

University of Miami Purchase Order Terms and Conditions

1. **Entire Agreement.** This Agreement (**Agreement**) and the provisions contained herewith, in this Purchase Order Terms and Conditions (**POTC**), constitute the entire agreement between the University of Miami (**University**) and Seller/Vendor (**Vendor**). Acceptance of this order constitutes acceptance of all conditions stated in this POTC. Any conflicting terms stated by Vendor, whether orally or in writing, in accepting or acknowledging this order shall not be binding unless accepted in writing by University. Should any other language (including, but not limited to, any terms, conditions, or covenants, collectively **Terms**) conflict with the language in this POTC, the terms and conditions in this POTC shall rule and govern. Vendor may not transfer or assign this order without University's of prior written consent. This order is not a requirements contract. This is not a contract to purchase goods specifically from this Vendor exclusively.
2. **Website Incorporation.** University expressly states that it will not be bound by any content on Vendor's website, even if Vendor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless University has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by authorized representatives of University and Vendor.
3. **Invoices.** Vendor is to render invoices as instructed on the face of the order, or follow the provisions previously agreed to between University and Vendor. Invoices must reference University's purchase order number. If an invoice does not clearly and conspicuously reference University's purchase order number, University shall not be held responsible for any late payment to Vendor and shall not be subject to any late payment penalties.
4. **Changes.** No changes of any type may be made in this order/contract, including changes in quantity, type of goods, delivery date, price, or any other provision of this order/contract, without the express written approval of an authorized representative of University.
5. **Returns.** University may return any deliverables which are defective, unsatisfactory, of inferior quality or workmanship, or fail to meet the specifications or other requirements of this order; Vendor shall reimburse University for all prior payments and/or costs incurred in connection with delivery or return of such materials. Any unused, unopened deliverables may be returned to Vendor within thirty (30) days of purchase for any reason.
6. **Warranty.** Vendor warrants that all materials and goods will conform to the description and applicable specifications, shall be of good merchantable quality and fit for the known purpose for which sold, that all materials and goods are free and clear of all liens and encumbrances, and that Vendor has good and merchantable title. This is in addition to any warranty or service guarantee given by Vendor to University and as provided by law.
7. **No Asbestos.** All materials, supplies, and goods used or provided on this order, are to be "FREE OF ASBESTOS." No product containing asbestos in any form may be provided, supplied, included, incorporated, encapsulated or sold to University.
8. **Applicable Laws.** Vendor shall comply, and has complied with all applicable State, Federal, and local laws, rules, regulations, and orders applicable to the purchase, manufacture, processing and delivery of materials and goods, including but not limited to the Fair Labor standards Act of 1938, as amended. The provisions of Executive Orders 10925, 11114, and 11246, as amended, and any subsequent executive order relating to equal opportunity for employment on government contracts and Rules and Regulations of the President's Committee on Equal Opportunity are incorporated by

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reference. The nondiscrimination clause contained in Section 202, Executive order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

9. **Bankruptcy.** If Vendor shall default in any respect, or become insolvent, or if a petition in bankruptcy or insolvency is filled by or against Vendor under any State or Federal law, University, in addition to other rights or remedies may terminate and cancel this order in its sole and absolute discretion and without any consequence.
10. **No Liability.** University shall not, in any event, be liable to Vendor for any special contingent or consequential damages.
11. **Delivery.** Vendor shall suitably pack, mark, and ship in accordance with any instructions from University. Vendor shall be responsible for all liabilities, costs, charges, insurance, fees, taxes, custom duties, permitting fees or otherwise associated with the sale and/or transportation of the materials and goods (**Deliverable(s)**). Deliverable(s) are to be shipped by surface carrier and delivered F.O.B. destination, freight prepaid, unless otherwise specified by University. Delivery must be made within the time specified in the order under the "need by" field. If the Deliverable(s) is/are not delivered within such specified time, University reserves the right to cancel the order or any part thereof. **C.O.D.** shipments are not acceptable without prior written approval by University. University will not be responsible for any Deliverable delivered to any destination other than that specified on the face of the order. Deliveries of Deliverables are accepted between 8:30 AM to 4:00 PM, Mondays through Fridays, excluding holidays. Perishable Deliverables will be shipped so as to arrive at destination on Monday through Friday between 8:30 AM and 4:00 PM.
12. **Packing Lists.** A packing list must accompany each case or parcel containing a Deliverable or Deliverables, showing our order number and complete description of contents. All barrels, boxes, bags crates or other packages must be labeled with tag (Linen tag preferred) securely fastened to packages, showing shipper's name and University order number. If not possible to attach tags, information must be printed on packages. Drop shipments and partials must be treated similarly.
13. **Indemnification.** As used in this Section, "**University Indemnities**" shall mean University, its subsidiaries and affiliates, its Trustees, officers, faculty, employees and agents thereof. Vendor agrees to indemnify, defend and hold harmless University Indemnitees from and against any and all cost, loss, or damage in connection with or arising out of the act, fault or negligence of Vendor, or any party acting under its direction or on its behalf (including, but not limited to, any third party shipping company) for (i) any liability or expense due to claims for personal injury or damage to property arising out of the furnishing, performance or use of the Deliverable(s) provided hereunder; (ii) any claim for payment of compensation, salary or benefits asserted by an employee of Vendor; (iii) any claim brought by a third party based upon the use or acquisition by said third party of any Deliverable supplied hereunder; (iv) any claim arising out of Vendor's failure to comply with any applicable law or regulation, and (v) any material breach of this POTC by Vendor or any party acting at its direction or on its behalf.
14. **Infringement Indemnification.** Vendor shall indemnify, defend, and hold harmless University from and against any claim, suit, or proceeding brought against University, its officers, agents, trustees, and/or employees based on a claim that the manufacture or sale or University's intended use or resale of any of the Deliverable(s) covered by this order constitutes infringement of any United States Letters Patent, now or hereafter issued, or violates any other proprietary interest (including,

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but not limited to, any copyright, trademark, and/or trade secrets). Vendor shall pay all damages, expenses, and costs (including, but not limited to all costs of litigation), awarded against University in such a suit or proceeding. In the event that University is enjoined from use and/or resale of any of the Deliverables covered by this order as a result of said suit or proceeding, Vendor shall (at its sole cost and expense) expend all reasonable efforts to procure for University the right to use and/or resell said Deliverables. If Vendor cannot so procure the aforementioned right within a reasonable time, Vendor shall then promptly (at Vendor's sole cost and expense): (A) modify said Deliverables so as to avoid infringement of any third party patent or other proprietary interest (collectively, **Proprietary Interest**), or (B) replace said Deliverables with new Deliverables which do not infringe or violate any third party's Proprietary Interest and reimburse University for any additional costs (including, but not limited to any transportation and reinstallation costs) in connection therewith, or (C) remove said Deliverables and refund the purchase price and reimburse University for any associated thereof (including, but not limited to, any the transportation and installation costs). Vendor shall have the same obligations with respect to any claim for infringement or violation of any foreign third party Proprietary Interest if University purchases hereunder for shipment to and for use or resale in a foreign country and Vendor is so advised.

15. **Buyer's Remedies.** In the event of default by Vendor, University shall be provided with all remedies available by law, in addition to all remedies as provided in this POTC.
16. **Representations and Warranties.** Vendor represents and warrants that Vendor (or anyone with a direct or indirect ownership control interest) has never been (1) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; or (2) excluded from participation in any federal health care program, including Medicare and Medicaid. Vendor is required to immediately notify University if any of the foregoing conditions occur. Furthermore, University reserves the right to terminate this Agreement immediately upon notification by Vendor, or discovery by University, that any of the foregoing conditions have occurred.
17. **Export Controls.** Vendor is responsible for complying with all applicable export control regulations including, but not limited to, ITAR and ETAR. Any such export controlled items, equipment, or information must be properly handled and labeled by Vendor as part of Vendor's responsibilities. The burden shall be on Vendor to prevent such export controlled information from being improperly disclosed to University and Vendor shall obtain the appropriate license or approval from the relevant authorities or to invoke an available exception, exemption, or exclusion before disclosing any export controlled materials to University. In the event that Vendor seeks to provide University with any such controlled disclosures, Vendor will so inform University in writing, and shall not forward or provide any export controlled information to University without the express written permission of a University official in charge of such matters. The name of such University official shall be provided upon request.
18. **Tax Exemption.** University is tax exempt and shall provide a certificate of such tax- exempt status upon written request by Vendor.
19. **Insurance.** Vendor shall, at its sole cost and expense, maintain and carry commercial general liability insurance coverage in minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Vendor shall also, at its sole cost and expense, maintain and carry, employers liability insurance covering all individuals deemed employees of Vendor and workers' compensation liability insurance as required under applicable

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law, such workers' compensation liability insurance shall have a waiver of subrogation in favor of University. All insurance coverage identified hereunder shall be written with insurance carriers which have an A.M. Best's rating of A VIII or better and shall provide at least thirty (30) days prior written notice of material adverse change or cancellation of such policies. A Certificate of Insurance naming *University of Miami as an additional insured* must be provided to University.

20. **Governing Law.** This Agreement and all subsequent agreements and amendments shall be governed and construed in accordance with the laws of the State of Florida without regard to its conflict of laws provision. Any disputes arising hereunder shall be subject to the exclusive jurisdiction of the state and federal courts residing in Miami-Dade County, Florida.
21. **Protected Health Information.** To the extent that Vendor will have or be given access to Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 (**HIPAA**) as part of performing services hereunder, Vendor will be deemed a Business Associate of University for purposes of this Agreement and will comply with all requirements of a Business Associate under HIPAA and/or any Addendum to this Agreement which University may provide. Additionally, if needed Vendor will enter into a Business Associate Agreement with University.
22. **FERPA.** University, as an educational institution, is subject to legal obligations with respect to the privacy of personally identifiable student education records (**Education Records**), as such term is defined under the Family Educational Rights and Privacy Act and regulations promulgated under the Act (**FERPA**). To the extent that Vendor (i) creates, (ii) receives from or on behalf of University, or (iii) has access to any Education Records, Vendor agrees that it shall (i) abide by terms and requirements of FERPA and University's policy with respect to handling of Education Records; and (ii) not disclose any information in relation to Education Records to any third party (including, but not limited to, parents of a student) without the prior written consent of the student as required by FERPA. If Vendor discloses any of the Education Records to a subcontractor or agent, Vendor shall require the subcontractor or agent to comply with the same restrictions and obligations as are imposed on Vendor by this Section of this Agreement. Vendor shall take any and all actions reasonably requested by University to protect the privacy and confidentiality of Education Records.
- a. **Notice of Impermissible Use.** If an impermissible use or disclosure of any of Education Records occurs, Vendor shall provide written notice to University within one (1) business day after Vendor's discovery of such use or disclosure. Vendor shall promptly provide University with all information requested by University regarding the impermissible use or disclosure of Education Records.
 - b. **Termination.** In addition to any other termination rights set forth in this Agreement and any other rights at law or equity, if University reasonably determines that Vendor has breached any of the restrictions or obligations set forth in this FERPA section of this Agreement, University may immediately terminate this Agreement without notice or opportunity to cure.
 - c. **Return of Education Records.** Vendor agrees that within thirty (30) days after the expiration or termination of this Agreement, for any reason, all Education Records created or received from or on behalf of University shall be (1) returned to University, with no copies retained by Vendor; or (2) if return is not feasible, all Education Records and any copies thereof shall be immediately destroyed and proof of such destruction provided to University upon University's request. Thirty (30) days before destruction of any of the Education Records, Vendor will provide University with written notice of Vendor's intent to destroy such Education Records. Vendor will confirm to University in writing the destruction of all Education Records.
 - d. **Duration.** The restrictions and obligations under this FERPA section of this Agreement will survive expiration or termination of this Agreement, regardless of the reason for termination.

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23. **Authorization:** The persons signing below represent and warrant that they have full authority to bind the parties they represent.