



STANDARD TERMS AND CONDITIONS
January 2013

By submitting a bid, proposal or quote or accepting a contract or purchase order, the vendor (this term includes contractors under service agreements) agrees to and is to be bound by the following Standard Terms and Conditions, which are incorporated into and made a part of any award of contract or purchase order. These Standard Terms and Conditions will apply to all attachments and shall supersede any offer or submission of Terms and Conditions or attachments by the vendor, unless deviations are specifically agreed to in writing by Northeastern State University (NSU).

GENERAL PROVISIONS:

Funding

1. **Appropriation of Funding:** Any agreement or contract awarded by NSU is subject to cancellation without penalty, either in whole or in part, if sufficient funds are not appropriated by the State of Oklahoma Legislature, or otherwise not made available to the University.
2. **Purchase Orders:** Per Oklahoma State Statute, funds must be encumbered prior to acquisitions being made. No products shall be acquired nor shall any services be rendered unless a valid purchase order has been issued on part of the NSU Purchasing Department and the NSU Purchasing Agent. Vendors supplying products or providing services to NSU without a legal purchase order issued by the NSU Purchasing Department will not be paid by the University.

Procedural & Administrative

1. **Authorized Signatures:** NSU is not responsible for purchase, lease, or contractual obligations unless approved in writing by a university employee with appropriate contracting authority. Those employees are limited to the following individuals:

Dr. Steve Turner – University President

2. **Acceptance/Rejection:** NSU reserves the right to accept or reject any or all bids, quotes or offers, wholly or in part, without penalty and make awards or issue purchase orders in the best interest of the Regional University System of Oklahoma (RUSO) and Northeastern State University.
3. **Policy and Procedures:** All bids, proposals, and quotes submitted are subject to the expenditure policies of RUSO and NSU. These policies can be located at:

<http://www.ruso.edu/PoliciesAndProcedures.htm>
Link needed

4. **Changes:** No oral statement or any person shall modify the terms and conditions, delivery, price, quality, quantities or specifications stated in any quote, bid, proposal or resultant contract or purchase order. Any interpretation of modifications to the quote, bid, proposal, contract or purchase order shall be in writing and approved by the NSU Purchasing Agent or designee. If a substantial change results, NSU at its option, may solicit new quotes, bids or proposals or the new terms may be agreed to by the parties' representatives having contracting authority.
5. **Prior Course of Dealing:** The parties hereby agree that no trade usage, prior course of dealing or course of performance in general or under other contracts between the parties shall be a part of the contract or shall be used in the interpretation or construction of the contract.
6. **Vendor Restriction Prohibiting Hiring University Employees:** For the duration of projects, the vendor shall agree that neither the vendor nor any subcontractors shall solicit for employment or employ any University staff member.
7. **Payment:** Payment terms shall be governed by the negotiation agreement or NSU purchase order. Products received or services rendered shall be subject to NSU's right of inspection and rejection. Payment made by the University shall not constitute acceptance of such product or service. Refunds, costs, charges or other amounts due the University from the vendor may be offset by NSU against payment due. A valid NSU purchase order number must be reflected on all invoices of shipments to receive payment. Vendor invoices should be billed within 30 days of the delivery of goods or completion of services. Payments made by the University shall be applied to the appropriate purchase order and invoice, on the part of the vendor and the vendor's accounting system. Vendors are responsible for keeping current on payment/invoice issues to insure appropriate receipt of NSU payments. For purposes of determining whether a cash discount, if applicable, may be taken by the University, the starting date of such reckoning period shall be the later of the date of a properly executed invoice or the date of completion of service and/or delivery of product. The University has fiscal year funding and budget. Any disputes or payment issues must be addressed within the current fiscal year or within 45 days of each fiscal year close at June 30.
8. **Travel Expense:** In accordance to Oklahoma Statute, Title 74, Section 85.40, all travel expenses to be incurred by the vendor which are part of a service contract shall be included in the total purchase order amount and shall be shown as a separate line item in the vendor's quote.
9. **Audits and Records.** As used in this clause, 'records' include books, documents, accounting procedures, practices and other data regardless of type and regardless of whether such items are in written form, computer data or any other form. In accepting any contract with NSU, the vendor agrees that the University or pertinent State or Federal Agency will have the right to examine and audit all records relevant to execution of this Agreement. The vendor is required to retain all records relative to this contract for the duration of the contract term and for a period of no less than five (5) years following completion and/or termination of the contract. If an audit, litigation or other action(s) involving such records is started before the end of the five-year period, the records are required to be maintained for three (3) years from the date all issues arising out of the action are resolved or until the end of the five (5) years retention period, whichever is later.
10. **Advertising.** Successful vendors shall not advertise or publish information regarding a contract award or purchase order without prior written consent on part of the University. The University shall not unreasonably withhold permission.

11. **Smoking Policy.** All facilities of Northeastern State University are smoke free. Vendors shall comply with this policy.
12. **Packaging.** Vendors will package products in accordance to acceptable commercial practice. Each shipping container shall be clearly and permanently marked as follows:

- Vendor name and address
- Consignee's name and address
- NSU Purchase Order Number
- Container number and total number of containers, e.g. Box 1 of 4
- The container bearing the packing slip

Vendors shall bear the cost of packaging unless otherwise noted in the purchase order contract.

13. **Title and Risk of Loss.** The title and risk of loss of the goods shall not pass to the University until (a) the University actually receives the goods at the point or points of delivery, or (b) the project is accepted or the delivery for NSU's use is deemed complete by NSU.
14. **Assignment.** No part of this Agreement may be directly or indirectly, in whole or in part, sold, transferred, assigned, conveyed, pledged, encumbered or otherwise disposed of without obtaining the prior written approval of NSU by an officer with contracting authority.
15. **Price Adjustment:** Price changes are considered at the end of the agreement period and prior to the beginning of a new period. Price change requests shall be in writing, submitted at least sixty (60) days prior to the end of the current agreement period, and shall be supported by written evidence of increased costs to the successful vendor. Price change requests shall also be a factor in the agreement extension review process. NSU, at its sole opinion, shall determine whether the requested price increase or an alternate option is in the best interest of the University.
16. **Authority:** Subject to the power and authority of the Regional University System of Oklahoma (RUSO) and Northeastern State University as provided by law in any contract, NSU in all cases, shall be the sole determiner of the quantity, quality and acceptability of the work, materials, and supplies for which payment is to be made under any contract. All items and services purchased by NSU must conform and be suitable for their intended purpose, which shall be judged by performance, or lack thereof, as determined by NSU alone.
17. **Relationship of Parties:** Nothing in the contract shall be construed to make either party the legal representative or agent of the other party, nor shall either party have the right or authority to assume, create, or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of the other party. The relationship created by the contract or purchase order shall be that of independent contractor, not employer/employee, joint venture, agent or business partners.
18. **Under Reservation Prohibited:** Vendor is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.
19. **Delivery Date:** In the event a delivery date is specified on the purchase order or contract, the vendor will be expected to meet this date. Failure to meet the required delivery date during the performance of the purchase order or contract shall be considered an act of default and could be cause for termination at NSU's option.

20. **Bid Compliance:** Vendor shall deliver products/service as contracted. No deviations shall be made. Vendor warrants that all products delivered shall be new, unless otherwise specified on part of NSU, free from defects in material and workmanship, and shall be fit for the intended purpose. All products found defective shall be replaced by the vendor upon notification by NSU. All costs of replacement, including shipping charges, are to be borne by the vendor.
21. **Pre-payment:** As a state agency, the University is prohibited by statute from paying for products or services in advance. Payment provisions shall be in arrears with late payment or interest calculated as provided by Oklahoma law.
22. **Right of Offset:** NSU shall be entitled to offset against any sums due the vendor, any expenses or costs incurred by the University, or damages assessed by the University concerning the vendor's non-conforming performance or failure to perform, or any other debt owing the University. This includes all expenses, costs, and damages as determined by NSU.
23. **Governing Law/Venue:** Purchase orders and contracts shall be governed by the laws of the State of Oklahoma; without giving force and effect to any choice of law provisions otherwise stated in any document, all legal actions will be in Cherokee County District Court or the United States District Court for the Eastern District of Oklahoma based on which may be appropriate for a particular cause and to which jurisdiction and venue the vendor expressly agrees to be bound.
24. **Laws and Regulations:** Vendors are solely responsible for keeping themselves fully informed of and faithfully observing all laws, ordinances and regulations affecting their rights and rights of their employees, including but not limited to the Oklahoma Workers Compensation Act and the Americans for Disabilities Act and shall protect and indemnify the University, the Regional University System of Oklahoma, and all of their officers and agents against any claims of liability arising from or based on any violation thereof.
25. **Compliance with Laws:** Vendor shall comply with any and all applicable federal, state and/or local laws, regulations, ordinances, rules and orders of the appropriate governmental authorities including, without limitation, those relating to payment of taxes, obtaining licenses, insurance, securing permits, OSHA, EPA, CWA, CAA, Homeland Security, Immigration and any other provisions that would be legally binding and applicable.
26. **Non-Discrimination:** The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity, Non-Discrimination and protection of Civil Rights as required by law, including, but not limited to, sexual harassment, age, gender, race, ethnicity, disability and religion and other forms of discrimination as they exist or may exist by statute in the future.
27. **Drug Free Workplace:** Vendors agree that in the performance of the purchase order or contract, neither the vendor nor any employee of the vendor or subcontractors of any vendor, shall engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity covered by the Purchase Order/Contract. NSU reserves the right to request a copy of the vendor's drug free work policy. The vendor further agrees to insert a provision similar to this statement in all subcontracts for services required.
28. **Sexual Harassment:** The policies of the University, along with sections of Federal and State Laws, prohibit sexual and verbal harassment of any University employees, students, faculty, or guests. Sexual harassment includes any unwelcome sexual advance, request for sexual favor or

other verbal or physical conduct of sexual nature that is so pervasive as to create a hostile or offensive work environment or offensive academic environment. Verbal harassment includes, but is not limited to, the use of profanity, loud or boisterous remarks, inappropriate speech, inappropriate suggestive conduct or body movements or comments that could be interpreted by the hearer as being derogatory in nature. This type of behavior and conduct is not tolerated or condoned on the campus of Northeastern State University. Vendors are required to exercise control over their employees, agents and subcontractors to prohibit acts of sexual and verbal harassment and agree as a term and condition that such vendor, contractors, agents, employees, or subcontractors may be immediately removed from the project site and from the University premises.

29. **No Waiver of Right by the University:** No waiver by NSU of any breach of the provisions of the purchase order or contract by the vendor shall in any way be construed to be a waiver of any future breach or bar the University's right to insist on strict performance of the provisions of the purchase order or contract, or any other remedy allowed by the laws of the State of Oklahoma.
30. **Force Majeure:** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitute thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty and other causes beyond the reasonable control of the party obligated to perform (except for financial ability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.
31. **Indemnification/Hold Harmless:** Successful vendors shall indemnify, defend and hold harmless the State of Oklahoma, the Regional University System of Oklahoma and Northeastern State University, its officers, agents and employees from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of: any act, omission, professional error, fault, mistake or negligence of vendor, its employees, agents, representatives, or subcontractors, their employees, agents, or representatives in connection with or incident to the performance of the purchase order or contract with NSU, or arising out of workers compensation claims, unemployment compensation claims of employees of the vendor and/or its subcontractors of claims under similar such laws and obligations. Vendors represent and warrant that in performing its obligations under any contract or agreement that it is not and will not infringe upon any property right, patent right, copyright, or other legal right of any person or entity; and, if any suit is brought or claim made by anyone alleging Vendor (or anyone acting at the direction of or in conjunction with Vendor) is infringing upon or violation any property right, patent right, copyright, or other legal right by performing the services or providing goods as contemplated by the contract or agreement, the Vendor will indemnify, defend, and hold harmless NSU against and from any and all loss, claim, damage, cost, attorneys fees, or other loss of any kind whatsoever.
32. **Insurance:** Vendors performing services on the NSU campus, prior to beginning any work under a purchase order or contract, shall acquire at their own expense and have in effect, minimum insurance coverage as set forth in the following table. The said minimum amounts are not intended to limit or reduce any vendor's liability. Such insurance shall be carried with financially responsible carriers licensed to do business in the State of Oklahoma, be subject to the University's approval, and remain in effect through the duration of the contract with NSU.

Copies of such insurance coverage shall be furnished to NSU with submittal of contracts, bids, quotes, or proposals.

Coverage Type	Minimum Amounts
Worker's Compensation (*)	Statutory – Oklahoma
Public Liability Insurance, Bodily Injury; each	\$200,000.00
Property Damage; each person	\$100,000.00
Per-occurrence for all claimants & coverage	\$1,000,000.00

(*) OR delivery of a fully executed original AFFIDAVIT OF EXEMPT STATUS UNDER THE WORKERS' COMPENSATION ACT

33. **Prices:** Vendor guarantees prices to be accurate when accepting the NSU purchase order. Firm prices shall be F.O.B. Destination, Northeastern State University, and shall include packaging, handling, shipping, and delivery charges, fully prepaid by the vendor unless otherwise stated on the PO or in the contract.
34. **Price Warranty:** Vendor warrants the prices, terms, products and services furnished herein are not less favorable than those currently extended to any other customer(s). If prices, terms, products, or services become more favorable to others, the vendor shall offer the same to NSU.
35. **Taxes:** Purchases made by NSU are not subject to sales tax or Federal Excise Tax. Tax exemption documentation shall be furnished upon request. Vendors agree to comply with, and to require all subcontractors to comply with, the provisions of applicable law of sales and use tax.
36. **Items to be Free and Clear:** Vendor warrants and represents that all goods offered to NSU are free and clear of liens, claims, and encumbrances of any kind. Damages caused by any such encumbrances shall be borne by the vendor and paid to NSU as a cash payment. NSU shall be the sole determiner of the value of such damages should they occur from failure to keep goods and services free of encumbrances.
37. **Warranties:** In addition to implied warranties and manufacturer warranties, vendor warrants the goods furnished will conform to the specifications, drawings, descriptions and to samples or sample furnished by the successful vendor, if applicable. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.
38. **Termination.** The University may terminate a Purchase Order or Contract for reason of vendor default, if conditions, including but not limited to, described in the following list come into being:
- If the vendor is adjudged bankrupt, if the vendor makes a general assignment for the benefit of the vendor's creditors, if a receiver is appointed on account of the vendor's insolvency, if the vendor does not pay 3rd party financial institutions and those parties contact NSU for payment, if the vendor is not responsible for timely invoicing and accurate invoicing which includes the appropriate purchase order number on the applicable invoice, if the vendor does not apply payments to the applicable purchase order number (payments applied to the oldest balance is an unacceptable practice).
 - If the vendor persistently or repeatedly refuses or fails to perform any of the provisions of the contract, or fails to make progress pursuant to the contract's terms or fails to meet delivery dates specified, except when extensions may be granted to carry on as required by the contract.
 - If the vendor persistently or repeatedly fails to make prompt payment to subcontractors.

- If the vendor persistently or repeatedly disregards laws, ordinances, NSU terms and conditions or instructions of any duly authorized representative of the University.
- If the vendor, in NSU's determination, refuses to take responsibility for problems incurred on behalf of the vendor's service or goods or if the vendor acts in any manner which negates NSU working with the vendor in good faith to resolve problems created by the vendor, NSU may, at its option, notify the vendor to terminate a contract or purchase order based on failure follow the good faith requirements as outlined by law. The vendor will be notified in writing regarding the immediate termination, and NSU shall seek all avenues of recourse available to re-establish service and goods and collect damages.
- The University may, without prejudice to any other right or remedy, deliver to the vendor a letter citing instances of noncompliance and shall terminate the contract or purchase order immediately or give the vendor a time period to respond in writing and show cause as to why the contract should not be terminated. If the noncompliance is not cured within the allotted time, the University may terminate the contract or purchase order.

In the event all or any part of a contract or purchase order is terminated, the University may take possession of any and all materials and finish the contract by whatever methods the University may deem expedient. In such case, the vendor shall not be entitled to any further payment until the contract is finished. The vendor shall be liable for any excess costs incurred by the University to perform the balance of the contract.

NSU shall provide written notice of any termination. Upon termination under this provision, all goods, materials, documents, data and reports prepared by the vendor under the purchase order contract shall become the property of and be delivered to the University on demand. In the case of the termination of a lease, NSU will provide an appropriate lead-time for the vendor to retrieve leased equipment. If the vendor does not act within the period offered, the equipment will become property of the University. Vendors shall continue to perform in accordance with the requirements to the date of the termination or as directed in the termination notice.

39. **Severability:** The provisions of the Terms and Conditions are severable such that if any provision is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
40. **Data Ownership:** In regards the purchase of any computer-based system or other computer software, all data and information entered by NSU remains the property of NSU. Vendor may not bar the access to the data and/or its removal at the end of the contract term.
41. **HB 1804, Compliance with the Oklahoma Taxpayer and Citizen Protection Act of 2007:** Pursuant to 25 O.S. 1313, effective 7/1/08, all individuals, contractors, subcontractors or vendors are prohibited by State Law from entering into a contract with a public employer for the performance of services within the State of Oklahoma unless registered and participating in the Status Verification System to verify information of all new employees. The Status Verification Service System is defined in 25 O.S. 1312 and includes, but is not limited to, the free Employment Verification Program (EEV).

By accepting a purchase order from NSU or executing a contract on part of the vendor with the University, the individual, contractor or vendor warrants and attests that they are registered and participating in the Status Verification System. Vendor declares its employees and all proposed subcontractors are in compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal and State laws and regulations related to the immigration status of employees.

These warranties shall remain in effect through the entire term, including all renewed periods if applicable, of the contract. The University reserves the right to request copies of documents certifying compliance with this requirement.

42. **Information Technology Acquisitions:** Any information technology purchase or services must be in compliance with the accessibility to information technology standard of Section 508 of the Workforce Act of 1998.