ACKNOWLEDGMENT: Agreement by Supplier to furnish the materials and/or services hereby ordered, or its commencement of such performance, shall constitute acceptance by Supplier of this Agreement subject to these terms and conditions. In the event that this Agreement does not state price or delivery, Baylor University, (hereinafter “University”), will not be bound to any prices or delivery to which it has not specifically agreed in writing. Acceptance by Supplier is expressly limited to the terms of this Agreement. Any terms or conditions proposed by Supplier inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect unless specifically agreed to in writing by the University. Modifications hereof or additions hereto, to be effective, must be specifically agreed to in writing by the University. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by the University, constitute the entire agreement between the parties; and supersede any prior or contemporaneous written or oral agreements thereon. Whenever a term defined by Chapter 2 of the Texas Business and Commerce Code, (UCC), is used in this Agreement, the definition contained in the Code applies.

CONFIDENTIALITY: Supplier agrees that it will not release any information relating to this order, including without limitations, press releases, advertisements, or marketing materials without prior written approval by the University. The supplier and University shall keep confidential any and all information obtained from the other party concerning the assets, properties, business serves trade secrets, organizational structure, philosophy, objectives, financial plans and results and other information relating to the other party and shall not use such information for any purpose other than that purpose contemplated under this Agreement.

EQUAL OPPORTUNITY: In the execution of the Agreement, the Supplier and all subcontractors agree, consistent with University policy, not to discriminate on the grounds of race, color, sex, national origin or citizenship status, age, disability, or veteran status and to provide reasonable accommodations to qualified individuals with disabilities upon request.

Supplier certifies and represents that in the performance of this contract it will comply with the provisions of all applicable federal, state and local laws, regulations, rules and orders. Any provision which is required to be a part of this contract by virtue of any such law, regulation, rule or order is incorporated herein by reference: including but not limited to Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and their respective implementing regulations at 41 CFR part 60; and Executive Order 13465 (Employment Eligibility Verification); and Executive Order 13496 (Employee Rights Under National Labor Relations Act).

SHIPPING INSTRUCTIONS: Supplier shall be responsible for ensuring the proper packaging of materials. Unless otherwise directed, all items shipped in one day from and to a single location must be consolidated on one bill of lading or airbill, as appropriate. No charges will be allowed for packing, crating, freight, local cartage, and/or any other services unless so specified in this Agreement or any authorized changes thereto. Unless agreed to otherwise in writing, all shipments should be FOB Destination; meaning, title and risk of loss of the goods shall not pass to the University until the University actually receives the goods at the point of delivery. Supplier shall at all times comply with University's written shipping instructions. Supplier shall submit all required shipping papers to the University prior to final payment. The Purchase Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading and airbills.

RETURNS: The University reserves the right to return merchandise to Supplier. All returned merchandise shall, to the best of the University's ability, be returned in the original packaging and shall include all of the manufacturer's documentation received with merchandise. Merchandise will be returned freight prepaid by the
University if the University, in the order process, makes a mistake. Merchandise will be sent freight collect from the supplier, if the supplier, in the order process, makes a mistake. In no instance will the University pay a restocking charge if merchandise is sent to the University by mistake. If merchandise is represented in sale brochures or catalogs as merchandise that the Supplier normally stocks for sale in their business, the University will not pay a restocking charge. If merchandise is determined to be special order, the University will pay supplier's customary restocking charge not to exceed 15% if the University, in the order process, makes a mistake. Upon receipt of merchandise, Supplier shall issue credit to the University in the amount of the price thereof, less any agreed upon applicable charges.

PAYMENT: The University's obligation is payable only and solely from funds appropriated for the purpose of this Agreement. The payment terms for this Agreement are Net 30 days, unless the Supplier offers discount terms for early payment.

DELIVERY: Time is and shall remain a material element of this Agreement, and no acts of the University, including without limitation modifications of this Agreement or acceptance of late deliveries, shall constitute waiver of this provision. The University also reserves the right to refuse or return at Supplier's risk and expense shipments made in excess of the University's orders or in advance of required schedules, or to defer payment on advance deliveries until scheduled delivery dates. Supplier shall notify the University in writing immediately of any actual or potential delay to the performance of this Agreement and such notice shall include a revised schedule and shall not constitute a waiver to the University's rights and remedies hereunder.

CHANGES: The University shall have the right by written order to suspend work or to make changes from time to time in the services to be rendered or the materials to be furnished by Supplier hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of this Agreement or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the Agreement shall be modified in writing accordingly. Any claim by Supplier for adjustment under this clause must be asserted in writing within 20 days from the date of receipt by Supplier of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures. Information, advice, approvals or instructions given by the University's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect the University's and Supplier's rights and obligations hereunder unless set forth in a writing which is signed by the University's Purchasing Representative.

SERVICES: If this Purchase Order is for services to be performed or delivered by or on behalf of Supplier, then it is also subject to the University's Insurance Requirements and Indemnification Agreement.

CONTRACT: If there is a separate written contract in effect between University and Supplier applicable to this transaction and any term thereof is in direct conflict with these terms and conditions, then the terms and conditions of the separate written contract shall govern this transaction, but only to the extent of the direct conflict.

TERMINATION FOR CONVENIENCE: University may terminate the Order or any part thereof for its sole Convenience. Upon notice of such termination, Supplier shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work against the Order. Supplier shall be paid a reasonable termination charge consisting of a pro-rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Supplier shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred by Supplier’s suppliers that Supplier reasonably could have avoided. University may terminate the Order or any part hereof for Cause if Supplier defaults, fails to comply with any terms and conditions of the Order, becomes insolvent, ceases operations, liquidates or files for bankruptcy protection. The University may take immediate possession of all work so performed upon notice of termination. Late delivery of goods or performance...
of services that are defective or do not conform to the Order shall, without limitation, be causes allowing University to terminate the Order for cause. In this event, University will not be liable to Supplier for any amount, but Supplier shall be liable to University for all losses, damages, and expenses, including costs of cover, resulting from the default that causes the termination.

**FORCE MAJEURE:** University will not be liable for contract default or delay due to acts beyond its reasonable control. Supplier shall inform University, in writing, whenever Supplier becomes aware of an event that could delay or prevent Supplier’s performance.

**LABOR DISPUTES:** Supplier shall give prompt notice to the University of any actual or potential labor dispute which delays or may delay performance under this Agreement.

**REMEDIES:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any action arising out of this agreement will be McLennan County, Texas. The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of the University to enforce any of its rights shall not constitute a waiver of such rights or of any other rights. In no event shall Supplier be entitled to anticipatory profits or to special (including multiple or punitive), incidental, or consequential damages.

**PROPERTY RIGHTS:** Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software and other items supplied to the University by Supplier shall be disclosed to the University on a non-proprietary basis and may be used and/or disclosed by the University without restriction. Unless otherwise expressly agreed in writing to the contrary, all specifications, information, data, drawings, software, and other items which are (i) supplied to Supplier by the University or (ii) obtained by Supplier and paid for by the University in the performance of this Agreement shall be maintained as proprietary to the University by Supplier, shall be used only for purposes of providing goods or services to the University pursuant to this Agreement, and shall not be disclosed to any third party without the University's express written consent. All such items supplied by the University shall be promptly returned to it on request or upon completion of this order.

**PROPERTY OF THE UNIVERSITY:** All information plus all drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by the University shall be and remain the property of the University; and the University shall have the right to enter Supplier's premises and remove any such property at any time without being liable for trespass or for damages of any sort. All such items shall be used only in the performance of work under this Agreement unless the University consents otherwise in writing. Material made in accordance with the University's specifications and drawings shall not be furnished or quoted by Supplier to any other person or concern without the University's prior written consent. Supplier shall have the obligation to maintain any and all property furnished by the University to Supplier and shall be responsible for all loss or damage to said property except for normal wear and tear.

**WARRANTY:** Supplier warrants the materials delivered or services rendered on this Agreement to be free from defects in workmanship, materials, and design (when applicable) and to be in accordance with all the requirements of this Agreement. These warranties shall survive final acceptance and payment pursuant to UCC 2-601 and 2-608. This warranty entitlement covers both the University and the University's customers. Supplier shall be liable for and save the University harmless from any loss, damage, or expense whatsoever that the University may suffer from breach of any of these warranties. Remedies include repair, replacement or reimbursement of the purchase price of nonconforming goods, at the University's election. If Supplier is unable to or refuses to promptly correct or replace such defective or nonconforming good or part thereof, University may, by contract or otherwise, repair or replace such work or materials and assess Supplier the excess cost occasioned the University thereby.
INSPECTION: Payment for goods or services provided hereunder shall not constitute acceptance thereof. University may inspect and test such goods or services and reject any or all items that are, in University’s sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Supplier at Supplier’s sole expense. Failure by University to inspect and test the goods or services shall not relieve Supplier of responsibility. If inspection and test are made on the premises of Supplier or Supplier's subcontractors, Supplier shall furnish without additional charge all reasonable facilities and assistance for the safe and convenient inspection and tests required by the inspectors in the performance of their duty.

ASSIGNMENTS AND SUBCONTRACTING: Supplier may not assign any rights or obligations due or to become due under this Agreement without the prior written consent of the University. The University may assign this Agreement to (i) any affiliates, (ii) any successor in interest, or (iii) the University's customer. The University shall have the right at any time to set off any amount owing from Supplier to the University or the University's subsidiaries and/or affiliates against any amount due and owing to Supplier or any of its subsidiaries pursuant to this Agreement or any other Contractual agreement between the University and Supplier or their respective subsidiaries and/or affiliates. Supplier shall not contract, subcontract or assign to a third party any part of this purchase order or any rights arising hereunder without first obtaining the express, written approval of the University.

INDEMNIFICATION: Supplier shall defend, indemnify, and hold harmless Baylor University and its agents, officers, directors, and employees from any personal injury or property damage claim, suit, action, expense, loss, or damage whatsoever, including but not limited to such claims under strict liability together with attorney's fees, arising out of or in any way connected with Supplier's performance or failure to perform this Agreement or that of Supplier's agents, employees, or subcontractors. Supplier shall be responsible for the actions and failure to act of all parties retained by, though, or under Supplier in connection with the performance of this Agreement. Supplier shall also maintain such General Liability, Property Damage, Employer's Liability, and Workers Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Agreement or if none are specified, such amount as will protect Supplier (or its subcontractors) and the University from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes including the Occupational Safety and Health Act. University shall notify Supplier promptly, in writing, of any claim or action brought against University in connection with this Agreement. On such notification, Supplier shall promptly assume responsibility for and defend any and all such claims or actions. Supplier shall notify University promptly, in writing, of any claim or action brought against the Supplier in connection with this Agreement. University shall retain the right to be represented by counsel of its own choosing at Supplier’s reasonable expense. Supplier shall without limitation as to time, indemnify and save University and its officers, directors, and employees harmless from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by the University's negligence.

INSURANCE: Supplier shall maintain adequate insurance in all forms necessary to protect both Supplier and the University against all liabilities, losses, damages, judgments, claims, settlements, expenses, including without limitation reasonable legal fees and costs, arising out of or resulting from performance of this Agreement. Although evidences of certain minimum coverage may be required, neither the existence of such insurance coverage nor anything else contained herein shall limit to available insurance Supplier’s responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or in connection with the performance of this Agreement.

RISK OF LOSS: Supplier assumes all risk of loss of or damage to all goods ordered and all work in process, materials, and other items related to this Order until the same are finally accepted by the responsible individual
and University department. Supplier also assumes all risk of loss of or damage to any goods, work in process, materials and other items rejected by University until the same are accepted by University.

**COMPLIANCE WITH LAW:** Supplier warrants that the materials to be furnished and the services to be rendered under this Agreement shall be manufactured, sold, transported, and used in compliance with all relevant federal, state, local laws and regulations. Additionally, Supplier shall comply with all applicable laws, ordinances, codes, and regulations of any federal, state, county, or municipal government, bureau, or department, including any applicable regulations, relative to all of its activities and shall obtain and maintain all necessary licenses and permits at its sole cost and expense. University shall have no responsibility for fines incurred due to acts or omissions of Supplier, its employees, agents, or subcontractors.

**SALES AND USE TAXES:** Baylor University is a 501(c)(3) non-profit educational institution and thus exempt from Texas sales and use taxes pursuant to Chapter 151 of the Texas Tax Code.

**FURNISH AND INSTALL:** Where appropriate, items purchased will be provided on a supplier furnish and install basis. The successful Supplier shall have complete responsibility for the items or system until it is in place and working. Any special installation preparation and requirements must be submitted to the University. All transportation and coordinating arrangements will be the responsibility of the successful Supplier. Delivery of equipment will be coordinated so those items will be delivered directly to the installation site. This will minimize risk of damage and avoid double handling.

**LIMITATIONS:** University shall not be liable to Supplier, its employees, representatives, agents, suppliers, or subcontractors for any lost profits or other incidental or consequential damages. University’s liability on any claim for loss, damage or expense arising out of or in connection with this Agreement shall not exceed the price of the goods or services which give rise to the claim. University shall not be liable for penalties or fines of any kind. Any action, suit or proceeding caused by any alleged breach of this Agreement by University must be commenced within one (1) year after the cause of action accrued.

**PATENTS/COPYRIGHTS:** Supplier agrees to indemnify University and hold University harmless from and against all claims, liability, losses, damages, and expenses, including without limitation legal fees and costs, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by the Purchase Order. Supplier shall pay to defend any such litigation brought against University. The Supplier's obligations hereunder shall survive acceptance of the goods and payment therefore by University.

**SEVERABILITY:** If any part of this Agreement is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of this Agreement shall be enforceable as written.

**FOB DESTINATION:** All shipments hereunder shall be FOB Destination, Baylor University, "Freight Prepaid", unless otherwise shown by University on this Purchase Order.

**CANCELLATION FOR CONFLICT OF INTEREST:** This order is subject to cancellation if the University determines that there is a conflict of interest between a University's employee and Supplier.

**EXTRA CHARGES:** No additional charges of any kind, including without limitation charges for boxing, packing, transportation or other extras or fees will be allowed unless specifically agreed to in writing by an authorized purchasing agent of University.
**SET-OFF**: University shall at all times have the right to set-off any amount owing from the Supplier to University against any amount owing from University to the Supplier. At University’s option, repayment, in lieu of setoff, may be required.