

PURCHASE ORDER TERMS AND CONDITIONS

1. **CONTRACT.** This Purchase Order includes these Purchase Order Terms and Conditions, the purchase order form (the "Form") and any exhibits thereto. The Contract Documents consist of this Purchase Order, and all of the following supplied by Purchaser; the General Conditions, Supplementary Conditions and the Specifications (where applicable), and all addenda issued before, and all Modifications issued after issuance of this Purchase Order. These form the Contract, and all are as fully a part of the Contract as if attached to this Purchase Order or fully set forth herein. Commencing performance of or accepting this Purchase Order shall indicate Supplier's intent to be bound by the terms and conditions of the Contract Documents (the "PO Terms"), shall constitute an acceptance by Supplier of each of the PO Terms, and shall form a contract under the laws of the Commonwealth of Pennsylvania. The Contract Documents shall constitute the entire agreement between the parties with respect to the subject matter of this Contract and may not be modified, added to or rescinded except by a subsequent written agreement signed by Purchaser. Notice of objection is hereby given that any different or conflicting or additional terms in Supplier's quotations, acknowledgments, invoices, or in any other communication from Supplier are hereby expressly rejected unless Purchaser expressly agrees to such terms in writing. Payment, acceptance of goods, or inaction by Purchaser shall not constitute Purchaser's consent to or acceptance of any such terms.

2. **PARTIES.** a. Purchaser or Owner (terms are interchangeable): Temple University - Of The Commonwealth System of Higher Education.
b. Supplier or Contractor (terms are interchangeable): As set forth on the Form.

3. **TERMS.** a. The term "goods" includes goods, material, chattels, equipment, machinery, manufactured articles, merchandise, fixtures, products, software, appliances, plant and any other items to be supplied pursuant to this Purchase Order. b. The term "warranty" includes warranties, guarantees, representations and promises.

4. **DELIVERY.** The goods shall be tendered by delivery to Purchaser at the time and place specified in the "Product Description" Section on the Form, or, if no time and place is specified in the Product Description Section, at such time and place specified in the "Delivery Information" Section of the Form. The times set forth for delivery are of the essence. Supplier is responsible for maintaining and providing proof of delivery. Packing lists must accompany each case or parcel, showing the PO/Reference number indicated on the Form and a complete description of contents. Supplier shall prepay all transportation charges. If transportation of the goods is undertaken by an entity other than Supplier, Supplier shall be responsible for and handle all claims against such entity for shortages, damages, theft and other such occurrences.

5. **IDENTIFICATION/RISK OF LOSS/TITLE.** Identification of the goods shall occur as soon as the Purchase Order is received by Supplier. Risk of loss of and clear title to the goods shall pass to Purchaser at the time that conforming goods are received and accepted by Purchaser.

6. **PURCHASE PRICE.** The Purchase Order Total Price (also referred to as the Contract Sum) and Unit Prices (collectively, "Prices") shall be as specified on the Form, subject to Section 9 hereof. Prices shall not include sales and use taxes for which an exemption is applicable. Purchaser shall have no responsibility for payment of over shipments, goods not delivered due to shortages, theft, etc., or otherwise non-conforming shipments. Purchaser shall have no responsibility for payment of non-conforming services, services not within the scope of the services specified on the Form, or services whose cost exceeds the Contract Sum. Purchaser's count shall be accepted as final and conclusive for all shipments. If Purchase Price is omitted from the Form and is not covered by a blanket order or agreement, this order is to be filled at the lower of (i) the price last quoted or charged or (ii) the lowest prevailing market price. All prices are FOB Purchaser's on-site receiving area unless otherwise specified. If shipment is indicated as FOB Supplier's plant, Supplier will arrange for shipping, prepay the freight charges and add them to the invoice. Collect shipments will be returned at Supplier's expense.

7. **PAYMENT.** a. Payment shall be processed generally as follows except that in the event of a conflict with the terms of the General Conditions, the terms of the General Conditions shall prevail. b. For contracts not requiring on-site work, payment shall be processed generally as follows subject to the General Conditions. One invoice shall be submitted for the Purchase Order. No invoices will be processed for payment until Purchaser has received goods, has inspected them and has determined that they are conforming. Invoices shall be considered as dated the later of the day the invoice is received or the day the goods are received and accepted by Purchaser. Payment for conforming goods and services shall be paid within thirty (30) days of the later of the date of Final Completion or the date of the invoice. With respect to invoices covering mechanical equipment and similar goods which cannot immediately be put into operation, Purchaser reserves the right to withhold from payment of such invoice retainage of 10% of the amount thereof pending approval of the operation of such equipment and/or goods. Purchaser shall pay for the goods by check. Payments on cash discount items will be rendered less any applicable cash discount.

8. **WARRANTIES.**

a. Supplier warrants to Purchaser that all items and services covered by this Purchase Order conform to the samples, drawings, specifications, plans, or other descriptions provided by Purchaser (collectively, "Specifications"). Suppliers are not authorized to substitute. All goods shall be merchantable; fit for Purchaser's intended purpose; of good material, workmanship and design, and free from defects. Supplier also guarantees that the goods are of sufficient size or capacity to perform as specified.
b. Supplier agrees that Purchaser and any representative designated by Purchaser, for itself and on behalf of Purchaser ("Purchaser's Representative"), shall have the benefit of all manufacturers warranties, express or implied, issued on or applicable to the goods, and Supplier authorizes Purchaser and/or Purchaser's Representative to obtain the customary services furnished in connection with such warranties and guaranties. Supplier hereby assigns such warranties to Purchaser.
c. This Purchase Order incorporates by reference any and all warranties (express, implied, oral or written) made by Supplier prior to or at the time this Purchase Order is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event of a conflict, the warranty providing the most protection to Purchaser shall prevail.
d. All warranties shall survive inspection, acceptance and payment.
e. Supplier agrees to repair or replace free of charge any goods or parts of goods which prove defective or which operate unsatisfactorily. This warranty does not apply to normal effects of corrosion or wear and tear. Such remedies shall be available to Purchaser in addition to all others afforded to it by this Contract or at law or equity.

9. **RIGHT OF INSPECTION.** Within a reasonable time after delivery of the goods in accordance with Section 4, Purchaser shall have the right to inspect the goods to determine their conformity with the Specifications. Thirty (30) days from the date of delivery or installation is deemed to be the reasonable time for Purchaser to inspect the goods. If all or any part of the goods are found to be non-conforming, Purchaser may reject such non-conforming goods, whereupon such rejected goods promptly shall be removed by Supplier at Supplier's cost, and the Purchase Price with respect to such rejected goods either shall be refunded by Supplier if already paid, or shall be reduced if still owing. In either case, if Purchaser so directs in writing, Supplier shall promptly replace such non-conforming goods with goods conforming to the Specifications. All direct and incidental costs of rejecting and removing such non-conforming goods shall be borne by Supplier.

10. **REMEDIES.** In addition to remedies provided in the Contract Documents, Purchaser shall have all other rights and remedies available under applicable law. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT DOCUMENTS, IN NO EVENT SHALL SUPPLIER BE ENTITLED TO ANY PAYMENT ON ACCOUNT OF LOST PROFITS OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY TERMINATION OF THE CONTRACT, OR OTHERWISE IN CONNECTION WITH THE CONTRACT.**

11. **INDEMNIFICATION & INSURANCE.** a. To the extent permitted by law, Supplier shall indemnify and hold harmless Purchaser, the Commonwealth of Pennsylvania and any Purchaser's Representative and all of their respective trustees, directors, officers, employees and agents (collectively, "Indemnitees") from and against all claims, liabilities, damages, losses, costs (including, without limitation, reasonable legal fees) and expenses (collectively, "Claims"), arising from or relating to the undertaking by Supplier of any services or any defect(s) in the goods supplied under the Contract, provided such Claims are caused in whole or in part by any

negligent act, omission, recklessness or willful misconduct of Supplier or anyone for whose acts Supplier may be liable, or provided Supplier may be held responsible for same under products liability law or under other applicable legal or equitable principles. Supplier further agrees to assume the defense of any suit brought against the Indemnitees and to protect the Indemnitees from all claims arising out of claims for infringement of any patent, invention, design, trademark or copyright in connection with the goods or services. b. Supplier shall at all times maintain, at its cost and expense, liability insurance in sufficient amounts to cover Supplier's indemnification obligations stated in the Contract. All insurance shall be subject to the approval of Purchaser as to the coverages, terms, and insurance carriers. Any insurance coverage limits that Supplier currently maintains shall not be construed to be a limitation of the liability on the part of Supplier nor an agreement by Purchaser that such minimum limits shall serve to reduce or limit a higher coverage limit in the policies actually maintained by Supplier. The procurement and maintenance of insurance of the type and at the limits of coverage set forth in the Contract shall not relieve Supplier of liability for loss or damage in excess of the policy coverage or limits specified in the Contract. Purchaser has the right at all times to require greater levels and additional and different types of coverage than what Supplier currently maintains. Supplier's commercial general liability and excess liability policies shall not exclude coverage for sexual assault and/or sexual molestation. The insurance required of Supplier hereunder shall name the Indemnitees as additional insureds, shall be primary and non-contributory and shall apply to loss prior to any coverage carried by Purchaser or any other party. Supplier shall provide proof of the required insurance to Purchaser prior to or upon issuance of the Purchase Order and from time to time as requested by Purchaser. All policies required under the Contract shall contain a provision requiring the insurance carrier to waive all rights of subrogation against the Indemnitees.

12. REGULATORY COMPLIANCE AND NONDISCRIMINATION. The Supplier must comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction ("Laws") including, without limitation the applicable provisions of the following and any Laws referenced in the General Conditions, all as amended and in effect as of the date of this order: the Anti-Kickback Act (41 U.S.C. Sections 51 *et seq.*), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a *et seq.*), Executive Orders 11246 and 11375, the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and of all other applicable Laws dealing with labor and wages, workmen's compensation, employer liability, unemployment compensation, old age benefits, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of race, color, religion, gender, national origin, veteran's status or disability.

13. WAIVER OF LIENS

a. Supplier, for itself and for all its Subcontractors, agrees that no mechanic's or materialman's lien or other claim shall be filed or maintained by Supplier or by any Subcontractor, laborer or any other person, whatsoever, for or on account of any work done on goods furnished under this Contract. This agreement shall be an independent contract.

b. In every subcontract entered into by Supplier after the issuance and delivery of the Contract or in connection herewith, Supplier shall incorporate a provision similar to the foregoing subsection to the effect that neither the Subcontractor nor any party acting through or under it shall file or maintain any mechanic's lien or other claim against Purchaser in connection with the work.

14. WAIVER OF BREACH. Waiver, forbearance or inaction by Purchaser of a breach by Supplier of any PO Term shall not be deemed a waiver of future compliance with all PO Terms, and all such PO Terms shall remain in full force and effect as to future performances.

15. CANCELLATION. If the subject matter of this Purchase Order (or any design, prototype, drawing, or other sample) is subject to prior review and approval by Purchaser, Purchaser may cancel this Purchase Order upon its determination that such design, prototype, drawing or sample does not conform to any applicable project specifications; and Purchaser shall have no further obligations or liability hereunder.

16. ASSIGNMENT/DELEGATION. Supplier shall neither assign any right or interest in this contract, nor delegate any obligation owed by it hereunder without the prior written consent of Purchaser. Any attempted assignment or delegation absent Purchaser's consent shall be wholly void and totally ineffective for all purposes.

17. COMMUNICATIONS. With the exception of invoices and monthly statements of account, which are to be directed to Temple University Accounts Payable, all communications and acknowledgments from Supplier concerning this Purchase Order must be directed to the Temple University Purchasing Department.

18. TAXES. Purchaser's tax exemption certificate will be supplied upon request. Supplier shall provide Purchaser with an executed IRS form W-9 prior to submission of the initial invoice.

19. NON-COLLUSIVE BIDDING. Supplier certifies that the Purchase Price has been determined independently without collusion with Purchaser's employees or any other supplier.

20. RIGHT TO AUDIT. Supplier shall provide Purchaser reasonable access to its books, documents and records as necessary to ensure Supplier's compliance with the provisions of the Contract Documents.

21. MISCELLANEOUS. a. No agreement or other understanding in any way modifying the Contract Documents shall be binding upon Purchaser unless made or accepted by Purchaser in writing. This Purchase Order shall be subject to modification, amendment and/or cancellation by Purchaser in event of fire, accident, strike, Government acts or other conditions beyond Purchaser's control. Purchaser shall promptly provide to Supplier written notice of the occurrence of such events requiring such modification, amendment and/or cancellation. b. This writing and the other Contract Documents are intended by the parties as a final expression of their agreement with respect to the subject matter hereof. c. Any provision in the Contract Documents that is held to be inoperative, unenforceable, voidable or invalid in any jurisdiction shall as to that jurisdiction, be ineffective, unenforceable, void or invalid without affecting the remaining provisions, or the enforceability of all provisions in any other jurisdiction and to this end, the provisions hereof are declared to be severable. d. The Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflicts or choice of laws provisions. The Supplier agrees to bring any federal or state legal proceeding arising under this Contract in which the Commonwealth of Pennsylvania or Purchaser is a party, in a court of competent jurisdiction within the City of Philadelphia and Commonwealth of Pennsylvania. This Section shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which one of the others is a party. e. All indemnification, payment, warranty, lien waiver, title and remedies provisions shall survive the termination or expiration of the Contract.

ADDITIONAL TERMS AND CONDITIONS

(If applicable)

1. Approved Equal: Wherever the term "or approved equal" is used herein, it is to be understood that reference to the specified trade name, brand name, manufacturer's name, model number and/or catalog number has been made solely for the purpose of indicating the minimum standard of quality required in material, workmanship and service. Any alternate item quoted on shall be clearly identified and will be subject to review prior to acceptance by Owner.

2. Damage To Temple University Property: The Contractor shall be totally responsible for any damages done to Owner's property during delivery, assembly, installation/placement of the materials and/or the furnishing of the services described herein and shall repair or cause to be repaired at his expense any such damages in a manner satisfactory to Owner.

3. Removal of Debris: The Contractor shall be totally responsible for the daily removal of debris (empty cartons, crates, packing material, etc.) resulting from delivery, assembly and/or installation/placement of material or the furnishing of services described herein, from Owner's property, as required by fire code regulations. Rubbish must not remain overnight. FAILURE TO COMPLY WITH THIS PROVISION WILL RESULT IN CONTRACTOR PAYING TEMPLE UNIVERSITY, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY FOR SUCH FAILURE, THE SUM OF \$100.00 (ONE HUNDRED DOLLARS) PER DAY, FOR EACH DAY

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THAT DEBRIS REMAINS ON TEMPLE UNIVERSITY PROPERTY, CORRESPONDING AMOUNT SHALL AUTOMATICALLY BE DEDUCTED FROM CONTRACTOR'S INVOICE.