

Exhibit C, Instructions for Use of University Terms and Conditions

**INSTRUCTIONS FOR USE OF UNIVERSITY TERMS AND CONDITIONS**

These Instructions for Use are intended to provide general guidance in the use of University Terms and Conditions as well as state and federal requirements and assume that the standard University purchase order form and appendices will be used. Contracts for which the standard purchase order form and/or appendices are not used should be written in accordance with the provisions stated in BUS 43, Part 3, VI. Purchase Contracts. The specific requirements for the use of the appendices, supplements, and additional flowdown clauses for federal contracts and grants can and do vary greatly and will require decisions and judgment on the proper applicability and implementation in each case. Your campus contract and grant officer should advise on any contracts or grants which have special requirements that do not fit these instructions.

I. USE OF APPENDICES FOR VARIOUS FUND SOURCES

A. For Fund Sources Other than Federal Contracts (Written Purchase Orders):

Materials, Supplies & Services: Appendix A  
Maintenance Appendix A  
S-2 - Special Terms and Conditions for Maintenance  
Lease of Personal Property: Appendix F

B. For Federal Government Contracts (All Orders Regardless of Dollar Value):

Materials, Supplies & Services: Appendix A  
S-5 - Special Terms and Conditions for  
Federal Government Contracts  
Maintenance Appendix A  
S-2 - Special Terms and Conditions for Maintenance  
S-5 - Special Terms and Conditions for  
Federal Government Contracts

II. SPECIAL AND DISCRETIONARY CLAUSES FOR VARIOUS FUND SOURCES

A. On Request for Quotation (if Request for Quotation Form 71440-103 is not used) for University Commodity Agreement, Price Schedule, value over \$10,000, the clauses regarding Certificate of Non-Segregated Facilities and List of Employment Openings are mandatory.

B. On both Requests for Quotations and on Purchase Orders for equipment use the following "OSHA" clause:

The Seller warrants and represents that the equipment, when delivered shall conform to all applicable standards and requirements of the California Occupational Safety and Health Act.

- C. On both Requests for Quotations and Purchase Orders for products where there are potential risks (such as pharmaceuticals and medical devices) include a statement that the provisions of Article 9C of Appendix A will apply to the order.
- D. Property Tax Exemption - See clauses for use in quotations and purchase orders as specified in Business and Finance Bulletin G-38, Tax Exemption and Refund Claims Filing for Property Leased by the University, dated 10/1/82.
- E. On both Requests for Quotations and on Purchase Orders for \$10,000 or more which are issued on State of California funding, use the following audit clause:

This order shall be subject to the examination and audit of the Auditor General of the State of California for a period of three years after final payment under this order. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

- F. For Services involving the provision of patient care where the University may request reimbursement under the Medicare System, the following clause for orders expected to exceed \$10,000 per year:

Until the expiration of four years after the furnishing of the services of this contract, the Seller shall make available, upon written request of the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, documents and records that are necessary and determined to be relevant to certify the nature and extent of the costs. If the Seller carries out any of the duties of this contract through a subcontract with a related organization, where the value or cost of subcontracts is \$10,000 or more in a year, such subcontract shall contain a clause to this effect.

- G. The following clauses are to be used at the discretion of the Materiel Manager when there is a requirement for: (1) an audit clause on cost type contracts (rather than fixed price contracts) for other than federally funded works to be performed under Purchase Orders or contracts; and/or (2) an approved clause providing that the University should be notified at the time the accumulated expenditures on a contract reach a predetermined amount specified by the University:

Accounts, Records and Audits:

Contractor, and any subcontractors performing work hereunder, shall maintain accounts, records, documents and other evidence ("Records") detailing all elements of their proposal costs and supporting all charges made by them under this contract. These records shall be retained by contractor and subcontractor for a period of three (3) years from the date of the expiration of this contract. The system of accounts employed by the contractor and the subcontractors hereunder shall be satisfactory to the University, shall be in accordance with generally accepted accounting principles consistently applied, and shall be subject to inspection and audit by University and any of its duly authorized representatives at all reasonable times and places.

If needed add:

Contractor agrees to include the above clauses in all subcontracts whose individual cost exceeds \$10,000 and which are issued under this contract.

If needed add:

It shall be a requirement of this contract that contractor will promptly notify University in writing in advance when the accumulated cost of this contract is expected to reach a level of (Specify dollars or percentage) of the agreed upon total cost of this contract.

- H. When it is determined that insurance coverage is required for a particular transaction, the applicable portions of the Insurance clause should be completed by the buyer after consideration of the following:

The standard University Terms and Conditions provide for the following types of insurance coverage:

Comprehensive or Commercial Form General Liability Insurance - This coverage protects the Seller against third-party liability for claims for bodily injury or property damage. Products/Completed Operations, ordinarily a part of a general liability policy, protects the Seller against liability arising out of the Seller's products or business operations conducted away from the Seller's premises once those operations have been completed or abandoned.

Business Automobile Liability Insurance - This coverage protects the Seller against liability for claims for bodily injury or property damage resulting from operation of a vehicle. (Required only if the Seller and/or the Seller's employees drive on University premises in the course of providing goods or services to the University.)

Professional Medical and Hospital Liability Insurance -

Workers' Compensation - This coverage provides benefits to a Seller's employees who are injured or become ill while in the course and scope of their employment. Purchase orders for service generally include the above coverages.

Purchase Orders for goods only should require product liability coverage from sellers who are furnishing products which could cause substantial bodily injury or property damage if they malfunction or spoil. Examples of such products include, but are not limited to, ammunition and explosives; meat, fish, and poultry; pharmaceuticals, biologicals, and medical devices.

Business and Finance Bulletin BUS 63, "Insurance Requirements/Certificates of Insurance," outlines recommended minimum insurance requirements for different types of activities. Exceptions to the insurance limit requirements may be developed by Campus Risk Managers in conjunction with Materiel Management personnel following risk identification and evaluation. If, after consultation with the Campus Risk Manager, it is determined that little or no risk is involved, the recommended insurance limit requirements of BUS 63 may be lowered or eliminated. If it is determined that additional risk is involved, the recommended insurance limits may be raised.

- I. On both Requests for Quotations and Purchase Orders for Maintenance for \$25,000 or more, include the following statement:

Prior to starting work, Seller shall furnish a Payment Bond to University in the amount of the order sum. The bond shall be effective as of the date of the order, in the form attached hereto, furnished by the University, and issued by a surety approved by University. Surety companies used by Seller shall be, on the date the order is issued by University, listed in the latest published State of California Department of Insurance list of "Insurers Admitted to Transact Surety Insurance in this State."

- J. On all Requests for Quotations, Purchase Orders, Purchase Contracts, and Subagreements for equipment, materials, or supplies (if Appendix A is not used), include the following statement:

Forced, Convict, and Indentured Labor

- A. By signing or accepting this (purchase order) (contract) (quotation) (proposal) the (seller) (contractor) (recipient) hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to the (purchase order) (contract) (quotation) (proposal) will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.

- B. Any (seller) (contractor) (recipient) contracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University 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 the University.
  2. The (seller) (contractor) (recipient) may be removed from consideration for University contracts for a period not to exceed 360 days.

### III. ADDITIONAL REQUIREMENTS FOR FEDERAL FUNDS

The following requirements should be used for transactions involving federal funds including University Commodity Agreement and Price Schedules. Transactions under federal grants are issued subject to the requirements of OMB Circular A110, Attachment O. Transactions under federal contracts are issued subject to the requirements of the Federal Acquisition Regulations (FAR). The majority of these requirements are included in the above appendices. However, the following requirements must be included in addition to those in the appendices.

#### Federal Contracts and Grants

- A. On Request for Quotation (if Request for Quotation Form 71440-103 is not used) for Purchase Order for government contract or grant, value over \$10,000, the clauses regarding Certificate of Non-Segregated Facilities and List of Employment Openings are mandatory.
- B. On Requests for Quotation for all federal contracts, grants, loans, and cooperative agreements (if the order value will exceed \$100,000) include the "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" as shown at FAR 52.203-11 and attached as Exhibit B.

#### Federal Grants

- C. On Request for Quotation (if the order value will exceed \$100,000 or the participant will have critical influence on or substantive control over the transaction) include the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions" as

stated in Appendix B of the OMB governmentwide common rule regarding nonprocurement debarment and suspension published in the Federal Register on May 26, 1988 (53 FR 19211). The text of this certification is attached as Exhibit A.

- D. Negotiated orders over \$10,000 require inclusion of the following clause:

The University, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, or records of the Seller which are directly pertinent to this order for the purpose of making audits, examinations, excerpts and transcriptions.

- E. Research, Development, Test and/or Evaluation orders (RDT&E) require the following patent clause:

The clause contained in the Department of Commerce Regulations at 37 CFR Part 401.14 - Patent Rights - Small Businesses and Nonprofit Organizations is incorporated herein by reference. For purposes of this order in the above clause, the term "contract" shall mean "this order"; the term "Contractor" shall mean "Seller"; and the terms "Government" and "Contracting Officer" shall mean "University".

#### Federal Contracts

- F. Awards under federal contracts which exceed \$25,000 must comply with the provisions of FAR 52.209-6, Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, which states that the University shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the University, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government. The text of such disclosure is attached as Exhibit C. The University shall notify the federal Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment. The notice must include the following:

1. The name of the subcontractor
2. The University's knowledge of the reasons for the subcontractor being on the List of Parties Excluded From Procurement Programs.

3. The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.
4. The systems and procedures the University has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.