

**APPENDIX A -- TERMS AND CONDITIONS**  
**UNIVERSITY SYSTEM OF NEW HAMPSHIRE**  
**KSC PAYMENT TERMS ARE NET 30**

1. **AGENCY:** Seller represents that it has authority to enter into and perform this order and that the person accepting this order on behalf of the Seller is so authorized and has read and understood the terms and conditions of this purchase order.
2. **ASSIGNMENT AND SUBCONTRACTS:** Seller shall not assign or subcontract this order or any right or Obligation thereunder without Buyer's prior written consent. Purchase of parts and materials normally purchased by Seller or required by this order shall not be construed as assignments or subcontracts.
3. **ATTACHMENTS:** All specifications, proposals, bids, plans and/or attachments referred to in this order shall form a part of the order.
4. **CANCELLATION AND TERMINATION:** This agreement can be terminated or canceled by the Buyer for any reason including convenience upon written notification to the Seller. Termination or cancellation for convenience by the Buyer will entitle Seller to payment for only those items that have been delivered, received, accepted, and not subsequently rejected at the Buyer's normal business location. The Buyer may terminate or cancel the agreement forthwith without prejudice to any right or remedy, after giving the Seller written notice, in the following cases: 1) Seller becomes insolvent or makes an assignment for the benefit of creditors; 2) a petition is filed to declare Seller bankrupt; 3) if delivery is not made within the time specified or within a reasonable time if no time is specified, and 4) if the quantity or quality of the articles delivered is not as specified.

All the purchase orders placed under a federal grant or contract or other federally sponsored program, entitle the Buyer to cancel such orders in accordance with the paragraph headed "Cancellation and Termination.," and the right to terminate the performance of work under this contract in whole or in part in the circumstances and with the effect set forth in the "Termination Clause" contained in Section 52.249-1 of the Federal Acquisition Regulation (FAR). The provisions of this clause shall not limit or affect the rights or remedies of the Buyer stated in other clauses of this order or provided by law in the event of default or breach by Seller.

5. **CHOICE OF LAW AND LEGAL REMEDIES /SEVERABILITY:** The agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire. In the event any provision of these terms and conditions shall be declared illegal or unenforceable by a competent court within this jurisdiction the remaining provisions shall remain in full force and effect.
6. **COMPLIANCE WITH LAWS:** The Seller agrees that all products provided or services performed are in compliance with the applicable provisions of all federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder, and such compliance shall be a material requirement of this order.
7. **DEBARMENT AND SUSPENSION:** In accordance with Executive Orders 12549 & 12689 (Debarment and Suspension), Seller certified by entering into this transaction, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

8. **DEFAULT:** In the event of default by Seller, including failure to deliver any item ordered within a reasonable time after acceptance of this contract, or if the Buyer rightfully rejects the goods or services or revokes acceptance, the Buyer may, without waiving any other remedy permitted by law, hold Seller liable for all additional costs incurred. Further, in such event, the Buyer, at its option, may be relieved of any duty to accept such items as are subsequently delivered pursuant to this contract.
9. **DELIVERY/TITLE:** All offers will be submitted F.O.B. destination, freight pre-paid, unless specifically indicated otherwise. Title to goods/products provided under this purchase order shall transfer to Buyer upon receipt of goods/products at Buyer's destination.
10. **DISCOUNTS:** Except for cash discounts, prices quoted shall be inclusive of ALL discounts, including educational discounts. Cash discounts (payment term discounts) will be computed from the date of receipt of a properly executed invoice or the date of completion of delivery and acceptance of all items in satisfactory condition, whichever is later.
11. **EQUAL EMPLOYMENT OPPORTUNITY:** The Seller agrees not to discriminate in any manner against employees or applicants for employment on the basis of race, color, religion, creed, age, sex, handicap, or national origin, and will take affirmative action to prevent such discrimination. If this agreement is funded in any part by monies of the United States, the Seller shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity") as amended by Executive Order No. 11375 ("Amending Executive Order 11246 Relating to Equal Employment Opportunity") and as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60) and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Seller further agrees to permit the University System, the State, the United States, or any designated representatives of the aforementioned, to have access to any of the Seller's books, records and accounts for the purpose of ascertaining compliance with the aforesaid rules, regulations and orders, and the covenants and conditions of the agreement.
12. **EXCULPATION:** Neither the currently existing nor any successor directors, officers, employees, agents, trustees or beneficiaries of the Buyer. are, personally liable for the performance of or failure to perform any term or condition contained in this order.
13. **FORCE MAJEURE:** Neither party shall be held responsible for any losses resulting if the fulfillment of any term or provision of the contract is delayed or prevented by any cause not within the control of the party whose performance is interfered, and which by the exercise of reasonable diligence, said party is unable to prevent. Seller shall exercise due diligence in promptly notifying Buyer of conditions which will result in delay.
14. **GENERAL SUBCONTRACT PROVISIONS:** All orders that are a subcontract under a U.S. Government prime contract: the clauses contained in Part 52, Solicitations Provisions and Contract Clauses, of the Federal Acquisition Regulations (FAR) are incorporated herein by reference. All orders that are issued under a federally sponsored grant: the procurement must be in accordance with OMB Circular A-110, Section 48(e) and Appendix A. The clauses of Section 48(e) and Appendix A are incorporated herein by reference. These provisions shall also be applied to subcontracts. For the purpose of this purchase order, the terms "Government" and "Contracting Officer" shall mean Buyer. Each regulation contains criteria for determining applicability of the regulation to a particular contract or grant.
15. **GRATUITIES:** The Seller shall not offer or give gratuities or gifts, in any form, to any employee or relative of any employee of the University System of New Hampshire.

16. **HOLD HARMLESS and INDEMNIFICATION:** Seller agrees to forever indemnify and hold harmless Buyer, its officers, employees and agents, from and against all claims, suits, damages, losses, liabilities or expenses of any kind, including reasonable attorney's fees, involving injury or death, damage to property, or another harm which arises out of or results from the negligence or other wrongful act or omission of the Seller, its officers, employees, agents or contractors, in the performance of the order.
17. **INSPECTION/ TESTING/ REJECTION:** Materials and services purchased under this order are subject to Buyer's inspection and approval within a reasonable time after delivery. Buyer reserves the right to return at Seller's expense defective materials not meeting the Buyer's specifications and standards, or materials shipped in excess of the requirements of this order. Buyer also reserves the right to reject inadequate services or reject services furnished in excess of the requirements of this order whether paid for or not. Inadequate services will be reworked, and all costs associated with the work will be charged to Seller.
18. **MSDS REQUIREMENT:** All suppliers of hazardous materials shall provide material safety data sheets with each order as mandated by New Hampshire RSA 277-A.
19. **OFFER AND ACCEPTANCE:** This order contains the entire agreement between Buyer and Seller. Acceptance of this purchase order is limited to the terms on the face and back hereof and in any USNH issued bid or proposal that may have preceded this award and have been incorporated by reference.
20. **PRICE:** If prices are higher than specified herein Seller will secure Buyer's approval before shipment.
21. **RIGHTS TO INVENTIONS/RIGHT TO LICENSE PATENTS:** All purchase orders placed under a federal grant or contract or other federally sponsored program which require experimental, developmental or research work to be performed by the Seller to fulfill the provisions of the order, will be governed by 37 CFR part 401 and any implementing regulations. In addition, the Federal Government retains its right to license patents under FAR 52-227-11 and 12.
22. **SAMPLES:** Any sample, whether supplied by Buyer or Seller, is to be returned at Seller's expense, unless noted by Buyer or Seller that sample does not need to be returned.
23. **SPECIAL TOOLING:** All custom tooling, mechanicals and/or art work employed in the production of the goods being purchased will be considered the property of the Buyer.
24. **USE OF BUYER'S NAME /PUBLIC RELEASE OF INFORMATION:** Seller will not use Buyer's name in any manner without prior written permission. In addition, no public release (including, without limitation, photographs, films, announcements, denials or confirmations of same) of any part of the subject matter of this purchase order or any phase of any program hereunder shall be done without the prior written approval of USNH. The Seller shall include this clause in each of its purchase orders and/or contracts issued pursuant to this purchase order.

25. **WARRANTIES:** Seller warrants and represents that the conveyed title to any goods shall be good, and its transfer rightful; the goods shall be delivered free from any security interest or other lien or encumbrance. Seller warrants that any work, materials, articles or products furnished under this order will conform to the specifications, drawings, samples, or descriptions agreed to by Buyer; will be free from defects in material or workmanship; and will not infringe upon the patent, trademark, copyright or other rights of any third party. Buyer agrees to notify Seller promptly in writing of any claim which may arise from infringement of the rights of a third party and will permit Seller to defend or settle the claim. The Seller warrants that the items furnished hereunder are suited and appropriate for the intended use. Seller agrees to forever indemnify and hold harmless Buyer, its officers, employees and agents from and against all claims, suits, damages, losses, liabilities or expenses of any kind, including reasonable attorney's fees, arising out of or resulting from a breach of this warranty.

