

2.11 Leases, Long-Term Rentals, & Conditional Sales Agreements

Any agreement for a short or long-term lease, rental, or lease-purchase of equipment must be covered by a procurement document, a purchase order. All vendor lease/rental and conditional sales agreements must be in accord with the General Conditions of Purchase of the State, a copy of which may be obtained from the Secretary of State. The Purchasing Department and the University Legal Counsel are available to aid in agreements, leases, and lease-purchases of a variety of products and services. Too often these offices are involved after "final" decisions have essentially been made regarding vendors and/or equipment. The decisions are usually made only on the basis of sales presentations, observations of equipment and/or software under optimum conditions and whatever research the responsible person has done.

Factors such as financing, terms, warranties and other legal "strings" are not always given proper consideration. Essentially, the deal is struck and the "paperwork" is done.

Legal and financial terms are not the same for all companies and terms can be negotiated if they are presented early in the sales process. It is important that sales representatives know that we expect to negotiate these terms and that the sale is contingent upon them being satisfactorily arranged.

It is required that the Requisitioner coordinate with the University Purchasing Department and the Legal Counsel before and during the selection process.

Lease Versus Purchase Guide

There are occasions when the buyer has to decide if he or she should lease or buy an item of major equipment. It may arise because of a number of considerations, such as availability of funds, length of time the equipment is to be used, or the necessity of having to obtain equipment for immediate use where the purchase of equipment would entail an extended delivery period. Also there are instances where equipment may be obtainable only on lease.

Following are some of the more important considerations of leasing versus purchasing equipment:

Lease

Purchase

1. It may be more economical to lease where the equipment is needed for a temporary period of a relatively short duration.
2. Where the suitability of the equipment for a particular purpose is uncertain, the expense of a purchase is saved in the event the equipment is not found acceptable.
3. When a new or improved design is imminent, leasing of an older type in the interim would avoid the purchase of a less efficient piece of equipment.
4. On an occasion when the purchase price exceeds the amount of appropriated or available funds, leasing permits an operation to start or to continue.

1. Since most leases are for definite terms or are terminable on some short period of notice, there is a danger that the leased equipment will be recaptured, resulting in depriving the lessee of a needed facility.
2. In a purchase either the equipment is sold at a delivered price or the transportation costs are paid but one way, from the manufacturer's plant to the purchaser. In a lease the lessee generally pays transportation expenses both ways, from the lessor's location to the lessee's and return. In addition, dismantling and loading costs may also be paid by lessee.

Terms of Lease Agreement. Most companies have their own forms of rental agreement. While there is considerable variation in them, the basic terms are essentially the same. There are a few special points to look out for in such agreements which are highly advantageous to the lessee. This is an area where review by our legal counsel is helpful. As stated on page 2-15, the agreements must be in accord with the General Conditions of Purchase of the State, and in the event of any conflict between the vendor's agreement terms, these general conditions shall govern. It is also important that vendors understand that purchase order contracts cannot be assigned or transferred to a third party without the previous consent of the State and the University.

Option to purchase. Whenever possible the lessee of rented equipment should obtain the right to purchase it outright. The sale price should be set forth in the agreement. Not infrequently the lessor will also agree to apply the rental paid under the lease toward the purchase price when the option to purchase is exercised by the lessee.

Maintenance provision. The rental agreement usually will provide that the equipment is to be returned to the lessor at the end of the rental period in the same condition as it was at the time it was rented, less reasonable wear and tear. Generally, ordinary repairs are the responsibility of the lessee; however some agreements, primarily long-term rentals, provide that the lessor keep the equipment in good working order, in which cases the rental price includes an amount to cover the cost of repairs. Where a latent defect arises which could not be observed at the time the rental started, the cost of repairing should be borne by the lessor and the agreement should so provide.

Maintenance Service Agreements. Many companies require service contracts or agreements to be in place during the entire term of the lease. These may add considerable costs to the transaction not contemplated by the department or fully disclosed by the company representative.

Check of Rates. Rental rates vary from one location to another. It is not too difficult to check rates by obtaining prices from competitors.