

HARVARD UNIVERSITY
PURCHASE ORDER TERMS & CONDITIONS
(REV 08/04/2020)

These Purchase Order Terms and Conditions (“Terms and Conditions”), and the Purchase Order (with any and all appendices, and/or exhibits attached hereto or otherwise issued by Harvard in connection herewith, collectively, the “Purchase Order”) by and between President and Fellows of Harvard College (“Harvard”) and Seller (as defined in the Purchase Order) (Harvard and Seller, collectively, the “Parties,” each a “Party”), constitute the entire agreement between Harvard and Seller relating to the Goods or Service and supersede and replace any and all prior discussions and agreements between the Parties. Harvard expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller’s quotation, proposal, acknowledgment or other document, whether such additions, deletions or differences materially alter this Purchase Order and are not affirmatively agreed to in writing by Harvard. Any inconsistencies or conflicts within this Purchase Order will be resolved by giving precedence in the following order: (a) the terms and conditions contained herein or the current Purchase Order terms and conditions located at http://hwpi.harvard.edu/files/procurement-vendors/files/pro_purchaseorderconditions.pdf, (b) any plans, specifications or other documents attached to this Purchase Order; and (c) any documents incorporated by reference into this Purchase Order signed by Harvard. Capitalized terms used but not defined herein shall have the meanings ascribed in the Purchase Order. Harvard hereby gives notice of its objection to any different or additional terms other than those terms and conditions set forth herein.

1. Changes. Harvard may make changes to the Purchase Order at any time, and Seller shall accept such changes. Any changes to the Goods or Services (as defined hereafter) shall be negotiated in advance by the Parties and agreed to in writing. If a change causes an increase or decrease in cost and/or time required for performance of the services, an equitable adjustment shall be made and the Purchase Order shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Purchase Order cannot be achieved or met by Seller, Harvard must be notified and must accept in writing any variation prior to shipment or delivery.

2. Prices. Prices or fees for conforming goods, items or services specified in the Purchase Order (collectively, the “Goods”) shall include any applicable transportation charges, insurance costs, shipping and handling fees and taxes; provided, however, Seller shall not include sales tax on the Goods pursuant to the terms set forth in Section 14 herein.

3. Terms of Payment and Title. Upon Acceptance (as defined hereafter) of the Goods or Service pursuant to Section 6 herein, Harvard agrees to pay all amounts due within thirty (30) days of receipt of Seller’s invoice (less any deposits paid to Seller (if any) unless otherwise agreed to by the Parties in the Purchase Order; provided, however, Seller shall invoice Harvard and Harvard shall only be obligated to pay such invoice if issued to Harvard subsequent to delivery, receipt and Acceptance of all Goods ordered under the Purchase Order.

4. Delivery of Goods. Seller hereby agrees to on-time delivery based upon the timeline set forth in the Purchase Order. If the Purchase Order does not specify a delivery date (the “Delivery Date”) or timeline, Seller shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from Harvard that prevents Seller from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Seller. If Seller anticipates a delay in the delivery of the Goods, Seller shall immediately notify Harvard. Such notification shall not, however, constitute a change to the delivery terms of this Purchase Order. In the event that Seller fails to deliver the Goods by the Delivery Date, or Seller fails to deliver conforming Goods, Harvard may purchase substitute Goods elsewhere and charge Seller for any additional expense incurred relating to the purchase of such substitute Goods.

Seller shall deliver all Goods in accordance with the terms of the Purchase Order. If delivery of the Goods is not complete by the Delivery Date, Harvard may, without liability, and in addition to its other rights and remedies, terminate the Purchase Order, by notice effective when received by Seller, as to Goods not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind Harvard to Accept (as defined hereafter) any future shipments nor deprive it of the right to return Goods already Accepted (as defined hereafter).

5. Shipping. Seller shall substantially pack, mark and ship all Goods in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order and the requirements of common carriers. Seller shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. The Parties agree to assist each other in the prosecution of claims against carriers.

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6. Acceptance. As a condition precedent to payment for the Goods by Harvard to Seller, Harvard shall Accept those Goods (in whole or in part thereof) on the Delivery Date or as otherwise set forth in the Purchase Order. For purposes of these Terms and Conditions, "Acceptance" means the point at which Harvard accepts or is deemed to accept the Goods in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms "Accept" and "Accepted". The Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by Harvard to Seller within a reasonable period of time, or (ii) upon timely delivery of the Goods identified herein to the shipping address specified on the face of the Purchase Order and the examination and confirmation that the Goods conform to their applicable specifications. Prior to Acceptance, title to the Goods remains with Seller; all risks of damage, injury, or loss thereto, or partial or complete destruction thereof, will be borne and assumed by Seller. By way of clarification, Harvard hereby retains the right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.

7. Inspection. Payment for the Goods provided under the Purchase Order shall not constitute Acceptance thereof. Harvard may inspect and test such Goods and reject any or all items that are, in Harvard's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at its expense. Failure by Harvard to inspect and/or test the Goods shall not be deemed Acceptance by Harvard.

8. Warranty. In addition to Seller's standard warranty relating to the Goods, Seller warrants that the Goods to be delivered pursuant to the Purchase Order (i) are of merchantable quality and free from defects in material or workmanship, (ii) shall conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety, and environmental standards) which bear upon Seller's performance, (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Harvard, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual rights of any third party. In addition, Seller warrants that Harvard shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Purchase Order, free of all liens and encumbrances and other restrictions, and

that no licenses are required for Harvard to use such Goods. The terms of this Section 8 shall not be waived by reason of Acceptance of the Goods or payment therefore by Harvard.

9. Cancellation. Harvard may for any reason and at any time, at its option cancel any unshipped Goods. To the extent the Purchase Order covers stock Goods, Harvard's only obligation is to pay for Accepted Products prior to such cancellation. To the extent the Purchase Order covers Goods manufactured or fabricated to Harvard's specifications, Seller shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Seller is not in default, Harvard shall reimburse Seller for the actual, direct cost to Seller of such Goods which have, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such Goods shall pass to Harvard. Unless Harvard shall have otherwise instructed Seller, Seller agrees that it will not manufacture Goods in reserve in an amount greater than the number of manufactured Goods that it has shipped to Harvard at any one time.

10. Risk of Loss. Seller assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Purchase Order until the same are finally Accepted by Harvard. Seller assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by Harvard until the same are received by Seller or Accepted by Harvard.

11. Indemnification. To the fullest extent permitted by law, Seller shall indemnify, defend, protect, and hold harmless Harvard and its affiliates, employees, faculty members, students, members of its governing boards and agents (each an "Indemnitee", and collectively, the "Indemnitees") from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from Seller's: (a) performance of its obligations under the Purchase Order, (b) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order, or (c) any other negligent or wrongful act or omission of Seller. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, and consequential damages.

12. Insurance. Seller shall maintain adequate insurance in any and all forms necessary to protect both Seller and Harvard against all liabilities, losses, damages,

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claims, settlements, expenses, and legal fees arising out of or resulting from performance or provisions of the Purchase Order. Although evidence of certain minimum coverage may be required, nothing contained herein shall abridge, diminish or affect Seller's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or resulting from performance or provisions of the Purchase Order.

13. Use of Harvard Names; Advertising or Publication. Neither Seller nor any of its subcontractors or affiliates shall use, or cause or allow to be used, the name "Harvard" (alone or as part of another name, and in any language) or any logos, seals, insignia or other words, names, symbols, images or devices that identify Harvard or any Harvard school, unit, division or affiliate ("Harvard Names") in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever in connection with the Goods or the Purchase Order, without prior written approval of, and in accordance with restrictions required by, Harvard. Seller shall not register any Harvard Name in any jurisdiction as a trademark, service mark, domain name, trade name, business or company name or otherwise.

14. Taxes. Harvard is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes (MA Taxpayer ID# 10798176) and federal excise taxes (# 04-73-0256F). Seller shall not charge Harvard for such taxes. Proof of Harvard's exemption from Massachusetts sales taxes and federal excise taxes is available at Harvard's Strategic Procurement website, www.procurement.harvard.edu, or such other website designated by Harvard.

15. Independent Contractor. Seller, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venture of, or with Harvard, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Seller shall have no authority to incur any obligations or expenses on behalf of Harvard or to act in any other manner on behalf of Harvard or in its name. Seller's employees and contractors shall not be entitled to receive any compensation or employee benefits from Harvard.

16. Non-Waiver. Except as otherwise provided in the Purchase Order, any waiver by Harvard of a breach of any provision of the Purchase Order must be in writing and shall not be deemed a waiver of any other or subsequent breach. No delay or omission by

Harvard in the exercise or enforcement of any right or remedy provided in the Purchase Order or by law shall be construed as a waiver of such right or remedy.

17. Severability. In the event that any provision of the Purchase Order shall be held invalid by any court, the remainder of the Purchase Order shall remain in force unless the invalid provision materially affects the rights of the Parties.

18. Successors and Assigns; Assignment. The Purchase Order is binding on Harvard and Seller and their respective successors, assigns, and legal representatives. Notwithstanding the foregoing, Seller shall not subcontract the work or assign the Purchase Order without the written consent of Harvard, and any assignment in violation of this Section 18 shall be void and of no effect.

19. Governing Law. The Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Seller submits to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum. Notwithstanding the foregoing, Harvard may seek and obtain injunctive relief against a breach or threatened breach of Seller's obligations in any court having jurisdiction.

20. Force Majeure. Harvard may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its reasonable control. Seller shall hold such goods or refrain from furnishing such services at the direction of Harvard, and Seller shall deliver the goods when the cause effecting the delay is eliminated. Harvard shall be responsible only for Seller's direct additional costs incurred by holding the goods or delaying performance of the services at Harvard's request. Causes beyond Harvard's reasonable control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, war, terrorism, declared pandemic, civil commotion, failure of communications systems, fire or similar catastrophe, and severe weather or other acts of God.

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21. Survival of Terms. The provisions of the Purchase Order which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to indemnification and use of Harvard Names, shall survive termination, cancellation or expiration of the Purchase Order.

22. Compliance With Terms of Federal Grant. If the Purchase Order is made with funds obtained by Harvard directly or indirectly from a Federal grant, Seller shall comply with all applicable provisions of Attachment A located at:

<https://procurement.harvard.edu/files/procurement-vendors/files/attachment-a-federal-grant-purchases.pdf>

23. Termination for Cause – Cancellation. Harvard may, by written notice of default to Seller, terminate this order in whole or in part, should the Seller fail to make satisfactory progress, fail to deliver within the time specified or fail to deliver in strict conformance to specifications or requirements set forth herein. In the event of such termination, Harvard reserves the right to purchase or obtain the supplies or services elsewhere and the defaulting Seller shall be liable for the difference between the prices set forth in this Purchase Order and the actual cost thereof to Harvard. In such case, the prevailing market price shall be considered to be the fair repurchase price. The rights and remedies of Harvard provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

23.1 If, after notice of termination of this Purchase Order under the provisions of this clause, it is determined for any reason that the Seller was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if notice of termination had been issued pursuant to Section 24, Termination for Convenience.

24. Termination for Convenience. Harvard may, by written notice stating the extent and effective date, terminate this Purchase Order for convenience in whole or in part, at any time. Harvard shall pay the Seller, as full compensation for performance until such termination, the unit or pro-rata Purchase Order price for any delivered and accepted portion of the Purchase Order. In no event shall Harvard be liable for any loss of profits on the order or portion thereof so terminated.

25. Remedies. Seller acknowledges that (i) any remedy at law for any violation of the provisions of this Purchase Order including, but not limited to performance or the use of Harvard Names may be inadequate; and (ii) that Harvard may suffer irreparable damage through any such violation. Therefore, in addition to any other remedies it may have, Seller agrees that Harvard may seek to obtain injunctive relief against a breach or threatened breach of such obligations of Seller.

26. Audit. (applicable to Purchase Orders greater than \$100k awarded with federal government funds)

The federal awarding agency, the Controller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Seller which are directly pertinent to this specific program for the purpose of making audits, examinations, excerpts and transcriptions.

27. Compliance With Terms of Federally Awarded Contracts.

If the Purchase Order is made with funds obtained by Harvard directly or indirectly from a Federal contract, Seller shall comply with all applicable provisions of Attachment A located at:

<https://procurement.harvard.edu/files/procurement-vendors/files/attachmen-a-federal-government-contract-purchases-3-2015.pdf>