



## EDUCATION AND TRAINING RESOURCES - TERMS AND CONDITIONS

**Terms and Conditions (T&C's)** - Reference to these T&C's within the body of any Purchase Order incorporates all applicable clauses of these provisions into such order as if individually cited therein and set forth in full text, except to the extent expressly altered in the body of the order. Except as otherwise provided in these provisions or the body of the order, the provisions of the Uniform Commercial Code, as adopted by the State in which the Facility operates, shall apply to this order. Education and Training Resources will be referred to as ETR throughout these T&C's and the Buyer shall be known as any Job Corps Centers operated by ETR.

1. **Price.** This is a firm fixed price order, unless otherwise indicated in the body of the order. In the absence of indication of price by Buyer, Seller must not fill this order at a price higher than last quoted or charged to Buyer, without Buyer's written consent.

2. **Terms of Payment.** Payment terms are net 30 days, unless otherwise agreed upon in writing, upon satisfactory receipt of goods or provision of services and receipt of an accurate invoice. Proof of receipt of goods is required prior to payment. All invoices are to be submitted directly to Accounts Payable at the address on the front of the PO.

2.a. **Proper Invoice.** Vendors are required to submit a "proper invoice" for payment. All invoices will contain the following criteria to meet "proper invoice" requirements: Vendor Name, Vendor Address, and Vendor Contact Information, Invoice Date, Invoice Number, PO Number, Description, Quantity, Unit of Measure, Unit Price, Extended Price, shipping and payment terms, payment remitting address. If invoice does not comply with these requirements, the Finance Department will return within seven days of receipt (three for meat or meat food products, or fish; five for contract perishable) with reasons why it is not a proper invoice. If such notice is not timely, then the designated billing office must adjust the due date for the purpose determining an interest penalty.

3. **Attachments.** Documents designated by Buyer including supplemental T&C's, if any, are incorporated by reference the same as if set out in full herein.

4. **Purchase Order Number.** A PO Number is required to do business with ETR and the Center operated by ETR and must be on all documents, including invoices, receipts, and statements.

5. **Allowable Purchasing Personnel.** The Job Corps Center and/or ETR will only pay for and are responsible for purchases made by staff on the "Authorized Purchasing Personnel List".

6. **Changes. Bilateral Changes:** With the concurrence of the Seller, Buyer may at any time change by written notification any of the following: (a) quantity; (b) time of delivery; and (c) any other matters affecting this order. Unilateral Changes: The Buyer reserves the right at any time and without Seller's concurrence to change by written notification any of the following (a) specifications, drawings and data incorporated in this contract where the items to be furnished are to be specially manufactured for the Buyer; (b) methods of shipment or packaging, and (c) place of delivery.

7. If any change by Buyer under this provision causes an **increase or decrease in the cost** of or the delivery schedule for this order, Buyer shall make in writing an equitable adjustment in the order price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be asserted in writing within thirty(30) days from Seller's receipt of notice of such change.

8. **Cancellation or Breach of Contract.** Buyer may cancel this order for its convenience, in whole or in part, at any time on written or telegraphic notice to seller. Upon receipt of such cancellation, Seller shall promptly comply with the directions contained in such notice and shall, as required, (a) take action necessary to cancel the work as provided in the notice, minimizing costs and

Liabilities for the cancelled work, (b) protect, preserve, and deliver in accordance with Buyer's instructions any property related to the order in Seller's possession and (c) continue the performance of any part of the work not canceled by buyer.

9. Buyer may also, by written or telegraphic **notice to Seller, cancel the whole or any part of this order for cause:** (a) if Seller fails to deliver items and material to perform the services required on schedule or (b) if, at any time, reasonable grounds for insecurity arise as to Seller's expected performance (including timely performance) within ten (10) days after Buyer's written demand for adequate assurance.

10. If Buyer cancels all or part of this order, Buyer may procure, upon terms and in a commercially reasonable manner, goods and services similar to those canceled, and **Seller shall be liable for additional costs**, if any, for the purchase of such similar goods and services to cover such breach.

11. **Buyer's rights and remedies** shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

12. **Assignment.** This order and any right or obligation hereunder may be assigned by either party to a successor of its entire business or to a successor of that portion of its business to which this order relates. This order and any right or obligation hereunder may not otherwise be assigned by either party without the prior written consent of the other party. This provision shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

13. **Delivery.** Delivery must occur in the time agreed upon by buyer and the seller, unless otherwise agreed upon in writing for any delivery delay.

14. Regardless of delivery or performance in installments, **Seller's obligation is not severable.** Buyer will not accept shipments sent C.O.D. without its consent and will return them at Seller's risk.

15. **Excusable Delay.** Fires, floods, strikes, lockouts, epidemics, accidents, shortages or other causes beyond the reasonable control of the parties, which prevent Seller from delivering, or Buyer from receiving any of the goods and services covered by this order shall suspend deliveries until the cause is removed, subject, however, to Buyer's right of cancellation under.

16. **Federal Supply Schedule Orders.** If this order is placed under the Federal Supply Schedule, then: (a) this order is placed under written authorization of the Federal Government Agency; and (b) in the event of any inconsistency between the T&C's of this order and those of the Seller's Federal Supply Schedule (FSS) contract, if applicable, the latter shall govern.

17. **Applicable Laws.** Seller warrants and agrees that it has complied and will comply with all applicable Federal, State and local laws, codes, and regulations, including, without limitation, the following: Fair Labor Standards Act of 1938, as amended and Federal Acquisition Regulations (FAR).

18. **Patents.** The Seller agrees to indemnify and hold harmless the Buyer against all claims and liability for infringement of any United States patent arising out of the manufacture or delivery of supplies under this order, provided that Buyer notifies the Seller of any alleged patent infringement and upon request, tenders Seller the defense of the Claimant's suit.

19. Except for infringement resulting from adherence to Buyer furnished drawings, **if the goods or any component part provided hereunder are held to infringe and their use is enjoined**, then Seller shall, at its option and its own expense, (1) procure for Buyer and its successors and assigns, the right to continue using the goods, (2) replace them with a substantially equivalent non-infringing product, or (3) modify them so they become non-infringing with substantially equivalent performance. Absent (1), (2), (3), Buyer reserves its rights at law and equity and contract.

20. **Packaging, Packing Lists and Bill of Lading.** Seller shall be responsible for

P.O Box 51865, Bowling Green, KY 42103

270-793-0607

270-793-9464



proper packaging, loading and tie-down to prevent damage during transportation. Seller must bill all returnable containers on a separate memo invoice, return transportation charges will be collected and for Seller's account. Buyer's weight and count will be accepted as final and conclusive on all shipments not accompanied by such packing list. Purchase Order numbers must accompany all documents.

21. **Inspection and Acceptance.** All goods furnished hereunder will be subject to Buyer's final inspection and approval within a reasonable time after delivery irrespective of payment date. Buyer may reject goods not in accordance with the instructions, specifications, drawings, data or Seller's warranty (expressed or implied). Buyer may return rejected goods to Seller at Seller's expense and buyer shall have no further obligation for such goods. Payment for any article shall not be deemed acceptance and in no event shall Buyer incur any liability for payment for rejected goods. "Disputes" provision of this order apply to all goods and services delivered.

22. **Buyer shall have a reasonable time** (not less than ten (10) days from receipt) **to submit claims** of count, weight, quantity, loss or damage to delivered goods. Buyer will calculate damages on claims and deduct the amount from Seller's invoice. If invoice was previously paid, Seller will reimburse the amount of damages to Buyer.

23. **Seller shall assume responsibility** for and will pay any and all loss, cost, damage, or expense, including attorney fees, and cost of replacement incurred by Buyer attributed to Buyer's rejection of goods due to non-conformance to specifications or untimely delivery.

24. **Indemnity.** Seller shall indemnify, defend and hold harmless the Buyer, its officers, agents and employees against all claims, loss, damage, expense and liability asserted or incurred by other parties.

25. **Warranties.** By accepting this order, Seller warrants that the goods and services furnished will be free from defects in materials and workmanship, merchantable and in full conformity with Buyer's specifications, drawings and data, and Seller's descriptions, promises or samples, and that such goods will be fit for the Buyer's intended use, provided Seller has reason to know of such use, and that Seller will convey good title to the goods, free and clear from all liens, claims and encumbrances. This warranty shall remain in effect for the period of one year from the date the goods are first put into use. Goods found to be defective within the warranty period shall be corrected or replaced by Seller with no change in order amount. This warranty shall survive and is in addition to any warranties of additional scope given to Buyer by Seller.

26. **Seller, without cost to Buyer shall promptly do all things necessary to correct any breach of the above warranties.**

27. **Title and Risk of Loss.** Risk of loss of all goods shall remain in Seller until receipt of the goods at Buyer's location.

28. **Title shall pass to Buyer upon Buyer's acceptance of goods at Buyer's location.** If Buyer makes progress payments, title to the goods shall be transferred to Buyer as payments are made, and in the same proportion as the cumulative payments bear to the order price.

29. **Nondisclosure.** If Buyer discloses or grants Seller access to any research, development, technical, economic or other business information or know-how of a confidential nature whether reduced to writing or not, Seller will not use or disclose any such information to any other person at any time, except as may be necessary in the performance of this order, without Buyer's written consent.

30. **Resolution of Conflicts or Inconsistencies Occurring in the Order.** It is Seller's responsibility to comply with these and all referenced documents and to clarify with Buyer any inconsistencies or conflicts in any parts of this order of which Seller is or may become aware, including but not limited to these provisions,

additional T&C's, and general or detailed specifications.

31. **Acknowledgment of Order.** Acknowledgment of this order, shipment of any goods or rendering of any services pursuant to this order shall be deemed an acceptance of these T&C's. Order confirmations should include shipping costs and any associated handling fees.

32. **Waiver.** Failure of either party to insist on strict performance of the T&C's of this order at any time shall not be construed as a waiver by such party for performance in the future.

33. **Freight Bill.** If freight is prepaid but chargeable to Buyer under the terms of this order, Seller shall submit a copy of the freight bill with the invoice.

34. **Most Favored Customer Price.** Seller represents and warrants that its prices for the goods covered by this order are no higher than the prices charged by Seller for sales to other customers of goods of the same kind, in the same quantities, and under similar T&C's.

35. **Sales Tax.** All purchases made on behalf of the Department of Labor for the Job Corps Center are exempt from sales tax.

36. **Required Documents from Vendors.** W-9's are required for all vendors and must be renewed each year. A current Certificate of Liability is required for all vendors who come or deliver on site at centers.

37. **Cumulative Remedies.** The remedies provided in this Exhibit shall be cumulative to all other rights or remedies now or hereafter given to Buyer by law and Buyer may enforce one or more of such remedies successively or concurrently.

38. **Disputes.** Any dispute arising out of this order shall be settled by final and binding arbitration. Unless otherwise agreed, and confirmed by written agreement of the parties, the arbitration proceeding shall be held in the City and State of Facility operation and shall be conducted in accordance with the rules of the American Arbitration Association. The arbitrators will be appointed in accordance with these rules. The arbitrators have authority to award attorney's fees and legal expenses to the prevailing party in such dispute. The arbitration decision shall be final and shall not be subject to judicial recourse for appeal, unless there has been an error of law. Pending arbitration of a dispute arising under this agreement, the Seller shall proceed diligently with the performance of the subcontract, including any changes issued pursuant to its terms.

P.O Box 51865, Bowling Green, KY 42103

270-793-0607

270-793-9464

**PART II. CONTRACT CLAUSES****SECTION I. CONTRACT CLAUSES AND PROVISIONS****I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer shall make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/far/>

52.202-1 Definitions. (NOV 2013),  
52.203-3 Gratuities. (APR 1984),  
52.203-5 Covenant Against Contingent Fees. (MAY 2014),  
52.203-6 Restrictions on Subcontractor Sales to the Government. (SEP 2006),  
52.203-7 Anti-Kickback Procedures. (MAY 2014),  
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (MAY 2014),  
52.203-10 Price or Fee Adjustment for Illegal or Improper Activity. (MAY 2014),  
52.203-12 Limitation on Payments to Influence Certain Federal Transactions. (OCT 2010),  
52.203-13 Contractor Code of Business Ethics and Conduct. (APR 2010),  
52.203-14 Display of Hotline Poster(s). (DEC 2007),  
52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper. (MAY 2011),  
52.204-7 System for Award Management. (JUL 2013),  
52.204-9 Personal Identity Verification of Contractor Personnel. (JAN 2011),  
52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards. (JUL 2013),  
52.207-3 Right of First Refusal of Employment. (MAY 2006),  
52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment. (AUG 2013),  
52.209-10 Prohibition on Contracting with Inverted Domestic Corporations. (MAY 2012),  
52.215-2 Audit and Records - Negotiation. (OCT 2010),  
52.215-8 Order of Precedence - Uniform Contract Format. (OCT 1997),  
52.215-14 Integrity of Unit Prices. (OCT 2010),  
52.215-17 Waiver of Facilities Capital Cost of Money. (OCT 1997),  
52.215-19 Notification of Ownership Changes. (OCT 1997),  
52.215-22 Limitations on Pass-Through Charges--Identification of Subcontract Effort. (OCT 2009),  
52.215-23 Limitations on Pass-Through Charges. (OCT 2009),  
52.216-7 Allowable Cost and Payment. (JUN 2013),  
52.219-8 Utilization of Small Business Concerns. (OCT 2014),  
52.219-9 Small business subcontracting plan. (OCT 2014),  
52.219-14 Limitations on Subcontracting. (NOV 2011),  
52.219-16 Liquidated Damages - Subcontracting Plan. (JAN 1999),  
52.219-28 Post-Award Small Business Program Rerepresentation. (JUL 2013),  
52.222-4 Contract Work Hours and Safety Standards - Overtime Compensation. (MAY 2014),  
52.222-6 Construction Wage Rate Requirements. (MAY 2014),  
52.222-10 Compliance with Copeland Act Requirements. (FEB 1988),  
52.222-11 Subcontracts (Labor Standards). (MAY 2014),  
52.222-13 Compliance With Construction Wage Rate Requirements and Related Regulations. (MAY 2014),  
52.222-21 Prohibition of Segregated Facilities. (FEB 1999),

52.222-26 Equal Opportunity. (MAR 2007),  
52.222-35 Equal Opportunity for Veterans. (JUL 2014),  
52.222-36 Equal Opportunity for Workers with Disabilities. (JUL 2014),  
52.222-37 Employment Reports on Veterans. (JUL 2014),  
52.222-40 Notification of Employee Rights Under the National Labor Relations Act. (DEC 2010),  
52.222-41 Service Contract Labor Standards. (MAY 2014),  
52.222-50 Combating Trafficking in Persons. (FEB 2009),  
52.222-51 Exemption From Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements. (MAY 2014),  
52.222-53 Exemption From Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements. (MAY 2014),  
52.222-54 Employment Eligibility Verification. (AUG 2013),  
52.222-55 Minimum Wages Under Executive Order 13658. (Dec 2015),  
52.223-1 Biobased Product Certification. (MAY 2012),  
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts. (SEP 2013),  
52.223-3 Hazardous Material Identification and Material Safety Data. (JAN 1997),  
52.223-4 Recovered Material Certification. (MAY 2008),  
52.223-5 Pollution Prevention and Right-to-Know Information. (MAY 2011),  
52.223-6 Drug-Free Workplace. (MAY 2001),  
52.223-10 Waste Reduction Program. (MAY 2011),  
52.223-12 Refrigeration Equipment and Air Conditioners. (MAY 1995),  
52.223-15 Energy Efficiency in Energy-Consuming Products. (DEC 2007),  
52.223-16 Acquisition of EPEAT(R)-Registered Personal Computer Products. (JUN 2014),  
52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts. (MAY 2008),  
52.224-1 Privacy Act Notification. (APR 1984),  
52.224-2 Privacy Act. (APR 1984),  
52.225-1 Buy American - Supplies. (MAY 2014),  
52.225-13 Restrictions on Certain Foreign Purchases. (JUN 2008),  
52.227-1 Authorization and Consent. (DEC 2007),  
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement. (DEC 2007),  
52.227-14 Rights in Data-General. (MAY 2014),  
52.228-7 Insurance - Liability to Third Persons. (MAR 1996),  
52.228-8 Liability and Insurance - Leased Motor Vehicles. (MAY 1999),  
52.230-2 Cost Accounting Standards. (MAY 2014),  
52.230-3 Disclosure and Consistency of Cost Accounting Practices. (MAY 2014),  
52.230-6 Administration of Cost Accounting Standards. (JUN 2010),  
52.232-9 Limitation on Withholding of Payments. (APR 1984),  
52.232-17 Interest. (MAY 2014),  
52.232-18 Availability of Funds. (APR 1984),  
52.232-22 Limitation of Funds. (APR 1984),  
52.232-23 Assignment of Claims. (MAY 2014),  
52.232-25 Prompt payment. (JUL 2013), 52.232-33 Payment by Electronic Funds Transfer - System for Award Management. (JUL 2013),  
52.233-1 Disputes. (MAY 2014),  
52.233-3 Protest after Award. (AUG 1996),  
52.233-4 Applicable Law for Breach of Contract Claim. (OCT 2004),  
52.242-1 Notice of Intent to Disallow Costs. (APR 1984),  
52.242-2 Production Progress Reports. (APR 1991),  
52.242-3 Penalties for Unallowable Costs. (MAY 2014),

52.242-4 Certification of Final Indirect Costs. (JAN 1997),  
52.242-13 Bankruptcy. (JUL 1995),  
52.243-2 Changes - Cost-Reimbursement. (AUG 1987),  
52.244-2 Subcontracts. (OCT 2010), 52.244-5 Competition in Subcontracting. (DEC 1996),  
52.244-6 Subcontracts for Commercial Items. (OCT 2014), 52.245-1 Government Property. (APR 2012),  
52.245-9 Use and Charges (APR 2012),  
52.246-25 Limitation of Liability - Services. (FEB 1997),  
52.249-6 Termination (Cost-Reimbursement). (MAY 2004), 52.249-14 Excusable Delays. (APR 1984),  
52.251-1 Government Supply Sources. (APR 2012), 52.251-2 Interagency Fleet Management System  
Vehicles and Related Services. (JAN 1991),  
52.253-1 Computer Generated Forms. (JAN 1991)  
52.237-7 Indemnification and Medical Liability Insurance (Jan 1997)

## EDUCATION AND TRAINING RESOURCES – APPROVED PURCHASING PERSONNEL

---



### **Oneonta Job Corps Academy**

21 Homer Folks Avenue, Oneonta, NY 13820  
607-433-1215, 607-431-1511 (fax)

Chris Kuhn, Academy Director  
Patricia Bowker, Administrative Services Director  
Scott Thompson, Procurement Agent Specialist  
Paul Lee, Procurement Assistant

### **Education and Training Resources - Corporate Facility**

2422 Airway Drive, Bowling Green, KY 42103  
270-793-0607, 270-793-9464

Rett Dallas, Executive VP / CFO\*  
Patty Bartlum, ETR Corp Procurement Support

\*Authorized to make company-wide purchases.

P.O Box 51865, Bowling Green, KY 42103  
270-793-0607, 270-793-9464 (fax)

