

PURCHASE ORDER TERMS AND CONDITIONS

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 The President and Fellows of Harvard College (“Harvard”) and Vendor (as defined in the Purchase Order) (Harvard and Vendor, collectively, the “Parties,” each a “Party”), constitute the entire agreement between Harvard and Vendor and supersede and replace any and all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the Purchase Order and these Terms and Conditions, these Terms and Conditions shall govern. 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 Vendor shall accept such changes. Any changes to the Goods (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 Vendor, 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, Vendor 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 pursuant to Section 6 herein, Harvard agrees to pay all amounts due within thirty (30) days of receipt of Vendor’s invoice (less any deposits paid to Vendor (if any) unless otherwise agreed to by the Parties in the Purchase Order; provided, however, Vendor 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. Vendor 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, Vendor shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from Harvard that prevents Vendor from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Vendor. If Vendor anticipates a delay in the delivery of the Goods, Vendor shall immediately notify Harvard. In the event that Vendor fails to deliver the Goods by the Delivery Date, or Vendor fails to deliver conforming Goods, Harvard may purchase substitute Goods elsewhere and charge Vendor for any additional expense incurred relating to the purchase of such substitute Goods. Vendor 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 Vendor, 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. Vendor shall substantially pack, mark and ship all Deliverables 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. Vendor 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.

6. Acceptance. As a condition precedent to payment for the Goods by Harvard to Vendor, 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 Vendor 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. 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 Vendor 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 Vendor’s standard warranty relating to the Goods, Vendor 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 Vendor’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 right of any third party. For Purchase Orders issued under U.S. Government Contracts and Grants, compliance with all applicable provisions of **Attachment A** (“Attachment A”), which is attached hereto and hereby incorporated herein, is required. In addition, Vendor 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 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, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, Harvard shall reimburse Vendor for the actual, direct cost to Vendor 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 Vendor, Vendor 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. Vendor 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. Vendor 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 Vendor or Accepted by Harvard.

11. Indemnification. To the fullest extent permitted by law, Vendor shall indemnify, defend, protect, and hold harmless Harvard, its departments, partners, officers, directors, shareholders, board members, representatives, agents, consultants, employees, affiliates, subsidiaries, and their respective successors and assigns (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 Vendor's: (a) performance of its obligations under the Purchase Order and (b) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, and consequential damages. This Section 11 shall survive termination, cancellation, or expiration of the Purchase Order.

12. Insurance. Vendor shall maintain adequate insurance in any and all forms necessary to protect both Vendor and Harvard against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance of the Purchase Order. Although evidence of certain minimum coverage may be required, 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 the Purchase Order.

13. Advertising or Publication. Neither Vendor nor any of its subcontractor or affiliates shall cause or allow the name of "Harvard" (or any variation thereof) or any Harvard logo or mark, or that of any of its schools, departments, or employees to be used in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever, without prior written approval of Harvard.

14. Taxes. Harvard is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes (Cert. # EO42203580) and federal excise taxes (#04-73-0256F). Vendor 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, <http://vpf-web.harvard.edu/procurement> or such other website designated by Harvard.

15. Independent Contractor. Vendor, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venturer of, or with Harvard, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor.

16. Non-Waiver. Except as otherwise provided in the Purchase Order, failure by Harvard to insist on strict performance of any provision of the Purchase Order, complain of any action, non-action, or default of the other Party, or to exercise any right or

privilege, shall not constitute a waiver of any aggrieved Party's rights hereunder.

17. Severability. If any term, covenant, condition, or provision of the Purchase Order, or the application thereof to any person or circumstance, shall ever be held to be invalid, illegal or unenforceable by a court or judicial officer, the provision shall remain in effect to the extent allowed by law, and in each such event the remainder of the Purchase Order or the application of such term, covenant, condition, or provision to any other person or any other circumstance (other than those as to which it has been deemed invalid or unenforceable) shall not be thereby affected and each term, covenant, condition, and provision thereof shall remain valid and enforceable to the fullest extent permitted by law.

18. Successors and Assigns; Assignment. Harvard and Vendor, respectively, bind themselves and their successors, assigns, and legal representatives to the other Party to the Purchase Order and to the successors and assigns of such other Party with respect to all covenants of the Purchase Order. Notwithstanding the foregoing, Vendor 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. Each of the Parties hereby irrevocably and unconditionally consents to submit 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.

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