

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** (a) "Seller" shall collectively mean any vendor, contractor or seller furnishing merchandise, goods, services or other work to Monmouth University (hereinafter referred to as "MU"); (b) "Merchandise" shall mean goods, products, materials or supplies; (c) "Services" shall mean design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting and any other services necessary to fulfill Vendor/Contractor's obligations under a Purchase Order; (d) "Work" shall mean "Merchandise" and "Services" required under this Purchase Order; (e) "Specifications" shall mean the specifications, qualities, nature, type, properties, amounts and other descriptions of and requirements for the Work as stated in this Purchase Order; (f) "Subcontractor" shall mean vendors, contractors and sellers of any tier contracting directly or indirectly with Seller for the performance of Work under this Purchase Order.

2. **ORDER OF PRECEDENCE:** In the event of any conflict, discrepancy, ambiguity, or inconsistency between the terms and conditions of this Purchase Order and the terms and conditions of Seller's proposal and/or agreement, the terms and conditions of this Purchase Order shall govern and control.

3. **MODIFICATION:** No modification of this Purchase Order shall be effective without MU's prior written consent. No course of prior dealings, no usage of trade and no course of performance shall be used to modify, supplement or explain any item used in this Purchase Order.

4. **TERMINATION:** (a) Termination for Convenience: MU may terminate this Purchase Order for convenience and without cause at any time, in whole or in part, upon no less than ten (10) days' written notice to Seller. MU shall pay Seller a proportionate amount of the amount due to Seller for work completed up to the effective date of termination, plus costs necessarily incurred directly as a result of termination, subject to Seller providing itemized receipts and documentation of such expenses; (b) Termination for Cause: MU may terminate this Purchase Order for cause if Seller fails to perform in accordance with the terms and conditions of this Purchase Order, fails to perform the work with promptness and diligence, fails to deliver the merchandise, or is otherwise in breach of the terms of this Purchase Order, provided that prior to such termination, MU shall provide Seller with prior written notice of its intent to terminate and the reasons therefore. If, after the time provide in such notice, if any, for correcting non-performance, such non-performance remains uncorrected, MU may, at its sole option, complete or contract with a third party to complete all or part of Seller's obligations under the Purchase Order, and Seller shall be liable to MU for the costs of performing such obligations and any other damages resulting from Supplier's failure to perform; (c) Limitation of Damages: MU's liability and Seller's recovery for any damages arising out of the cancellation of any part of the Purchase Order shall be limited to the lesser of: (1) the reasonable costs incurred by Seller prior to such cancellation, provided Seller sends MU itemized receipt and documentation to support such costs; or (2) the contract balance remaining for the Purchase Order. In no event shall MU be liable to Seller for consequential or incidental damages.

5. **DELIVERY:** Time is of the essence in this Purchase Order and if delivery of conforming goods or performance of conforming services in not completed by the time(s) promised, MU reserves the right, in addition to its other rights and remedies, to cancel this Purchase Order, to reject such merchandise or services in whole or in part and/or to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Any provisions for delivery of goods or performance of services by installments shall not be construed as making the obligation of the Seller severable. Shipments sent F.O.B. and/or C.O.D. without MU's prior written consent will not be accepted and will be at Seller's risk.

6. **PRICE:** MU shall not be billed at prices higher than stated in this Purchase Order. MU shall pay undisputed invoices within thirty (30) days of receipt of Seller's invoice. If any portion of the merchandise or services does not conform to the requirements of this Purchase Order, a corresponding portion of the price may be withheld by MU until the nonconformity is corrected. No additional charges of any kind, including, but not limited to, charges for boxing, packing, transportation, insurance, or container charges, will be allowed unless specifically agreed to in writing signed by an authorized representative of MU. Seller represents that the prices charged for the merchandise or services covered by this Purchase Order comply with all applicable laws and government regulations in effect at the time of the quotations, sale, delivery and performance. Seller agrees to notify MU of any price reduction made in merchandise or services covered by this Purchase Order subsequent to the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this Purchase Order.

7. **CONTINGENCIES:** MU shall have no liability for failure of MU to take delivery of goods or accept performances of services hereunder (for portions thereof) occasioned by an Act of God, National or State of Emergency, war, labor dispute, fire, casualty, University closing due to inclement weather, riot, civil disturbance, accident, explosion, perils of the sea, flood, drought, accident, embargo, any other circumstances of like character, or other unforeseen occurrence or cause beyond the reasonable control of MU, or by delay in transportation, labor trouble, from whatever cause arising and whether or not the demands of MU are reasonable. At MU's option, the period specified for delivery of goods or performance of services hereunder shall be extended by the period of any such delay, or the total ordered hereunder shall be reduced

by the deliveries or services (or portions thereof) so omitted. The provisions of this Section 7 shall be effective notwithstanding that such circumstances shall have been operative as of the date of this Purchase Order.

8. **WARRANTIES:** In addition to all the warranties established by law, Seller hereby warrants and agrees that: (a) All merchandise and services covered by this Purchase Order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by MU and shall be merchantable, fit for the purpose intended, of first quality and workmanship and free from all defects. MU shall have the right of inspection and approval and may reject and return goods or require re-performance of services at Seller's expense if defective or not in compliance with MU's specifications. Defects shall not be deemed waived by MU's failure to notify Seller upon receipt of merchandise or completions of services or by payment of invoice; (b) No disclosure, description or other communication of any sort shall be made to Seller to any third person by the fact that MU's purchase of merchandise or services hereunder, or their details and characteristics thereof, without MU's prior written consent. Anything furnished to the Seller by MU pursuant to this Purchase Order, including, without limitation, samples, drawings, patterns and materials, shall remain the property of MU, shall be held at Seller's risk and shall be returned upon completion of the work and no disclosure or reproduction thereof in any form shall be made without MU's prior written consent; (c) All merchandise delivered and services performed pursuant to this Purchase Order shall conform to the standards established for such goods and services and in accordance with any applicable Federal, State or local laws or regulations, as well as, industry standards; (d) The use or sale of any merchandise delivered hereunder, or any part thereof, except goods produced to MU's drawings or specifications, does not infringe any adverse valid patent, trademark, or service mark (collectively "IP"); and (e) the foregoing warranties shall survive any acceptance of goods and performance of services hereunder and for payment of same.

9. **LOSS OR DAMAGE IN TRANSIT:** Title and all risk of loss in transit or damage shall remain with the Seller.

10. **NO ASSIGNMENT:** Seller shall not assign or transfer this Purchase Order or any interest herein or any money due or to become due hereunder without the prior written consent of MU. Any assignment without MU's prior written consent shall be null and void.

11. **INDEMNIFICATION:** Seller agrees to indemnify, defend and hold harmless MU, its trustees, officers, directors, employees, agents and students from and against any and all liability, loss, costs and expenses, including reasonable attorney's fees, in connection with: (a) any loss, damage, injury, sickness, disease, or death or injury or destruction of tangible property, including the loss of the use therefrom, whatsoever caused, in whole or in part by any negligent act or omission or willful misconduct by the Seller, its employees, agents or subcontractors in connection with this Purchase Order; (b) any breach of this Order by Seller; (c) from any liability for Seller's obligation as an employer to the payment of all Federal, State or local unemployment and disability insurance, all social security; and/or other taxes and contributions payable in respect to the employment of such persons; and (d) any claim, suit or action for actual or alleged infringement of any IP.

12. **INSURANCE:** Seller shall maintain and keep in force at Seller's expense, the following minimum liability insurance coverages during performance under this Purchase Order: (a) Worker's Compensation (Statutory) and Employer's Liability in an amount of no less than \$100,000,000 aggregate; (b) Commercial General Liability insurance: Including Bodily Injury and Property Damage Liability in an amount of not less than \$1,000,000 per occurrence, Independent Contractors Liability, Contractual Liability, Product Liability and Completed Operations Liability, in an aggregate amount of not less than \$3,000,000. Seller's coverage shall be primary and non-contributory and shall include a severability of interest provision or endorsement as applicable. (If work is on MU's premises and services involve any work with minors, coverage shall also include sexual abuse and molestation in an amount not less than \$1,000,000 per occurrence; (c) If Seller is driving on MU's premises, Commercial Automobile liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury (including death) and property damage, including owned, hired, and non-owned vehicle coverage, and personal injury protection (where applicable), if Seller will own, hire or lease an automobile in connection with the merchandise or services provided under this Purchase Order; (d) Excess (Umbrella) Liability: If Seller is performing work on MU's premise, Excess (Umbrella) Liability insurance on all occurrence basis with an occurrence/aggregate minimum limit of \$5,000,000, all to be following form over underlying Commercial General Liability, Commercial Business Automobile and Employer's Liability Policies; (e) If Seller is required to hold a professional license for their practice or profession (including, but not limited to, architects, engineers, physicians, and attorneys), Professional Liability insurance coverage in an amount of \$1,000,000 each claim, for all professional services, which shall include Contractual Liability Coverage and Defense and Indemnification; (f) If Seller is handling MU's data and confidential, sensitive or personally identifiable information is involved in a transaction, Cyber/Network Security & Privacy Liability insurance with a minimum amount of \$2,000,000 per incident/claim and \$2,000,000 aggregate covering the services contained within this Purchase Order, including, but not limited to data breach, security and privacy violations, first party damage, third party liability, regulatory fines and penalties, crisis management costs which include customer notification expense and credit monitoring. Coverage shall be maintained for a minimum of 2 years following completion of all services under this Purchase Order; (g) Seller shall name Monmouth University, its trustees, officers, directors, employees, agents and students as additional insureds on all liability policies. Seller must present a Certificate of Insurance with an Additional Insured Endorsement. MU does not need to be named as an additional insured on the Seller's worker's compensation and professional liability policies. Each insurance policy required by this Purchase Order shall provide the required coverage and shall not be suspended, voided or canceled except after prior written notice to MU. All certificates of insurance shall be sent to MU's Director of Compliance and Risk Manager, Monmouth University, Revised 7.19.18

400 Cedar Avenue, West Long Branch, NJ 07764, who can be contacted at (732) 263-5355. Seller is not relieved of any liability or other obligations assumed or pursuant to this Purchase Order by reason of its failure to obtain or maintain insurance in sufficient amounts, durations and types.

13. **COMPLIANCE WITH LAW AND MU'S RULES:** Seller agrees to comply with MU's rules and all applicable federal and state laws, including, but not limited to: (a) Seller and its subcontractors shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) and shall not discriminate against qualified individuals based on their status as protected veterans or individuals with disabilities, and shall not discriminate against all individuals based on race, color, religion, sex, sexual orientation, gender identity, national origin or other legally protected classes. Seller and its subcontractors shall take affirmative action to employ and advance in employment individuals or legally protected classes; (b) Executive Order 13655 and 11246 prohibits federal contractors and subcontractors from discharging, or otherwise discriminating against their employees or job applicants for discussing, disclosing or inquiring about compensation; (c) MU is an Equal Opportunity Employer. Seller hereby represents that it is an Equal Opportunity Seller and it and its subcontractors (if any) agree to comply with the applicable laws and regulations pursuant to the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 et seq.); Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794); the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621 et seq.); the Americans with Disabilities Act of 1990, (42 U.S.C. §12101 et seq.); Title VII of the Civil Rights Act, (42 U.S.C. §2000e et seq.); Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 38 U.S.C. §4212 et. seq.); Section 503 of the Vocational Rehabilitation Act of 1973; Executive Order 13496 (29 C.F.R. Part 471, Appendix A to Subpart A), as applicable, relating to notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment, (d) Seller certifies all merchandise was produced in full compliance with Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938 as amended and regulations issued thereunder; (e) Seller shall perform all services in compliance with all applicable sections and standards of the Occupational Safety and Health Act of 1970; (f) Seller assumes sole responsibility for implementing and monitoring all Environment, Health & Safety Precautions and programs related to its performance of its obligations under this Purchase Order; (g) Seller shall be responsible to comply with the more stringent of: (i) the then current laws, statutes, ordinances and codes as well as industry standards; and (ii) all applicable rules of MU (including without limitation, environmental quality and safety and fire prevention) in connection with its performance of its duties under this Purchase Order; (h) MU reserves the right to require Seller to restrict any Seller personnel from its property, for any reason, including those deemed by MU to be in violation of any MU policy, including but not limited to Non-Discrimination & Anti-Harassment and Drug-Free Workplace Policies; (i) All materials and equipment supplied by Seller under the terms of this Purchase Order must meet all applicable standards established by the Code of Federal Regulations, Title 29, Part 1910 – Occupational Safety and Health Standards; (j) Seller shall be responsible for securing all applicable licenses and permits and compliance therewith.

14. **SALES TAX EXEMPTIONS:** As a non-profit educational institution, MU is exempt from NJ sales or other state taxes as may be applicable. MU's tax exempt number is E0210-634-584.

15. **USE OF NAME:** Seller shall not use MU's name, insignia, or any logos or symbols of MU, nor issue any publicity releases, including but not limited to, news releases and advertising, relating to this Purchase Order without the prior written consent of MU's University and Marketing Communications.

16. **TRADEMARKS AND LICENSING:** Seller agrees to comply with all licensing and trademark policies and procedures for goods supplied by Seller with the MU logo. All costs associate with this process will be borne by Seller.

17. **NOTICES:** All notices required under this Purchase Order shall be in writing and sent to Seller and MU at their respective addresses identified on the Purchase Order. All legal notices to MU shall also be copied to: Office of the General Counsel, Monmouth University, 400 Cedar Avenue, West Long Branch, New Jersey 07764.

15. **GOVERNING LAW/VENUE:** This Purchase Order shall be governed by the laws of the State of New Jersey. Any action arising or relating to this Agreement shall be litigated in the courts located in the State of New Jersey. Seller consents and submits to the exclusive jurisdiction of such courts.

16. **INDEPENDENT CONTRACTORS:** MU and Seller are independent contractors and nothing in this Purchase Order shall be deemed to create a partnership or joint venture or the relationship of principal and agent between MU and Seller.

17. **SEVERABILITY:** If any provision of this Purchase Order is declared invalid or unenforceable, in whole or in part, for any reason, the remaining provisions shall continue in full force and effect.

18. **TERMS AND CONDITIONS WHICH ARE PART OF PURCHASE ORDERS ISSUED UNDER GOVERNMENT CONTRACTS:** (a) Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CRF, Part 3);
Revised 7.19.18

(b) Davis Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, Part 5); (c) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5); (d) Clean Air Act of 1970 (42 U.S.C. 1857 et seq.) as amended; (e) Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended.; (g) All negotiated contracts (except those of \$10,000 or less) awarded by recipients shall include a provision to the effect that the recipient, the Federal sponsoring agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, excerpts, and transcriptions. (h) The contractor agrees to comply with provisions of 29 CFR part 470.