

University of Mississippi Terms and Conditions:

All purchases are governed by the University of Mississippi (“UM”) terms and conditions as listed below:

Notwithstanding anything contained in Vendor’s terms and conditions, in any agreement by and between Vendor and UM, or in any quotation, voucher, or document which our purchase order accompanies or to which it is attached (hereinafter collectively referred to as the “Agreement”), in the event of any conflict between the terms of the Agreement and the purchase order, the terms of the purchase order shall control. Any terms in the Agreement which purport to modify or are in conflict with the terms of the purchase order are hereby deleted, and replaced with the terms in the purchase order. By accepting UM’s purchase order and/or by supplying the goods and services which are the subject matter of the Agreement without objection, Vendor expressly agrees to be bound by the terms of the purchase order; expressly acknowledges that the terms of the purchase order supersede the terms of any Agreement which the purchase order accompanies or to which it is attached; and expressly acknowledges that no agreement, or understanding, oral or written, which purports to modify the terms of this purchase order, whether such be contained in any of Vendor’s prior or subsequent receipts, invoices, quotations, order confirmations, purchase orders, shipping forms or any other documents, shall be binding on UM. The terms of the purchase order may only be amended by a writing which specifically references the purchase order, and is signed by a duly authorized officer of Vendor and an authorized signatory of UM.

Shipments – All shipments associated with the purchase order should have the purchase order number clearly displayed on the shipping label and the packing list.

Invoices – Show the purchase order number on the invoice. Discount period is to be calculated from date invoice or material is received, whichever is later. FOB Destination, Freight Prepaid and Allowed.

Substitutions – Substitutions or price increases will not be accepted without prior written approval of the Director of Procurement. Any deviation in the original specification and/or price by the vendor will not be paid by the University unless cleared in advance by the Procurement Services Department.

Cancellation – The University of Mississippi reserves the right to cancel all or any part of the order not shipped in accordance with the Vendor’s quotation and UM terms and conditions.

By accepting the Purchase Order or any part of it, the vendor certifies that it, or its principals, are not debarred, suspended, or proposed for debarment by the Federal Government. Debarment, suspension, or proposed debarment by the Federal Government constitutes grounds for automatic termination of the Purchase Order.

The University of Mississippi is an equal opportunity employer. Any supplier, contractor, and subcontractor of the University must comply with Executive Order 11246 and shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. For related information, please see the UM policy directory at www.olemiss.edu/policies .

This purchase order may be funded in whole or in part with funding from the Department of the Treasury and the Mississippi Department of Environmental Quality under the RESTORE Act, and as such, is subject to applicable federal laws and regulations; all clauses required by federal statutes; applicable executive orders and implementing regulations; all of the provisions listed in Appendix II to 2 C.F.R. Part 200 - Contract Provisions for Non-Federal Entity Contracts under Federal Awards; and, any other provisions required by law or regulations. - RESTORE Council Standard Terms and Conditions and MDEQ Standard Subaward Terms and Conditions

The purchase of materials and/or services furnished or provided by our purchase order shall be governed by the laws of the State of Mississippi.

The Vendor recognizes and acknowledges that UM, as a political subdivision of the State of Mississippi, is issuing the purchase order, including the provisions thereof, only to the extent authorized by Mississippi law, including the opinions of the Mississippi Attorney General. Any provision of the purchase order or Vendor's accompanying documents that is in any respect not authorized by or is inconsistent with Mississippi law, including the opinions of the Mississippi Attorney General, is invalid.

Pursuant to Mississippi law, UM is exempt from state sales and use taxes. UM will not pay excise, personal property, income, value added, or similar taxes. If the Vendor is liable for such taxes, the Vendor shall take such into consideration in pricing. It is the Vendor's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible tax liabilities in connection therewith.

The University of Mississippi ["UM"], despite any contrary provision contained in any contract to which UM is a party, does not waive any rights, benefits, or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contract to which UM is a party are hereby null, void, and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which UM is a party:

1. UM contracts are governed by the laws of the State of Mississippi. Any provision that purports to set venue outside of the State of Mississippi is deleted.
U.S. Const. Amend XI; Miss. Code Ann. § 11-11-3; Miss. Code Ann. § 11-45-1; City of Jackson v. Wallace, 196 So. 223 (1940); Miss. AG Op., Clark (June 2, 2002); Miss. AG Op., Nowak (November 19, 2005).
2. UM does not waive its sovereign immunity. UM shall only be responsible for liability resulting from the negligent actions of its officers, agents, and employees acting within the course and scope of their official duties.
Miss. Code Ann. § 11-46-1, et seq.
3. UM does not waive its Constitutional Eleventh (11th) Amendment immunity.
U.S. Const. Amend. XI.
4. Any references to UM waiving its right to a trial by jury are deleted.
Miss. AG Op., Chamberlin (Oct. 18, 2002).

5. UM does not agree to any provisions wherein the credit of the State of Mississippi is pledged or loaned in aid of any person, association, or corporation.
Miss. Const. Art. 14 § 258; Miss. AG Op., Stringer (January 25, 2006).
6. Any references to payment of attorney's fees by UM are deleted.
Miss. AG Op., Nowak (January 23, 2009); Miss. AG Op., Stringer (January 25, 2006).
7. UM does not agree to pay extra compensation, fees, or allowances after service rendered or contract made, or for any payment not authorized by law.
Miss. Const. Art. 4, § 96; Miss. AG Op., Stringer (January 25, 2006).
8. Any references to UM limiting UM's damages to the contract price or any other set amount are deleted.
Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
9. Any references to UM indemnifying or holding harmless the Contractor or any other party are deleted.
Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
10. Any provisions limiting the time for UM to pursue legal action are deleted.
Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
11. Any references to UM waiving any cause of action it may have against Contractor or any other party as a result of Contractor's breach of the contract, or Contractor's own negligence or willful misconduct or the negligence or willful misconduct of Contractor's employees or agents are deleted.
Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. Any references to UM limiting damages, remedies or waiving any claim are deleted.
Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
13. Any provisions giving the Contractor exclusive control over litigation are deleted. UM does not agree that Contractor may represent, prosecute or defend legal actions in the name of UM.
Board of Trustees Institutions of Higher Learning Policy 1102.
14. Any references to UM submitting to binding arbitration are deleted.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
15. With the exception of any expressed limitation of remedies for breach of implied warranties of merchantability and fitness for a particular purpose concerning computer software and

services performed on computer hardware and computer software, which are sold between merchants, any provisions which would limit the Contractor's liability to UM or allow Contractor to waive any applicable warranties (express or implied) are deleted.

Miss. Const. Art. 4, § 100; Miss. Code Ann. § 75-2-719; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002); Miss. AG Op., Long (February 22, 2009).

16. Any references to UM limiting or waiving any common law warranty are deleted.

Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).

17. UM does not make any warranty.

Miss. Const. Art. 4, § 100; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).

18. UM will deliver payments to Contractor no later than forty-five (45) days after receipt of invoice and receipt, inspection and approval of Contractor's products/services. Any provision that requires UM pay Contractor any late charges is governed by Miss. Code Ann. § 31-7-305.

19. UM is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, Miss. Code Ann. §25-61-1, et seq., and the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. § 27-104-151, et seq.

20. Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Miss. Code Ann. § 71-11-1, et seq., and will register and participate in the status verification system for all newly hired employees. Any provision penalizing UM for hiring an employee who works for the Contractor is deleted.

21. UM is an equal opportunity employer. Executive order 11246 requires that UM do business with organizations that are in compliance with Title VII of the 1964 Civil Rights Act, as amended. During the performance of any contract with UM, Contractor agrees to be bound by provisions of Section 202 of Executive Order 11246, as amended and Executive Orders 11701, 11625 and 11758.

22. The continuance of any UM contract is based on the availability of funds. Should there be no funds available for any succeeding funding period; the contract will be cancelled as of the end of the funding period with no further obligation on the part of UM. This contract is cancellable with thirty (30) days' notice to the vendor at the end of the fiscal period in the event funds are not appropriated by the funding authority. (Any property covered by a lease shall be returned to lessor).

23. Any provision requiring UM to name the contractor as an additional insured is deleted.

24. Neither party may assign its rights or delegate its duties under the contract without the prior written consent of the other party, which shall not be unreasonably withheld.

25. Contractor recognizes that UM, as a political subdivision of the State of Mississippi, enters into this contract only to the extent authorized by Mississippi law.
26. Contractor acknowledges that the individual executing the contract on behalf of UM is doing so only in his/her official capacity only, and to the extent that any provision contained in the contract exceeds his/her authority, Contractor agrees that it will not look to that individual in his/her personal capacity or otherwise seek to hold him/her individually liable for exceeding such authority.