

Award Notice Document

This is an award notice for a Time Period Contract.
Request or Release required for purchase.

Purchasing Services
1300 South Second St., Suite 560
Minneapolis, MN 55454-1082
Phone (612) 624-2828 Fax (612) 626-0366

Date:
CUFS Account No:
Bid/Requisition No:

Vendor:

[Empty box for Vendor Name]

Phone: _____ **Fax:** _____

Payment Terms:

FOB:

Buyer:

Ship To:

[Empty box for Ship To Name]

Phone: _____

Dept Contact Person :

Phone:

Ext:

Bill To:

[Empty box for Bill To Name]

Phone: _____

Internal Location:

[Empty box for Internal Location]

Phone: _____

This award incorporates and is subject to the Regents of the University of Minnesota General Terms and Conditions for Large Purchases.

APPROVED

For Director of Purchasing Services

Estimated Total :

**Regents of the University of Minnesota (University)
General Terms and Conditions for Large Purchases**

1. Seller's Acceptance of Terms, Choice of Law, Forum Selection and Amendment. The following terms and conditions, together with such terms and conditions as may be set forth on the face of this Purchase Order and together with such plans, specifications or other documents as are attached or incorporated by reference on the face of this Purchase Order constitute the offer of University to Seller and shall, when accepted, constitute the entire agreement between University and Seller. University hereby gives notice of its objection to any different or additional terms (including any general terms which Seller may have included in any documents attached to or incorporated on the face of this Purchase Order). If this Purchase Order has been issued by University in response to an offer by Seller, and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Purchase Order by University shall constitute an acceptance of such offer, subject to the express condition that the Seller accept such additional and different terms herein and acknowledge that this Purchase Order constitutes the entire agreement between University and Seller with respect to the subject matter of such offer. Seller shall be deemed to have accepted the terms and conditions of this Purchase Order, unless, prior to commencement of the services or delivery of the goods, Seller notifies University to the contrary in writing in a separate document delivered to Purchasing Services, 1300 South Second Street, Suite 560, Minneapolis, MN 55454-1082. Such notification shall state the specific provisions of this Purchase Order to which Seller objects. Any handwritten changes on the face of this document shall be ignored and have no legal effect unless initialed by both parties. This Purchase Order shall be construed under Minnesota law (without regard for choice of law considerations) and the policies and procedures of the University, as amended from time to time. Any action arising out of this Purchase Order shall be heard by a state court in Minnesota. For this purpose, Seller specifically consents to jurisdiction in Minnesota. No amendments to this Purchase Order shall be effective unless in writing and signed by both parties. If this Purchase Order was made pursuant to a Request for Proposal ("RFP") or Request for Bid ("RFB"), the following order of precedence shall apply: (1) this Purchase Order and its Exhibits, (2) University's RFP or RFB, and (3) Seller's Response to University's RFP or RFB.

2. Warranty. Seller represents that all goods and services provided under this Purchase Order (i) are new and unused (unless otherwise specified or agreed to in writing by University) and free from defects in material and workmanship; (ii) are of the quality, size and dimensions ordered; (iii) are fit for the particular needs and purposes of University as may be communicated to Seller; (iv) comply with the highest warranties and representations expressed by Seller orally or in any written advertisement, correspondence, response to University RFP or RFB, or other document provided to or in the possession of University; (v) comply with all applicable laws, codes and regulations (including any published by any national or statewide association or groups), (vi) are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties, and (vii) are Y2K compliant. If any of the foregoing warranties is breached, Seller agrees to correct all defects and nonconformities at Seller's sole expense, to be liable for all direct damages suffered by University and any other persons, and to defend and indemnify University, its regents, faculty members, students, employees, and agents from any claim asserted by any person resulting in whole or in part from such breach. The foregoing

warranties shall not be waived by reason of the acceptance of the goods or services or payment.

3. Hazardous Substance and Environmental Law. "Hazardous Substance" means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material listed or identified in or regulated by any Environmental Law, and (ii) "Environmental Law" means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment now or hereafter in effect including without limitation, any and all claims or causes of action based upon the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Resource Conservation and Recovery Act ("RCRA"), the Toxic Substances Control Act (the "TSCA"), the Minnesota Environmental Response and Liability Act (MERLA), and Minn. Statute, Section 116.70-.74 regarding chlorofluorocarbon, as such acts may be amended from time to time, or any other federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources or the environment. Seller shall comply with all Environmental Laws. Seller shall notify University in writing at the "Ship To" address on the face of this Purchase Order of every article ordered or supplied under this Purchase Order or stored or used by Seller on University property that contains Hazardous Substances or substances for which the law requires a Material Safety Data Sheet. Such notification shall be given prior to the shipment or introduction of such substances onto University Property and shall include, at a minimum, information regarding the substance including but not limited to, Material Safety Data Sheets. University shall at all times have the right to inspect any Hazardous Substances introduced onto or intended to be introduced onto University property by Seller.

4. Inspections and Improper Delivery. The University shall have a reasonable time (but not less than 30 days) after receipt to inspect and test any goods or services provided under this Purchase Order and reject any or all items that are, in the University's sole judgment, nonconforming or defective. Goods or services rejected or supplies in excess of quantities ordered may be returned to Seller at Seller's expense. The University also reserves the right to refuse any goods or services and to cancel all or any part of this Purchase Order if Seller fails to deliver all or any part of the goods or services in accordance with the terms and conditions of this Purchase Order. Failure by the University to inspect and test the goods or services shall not relieve Seller of such responsibility. Any acceptance by University shall not be deemed a waiver or settlement of any defect or nonconformity in such goods or services. If University elects to accept nonconforming or defective goods or services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity or defect.

5. Assignment. The Seller may not assign any rights or obligations of this Purchase Order without the prior written consent of the University. In the event of any assignment, Seller shall remain responsible for its performance and that of any assignee under this Purchase Order. This Purchase Order shall be binding upon Seller, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Purchase Order shall be void. Notwithstanding any notice of assignment, University's tender

of payment to the Seller named herein, or to any person reasonably believed by University to be entitled to payment, shall satisfy University's obligation to pay, and in no event shall University be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

6. **Taxes.** The University is exempt from paying Minnesota sales and use taxes. Except as provided in Minnesota Statute, Section 297A.70, Subd. 2, Seller shall not charge University for such taxes.

7. **Risk of Loss.** With respect to any goods provided under this Purchase Order, risk of loss shall not pass to University until such goods have been actually received and accepted by University, pursuant to Section 3 ("Inspections and Improper Delivery"), at the destination specified by the University. Seller assumes full responsibility for packing, crating, marking, transporting and liability for loss or damage in transit, notwithstanding any agreement in this Purchase Order by University to pay freight, express, or other transportation charges.

8. **Use of University Name or Logo.** Seller agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University or the name of any representative of the University in any sales promotion work or advertising, or any form of publicity, without the written permission of the University's Office of General Counsel and Office of Institutional Relations in each instance.

9. **Terms of Payment.** Payment shall be made by the University within 30 days upon Seller's presentation of an invoice for goods delivered or services rendered pursuant to this Purchase Order. In the case of goods, payment shall not be due prior to 30 days from the date the invoice is received by the University at the address indicated in the "Bill To" field on the face of the Purchase Order or from the date the goods are delivered to the destination specified in the "Ship To" field on the face of the Purchase Order, whichever is later. University may withhold payment in whole or in part for goods or services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to this Purchase Order, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.

10. **Termination.** University may terminate this Purchase Order in whole or in part for its sole Convenience. Upon notice of such termination, Seller shall immediately stop all work including shipment of goods under this Purchase Order and cause its suppliers and/or subcontractors to cease their work for this Purchase Order. Sellers shall be paid a reasonable termination charge calculated on a pro rata or other equitable basis, determined by the University in its sole discretion for services or goods satisfactorily performed or provided. In no event shall Seller be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by suppliers or subcontractors which reasonably could have been avoided. University may terminate this Purchase Order in whole or in part for Cause upon seven (7) days written notice if Seller fails to comply with any material term or condition of this Purchase Order, becomes insolvent or files for bankruptcy protection, or fails to comply in a material way with the requirements of this Purchase Order. Late delivery of goods or services or delivery of goods or services that are defective or do not conform to this Purchase Order shall, without limitation, be causes allowing the University to terminate for cause. In this event, the University will not be liable for any amounts; but Seller shall be liable to the University for all losses, damages, and expenses, including, without limitation, the excess cost of reprocurring similar goods or services; shipping charges for any items University may at its option return to Seller, including items already delivered, but for which University no longer has any use because of Seller's default; and amounts paid by University for any items University has received but returns to Seller. If a determination is made that the

University improperly terminated this Purchase Order for Cause, then such termination shall be deemed to have been for the University's Convenience.

11. **Independent Contractor.** SELLER SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER SELLER NOR ANY AGENT OR EMPLOYEE OF SELLER SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE UNIVERSITY. SELLER SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX ON ANY MONIES PAID PURSUANT TO THIS PURCHASE ORDER. SELLER ACKNOWLEDGES THAT SELLER AND ITS EMPLOYEES ARE NOT ENTITLED TO TAX WITHHOLDING, WORKER'S COMPENSATION, UNEMPLOYMENT COMPENSATION, OR ANY EMPLOYEE BENEFITS, STATUTORY OR OTHERWISE. SELLER SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE UNIVERSITY TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. SELLER SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF SELLER, ITS EMPLOYEES, AND AGENTS.

12. **Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.

13. **Audit and Retention of Books and Records.** The University shall have the right to inspect and copy such books, records, and documents (in whatever medium they exist) as well as all accounting procedures and practices of Seller, its agents, and subcontractors to verify Seller's performance and all expenses submitted pursuant to the terms of this Purchase Order. Seller shall make such items available for inspection during normal business hours at Seller's place of business. All such items shall be retained by Seller during the term of this Purchase Order and for a period of three (3) years after the delivery of the goods and/or services. Any items relating to a claim arising out of the performance of this Purchase Order shall be retained by Seller, its agents and subcontractors, if any, until the claim has been resolved. This Purchase Order incorporates the Audit and Records – Negotiation clause 52.215-2 from the Federal Acquisition Regulation (FAR) by reference, with the same force and effect as if it was given in full text. Upon request, the University of Minnesota will make full text available. Also, the full text of this clause may be accessed electronically at this address: <http://www.arnet.gov/far/>. This Purchase Order also incorporates the White House Office of Management and Budget Circular A-110, Subpart C – Post Award and Requirements .53 Retention and Access Requirements for Records, with the same force and effect as if it was given in full text. Upon request, the University of Minnesota will make full text available. The full text of this clause may be accessed electronically at this address: <http://www.whitehouse.gov/omb/circulars/a110/a110.html>.

14. **Limitation on University Liability.** IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THIS PURCHASE ORDER. The University's total obligation under this Purchase Order is set forth in the "total amount" field on the face of this Purchase Order.

15. **Changes.** University may at any time by a written notice change the drawings, designs, specifications, materials, packaging, and the time and place of delivery and/or completion of the goods and services to be provided under this Purchase Order. Promptly upon receipt of the details of any such change, Seller shall either advise that the change will not affect its costs, or furnish: (i) a breakdown of estimated cost and changes in the compensation

attributable thereto, and (ii) a statement of any necessary changes in the time of completion. Seller's failure to advise the University in writing within 10 days of the effect of any change shall constitute Seller's consent to conform to the change without increase in the amount to be paid by University or the time of completion.

16. University Information. Seller agrees that any information it receives during the course of its performance, which concerns the personal, financial, or other affairs of the University, its regents, officers, employees or students shall be kept confidential and in conformance with all state and federal laws relating to data privacy, including, without limitation, the Minnesota Government Data Practices Act, Minnesota Statute, Chapter 13.

17. Insurance. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Purchase Order, Seller shall obtain and keep in force comprehensive general and professional liability and general liability insurance, including coverage for death, bodily or personal injury, property damage, including products liability, pollution liability (if requested by the University), and automobile coverages, with limits of not less than \$1,000,000 each claim and \$3,000,000 each occurrence, with the exception of \$1,000,000 each occurrence for automobile coverage. All such certificates evidencing such insurance shall name the Regents of the University of Minnesota as an additional insured. Seller represents that it has worker's compensation insurance to the extent required by law and agrees to furnish proof of such insurance. Seller shall provide all such certificates to the University prior to commencement of services or delivery of goods.

18. Indemnification. Seller agrees to defend, indemnify and hold harmless the University, its regents, faculty members, students, employees, and agents from injuries, damages and loss, including costs and attorneys' fees, arising from (i) the negligent acts and omissions of Seller, (ii) the breach by Seller of any of its obligations under this Purchase Order, and (iii) the presence of any Hazardous Substance (as defined in Section 3) supplied by or introduced onto University property by Seller, knowingly or unknowingly. For purposes of this Section, Seller shall include the Seller, its employees, officers and agents, and sub-contractors.

19. Copeland "Anti-Kickback" Act. This Purchase Order is subject to, and Seller agrees to comply with, the provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276(c)) as supplemented by Department of Labor regulations (29 CFR part 3, "*Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States*"), which provides in part that contractors or subrecipients are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which such person is otherwise entitled. The Anti-Kickback Act imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in the Act, and provides for civil penalties of twice the amount of the kickback for each violation and up to \$10,000 for each occurrence. By accepting this Purchase Order, Seller (i) certifies that it has not paid kickbacks directly or indirectly to any University employee for the purpose of obtaining this or any other University Purchase Order, and (ii) agrees to cooperate fully with any investigation involving a possible violation of the Act; and (iii) agrees to report any suspected violations of the Act to the University's Director of Audits at (612) 625-1368. Seller also certifies that it has provided no fees, gifts, gratuities, compensation, or anything of value in violation of Minnesota Statute, Section 15.43.

20. Davis-Bacon Act. This Purchase Order is subject to the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "*Labor Standards*

Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"), which requires in part that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in wage determinations made by the Secretary of Labor and that such wages be paid not less than once a week.

21. Contract Work Hours and Safety Standards Act. This Purchase Order is subject to, and Seller agrees to comply with, Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5), which provides in part that contractors are required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours; that work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week; and that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

22. Rights of the Federal Government to Inventions Made Under a Contract or Agreement. To the extent this Purchase Order involves the performance of experimental, developmental, or research work, the rights of the Federal Government and the University to any resulting inventions shall be determined in accordance with 37 CFR part 401, "*Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*," and any implementing regulations issued by the awarding agency.

23. Clean Air Act. In addition to the requirements in Section 3, to the extent this Purchase Order is in excess of \$100,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

24. Byrd Anti-Lobbying Amendment. To the extent this Purchase Order is in excess of \$100,000, Seller certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Seller shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Seller shall insure compliance with 31 U.S.C. 1352 by all subcontractors utilized by Seller.

25. Affirmative Action, Equal Employment Opportunity, and Targeted Group Business. The University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation and is committed to transacting business only with firms who follow these practices. Seller must apply every good faith effort to ensure implementation of this policy in their practices of employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Seller will maintain non-segregated facilities for their employees and not allow its employees to perform services at any segregated facilities under its control. Seller shall also develop and have on file for each of its

establishments, written Affirmative Action Plans, as may be required by the rules and regulations of the Secretary of Labor. Additionally, this Purchase Order is subject to, and Seller agrees to comply with, the requirements of and Seller agrees to comply with (i) Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relation to Equal Employment Opportunity" and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor"; (ii) Public Laws 92-540 and 93-508, Executive Order 11701, and the regulations of the Secretary of Labor (41 CFR Part 60-250) in promoting employment opportunities for disabled and Vietnam veterans; (iii) Section 503 of the Rehabilitation Act of 1973, Public Laws 93-112 and 93-516, Executive Order 11758 and the regulations of the Secretary of Labor (41 CFR Part 60-471) in promoting affirmative action in Employment of the Handicapped; (iv) Public Law 95-507 in promoting the policy that small business concerns owned and controlled by socially and economically disadvantaged shall have maximum practicable opportunity to participate in the University's bidding process; and (v) Minnesota Statutes, Chapter 363 in promoting the equal rights and non-discrimination of persons based on race, color, creed, religion, sex, age, marital status, disability, public assistance status, veteran status or sexual orientation. The University's Targeted Group Business Policy and Affirmative Action Policy are incorporated into this Purchase Order by reference and Seller agrees to comply with such policies. If applicable, Seller certifies that it has received a certificate of compliance from the Minnesota Commissioner of Human Rights for its affirmative action plan. By accepting this Purchase Order, Seller certifies that it complies with all applicable federal and state laws as well as University policies related to non-discrimination, equal employment opportunity, and affirmative action.

26. Debarment and Suspension. Seller represents that it is not currently debarred or suspended or listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension". Seller shall notify University if it becomes debarred or suspended during the term of this Purchase Order.

27. Compliance with Laws. Seller certifies that all goods or services furnished under this Purchase Order shall comply with all applicable federal, state, and local laws and regulations, regardless of whether such laws and regulations are specifically set forth in this Purchase Order.

28. Anti-Trust Violations. Seller recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the buyer. Therefore, Seller hereby assigns to the University, as the buyer of goods and services under this Purchase Order, any and all claims for such overcharges as to goods and services purchased in connection with this Purchase Order.

29. Notices/Administration. Except as otherwise provided in this Purchase Order, all notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth on the face of this Purchase Order.

30. Acknowledgement. In accepting this Purchase Order, the Seller certifies (1) that the taxpayer I.D. number provided to the University is correct and (2) that it is not subject to backup withholding because (a) it is exempt from such withholding, (b) it has not been notified by the IRS that it is subject to backup

withholding as a failure to report all interest or dividends, or (c) the IRS has notified it that it is no longer subject to backup withholding. Seller must cross out and initial item (2) and notify the University in writing at Purchasing Services, 1300 South Second Street, Suite 560, Minneapolis, MN 55454-1082, if Seller has been notified by the IRS that it is currently subject to backup withholding because of under-reporting interest or dividends on its tax return.

31. University Order Number. Seller agrees to place University Order Number shown in the "Order Nbr." field on the face of this Purchase Order on all packages, invoices, packing slips, notices, and correspondence related to this Purchase Order.

32. FOB Terms. Except as otherwise indicated on the face of this Purchase Order, FOB Terms shall be FOB Destination/Seller to Pay Shipping and Freight. If the face of this Purchase Order indicates that FOB is Origin, Seller will insure shipment for its full value, prepay freight and add to invoice.

33. "Most Favored Customer" Provision. If Seller has negotiated terms or conditions for the sale of goods or services to another customer of Seller which the University deems more favorable than those contained herein, the University may request and shall be afforded the opportunity to purchase those goods or services on the same terms and conditions as Seller has negotiated to provide a third party under reasonably similar circumstances.

34. Cash Discount Period. The cash discount or other similar prompt payment discount period available to University by Seller shall commence on the later of (i) University's receipt of all goods and services under this Purchase Order or (2) University's receipt of Seller's invoice.

35. Fund Availability; Federal Funds Contingency. Financial obligations of the University, which are payable after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this Purchase Order is funded in whole or in part with federal funds, the University's payment obligations are subject to and contingent upon the continuing availability of federal funds for the purposes of this Purchase Order.

36. Severability. If any provision of this Purchase Order shall be invalid or unenforceable with respect to any party, the remainder of the provisions, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the provisions shall be valid and be enforceable to the fullest extent permitted by law.

37. Assurance. If at any time University in good faith determines that it is insecure with respect to Seller's ability or intent to fully perform, then Seller agrees to provide Buyer with written assurance fully satisfactory to University, in University's sole discretion, of Seller's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by University. Seller immediately shall notify University of any circumstance that may cause Seller to fail to fully perform. Upon University's good faith determination that Seller cannot or will not perform, then University may deem this contract to be breached by Seller and may procure from other sources.

38. Survivability. All of the terms and conditions of this Purchase Order shall survive the delivery of goods, the provision of services, and the expiration or termination of this Purchase Order.