

## **Terms and Conditions**

All purchases by the University must abide by the following terms and conditions depending on the type of purchases:

- A. Purchase Order Terms and Conditions
- B. Minimum General Bid Conditions
- C. Terms for On-site Contractors

## Purchase Order – Standard Terms and Conditions

1. **THE ORDER**-Furnish the material or services specified in full accordance with conditions printed on the face and back hereof, and any other attachments made a part of this order.
2. **TERMS OF SALE**-Preferred: F.O.B. Destination, Prepaid with freight included in pricing; Acceptable: F.O.B. Destination, Prepay & Add, and freight added to invoice UNLESS another point has been specified by the Institution. No unauthorized or collect shipments accepted.
3. **IDENTIFICATION OF ORDER**-The Purchase Order Number must appear on all invoices, correspondence containers, shipping papers, and packing lists.
4. **CORRESPONDENCE**-All correspondence pertaining to this order must be addressed as follows: Purchasing Department, Institution Name and Buyer Name.
5. **BILLING INSTRUCTIONS**-a. 3-Part Invoice within five (5) days after shipment of material; b. Invoice must show cash discounts. Cash discounts when authorized, will be computed from the date correct invoices are received, c. Send SEPARATE invoices for EACH AND EVERY shipment; d. Submit invoices for returnable containers, stating terms and conditions for return thereof.
6. **TAXES**-Do not include Federal Excise or State Sales Tax on your invoices. Institution is exempt from these taxes. Appropriate certification of exemption will be furnished upon reasonable request.
7. **INVOICE TERMS**-Time in connection with discounts offered will be computed from date of the delivery of the supplies or services to carrier when final inspection and acceptance are at point of origin or from date of delivery at destination when final inspection and acceptance are at the point or from date correct invoice is received if the later date is later than the date of delivery.
8. **CONTRACTUAL REMEDIES**-The Institution shall not be bound by any limitations on remedies available to the Institution or other TBR Institutions. Any attempt to contractually limit remedies will be void on its face.
9. **MATERIALS/EQUIPMENT**-Unless specifically called for in the Purchase Order, all items shall be new and unused. The Seller warrants that the supplies delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this order for a period of ninety- (90) days from the date such supplies are accepted unless otherwise provided herein.
11. **PACKING LIST**-A detailed packing list showing the purchase order must accompany all shipments.
12. **INSPECTION**-All supplies purchased hereunder are subject to inspection and rejection upon receipt by the Institution, and rejected supplies will be returned at the Seller's expense. Transportation charges paid by the Institution in returning rejected supplies shall be reimbursed by the Seller. The Institution's count shall be final and conclusive on all shipments not accompanied by a packing list. In addition to the right to return rejected supplies, in the event of delivery of supplies not in accordance with the requirements of this order, the Institution may notify the Seller of such damages or deficiencies and if not

repaired or corrected by the Seller within ten (10) days after receipt of such notice, or such additional time as may be mutually agreed to by the Institution and the Seller, the Institution shall have the right to correct any damages, defects, insufficiencies or improprieties therein and do any other work necessary to put the supplies in condition for the use intended and the cost of such correction shall be deducted from the monies due the Seller under this order.

13. **CHANGES**-The Institution may at any time by written instructions make changes, within the general scope of this order, in any one or more of the following: a. Quantity or specifications; b. Method of shipment or packing; and c. Place of delivery. If any such change causes any increase or decrease in the cost of, or time required for, performance of this order, any equitable adjustment shall be made in the order price or delivery schedule, or both and the order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this paragraph must be asserted within thirty (30) days from date of receipt by the Seller of the notification of change, provided however, that the Institution may receive and act upon such claim asserted at any time prior to final payment under this order.
14. **VARIATIONS IN QUANTITIES**-Unless otherwise specified on the face of this order, any variation in the quantities herein called for, not exceeding 10%, will be accepted as compliance with the order when caused by conditions of loading, shipping, packing or allowance in manufacturing process, and payments shall be adjusted accordingly.
15. **PAYMENT**-The Seller shall be paid, upon the submission of invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered in completion, less deductions, if any, in accordance with the provisions of the Tennessee Prompt Pay Act of 1985.
16. **CANCELLATION OF ORDER**-This purchase order or any part thereof may be canceled by either the Institution or the Seller with the giving of thirty (30) days notice of intent to cancel for reasons including, but not limited to, the following: The Institution may cancel for costs exceeding the purchase order prices; late delivery, and failure of the Seller to comply with the terms and conditions specified herein. Seller may request cancellation of a purchase order if the Seller is prevented from performance by an act of war, order of a legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the Seller.
17. **ERRORS**-In case of error in calculation or typing, the quoted unit price will be used as the basis for correction of this order.
18. **NONDISCRIMINATION**-The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, gender, age, disability, veteran status or national origin. The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during the employment without regard to their race, religion, creed, color, gender, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.

19. **COMPLIANCE WITH FEDERAL AND STATE LAWS**-The Seller shall comply with all applicable Federal and State Laws and regulations in the performance of the Contract. The Contract shall be governed by and subject to the laws of the State of Tennessee.
20. **MATERIAL SAFETY DATA SHEETS**-An up-to-date Material Safety Data Sheet (MSDS) must accompany all goods requiring one in accordance with current State of Tennessee and Federal laws, rules and regulations.
21. **COPYRIGHTED/LICENSED PRODUCTS**-Seller must be an authorized dealer for selling copyrighted/licensed products under this purchase order. Notwithstanding this, Seller assumes responsibility for any and all liabilities associated with the selling of these products or services upon acceptance of purchase order.
22. **ACCEPTANCE OF TERMS**
  - a. The goods and/or services shall be furnished by the Seller subject to and in accordance with this order. Seller's acceptance of this order shall constitute agreement to be bound by and comply with all terms and conditions set forth herein. Written acceptance or shipment of all or any portion of the goods or the performance of all or any portion of the services covered by this order by the Seller shall constitute unqualified acceptance of all its terms and conditions.
  - b. Any additional or different terms and conditions shall not become part of the order, despite the Institution's receipt thereof unless the Institution specifically agrees in writing to the inclusion. The Seller's quotation, if any, is incorporated and made a part of this Purchase Order only to the extent of specifying the nature and description of the goods or services ordered, and then only to the extent that such items are consistent with the other terms of this Purchase Order and/or the Institution's Request for Quotation.
23. **INSURANCE**-Seller agrees to furnish Workers' Compensation Insurance in the amounts required by law. Public Liability and Property Damage coverage shall be for all operations under the proposal for at least \$100,000 for one person and \$300,000 for each accident for bodily injury or death; and for property damage at least \$50,000 for each accident, plus coverage for the equipment being moved. Certificate of Insurance is to be on file with the Institution's Purchasing Department prior to performing any work or service on the Institution's campus.
24. **FUNDING OUT CLAUSE**-This Purchase Order is subject to the allotment of state and/or federal funds, and may be null and void unless funds have been appropriated and are available for the purchase of the service or item, which forms the basis of the Contract.
25. **SIGNATURE**-Only Institution Purchase Orders with authorized Signatures may contractually bind the Institution.
26. **AUDIT**- The Contractor shall maintain documentation for all charges against the TBR and payment made by the Institution under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.

**AUSTIN PEAY STATE UNIVERISTY  
MINIMUM GENERAL BID CONDITIONS**

**1. PREPARATION AND SUBMISSION OF BID.**

- a. Failure to examine any drawings, specifications, or instructions will be at the bidder's risk.
- b. **BID SUBMITTAL / SIGNATURE:** Bid shall give the full name and business address of the bidder. If the bidder is a corporation, the name shall be stated as it is in the corporate charter. Bids must be signed in ink by the bidder's authorized agent. Unsigned bids will be rejected. Bids are to be sealed and the outside of the envelope is to reference the bid number. The person signing the bid must show his title, and if requested by the institution, must furnish satisfactory proof of his or her authority to bind his or her company in contract. Bidder understands that by submitting a bid with an authorized signature, it shall constitute an offer to the institution. Bids must be typewritten or in ink; otherwise they may not be considered. Purchase orders will be issued to the firm name appearing on the bid.
- c. Bids are to be received in the location designated on the bid no later than the specified date and time. Late bids will NOT be opened or considered.
- d. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent to error and must be initialed in ink by person signing bid.
- e. Discounts other than "Time" or "Cash" offered should be deducted from the unit price.
- f. **Specifications:** Reference to available specifications shall be sufficient to make the terms of the specifications binding on the bidder. The use of the name of a manufacturer, or any special brand or make in describing an item does not restrict the bidder to that manufacturer or specific article, unless specifically stated. Comparable products of other manufacturers will be considered if proof of compatibility is contained in the bid. Bidders are required to notify the Institution's RFQ Coordinator whenever specifications/procedures are not perceived to be fair and open. All suggestions or objections shall be made in writing and received by the RFQ Coordinator at least three (3) working days prior to the bid opening. The articles on which the bids are submitted must be equal or superior to that specified. **Informative and Descriptive Literature:** The bidder must show brand or trade names of the articles bid, when applicable. It shall be the responsibility of the vendor, including vendors whose product is referenced; to furnish with the bid such specifications, catalog pages, brochures or other data as will provide an adequate basis for determining the quality and functional capabilities of the product offered. Failure to provide this data may be considered valid justification for rejection of bid.
- g. **Samples:** Samples of items when called for, must be furnished free of expense, and if not destroyed will, upon vendor's request within ten (10) days of bid opening, be returned at the bidder's expense. Each sample must be labeled with the bidder's name, manufacturer's brand name and number, bid number and item reference.
- h. **Time of Performance:** The number of calendar days in which delivery is to be made after receipt of order shall be stated in the bid and may be a factor in making an award, price notwithstanding. If no delivery time is stated in the bid, bidder agrees that delivery is to be made within two weeks (10 business days) of order.
- i. Transportation and delivery charges should be included in the price and be fully prepaid by the vendor to the destination specified in the bid. Bid prices shall include delivery of all items F.O.B. destination.

- j. New materials and supplies must be delivered unless otherwise specifically stated in the bid.
  - k. Alternate/multiple bids will not be considered unless specifically called for in the bid.
  - l. Bond requirements. The institution reserves the right to require that the selected vendor post a performance and/or payment bond in such amount as deemed reasonable by the institution. Any bond requirement should be included in the bid, itemized separately.
  - m. Only bids submitted on bid forms furnished by the Institution will be considered, except that the Institution reserves the right to consider telephone, faxed or electronically submitted bids for purchases totaling less than \$25,000 if received by the deadline and confirmed in writing within five (5) days on Institution forms.
  - n. By signing this bid where indicated, the bidder agrees to strictly abide by all state and federal statutes and regulations. The bidder further certifies that this bid is made without collusion or fraud.
  - o. Failure to Bid/Error in Bid. Failure to bid without advising the Institution that future invitations for bids are desirable may result in removal from Institution's bidders' list covering this category of items. In case of error in the extension of prices in the bid, the unit price will govern. Late bids will NOT be opened or considered. Bidders are cautioned to verify their bids before submission, as amendments received after the bid deadline will not be considered. No bid shall be altered, amended or withdrawn after opening. After bid opening, a bidder may withdraw a bid only when there is obvious clerical error such as a misplaced decimal point, or when enforcement of the bid would impose unconscionable hardship due to an error in the bid resulting in a quotation substantially below the other bids received. Bid withdrawals will be considered only upon written request of the bidder.
2. **INSPECTION.** All bids will be publicly opened and are subject to public inspection after the award. Bidders may be present at bid opening.
3. **ACCEPTANCE AND AWARD.** The Institution reserves the right to reject any and all bids and to waive any informality in bids and, unless otherwise specified by the bidder to accept any item in the bid. Action to reject all bids shall be taken for unreasonably high prices, errors in the bid documents, cessation of need, unavailability of funds, or any other reason approved by the Tennessee Board of Regents.
- a. Contracts and purchases will be made with the lowest, responsible, qualified bidder. The quality of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the Institution, cash discount offered and the delivery terms will be taken into consideration.
  - b. The Institution reserves the right to order up to 10% more or less than the quantity listed in the bid.
  - c. If a bidder fails to state a time within which a bid must be accepted, it is understood and agreed that the Institution shall have sixty (60) days to accept.
  - d. A written purchase order mailed or otherwise furnished, to the successful bidder within the time period specified in the bid results in a binding contract without further action by either party. The contract may not be assigned without written Institution consent.
  - e. If the appropriate space is marked on the bid, other state institutions of higher education may purchase off the contract during the same period as the Institution.

4. **DISCOUNT PERIOD.** Time in connection with discount offered will be computed from the date of delivery at destination, or from the date correct invoices are received, whichever is later.
5. **DEFAULT OF SELECTED VENDOR.** In case of vendor default, the Institution may procure the articles or services from other sources and hold the defaulting vendor responsible for any resulting cost.
6. **INSPECTION OF PURCHASES.** Articles received which are not equivalent will not be accepted and will be picked up by the vendor or returned to vendor, shipping charges collect. Institution shall have a reasonable period in which to inspect and accept or reject materials without liability. If necessity requires Institution to use nonconforming materials, an appropriate reduction in payment may be made.
7. **TAXES.** Institution is tax exempt; do not include taxes in quotation. Vendors making improvements or additions to, or performing repair work on real property for Institution are liable for any applicable sales or use tax on tangible personal property used in connection with the contract or furnished to vendors by the state for use under the contract.
8. **NONDISCRIMINATION.** The Institution and bidder agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.
9. **PROHIBITIONS/NO VENDOR CONTRACT FORM/TENNESSEE LAW/AUDIT.** Acceptance of gifts from vendors is prohibited. TCA §12-3-106. Bidding by state employees is prohibited. TCA §12-4-103. The bidder warrants that no part of the total contract amount shall be paid directly or indirectly to any officer or employee of the State of Tennessee. The contract documents for purchase under this bid request shall consist of the successful bidder's bid and the Institution's purchase order. **Bidders may not require any other written contract terms or conditions, nor may any other terms and conditions be imposed by means of subsequent documents, such as invoices, warranty agreements, license agreements, etc. Should the bidder request exceptions to terms and conditions and/or those proposed by the bidder vary from the bid and TBR Policies and Guidelines, Institution may render the bid unresponsive and subject the bid to rejection. The contract shall be governed by Tennessee law.** For all awards other than for a firm, fixed price, vendor shall maintain books and records for a period of three (3) years from final payment, and these records shall be subject to audit by the State.
10. **PURCHASING POLICIES/BID PROTESTS.** This bid request and any award made hereunder are subject to the policies and guidelines of the Tennessee Board of Regents ([www.tbr.state.tn.us](http://www.tbr.state.tn.us)) and Institution (available upon request). Bid protest procedures are available at: [http://www.tbr.state.tn.us/policies\\_guidelines/business\\_policies/4-02-10-00.htm](http://www.tbr.state.tn.us/policies_guidelines/business_policies/4-02-10-00.htm)