

Purchase Order Terms and Conditions

1. **ACCEPTANCE.** These terms and conditions, as written, (including the additional terms referenced in Paragraph 18 and, if applicable, the supplemental terms referenced in Paragraph 19) 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 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 Buyer.
2. **SHIPPING & 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. Seller shall package, label, transport and ship any hazardous materials, items containing hazardous materials, and any other regulated materials in accordance with all applicable federal, state, and local laws, and shall furnish to Buyer any appropriate documentation, including Material Safety Data Sheets, prior to each shipment of such materials. Seller shall be solely responsible for notifying carriers and other handlers of any risks inherent in any such shipments.
3. **INVOICES.** Seller shall render itemized invoices (in duplicate) to Buyer no later than ten (10) days after the shipment date and/or completion of the services. All invoices must reference Buyer's PO number. Drafts will not be honored. Transportation charges must be listed as a separate item. Buyer will pay Seller within two (2) weeks of Buyer's completion of Buyer's internal review and approval process for such invoice.
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 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 and/or performed in a professional, workmanlike manner, consistent with industry standards for similar services; (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 third-party rights.
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 reasonable 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, 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 Buyer improperly terminated the PO pursuant to this paragraph, then such termination shall be deemed to have been for Buyer's convenience as permitted pursuant to the following paragraph.
10. **CANCELLATION/TERMINATION FOR CONVENIENCE.** Prior to Seller's acceptance of this PO, Buyer shall have the right to revoke or withdraw the PO, in whole or in part, without liability to 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 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 EMPLOYMENT OPPORTUNITY.** Seller shall comply in all respects with applicable Federal anti-discrimination laws and will not discriminate against any employee or applicant for employment on the basis of any legally protected class. Seller agrees to post in conspicuous places, available to employees or applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Further, Seller shall abide by the requirements of 41 CFR §§ 60-300-5(a) and 60-741.5(a) in the performance of this Agreement. These regulations prohibit discrimination against (1) qualified individuals who are protected veterans and (2) qualified individuals on the basis of physical or mental disabilities. They also require affirmative action by covered parties to employ and advance such individuals.

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, upon Buyer's request, 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.** Seller shall indemnify, defend, and hold harmless Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, losses, 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 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, trademark, or other third party right.

Additionally, if in the execution of this PO it becomes necessary for Seller, its agents, subcontractors or their employees to enter upon Buyer's premises, Seller shall indemnify, defend, and hold harmless Buyer, its trustees, officers, employees, agents and representatives from and against any and all demands, claims, damages, liabilities, losses, 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. **CONFIDENTIALITY.** Seller acknowledges that Seller may receive and/or otherwise have access to confidential information about Buyer, its research, operations, business, and proprietary information. Seller agrees that Seller will not disclose such confidential and/or proprietary information, except as necessary in the fulfillment of Seller's duties hereunder or with express prior approval of Buyer. Seller agrees to protect such confidential and/or proprietary information by using the same degree of care, but no less than a reasonable degree of care, as Seller uses to protect its own of confidential and/or proprietary information. If Seller suspects or discovers any unauthorized disclosure, Seller agrees to notify Buyer in writing within twenty-four (24) hours of such disclosure. Upon Buyer's request, Seller agrees to return and/or destroy any of Buyer's confidential and/or proprietary information.
16. **PROPRIETARY RIGHTS.** To the extent Buyer provides Seller with any data, designs, drawings, information, materials, samples, sequence and other technical information, specifications, photographs, plans or other intellectual property ("Buyer Background IP"), Buyer retains all rights to such Buyer Background IP and Seller has no permission to reproduce, publish, distribute, modify, license, display, perform, prepare derivative works based upon, or otherwise use Buyer Background IP for any purpose other than Seller's performance of the PO. Seller hereby irrevocably assigns, transfers and conveys to Buyer all right, title and interest in and to any artwork, concepts, content, data, deliverables, designs, developments, discoveries, documents, formulae, ideas, improvements, information, inventions, materials, plans, processes, prototypes, reports, results, software programs, strategies, technical information, and any other work or work product authored, produced, created, conceived, reduced to practice or

developed by or on behalf of Seller (whether alone or jointly with others) for Buyer in connection with or arising out of this Agreement (the "Work Product"), including all copyrights, patents, trademarks, trade secrets, and other intellectual property rights therein. Work Product shall not include Seller know-how and methodologies, and improvements thereto, to the extent developed independently from the services contemplated by this Agreement and without integrating, incorporating, referencing or otherwise using Buyer Background IP or Buyer's confidential and/or proprietary information. Seller acknowledges and agrees that it retains no rights whatsoever in the Work Product, and agrees to execute, at Buyer's request, all lawful documents and other instruments necessary or desirable to confirm such assignment in and to Buyer of the Work Product. Buyer shall have the sole right to register and hold copyrights, trademark registrations, patents, or whatever protection Buyer may deem appropriate for the Work Product. Upon the expiration or termination of this Agreement, or upon Buyer's request, Seller shall promptly provide or return to Buyer all Buyer Background IP, Work Product, and all copies thereof; or, upon written direction of Buyer, destroy all of the foregoing.

17. **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." If for any reason such works are deemed not to be "works made for hire," this Agreement shall serve as a full and irrevocable assignment to Buyer of all right, title, and interest in such works, for the full duration of copyright and for all renewals and extensions of copyright that may be obtained under applicable laws.
18. **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/purchasing/).
19. **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, 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/purchasing/).
20. **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.
21. **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.
22. **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 (the "Agreement"). No other terms or conditions are binding on Buyer unless accepted by Buyer in a writing signed by an authorized representative of Buyer.

Appendix A: Wistar Purchase Order Terms and Conditions

The following regulatory requirements, as amended from time to time, shall apply to Seller as applicable and as indicated below. Informational websites for each have been provided for reference only. Buyer makes no representations or warranty of any kind, express or implied, regarding the accuracy, adequacy, validity, reliability, availability, or completeness of any website information and/or regulatory requirements provided in this Appendix. It is the responsibility of Seller to comply with these requirements and all other applicable federal, state, or local laws, as such laws may be amended from time to time.

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. www.ecfr.gov/current/title-29/subtitle-A/part-3

Davis-Bacon and Related Act, as amended – relates to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings. www.dol.gov/agencies/whd/government-contracts/construction

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 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. www.ecfr.gov/current/title-37/chapter-IV/part-401

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. www.dol.gov/agencies/whd/government-contracts/cwhssa

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.). 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. www.law.cornell.edu/uscode/text/31/1352

Equal Opportunity – Executive Order 13496 requires government contractors and subcontractors to inform their employees (through displayed posters) that they have certain rights related to organizing and bargaining collectively with their employers under Federal law. www.dol.gov/agencies/olms/poster/labor-rights-federal-contractors

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. 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. www.whitehouse.gov/wp-content/uploads/2017/11/Circular-110.pdf

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment & Costs (2 CFR § 200.216 and 2 CFR § 200.471)

No portion or component of any goods or other equipment, services or systems to be used or provided by Seller hereunder shall use, reference or consist of covered telecommunications equipment or services (as defined by 2 CFR § 200.216 and 2 CFR § 200.471) as a substantial or essential component of any goods or other equipment, services, or systems or as a critical technology thereof. www.law.cornell.edu/cfr/text/2/200.216; www.law.cornell.edu/cfr/text/2/200.471

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 shall comply with all reasonable procedures prescribed by Buyer for coordination of the services with the functions, activities and operations of Buyer.
 3. 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 Buyer's Environmental Health and Safety Department at ehs@wistar.org. 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 (or such other telephone number as Buyer may provide) 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 (or such other telephone number as Buyer may provide).
 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 ensure 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 secure and maintain at all times during the provision of work or services under these Purchase Order Terms and Conditions, and also at its sole cost and expense:
 - a. Workers' compensation insurance in the amount required by applicable law;
 - b. Commercial general liability insurance including coverages for products liability, property damage and personal injury in the minimum amount of One Million Dollars (\$1,000,000 USD) per occurrence and Two Million Dollars (\$2,000,000 USD) in the aggregate. The commercial general liability insurance shall contain terms sufficient to cover Seller's performance of its obligations under this Agreement; and
 - c. Umbrella liability insurance with a minimum limit of One Million Dollars (\$1,000,000 USD). NOTE: Five Million Dollars (\$5,000,000 USD) minimum limit is required for construction projects or other high-risk contracts.
- Upon Buyer's request, Seller shall provide certificate(s) of insurance to Buyer evidencing the insurance coverage and policy limits outlined above. Seller's insurance policies shall be provided by insurance companies with a most recent A.M. Best rating of "A-". During the provision of work or services, Seller shall provide Buyer with thirty (30) days prior written notice of any material change to the required minimum insurance coverages, including the cancellation or non-renewal of any of the foregoing policies. Nothing in these policies is to be construed as limiting the extent of Seller's responsibility to pay for damages resulting from 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.