

## TERMS AND CONDITIONS OF PURCHASE

**Acceptance-Agreement:** The issuance of this Purchase Order ("Order") constitutes an offer by Wellesley College ("WC") for acceptance by Vendor. Vendor's notification to WC of Vendor's acceptance of the Order within a reasonable time, or Vendor's commencement of work on the goods or services subject to this Order, or shipment of any goods, materials or other items related to this Order, whichever occurs first, shall be deemed an effective mode of acceptance by Vendor of WC's offer as contained in this Order. Any acceptance of this offer is limited to acceptance of the terms and conditions contained in this Order. Any proposal by Vendor for additional or different terms and conditions or any attempt by Vendor to vary in any way the terms and conditions of this offer is hereby objected to and rejected. Such proposal or attempted variance by Vendor shall not operate as a rejection by Vendor of this offer unless such variances are in the terms of item description/specifications, quantity, price, payment, or delivery schedule ("Essential Terms") of the goods or services ordered hereunder. Any proposal or attempted variance by Vendor of terms and conditions other than the Essential Terms shall be deemed a material alteration of this offer, and this offer shall be deemed accepted by Vendor without said additional or different terms and conditions. If WC has received a prior offer from Vendor that contains terms and conditions differing in any respect from the terms and conditions of this Order, such prior offer is hereby rejected, and the issuance of this Order shall constitute an offer by WC for acceptance by Vendor in the manner described above.

**Changes:** WC may make changes to this Order at any time, and Vendor shall accept such changes. If a change causes an increase or decrease in cost and/or time required for performance, an equitable adjustment shall be made and this Order shall be modified accordingly.

**Termination for Convenience:** WC may terminate this Order or any part hereof for its sole convenience. Upon notice of such termination, Vendor shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work or shipment against this Order. Vendor shall be paid a reasonable termination charge consisting of a pro-rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Vendor shall not be paid for work performed or costs incurred after receipt of notice of termination, or for costs incurred by Vendor's suppliers or subcontractors, which Vendor could have reasonably avoided.

**Termination for Cause:** WC may terminate this Order or any part hereof for cause if Vendor defaults, fails to comply with any terms and conditions of this Order, becomes insolvent, or files for bankruptcy or protection under applicable laws. Late delivery of goods or performance of services, delivery of goods or performance of services that are defective or do not conform to this Order, and failure to provide WC, upon request with reasonable assurance of future performance shall, without limitation, be cause for allowing WC to terminate this Order. In the event of termination for cause, WC shall not be liable to Vendor, its employees, representatives, agents, suppliers or subcontractors for any amounts; but Vendor shall be liable to WC for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination. If a determination is made that WC improperly terminated this Order for cause, then such termination shall be deemed to have been for WC's convenience.

**Delivery:** Time is of the essence for this Order. If delivery of goods or performance of services by Vendor is not completed within the time specified, WC may, without liability and in addition to its other rights and remedies, terminate this Order, by notice effective when received by Vendor, as to goods not yet delivered or services not yet rendered; and WC may purchase substitute goods or services elsewhere and charge vendor for any loss or additional expense incurred.

**Shipment:** If, to meet WC's required delivery date, Vendor must ship goods by a more expensive medium than specified herein or anticipated by the parties, any resulting increased transportation cost shall be borne solely by Vendor unless such rerouting or expedited handling is caused by WC.

**Force Majeure:** WC may delay delivery, performance, or acceptance of the goods or services ordered hereunder in the event of causes beyond its control. Vendor shall hold such goods or refrain from performing such services at the direction of WC, and Vendor shall deliver the goods or services when the cause affecting the delay is eliminated. WC shall be responsible only for Vendor's direct additional costs incurred by holding the goods or delaying performance of this agreement at WC's request. Causes beyond WC's control shall include, without limitation: government action or failure to act where required, strike or other labor trouble, fire or similar catastrophe, severe weather or other acts of God.

**Warranties:** Vendor expressly warrants that all goods or services furnished hereunder shall: conform to all specifications and appropriate standards; be free of defects in materials and workmanship; be new and unused unless otherwise specified herein; conform to proposals and/or samples provided by Vendor and to statements in descriptive material and advertisements for such goods or services; and be merchantable, safe, and appropriate for the purpose of such goods or services. If Vendor knows or has reason to know the particular purpose for which WC intends to use the goods or services, Vendor warrants that such goods or services will be fit such particular purpose. Inspection, testing, acceptance, or use of the goods or services furnished hereunder shall not affect Vendor's obligation under warranties; and all warranties shall survive inspecting, testing, acceptance, and use. Vendor's warranties shall run to WC, its successors, assigns, customers, and users of Vendor's goods or services. Vendor shall promptly correct or replace, at no expense to WC, any goods or services not conforming to the foregoing warranties, when notified of such nonconformity by WC, or WC may, at its option, make such corrections or replace such goods or services and charge Vendor for the cost incurred by WC to do so. Vendor shall hold WC harmless from any breach of these warranties, and no limitations on WC's remedy referenced in Vendor's documents shall reduce this obligation. These warranties are in addition to all warranties contained under law.

**Price Warranty:** Vendor warrants that the prices and terms for goods or services furnished hereunder are not less favorable than those prices and terms currently extended to any other customer for the same or similar goods or services. If Vendor reduces its prices and/or improves its terms to others for such goods or services during the terms of this Order, Vendor shall reduce the prices and/or improve the terms herein accordingly.

**Risk of Loss:** Vendor assumes all risk of loss or damage to all goods ordered and all work in progress, materials, and other items related to this Order until the same are finally accepted by WC. Vendor also assumes all risk of loss of or damage to any goods, work in progress, materials, and other items rejected by WC until the same are received by Vendor or accepted by WC.

**Inspection:** Payment for goods or services provided hereunder shall not constitute acceptance thereof. WC may inspect and test such goods or services and reject any or all items that are, in WC's judgment, defective or nonconforming. Goods rejected or supplied in excess of quantities ordered herein may be returned to Vendor at its expense. If WC receives goods or services with defects or nonconformities not apparent upon examination, WC may require replacement or correction and payment for damages. Failure by WC to inspect and test the goods or services shall not relieve Vendor of responsibility.

**Funded-Purchase Compliance:** If this Order covers a purchase that is partially or wholly funded by a government agency, Vendor shall comply with all applicable state and federal laws and regulations, including the provision that all of Vendor's records related to a government-funded purchase shall be available to WC, its designate, or a government agency, upon reasonable notice, for the purpose of making audits, examinations, excerpts, and transcriptions.

**Compliance:** Vendor certifies that all goods or services furnished hereunder, including materials and work incidental thereto, shall comply with all applicable federal, state, and local laws and regulations concerning health, safety and environmental standards and requirements.

**Tax Exemption:** WC is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes (Cert. #E042-103-637) and federal excise taxes (Exempt. #04-73-0139F). Vendor shall not charge WC for such taxes. Proof of exemption is available upon request.

**UCC:** The provisions of the Uniform Commercial Code ("UCC") covering the sale of goods are incorporated by reference if not otherwise provided herein. Unless stated to the contrary, the terms and conditions of this Order shall be interpreted according to the UCC. If this Order includes performance of services by Vendor, the parties acknowledge that the provisions of the UCC normally do not apply to performance of services as distinguished from the sale of goods. Notwithstanding, the parties expressly agree that the provisions of the UCC shall apply to this Order and that any dispute arising out of or resulting from this Order shall be resolved according to the provisions contained herein and in the UCC.

**Insurance:** Vendor shall maintain at its own expense insurance to protect both Vendor and WC against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance of this agreement. Nothing contained herein shall abridge, diminish, or affect Vendor's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or resulting from performance of this agreement. Notwithstanding any other modifications or changes, vendor shall provide the following limits of coverage: **Workers' Compensation** that meet statutory limits; and **Employers Liability Insurance** to cover bodily injury claims up to \$500,000 per person, per claim. **General Liability Insurance** for \$1,000,000 per occurrence. **Commercial Automobile Liability Insurance** (including coverage for all owned, non-owned, and hired vehicles) with a CSL of \$1,000,000 per accident; and **Umbrella /Excess Liability Insurance** to cover all liability risks, including defense costs in the amount of \$2,000,000 unless otherwise requested. Lastly, Vendor, shall include "Trustees of Wellesley College, their Officers, Directors and Employees" as additional insureds on these policies (where allowed by law) and shall furnish Wellesley College with current certificates of insurance that provide for written notice in case of cancellation or material change in the policy limits or coverage stated to: shall be sent to: Wellesley College, Purchasing Department, 106 Central Street, Wellesley, MA 02481.

**Limitations:** WC shall not be liable to Vendor, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental or consequential damages. WC's liability on any claim for loss, damage, or expense arising in connection with this agreement shall not exceed the price of the goods or services, or units thereof, which give rise to the claim. WC shall not be liable for penalties of any kind. Any action arising from any alleged breach of this agreement by WC must be commenced within one year after the cause of action has accrued.

**Patents:** Vendor shall defend and hold harmless WC, and any person or entity associated with WC, against and from any liability, loss, damage, expense, and legal fees arising in connection with any claim that the purchase or sale of the goods or services furnished hereunder constitutes unfair competition or that the goods or services furnished hereunder infringe the patent, copyright, trade secret, or other rights of any other person or entity. WC may be represented in connection with any such claim by its own counsel at Vendor's expense. If WC reasonably believes that the goods or services are likely to infringe any such right, Vendor shall, at its expense and as requested by WC, either procure the right for WC to use the goods or services or replace or modify the same to make them non-infringing but functionally equivalent.

**Independent Contractor:** If Vendor's obligations hereunder require or contemplate the performance of work or services by Vendor, its employees, agents, suppliers, or subcontractors on WC's property or elsewhere, Vendor agrees that such work or services shall be performed by Vendor, its employees, agents, suppliers, or subcontractors as independent contractors, and not as employees of WC, and that such persons doing such work shall not be considered or represent themselves as employees or agents of WC.

**Confidentiality:** Vendor shall regard all information furnished by WC, including this Order, as confidential and shall not disclose such information to any other party or use such information for any purpose other than performing this contract, unless Vendor first obtains WC's written permission. Vendor shall not advertise or publish the fact that WC has contracted to purchase goods or services from Vendor. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner at any time by Vendor to WC shall be deemed secret or confidential, and Vendor shall have no rights against WC with respect thereto except as may exist under patent laws.

**Entire Agreement:** This Order (including any referenced and/or attached document), when accepted, is the entire agreement between the parties and supersedes any prior oral or written agreement between the parties. This order can be modified only by express approval of WC. This Order shall govern in the event of any conflict of terms or conditions between this Order and any referenced and/or attached document, unless such document explicitly states the intention of WC to override the terms of this Order and is executed by an authorized representative of WC. The fact of this Order has been generated by computer, and the information contained on the face of this Order is retained by WC's computer or on magnetic tape, on microfiche, or in other readable form.

**Assignment:** No part of this Order may be assigned, transferred, or subcontracted by Vendor without WC's written approval.

**Waiver:** WC's failure to insist on performance of the terms and conditions herein or to exercise any right or privilege, or WC's waiver of any breach hereunder, shall not thereafter waive the same or other terms, conditions, rights, or privileges, or affect any subsequent breach.

**Severability:** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**Setoff:** Any claim by Vendor for money due or to become due from WC shall be subject to deduction or setoff by WC against any counterclaim of WC arising out of this or any other transaction with Vendor.

**Applicable Law:** This Order, and any agreement arising out of such, shall be construed and governed by the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of law. The sole jurisdiction and venue for actions related to the subject matter hereof shall be Massachusetts and United States federal courts having within their jurisdiction in Massachusetts.

**Equal Employment Opportunity:** WC is an affirmative action employer and complies with all laws relating to Equal Employment Opportunity and Civil Rights, including Executive Order 11246, as amended; section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended. **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** This purchase order/contract is issued upon the condition that the Vendor complies with all of the aforementioned laws and regulations.

**Indemnification and Hold Harmless:** To the fullest extent permitted by law, the Vendor shall protect, defend, indemnify and hold harmless WC, and any person or entity associated with WC from and against all claims, demands, causes of action, suits, other litigation, loss and costs (including attorney's fees and expenses) of every kind and character for (i) injury to, illness or death of any person, (ii) all damage to, loss or destruction of property, and (iii) economic loss, which is incident to, arising out of, within the scope of, or in connection with performance of the Work, regardless of how, when or where such injury, illness, death, damage, loss, destruction or economic loss occurs, including the concurrent negligence or fault of WC or its agents or employees. The Vendor specifically intends that the foregoing obligation to protect, defend, indemnify and hold WC and its agents or employees harmless shall cover, but not be limited to, and shall apply even in the event of (i) negligence, whether comparative, contributory or concurrent, of WC or its agents or employees; (ii) any obligation of the Contractor arising from contractual liability for indemnity or liability without fault; and (iii) the sole comparative, contributory liability for indemnity or liability without fault of any third person. This obligation shall be in addition to the warranty obligations of Vendor.