

Purchase Order Terms and Conditions

1. **ACCEPTANCE.** These terms and conditions, as written, (including the additional terms and conditions referenced in Paragraph 16 and, if applicable, the supplemental terms and conditions referenced in Paragraph 17) shall govern the goods or services identified in the accompanying Purchase Order, which is incorporated herein by reference (the "PO"), and shall be deemed to have been accepted on the earlier of (a) ten (10) days after Seller's receipt of the PO so long as there is no written notification of non-acceptance by the Seller; (b) the shipment by Seller of any ordered goods (or lots thereof); (c) the commencement of any ordered services; (d) the acceptance of any payment by Seller; or (e) any other conduct by Seller that recognizes the existence of a contract pertaining to the PO. These terms and conditions may not be modified without written consent of the Buyer.
2. **DELIVERY.** Time is of the essence and the PO may be cancelled by Buyer if delivery is not made or services are not performed by the date specified on the PO (or, if no date is specified, within fifteen (15) days of the date of the PO or such later date as may be agreed upon in writing by the parties). No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof.
3. **INVOICES.** Seller shall render itemized invoices (in duplicate) to Buyer no later than ten (10) days after the shipment date. All invoices must reference Buyer's PO number. Drafts will not be honored. Transportation charges must be listed as a separate item.
4. **INSPECTION.** Buyer shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Seller. Buyer at its option may reject all or any portion of such goods or services that do not in Buyer's sole discretion comply in every respect with each and every term and condition of this PO. Buyer may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. Items rejected shall be returned at Seller's expense, including transportation and handling charges, if any. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services.
5. **RISK OF LOSS.** Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of goods and services ordered herein that occur prior to acceptance by Buyer. No such loss, injury or destruction shall release Seller from any obligations hereunder.
6. **CHANGES.** Buyer may make changes within the general scope of the PO by giving written notice to Seller. If any such change causes an increase or decrease in the price of the PO or in the time required for its performance, Seller shall promptly notify the Buyer and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated. No change by Seller shall be allowed without written approval of Buyer.
7. **WARRANTY.** Seller warrants that the goods and services set forth in the PO (a) are of merchantable quality; (b) are fit for the particular needs and purposes of Buyer as may be communicated to Seller; (c) comply with the highest warranties, representations, and options expressed by Seller orally or in any written advertisement, correspondence or other document provided to or in the possession of Buyer; (d) comply with all applicable laws, codes, and regulations as published by any national or statewide association or group; and (e) are free of claims by third parties, and can be used without infringing patents, copyrights, trade secrets, or any other rights of third parties.
8. **ASSIGNMENT AND SUBCONTRACTING.** The PO or any rights, obligations, or monies due hereunder may not be assigned or otherwise transferred (as security for advances or otherwise) without Buyer's prior written consent. Seller shall not subcontract any portion of the PO or be required to recognize any subcontract without Buyer's prior written consent.
9. **TERMINATION FOR DEFAULT.** Buyer may terminate the PO or any part thereof by written notice if Seller fails to make deliveries or complete performance of service within the time specified or in accordance with agreed schedules or these terms and conditions (unless such failure is due to acts of God, strike or any other causes beyond Seller's control) and does not cure such failure within ten (10) days after written notice thereof; or, if Seller makes an assignment for the benefit of creditors, becomes insolvent, or is subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors. In the event of termination for default pursuant to this paragraph, the Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all losses, damages, and expenses sustained by reason of the default and subsequent termination of the PO. If a determination is made that the Buyer improperly terminated the PO pursuant to this paragraph, then such termination shall be deemed to have been for the Buyer's convenience as permitted pursuant to the following paragraph.
10. **CANCELLATION/TERMINATION FOR CONVENIENCE.** Prior to Seller's acceptance of this PO, the Buyer shall have the right to revoke or withdraw the PO, in whole or in part, without liability to the Buyer by giving written notice to Seller. After Seller's acceptance of the PO, Buyer may terminate the PO, in whole or in part, for its convenience by written notice to Seller. In the event of such termination, Seller may claim its reasonable costs incurred prior to the effective date of termination plus a reasonable allowance for profit, as may be agreed by the parties,

provided, however, that the total sum payable upon termination shall not exceed the PO price, reduced by payments previously made. If it appears that Seller would have sustained a loss on the entire order had it been completed, no profit shall be allowed. As to partially completed work or raw material included in Seller's costs, Seller shall hold the same for disposition in accordance with Buyer's instructions.

The rights and remedies of the Buyer provided under this clause are in addition to any other rights and remedies provided by law or under the PO. The failure of Buyer to insist upon strict performance of any of the terms of the PO or to exercise any rights hereunder shall not be construed as a waiver of Buyer's rights.

11. **EQUAL OPPORTUNITY.** Seller agrees to adhere to the nondiscrimination clauses contained in Section 202 of Executive Order 11246 (as amended by Executive Order 11375), 29 USC§ 623, 29 CFR Part 1635, and 41 CFR Part 60 (which is incorporated herein by reference), regarding equal employment opportunity for all persons without regard to race, color, creed, religion, national origin, ancestry, sex, age, veteran's status, disability, sexual orientation, gender identity, or on the basis of genetic information, or any other characteristic protected by federal, state or local law, with respect to all terms and conditions of employment and the implementing rules and regulations prescribed by the Secretary of Labor, unless exempted.
12. **SEXUAL HARRASSMENT POLICY.** Seller agrees to establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated, and employees who practice it will be disciplined.
13. **DEBARMENT AND SUSPENSION.** By accepting this PO, Seller certifies that neither it nor its principals have been debarred, suspended, or otherwise excluded from doing business with the federal government or declared ineligible under statutory or regulatory authority. Furthermore, if this PO is for the provision of goods or services in excess of \$100,000, Seller shall provide Buyer with written certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal agency.
14. **INDEMNIFICATION.** The Seller shall indemnify, defend, and hold harmless the Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, and expenses including, but not limited to, attorney's fees and costs, incurred by Buyer in connection with or arising out of (a) Seller's performance or failure to perform under this PO, except where such liabilities are the result of the gross negligence of the Buyer; (b) defective, unsafe or non-conforming goods supplied by Seller, or (c) a claim that Buyer's use of an item supplied by Seller under this PO infringes any third party patent, copyright, or trademark.

Additionally, if in the execution of this PO it becomes necessary for the Seller, its agents, subcontractors or their

employees to enter upon Buyer's premises, Seller shall indemnify, defend, and hold harmless the Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, and expenses arising from or out of the presence or activity of Seller's employees, agents, contractors or subcontractors while on Buyer's premises, including but not limited to Seller's failure or the failure of Seller's employees, agents, subcontractors or their employees to observe Buyer's rules and regulations relating to traffic, safety, and fire precaution, and for any damage or injury otherwise caused by such individuals while on, entering, or leaving Buyer's laboratories or other areas of the premises.

15. **PROPRIETARY RIGHTS.** If the items to be supplied under this PO have been designed in accordance with specifications or data furnished or originated by Buyer, such items shall not be reproduced except with the approval of the Buyer and all drawings, photographs, data and other written material or information supplied in connection therewith shall at all times remain the property of Buyer and be returned promptly upon written request.
16. **WORKS MADE FOR HIRE.** With respect to any copyrightable works that may be supplied or produced by Seller under this PO, Seller expressly agrees that such works are "works made for hire" within the meaning of the Copyright Act of 1976, 17 U.S.C. Section 101, as amended, and that Buyer is the sole owner of all rights in such works, including but not limited to all rights of copyright."
17. **ADDITIONAL TERMS.** In addition to these terms and conditions, Seller shall comply with the applicable regulations set forth in Appendix A, whether or not Appendix A is attached hereto. (Copies furnished upon request and available at www.wistar.org/purchasingterms.pdf.)
18. **SERVICE OR INSTALLATION OF WORK.** In the event the PO requires the performance of work or installation of goods by Seller upon any property or project of Buyer, the Seller shall comply with the terms and conditions set forth in Appendix B, whether or not Appendix B is attached hereto. (Copies furnished upon request and available at www.wistar.org/purchasingterms.pdf.)
19. **PUBLICITY/ADVERTISING.** No advertising or publicity material having or containing any reference to Buyer or any of its trustees, officers, employees or agents shall be made or issued by Seller or anyone on Seller's behalf unless Seller has written consent of Buyer.
20. **GOVERNING LAW.** The PO and these terms and conditions shall be construed in accordance with the laws of the United States and the Commonwealth of Pennsylvania.
21. **ENTIRE AGREEMENT.** The PO, these terms and conditions, and any specifications or additional terms and conditions attached hereto or referenced herein constitute the entire agreement between Buyer and Seller. No other terms or conditions are binding on Buyer unless accepted by it in writing.

Appendix A

Wistar Purchase Order Terms and Conditions

Construction Contracts in excess of \$2,000

Copeland "Anti-Kickback" Act (29 CFR Part 3) - Contractors or subrecipients are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work financed in whole or in part by the federal government, to give up any part of the compensation to which he is otherwise entitled.
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_3/toc.htm

Davis-Bacon Act, as amended – relates to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings. <http://www.dol.gov/esa/regs/statutes/whd/dbra.htm>

Contracts or Agreements for performance of experimental developmental, or research work

Rights to Inventions Made Under a Contract or Agreement – relates to the rights of the federal government and the Buyer in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title37/37cfr401_main_02.tpl

Contracts in excess of \$100,000

Contract Work Hours and Safety Standards Act (40 USC §§ 3701-3708) – requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects. <http://www.dol.gov/compliance/laws/comp-cwhssa.htm>

Clean Air Act and the Federal Water Pollution Control Act, as amended – promotes pollution prevention; requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC. 1251 et seq.). <http://www.epa.gov/air/caa/>

Byrd Anti-Lobbying Amendment (31 USC 1352) – requires certification by a contractor that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award http://www.law.cornell.edu/uscode/uscode31/uscode31_usc_sec_31_00001352----000-.html

Equal Opportunity – Executive Order 13201 (<http://www.dol.gov/olms/regs/compliance/BeckInfo.htm>) requires government contractors and subcontractors to inform their employees (through displayed posters) that they have certain rights related to union membership and use of union dues and fees under Federal law. The posting requirement does not apply to:

- Contractors with fewer than 15 employees,
- Contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees,
- Contractor establishments where state law forbids enforcement of union-security clauses ("right-to-work" states), or Work performed outside the United States that does not involve the recruitment or employment of workers within the United States.

For all negotiated contracts (except those for less than the small purchase threshold (currently \$25,000))

Access to Records (OMB Circular A-110, .48(d)) – requires that the recipient, the federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. The Seller agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.
<http://www.whitehouse.gov/omb/circulars/a110/a110.html#48>

Appendix B
Purchase Order Supplemental Terms and Conditions
Service or Installation of Work

When work or services are performed under a Purchase Order (PO) on Buyer's premises, the Seller shall abide by the following terms and conditions in addition to the terms and conditions set forth in the PO.

1. Seller shall be solely liable for its employees, agents, contractors or subcontractors (hereafter referred to as "Seller's personnel") and their actions while on Buyer's premises.
2. Seller's personnel will be permitted access only to the immediate work area and nearest routes of ingress or egress from the building, as well as designated lavatory and eating facilities. Under no circumstances are unescorted Seller's personnel permitted beyond these areas. Photographing or videotaping of Buyer's operations and facilities is prohibited.

Seller shall take precautions to protect all persons from injury and all property from damage arising out of its work. It is Seller's responsibility that Seller's personnel abide by Buyer's fire, health and safety rules, and other applicable regulations of the governmental agencies listed below:

- a. U.S. Environmental Protection Agency;
- b. Pennsylvania Department of Environmental Protection;
- c. Philadelphia Air Management Services Code; and
- d. U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction Industry).

Questions concerning Buyer's fire, health, and safety rules or the applicability of the various federal, state, and local codes should be directed to the Environmental Health and Safety Department at 215-898-3712. Buyer has the right to exclude any of Seller's personnel from Buyer's premises who do not abide by such rules and regulations, and at Buyer's election, to declare a default under the PO.

For emergency assistance (fire, medical assistance, spill, etc.), all Seller's personnel are instructed to call telephone 215-898-3730 and report the following information:

Individual's name and company name
Location of the emergency (floor, room number, area)
Emergency condition
Telephone extension being used

All injuries must be reported immediately to the Environmental Health and Safety Department at 215-898-3712.

3. Seller shall keep the premises and work free and clear of all mechanics and materialmen's liens or claims; Seller shall promptly pay for all labor and material and if Seller fails to do so, Buyer may, without waiving any rights or remedies against Seller for or by reason of such failure, but without any obligation to do so, pay the same and deduct the amount of such payments from sums due Seller under the PO, and Buyer may withhold any payment to Seller until receiving such affidavits, waivers, and releases with respect to claims for labor and materials as Buyer may require.
4. Seller shall perform its work in accordance with the schedules and work programs established by Buyer and shall fully cooperate with Buyer and others engaged in work on the project so that the work on the entire project may be performed with the utmost speed, consistent with good practices that insure quality and safety. In case of conflict, Buyer may direct the necessary coordination of work schedules. Failure of Seller to perform work in a timely manner that causes delay of project or impedes work of others shall be considered a material breach of contract. In the event of such breach Buyer may, without waiving other rights and remedies, cancel the PO and complete work itself or contract with others to complete the work and deduct all costs for completion from this contract.
5. Seller shall carry on its work so that the premises shall at all times be clean, orderly and free from debris and upon completion shall remove all equipment and unused materials from the project; clean up all refuse and debris, and leave the site of the work clean, orderly and in good condition.

6. Seller shall repair or replace for a period of one (1) year from date of completion any portion of material or workmanship that proves defective.
7. Seller shall maintain insurance coverage for not less than the following limits.
 - a. Workers' Compensation: Limits as specified by Pennsylvania statute
 - b. Employers' Liability: \$500,000 per occurrence
 - c. Commercial General Liability (excluding automobile liability)

Minimum combined limit of \$2,000,000 for both bodily injury and property damage liability coverage, per occurrence and in the aggregate, including i) blanket contractual liability coverage, with no exclusion for damages arising out of blasting operations or the use of explosives, vibration from pile driving, or the removal or weakening of support of any property, building or land; ii) owner's and contractors protective liability; iii) products and completed operations coverage, including extension of the policy term for three (3) years beyond acceptance by the Buyer; iv) personal injury liability hazards with employee exclusion deleted; and v) incidental medical malpractice coverage.
 - d. Comprehensive Automobile Liability

Comprehensive automobile liability coverage of all owned, non-owned, or hired motor vehicles, with limits of \$1,000,000 per accident for bodily injury coverage and \$1,000,000 per accident for property damage.

The Seller shall be solely responsible for the cost of maintaining these insurance policies and shall name the Buyer as an additional insured on the policies. Nothing in these policies is to be construed as limiting the extent of the Seller's responsibility to pay for damages resulting from the Seller's operations under the PO.
8. Seller shall observe and comply with, to the extent required by Buyer, the wages, hours and working conditions established by Buyer on the project or required of Buyer by an applicable labor agreement.
9. Seller shall act as an independent contractor and not as the agent or representative of Buyer.