



Procurement Department

PURCHASE ORDER TERMS AND CONDITIONS

PLEASE NOTE THE FOLLOWING: Scam Fraudulent Purchase Orders

We want to alert you to a nationwide fraud scam that is targeting suppliers for colleges across the country. Please take precautions so that you are not a victim of this scam.

The fraud scam involves purchase orders and requests for product quotations that purport to originate from the University but are in fact fraudulent. The FBI could be involved.

According to multiple schools, the emails request quotes for specific merchandise. Later, a purchase order is emailed to the business that bears resemblance to an authentic University purchase order. The purchase order instructs delivery to an address not affiliated with the University.

After shipping the merchandise, the business never receives payment and is unable to retrieve the mailed products.

If an order is received by email, please alert your staff to hover over the address to see if it was sent from an address that contains an ending of "@kent.edu".

In addition, please confirm the address for any suspicious or large dollar orders, with the ordering department. All orders for Kent State University should be delivered only to official Kent State University addresses.

Should you receive what appears to be a suspicious order, please forward the email to phish@kent.edu.

- 1) **ACCEPTANCE, TERMS AND CONDITIONS OF CONTRACT:** Whether construed as an offer, acceptance or confirmation, these Purchase Order Terms and Conditions ("Purchase Order") include all documents and exhibits attached hereto and all other terms incorporated by reference herein. This Purchase Order shall constitute the final, complete and exclusive statement of the contract between Purchaser and Seller and may not be modified or rescinded except by a written change order issued by the Purchaser. If this constitutes an offer by the Purchaser to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified herein, Seller shall indicate its acceptance of this order by verbal acceptance communicated to the Purchaser, by written acceptance on the face of this Purchase Order received by the Purchaser, by other written confirmation received by the Purchaser, by commencing work on this Purchase Order in any manner, expressly conditioned on notice of such commencement of work received by the Purchaser, or by the delivery of the goods or services within the time for such delivery as stated in this Purchase Order. Regardless of the manner or medium of acceptance time is of the essence. **As an offer, this Purchase Order expressly limits acceptance to its terms and conditions, and notification of objection from Purchaser to any different or additional terms in any response to this offer from the Seller is hereby given.** If this Purchase Order is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the Seller's/offeree's assent to any additional or different terms contained in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this Purchase Order constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the use of this Purchase Order to place orders for goods or services pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the terms and conditions of this Purchase Order are not inconsistent with such written contract. **Regardless of its construction as an offer, acceptance, confirmation or use to place orders for goods or services pursuant to an earlier contract, this Purchase Order incorporates by reference all terms of the Ohio**



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Uniform Commercial Code providing any protection for Purchaser, including, without limitation, all express and implied warranty protection and all Purchaser's remedies under the Ohio Uniform Commercial Code.

- 2) **PACKING:** No charge will be allowed for packing, boxing or cartage, unless agreed upon at the time of purchase, but damage to any material not packed to ensure proper protection will be charged to Seller. Each package must contain a memorandum showing Shipper's name, contents of package and number of Purchaser.
- 3) **CHANGES:** Purchaser may at any time, by written order, request changes in or additions to the goods and/or services, issue additional instructions, require additional work or direct the omission of work covered by this order, and Seller shall proceed with the work as so changed. However, such changes shall be within the general scope of the order. If any changes cause a material increase or decrease in the amount or character of the work required under this order or in the time required for its performance, an equitable adjustment in the price and time for performance shall be made and the order modified in writing accordingly. Any claim for adjustment under this paragraph must be asserted within thirty (30) days from the date the change is ordered or within such further time prior to the date of final settlement as may be agreed to in writing by the parties.
- 4) **WARRANTY:** Seller expressly warrants that all work including articles, materials and designs supplied by Seller, will conform to the specifications, drawings, samples or other descriptions set forth in the order or furnished by Purchaser, and will be of good material and workmanship and free from defect. Any work which is found to be defective either before or after acceptance may be rejected and returned to Seller at Seller's risk and expense for repair or replacement, or, if Seller cannot make the repair or replacement in the time required by Purchaser, Purchaser may, in its sole discretion, reject such defective goods and/or work for credit. If Purchaser finds it impractical to return defective work for repair or replacement within a reasonable time, it may perform necessary repairs at its own plant and charge the reasonable cost thereof to the Seller. Any payments made on any rejected work shall be immediately refunded to Purchaser.
- 5) **PERFORMANCE OF WORK:** If this order calls for work to be performed by Seller all work performed and all materials used in connection therewith shall be at the risk and expense of and shall be replaced by Seller in the event of any damage or destruction thereof prior to delivery to and acceptance by Purchaser. If this order calls for work to be performed by Seller upon any premises owned or controlled by Kent State University, Seller will keep the premises and the work free and clear of all mechanics' liens and will furnish Purchaser with certificate and waiver as provided by law. Whenever any property belonging to Purchaser is in the possession of Seller or Seller's suppliers, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Purchaser. Seller will indemnify, hold harmless and defend Purchaser from any and all claims, demands or suits made or brought under the Worker's Compensation Law of the state in which any work is performed hereunder and will, if requested, furnish to Purchaser a certificate showing that Seller is complying with Worker's Compensation Law of such state. Seller will also indemnify, save harmless and defend Purchaser from all loss and expense for any damage to property or injury to or death of persons caused by Seller in the performance of this Purchase Order.
- 6) **DELIVERY:** Should Seller fail to deliver material within the time specified, Purchaser may terminate this order in whole or in part and may buy elsewhere and charge Seller any additional expense incurred thereby. Purchaser expressly retains all its rights and remedies provided by law in the case of such default, and no action on the part of Purchaser shall constitute a waiver of any right or remedy. Seller shall not be liable by reason of any failure to deliver or delay in delivery due to any cause beyond Seller's reasonable control and without the fault or negligence of Seller. Purchaser, in the case of material and/or equipment to be furnished by Purchaser to Seller shall not be liable by reason of any failure to deliver or delay in delivery due to any causes beyond Purchaser's reasonable control and without fault or negligence of Purchaser.



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- 7) **ELECTRONIC INFORMATION TECHNOLOGY (“EIT”) COMPLIANCE:** Purchaser is committed to ensuring that its electronic and information technologies, including but not limited to, all information provided through Purchaser and third-party websites, online learning and course management systems, and curriculum, institutional and administrative data systems, (collectively “electronic information technologies” or “EIT”): (a) provide equal opportunity to the educational benefits and opportunities afforded by the technology; (b) provide equal treatment in the use of such technology; and (c) be accessible to individuals with disabilities in compliance with Section 504 of the Rehabilitation act of 1973, as amended and the Americans with Disabilities Act of 1990, as amended (ADA-AA) and other applicable laws of the State of Ohio.
- 8) If this Purchase Order is for the purchase of software or software as a service (SaaS), Seller shall comply with the Americans with Disabilities Act (ADA), 42 USC 1201 and Section 504 of the Rehabilitation Act, 29 UCS 701. Such compliance includes but is not limited to ensuring that any products or services provided include assistive software or devices such as large print interfaces, text-to-speech output, voice-activated input, refreshable braille displays, and alternate keyboard or pointer interfaces, in a manner consistent with Section 508 of the Rehabilitation Act of 1973 (Section 508), and the Web Accessibility Initiative Web Content Accessibility Guidelines 2.0 (WCAG 2.0). Unless already provided, Seller must provide a fully completed Voluntary Product Accessibility Template® (VPAT®) for the product/service. Seller should use the VPAT® 2.0 template from the following website - <http://www.kent.edu/node/650996>. When filling out the VPAT®, Vendor must carefully respond and make sure to explain why the product may or may not meet accessibility standards.

If Seller’s product(s) or service(s) do not meet the above accessibility standards, Seller must provide a roadmap to make product(s) or service(s) fully compliant with the above law and standards. In the event that product(s) or service(s) require remediation to be fully accessible Seller is fully responsible, at its own cost and expense, to bring such product(s) or service(s) into compliance. Without limiting the effectiveness of Section 32 above, Seller shall fully indemnify Purchaser for any liability arising out of EIT Products or Services that are not in compliance with the above, and the Purchaser reserves the right, in its sole discretion to terminate this Contract and exercise any other available remedies available at law.

- 9) **AMERICANS WITH DISABILITIES ACT:** Without limiting the requirements of Paragraph 7, *Electronic Information Technology (“EIT”) Compliance*, Seller agrees to comply with the Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131-12134, and its implementing regulation 28 C.F.R. pt. 35, which prohibits public universities from excluding individuals with disabilities from participating in and/or receiving the benefits of university services, programs, and activities, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits a qualified individual with a disability, solely by reason of disability, from being excluded from participation in, being denied benefits of, or being subjected to discrimination under any University activity, and other applicable State of Ohio laws and regulations regarding accessibility and disability. Accordingly, Seller hereby warrants and represents that products and services are functionally accessible to individuals with disabilities. Compliance means that a person with a disability can acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability, in an equally effective and integrated manner, with substantially equivalent ease of use.
- 10) **PATENTS:** Seller warrants that the goods furnished hereunder and the use thereof, do not infringe any patent, trademark or copyright; that Seller will, at its own expense, defend any suit that may arise in respect thereto, provided Seller is notified thereof; and that Seller will indemnify and hold harmless the Purchaser from all loss and expense incurred on account of any such alleged or actual infringement.
- 11) **COMPLIANCE WITH LAW:** Seller shall, in the performance of work or services under this order, fully comply with all applicable Federal, State or local laws, rules, regulations or ordinances and shall hold Purchaser harmless from any liability resulting from failure of such compliance.



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- 12) **PERMITS, CERTIFICATES, ETC.:** Seller shall obtain all permits, certificates of inspection, etc., relating to his work and shall pay all charges connected therewith.
- 13) **EQUAL EMPLOYMENT OPPORTUNITY:** Seller, in bidding and/or fulfilling this Purchase Order, agrees not to discriminate against any employee or applicant for employment with respect to hiring and tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, gender, age, sexual orientation, national origin, disability, or identity as a disabled veteran or veteran of the Vietnam era to the extent required by law. Seller must further agree that every subcontract or order given for the supplying of this order will contain a provision requiring nondiscrimination in employment, as herein specified. This covenant is required pursuant to Federal executive orders 11246 and 11375 and any breach thereof may be regarded as a material breach of this Purchase Order.
- 14) **CONFLICTS OF INTEREST AND ETHICS COMPLIANCE:** Seller represents, warrants, and certifies that it and its employees engaged in the administration or performance of the Purchase Order are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Seller further represents, warrants, and certifies that neither Seller nor any of its employees will do any act that is inconsistent with such laws.
- 15) **CAMPAIGN CONTRIBUTIONS:** Seller hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of O.R.C. Section 3517.13.
- 16) **FINDINGS FOR RECOVERY:** Seller warrants that it is not subject to an “unresolved” finding for recovery under O.R.C. Section 9.24. If this warranty is found to be false, this Purchase Order is void *ab initio* and Seller shall immediately repay to Agency any funds paid under this Purchase Order.
- 17) **ACCESSIBILITY:** Without limiting the requirements of Subsection 4.49, *Electronic Information Technology Accessibility*, Kent State University endeavors to comply with the Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131-12134, and its implementing regulation 28 C.F.R. pt. 35, which prohibits public universities from excluding individuals with disabilities from participating in and/or receiving the benefits of University services, programs, and activities, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits a qualified individual with a disability, solely by reason of disability, from being excluded from participation in, being denied benefits of, or being subjected to discrimination under any University activity, and other applicable State of Ohio laws and regulations regarding accessibility and disability. Accordingly, the University’s goal is to ensure that products and services are functionally accessible to individuals with disabilities. Compliance means that a person with a disability can acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability, in an equally effective and integrated manner, with substantially equivalent ease of use.
- 18) **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) COMPLIANCE:** Seller agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the regulations promulgated thereunder, including without limitation the federal privacy regulations (the “Federal Privacy Regulations”) and the federal security standards (the “Federal Security Standards”), as such provisions are applicable to delivery of the goods or services being provided hereunder. Seller acknowledges that an entity’s status as a business associate is determined under law, regardless of such entity’s opinion as to its status as a business associate; and if an entity is, under applicable law, a business associate, such entity has a direct legal obligation in its own right to comply with all legal requirements applicable to a business associate. Seller agrees, as applicable to the goods and/or services provided hereunder, not to use or further disclose any protected health information, as defined in 45 CFT



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164.504, or individually identifiable health information, as defined in 42 USC § 1320d (collectively the “Protected Health Information” or “PHI”), other than as permitted by the requirements of HIPAA or regulations promulgated under HIPAA including without limitation the Federal Privacy Regulations and the Federal Security Regulations. Seller agrees to implement appropriate safeguards to prevent the use or disclosure of Protected Health Information. Seller agrees to promptly report to university any improper or unlawful use or disclosure of any PHI arising out of or related to the goods or services provided hereunder.

- 19) **FINDING FOR RECOVERY; DEBARMENT:** Ohio Revised Code Section 9.242 prohibits any vendor who has been debarred by any state agency to participate in any contract during the debarment period. Further, seller represents and warrants that it is not now, and will not become during the term of this Purchase Order or the services being provided hereunder, subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24 and is not under any suspension or debarment by any office of the State of Ohio or the federal government. If this representation and warranty is found to be false, then this Purchase Order shall be void, and Seller shall immediately repay to the Purchaser any funds paid under this Purchase Order. If Seller becomes subject to an unresolved finding for recovery under Ohio Revised Code Section 9.24 and/or is suspended or debarred by any office of the State of Ohio or the federal government during the term of this Purchase Order or the services being provided hereunder, such finding for recovery, suspension or debarment shall be considered a material breach of this Purchase Order, and the University may, at its sole discretion, terminate the Purchase Order.
- 20) **CHOICE OF LAW:** This Purchase Order shall be governed, interpreted and construed in accordance with the laws of the State of Ohio.
- 21) **ENTIRETY:** The terms and conditions set forth or referred to in this order constitute the entire agreement between the parties hereto and no modification hereof shall be binding unless mutually agreed to in writing. The receipt by Purchaser of any quotation form, sales confirmation or other proposal shall not, in the absence of a written acknowledgement by Purchaser expressly agreeing to same, have the effect of changing in any manner or adding to the terms and conditions hereof.

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