



Insurance & Purchasing Services  
Box 1845  
Providence, RI 02912  
(401) 863-2206

## **Brown University Purchase Order Terms & Conditions**

The Purchase Order Form, these Purchase Order Terms and Conditions, any attachments hereto (collectively, the "Purchase Order") are the exclusive terms and conditions for the delivery of the specified goods or materials and/or performance of the specified services and/or work (collectively, "Goods and Services") by the named supplier ("Supplier") for the benefit of Brown University ("Brown") unless otherwise negotiated.

### **1. Acceptance/Agreement**

Supplier's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance. Any acceptance of this purchase order indicates the Supplier's assent to the express terms and conditions contained herein. Any proposal for additional or different terms, or any attempt by the Supplier to vary in any degree any of the terms of this offer in the Supplier's acceptance is hereby objected to and rejected, this includes the purchase order price. If this purchase order is deemed an acceptance of a prior offer by the Supplier, such acceptance is strictly limited to the Supplier's assent to the terms and conditions as set forth herein. Any performance by the Supplier against this purchase order shall signify Supplier's assent to the terms and conditions set forth herein.

### **2. Shipping instructions**

All goods must be shipped to the address specified on the face of this document. All packing lists, packages, cartons, etc. must bear the purchase order number printed on this form.

### **3. Shipping terms/Title**

All shipments will be F.O.B. Brown University, Providence, R.I. Title to and risk of loss in transit shall remain with Supplier until goods are delivered to buyer's designated location in acceptable condition.

### **4. Invoice Instructions/taxes**

All invoices must be forwarded to the Accounts Payable Department at the following address, Controller's Office, Box J, Providence, RI 02912. Brown University is exempt from Federal Taxes under PL 85-859, Register # 0571 1256 F, and from R.I. State Sales and Use Tax under section 31- E, Permit No. 41.

## 5. Warranties

Supplier expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards and will be free from defects in material and workmanship. Supplier warrants that all such goods or services will conform to any statements made on the containers, labels, or advertisements for such goods or services, and that goods will be adequately contained, packaged, marked, and labeled. Supplier warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods/services of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which the purchaser intends to use the goods/services, Supplier then warrants that the goods/services will be fit for such particular purpose. Inspection, tests, acceptance or use of the goods or services furnished hereunder shall not affect the Supplier's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Supplier's warranty shall run to Purchaser, its successors, assignees and customers, and users of products sold to Purchaser. Supplier agrees to replace or correct defects in any goods/services not conforming to the foregoing warranty promptly and without expense to Purchaser when notified of such nonconformity by Purchaser, provided purchaser elects to provide Supplier with the opportunity to do so. In the event of failure by the Supplier to correct defects in or replace non-conforming goods/services promptly, the Purchaser, after reasonable notice to the Supplier, may make corrections or replace the goods/services and charge Supplier for the cost incurred.

## 6. Compliance with laws

In accepting this order, Supplier represents and warrants that it has complied with and will continue to comply with all applicable Federal, state, and local laws/regulations in the production of goods or performance of services under this order. Such laws include, but are not limited to: Fair Labor Standards Act 1938 as amended, Occupational Safety and Health Act of 1970 as amended, nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375 relative to equal employment opportunity, Rehabilitation Act of 1973, Vietnam Era Veterans Readjustment Act 1974, Title 48 CFR--Utilization of small business concerns and small disadvantaged business concerns, Flammable Fabrics Act (15 USC, 1911:67 Stat. 111) section 2 as amended, Anti-Kickback Enforcement Act 1986, PL 99634. Education Rights and Privacy Act 1974. GRAMM-LEACH-BLILEY Act pertaining to safeguards for non-disclosure of confidential (non-public) personal information, and FAR including GSA suspensions, debarment, or ineligible status pursuant to Executive Order 12549. Further Supplier assures that it has in place administrative, technical, and physical safeguards capable of maintaining the security of non-public financial information, student education records, personnel information, and other protected information ("Brown Confidential Information" [BCI]) to which Contractor may be provided access to or gathering/storing on behalf of Brown. BCI shall be held in the strictest confidence and may only be used by Supplier only as necessary to perform its obligations under this agreement. Supplier will protect BCI in accordance with generally accepted commercial standards and no less rigorously that it protects its own confidential information. Supplier shall not release BCI in its possession to any other party unless authorized in writing by the appropriate data owner at Brown. Contractor laptops and/or PDA's used to transmit or store BCI (with written permission) must be patched and protected with up-to-date anti-virus and anti-spyware software. Remote access to BCI must be protected with a Brown approved encryption mechanism (e.g. VPN, SSH). Upon termination of this agreement, Contractor shall return to Brown all BCI in its possession and Contractor shall not maintain any originals or copies of BCI, in

any format or on any media. Any breach by Contractor of these obligations shall be cause for immediate termination of this Agreement.

Contractor shall immediately notify Brown of any breach of its obligations of confidentiality. Contractor agrees that any breach of its obligations of confidentiality will cause immediate and irreparable injury, and Brown shall be entitled to obtain injunctive relief in addition to any other remedies at law.

#### 7. Governing Law

This order shall be governed in all respects by the laws of Rhode Island and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction residing in Rhode Island.

#### 8. Independent Contractor

The Supplier (if incorporated, a professional firm, or partnership) is deemed an independent contractor. Any agreement formed shall not be construed to form any relationship of agency, master-servant, employer/employee, partnership, joint venture, or association. The Supplier's company shall be solely responsible and liable for all salary, workers compensation payments/benefits, income tax withholding, unemployment insurance, FICA, and all other aspects of employment of its employees, and the Purchaser shall have no responsibility or liability with respect thereto.

#### 9. Insurance requirements

Supplier will maintain: (a) Commercial General Liability Insurance, written on an occurrence basis in amounts of not less than \$1,000,000 per occurrence/\$2 million aggregate, which will include in its coverage liquor liability if this Purchase Order includes service of alcohol; (b) Workers' Compensation Insurance as required by applicable law and Employer's Liability Insurance in an amount not less than \$500,000 for each accident; (c) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$1,000,000 for each wrongful act if this Purchase Order covers the provision of professional services; and (d) Automobile Liability Insurance for a combined single limit of not less than \$1,000,000 if Supplier will own, hire or lease any automobile in connection with this Purchase Order (e) Cyber Risk Insurance: Supplier shall carry cyber risk insurance if providing software development or installation, or storage (including cloud computing), hosting, use, or access to Licensee data. Subject to the limit of at least \$1,000,000 per claim to be maintained for the duration of the agreement and three years following its termination, to respond to privacy and network security liability claims. (f) Environmental Liability: Coverage of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, for environmental contamination, hazardous substance or waste, or similar such exposures however defined in connection with the provision of Services that are related to remediation or, work with hazardous materials. Higher limits of environmental liability coverage may be required when the work to be provided is deemed by the University to warrant higher coverage limits. Suppliers shall name Brown University as additional insured on its liability policies and, should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The University does not need to be named additional insured on the Supplier's workers compensation policy. Prior to beginning work, Supplier will submit to Brown University's Office of Insurance & Purchasing Services, Box 1845, Providence, RI, 02912, certificates of insurance evidencing the coverage described above and should include any additional insured endorsements. Failure of the Supplier to take out and/or maintain any required insurance shall not relieve the Supplier from any liability under this contract, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligation of the Supplier concerning indemnification. The Supplier's policies shall be considered primary insurance and exclusive of any insurance carried by Brown University.

#### 10. Indemnification

If Supplier's work under this order involves operations by the Supplier outside of Supplier's premises Supplier shall take all necessary precautions to prevent the occurrence of injury to persons or damage to property during the progress of all work it undertakes under this purchase order, including the provision of goods, equipment, services or facilities. Supplier further hereby exonerates, indemnifies and holds harmless Brown, including the Corporation, its trustees, officers, employees, and agents, for all liability, losses, damages or expenses from any and all fines, suits, claims, and demands, including reasonable attorneys' fees, arising from any actions of any kind or nature resulting from any acts, errors, or omissions of Supplier as a result of performing the services to be rendered hereunder, provided, however, that such indemnification shall not apply to any fines, suits, claims, and demands resulting from the sole negligence of Brown.

#### 11. Modification, Assignment/Subcontracting

The Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in cost, or the time required for performance, an equitable adjustment will be made and the agreement shall be modified in writing accordingly. No part of this order (contract) may be assigned or subcontracted without prior written approval of the Purchaser.

#### 12. Delivery Time

Delivery Time is of the essence in performance under any contract formed, and if delivery of items or rendering of services is not completed by the time promised, the Purchaser reserves the right without liability in addition to its' other rights and remedies to terminate the contract (after a reasonable period allowed to cure) by notice effective when received by Supplier as to items not yet shipped or Services not yet rendered, and to purchase substitute items or services elsewhere and charge Supplier for any loss incurred.

#### 13. Inspection and Testing Payment

Inspection and Testing Payment for the goods delivered hereunder shall not constitute acceptance thereof. The Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to the Supplier at its' expense and, in addition to the Purchasers' other rights, Purchaser may charge Supplier all

expenses of unpacking, examining, re-packing, and re-shipping such goods. In the event that Purchaser receives goods whose defects or non-conformity is not apparent on examination, purchaser reserves the right to revoke acceptance and require replacements as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Supplier from obligation of testing, inspection, and quality control.

#### 14. Patents/Copyrights, etc.

Supplier agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other Suppliers for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of goods furnished hereunder. Supplier further agrees to indemnify purchaser, its agents and customers against any and all expenses, losses, royalties, profits, and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by the Supplier.

#### 15. Use of Purchasers Name

Supplier agrees not to use Purchaser's name, logo, seal, the name of any employee, student or agent of Purchaser, or any trademarks, service marks or trade names owned or controlled by Purchaser, in any sales, promotional, advertising or other publication, without the express prior written permission of Supplier. Supplier shall take reasonable steps to avoid any communication that might create a third party any misunderstanding of the relationship of Purchaser and Supplier.

#### 16. Limits of liability/Statute of Limitations

In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

#### 17. Force Majeure

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Supplier shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Suppliers' direct additional costs in holding the goods or delaying performance of this agreement at purchaser's request. Causes beyond Purchaser's control shall include: government action or failure of government to act where such action is required, strike or other labor dispute, fire, severe weather, natural disasters, riots, insurrections, or other civil disturbances, wars, epidemics, etc.

#### 18. Conduct of Personnel

While at any Purchaser's location, Supplier's personnel, agents, and subcontractors shall comply with all reasonable requests, standard rules, and regulations of Purchaser communicated to Supplier regarding personal and professional conduct, including without limitation any security or privacy requirements, and shall otherwise conduct themselves in a businesslike manner.

#### 19. Proprietary Information, Confidentiality, Advertising

Supplier shall consider all information furnished by Purchaser to be confidential, and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Supplier obtains written permission to do so from Purchaser. This paragraph shall apply to drawings, specifications, or other documents prepared by Supplier for Purchaser in connection with this order/contract. Supplier shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Supplier, nor shall any other information relating to the order be disclosed without the Purchaser's written permission. Unless otherwise agreed to in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Supplier to Purchaser shall be deemed secret, or confidential and Supplier shall have no rights against Purchaser with respect thereto except such rights as may exist under patent laws.

#### 20. Termination For Convenience of Purchaser

The Purchaser reserves the right to terminate this order or any part thereof for its' sole convenience. Events that may "trigger" such action include, but are not limited to; design changes, process changes, change in material specifications, technological obsolescence, adverse budget allocations, program deletions, deletions from product line, etc. If invoked by the Purchaser, Supplier shall immediately cease all work (including subcontract work). If the goods are "custom manufactured", the Supplier will be paid a reasonable termination charge based on the amount of work completed prior to notification. If the goods are "standard off-the-shelf" the termination charge will be based solely on any "incremental" costs incurred by the Supplier in "gearing up" for the order and/or contract. In all cases, the Supplier must provide documentation of such costs.

#### 21. Entire Agreement

This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. Any conflicting or additional terms/conditions contained in, but not limited to, Suppliers proposal, bid offering, correspondence, memoranda, catalog, technical bulletins, price lists, etc. shall have no force or effect.