



Purchase Order Terms and Conditions

The following terms and conditions, together with such terms as are set forth in the Standard Form of Purchase Order (hereinafter referred to as "the Order"), with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Merrimack College (hereinafter referred to as "the Buyer"), shall constitute the entire contract (the "Order") between the Buyer and Supplier.

1. ACKNOWLEDGMENT AND ACCEPTANCE OF ORDER: This Order constitutes an offer from the Buyer that is expressly limited to the Terms and Conditions contained herein. The Terms and Conditions of this Order are those that apply to the purchase of materials, items, products, components or services (hereinafter referred to as "Material"). All exhibits, attachments, technical specifications, drawings, notes, instructions, or information referenced in the Order are incorporated herein by reference. These Terms and Conditions control, unless they are specifically varied or contradicted by one of the following methods in the listed order of precedence; 1.) Published varying terms and conditions on the face of the order. 2.) A current existing Master Purchase Agreement, 3.) Separate valid contract between the Buyer and Supplier, to which this Order applies. All other prior oral or written statements varying the Order are specifically rejected and disclaimed.

2. CHANGES/AMENDMENTS: The Buyer shall have the right at any time, by written notice, in the form of a Change Order, to the Supplier, to make any changes it deems necessary, including, but not limited to, changes in specifications, design, delivery, testing methods, packing or destination. If any such required changes cause an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by the Supplier for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Supplier of notice of change. Price increases, extensions of time for delivery and change in quantity shall not be binding on the Buyer unless evidenced by a form of Change Order issued and signed by the Buyer.

3. DELIVERY/FORCE MAJEURE: If any Material is not delivered by the date specified herein, the Buyer reserves the right, without liability, to cancel this Order as to any Material not yet shipped or tendered, and to purchase substitute Material and to charge the Supplier for any loss incurred. Oral cancellation notices, made by the Buyer or the Supplier, are effective when made, but must be confirmed in writing. Any provisions hereof for delivery by installment shall not be construed as making the obligations of the Supplier severable. The Buyer shall have the right to refuse deliveries made more than one week in advance of any delivery schedule appearing in this Order unless arrangements for such early delivery have been confirmed with the receiving party.

The Supplier shall notify the Buyer in writing promptly of any delays (however caused) and of any actual potential labor dispute which delays or threatens to delay the timely performance of this Order.

If the Supplier is unable to complete performance at the time specified for delivery hereunder, by reason of strikes, labor disputes, riot, war, fire or other causes beyond the Supplier's reasonable control, the Buyer, at his option, may elect to take delivery of Material hereunder in its unfinished state and to pay such proportion of the contract price as the work then completed bears to the total work hereunder and to cancel this Order without liability as to the balance of the Material covered hereunder. TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.

4. TITLE AND RISK OF LOSS: Unless the Order expressly states otherwise, all goods shall be shipped FOB: the "Ship to" location designated in the Order. Risk of loss shall not pass to the Buyer until goods called for in this Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crafting, marking, transportation and liability for loss and/or damage even if the Buyer has agreed to pay freight, express or other transportation charges

5. PRICE/TAXES: Prices stated on the Order hereof are firm and shall remain firm until deliveries have been completed unless otherwise expressly agreed to in writing by both parties. The Supplier agrees that any price reduction made with respect to Material covered by this Order subsequent to placement will be applied to this Order. All prices specified herein include all charges for, but not limited to, inspection, and packaging. Prices set forth are exclusive of applicable sales, use, excise and value-added or similar taxes. The Buyer is a tax exempt 501(c) (3) organization. The Buyer is exempt from the Massachusetts Sales and Use Tax Law (exemption number 042-103-731). The ST-2 "Certificate of Exemption" form can be found on the Merrimack College web site (www.Merrimack.edu) or the Buyer will furnish the Supplier with a tax exemption certificate upon request.

6. WARRANTIES: The Supplier expressly warrants that any Material supplied hereunder shall conform to the generally recognized manufacturing and safety standards of the Supplier's industry in the United States and shall meet or exceed the Supplier's specifications on performance as detailed in the Supplier's brochures, sales literature and other specifications as may be available to the Buyer. Supplier will perform all services to the reasonable satisfaction of Buyer.

In addition to any other express or implied warranties, the Supplier expressly warrants that the Material furnished pursuant to this Order will be: (a) free from defects in title, workmanship and material; (b) free from defects in design except to the extent that such items comply with detailed designs provided by the Buyer; (c) of merchantable quality and suitable for the purposes, if any, which are stated on this Order.

If any material covered by this Order is found not to be as warranted, the Buyer may, by written notice to the Supplier: (a) rescind this Order as to such non-conforming Material; (b) accept such Material at an equitable reduction in price; (c) reject such non-conforming Material and require the delivery of suitable replacements.

In addition to other remedies provided by law, the Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Order if Supplier fails to deliver all or any part of the goods or perform any part of the work in accordance with the terms and conditions of the Order. Acceptance of any part of the Order shall not bind the Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted.

If the Supplier fails to deliver suitable replacements promptly, the Buyer, with notice of five (5) business days, may replace or correct such Material and charge the Supplier the additional cost occasioned the Buyer thereby, or terminate this Order for default.

Any items corrected or furnished in replacement are subject to all the provisions of this article entitled WARRANTIES to the same extent as items initially furnished or originally ordered.

Cost of replacement, rework, inspection, repackaging and transportation of such corrected Material shall be at the Supplier's expense.

This warranty provision shall survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Order and such warranties shall run to the Buyer, its successors, assigns, employees, students, and users of the Material. Nothing herein, however, shall limit the Buyer's rights in law or equity for damages resulting from delivery of defective goods or damage caused during the delivery of goods or provision of services.

Rights granted to the Buyer in this article entitled WARRANTIES are in addition to any other rights or remedies provided elsewhere in this Order or in Law.

7. INSPECTION AND ACCEPTANCE: The Supplier shall inspect all Material prior to shipment to the Buyer. All Material covered by this Order may be inspected and tested by the Buyer or its designee. If the Buyer elects to inspect or test successful completion, inspection and testing shall be a prerequisite to the Buyer's acceptance of the Material. If deemed necessary by the Buyer, the Supplier shall provide without charge, all reasonable facilities and assistance for such inspection and test.

Any inspection records relating to Material covered by this Order shall be available to the Buyer during the performance of this Order and for such longer periods as specified by the Buyer.

If any Material covered by this Order is defective or otherwise not conforming with the requirements of this Order, the Buyer may, by written notice to the Supplier: (a) rescind this Order as to such non-conforming Material; (b) accept such Material at an equitable reduction in price; (c) reject such non-conforming Material and require the delivery of suitable replacements. If the Supplier fails to deliver suitable replacements promptly, the Buyer, with notice of five business days, may replace or correct such Material and charge the Supplier the additional cost occasioned the Buyer thereby, or terminate this Order for default.

No inspection (including source inspection) test, approval (including design approval) or acceptance of Material shall relieve the Supplier from responsibility for defects or other failures to meet the requirements of this Order. Rights granted to the Buyer in this article entitled INSPECTION is in addition to any other rights or remedies provided elsewhere in this Order or in Law.

8. BUYER'S PROPERTY IN SELLER'S POSSESSION: All tools, special dies, molds, patterns, jigs and any other property furnished to the Supplier by the Buyer or specifically paid for by the Buyer for use in the performance of this Order shall be and remain the property of the Buyer; shall be subject to removal at any time upon the Buyer's demand; shall be used only in filling orders for the Buyer; shall be maintained in good order and condition and shall be clearly identified as the property of the Buyer. The Supplier assumes all liability for loss or damage to such property.

9. PATENT INDEMNITY: The Supplier agrees to indemnify, hold harmless and defend the Buyer, its employees, directors, officers, trustees, Agents and students with respect to all claims, suits, actions and proceedings of actual or alleged infringements of any Letter, Patent, Registered or Industrial Design, Trademark or Trade Name, Trade Secret, Copyright or other protected right in any country resulting from any sale, use or manufacture of any Material delivered hereunder and to pay and discharge all judgments, decrees, and awards rendered therein or by reason thereof and bear all expenses and legal fees (including the Buyer's) associated herewith. The Buyer reserves the right to be represented in any such action by its own counsel at its own expense.

10. INDEMNITY: The Supplier will indemnify, defend and hold the Buyer, its directors, officers, trustees, employees, agents and students harmless from any loss, expense, claim or damage including reasonable defense costs, arising from any claim or action based on any acts or omissions of the Supplier, its employees, servants, agents or subcontractors. The Buyer reserves the right to be represented in any such action by its own counsel at its own expense.

11. ASSIGNMENT/SUBCONTRACTING: The Supplier shall not assign this Order, any rights under this Order or any monies due or to become due hereunder nor delegate or subcontract any obligations or work hereunder without the prior written consent of the Buyer. Neither purported assignment nor delegation by the Supplier shall be binding on the Buyer without such consent.

12. CANCELLATIONS: The Buyer may cancel this Order in whole or in part, for no cause, via written, FAX or telecommunication which includes e-mail or text to the Supplier, effective when sent, provided such notice is sent at least ten (10) days prior to the delivery date specified on the face of this Order.

The Buyer may cancel this Order in whole or in part at any time for cause by written, FAX or telecommunication notice to the Supplier, effective when sent, in the event that the Supplier: (a) fails to comply with any term or condition of this Order including, but not limited to, delivery terms; or (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; or (c) files a voluntary petition in bankruptcy; or (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; or (e) voluntarily ceases trading; or (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Order to a third party without the Buyer's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies which the Buyer may have in Law or in Equity, the Buyer may also cancel this order or any outstanding deliveries hereunder by notifying the Supplier in writing of such cancellation and the Supplier shall thereupon transfer title and deliver to the Buyer such work in progress or completed material as may be requested by the Buyer. The Buyer shall have no liability to the Supplier beyond payment of any balance owing for Material purchased hereunder and delivered to and accepted by the Buyer prior to the Supplier's receipt of the notice of termination, and for work in progress requested for delivery to the Buyer.

13. RESCHEDULING: The Buyer may without liability at least fourteen (14) days prior to the scheduled delivery date appearing on the Order defer delivery on any or every item under said Order by giving oral notice to the Supplier (confirmed in writing within ten (10) working days) of any necessary rescheduling.

14. PROPRIETARY INFORMATION/TITLE TO SPECIFICATIONS: All written information obtained by the Supplier from the Buyer in connection with this Order and which is identified as proprietary, including, but not limited to, any specifications, drawings, blueprints and software programs, shall remain the property of the Buyer, shall be used by the Supplier only to the extent necessary for performance of this Order and shall not be disclosed to any third parties without prior written consent of the Buyer.

The Supplier shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Order without prior written consent of the Buyer except as may be required to perform this Order. Supplier hereby sells, assigns, grants and transfers to Buyer all right, title and interest in any reports, documents, performances or other copyrighted materials authored or created by Supplier for Buyer pursuant to this Agreement, including all copyrights, renewals and extensions thereof.

15. SHIPPING, PACKAGING AND LABELING: All Material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, the Buyer's packaging specification.

The Supplier shall mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of the Supplier and the Buyer. An itemized packing list must accompany each shipment. Each packing slip shall include; this Order number, quantity, item description, order date, shipping date and delivery address, but shall not include pricing information.

All shipments of hazardous materials under this Order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910, 1200 for the transporting and labeling of hazardous materials.

Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made.

16. THE SUPPLIER AS AN INDEPENDENT CONTRACTOR: The Supplier shall perform the obligations of this Order as an independent contractor and under no circumstances shall it be considered an agent or employee of the Buyer. The Terms and Conditions of this Order shall not, in any way, be construed as to create a partnership or any other kind of joint undertaking or venture between the parties hereto. The Supplier expressly waives any and all rights which may or may not exist to claim any relief

under the Buyer's comprehensive insurance policy, worker's compensation or unemployment benefits. Supplier is solely and personally responsible for all federal, state and local taxes, contributions and other liabilities with regard to payments by Buyer to Supplier.

17. STANDARDS OF CONDUCT: The Supplier must reassign its employees, agents and subcontractors working on the Buyer's premises if any such personnel are deemed to be disruptive, dangerous, incompetent, or otherwise noncompliant with reasonable conduct guidelines and College policies and procedures. At the Buyer's request, the Supplier will distribute publications supplied by the Buyer regarding the Buyer's policies, practices, and procedures, including, but not limited to, Affirmative Action and Sexual Harassment policies.

18. INVOICING/PAYMENTS/SET-OFFS: After each delivery of Material, pursuant to this Order, the Supplier shall send duplicate invoices including item number to the Buyer's Accounts Payable Department.

Payment of invoice shall not constitute acceptance of Material ordered and shall be subject to appropriate adjustment, if the Supplier failed to meet the requirements of this Order. The Buyer shall have right at any time to set-off any amounts due to the Supplier, (or any of its associated or affiliated companies) against any amounts owed by the Buyer with respect to this Order or any subsequent Order or any other contractual agreement between the parties hereto unless such set-off violates local law or regulations. In exception as expressly provided to the contrary in this Order, all expenses incurred by the parties shall be the sole responsibility of the party who ordered the service or incurred the particular expense.

19. INSURANCE AND STATUTORY OBLIGATIONS: If any part of this Order involves the Supplier's performance on the Buyer's premises or at any place where the Buyer conducts operations, or with material or equipment furnished to the Supplier by the Buyer, the Supplier shall take all necessary precautions to prevent injury to persons or property during the progress of such work. The Supplier shall maintain public liability, personal injury, and property damage insurance and employer's liability and compensation insurance, in an amount determined by the Buyer to be appropriate, to protect the Buyer from said risks and from any statutory liabilities whatsoever arising therefrom. The Supplier shall timely produce evidence of such insurance upon request by the Buyer.

20. WAIVER: The failure of the Buyer to insist in any instance upon the strict performance of any provision of this Order or to exercise any right or privilege granted to the Buyer hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

21. NOTIFICATION OF HAZARDOUS PRODUCT: The Supplier hereby agrees to notify the Buyer of any inherent hazard related to the Material being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to the Buyer's Director of Purchasing and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by the Buyer or others and any additional information that the Buyer should reasonably expect to know to protect its interest.

22. COMPLIANCE WITH LAWS By acceptance of this Order, the Supplier agrees to comply with the requirements of Executive Order 11246, as amended, relating to Equal Employment Opportunity; Executive Order 11701, relating to the Employment of Veterans, and the Rehabilitation Act of 1973 and their implementing regulations at 41 CFR 60-250 and 41 CFR 60-741. The Supplier also agrees to comply with the Fair Labor Standards Act and the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including the procurement of required permits and certificates and compliance with the Small and Minority Business Investment Act known as Public Law 95-507) in the Supplier's performance hereunder. Whether or not the Buyer provides a specification, if materials, services or containers furnished by the Supplier are required to be constructed, packaged, labeled or registered in a prescribed manner, the Supplier shall comply with the applicable federal, state, county and local laws, ordinances, regulations and codes. The Supplier further agrees to indemnify and hold the Buyer and its customers harmless from any loss or damage that may be sustained by the Buyer, by reason of the Supplier's failure to comply with any federal, state, county or local laws, ordinance, regulation and codes.

The Buyer encourages the Supplier to provide opportunities and assistance to minority and women owned businesses in accessing the necessary channels to allow their maximum participation in the provision of goods and services. A minority owned business is defined as a business owned and operated by a person(s) who is a member of a minority group such as African American, Hispanic, Native American (American Indian), Asian American (Chinese, Korean, from India, Japanese, Pacific Islander), or Cape Verdean (from the Cape Verde Islands off the coast of Africa).

23. MANDATORY CLAUSES REQUIRED UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS: If a governmental contract number is shown on the face of this Order, clauses contained in the current issue of the Federal Acquisition Regulations (FAR) and supplements thereto, which the government makes mandatory for a contractor under a government contract to include in its subcontracts thereunder, will apply to this Order.

24. REPRODUCTION OF DOCUMENTATION: The Buyer shall have the right at no additional charge to use or incorporate all or portions of material found in the Supplier's literature and/or reproduce the Supplier's applicable literature such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and other similar supporting documentation and sales literature. The Supplier agrees to advise the Buyer of any updated information relative to the foregoing literature and documentation with timely written notice.

25. LAW OF THE CONTRACT This Order shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts. At the Buyer's option, if the Buyer so elects, in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Order shall be resolved by arbitration in Boston, MA in accordance with the rules of the American Arbitration Association; and all disputes shall otherwise be resolved in and only in the courts of the Commonwealth of Massachusetts as the exclusive judicial forum. BUYER AND SELLER WAIVE THEIR RIGHT TO A JURY TRIAL WITH REGARD TO ANY DISPUTE ARISING IN CONNECTION WITH THIS ORDER.