

# WELLESLEY COLLEGE

## TERMS AND CONDITIONS OF PURCHASE

1. The terms and conditions set forth in this purchase order shall govern all the rights and duties of the parties to the contract formed by acceptance of this purchase order (the "Contract") unless specifically negated, altered or replaced by a written instrument signed by both parties to the Contract, except as provided in Paragraph 4 below. The Contract shall be governed by and interpreted in accordance with the laws of The Commonwealth of Massachusetts, including the version of the Uniform Commercial Code effective in Massachusetts from time to time.
2. **COMPLIANCE WITH LAW:** Seller warrants that in performance of work under the Contract, if any such performances is required or permitted, it has complied with or will comply with all applicable Federal, State and local laws and ordinances, and all lawful order, rules, and regulations thereunder. At the request of Buyer, Seller will furnish certificates to the effect that it has complied with the same.
3. **CONFLICT in TERMS and CONDITIONS: ADDITIONAL TERMS in ACCEPTANCE OR ACKNOWLEDGEMENT:** In the event of a conflict between the printed terms and conditions of this purchase order and any typewritten terms and conditions which may appear on the face hereof, the latter shall prevail. No terms or conditions additional to or different from those set forth herein (whether material or not) proposed by Seller in acknowledging or accepting this purchases order, will become part of the Contract unless accepted in writing by Buyer.  
**SUPPLEMENTARY TECHNICAL INFORMATION:** All technical specifications, drawings, notes, instructions or information referred to on the face of this purchase order shall be deemed to be incorporated herein by reference as if full set forth at this place.
4. **CHANGES, ADDITIONS, AND DELETIONS:** Buyer shall have the right, by reasonable written notice to Seller to cancel in whole or in part any order for goods, materials, or other articles, or to change the quantity, quality, or specifications of said goods, materials or articles, notwithstanding anything to the contrary contained elsewhere in this purchase order with thereby breaching the Contract. If such change causes an increase or decrease in the amount due under this purchase order or in the time required for its performance, an equitable adjustment in price or in the time allowed for performance shall be made, provided, that any claim by Seller therefore is asserted in a writing received by Buyer within fifteen days from the date Buyer gives notice of the change, and said claim is approved by Buyer in writing. Absent such approval, which Buyer will not unreasonable withhold, no adjustment shall be made.  
Seller shall not substitute other materials or accessories for, or revise specifications from; these specified in the purchase order without written notice from or consent of Buyer. Changes made by Seller without Buyer's express written consent shall constitute a material breach of the Contract, upon which breach Buyer shall have all rights and remedies for breach of contract set forth in Article 2 of the version of the Uniform Commercial Code then effective in Massachusetts and all other applicable legal remedies.
5. **LIABILITY:** Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of all work required or permitted by the Contract and shall exercise reasonable care in performing its obligations thereunder. Except to the extent that any such injury is caused solely by Buyer's negligence. Seller shall indemnify Buyer against all loss which may result in any way from any act of omission of Seller, its employees, servants, agents or subcontractors in performing obligations under this Contract or any subcontract or agreement relating thereto. Seller shall maintain such Public Liability and Compensation Insurance in such amount and upon such terms as will fully protect Buyer from said loss, any claims under any applicable Workman's Compensation and Occupational Disease Act and all other claims, losses and incidental or consequential damages resulting therefrom.
6. **DELIVERY:** Buyers reserves the right to refuse shipments received in advance of the schedule or deliveries appearing on the face hereof. Whenever any delay (or any threatened delay) in delivery is foreseeable, Seller shall immediately notify Buyer of such delay, but no such notice shall affect Buyer's rights under the Contract. In this event that delivery is not made upon the date specified or, if no date is specified within a reasonable time, Buyer shall have the option to accept the shipment when received, to accept any commercial unit or units and reject the rest, or to reject the whole shipment, and in any event to treat the

untimely delivery of any installment as a breach of the whole contract giving Buyer the right to revoke the entire contract and recover all damages proximately caused by the breach, both incidental and consequential. UNLESS OTHERWISE SPECIFIED ALL DELIVERIES ARE FOR DESTINATION AND SHOULD BE SENT DIRECTLY TO THE RECEIVING DOCK AT WELLESLEY COLLEGE, 300 CENTRAL STREET, WELLESLEY, MA 02481-8282.

7. INSPECTION: All goods, materials, or other articles to be fabricated, delivered, or installed under the Contract are subject to reasonable inspection and testing before payment or acceptance by Buyer. Failure by Buyer to inspect and accept or reject said goods, materials, or articles shall not relieve Seller from liability for tender or delivery of nonconforming goods not constitute a waiver or any of Buyer's rights or remedies for breach of contract. Inspection and acceptance will be according to specifications noted on the face of this purchase order. Buyer hereby reserves the right to reject all goods, materials, or other articles not in conformity with said specifications in any respect whether material or not.
8. REJECTIONS: Buyer reserve the right to reject and receive full credit for any goods, materials, articles or services which are defective as to material, workmanship, or quality or otherwise are not in conformity with the specifications or the sample or model approved by Buyer, if any. Without cost to Buyer, Seller will immediately, upon requests of Buyer, replace all rejected material, including material damaged because of unsatisfactory packing or packaging by Seller. Seller will be notified of defective material or material not in accordance with specifications of Buyer and such material will be returned to Seller. COLLECT. Seller may advise Buyer of any preferred routing for return of rejected material and whether or not the shipment should be protected by insurance of full declaration of value at the time of acceptance of this order. In the absence of such information from Seller regarding such shipment. Buyer reserves the right to declare full valuation or insurance (whichever is applicable) for the benefit of and at the expense of the Seller.
9. WARRENTY: Seller warrants that all goods, articles, materials, work and services furnished hereunder will be free from defects in materials, workmanship, and fabrication: will conform to applicable specifications, drawings, samples or descriptions; will be merchantable: will be fit for the particular purpose for which Buyer requires them (Buyer declares that it is replying on Seller's skill or judgement to select or furnish suitable goods), and if of Seller's design, will be free from design defects. These warranties shall survive inspection, delivery, acceptance and payment and may not be disclaimed by Seller in whole or in part except in writing signed by both Buyer and Seller.
10. PATENTS: The Seller warrants that the sale, use or incorporation into manufactured product of all machines, devices, goods, articles or material furnished hereunder which are not of Buyer's design, composition, or manufacture shall be free of the rightful claim of any third person by way of infringement or the like of any valid patent, license, copyright, trade or service mark of similar legal right. Seller shall indemnify Buyer and its customers against any and all expense liability and loss of any kind (and all cost and expenses of collections, including attorney's fees) growing out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller agrees to compose or defend on Buyer's behalf.
11. DEFAULT CANCELLATION-BANKRUPCY: a) Buyer may cancel this purchase order in whole or in part at any time by timely communication to Seller, whenever Seller shall breach any of its obligations under the Contract, whereupon Buyer shall have all rights and remedies for breach of contract set forth in Article 2 of the version of the Uniform Commercial Code adapted by Massachusetts and all other applicable legal remedies. b) Buyer may cancel this order by timely written or other communication to Seller if Seller shall become insolvent or make a general assignment for the benefit of creditors, or if a petition for relief under the Bankruptcy Code is filed by or against Seller or if a receiver is appointed to take possession of any Sellers assets. In any such event Buyer shall have the right to retain possession of all goods which have been delivered to Buyer.
12. CONFIDENTIAL INFORMATION and ADVERTISING: Without the prior written consent of Buyer, Seller shall neither disclose to any person outside of its employ, nor use for purposes other than performance of its obligations under the contract, any information pertaining to Buyer of Buyer's affairs (including all drawings, blueprints, descriptions, specifications and the contents of this purchase order). Without obtaining the prior written consent of Buyer, Seller shall not in any manner, disclose, advertise, or publish the fact that Seller has furnished or contracted to furnish to Buyer the material and/or services ordered hereunder.