

Xavier University – Cincinnati, Ohio

General Terms and Conditions

- 1. ACCEPTANCE AND MODIFICATION OF AGREEMENT** This Purchase Order (P.O.) becomes a binding contract, subject to the terms and conditions hereof, when accepted by delivery or acknowledgement to Purchaser or by delivery of materials, or performance of services, to Purchaser by Vendor, in whole or in part. Any acknowledgement form or other form of Vendor containing terms and conditions of sales shall not have the effect of adding to, modifying or deleting the terms and conditions hereof. Any addition to, modification of or deletion from the P.O. to be valid, must be in writing and signed by Purchaser's authorized representative.
- 2. DELIVERY** This P.O. constitutes a designation contract and the Vendor shall be responsible for delivery of the goods hereunder to Purchaser at the address set forth on the front hereof or as otherwise directed in writing by Purchaser. All risk of loss to the goods shall be borne by Vendor until delivered to and accepted by Purchaser. Time of delivery is and shall remain the essence of this P.O. Default in delivery caused by acts of God and other causes beyond Vendor's control and without its fault and negligence shall not make Vendor liable therefore provided Vendor immediately notifies Purchaser of said event and the estimated delay in delivery. Purchaser shall have the right to cancel all or any portion of this P.O. which has not been delivered on time. Acceptance by Purchaser of a late delivery of either a whole or a part of the P.O. shall not constitute a waiver of its claim for damage caused it by the late delivery or its right to cancel the remaining portion of the P.O. If deliveries are behind schedule, whether or not as a result of the fault of Vendor, Purchaser may request Vendor to ship by express. In such event, such deliveries shall be made by express and Vendor shall pay or promptly reimburse Purchaser for the difference between regular freight and express freight rates.
- 3. SHIPPING AND PACKING** All items ordered shall be suitably packed and marked for shipping. Purchaser shall not be charged for any packing, marking or boxing not separately itemized hereon. Vendor shall be liable to Purchaser for any loss or damage resulting from Vendor's failure to provide adequate protection during shipment. Purchaser and Vendor shall assist each other, including the procuring of any documents or information, in filing and/or prosecuting any claims against carriers or others arising out of any such shipment.
- 4. INVOICES** Discount items must be stated on all invoices. Discount period begins on date of delivery and acceptance of invoice, whichever is later. Bill of Lading with rate and weight must accompany invoice. P.O. number and item number must appear on all shipping documents, invoices, quality certification, if any, and packing sheets.

5. **OVERSHIPMENTS** Materials shipped on this P.O. must not be in excess of quantity ordered unless authorized by Purchaser in writing. Overshipments may be returned at Vendor's expense.
6. **WARRANTIES** In addition to its standard warranty and/or service guaranty, if any, Vendor also warrants that all goods supplied hereunder shall:
 - (a) be free and clear of all liens and encumbrances;
 - (b) be free from any defects in design, material or workmanship and of good and merchantable quality;
 - (c) conform to Purchaser's drawings and specifications. If any, whether set forth herein or in any documents attached to or referred to herein, and to any sample approved by Purchaser;
 - (d) be fit and safe for all purposes for which the same are purchased hereunder, and of which Vendor shall have been informed by Purchaser or shall be otherwise aware; and
 - (e) comply and have been produced, processed and delivered in conformity with all applicable Federal, State or local laws, orders and regulations.

The foregoing warranties shall survive inspection, delivery and payment. Purchaser shall have the right to return all defective items to Vendor at Vendor's expense for repair, replacement or refund at Purchaser's option as well as remedies permitted by law.

7. **PROPRIETARY INFORMATION** All specifications, drawings, designs, know how, trade secrets, customer lists, sales information, technical data, inventions or other propriety information which are disclosed by Purchaser to Vendor, or which are developed by Purchaser or Vendor in connection with the subject matter of this contract, shall be the sole and exclusive property of Purchaser and Vendor agrees to retain all such proprietary in confidence and not to disclose it to other parties.
8. **PRICE** If price is omitted it is agreed that Vendor's price will be Vendor's lowest prevailing price provided such price is not higher than previously quoted to or charged Purchaser. If the price is to be higher, Vendor must first obtain Purchaser's written agreement to such higher price.
9. **INDEMNITY, INSURANCE** Vendor, its heirs, successors, assigns and legal representatives, shall forever protect, indemnify and save harmless Purchaser, its subsidiaries and affiliated companies, their successors, assigns, customers and users of their products against all damage claims, suits at law or in equity, demands or losses of any kind arising out of or alleged to have arisen out of, or in connection with Vendor's performance of this contract. This obligation shall include the costs arising out of or in connection with Purchaser's voluntary or involuntary recall, recovery, or withdrawal of products in compliance with any Federal, State or local laws, orders, or regulations. The certificates must specifically mention that contractual and products

liability is provided and must contain a clause covering Vendor's assumption of liability.

10. **PATENTS, TRADEMARKS AND TRADE NAMES** Vendor agrees to indemnify and save harmless the Purchaser, its officers, agents, successors, assigns and customers against all damages, claims, demands, attorney's fees and costs of any kind for actual or alleged infringement of any trade-name, trademark and patent or patents (unless the goods ordered are of Purchaser's design) because of the possession, sale or use of any material specified herein.
11. **TERMINATION AT PURCHASER'S OPTION** This order may be terminated by the Purchaser in whole or in part at any time upon written notice. Upon receipt notice of such termination, the Vendor shall stop all work under this purchase order and shall furnish the Purchaser a list of all outstanding orders for material, equipment, and services and take such action relative thereto as the Purchaser may direct.
12. **TERMINATION FOR DEFAULT** Purchaser shall have the unrestricted right to terminate this P.O. upon the happening of any one or more of the following events: (1) Vendor's insolvency or commission of an act of bankruptcy; (2) filing a voluntary or involuntary petition of bankruptcy by or against Vendor; (3) appointment of a receiver for Vendor by any court of competent jurisdiction; (4) Vendor's failure to make deliveries within the time specified by this P.O.; or (5) Vendor's breach of any representation or warranty contained herein or any failure to perform any other provision of this P.O. The acceptance of goods or performance after the occurrence of any of the above enumerated events shall not affect the right of Purchaser to terminate under this paragraph.
13. **CHANGES** Purchaser may at any time make changes in the drawings, specifications, samples, quantities, delivery schedules, shipments, or other descriptions to any article, material and work covered by this P.O. If any such change cause an increase or decrease in the amount due under this P.O. then an equitable adjustment shall be made by mutual agreement, reduced in writing and executed by authorized representatives of both parties. Any claim by Vendor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Vendor of the notification of change.
14. **WAIVERS** Any waiver of strict compliance with the terms of this P.O. shall not be a waiver of Purchaser's right to insist upon strict compliance with the terms of the P.O. thereafter.
15. **PERFORMANCE BY VENDOR** This P.O. is issued to Vendor in reliance upon Vendor's personal performance of the duties imposed and by accepting same Vendor agrees not to sign this order or delegate the performance of its duties without consent in writing of Purchaser. Any such assignment or delegation attempted without the previous written consent of Purchase shall effect, at the option of Purchaser, a cancellation of all Purchaser's obligations hereunder.

16. **WORK ON PURCHASER'S PREMISES** If any work under this P.O. is to be performed on Purchaser's premises Vendor agrees to defend, indemnify and hold harmless Purchaser from and against all claims, losses or damages due to injury or death to any persons, including Vendor's agents or employees, and damage to or the destruction of any property resulting from Vendor's negligent acts or omissions incident to or arising out of such work.
17. **USE OF NAME, TRADE-NAME, AND TRADEMARKS** Unless authorized by Purchaser in writing, the name of Purchaser, its parent, subsidiaries and/or any affiliated corporations or any of their trademarks shall not be used by Vendor.
18. **TAXES** The Purchaser is exempt from Federal Excise, State and Local taxes. Upon request the Purchaser will issue to the Vendor an Exemption Certificate.
19. **NONDISCRIMINATION** Vendor will, in the performance of this Agreement, comply with all applicable laws, rules, regulations, and orders regarding equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act and Affirmative Action.
20. **GOVERNING LAW** This P.O. shall be governed by the laws of the State of Ohio. Actions or proceedings arising from the P.O. shall be heard in a court of competent jurisdiction in the State of Ohio.