

Terms and Conditions

1. **ACCEPTANCE:** A Western New England University Purchase Order (PO) is an offer by the University to purchase goods and/or services. Any of the following acts shall constitute acceptance of this order: delivery of any of the goods ordered; commencement of performance; or written or verbal acknowledgement expressly accepting the terms set forth. Any additional or different term or condition on Supplier's acknowledgement form, or otherwise communicated by Supplier in accepting this order, shall be deemed to be a material alteration of this order and is hereby objected to by Western New England University. Acceptance of the goods or services covered by this order will not constitute acceptance by Western New England University of Supplier's terms and conditions to the extent this order is in any way deemed to be an acceptance of a quotation or other offer by the Supplier. Any such acceptance is expressly conditional upon the consent of the Supplier to the terms and conditions of this order.

2. F.O.B. DESTINATION, FREIGHT PREPAID (DELIVERED) UNLESS OTHERWISE SPECIFIED.

3. **SHIP TO:** To insure that delivery is made to the correct location, please address all shipments as noted on the face of this order. All correspondence, packages, and invoices must indicate the purchase order number, department name, and delivery address as indicated on this order. Direct all correspondence relative to this contract to Procurement Services, Western New England University, 1215 Wilbraham Road, Springfield, MA 01119.

4. **DELIVERY:** Time is hereby expressly declared to be of the essence. Failure to deliver within the time specified, or in a reasonable time when not specified, shall entitle Western New England University, in addition to other rights or remedies, to cancel this order and purchase the goods elsewhere, in which event the Supplier shall be responsible for any increase in costs. Further, in such event, Western New England University, upon invoking the terms found herein, may be relieved of any duty to accept such items as are subsequently delivered pursuant to this contract.

5. **INSPECTION OF GOODS AND SERVICES:** The University shall have a reasonable time after delivery to inspect the goods delivered or services rendered under this contract and retains the right to reject or revoke acceptance of any goods not conforming with the terms of this agreement. Rejected goods will be returned to the Supplier at their expense. Rejected services will be reworked to the satisfaction of the University and all costs associated with the correction will be charged to the Supplier. Payment by Western New England University shall not waive the right of Western New England University to return nonconforming goods and receive credit or reimbursement from Supplier.

6. **IDENTIFICATION:** Goods delivered under this contract shall be clearly labeled with the name and location of the manufacturer.

7. **SUBSTITUTION OF GOODS:** Goods not conforming with this contract will not be accepted. The University must approve, in writing, any substitution of nonconforming goods prior to shipment.

8. **MATERIAL SAFETY DATA SHEETS:** Supplier shall submit a Material Safety Data Sheet (OSHA form 20 or equivalent) for any chemical substances that are shipped against this order, as required by any and all applicable federal, state, or local law or ordinance, rule or regulation. MSDS shall contain all the information necessary to comply with the Federal Hazard Communication Standard (29 CFR 1910.1200) and all applicable state regulations.

9. **WARRANTY:** Supplier herein warrants and covenants that the subject merchandise complies with all applicable federal, state, and local statutes, rules and regulations for the installation and use of said merchandise for the purpose for which said merchandise is being purchased or rented. Supplier further warrants that all goods shall be free and clear of all liens and encumbrances, good and merchantable title hereto being in the Supplier; and upon receipt by Supplier of payment good and merchantable title shall be vested in Western New England University. Supplier warrants the goods shall conform to all specifications and drawings on or incorporated by reference into this order and shall be of good material and workmanship, free from any defect of material, labor, or fabrication.

10. **PAYMENT:** The Supplier shall only be compensated for performance delivered and accepted by the University in accordance with the specific terms and conditions of this contract. All invoices against purchase orders must be

rendered to Procurement Services, Western New England University, 1215 Wilbraham Road, Springfield, MA 01119 or emailed to procurement@ wne.edu, and must indicate the University's purchase order number.

11. **MASSACHUSETTS SALES TAX EXEMPTION #11127624** and Federal EIN#**04-2108376**. A copy of the certificate is available upon request. Western New England University is not liable for taxes, customs, or assessments in connection with the purchase and/or delivery of goods ordered, except as expressly set forth on the PO.

12. **CANCELLATION**: Western New England University shall have the right to cancel this order without cause, and its liability for such cancellation shall be limited to Supplier's actual cost for work and materials applicable solely to this order which has been expended when Seller receives notice of cancellation. Western New England University may, at its discretion, cancel this without liability to Supplier (except for conforming shipments Western New England University previously accepted), in the event Supplier ceases to exist, becomes insolvent, the subject of bankruptcy or insolvency proceedings or shall commit a material breach in the performance of any obligation hereunder.

13. **INDEMNIFICATION AGAINST CLAIMS**: Supplier agrees to protect, defend, indemnify and hold Western New England University harmless from all claims, losses, damages, and expenses which may be asserted or be incurred by Western New England University whether direct or indirect, foreseeable or unforeseeable, including, but not limited to, those resulting from injuries to any person or damages to any property, caused in any manner by an act or failure to act of Supplier in connection with the furnishing of the goods covered by this PO, or because of any imperfection or defect in said goods, or based upon any claim of product liability of strict liability in tort, or because of the failure of such goods to be in accordance with the description of such goods as may appear in any catalog, analytical information report or other technical bulletin as is furnished or utilized by Western New England University, or because of the failure of such goods to be produced in compliance with the requirements of this PO.

14. The Supplier agrees to protect, defend, and save the University harmless against any demand for payment for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by this agreement.

15. **NON-DISCRIMINATION**: The Supplier agrees to comply with all applicable Federal and Massachusetts statutes, rules, and regulations prohibiting discrimination in employment.

16. **DISPUTES**: Any dispute arising under this order not disposed of by this agreement shall be decided by a court of competent jurisdiction in the Commonwealth of Massachusetts. Pending Settlement on final decision of any dispute, Supplier shall proceed diligently with the performance of this order in accordance with Western New England University's direction.

17. **CHANGES**: The terms of this contract cannot be modified, altered, or changed without the specific written approval of the University.

18. **COMPLIANCE WITH LAWS**: Supplier shall comply with all federal, state, and local laws, ordinances, rules, and regulations in the manufacture and sale of the goods and performance of the services. Supplier will defend and hold Western New England University harmless from any loss, damages, or cost arising from or caused in any way by Supplier's actual or alleged violation of any federal, state, or local law, ordinance, rule or regulation.

20. **COMPLETE AGREEMENT**: This order embodies the complete and entire agreement of the parties, and replaces and supersedes any previous agreements, communications, or representations, whether written or oral. In the event of a conflict between the terms and conditions of the purchase order, as preprinted herein on this form, and any differing terms and conditions entered by Western New England University upon the face of this order or within any referenced attachment, the latter shall prevail.