

# VASSAR

## Terms and Conditions Standard Terms and Conditions for Procurement

### 1. Acceptance/Agreement

Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order indicates the Seller's assent to the express terms and conditions contained on the face and back hereof. Any proposal for additional or different terms, or any attempt by the Seller to vary in any degree any of the terms of this offer in the Seller's acceptance or otherwise is hereby objected to and rejected. If this purchase order is deemed an acceptance by the Seller of a prior offer, such acceptance is strictly limited to the Seller's assent to the terms and conditions as set forth on the face and reverse of this purchase order document. Any performance by the Seller against or in response to this purchase order shall signify Seller's assent to the terms and conditions set forth herein. Vassar College as purchaser will not be responsible for goods and services furnished without a purchase order number and reserves the right to reject goods and services so furnished.

### 2. Shipping

i. Ship all goods to the address specified on the face of this document. All packing lists, packages, cartons, etc. must bear the purchase order number printed on this form. a. ii. All shipments will be F.O.B. Vassar College, Poughkeepsie, N.Y. Title to and risk of loss in transit shall remain with Seller until goods are delivered to buyer's designated location in acceptable condition.

3. Invoice Instructions/taxes Forward to the Accounts Payable Department at the address indicated. Vassar College is tax exempt, and its tax-exempt number is 125640.

4. Warranties Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and be free from defects in material and workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers, labels, or advertisements for such goods or services, and those goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable and will be safe and fit for the purpose for which goods/services of that kind are normally used. If seller knows or has reason to know the particular purpose for which the purchaser intends to use the goods/services, seller then warrants that the goods/services will be fit for such particular purpose. Inspection, tests, acceptance or use of the goods or services furnished hereunder shall not affect the seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. Seller's warranty shall run to purchaser, its successors, assigns and customers, and users of products sold to purchaser. Seller agrees to replace or correct defects in any goods/services not conforming to the foregoing warranty promptly when notified of such non-conformity by purchaser, without expense to purchaser, provided purchaser elects to provide seller with the opportunity to do so. In the event of failure by the Seller to correct defects in or replace non-conforming goods/services promptly; the purchaser, after reasonable notice to the Seller, may make corrections or replace the goods/services and charge Seller for the costs incurred.

### 5. Compliance with laws

In accepting this order, Seller represents and warrants that it has complied with and will continue to comply with all applicable Federal, state, and local laws/ regulations in the production of goods or performance of services under this order. Such laws include, but are not limited to: Fair Labor Standards Act 1938 as amended, Occupational Safety and Health Act of 1970 as amended, non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375 relative to equal employment opportunity, Rehabilitation Act of 1973, Vietnam Era Veterans Readjustment Act 1974, Title 48 CFR--Utilization of small business concerns and small disadvantaged business concerns, Flammable Fabrics Act (15 USC,1911:67 Stat.111) section 2 as amended, Anti-Kickback Enforcement Act 1986, PL 99-634. Education Rights and Privacy Act 1974. GRAMM-LEACH-BLILEY Act pertaining to safeguards for non-disclosure of confidential (non-public) personal information, and FAR including GSA suspensions, debarment, or ineligible status pursuant to Executive Order 12549. Any dispute arising under this contract shall be decided under the laws of New York State.

### 6. Independent Contractor

The Seller is deemed an independent contractor. Any agreement formed shall not be construed to form any relationship of agency, master servant, employer/ employee, partnership, joint venture, or association. The Seller shall be solely responsible and liable for all salary, workers compensation payments/benefits, income tax withholding, unemployment insurance, FICA, and all other aspects of employment of its employees, and the purchaser shall have no responsibility or liability with respect thereto.

### 7. Insurance requirements

The Seller will maintain in force and effect during contact period Comprehensive General Liability, Automobile Liability (Hired and Non-Owned only where appropriate) and Workers Compensation insurance. A Certificate of Insurance indicating limits of \$1,000,000 per occurrence on all liability policies with Certificate Holder named as Additional Insured shall be provided prior to the start of work. Workers Compensation limits shall be as required in the state where work is being performed. All Liability policies shall be endorsed to provide a 30-day notice of cancellation to certificate holder.

### 8. Modification, Assignment/Subcontracting

The purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in cost, or the time required for performance, an equitable adjustment will be made, and the agreement shall be modified in writing accordingly. No part of this order (contract) may be assigned or subcontracted without prior written approval of the purchaser.

### 9. Delivery

Time is of the essence in performance under any contract formed, and if delivery of items or rendering of services is not completed by the time promised, the purchaser reserves the right without liability in addition to its' other rights and remedies to terminate the contract (after a reasonable period allowed to cure) by notice effective when received by Seller as to items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and recover from Seller for any loss or damages incurred.

# VASSAR

## 10. Inspection and Testing

Payment for the goods delivered hereunder shall not constitute acceptance thereof. The purchaser shall have the right to inspect such goods and to reject any or all said goods which are in purchaser's judgment defective or non-conforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to the seller at its expense and, in addition to the purchasers' other rights, purchaser may charge seller all expenses of unpacking, examining, re-packing, and re-shipping such goods. In the event that purchaser receives goods whose defects or non-conformity is not apparent on examination, purchaser reserves the right to revoke acceptance and require replacements as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligations of testing, inspection, and quality control.

## 11. Patents/Copyrights, etc.

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against purchaser or its agents, customers, or other vendors for alleged patent infringement or violation of other intellectual property interests, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of goods furnished hereunder. Seller further agrees to indemnify purchaser, its agents, and customers against any and all expenses, losses, royalties, profits, and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by the Seller.

## 12. Limits of liability/Statute of Limitations

In no event shall purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the unpaid portion of the price allocable by this agreement to the goods or services or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of purchaser as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued. The seller shall indemnify and hold harmless the purchaser and its representatives against any and all liabilities, claims, and costs of whatsoever kind and nature for injury or death of any persons and for loss or damage to property occurring in connection with the performance of this contract except for cases of sole negligence of the purchaser.

## 13. Force Majeure

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the purchaser and shall deliver them when the cause of the delay has been removed. Purchaser shall be responsible only for Seller's direct and substantiated additional costs in holding the goods or delaying performance of this agreement at purchaser's request. Causes beyond purchaser's control shall include, without limitation: government action or failure of government to act where such action is required, strike or other labor dispute, fire, severe weather, natural disasters, riots, insurrections, or other civil disturbances, wars, epidemics, etc.

## 14. Proprietary Information, Confidentiality, Advertising

Seller shall consider all information furnished by purchaser to be confidential, and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission to do so from purchaser. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for purchaser in connection with this order/contract. Seller shall not advertise or publish the fact that purchaser has contracted to purchase goods from Seller, nor shall any other information relating to the order be disclosed without the purchaser's written permission. Unless otherwise agreed to in writing, no commercial, financial, or technical information disclosed in any manner or at any time by seller to purchaser shall be deemed secret, or confidential and Seller shall have no rights against purchaser with respect thereto except such rights as may exist under patent laws.

**15. Termination for Convenience of Purchaser** The purchaser reserves the right to terminate this order or any part thereof for its sole convenience. Events that may "trigger" such action include, but are not limited to; design changes, process changes, change in material specifications, technological obsolescence, adverse budget allocations, program deletions, deletions from product line, etc. If invoked by the purchaser, Seller shall immediately cease all work (including subcontract work). If the goods are "custom manufactured", the Seller will be paid a reasonable termination charge based on the reasonable costs of amount of work completed prior to notification. If the goods are "standard off-the shelf" the termination charge will be based solely on any "incremental" costs incurred by the Seller in "gearing up" for the order and/or contract. In all cases, the Seller must provide documentation of such costs.

## 16. Entire Agreement

This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. Any conflicting or additional terms/ conditions contained in, but not limited to, Seller's proposal, bid offering, correspondence, memoranda, catalog, technical bulletins, price lists, etc. shall have no force or effect. Notwithstanding anything to the contrary set forth herein, if Seller and Vassar College enters into a formal and binding written contract providing for the sale of goods or the providing of services by Seller for the College (a "Contract"), the terms and conditions of the Contract shall prevail over any inconsistent terms and conditions set forth in this purchase order.