

## General Terms and Conditions Applicable to All Purchase Orders

1. INVOICES must be rendered in duplicate not later than the day following shipment. In accordance with Sections 1.6047-1.6050 of the IRS Code, Vendor shall provide the Research Corporation of the University of Hawaii (RCUH) with its Federal Taxpayer Identification Number and its (a) Hawaii General Excise/Use Identification Number, or (b) its Social Security Number on the invoice.
2. EXTRA CHARGES. No additional charges of any kind, including charges for boxing, packing, cartage, or other extras will be allowed unless specifically agreed to in writing, in advance by RCUH.
3. PAYMENT. C.O.D. shipments will not be accepted. Drafts will not be honored. In accordance with Section 103-10, Hawaii Revised Statutes, payment to vendors shall be made no later than thirty (30) calendar days following receipt of invoice or satisfactory receipt of goods and services, whichever is later.
4. PRICE. If price is not stated in this order, it is agreed that goods shall be billed at the price last quoted, or billed at the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without RCUH's specific authorization.
5. APPLICABLE LAWS. Vendor represents that the merchandise covered by this order was not manufactured, and is not being sold or priced, in violation of any federal, state, or local law.
6. FAIR LABOR STANDARDS ACT. Vendor agrees that goods shipped to RCUH under this order will be produced in compliance with the Fair Labor Standards Act.
7. WARRANTY SPECIFICATIONS. Vendor expressly warrants that all materials and articles covered by this order or other description or specification furnished by RCUH will be in exact accordance with such order, description, or specification, free from defects in material and/or workmanship, and merchantable.
8. CANCELLATION. RCUH reserves the right to cancel all or any part of the undelivered portion of this order if Vendor does not make deliveries as specified, time being of the essence for this order, or if Vendor breaches any of the terms hereof including, without limitation, the warranties of Vendor.
9. ACCEPTANCE. The items or services covered by this order shall be furnished by Vendor subject to all the terms and conditions set forth in this order. Vendor, in accepting this order, agrees to be bound by and to comply with all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the items or services covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made part of the order only to the extent of specifying items, the nature of the items, the services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions of this order.
10. WAIVER. The failure of the RCUH to enforce at any time the provisions of the order, or to exercise any option herein provided, or to require at any time performance by Vendor of provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right of the RCUH thereafter to enforce each and every such provision.
11. WARRANTIES. Vendor warrants the articles delivered hereunder to be free from defects in labor, material, and manufacture, and to be in compliance with any drawings or specifications incorporated or referenced herein and with any samples furnished by Vendor. All warranties shall run to the RCUH, its successors and assigns.
12. DISCOUNT DATE. The date for calculation of any cash discount offered by Vendor and provided for on the face of this order is (a) the date material is received, or (b) the date an acceptable invoice is received, whichever is later.
13. INSPECTION. All works performed and all deliverable items are subject to inspection and acceptance at destination, notwithstanding any payments or inspection at source. Final inspection and acceptance shall be conclusive except as to latent defects, fraud, gross mistakes that amount to fraud, and Vendor's warranty obligations. Supplies to be furnished hereunder shall be subject to inspection by the RCUH and/or government inspectors upon the premises of Vendor. Vendor, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspection, Vendor shall make available to the inspectors copies of all drawings, specifications and process, preservation and packaging data applicable to the articles ordered herein.
14. ASSIGNMENT. This order is assignable by the RCUH. Except as to any payment due hereunder, this order is not assignable by Vendor without prior written approval of the RCUH. In case such consent is given, it shall not relieve Vendor from any of the obligations of this order and any transferee or subcontractor shall be considered the agent of Vendor and, as between the parties hereto, Vendor shall be and remain liable as if no such transfer or subletting has been made.
15. CHANGES. The RCUH may make changes within the general scope of this order by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, equitable adjustment in the price or delivery or both shall be made. No change by Vendor shall be recognized without written approval of the RCUH. Any claim of Vendor for an adjustment under this article must be made in writing within thirty (30) days from the date of receipt by Vendor of notification of such change unless the RCUH waives this condition. Nothing in this article shall excuse Vendor from proceeding with performance of the order as changed hereunder.
16. SHIPPING INSTRUCTION. Vendor shall bear the risk of loss during shipment, unless otherwise agreed to in writing by the RCUH. All shipments shall also be made as specified on the face of the order.
17. LABOR DISPUTES. Vendor shall give prompt notice to the RCUH of any actual or potential labor dispute which delays or may delay timely performance of this order.
18. TERMINATION AND DELAYS. The RCUH may provide written notice stating the extent and effective date of termination of this order for the RCUH's convenience in whole or in part, at any time. The RCUH shall pay Vendor as full compensation for performance under such termination: (a) the unit or pro rata order price for the delivered and accepted portion, and (b) a reasonable amount, not otherwise recoverable from other sources by Vendor as approved by the RCUH with respect to the undelivered or unaccepted portion of the order; provided compensation hereunder shall in no event exceed the total order price. The RCUH may, by written notice, terminate this order for Vendor's default, in whole or in part, at any time, if Vendor refuses or fails to make progress, as to endanger performance, and does not cure such failure within a reasonable period of time, or fails to make deliveries of the items or services or perform the services within the time specified or any written extension thereof. In such event, the RCUH may purchase or otherwise secure items or services and, except as otherwise provided herein, Vendor shall be liable to the RCUH for any excess cost incurred by the RCUH. If, after notice of termination for default, the RCUH determines that Vendor was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Vendor (including, but not restricted to, acts of God or the public enemy, acts of the RCUH, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of the RCUH, unless the RCUH shall determine that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule. If the RCUH determines that Vendor has been delayed in the work due to causes beyond the control, and without the fault or negligence, of Vendor, the RCUH may extend the time for completion of the work called for by this order, when promptly applied for in writing by Vendor; and if such delay is due to failure of the RCUH, not caused or contributed to by Vendor, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes article. Sole remedy of Vendor in event of delay by failure of the RCUH to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits. The rights and remedies of the RCUH provided in this article shall not be exclusive and are in addition to any other rights and/or remedies provided by law or under this order. As used in this article, the word "Vendor" includes Vendor and Vendor's sub-suppliers at any tier.
19. LIABILITY FOR RCUH FURNISHED PROPERTY. Vendor assumes complete liability for any tools, articles or material furnished by the RCUH to Vendor in connection with this order, and Vendor agrees to pay for all such tools, articles, or materials spoiled by Vendor, or not otherwise accounted for to the RCUH's satisfaction. The furnishing to Vendor of any tools, articles, or materials in connection with this order shall not, unless otherwise expressly provided, be construed to vest title with Vendor.
20. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION. Vendor agrees that the equal opportunity clause, which prohibits discrimination on the basis of race, color, religion, sex, or national origin, and the affirmative action requirements of Executive Order 11246, as amended, and implementing regulations at 41 CFR 60, are incorporated by reference in each non-exempt contract, subcontract, or purchase order which is presently existing or which may be entered into hereafter, between Vendor and the RCUH. Vendor agrees to perform the applicable obligations of the equal employment opportunity and affirmative action clauses, as amended, covering non-segregated facilities (41 CFR 60-1.8), minorities and women (41 CFR 60-1.4), workers with disabilities (41 CFR 60-741.5), disabled veterans, recently separated veterans, other protected veterans, and armed forces service medal veterans (41 CFR 60-300.5, as amended), and special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans (41 CFR 60-250.5), for employee rights (29 CFR, part 471). Contractors and construction contractors with 50 or more employees, and contracts of \$50,000 or more, agree to comply with requirements for EEO-1 reports (41 CFR 60-1.7(a)), affirmative action programs (41 CFR 60-1.40(a)), affirmative action programs for certain veterans and disabled veterans (41 CFR 60-250.5; 41 CFR 60-300.5), and affirmative action programs for disabled workers (41 CFR 60-741.5). Vendor agrees to indemnify, defend, and hold harmless the RCUH from any claims or demands with regard to Vendor's compliance with these provisions.
21. INDEMNIFICATION. Vendor shall indemnify, defend, and hold harmless the RCUH, the State of Hawaii, and the Federal government if applicable, and their officers, employees, agents, or any person acting on their behalf from and against: (a) any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, by whomsoever brought, arising from any act or omission of Vendor, its officers, employees, or agents connected with the performance of this order, except liability arising out of the negligence of the RCUH or its employees; and (b) all claims, suits and damages by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms, covenants, and conditions herein, or the rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments. Furthermore, Vendor shall reimburse the RCUH and the State of Hawaii, and their officers, employees, agents or any person acting on their behalf for all attorneys' fees, costs, and expenses incurred in connection with the defense of any such claims.
22. PATENT INDEMNITY. Vendor shall pay all royalty and license fees relating to the items covered hereby; in the event any third-party shall claim that the manufacture use and sale of the goods covered hereby, infringe on any copyright, trademark, or patent, Vendor shall indemnify the RCUH and hold the RCUH harmless from any cost, expenses, damage, or loss incurred in any manner by the RCUH on account of any such alleged infringement.
23. DISPUTES. All disputes arising under or related to this order shall be resolved in accordance with this clause.
  - a. A claim by Vendor shall be made in writing and submitted to the RCUH Procurement & Disbursing Manager for a written decision.
  - b. The RCUH Procurement & Disbursing Manager shall make a finding of fact and render a decision within 90 days of the request, provided all the necessary investigation can be made. The finding and decision shall be written and shall be mailed or otherwise furnished to Vendor.
  - c. If the RCUH Procurement & Disbursing Manager cannot decide the claim within 90 days, Vendor will be notified of the date when the decision will be made. The decision of the RCUH Procurement & Disbursing Manager shall be final.
24. GOVERNING LAW. This order shall be construed according to the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this order shall be brought in a state court of competent jurisdiction in Honolulu, Hawai'i.
25. TAX CLEARANCE. Vendor is required to obtain a tax clearance from the Hawaii Department of Taxation and the U.S. Internal Revenue Service prior to the execution of this order if \$25,000 or more, and upon final payment. The tax clearance is required pursuant to Section 103-53 of the Hawaii Revised Statutes. *Revised 05/31/2017*