Terms and Conditions

1. This Purchase Order is University of San Diego’s offer to purchase the goods and/or services described herein from Seller. Placement of this Purchase Order is expressly conditioned upon Seller's acceptance of these Terms and Conditions. By performing under this Purchase Order, or any part hereof, Seller agrees to and accepts these Terms and Conditions and agrees to fully perform. The rights and duties of the parties shall be subject to and governed by these Terms and Conditions.

2. Definitions. “Purchase Contract” means the Purchase Order, these Terms and Conditions, and any additional terms and conditions agreed to in writing by the Buyer and Seller. “Buyer” or “University” means the University of San Diego. “Seller” means the person or entity supplying the goods and/or services under the Purchase Contract, and includes all Seller’s agents, subcontractors, employees and distributors.

3. Entire Agreement. This Purchase Contract, and any specifications or additional terms and conditions signed by both parties, constitute the entire agreement between Buyer and Seller. Any additional or different terms or conditions which may appear in any communication or form from Seller are objected to and rejected and shall not be effective or binding unless specifically agreed to in writing by Buyer. In the event of a conflict between this Purchase Contract and terms and conditions stated in Seller’s quotation/proposal, the terms of this Purchase Contract shall control.

4. Inspection. All items furnished under this Purchase Order shall be subject to inspection and acceptance by Buyer. In the event of Seller’s failure to deliver as and when specified, Buyer reserves the right to cancel this order or any part thereof, and Seller agrees that Buyer may return part or all of any shipment and may charge Seller with any loss or expense sustained as a result of such failure to deliver.

5. Taxes and Expenses. Unless otherwise agreed to in writing by both parties, Seller agrees that the price quoted herein includes all expenses and all federal, state and local sales taxes, fees and/or assessments. This purchase is exempt from any applicable federal excise tax, per Internal Revenue Service Registration Certificate #A-151381. Buyer will comply with applicable California laws (including but not necessarily limited to California Revenue and Taxation Code Section 18662) that govern required withholdings from payments to nonresident independent contractors performing services in California. If Seller believes it is exempt from this requirement, Seller shall submit a Withholding Exemption Certificate (California Form 590) to Buyer.

6. Warranty. Seller warrants that the goods or services furnished shall be merchantable and free from any defects in workmanship, material or title. If Seller has been informed of the use of the products, Seller also warrants that the items furnished are suitable and appropriate for such use. Seller shall indemnify and defend Buyer from any breach of this warranty. This warranty is in addition to all warranties contained under the law.

7. Safety/Hazardous Materials. All goods or services provided on this Purchase Order shall comply with the safety standards as promulgated under the Federal Occupational Safety Act and Cal/OSHA. If any material or ingredients of any material furnished by Seller is considered to be hazardous as defined by Federal or California statute, Seller shall provide Buyer applicable Material Safety Data Sheets (MSDS).

8. Payment Terms. Payment for goods or services provided on this Purchase Order will be made per the payment terms indicated on the order and only after the entire order is delivered or completed to the satisfaction of Buyer. Terms shall be net 30 days.

9. Risk of Loss. The title and risk of loss of the goods shall not pass to Buyer until Buyer receives, inspects and accepts the goods at the point of delivery.

10. Termination. Buyer reserves the right to terminate this Purchase Order for convenience and without penalty. Buyer may also terminate this Purchase Order for failure of Seller to perform any of the covenants contained herein at the time and in the manner prescribed. If the Purchase Order is terminated due to such failure, Seller shall be liable for all damages.

11. Indemnification. Seller shall be solely responsible for any and all claims, damages and injuries caused by Seller or Seller’s employees, agents or subcontractors arising out of or relating to this Purchase Order. Seller agrees to defend, indemnify and hold Buyer and its employees and agents harmless from any and all liability, claims, demands, suits, costs, charges and expenses, including without limitation attorneys’ fees, arising out of or in any way related to the alleged acts or omissions of Seller or its employees, agents, or subcontractors, including but not limited to claims of property damage, personal injury, death, Seller’s failure to perform any of its obligations under this Purchase Order, or any other statutory, contract or tort claims, except those claims caused solely by the negligent or willful acts or omissions of Buyer.

12. Trademarks. Seller shall not use the name “USD,” “University of San Diego,” “Toreros,” or use any logo or insignia of or otherwise identify USD or the Toreros in any form of publicity, disclosure or sale without the prior written consent of Buyer, which consent may be withheld, granted or rescinded by Buyer in its sole discretion.

13. Applicable Law/Venue. The contract resulting from this Purchase Order shall be governed by the laws of the State of California. The parties agree that the venue for any litigation which may arise from this Purchase Order shall be in San Diego County, California.

14. No Waiver. No waiver by Buyer of any breach of any of the provisions of this Purchase Contract by the Seller shall in any way be construed to be a waiver of any future breach or bar Buyer's right to insist on strict compliance with these Terms and Conditions.

15. Confidentiality. Seller agrees that it will not publish or disclose (nor allow to be published or disclosed) any confidential or proprietary information of Buyer to any person who is not an employee of Buyer or to any other entity other than Buyer, without the express written approval of an officer of Buyer.

16. Debarment, Suspension, and Other Responsibility Matters. By accepting this Purchase Order, Seller certifies 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, state or local governmental department or agency.

17. Non-Discrimination. By accepting this Purchase Order, Seller agrees not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, because of race, color, religion, sex, national origin, ancestry, or other condition or characteristic protected by applicable law. Seller further agrees that every subcontract or order given for the supplying of this order will contain a provision requiring such non-discrimination in employment. A breach of this provision may be regarded as a material breach of this contract.

18. Insurance. Seller, at its sole cost and expense, shall insure its activities in connection with the work under this Purchase Order and obtain, keep in force, and maintain insurance as stated below, and shall supply a Certificate of Insurance (“Certificate”) to Buyer showing evidence of coverage. The insurer for all coverages shall have a minimum A.M. Best's rating of A. VII and be admitted in California. All Certificates must be received by Buyer with bids, and prior to any work, event, or activity being commenced. Failure to supply the required insurance coverage may cause removal of Seller from University, and withholding of payment. All Certificates shall be sent to: Director of Risk Management, University of San Diego, 5998 Alcala Park, San Diego, CA 92110.

   a. Commercial General Liability. Seller shall supply a Certificate of Commercial General Liability coverage with a limit of at least $1,000,000 combined single limit per occurrence. The Certificate shall have an endorsement attached naming Buyer as an additional insured. The additional insured endorsement must be attached to the Certificate and have primary and non-contributory wording. Endorsements shall be on CG20 10 [11 85] forms or equivalent (CG 20 10 [7 04] plus CG 20 37 [10 01] when applicable. Endorsements which limit or exclude coverage will need to be attached to the Certificate.

   b. Worker’s Compensation and Employers Liability. Seller shall supply a Certificate of Workers’ Compensation and Employers Liability coverage with employers liability limits of at least $1,000,000 each item. A waiver of subrogation shall be attached in favor of Buyer.

   c. Automobile Liability. Seller shall supply a Certificate showing Commercial Automobile Liability coverage in an amount no less than $1,000,000 combined single limit per accident for all owned, non-owned and hired vehicles.

   d. Professional Liability. If the Seller is a licensed architect, engineer, designer or other "professional", they shall supply a Certificate showing errors and omissions coverage in an amount not less than $1,000,000 per occurrence.

   e. Umbrella or Excess Liability. If the Seller is a licensed architect, engineer, designer or other "professional", they shall supply a Certificate showing evidence of umbrella or excess liability coverage in an amount not less than $1,000,000 combined single limit per occurrence. Endorsements which limit or exclude coverage shall be attached to the Certificate.