

NEW MEXICO HIGHLANDS UNIVERSITY

GENERAL TERMS AND CONDITIONS

SECTION I. NMHU GENERAL TERMS AND CONDITIONS

1. **INSPECTION:** The University may inspect, at any reasonable time, any part of Seller's plant or place of business which is related to performance of the Purchase Order. Final inspection will be made at the destination. Acceptance of delivery shall not be considered acceptance of the materials, supplies or services furnished. Any testing or inspection procedures required by the specification add to the University's rights under this paragraph.
2. **WARRANTIES:** Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express or implied are incorporated herein.
3. **ACCEPTANCE AND REJECTION:** If prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, or, if University is entitled to revoke acceptance of them, University may reject or revoke acceptance, require Seller to correct without charge within a reasonable time, or require delivery at an equitable reduction in price, at University's option, Seller shall reimburse University for all incidental and consequential costs related to unaccepted materials, supplies or service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach.
4. **ASSIGNMENT:** This order is assignable by the University. Except as to any payment due hereunder, this order is not assignable by Seller without written approval of the University.
5. **CHANGES:** University may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of the University. Any claim of seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless University waives this condition. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.
6. **TERMINATION AND DELAYS:** The University may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. The University shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller, as approved by the University, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to Seller's actual cost, and may not include anticipated profits.

The University may by written notice terminate this order in whole or in part for Seller's default if seller refuses or fails to comply with the provision of this order, or so fails to make progress as to endanger performance and does not cure such failures within a reasonable period of time. In such event, University may otherwise secure the materials, supplies or services ordered, and Seller shall be liable for damages suffered by the University thereby, including incidental and consequential damages.

If after notice of termination, University determines Seller was not in default, or if Seller's default is due to failure of the University, termination shall be deemed for the convenience of the University.

The rights and remedies of the University provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

As used in this Article, the word "Seller" includes Seller and his subsuppliers at any tier.

7. **AFFIRMATIVE ACTION:** Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; communicate this policy in both English and Spanish to all persons concerned within his company, with outside recruitment services and the minority community at large; to

provide the University on request a breakdown of his labor force by ethnic group, sex, and job category; and to discuss with the University his policies and practices relating to his affirmative action program.

8. **INDEMNIFICATION AND INSURANCE:** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performance of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of University. Seller shall indemnify and hold harmless University, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

Seller agrees that it and its subcontractors will maintain public liability and property insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of University.

9. **PATENT AND COPYRIGHT INDEMNITY:** Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use, or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold University harmless from any cost, expense, damage, or loss resulting therefrom.
10. **DISCOUNTS:** Prompt payment discounts will not be considered in computing the low bid. Any discount time will not begin until the materials, supplies or services have been received and accepted and correct invoice received by the University's Purchasing Department. In the event testing is required, the discount time shall begin upon the completion of the tests.
11. **PENALTIES:** The Procurement Code, Section 13-1-28 et seq., imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.
12. **TITLE AND DELIVERY:** Title to the materials and supplies passed hereunder shall pass to University at the F.O.B. point specified subject to the right of University to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from University's Purchasing Department. Time is of the essence and the order is subject to termination for failure to deliver on time.
13. **OTHER APPLICABLE LAWS:** Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.

If this order is subcontract under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this order. In the event of any conflict between the terms and conditions of Subsection II and any other provisions of this order, the terms and conditions of Subsection II shall prevail. The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated herein by reference.

SECTION II. GOVERNMENT SUBCONTRACT PROVISIONS

- A. The following provisions of the Federal Acquisition Regulations (FAR) apply regardless of the amount of this order.

* Anti-kickback Procedures	52.203-7
Buy American Act and Balance of Payments Program	52.225-7001
* Contract Work Hours and Safety Standards Act-Overtime Comp.	52.222-4
* Equal Employment Opportunity	52.222-26
Integrity of Unit Prices	52.215-26(a)(b)
Notice to the Government of Labor Disputes	52.222-1
Preference for U.S. Flag Air Carriers (for international air travel)	52.247-63
Restriction on Subcontractor Sales to the Government	52.203-6
Service Contract Act of 1965 (reserved)	52.222-41
* Termination for Convenience of Government (Education and other nonprofit institutions)	52.249-5(a)(f)
- B. The following provision of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$2,500:

Affirmative Action of Handicapped Workers	52.222-36
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- C. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$10,000:
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| Affirmative Action for Special Disabled and Vietnam Era Veterans | 52.222-35 |
| Audit- Negotiations | 52.215-2 |
| Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era | 52.222-37 |
| * Examination of Records by Comptroller General Utilization of Small Business Concerns | 52.219-8 |
| Walsh Healey Public Contracts Act | 52.222-20 |
- D. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$25,000:
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| Authorization and Consent | 52.227-1 |
| Notice and Assistance re: Patent and Copyright Infringement | 52.227-2 |
| Preference for Privately Owned U.S. Flag Commercial Vessels | 52.247-64 |
| Utilization of Labor Surplus Area Concerns | 52.220-3 |
| Utilization of Women-Owned Small Businesses | 52.219-13 |
- E. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$100,000:
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| Clean Air & Water | 52.223-12 |
| Price Reduction of Detective Cost or Pricing Data | |
| - Subcontractor Cost or Pricing Data | 52.215-24 or |
| - Subcontractor Cost or Pricing Data | 52.215-25 |
- Note 52.215-24 applies if cost or pricing data is initially required if not 52.215-25 applies to transactions over \$100,000.
- F. The following provisions of the Federal Acquisition Regulations (FAR) also applies if the amount of this order exceeds \$500,000:
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| Labor Surplus Area Subcontractors Program | 52.220-4 |
| Small Business and Small Disadvantaged Business Subcontracting Plan | 52.219-9 |
- G. The following provisions of the Federal Acquisition Regulations (FAR) apply when noted:
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| Filing of Patent Applications\ | When Subcontract involves | 52.227-10 |
| Classified Subject Matter | Classified Matters | |
| Hazardous Materials identification | When Subcontract involves | 52.223-3 |
| And Material Safety Date | hazardous material | |
| Overseas Distribution of Subcontract | When subcontract amount | 52.204-7005 |
| | exceeds \$100,000 (DOD only) | |
| Patent Rights Clauses | When the subcontract or purchase | 52.227-11.12 |
| | order involves experimental research and | |
| | development work 52.227-11 applies | |
| | to small business and non-profit organizations. | |
| | 52.227-12 applies to others. | |
| Rights in Technical Data and Computer | When subcontract includes technical data or | 52.227-7013 |
| Software | software acquisition requirements (DOD only) | |
| Required Sources for Jewel Bearings | When subcontract or purchase order | 52.208-1 |
| | requires use of jewel bearings | |
| Restrictive Markings on Technical Data | When subcontract includes technical data or | 52.227-7018 |
| | software acquisition (DOD only) | |
| Security Requirements | When subcontract involves access to | 52.204-2 |
| | classified information | |
| Special Prohibition on Employment | If the subcontract amount exceeds | 52.203-7001 |
| | \$25,000 (DOD only) | |
| Validation of Restrictive Markings on | When subcontract includes technical data | 52.227-7037 |
| Technical Data | or software acquisition (DOD only) | |

The University reserves all administrative, contractual, and legal remedies against the contractor or vendor who breaches any of the contract terms.

On contracts funded by federal grants, only the Special Terms and Conditions clauses identified by the asterisk () are incorporated into this contract.