

**University of North Carolina School of the Arts (UNCSA)**

**Purchase Order (PO) Terms and Conditions**

1. **ORDER:** Prices and/or quantities are not to exceed those shown on the purchase order. If the dollar amount on the PO is an estimate, the Purchasing Officer must grant approval to exceed the estimate. UNCSA will not be responsible for any excess costs without approval.
2. **FREIGHT:** Deliveries shall not be shipped collect or C.O.D. Shipper must show UNCSA Purchase Order number on all shipping cartons and manifests. Any freight or postage charges shown on invoices are subject to authentication, and overcharges are refundable to UNCSA or deductible from invoice.
3. **CONDITION AND PACKAGING:** It is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be free from defect, unless otherwise provided for. All containers/packaging shall be suitable for handling, storage, or shipment.
4. **INSPECTION AND ACCEPTANCE:** All products, supplies, and materials ordered are subject to UNCSA inspection. If defective or not as ordered, they shall be returned to vendor, and the vendor shall be fully responsible for any applicable postage, freight, and restocking charges. Invoices shall not be paid until UNCSA verifies that the items ordered were received and acceptable.
5. **INVOICE AND PAYMENT:** Invoices showing the PO number, terms of payment and routing must be mailed to Accounts Payable upon completion of delivery. If the PO terms are "As Invoiced," UNCSA will pay the terms stated on the invoice. If no terms are specified on the invoice, our payment system defaults to Net 30 days. On all invoices subject to a prompt payment discount, the discount period will be calculated from the date a correct invoice is received or the date service is received, whichever is later.
6. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by the University. The vendor shall retain all records associated with the performance of this contract for three years following completion or termination of the contract.
7. **ACTS OF GOD:** Neither party shall be deemed to be in default of its obligations for failure to perform due to acts of war, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
8. **ADVERTISING:** The vendor agrees not to use the existence of this contract, the name of UNCSA, or the name of the State of North Carolina as part of any commercial advertising without prior written approval.
9. **AFFIRMATIVE ACTION:** Vendor shall comply with all Federal and State requirements, rules, Executive Orders, and regulations governing fair employment practices and the employment of individuals with disabilities.

10. REPRESENTATION: Vendor hereby warrants to UNCSA that:

- a. The vendor is:
  - i. a corporation duly organized
  - ii. validly existing
  - iii. in good standing under the laws of the State of North Carolina
  - iv. duly qualified to do business in the State of North Carolina
  - v. has full power and authority to enter into and fulfill all the terms and conditions of this PO.
- b. The person named in the purchase order is 1) an officer authorized to bind the vendor in the PO and 2) that the person executing the PO is an officer or otherwise authorized employee of the vendor to execute the PO on behalf of the vendor, and in executing this PO on behalf of vendor, binds vendor to all the terms and conditions of the PO.
- c. The vendor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to perform all its duties and obligations and to satisfy all the terms and conditions of this PO.
- d. Vendor is experienced in and competent to provide all the services required by this PO and to fully satisfy all the terms and conditions of this PO.
- e. Vendor has the experience, capability, and resources to efficiently and expeditiously perform the services required and fully satisfy all the terms and conditions of this PO.
- f. There is no suit, action, arbitration, outstanding judgment, order, decree, other proceeding or governmental investigation affecting vendor or threatened against vendor which materially or adversely affects the business of vendor relating to this PO.
- g. This PO is a valid and binding obligation of vendor in accordance with its terms.
- h. That any and all assertions by vendor regarding warranties and/or representations are free from error and omission, and that all future representations by vendor will also be free of error or omission.
- i. Vendor has reviewed and understands UNCSA's objectives and expectations.

11. AMENDMENTS: This PO may be amended only by written change issued by the Purchasing Officer.

12. ASSIGNMENT: Vendor shall neither assign nor transfer any rights or obligations associated with this contract. However, upon written request approved by the Purchasing Officer, and without creating privity, UNCSA may forward the vendor's payment directly to a vendor designee, or include any person or entity designated by vendor as a joint payee on vendor's check(s).

13. CARE OF PROPERTY: Vendor shall be responsible for the proper care and custody of any property furnished by UNCSA or purchased for contractor use in connection with the performance of this contract. Vendor shall reimburse UNCSA for any loss or damage to such property.
14. CONFIDENTIALITY AND PERSONAL IDENTIFICATION INFORMATION: Any information, data, instruments, documents, studies, or reports given to or prepared or assembled by the vendor under this contract shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of UNCSA. If the vendor receives any person information (see N.C.G.S. 132-1.10, N.C.G.S. 14-133.20(b), and 34 CFR 99.33) necessary to perform its duties, vendor will safeguard such information and maintain the confidentiality of same. If vendor experiences a security breach, in addition to the vendor's responsibilities under the North Carolina Identity Theft Protection Act, vendor shall immediately notify UNCSA and fully cooperate with any further investigation.
15. CONTRACT: This PO will serve as the final agreement between the vendor and UNCSA. Any and all documents, invoices, amendments, or correspondence generated before the creation of the PO are superseded by this signed purchase order. No documents are incorporated by reference unless referenced expressly on the face of the purchase order and attached thereto.
16. COVENANT AGAINST CONTINGENT FEES: Vendor warrants that no person or agent has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission or payment of fees. In the event of vendor breach of this warranty, UNCSA shall have the right to annul this contract without any further obligation to vendor.
17. JURISDICTION AND CHOICE OF LAW FOR DISPUTES: Vendor expressly agrees that as a condition of this contract, all disputes arising out of this contract shall be litigated in the state courts of Forsyth County, North Carolina. Additionally, vendor agrees that the contract law of North Carolina will govern this agreement, irrespective of North Carolina's choice of law principles.
18. HOLD HARMLESS AND INDEMNIFICATION: Vendor shall hold harmless, defend, and/or indemnify UNCSA, the state of North Carolina, and/or their respective officers, agents, and employees, from liability of any kind accruing to or held by any person, firm, or corporation furnishing or supplying work, services, materials, and/or supplies in connection with the performance of this contract. The obligations herein are affirmative duties, and shall survive the termination or expiration of this contract for any reason.
19. INSURANCE COVERAGE: Vendor, at its sole cost and expense, shall be responsible for securing any and all insurance of such type and with such terms and limits as may be reasonably associated with its line of business, including but not limited to commercial general liability, professional liability, automobile, or errors and omissions coverage.
20. AVAILABILITY OF FUNDS: Any and all payments to the vendor are dependent upon and subject to the availability of funds to UNCSA for the purpose set forth in this agreement. Vendor

expressly acknowledges and agrees that in the event funds are not appropriated or allocated by the state of UNCSCA for this purpose, UNCSCA may terminate the order at any time during the period of performance without further obligation to vendor and without vendor recourse of any kind in law or equity.

21. TAXES: Effective July 1, 2004, UNCSCA became exempt for North Carolina state sales tax in accordance with G.S. 105-164.13(52). Our tax exempt number is printed on the front of all Purchase Orders.
22. TERMINATION FOR CAUSE AND CANCELLATION: UNCSCA may terminate this contract for cause without further obligation to vendor for any material breach of the terms and conditions governing vendor's performance. UNCSCA, in its sole discretion and without waiving its rights in law or equity, may grant vendor an equitable adjustment in light of contractor's time, efforts, and damages associated with the breach. UNCSCA reserves the right to cancel this order if delivery is not provided by or before the date agreed upon and the right to pursue any and all remedies in law or equity due to vendor's breach.
22. TERMINATION FOR CONVENIENCE: UNCSCA may terminate this contract for convenience upon written notice to vendor. At UNCSCA's discretion, the vendor may be compensated pursuant to the PO on a pro-rata basis consistent with any partial deliveries or services completed by the vendor and accepted by UNCSCA prior to the date of termination.
23. POWERED EQUIPMENT: All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels, the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution.
24. IRAN DIVESTMENT ACT - CERTIFICATION AND ONGOING OBLIGATIONS: The NC General Assembly recently enacted the Iran Divestment Act (S.L. 2015-118). This requirement applies to all units of State government and to all political subdivisions of the State. The Iran Divestment Act List is a list published by the North Carolina Department of State Treasurer pursuant to the requirements of this Act that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx> .

By accepting an order from the University, the Contractor certifies that, as of the date of acceptance, it is not on the then-current version of the Iran Divestment Act List. Contractor agrees to not contract with any person to perform a part of the contractual work, if, at the time the Contractor enters into a subcontract, that person is on the then-current version of the Iran Divestment Act List. Contractor further agrees to notify the Procurement Specialist if, at any time during the contract term, including any renewal terms, it is added to the Iran Divestment Act List.