

## PURCHASE ORDER FOR COMMODITIES AND SERVICES TERMS AND CONDITIONS

This Purchase Order constitutes a binding contract between the College and the Vendor named on the Purchase Order when accepted by the Vendor either by express acknowledgment or by commencement of work or shipment without reservations.

1. **ASSIGNMENT/DELEGATION.** No right, obligation or interest in this Purchase Order shall be assigned or delegated by the Vendor without the prior written consent of the College. Any such unauthorized assignment or delegation by the Vendor shall be void and may render this Purchase Order void, at the sole option of the College, without prejudice to the College's other rights and remedies.

2. **FORCE MAJEURE.** Neither party shall be held responsible for losses resulting, if the fulfillment of any terms or provisions of this Purchase Order is delayed or prevented by unforeseeable causes including but not restricted to acts of God, restraint of Government, pandemic/epidemic or for any other cause which is unavoidable through the exercise of due care, and beyond the control of the party who is to perform. If performance is interrupted pursuant to this provision, the College is only liable for the products or services it has accepted. In no instance will the College be liable for third party, consequential, foreseen or unforeseen damages including, but not limited to, lost profits or any noneconomic loss.

3. **APPLICABLE LAW AND VENUE.** The laws of the State of Florida shall govern all aspects of the Purchase Order. In the event it is necessary for either party to initiate legal action regarding the Purchase Order, venue for all claims shall be in Palm Beach County, Florida.

4. **INDEMNIFICATION.** For value received, the Vendor shall defend, indemnify and hold the College, its officers, directors, Board of Trustees, agents, assigns, and employees harmless from any and all claims or causes of action, including without limitation, all damages, liabilities, expenses, costs, and attorneys' fees related to such claims resulting from any negligent or intentional act or omission, or the violation of any federal, state, or local law or regulation, by the Vendor, its subcontractors, agents assigns, invitees, or employees in connection with this Purchase Order. Vendor also agrees to save and hold harmless the College, its officers, directors, Board of Trustees, agents, assigns, and employees for infringement of any United States patent, trademark, or copyright due to the use of any product sold to the College or used in the performance of the Purchase Order. This paragraph shall survive the expiration or termination of this Purchase Order.

5. **INTERPRETATION - PAROL EVIDENCE INTEGRATION.** This Purchase Order states the entire and final understanding between the parties and no course of prior dealing, usage of the trade, or extrinsic or parol evidence, or terms or conditions contained in a subsequent invoice, purchase order or other subsequent document from the vendor shall be relevant to supplement, vary or explain any term used herein. The acceptance or acquiescence of any course of performance rendered under this Purchase Order shall not be construed as a waiver nor shall it be relevant to define or vary any term stated herein.

6. **TERMINATION FOR DEFAULT.** If either party fails to fulfill its obligations under this Purchase Order in a timely and proper manner, the other party shall provide the breaching party with a letter granting the breaching party ten (10) calendar days from receipt of notice to cure the breach. If the breaching party fails to cure the breach within 30 calendar days, the breaching party has defaulted under this Purchase Order and the non-breaching party may terminate this Purchase Order.

7. **TERMINATION FOR CONVENIENCE.** The College may terminate this Purchase Order with or without cause at any time for convenience upon ten (10) calendar days' prior written notice to the Vendor. In the event of termination for convenience, the College shall compensate the Vendor for all authorized and accepted deliverables and or services completed through the date of termination in accordance with the signed Statement of Work. The College shall be relieved of any and all future obligations hereunder including but not limited to, lost profits, third party or consequential damages under this Purchase Order. The College may withhold all payments to the Vendor for such work until such time as the College determines the exact amount due to the Vendor.

8. **DISPUTES.** In the event a dispute arises which the Vendor and College cannot resolve, the parties shall have the option to submit to non-binding mediation. The mediator shall be impartial, shall be selected by the parties and the cost of mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

9. **COMPLIANCE/LICENSES.** The Vendor, its employees, subcontractors or assigns shall obtain, at its own expense, all licenses, permits, and other authorizations necessary to comply with all applicable federal, state, and local laws and regulations relating to the performance of this Purchase Order. The College undertakes no duty to ensure such compliance, the Vendor shall indemnify the College and hold the College harmless from any failure by the Vendor to comply with such laws and regulations relating to performance of this Purchase Order.

10. **PUBLIC ACCESS.** The Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the Vendor assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the Vendor and Vendor shall be solely responsible for all related expenses.

Moreover, pursuant to Section 119.0701, *Florida Statutes*, Vendor is required to comply with the public records laws of the State of Florida by (1) keeping and maintaining applicable public records required by the College to perform under this agreement; (2) upon request from the College, provide the College with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided Chapter 119, *Florida Statutes*, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Vendor does not transfer the records to the public agency; and (4) upon completion of the contract, transfer, at no cost, to College all public records in possession of Vendor or keep and maintain public records required by the public agency to perform the service. If Vendor transfers all public records to the College upon completion of the contract, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the contract, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the College, upon request from the College, in a format that is compatible with the information technology systems of the College. If Vendor fails to provide the public

records to the College within a reasonable time, Vendor may be subject to penalties under s. 119.10.

**IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COLLEGE'S OFFICE OF THE GENERAL COUNSEL AT 561-868-3139, [denisg@palmbeachstate.edu](mailto:denisg@palmbeachstate.edu), 4200 S. Congress Avenue, MS # 21, Lake Worth, Florida 33461.**

11. **RECORDS RETENTION/AUDIT.** The Vendor shall maintain all records, books and documents pertinent to the performance of this Purchase Order in accordance with generally accepted accounting principles consistently applied. The College shall have inspection and audit rights to such records for a period of 5 years from final payment under this Purchase Order. Records relating to any legal disputes arising from performance under this Purchase Order shall be made available until final disposition of the legal dispute.

12. **COLLEGE'S TAX EXEMPTION.** The College is exempt from federal and state taxes for tangible personal property. The Vendor shall not utilize the College's exemption certificate number issued pursuant to Sales and Use Tax Law, Chapter 212, Florida Statutes, when purchasing materials used to fulfill its contractual obligations with the College. The Vendor shall be responsible and liable for the payment of all applicable FICA/Social Security and other taxes resulting from this Purchase Order.

13. **Website Exclusion.** The College expressly states that it will not be bound by any content on the Vendor's website, even if the Vendor's documentation specifically references that content and attempts to incorporate it into any other communications, unless the College has actual knowledge of such content and has expressly agreed to be bound by it in writing that has been manually signed by an authorized representative of the College.

14. **INVOICES AND PAYMENTS.** All invoices submitted by the Vendor shall contain the Purchase Order number, or the Vendor will not get paid. If the College receives a correct invoice and the deliverables are accepted, the College will pay Vendor within 30 days. If the invoice or

deliverables are not accepted, the Vendor will get paid according to the Prompt Payment Act, Florida Statute, Section 218.70.

15. **NONDISCRIMINATION.** The Vendor hereby assures that no person shall be excluded on the grounds of race, color, religion, national origin, disability, age, gender, marital status, sexual orientation or any other basis prohibited by law, from participation in, or denied the benefits of, or otherwise be subjected to discrimination in any activity hereunder. The Vendor shall take all measures necessary to effectuate these assurances.

16. **AMENDMENTS.** This Purchase Order may be amended or rescinded only with the written approval of the College and the Vendor.

17. **STATE CONVICTED VENDOR LIST/DISCRIMINATION LIST.** The Vendor by its execution of the Statement of Work, or commencement of shipment without reservations, acknowledges and attests that neither it, nor its subcontractors, suppliers or consultants, who perform work for the benefit of the College is included on the State of Florida's convicted vendor list, or is on the State of Florida's discriminatory vendor list pursuant to Sections 287.133 or 287.134, Florida Statutes. The Vendor further understands and accepts that this Purchase Order shall be void or subject to immediate termination by the College, if the Vendor makes any misrepresentations regarding this paragraph. In the event of termination, the College shall not incur any liability to the Vendor for any work or materials furnished.

18. **ORDER OF PRECEDENCE.** Any inconsistency in this Purchase Order shall be resolved by giving precedence in the following order: (1) Purchase Order terms and conditions; (2) Statement of Work or Specifications regarding goods; (3) all other documents, including, but not limited to, drawings, descriptions, sample(s).

19. **SEVERABILITY.** Should any term or provision of this Purchase Order be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Purchase Order and the Purchase Order shall remain operable, enforceable and in full force and effect to the extent permitted by law.

#### **ADDITIONAL TERMS AND CONDITIONS FOR COMMODITIES:**

20. **COLLEGE'S TITLE TO MATERIALS, DOCUMENTS & PACKAGING.** All materials, drawings or other items provided by the College to the Vendor remain the property of the College and will be returned to the College upon demand. All containers, reels or pallets shipped with goods by the Vendor are to remain the property of the College unless otherwise agreed to in writing.

21. **SHIPMENT UNDER RESERVATION PROHIBITED.** Vendor is not authorized to ship the goods with any reservations and no tender of a bill of lading will substitute as a tender of the goods.

22. **DELIVERY TERMS & TRANSPORTATION CHARGES.** Delivery is "F.O.B. Destination" unless delivery terms are otherwise specified in the Purchase Order. If the College agrees in writing to reimburse the Vendor for transportation costs, the College shall have the right to designate the method of shipment. In either case, the title and all risk of loss of the goods shall remain with the Vendor until the goods are received and accepted by the College. Rejected materials will be returned to the Vendor at the Vendor's risk and expense. The College reserves the right to reject any shipment that does not meet the terms, conditions and specifications as stated. Rejected shipments will be returned to Vendor at Vendor's expense. Failure to make delivery by or before the required delivery date stated on the Purchase Order shall constitute cause for cancellation of the order, or any part thereof, without further liability to the College or without prejudice to the College's rights. Vendor's failure to adhere to any term or condition of this order may result in cancellation with 48 hours' notice. Vendor agrees that the College may return part or all of any shipment made and may charge the Vendor for any loss or expense sustained as a result thereof (this includes. Partial deliveries/payments shall not be made, unless otherwise specified on the Purchase Order, per Section 672.307, Florida Statutes.

23. **MATERIAL SAFETY.** In accordance with Title 29, C.F.R., Chapter XVII, and Chapter 442, Florida. Statutes, it is the Vendor's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at the time of delivery.

24. **VENDOR TO PACKAGE GOODS.** Vendor will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (1) Vendor's name and address; (2) consignee's name, address and Purchase

Order or Purchase Release number; (3) container number and total number of containers, e.g., box 1 of 4 boxes; and (4) the number of the container bearing the packing slip. Vendor shall bear the cost of packaging unless otherwise specified in the Purchase Order.

25. **COLLEGE'S RIGHT TO CANCEL.** The College reserves the right to cancel all or part of this Purchase Order, without obligation, if unconditioned acceptance is not expressed by the Vendor through written notice within the specified time(s) and date(s).

26. **VENDOR NOT TO LIMIT WARRANTY.** The Vendor shall not limit or exclude any express or implied warranties and any attempt to do so shall render this Purchase Order void, at the option of the College. The Vendor warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the offering document or to the sample(s) furnished, or in the Statement of Work and are appropriate for the stated intended use.

27. **UNIFORM COMMERCIAL CODE.** In addition to all other Florida laws that are applicable to this Purchase Order, provisions of the Uniform Commercial Code, Chapters 671-679, Florida Statutes shall apply to commodities.

28. **No Conflict of Interest.** The Vendor certifies that the company directors/principal officers are not employed and/or affiliated with the College.

#### **ADDITIONAL TERMS AND CONDITIONS FOR SERVICES:**

29. **STATEMENT OF SERVICES.** The Vendor shall, to the satisfaction of the College, fully and timely perform all work items described in the Statement of Work. As part of the services to be provided by the Vendor under this Purchase Order, the Vendor shall substantiate, in whatever form reasonably requested by the College, the methodology, lab analyses, scientific theories, data, reference materials and research notes to formulate its opinions. This requirement shall survive the expiration or termination of this Purchase Order. The Parties agree that time is of the essence in the performance of each and every obligation hereunder. It is the Vendor's responsibility to advise its employees or hired workers of the nature of the project, as described in this Purchase Order and the Statement of Work attached hereto. The Vendor shall determine the method, details and means of performing the services, within the parameters established by the Statement of Work. The College may provide additional

guidance and instructions to the Vendor's employees or hired workers where necessary or appropriate as determined by the College. The Vendor agrees to abide by any and all additional guidance and instructions.

30. **COMPENSATION/CONSIDERATION.** The total consideration for all work required by the College pursuant to this Purchase Order shall not exceed the amount indicated in the Statement of Work. Should the Vendor incur any travel expenses, payment for such travel shall be agreed upon prior to purchase order execution, stipulated clearly on Purchase Order and will not exceed Section 112.061, Florida Statutes. The Vendor shall supply the College with receipts and supporting documentation for all reimbursable travel expenses. The Vendor, by executing this Purchase Order, certifies to truth-in-negotiation, specifically, that wage rates and other factual unit costs supporting the consideration are accurate, complete and current at the time of contracting. If the total consideration for this Purchase Order is subject to multi-year funding allocations, funding for each applicable fiscal year of this Purchase Order will be subject to College Board of Trustees budgetary appropriations. Moreover, pursuant to 287.0582, F.S., the College's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the State of Florida.

31. **INSURANCE.** The insurance requirements in terms of types of insurance and the amount of insurance will vary depending on the Statement of Work. The College will determine the amounts and types of insurance required, if any, for the work performed. The Vendor shall procure and maintain, through the term of this Purchase Order, insurance coverage required by the College, each with a limit of not less than \$ (as determined by the College) in general liability insurance, \$ (as determined by the College) in automobile liability insurance, \$ (as determined by the College) in professional liability insurance, and all Florida statutorily required workers' compensation insurance. The coverage required shall extend to all employees and subcontractors of the Vendor. The Vendor must provide a Certificate of Insurance completed in full, indicating the producer, insured, carrier's name, and Best rating, policy numbers and effective and expiration dates of each type of coverage required. The Certificate of Insurance shall be signed by an authorized representative and shall identify the College as an additional insured as required. No work is authorized until such time as the College has received a Certificate of Insurance in compliance with the above requirements.

32. **OWNERSHIP.** The College shall retain exclusive title, copyright and other proprietary rights in all work items, including, but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the Vendor if said work was produced specifically and pursuant to this Purchase Order. The Vendor shall grant to the College a perpetual, non-transferable, exclusive right to use any proprietary software, if any. Any equipment purchased by the Vendor with College funding shall be returned and title transferred from the Vendor to the College upon expiration or termination of this Purchase Order.

33. **INDEPENDENT CONTRACTOR.** The Vendor shall be considered an independent contractor and nothing in this Purchase Order shall be interpreted to establish any relationship other than that of an independent contractor between the Parties and their respective employees, agents, subcontractors or assigns, during or after the term of this Purchase Order. Both Parties are free to enter into contracts with other Parties for similar services. The College assumes no duty with regard to the supervision of the Vendor or anyone performing through or acting on behalf of Vendor and the Vendor shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property at the site of performance under this Purchase Order. In the event the Vendor is a sole proprietor, the Vendor is responsible for submitting legally required tax returns to the Federal Government.

34. **IMMIGRATION.** The Vendor shall be responsible for verifying employee authorization to work in the U.S. and to properly identify the status of employees by timely reviewing and completing appropriate documentation, including but not limited to, USCIS Form I-9. Written verification shall be kept by the Vendor and made available for inspection on demand by the College. The hourly rate of pay for each employee shall comply with State law and industry standards for similar work performed under this Purchase Order. The Vendor shall maintain records verifying the rate of pay for each employee working on this Purchase Order and make such records available for inspection on demand by the College. Failure to comply with these provisions shall be a material breach of this Purchase Order and cause for termination of the Vendor.

35. **CHANGE IN PERSONNEL.** The College may at any time and at its sole discretion request that the Vendor

replace any Vendor personnel provided by the Vendor to work on this Purchase Order if the College believes that it is in the best interest of the College to do so. The College may, but will not be required to, provide a reason for requesting the replacement of personnel. Such change in personnel shall be made immediately upon the College's written request for a change of personnel. The Vendor shall place the above language in any contract that it has with subcontractors. The Vendor will enforce the replacement of subcontractor personnel upon a request by the College. No requests for change in personnel will be for any illegal or discriminatory reason.

36. **BACKGROUND CHECKS.** *This clause applies to Vendors working on site, including, but not limited to, childcare services, janitorial services, food services and security.* Vendor shall conduct thorough background checks for all of the Vendor's employees or hired workers who will be working on any College site. The background checks shall consist of education verification, a national criminal check for state and federal felonies and misdemeanors, and a check on immigration status in accordance with the above provision titled "IMMIGRATION." After reviewing the results of the background check, the Vendor shall determine whether the Vendor's employee and/or hired worker meets the necessary criteria for the position sought to be filled by the College. The College will rely on the Vendor's assessment of its employees' or hired workers' suitability to be hired for the position(s) sought to be filled by the College, based on the background check conducted by the Vendor. Prior to allowing any employees or hired workers to work on-site at College facilities, the Vendor will provide written verification to the College that a complete background check, as described above, was conducted for any such employee or hired worker. The Vendor will place the above language in any contract that it has with its subcontractors and is responsible for enforcement of this provision.

37. **MARKETING.** Upon receipt of prior approval from the College, Vendor may use the College's name in marketing materials for the purpose of publicizing contract awards; however, Vendor is prohibited from obtaining affirmations from College staff regarding its products or services. Affirmations include any kind of testimonials or endorsements of the Vendor as well as the products and/or services offered by the Vendor. The College, as a government entity, must fairly and equitably compete for goods and services, and therefore the endorsement of any particular firm, product, or service is strictly prohibited. Vendor is strictly prohibited from releasing any

statements to the media regarding work performed under this Purchase Order without the review, and the express prior written approval of the College. The College's approval is at its sole discretion; however, such approval will not be unreasonably withheld.

38. **EMPLOYMENT BENEFITS.** Vendor expressly understands that it is an independent contractor and agrees that Vendor, its officers, agents, and employees, are not entitled to any employment benefits from the College.

39. **STOP WORK ORDER.** The College may order that all or part of the work stop if circumstances dictate that this action is in the College's best interest. Such circumstances may include, but are not limited to, unexpected technical developments, direction given by the College's Board of Trustees, a condition of immediate danger to the College, the Vendor or the public, or the possibility of damage to any equipment or property including, but not limited to, that owned by the College, students or staff. This provision shall not shift responsibility for loss or damage, including but not limited to, lost profits or consequential damages sustained as a result of such delay, from the Vendor to the College. If this provision is invoked, the College shall notify the Vendor in writing to stop work as of a certain date and specify the reasons for the action, which shall not be arbitrary or capricious. The Vendor shall then be obligated to suspend all work efforts as of the effective date of the notice and until further written direction from the College is received. However, if at the College's sole discretion, the circumstances are such that work must be stopped immediately (including but not limited to emergency or safety reasons), the College shall notify the Vendor in writing as soon as reasonably possible thereafter. If deemed appropriate by the College and in the event, work is resumed, the College may amend this Purchase Order to reflect any changes to the Statement of Work and/or the project schedule.