchase orders, acknowledgements, purchase order changes, ship notices, invoices, remittance advice, electronic funds transfer (EFT) or such purchasing communications as may be requested by University for transactions under this Agreement. Seller shall, at its sole expense, obtain, make fully operational and maintain all equipment, software and other materials as necessary to engage in E-commerce.

11. **Confidential Information:** Seller acknowledges that any data, designs or other information disclosed by University to Seller in connection with this Purchase Order is confidential and proprietary to University and that use of or disclosure of this information other than as may be required in the course of Seller’s performance of this Purchase Order will be detrimental to University. Seller shall not in any manner advertise, publish or release any information concerning this Purchase Order without the prior written consent of University, except as may be required by law.

12. **Assignment and Transfer:** Seller shall not assign or transfer any of its rights or obligations under this Purchase Order without the express prior written consent of University.

13. **Force Majeure:** Neither party shall be liable to the other for delay or failure to perform any of its obligations hereunder provided such delay or failure to perform is due to fire, storm, flood, earthquake, act of God, war, insurrection, riot, governmental action, or other unanticipated event beyond the control of such party (an “event of force majeure”). In the event Seller claims that an event of force majeure has rendered it unable to perform, and as a condition to exercising rights under this Section so that University may seek alternative sources of performance, Seller must provide written notice to University within 24 hours of the occurrence of such event, together with a detailed description of such event and the expected duration of non-performance. If any such cause continues or is expected to continue for more than thirty days, University may at its option, cancel this contract.

14. **Costs of Breach:** In the event Seller shall breach in any way Seller’s obligations under this, or any other agreement, to University, Seller shall be liable to University for all of University’s costs of remedying the breach including, but not limited to, attorney’s fees and expenses.

15. **Waiver:** Failure of University to insist upon strict adherence to any term of this Purchase Order on any occasion shall not be considered a waiver or deprive University of the right thereafter to insist upon strict adherence to that term or any other term of this Purchase Order. Any waiver must be in writing and signed by an authorized representative of University.

16. **Governing Law:** This Purchase Order shall be governed by and construed in accordance with the laws of the State of Nebraska.

17. **Entire Agreement:** This Purchase Order, and the terms and conditions hereof, contains the complete agreement of the parties as to its subject matter, supersedes all prior agreements with respect to its subject matter, and may not be amended or discharged except in writing signed by the duly authorized representatives of both parties.