



Western Kentucky University

Purchase Order Terms and Conditions

WKU Purchase Orders are issued under the following Terms and Conditions:

Please note: Any changes to this order must be approved by an authorized representative of The WKU Procurement Services and will require reissue of a new order. The following people are authorized representatives:

Pamela Davidson (270) 745-4260 pam.davidson@wku.edu

Brittney Green (270) 745-4252 brittney.green@wku.edu

Marci Morehead (270) 745-6365 marci.morehead@wku.edu

Jennifer Tougas (270) 745-3931 jennifer.tougas@wku.edu

IMPORTANT INSTRUCTIONS TO VENDOR

- Payment Terms - Unless stated above all payments will be Net 30.
- Acknowledge receipt of order within 7 days and advise date of shipment via email address under Buyer Contact.
- Invoice prices cannot exceed bid prices. Any item not meeting specifications will be returned to vendor at vendor's expense.
- Upon shipment, submit Material Safety Data Sheets (MSDS) to Western Kentucky University, Department of Environmental Health and Safety, 1906 College Heights Blvd #11046, Bowling Green, KY 42101-1046. Vendor shall also enclose a copy of all MSDS sheets in the order for the department requesting the shipment. This shall be done in accordance with OSHA Hazardous Communication Standard 29 DFR 1910.1200.

TERMS AND CONDITIONS FOR PURCHASE ORDERS

Acceptance- This purchase order is subject to the following terms and conditions and no others unless there is prior written consent of both parties.

The laws of the Commonwealth of Kentucky shall apply in all disputes.

All shipments are to be made F.O.B. Destination, freight prepaid, to the receiving point at Western Kentucky University, Bowling Green, KY., unless otherwise indicated on this form.

Western Kentucky University is exempt from Federal Excise Taxes, Kentucky Sales and Use Taxes. Do not include taxes when submitting invoices. Tax Exemption Certificates will be furnished upon request.

All vendors are subject to and must comply with applicable state and federal anti-discrimination laws.

All items procured under this Purchase Order shall be packaged and packed best commercial pack at no additional charge to the University. Such procedure shall require the inclusion of a packaging list in each box shipped which indicates the contents thereof.

Buyer may cancel an order, in whole or in part, without liability to Buyer, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the terms or conditions hereof. Buyer may terminate an order in whole or in part at any time for its convenience, by notice to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and the placement of subcontract, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within sixty (60) days after the effective date of the termination. Any cancellation or termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.

Risk of loss or damage to goods shall be on the Seller until such goods have been delivered to and accepted by Buyer, notwithstanding any other terms contained herein. All goods will be received by Buyer subject to its right of inspection and rejection. Buyer shall be allowed a reasonable period of time to inspect the goods and to notify Seller of any nonconformance with the terms and conditions of this order. Buyer may reject any goods which do not conform to the terms and conditions of this order. Goods so rejected may be returned to the Seller or held by the Buyer at Seller's risk and expense.

The Seller expressly warrants that all goods supplied hereunder shall be merchantable within the meaning of Article 2-314(2) of the Uniform Commercial Code in effect on the date of this order in the Commonwealth of Kentucky. In addition to all warranties which may be prescribed by law, the goods shall conform to specifications, drawings, and other description and shall be free from defects in materials and workmanship. Seller also warrants that to the extent the goods are not manufactured pursuant to detailed designs furnished by Buyer; they will be free from defects in design. Such warranties, including warranties prescribed by law, in design. Such warranties, including warranties prescribed by law, shall run to Buyer, for a period of one year after delivery.

To the extent the goods are not manufactured in accordance with Buyer's designs, Seller shall defend, indemnify and hold harmless Buyer, Buyer's assignees, and other users of the goods from and against any claim of infringement or any Letters Patent, Trade names, Trademark, Copyright or Trade secrets by reason of sale or use of any articles purchased hereunder. Buyer shall promptly notify Seller of any such claim.

In filling this order, Seller shall warrant and guarantee to Buyer that the articles are in compliance with Sections 5 and 12 of the Federal Trade Commission Act, the Fair Packaging and Labeling Act, the Federal Food, Drug, and Cosmetic Act, the Consumer Product Safety Act of 1972, The Federal Insecticide, Fungicide and Rodenticide Act. The Federal Hazards and Substances Act, The Fair Labor Standards Act, The Wool Products Labeling Act, The Flammable Fabrics Act, the Occupational Safety and Health Act of 1970, and any applicable Act not specifically referred to herein by name.

Seller shall not assign this order of any interest herein including any performance or any amount which may be due or may become due hereunder, without Buyer's prior written consent. In the event the Seller desires to subcontract some part of the work specified herein, the Seller shall furnish Western Kentucky University the names, qualifications and experience of their proposed subcontractors. The Seller shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of the contract.

For good cause and as consideration for (executing the contract) (submitting this bid), the contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to Western Kentucky University all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Kentucky, relating to the particular goods or services purchased or acquired by Western Kentucky University.

Vendor warrants that the goods procured hereunder are free from all liens, claims or encumbrances.

All vendors understand and acknowledge that University is a public agency, and that any contract with the University, including all related proposals, information, and other documentation may be subject to public disclosure under the Kentucky Revised Statutes 61.870 et.seq. Bidder is hereby notified that University strictly adheres to this statute and the interpretations thereof rendered by the courts and the Kentucky Attorney General. All bidders shall be deemed to have knowledge of this law and the means of protecting a bidder's legitimate interests.

OFFICE OF THE GENERAL COUNSEL
PROVISO
October 16, 2023

This Proviso is to all contracts/agreements, including quotes and/or on-line agreements with Western Kentucky University

Western Kentucky University ("WKU" or "University" hereinafter) is a state agency and instrumentality of the Commonwealth of Kentucky and is subject to all terms and conditions of the Kentucky Model Procurement Code as set forth in KRS Chapter 45A, as well as other statutes and constitutional provisions applicable to Kentucky state agencies. Please be advised that WKU cannot make purchases of goods or services that are not in accord with applicable state laws and constitutional requirements, nor can it accept or agree to terms inconsistent with state laws or the state constitution. WKU's acceptance of any agreement is expressly conditioned upon the deletion or amendment of all terms that are not consistent with state laws or constitutional provisions.

Thus, you agree that notwithstanding any other term or condition in the agreement(s), WKU accepts and shall only be bound by terms and conditions permitted by and in accord with the Kentucky constitution and applicable state law. The following is a non-exhaustive list of commonly problematic terms:

Arbitration: Kentucky law does not permit the University to agree to arbitration for any dispute. The University can agree to other alternative non-binding dispute resolution processes.

Disclosure of Contracts: As a public institution and state agency, the University is subject to the Kentucky Open Records Act (KRS 61.870-61.884). This Act establishes a right of access to public records, including contracts entered into with the University, and provides exemptions for certain types of information contained in otherwise public records as set forth in KRS 61.878.

Governing Law: Kentucky law does not permit the University to be bound by the laws of another forum or agree to the jurisdiction of another forum's courts. The University can agree to leave an agreement silent as to governing law/choice of law.

Immunities: The University shall not waive any of the rights, privileges, or immunities available to Kentucky state agencies.

Indemnification: Kentucky law does not permit the University to indemnify or hold harmless a third party. Negligence claims against the University are subject to the Kentucky Board of Claims. The University may not agree to pay another party's legal/attorneys' fees.

Insurance: The University does not carry general liability insurance.

By providing goods and/or services to WKU, you acknowledge and accept the terms of this Proviso. YOU SHOULD NOT PROVIDE GOODS OR SERVICES TO WESTERN KENTUCKY UNIVERSITY IF YOU DO NOT ACCEPT THE TERMS SET OUT IN THIS PROVISO.