

Liberty University
Purchase Order Terms & Conditions

1. Price. The Purchase Order (the “Order”) is not to be billed at a price higher than is listed on the face of the Order.

2. Conditions of Offer or Acceptance.

a. The Order is Buyer’s offer to Seller and does not constitute an acceptance by Buyer of any offer to sell, quotation or proposal. Any reference to such offer to sell, quotation, or proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of the Order. The Order consists only of the terms contained herein and on the face of the Order and any supplements, specifications or other documents expressly incorporated therein by reference.

b. It is expressly agreed that Seller’s acknowledgement or confirmation of the Order, or shipment of the goods or performance of the services called for by the Order will constitute agreement by Seller to the terms and conditions of sale contained in the Order. The Order supersedes all other writings concerning its subject matter, except any Master Purchasing Agreement between the parties, and is expressly conditioned upon Seller’s acceptance. Any additional or different terms or conditions contained in any acknowledgement of the Order by Seller shall be deemed objected to by the Buyer without the need of further notice of objection and shall be of no effect nor in any circumstance binding unless accepted by Buyer in writing. Acceptance or rejection by Buyer of any such additional terms or conditions shall not constitute an acceptance of any other additional terms or conditions.

3. Contract Documents. The Order, including any exhibits, attachments, Master Purchasing Agreements, and Statements of Work, if any, and these Terms and Conditions comprise the complete and final agreement between Buyer and Seller (the “Contract Documents”) concerning its subject matter, and supersede all prior negotiations, proposals, representations, commitments, understandings, and agreements between the parties, either written or oral. No other agreement, quotation, or acknowledgement in any way modifying any of the Contract Documents will be binding upon Buyer unless made in writing and signed by Buyer’s authorized representative. Any attachment is intended to supplement and complement the Order and shall, where possible, be so interpreted. Unless otherwise provided, all terms used in any attachment shall have the meanings set forth in the Order. Except where indicated and defined within the scope of the Order, quotations or proposals may NOT be attached to the Order and do NOT define the Seller’s scope of work; subsequently, quotations or proposals are for informational purposes only and are not part of the Order and do not define Seller’s scope of work.

4. Changes. A Purchase Order change may be used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original orders. It may

also be used to cancel an order. If Seller deviates from the requirements of the Order prior to receipt of an authorized written purchase order change, Seller does so at its own risk. The authority to modify a contract resides with the Buyer's Procurement Department exclusively.

5. Termination for Convenience. Buyer may at any time terminate the Order in whole or in part for its convenience upon written notice to Seller, in which event Seller will be entitled to reasonable termination charges. In no event will Seller be entitled to payment in excess of the Order price or lost opportunity costs, unabsorbed overhead or anticipated profits as a result of such termination and in no event will said termination costs exceed the amount of the purchase order.

6. Authorized Representative of Buyer. Buyer designates in writing those persons authorized to sign purchase orders and contracts. Dollar thresholds for each signatory are published at www.liberty.edu/financeadmin/purchasing/index.cfm?PID=13852. All communications regarding the Order must be routed through the authorized representative of Buyer referenced on the Order or Buyer's Procurement Department.

7. Payment Terms.

a. *Payment Due Date.* Buyer shall pay amounts properly payable under the Contract Documents and not otherwise disputed by Buyer within the timeframe established in the Order or other Contract Document. Seller shall invoice and Buyer shall pay in U.S. dollars.

b. *No Interest on Disputed Orders.* Seller will not be entitled to any interest penalty when payment is delayed because of disagreement between Buyer and Seller regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for such goods or services. A Purchase Order number is required on all invoices.

c. *Electronic Payments.* Buyer may require Seller to receive payments via specified electronic methods. Each party must bear the respective fees and other charges assessed by its designated bank(s) and third party service providers for electronic payments.

8. Taxes and Compliance with Laws. Seller shall deliver to Buyer the goods described in the Contract Documents free and clear of all federal, state, and local taxes, including income, excise, use, and sales taxes, and customs and import duties. Liberty University is exempt from taxes under Section 501(c) 3 of the Internal Revenue Code and is further exempt as an educational institution from certain other state and local taxes, including Virginia sales taxes.

9. Seller shall, in connection with any goods or services Seller provides hereunder, comply with all applicable federal, state and local laws, rules and regulations, and shall indemnify and hold Buyer harmless from any claim, fine, penalty or proceeding resulting from Seller's failure to comply with all applicable laws, including but not limited to the Fair Labor and Standards Act, Executive Order 11246, Executive Order 11375, and the Foreign Corrupt Practices Act.

10. Delivery.

a. *Method of Shipment.* Shipment and delivery must be in strict accordance with the instructions contained in the Contract Documents. In cases where freight is to be paid by Buyer, Seller shall ship all goods via the particular manner specified by Buyer, if Buyer has specified a manner in the Contract Documents; otherwise, the difference in freight and extra cost in cartage will be at Seller's sole expense. Seller shall include a packing slip in each shipment of goods. Buyer reserves the right to accept or reject, in whole or in part, partial or excess deliveries of goods.

b. *Delivery Schedule.* TIME IS OF THE ESSENCE IN SELLER'S PERFORMANCE OF THE PURCHASE ORDER. If Seller cannot make delivery as specified by the Contract Documents, Seller must immediately notify Buyer's Procurement Department. Seller may offer a new delivery date; however, if it is not acceptable to Buyer and delivery cannot be made as originally specified, Seller will be considered in default. Delivery by Seller to a common carrier does not constitute delivery to Buyer.

c. *Risk of Loss.* Any claim for loss or damage incurred during delivery is between Seller and the carrier. Unless otherwise specified in the Contract Documents, Buyer accepts title only when goods are received and accepted regardless of the FOB point. Seller should ensure they have a specific delivery location and request a signed receipt for goods delivered.

d. *Over-shipments; Overruns.* Buyer's Procurement Department has the authority to provide written approval prior to shipment for the acceptance of goods in excess of those specified on the purchase order.

e. *Substitutions.* Substitution is defined as delivery of an item that does not conform to the specifications of the Contract Documents. Substitutions on Orders require the prior written approval of Buyer's Procurement Department. Any supplies delivered that do not meet specifications may be returned to the Seller at the Seller's expense. When a shipment or item is returned, the Seller must make immediate replacement with acceptable merchandise.

f. *New, Used, Altered.* All supplies and equipment furnished must be new and in first class condition unless the Contract Documents specify used items. Demonstration items, previously-rented items, and reconditioned items are not considered new. No equipment is acceptable if serial numbers or any other manufacturers' identifying labels or marks have been removed, obliterated, or changed.

g. *Packaging.* Unless otherwise specified in the Contract Documents, Seller must use new standard commercial packing and shipping containers. Shipping containers must be legibly marked or labeled on the outside with the commodity description and number, size, quantity, and Order number. A packing slip or invoice must accompany all shipments and reference the Purchase Order number.

h. *Inspection; Latent Defects.* All materials, equipment, supplies, and services are subject to inspection and test. Goods or services that do not meet specifications may be rejected, in whole or in part. Failure to reject upon receipt, however, does not relieve Seller of liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, Seller is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses Buyer incurs. Buyer will note all apparent damages in transit on the freight bill and will notify Seller. Seller must make immediate replacement of the damaged or lost merchandise or be in default. It is Seller's responsibility to file a claim against the carrier. If damage is to a small quantity, with Buyer's Procurement Department's approval, Seller may deduct the amount of damage or loss from its invoice in lieu of replacement.

11. Warranties on Goods and Services. SELLER EXPRESSLY REPRESENTS THAT IT HAS MARKETABLE TITLE TO THE GOODS, IF APPLICABLE, AND THE RIGHTS TO CONVEY THEM AND WARRANTS THAT ALL GOODS TO BE SUPPLIED HEREUNDER (1) CONFORM TO THE SPECIFICATION DRAWINGS, SAMPLES, OR OTHER DESCRIPTION UPON WHICH THE ORDER IS BASED, (2) ARE FIT AND SUFFICIENT FOR THE PURPOSE INTENDED, (3) ARE MERCHANTABILITY, (5) ARE OF GOOD MATERIAL AND WORKMANSHIP, (5) ARE FREE FROM DEFECT, and (6) ARE UNENCUMBERED AND FREE FROM SECURITY INTERESTS AND LIENS. SELLER ALSO WARRANTS THAT THE SERVICES AND SPECIFICATIONS FURNISHED BY IT HEREUNDER (1) WILL BE PERFORMED WITH REASONABLE SKILL AND CARE, USING SUITABLY QUALIFIED PERSONNEL WHO ARE LEGALLY PERMITTED TO WORK IN THE UNITED STATES, IN A MANNER CONSISTENT WITH INDUSTRY STANDARDS AND PRACTICES AND IN COMPLIANCE WITH ALL APPLICABLE LAWS; (2) WILL CONFORM IN ALL MATERIAL RESPECTS WITH THE DESCRIPTIONS AND SPECIFICATIONS SET FORTH IN THIS AGREEMENT, INCLUDING ANY APPLICABLE STATEMENTS OF WORK OR PURCHASE ORDERS; AND (3) DO NOT INFRINGE UPON ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. Seller hereby assigns and agrees to assign to Buyer whatever rights Seller has and will have under any manufacturer warranties of which Seller is and will be a holder. Upon request, Seller agrees to execute any document to effectuate such assignment(s). Seller agrees to replace or correct defects (including labor and transportation) in any goods not conforming to the foregoing warranties promptly, without expense to Buyer. In the event of failure by Seller to correct defects in or replace non-conforming goods promptly, Buyer after reasonable notice to Seller, may make such corrections or replace such goods and Seller shall pay charges for the costs incurred by Buyer.

12. Buyer's Remedies upon Discovery of Defects. Upon discovery of any good that is defective or not in accordance with the Contract Documents, at Buyer's option, Buyer may, in addition to any other remedies available in equity or at law, either (a) reject the defective or nonconforming good by sending written notice to Seller or (b) require Seller to replace or repair the good to a condition acceptable to Buyer. Any repaired, modified, or replaced good will be additionally warranted against defects after completion of such repair, modification, or replacement. If Buyer rejects the defective good and if the same is in Buyer's control, Buyer will, to the extent it is commercially reasonable, hold the rejected good for Seller's inspection and instruction and, if Seller so directs, return same at Seller's expense, all at

Seller's risk. Upon Buyer's rejection, Buyer may cover the same with another supplier, and Seller agrees to pay Buyer on demand for all loss, damage, costs, attorneys' and consultants' fees, and other charged incurred or made by Buyer in connection with such replacement order. Upon Buyer's notice to Seller that it desires to exercise its option to have Seller replace or repair the defective good, Seller shall immediately proceed at Seller's sole expense to replace or repair the good, including providing parts, freight, and labor for removal and reinstallation, if necessary, to the satisfaction of Buyer.

13. Indemnity. Seller shall defend and indemnify Buyer and its directors, officers, employees, and agents (each an "Indemnified Party") against, reimburse each Indemnified Party for, and hold each Indemnified Party harmless from, all losses, claims, damages, liabilities and costs (including attorneys' fees)(collectively, "Losses") incurred by an Indemnified Party as a result of (a) any breach by Seller of any of the terms, conditions, covenants, representations, or warranties contained herein, (b) any personal injury, death, or property damage caused by any defective good or service or by any employees, contractors, or representatives of Seller, (c) any claim by an employee or contractor of Seller for wages, benefits or other compensation, (d) Seller not properly withholding and paying tax amounts for its employees and contractors, or (e) any third-party claim alleging that any of the a good or service infringe upon such third-party's patent, copyright, trademark, trade secret, or other intellectual property rights.

14. Insurance. Seller shall maintain, at its sole cost and expense, liability insurance coverage in accordance with Buyer's insurance requirements published at <https://www.liberty.edu/finance-admin/risk-management/certificate-of-insurance-addendum/>.

15. Intellectual Property/Patents. Unless otherwise agreed in writing or provided in the Contract Documents, Buyer will retain all rights, title, and interests in all materials, work product, documents, data, and other deliverables developed or provided by Seller in connection with any services provided to Buyer, which will be considered "works made for hire," as defined in the U.S. Copyright Act of 1976 ("Intellectual Property"). Seller agrees to execute any and all documents and do any and all further acts, at Buyer's expense, as may be requested by Buyer from time to time to carry out the intent and purposes of this section, including, but not limited to, executing and delivering all instruments requested by Buyer to secure or protect its rights in and to the Intellectual Property or giving testimony in support of creation, inventorship or authorship consistent with the Order as may be necessary in any legal proceedings or any application proceedings for any U.S. or foreign patents or copyrights. As owner of the Intellectual Property, Buyer will have the right to independently use, make improvements to, make derivative works of and license the Intellectual Property. To the extent Buyer uses, makes improvements to, makes derivative works of or licenses any of the Intellectual Property, Buyer will have no obligation to pay any royalty or other fee to Seller.

a. *Pre-Existing Intellectual Property*. Seller will retain all rights, title and interests in the Intellectual Property that it has as of the date of the Order ("Pre-Existing IP"). However,

Buyer will have an irrevocable, royalty-free, and perpetual license to use for its internal business purposes any of Seller's Pre-Existing IP that is incorporated into any Deliverable.

b. *Independently-Developed Intellectual Property.* Seller will retain all rights, title, and interests in all Intellectual Property that it independently developed for purposes outside of the scope of the Contract Documents yet developed during the term specified within the Order or the Contract Documents ("Independently-Developed IP"). However, Buyer will have an irrevocable, royalty-free, and perpetual license to use for its internal business purposes any of Seller's Independently-Developed IP that is incorporated into any materials, work product, documents, data, and other deliverables developed or provided by Seller in connection with any services or products provided to Buyer.

16. Special Tooling.

a. All documents and tools including, but not limited to, designs, drawings, models, and patterns furnished to Seller by Buyer will remain the exclusive property of Buyer; may only be used by Buyer in the performance of Orders from Buyer; and shall not be reproduced or disclosed to third parties. Disposition of such documents and tools and any copies shall be as directed in writing by Buyer.

b. Unless otherwise provided herein, special tools, equipment, dies, jigs, fixtures and patterns (hereinafter collectively referred to as "Special Tooling"), used in the manufacture of goods shall be furnished by and at the expense of Seller, shall be kept in good condition and when necessary, shall be replaced by Seller without expense to Buyer. Buyer may at any time reimburse Seller for the cost of any of the Special Tooling and/or replacements and become the owner and entitled to the possession of same.

c. If the price stated on the face hereof includes the cost of any Special Tooling fabricated or acquired by Seller for the purpose of filling the Order, such Special Tooling and any process sheets related thereto shall become the property of Buyer and shall be identified by Seller as such. Unless otherwise specified herein, Buyer shall make payment only upon acceptance of the first run of material or parts fabricated therewith. Seller shall at its own expense maintain such Special Tooling in proper working order and shall be responsible for all loss of or damage thereto while in its possession and shall use the same only for the production of goods for Buyer, unless otherwise authorized in writing by Buyer. Seller shall follow its normal industrial practice in maintaining property control records for such Special Tooling and when the Order has been completed, such Special Tooling will be disposed of as Buyer may direct. Seller shall include the substance of this subparagraph in all purchase orders and subcontracts issued by it hereunder.

17. Confidentiality and Nondisclosure.

a. *“Confidential Information,” Defined.* “Confidential Information” means nonpublic information that Buyer designates as being confidential to Seller or which, under the circumstances surrounding disclosure, reasonably ought to be treated as confidential by Seller. Confidential Information will not include any information that: (a) is or subsequently becomes publicly available without Seller’s breach of any obligation owed to Buyer; (b) was known by Seller prior to Buyer’s disclosure of such information; (c) became known to Seller from a source other than Buyer other than by the breach of an obligation of confidentiality owed to Buyer; or (d) is independently developed by Seller without reference to Confidential Information.

b. *Obligations Regarding Confidential Information.* Seller shall: (a) refrain from disclosing any Confidential Information of Buyer to third parties; (b) take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information but no less than reasonable care, to keep confidential the Confidential Information of Buyer; (c) refrain from disclosing, reproducing, summarizing, and/or distributing Confidential Information of Buyer except in pursuance of Seller’s business relationship with Buyer, and only as otherwise provided hereunder; and (d) refrain from reverse engineering, decompiling, or disassembling any Confidential Information disclosed by Buyer under the Order and/or supplemental documents.

c. *Permitted Use of Confidential Information.* Seller may use Confidential Information only to accomplish the purposes of the Order and/or supplemental documents. Seller may disclose Confidential Information only to Seller’s employees and consultants on a need-to-know basis, provided that such employees and consultants agree to maintain the confidentiality of the Confidential Information.

d. *Ownership of Confidential Information.* All Confidential Information is and will remain the property of Buyer. By disclosing Confidential Information to Seller, Buyer does not grant any express or implied right to Seller to or under any patents, copyrights, trademarks, or trade secret information except as expressly provided herein.

e. *Disclosure Required by Law.* Seller may disclose Confidential Information in accordance with a judicial or other binding governmental order, provided that Seller gives the Buyer reasonable notice prior to such disclosure to allow Buyer a reasonable opportunity to seek a protective order or equivalent.

f. *Remedies.* Seller shall notify Buyer immediately upon discovery of any unauthorized use or disclosure of Confidential Information and will cooperate with Buyer in every reasonable way to help Buyer regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. Seller acknowledges that monetary damages will not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Buyer will be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

18. Return of Buyer’s Data. To the extent Buyer provides Seller with any data, Seller shall upon completion of Seller’s performance under the Order return such data to Buyer in

a useable electronic form, and erase, destroy, and render unreadable in its entirety all such data retained by Seller in some other form in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of Buyer, whichever occurs first.

19. Confidential Records Compliance. To the extent Seller receives education records or otherwise becomes aware of information from education records directly related to a student and protected by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232, as amended (popularly known as “FERPA”), and other laws with respect to its activities under this Agreement, Seller acknowledges it has a duty to maintain the privacy of student records and agrees that its use and maintenance of these education records, including the use and disclosure of personally identifiable information concerning a student from education records, will always be in accordance with in accordance with FERPA as if Seller was itself an educational institution. Specifically, Seller shall comply with Seller’s obligations under FERPA as a “school official” and FERPA’s “legitimate educational interests” limitation on its use or disclosure of education records. Additionally, Seller shall implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure any protected education records Seller might possess. Seller agrees to abide by FERPA’s limitation on re-disclosure of personally identifiable information in education records; to not use or disclose education records created or received from, by, or on behalf of Buyer or its students for any purpose other than the purpose for which such disclosure is made; and to not use or disclose such education records except as permitted by this Agreement, as required by law, or as authorized by Buyer in writing.

20. PCI Compliance. To the extent Seller receives, stores, processes, and/or transmits cardholder data (e.g. credit card numbers and other related information, as such term is defined by the Payment Card Industry (PCI) Data Security), Seller shall comply with all PCI Data Security Standards.

21. Miscellaneous.

a. *No Assignment.* Seller may not assign, subcontract, transfer, delegate, or sublet any of its rights or obligations without the Buyer’s prior written consent.

b. *Advertising.* Seller may not use Buyer’s name, logo, or other service marks, or the fact that Buyer contracts with Seller in any of Seller’s product or service literature or advertising without the prior written consent of Buyer.

c. *Force Majeure.* Any delay or failure in the performance by either party hereunder will be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure will include, but not be limited to: acts of God, civil unrest, fires, riots, wars, pandemics, or embargoes. Notwithstanding anything to the contrary contained herein, if either party is unable to perform hereunder for a period of

thirty (30) consecutive days, then the other party may terminate this Agreement immediately without liability by ten (10) days written notice to the other.

d. *Governing Law; Forum Selection.* The validity and interpretation of the Contract Documents and of the rights and obligation of Buyer and Seller will be governed and construed according to the laws of the Commonwealth of Virginia, without giving effect to its conflict of laws rules. Any claim or action arising out of the Order must be brought in a court sitting in Lynchburg, Virginia.

In the event of a conflict the Liberty University Procurement Purchasing Terms and Conditions will supersede all quotes, order forms, statements of work, service level agreements and license agreements.

The undersigned certify that they have read and accept this Agreement.

LIBERTY UNIVERSITY, INC.

CONTRACTOR

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____