

TERMS AND CONDITIONS FOR SERVICES AND/OR PRODUCTS

ARTICLE 1 - The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller, in accepting this order, agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by the order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent it specifies the materials, suppliers, or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

ARTICLE 2 - INSPECTION

The services, materials and supplies furnished shall be exactly as specified in this order free from all defects in Seller's performance, design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by ASUCLA at all times and places. If, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, ASUCLA may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by ASUCLA, ASUCLA may terminate the order in whole or in part. Seller shall bear all risks as to rejected services and, in addition to any costs for which Seller may become liable to ASUCLA under other provisions of this order, shall reimburse ASUCLA for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted services and material and supplies incidental thereto. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 3 - CHANGES

ASUCLA may make changes within the general scope of this order in drawings and specifications for specially manufactured supplies, place of delivery, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be allowed without written approval of ASUCLA. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless ASUCLA waives this condition in writing. Nothing in the Article shall excuse Seller from proceeding with performance of the order as changed hereunder.

ARTICLE 4 - TERMINATION

A. ASUCLA may, by written notice stating the extent and effective date, cancel and/or terminate this order for convenience in whole or in part, at any time. ASUCLA shall pay Seller as full compensation for performance until such termination:

- (1) the unit or pro rata order price for the performed and accepted portion; and
- (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by ASUCLA, with respect to the unperformed or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.

B. ASUCLA may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to perform the services within the time specified or any written extension thereof. In such event, ASUCLA may purchase or otherwise secure services and, except as otherwise provided herein, Seller shall be liable to ASUCLA for any excess costs incurred by ASUCLA .

If, after notice of termination for default, ASUCLA determines that the Seller was not in default or that the failure to perform this order was due to causes beyond the control and without the fault of negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of ASUCLA, Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the

subcontractor or supplier), termination shall be deemed for the convenience of ASUCLA, unless ASUCLA shall determine that the services covered by this order were obtainable by Seller from other sources in sufficient time to meet the required performance schedule.

C. If ASUCLA determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, ASUCLA may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller, any extension granted shall be effective only if given in writing. If such delay is due to failure of ASUCLA, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of ASUCLA to perform shall, however, be limited to any one actually and necessarily expended during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

D. The rights and remedies of ASUCLA provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

E. As used in these Articles, the word "Seller" included Seller and its sub-suppliers at any tier.

ARTICLE 5 - LIABILITY FOR ASUCLA - FURNISHED PROPERTY

Seller assumes complete liability for any tooling, articles or material furnished by ASUCLA to Seller in connection with this order and Seller agrees to pay for all such tooling, articles or material damaged or spoiled by it or not otherwise accounted for to ASUCLA's satisfaction. The furnishing to Seller of any tooling, articles, or material in connection with this order shall not, unless otherwise expressly provided, be construed to vest title thereto in Seller.

ARTICLE 6 - TITLE

Title to the material and supplies purchased hereunder shall pass directly from Seller to ASUCLA at the f.o.b. point shown, or as otherwise specified in this order, subject to the right of ASUCLA to reject upon inspection.

ARTICLE 7 - PAYMENT, EXTRA CHARGES, DRAFTS

Seller shall be paid, upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. ASUCLA will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by shipping documents or photocopies of such, if transportation is payable and charged as a separate item.

ARTICLE 8 - CHARACTER OR SERVICES

Seller, as an independent contractor, shall furnish all equipment, personnel and material sufficient to provide the services expeditiously and efficiently during as many hours per shift and shifts per week and at such location as the ASUCLA may so require and designate.

ARTICLE 9 - FORCED, CONVICT, AND INDENTURED LABOR

A. By accepting this order, Seller hereby certifies that no foreign-made equipment, materials, or supplies furnished to ASUCLA pursuant to this order will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

B. Any Seller contracting with ASUCLA who knew or should have known that the foreign-made equipment, materials, or supplies furnished to ASUCLA were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a contract pursuant to the above, may have any or all of the following sanctions imposed:

(1) The contract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of ASUCLA.

(2) Seller may be removed from consideration for ASUCLA contracts for a period not to exceed 360 days.

ARTICLE 10 - INDEMNITY

A. General. Seller shall defend, indemnify, and hold harmless ASUCLA and the Regents of UC, its officers, employees, and agents, from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Seller's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Seller, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Seller's direction and control.

B. Proprietary Rights. Seller shall indemnify, defend, and hold harmless ASUCLA and the Regents of UC, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Seller's furnishing or supplying ASUCLA with parts, goods, components, programs, practices, or methods under this order or ASUCLA's use of such parts, goods, components, programs, practices, or methods supplied by Seller under this order constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The foregoing shall not apply unless ASUCLA has informed Seller as soon as practicable of the suit or action alleging such infringement. Seller shall not settle such suit or action without the consent of ASUCLA. ASUCLA retains the right to participate in the defense against any such suit or action.

C. Products. Seller shall fully indemnify, defend, and hold harmless ASUCLA and the Regents of UC from and against any and all claim, action, and liability, for injury, death and property damage, arising out of the dispensing or use of any of Seller's product provided under authorized ASUCLA orders. In addition to the liability imposed by law on the Seller for damage or injury (including death) to persons or property by reason of the negligence, willful acts or omissions, or strict liability of the Seller or his agents, which liability is not impaired or otherwise affected hereby, the Seller hereby assumes liability for and agrees to save ASUCLA harmless and indemnify it from every expense, liability or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any act or omission of the Seller.

ASUCLA agrees to provide Seller with prompt notice of any such claims and to permit Seller to defend any claim or suit, and that it will cooperate fully in such defense.

ARTICLE 11 - DECLARED VALUATION OF SHIPMENTS

Except as otherwise provided on the face of this order, all shipments by Seller under this order for ASUCLA's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.

ARTICLE 12 - WARRANTY

Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services, or such other more favorable warranties as specified in this order. The rights and remedies so provided are in addition to and do not limit any rights afforded to ASUCLA by any other article of this order. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the services or supplies by ASUCLA.

ARTICLE 13 - ASSIGNMENT AND SUBCONTRACTING

This order is assignable by ASUCLA. Except as to any payment due hereunder, this order may not be assigned or subcontracted by Seller without written approval of ASUCLA. In case such consent is given, it shall not relieve Seller from any of the obligations of the Agreement and any transferee or subcontractor shall be considered the agent of Seller and, as between the parties hereto, Seller shall be and remain liable as if no such transfer or subcontracting had been made.

ARTICLE 14 - EQUAL OPPORTUNITY AFFIRMATIVE ACTION

Seller shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Seller agrees to adhere to the requirements set forth Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 129-00 et seq.). Expressly, Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition (as defined by California Code section 12925f), marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or

because he or she is a disabled veteran or veteran of the Vietnam era. Seller shall further specifically undertake affirmative action regarding the hiring, promotion and treatment of minority group persons, women, the handicapped, and disabled veterans and veterans of the Vietnam era. Seller shall communicate this policy in both English and Spanish to all persons concerned within its company, with outside recruiting services, and the minority community at large. Seller shall provide ASUCLA on request a breakdown of its labor force by groups, specifying the above characteristics within job categories, and shall discuss with ASUCLA its policies and practices relating to its affirmative action programs.

ARTICLE 15 - The clauses contained in the following paragraphs of the Federal Acquisition Regulations are incorporated by reference. The full text is available upon request:

- FAR 52.222-04 Contract Work Hours and Safety Standards Act
- FAR 52.222-26 Equal Opportunity
- FAR 52.223-02 Clean Air and Water (if order exceeds \$100,000)

ARTICLE 16 - WORK ON ASUCLA OR GOVERNMENT PREMISES

If Seller's work under this order involves performance by Seller at ASUCLA or United States Government owned sites or facilities, the following provisions shall apply:

A. Liens. Seller agrees that at any time upon request of ASUCLA he will submit a sworn statement setting forth the work performed or material furnished by subcontractors, suppliers and material persons, and the amount due and to become due to each, and that before the final payment called hereunder, will if requested, submit to ASUCLA a complete set of vouchers showing what payments have been made for materials and labor used in connection with the work called for hereunder.

Seller shall:

- (1) Indemnify and hold harmless ASUCLA from all claims, demands, causes of action or suits, of whatever nature, arising out of the services, labor and materials furnished by Seller or its subcontractors under this order, and from all laborers', material person's and mechanics' liens upon the real property upon which the work is located or any other property of ASUCLA;
- (2) Promptly notify ASUCLA in writing, of any such claims, demands, causes of action, or suits brought to its attention. Seller shall forward with such notification copies of all pertinent papers received by Seller with respect to any such claims, demands, causes of action and, at the request of ASUCLA shall do all things and execute and deliver all appropriate documents and assignments in favor of ASUCLA of all Seller's right and claims growing out of such asserted claims as will enable ASUCLA to protect its interest by litigation or otherwise.

The final payment shall not be made until Seller, if required, shall deliver to ASUCLA a complete release of all liens arising out of this order, or receipts in full in lieu thereof, as ASUCLA may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts included all the labor and materials for which a lien could be filed; but Seller may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to ASUCLA to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Seller shall refund to ASUCLA all moneys that the latter may be compelled to pay in discharging such lien or claims, including all costs and reasonable attorneys' fees.

B. Clean Up. Seller shall at all times keep ASUCLA premises where the work is performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its subcontractors, and, at the completion of the work, shall remove all rubbish from and about the building and all its and its subcontractors' tools, scaffolding, and surplus materials and shall leave the work "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Seller and the subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or in case the same be not promptly removed as herein required, ASUCLA may remove the rubbish and charge the cost to Seller.

C. Employees. Seller shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her, and shall devote only its best-qualified personnel to work under this order. Should ASUCLA deem anyone employed on the work incompetent or unfit for his or her duties and so inform Seller, Seller shall immediately remove such person from work under this order and he or she shall not gain, without written permission of ASUCLA, be assigned to work under this order.

It is understood that if employees of ASUCLA shall perform any acts for the purpose of discharging the responsibility undertaken by the Seller in this Article 15, whether requested to perform such acts by the Seller or not, such employees of ASUCLA while performing such acts shall be considered the agents and servants of the Seller subject to the exclusive control of the Seller.

D. Safety, Health, and Fire Protection. Seller shall take all reasonable precautions in the performance of the work under this order to protect the health and safety of employees and members of the public and to minimize danger from all hazards to life and property, and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements) of ASUCLA. In the event that Seller fails to comply with said regulations or requirements of ASUCLA, ASUCLA may, without prejudice to any other legal or contractual rights of ASUCLA, issue an order stopping all or any part of the work, thereafter a start order of resumption of work may be issued at the discretion of ASUCLA. Seller shall make no claim for extension of time or for compensation or damages by reason of or in connection with such work stoppage.

The safety of all persons employed by Seller and its subcontractors on ASUCLA premises, or any other person who enters upon ASUCLA premises for reasons relating to this order, shall be the sole responsibility of Seller. Seller shall at all times maintain good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her. Seller shall confine employees and all other persons who come onto ASUCLA's premises at Seller's request or for reasons relating to this order and its equipment to that portion of ASUCLA premises where the work under this order is to be performed or to roads leading to and from such work sites, and to any other area which ASUCLA may permit Seller to use.

Seller shall take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees of any other person who enters and others against any conditions on Owner's premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by the Seller, its subcontractors, ASUCLA or other persons.

To the extent compliance is required, Seller shall comply with all ASUCLA and University safety rules and regulations when on ASUCLA premises.

ARTICLE 17 – INSURANCE

Seller shall at its expense obtain, keep in force and maintain insurance to cover its performance under this order as follows (Note: Minimum required limits may be increased at ASUCLA's sole discretion based on risk factors involving this order.)

A. Commercial Form General Liability Insurance (Contractual Liability Included)

Minimum Limits:

Each Occurrence	<u>\$2,000,000</u>
Products/Complete Operations	<u>\$2,000,000</u>
Personal and Advertising Injury	<u>\$2,000,000</u>
General Aggregate	<u>\$4,000,000</u>

If the above insurance is written on a claims made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

B. Business Automobile Liability: (Owned, Scheduled, Non-Owned, or Hired Automobiles) with a combined single limit of no less than \$1,000,000 per occurrence.

*C. Professional Liability Insurance with minimum limits of:

\$1,000,000 per occurrence.
\$2,000,000 General Aggregate.

(*Applicable to the following activities, but not limited to: Architecture, Engineering, Consulting and Construction Project Management)

If the above insurance is written on a claims made form, it shall continue for three years following termination of this agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this agreement. Coverage shall include endorsements to the insurance policies for Contractual Liability Coverage and Defense and Indemnification of ASUCLA by Seller.

D. Workers' Compensation as required under California State law.

Seller, upon the execution of this agreement shall furnish ASUCLA with Certificates of Insurance evidencing compliance with all requirements. Coverages referred to under A., B., above shall include ASUCLA and the Regents of UC as additional insured, but only with respect to the negligent acts or omissions of Seller, its officers, agents, employees, subcontractors, any one directly or indirectly employed by them, or any other person or persons under its direction and control. The Certificates of Insurance shall obligate Seller's insurers to notify ASUCLA at least thirty (30) days prior to cancellation of or change in any of said insurance.

ARTICLE 18 - PERMITS

Seller agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the work under this order is performed. Seller shall be liable for all damages and shall indemnify and save ASUCLA and the Regents of UC harmless from and against all damages and liability which may arise out of failure of Seller to secure and pay for any such licenses or permits or to comply fully with any and all applicable laws, ordinances and regulations.

ARTICLE 19 - COOPERATION

Seller and its subcontractors, if any, shall cooperate with ASUCLA and other vendors and contractors on the premises and shall so carry on their work that other cooperating vendors and contractors shall not be hindered, delayed or interfered with in the progress of their work, and so that all of such work shall be a finished and complete job of its kind.

ARTICLE 20 - WAIVER OF DEFAULT

Any failure of ASUCLA at any time, or from time to time, to enforce or require the strict keeping and performance by Seller of any of the terms and conditions of this order shall not constitute a waiver by ASUCLA of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of ASUCLA at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

ARTICLE 21 – TAXES

Seller shall pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the performance of work under this order, and all applicable sale, use, excise, transportation, privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save ASUCLA and the Regents of UC harmless from liability for any such contributions, premiums, and taxes.

ARTICLE 22 - OTHER APPLICABLE LAWS

Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations shall be deemed to be incorporated herein.

ARTICLE 23 - GOVERNING LAWS

The laws of the State of California shall control this Appendix and any document to which it is appended.