



**Union College
Schenectady, NY 12308
General Purchasing Terms & Conditions**

1. DEFINITIONS.

- a. "UNION COLLEGE" represents the "Trustees of Union College," is the purchaser of goods specified in the Purchase Order, and includes any students, faculty, staff, or administration identified in the Purchase Order.
- b. "VENDOR" means the supplier or provider specified in the Purchase Order and includes and staff or personnel acting on its behalf.
- c. "Goods" means the products, systems, or services described in the Purchase Order.
- d. "Specification" means the work specification as defined in the Purchase Order, including but not limited to quotations, attached schedules, applicable laws and regulations of the State of New York, descriptions, designs, or drawings of the goods and details (if any) of their manufacture and performance.

- 2. OFFER AND CONTRACT.** The following terms and conditions apply to all Union College Purchase Orders, in addition to any terms set forth on the face of an individual purchase and any plans, specifications, designs, drawings, price quotations, applicable federal and state laws and regulations or other documents attached or incorporated by reference therein (collectively, "Purchase Order" or "Order"). Acceptance by Union College of any offer from Vendor is expressly limited to the Purchase Order as written, and Union College hereby objects to and shall not be bound by any additional, different or conflicting terms, whether printed or otherwise, in any other communication between the parties.

- 3. ACCEPTANCE OF THE ORDER.** The Purchase Order is valid only as written, and shall not be valid unless it has been processed by Union College's Purchasing Department and authorized by Union College. By accepting the Purchase Order, VENDOR acknowledges each and every term and condition set forth herein as binding upon the VENDOR. If any terms or conditions of the Order are unacceptable to VENDOR, UNION COLLEGE must be notified, and any additional or differing term or condition must be specifically accepted by both parties in a separately signed attachment. Any and all representations, promises, warranties, or statements by UNION COLLEGE'S agents that contradict or differ from the terms set forth in the Purchase Order shall be given no force or effect. The Order shall be deemed to have been accepted by the VENDOR on the earlier of (a) timely delivery of goods or rendering of services ordered, in total or in part, or (b) within 15 days of issuance by UNION COLLEGE, absent written notification to UNION COLLEGE of non-acceptance.

- 4. SCOPE OF THE AGREEMENT.** The VENDOR shall furnish all goods and services specified in the Purchase Order. All costs to UNION COLLEGE are identified in the Purchase Order. VENDOR shall also provided technical support in connection with any goods or equipment purchased hereunder, if required by UNION COLLEGE to ensure adequate performance, quality, and reliability.

5. **TIME IS OF THE ESSENCE.** Time is of the essence with respect to this Order. UNION COLLEGE may, at its option, without penalty or limitation of any of its other rights, cancel any unfilled part of the Order if complete, conforming delivery is not made on time. UNION COLLEGE is not required to accept partial or incomplete delivery.
6. **CHANGES.**
 - a. The written consent of UNION COLLEGE shall be required to affect any alteration in terms, conditions, delivery, price, quality, quantity, or specifications regarding this Order.
 - b. UNION COLLEGE reserves the right at any time to change anyone or more of the following by giving written notice:
 - i. Specifications, drawings, blueprints, and data;
 - ii. Method of shipment or packing;
 - iii. Place and/or time of delivery.
 - c. If any such change causes an increase or decrease in the cost or the time required for performance hereunder, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim for adjustment by the VENDOR shall be deemed waived unless asserted within thirty (30) days from the receipt by the VENDOR of notice of the change. Nothing contained in this clause shall relieve VENDOR from its obligation to proceed without delay in the performance of this Order as changed.
7. **SUBSTITUTIONS.** VENDOR will make no substitutions without the written consent of UNION COLLEGE. If VENDOR recommends a substitution, VENDOR guarantees that the substituted material is at least equal in appearance, durability, function, capacity, and ease of maintenance to the goods specified in the Order.
8. **PRICE.** If the price is not stated on the Purchase Order, it is agreed that the goods or services shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
9. **HANDLING.** Unless otherwise stated herein, no handling charges shall be assessed against UNION COLLEGE. "Handling charge" shall have its ordinary business meaning, including, but not limited to, the cost of packing, wrapping, bags, containers or reels.
10. **SHIPPING INSTRUCTIONS AND DELIVERY.** Unless otherwise specified, all goods are to be shipped prepared, FOB destination. Where shipping addresses indicate room numbers, it will be the VENDOR'S responsibility to make delivery to that location at no additional charge. Where specific authorization is granted by UNION COLLEGE to ship goods FOB shipping point, VENDOR agrees to prepare all shipping charges, route least expensive common carrier, and to bill UNION COLLEGE as a separate item on the invoice for said charges, if routing instructions are not included in the Purchase Order. Each invoice for shipping charges shall contain the original or a copy of the bill indicating that the payment for shipping has been made. It is also agreed that UNION COLLEGE will refuse COD shipments.
11. **IDENTIFICATION.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affection this Order shall contain the applicable Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Order indicating the contents therein. Invoices must contain the valid Purchase Order number and will not be processed for payment until all items invoiced are received.
12. **RISK OF LOSS.** VENDOR assumes all risk of loss of or damage to all goods ordered and all work in progress, materials and other items related to this Order until the same are actually received and title finally accepted by UNION COLLEGE. VENDOR assumes full responsibility for packing, crating, marking and transporting all goods covered by the Order, and full liability for loss or damage of any goods in transit, notwithstanding (i) any specification of the method of such packing, crating, marking, and/or transporting, and/or (ii) any agreement by UNION COLLEGE to pay freight, express, or other transportation charges.

13. **TERMINATION.** If the **VENDOR** fails to perform satisfactory service and **UNION COLLEGE** notifies the **VENDOR** in writing by certified mail of said unsatisfactory performance, and if the **VENDOR** does not correct or make a reasonable attempt to correct said unsatisfactory performance within ten (10) working days, then the Agreement may be terminated by either party with a 30 day written notice to the other party. **UNION COLLEGE** may terminate the Order or any part thereof for cause if the **VENDOR** defaults, fails to comply with any terms and conditions of the Order, becomes insolvent or files for bankruptcy protection. Late delivery of goods or performance of services that are defective or do not conform to the order shall, without limitation, be causes allowing **UNION COLLEGE** to terminate for cause. In this event, **UNION COLLEGE** will not be liable to **VENDOR** for any amounts, but **VENDOR** shall be liable to **UNION COLLEGE** for all losses, damages, and expenses, including costs to cover, resulting from the default that caused the termination.
14. **PAYMENTS AND ASSIGNMENTS.**
- a. Unless otherwise authorized in writing by **UNION COLLEGE**, all payments to **VENDOR** will be made by check and sent via the United States Postal System. **UNION COLLEGE** shall not honor drafts nor accept goods on a sight draft basis.
 - b. The Purchase Order and any orders or releases made pursuant hereto shall not be assigned without the prior written consent of **UNION COLLEGE**, nor shall **VENDOR** have the right to assign any of its rights or obligations hereunder to a third party without the written consent of **UNION COLLEGE**; except in the event of assignment to a successor in interest vis a vis a change in control.
 - c. **UNION COLLEGE**'s consent to the assignment of any of the **VENDOR**'S rights or obligations hereunder shall not relieve the **VENDOR** of its duties and obligations under the Purchase Order. **VENDOR** shall safeguard **UNION COLLEGE**'S interests by incorporating such terms and conditions as are contained in the Purchase Order for any related contractual relationship the **VENDOR** may enter into with a third party.
15. **CASH DISCOUNT.** In the event that **UNION COLLEGE** is entitled to a cash discount, the period of computation will commence on the date of delivery or receipt of a correctly completed invoice, whichever is later. If an adjustment is payment is necessary due to damage, the cash discount period shall commence of the date final approval for payment is authorized. If a discount is made a part of the Order, but the invoice does not reflect the existence of the agreed cash discount, **UNION COLLEGE** is entitled to a cash discount with the period commencing on the date it is determined by **UNION COLLEGE** that a cash discount applies.
16. **TAXES.** **UNION COLLEGE** is generally exempt from federal, state and local taxes for purchases made in furtherance of its exempt mission, including New York State and local sales tax and federal excise taxes. **VENDOR** shall impose no charge for same to the extent permitted by law. **UNION COLLEGE** agrees to provide **VENDOR** with an exemption certificate at **VENDOR**'S request.
17. **REJECTION.** **UNION COLLEGE** shall have the right (but not the obligation) to inspect the goods covered by the Purchase Order, and the activities of the **VENDOR** in the fulfillment of this Purchase Order, in such a manner and at such reasonable time as **UNION COLLEGE** may deem appropriate. Neither receipt of, nor payment for, goods and/or services shall constitute final acceptance of title to same. **UNION COLLEGE** may reject any or all items that are non-conforming, as determined in **UNION COLLEGE**'s sole reasonable judgment. Any goods not conforming to the Purchase Order shall be returned at **VENDOR**'S sole expense, and **VENDOR** assumes the risk and expense and shall bear the risk of loss or damage to such goods.
18. **REMEDIES.** **UNION COLLEGE** retains all rights and remedies available under law.
19. **INFRINGEMENT.** Stricken. Moved to Warranties section.

20. **WARRANTIES.** Except where otherwise stated in a supplemental condition:
- a. VENDOR warrants that goods and materials supplied under the Purchase Order conform to the specifications regarding quality, quantity, design, and description as state; are fit for the purpose for which such goods are ordinarily employed; and where a particular purpose is intended, goods and materials are fit for such particular purpose.
 - b. VENDOR warrants that all goods and materials will be new or merchantable quality, free of defects and damage. VENDOR will repair or replace defective goods or materials, at no expense to UNION COLLEGE, for a period of one (1) year following final acceptance of title to said goods or materials.
 - c. VENDOR warrants and represents that all goods and materials supplied under the Purchase Order are free and clear of all liens, claims, or encumbrances of any kind.
 - d. VENDOR warrants that the goods and materials provided hereunder comply in all respects with the requirements of any applicable statute or regulation in effect at the date of delivery.
 - e. VENDOR warrants that the goods and materials provided hereunder shall not infringe any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party.
 - f. VENDOR agrees that the warranties recited herein are in addition to the warranties expressed or implied in the Uniform Commercial Code as adopted by the State of New York.
 - g. Except where otherwise stated, these warranties shall survive for a reasonable period following final acceptance of title.

21. **INSURANCE AND INDEMNIFICATION.**

- a. In the performance of any and all services, the VENDOR, as an independent contractor, accepts responsibility for all persons employed in connection with the services rendered. VENDOR agrees to indemnify, exonerate, and hold harmless UNION COLLEGE from any liability for the payment of federal, state, and local unemployment and disability insurance, all social security, and/or other taxes and contributions payable in respect of the unemployment of such persons.
- b. If the Purchase Order shall require the presence of VENDOR'S employees, subcontractors, or others under the VENDOR'S control on UNION COLLEGE premises, a Certificate of Insurance issued to UNION COLLEGE and naming UNION COLLEGE and its employees as additional insureds, evidencing the following coverages and the provisions of this paragraph, must be forwarded to UNION COLLEGE prior to commencement of services:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Comprehensive General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Automobile Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Workers Compensation	\$500,000 or Statutory, whichever is greater
Employer's Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate

- c. VENDOR shall indemnify, exonerate, hold harmless and defend UNION COLLEGE from and against any actions or suits, any claims, demands, liability, damages, costs, loss or expenses as a result of bodily injury or death and/or property damage arising from or in connection with the performance of services under this Order unless caused by the sole negligence of UNION COLLEGE.
- d. VENDOR shall indemnify and hold harmless UNION COLLEGE from any claim, demand, liability, cause of action, or damage for which UNION COLLEGE might become liable, arising directly and solely from negligence or willful misconduct in connection with VENDOR'S performance hereunder.
- e. VENDOR shall indemnify and hold harmless UNION COLLEGE from all actions, costs, claims, demands, expenses and liabilities whatsoever resulting from any alleged or actual infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party.
- f. VENDOR shall, at its expense, intervene in or defend any proceeding which may be brought in connection with its performance hereunder, upon notice by UNION COLLEGE.

22. **DEFAULT.** VENDOR covenants and agrees that in the event a suit is instituted by UNION COLLEGE for any default on the part of VENDOR and the VENDOR is adjudged to be in default by a court of competent jurisdiction, VENDOR shall pay to UNION COLLEGE all costs and expenses disbursed or incurred by UNION COLLEGE in connection therewith, including reasonable attorneys' fees. The parties agree that any dispute or claim arising under the Purchase Order shall be governed by the laws of New York State. The venue for any such claim or dispute shall be within the County of Schenectady, State of New York.
23. **COMPLIANCE WITH LAWS.** VENDOR represents and warrants that, in the production and sale of goods to be delivered pursuant hereto, and in the provision of services hereunder, VENDOR has complied with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity. Any VENDOR who is in violation of any law or regulation pertaining to non-discrimination, equal opportunity, or any applicable affirmative action program shall be barred forthwith from receiving awards of any purchase order unless a showing is made that discriminatory practices or noncompliance with applicable affirmative action programs have ceased and that a recurrence of such acts is unlikely.
24. **SEXUAL HARASSMENT.** Stricken. This and the Non-Discrimination/Affirmative Action provisions are adequately covered in the preceding paragraph.
25. **USE OF THE NAME OF UNION COLLEGE.** VENDOR agrees not to use the name of UNION COLLEGE, or the name of any member of UNION COLLEGE's staff, in sales promotion work or advertising, or in any form of publicity without the written permission of UNION COLLEGE.
26. **NOTICE.** Any communications concerning the Purchase Order shall be in writing and addressed to:

Trustees of Union College
Attn: Jessica Hopper, Assistant Director of Financial Services
McKean House-Purchasing Office
Schenectady, NY 12308
purchasing@union.edu