

PURCHASE ORDER RIDER

The following Purchase Order Rider (“Rider”) governs the purchase of goods, including products, equipment, hardware, software, merchandise and materials (“Products”) and services (“Services”) by the University of the Incarnate Word (“University”) under purchase orders issued by the University (each a “Purchase Order” or “PO”) to the entity identified in the PO (“Vendor”), and together with the PO, form a binding agreement (“Agreement”), between University and Vendor.

Any additional or different terms in any Vendor document, including a quotation, order acknowledgment, invoice, or online terms are hereby rejected and shall not constitute additional or modified terms. Any such terms shall be deemed material alterations of the Agreement and are void. Any online terms or agreement that Vendor has published on its website is not an agreement that has been “mutually signed”, is not deemed a Parent Agreement, and will not replace, supplement or amend any portion of the Agreement or this Rider.

These terms in this Rider are deemed accepted by (i) Vendor’s commencement of performance of the Services, (ii) Vendor’s shipment of any Products specified in a PO, or (iii) any other indication of Vendor’s agreement to a PO, whichever occurs first.

1. Shipment and Delivery. Unless otherwise specified in a PO, all shipments shall be to University’s ship to location specified in the PO. Title and risk of loss will transfer from Vendor to University at the delivery destination. Vendor will package and ship Products in accordance with University’s instructions, and if none are provided, then according to good commercial practice to protect Products from loss or damage. Vendor shall deliver Products and Services strictly in accordance with the PO. Any delays shall be reported promptly to University with a proposed new delivery date and expedited shipping at Vendor’s expense. University may (a) cancel the PO for delayed Products that are not yet delivered, or (b) source replacements from another vendor, at Vendor’s reasonable expense.
2. Inspection, Acceptance and Rejection. University may inspect Products and Services upon delivery or performance and in accordance with any acceptable criteria. Unless otherwise agreed, Products and Services not rejected within thirty (30) days will be deemed accepted, however, University’s payment for Products or Services shall not be deemed acceptance. University may reject all or any portion of defective Products or nonconforming Services. If University rejects any portion of the Products or Services, University may: (a) return rejected Products for a prompt replacement, at Vendor’s sole cost and expense (including shipping costs); (b) return rejected Products with no further liability for payment and/or seek a refund of any payments made under the PO; or (c) accept the Products at a reasonably reduced price. If Vendor fails to timely deliver replacement Products, University may source replacements from another vendor, at Vendor’s reasonable expense.
3. Payment. University will pay Vendor the price set forth in the PO (“Price”) within sixty (60) days of receipt of a properly prepared invoice except for any amounts disputed by University in good faith. Vendor will invoice University upon acceptance of Products or Services by submitting properly prepared invoices to the University’s Accounts Payable Department at ap@uiwtx.edu. Properly prepared invoices will include at a minimum the PO number, complete bill-to address, product part numbers and quantities, description of Products or Services, unit prices, applicable tax or other charges, and extended totals. The University is a tax-exempt organization and will submit to Vendor a tax-exempt certificate when purchasing goods or services on behalf of the University. Invoice inquiries shall be submitted to the University’s Accounts Payable Department at ap@uiwtx.edu.
4. Products. Where Products are delivered by Vendor to University under a PO, the terms in this Section shall apply.
 - (a) Product Warranty. Vendor warrants to University that Products will be (i) new, unused, or refurbished at the time of delivery; (ii) free from defects in design, materials, and workmanship for the longer of Vendor’s normal warranty period or for one (1) year following the date of University’s acceptance of Products; and (iii) safe for normal use and conform to the applicable documentation. The foregoing warranties are in addition to all other warranties, whether express or implied and otherwise authorized by Texas law, and will survive delivery, inspection, acceptance, or payment by University. Vendor assigns and passes through to University any and all third-party manufacturers’ and licensors’ warranties and indemnities for Products.
 - (b) Defective Products. During the Warranty Period, Vendor will, at its expense, including but not limited to transportation charges for the return of defective products to Vendor and the delivery of repaired or replacement Products to University, and at University’s option: (i) replace or repair nonconforming product and re-deliver such repaired or replaced Product to University within a commercially reasonable timeframe agreed to by University; (ii) refund the Product purchase price within 30 days of receiving University’s notice of nonconforming product; or (iii) reimburse University for the reasonable cost to have the Product repaired within 30 days after receiving University’s invoice. Vendor is responsible for all costs, damages, and liabilities incurred by University as a result of a nonconforming product. Vendor will warrant replacement Product for the longer of 90 days following University’s acceptance of the replacement Product or the remainder of the original Product’s Warranty Period.

5. Services. Where Services are delivered by Vendor to University under a PO, the terms of this Section shall apply.
- (a) Services Warranty. Vendor warrants to University and its customers that Vendor shall: (i) perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services; (ii) maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services; and (iii) comply with University's rules, regulations and policies, including safety, security, and code of conduct requirements and policies.
 - (b) Non-Conforming Services. Notwithstanding University's acceptance of any Services, if the Services do not meet the applicable warranties or other criteria under this Rider, at University's option, University may (i) require Vendor to re-perform the non-conforming Services at no charge to University; (ii) re-perform or have a third party chosen by University re-perform the non-conforming Services, and charge Vendor the reasonable cost of this re-performance; (iii) accept the non-conforming Services and obtain a reduction in price; or (iv) reject the non-conforming Services and obtain a refund from Vendor for all amounts paid for these Services.
 - (c) Insurance. During the term of the Agreement, Vendor shall maintain, at its own expense: (a) commercial general liability ("CGL") insurance, including blanket contractual liability and broad form property damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; \$2,000,000 in the annual aggregate; (b) automobile liability insurance if the use of motor vehicles is required, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence for owned, non-owned, and hired vehicles; (c) workers' compensation insurance as prescribed by the laws of the State of Texas; (d) employer's liability insurance with limits of at least \$1,000,000 for each accident; (e) umbrella insurance with a limit of at least \$1,000,000 for each occurrence. Vendor shall have all CGL and automobile liability insurance policies endorsed to identify the University of the Incarnate Word, its Board of Trustees, employees, officers, directors, agents and volunteers as additional insureds. All insurance as listed above shall be primary with respect to Vendor's activities and University's insurance policies will be non-contributing. Such policies shall contain a provision waiving the insurer's right of subrogation against University. Any deductibles or self-insured retentions are the responsibility of Vendor. Prior to the commencement of any work, Vendor will furnish University with Certificates of Insurance listing University as the certificate holder, which evidence the minimum levels of insurance set forth above and the Additional Insured Endorsements.
 - (d) Independent Contractors. The relationship between University and Vendor is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

6. INDEMNIFICATION. VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS UNIVERSITY AND UNIVERSITY'S OFFICERS, AGENTS, FACULTY, STUDENTS AND EMPLOYEES (COLLECTIVELY, "INDEMNITEES") AGAINST ANY AND ALL LOSS, INJURY, DEATH, DAMAGE, LIABILITY, CLAIM, DEFICIENCY, ACTION, JUDGMENT, INTEREST, AWARD, PENALTY, FINE, COST OR EXPENSE, INCLUDING REASONABLE ATTORNEY AND PROFESSIONAL FEES AND COSTS, AND THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER AND THE COST OF PURSUING ANY INSURANCE PROVIDERS (COLLECTIVELY, "LOSSES") ARISING OUT OF OR OCCURRING IN CONNECTION WITH THE PRODUCTS AND SERVICES PURCHASED FROM VENDOR OR VENDOR'S NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THE AGREEMENT.

7. Termination. Either party may terminate the Agreement upon written notice if the other party (i) materially breaches any other provisions of the Agreement and fails to remedy that breach within 30 days after such written notice; or (ii) if an applicable law or court order prohibits either party's performance of the Agreement. University may terminate the Agreement for any reason by giving Vendor thirty (30) days prior written notice at no cost to University except on the portion of Products and Services received and accepted by University delivered or completed before the termination date.

8. Governing Law and Dispute Resolution. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Texas without regard to conflict of law principles that would require the application of any other law. All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the County of Bexar, State of Texas. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes any prior written or oral agreements between the parties.