

HOFSTRA UNIVERSITY

Purchase Order Standard Terms & Conditions

The Purchase Order Form, these Purchase Order Terms and Conditions, and 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 seller ("Seller") for the benefit of Hofstra University ("Hofstra").

1. Acceptance of Purchase Order by Seller

Upon acceptance of this Purchase Order by the Seller as set forth herein, this Purchase Order is a valid and binding contract between Hofstra and the Seller, its successors and assigns. This Purchase Order is deemed accepted if Seller at any time delivers or performs all or any part of the goods, wares, merchandise or services included in the Purchase Order. Notwithstanding the provisions of any other document, writing, representation, agreement, proposal, promise or other understanding, oral or otherwise, between Hofstra and Seller, including but not limited to any prior or subsequent price quotation, invoice, statement of work, terms and conditions, order, confirmation or other document furnished by Seller (Seller Terms), this Purchase Order constitutes the entire agreement between the Seller and Hofstra regarding the subject matter of this Purchase Order and supersedes all Seller terms regarding the subject matter of this Purchase Order.

2. Acceptance by Hofstra

Delivery of the Goods and Services will be deemed to be complete only when delivered pursuant to a valid Purchase Order and when actually received and accepted by Hofstra. All Goods and Services are subject to Hofstra's right of inspection following delivery and/or performance by Seller. Prepayment or deposit for Goods and Services under this Purchase Order prior to inspection by Hofstra will not constitute acceptance by Hofstra. Hofstra may, at its option, reject all or any portion of the Goods and Services that do not, in Hofstra's discretion, comply with the terms and conditions of this Purchase Order or Hofstra's requirements. Hofstra may elect to reject all of the Goods and Services even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods and Services will not be deemed to be a waiver by Hofstra of its right to cancel, reject or return all or any portion of the Goods and Services, or make a claim for damages, for reasons including defect, breach of warranty, late delivery, or breach or non-compliance with any of the terms or provisions of this Purchase Order. Except with respect to materials furnished by Hofstra, the Seller hereby warrants the material delivered on the order to be in accordance with specifications, drawings, or samples if such were submitted and agrees that this warranty shall survive acceptance. If the materials supplied by the Seller are defective or not in accordance with the specifications, drawings or samples, Hofstra reserves the right to cancel and return at Seller's expense. The Seller agrees to bear the cost of inspecting material rejected.

3. Taxes

Hofstra is a not for profit educational organization and as such is exempt from sales taxes. Hofstra's sales tax exemption number is 111888 and its Federal Excise Tax exemption number is A109562. Any and all other sales, consumer and other similar taxes shall be paid by the Seller. Hofstra will supply copies of its exemption certificates to Seller upon request from Seller.

4. Payment Terms

Standard payment terms are Net 30 days from receipt of invoice, unless otherwise specified on Purchase Order.

5. Notices

Written notice to Hofstra, including all legal notices, shall be deemed to have been duly served if delivered in person or by certified mail-return receipt to: Vice President for Financial Affairs and Treasurer, 128 Hofstra University, Hempstead, NY 11549. Along with a copy to: Vice President for Legal Affairs and General Counsel, 101 Hofstra University, Hempstead, NY 11549.

6. Time for Delivery

Delivery or performance will be strictly in accordance with Hofstra's delivery or performance schedule. If Seller's delivery or performance fails to meet such schedule, Hofstra may without limiting any of its other rights or remedies, cancel the order or direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing or performance and this Purchase Order's routing or performance costs will be paid by Seller upon Hofstra's demand. Time is of the essence with respect to Seller's delivery and/or performance under this Purchase Order. Whenever the Seller has knowledge of a potential labor dispute that would delay or threaten to delay the timely performance of this order, the Seller shall so inform Hofstra.

7. Risk of Loss

Until delivered to Hofstra, Seller will bear all risk of loss or damage. Shipment of goods or materials is D.D.P. /F.O.B. Destination unless Purchase Order states otherwise.

8. Pricing

Hofstra will pay Seller only for such Goods and Services and at such prices as agreed upon pursuant to this Purchase Order. Prices include all amounts payable by Hofstra and no additional charges of any kind (including, without limitation, charges for transportation, delivery, boxing, packing or other extras) will be payable by Hofstra unless specifically set forth in this Purchase Order or otherwise specifically agreed to in writing by an authorized purchasing agent of Hofstra. Any material, shipped in excess of quantity specified in the Purchase Order, will at Hofstra's option, be returned at Seller's expense.

9. Nondiscrimination Compliance

Seller acknowledges that the work covered by this Purchase Order shall comply with New York State non-discrimination and affirmative action policies. The Seller agrees to follow and abide by all such rules and regulations throughout the performance of this Purchase Order. Seller acknowledges that it is the policy of the State of New York, to comply with federal, state and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, color, religion, sex, sexual orientation, gender identity or expression, age, national or ethnic origin, physical or mental disability, marital or veteran status, since it is the policy of Hofstra University to promote the full realization of equal employment opportunity through an affirmative action program.

10. Compliance with Laws and Hofstra Policies

Seller will comply with all applicable international, foreign, and U.S. federal, state and local laws, rules and regulations, including, but not limited to, all applicable laws and regulations pertaining to privacy and confidentiality, including the Family Educational Rights and Privacy Act of 1974, and Seller will comply with all applicable Hofstra policies and instructions. Seller will not violate U.S. export control and economic sanctions laws, including, but not limited to, the U.S. Department of Commerce's Export Administration Regulations and the economic sanctions programs administered by the U.S. Department of Treasury, nor take any other action that would cause Hofstra to be in violation of U.S. export control and economic sanctions laws. Seller will obtain and maintain, and furnish to Hofstra upon request, any and all permits, licenses, approvals, certificates and other documents required by Hofstra or otherwise required by applicable law. Personal safety protective equipment shall comply with the Department of Labor Occupational Safety and Health Act (OSHA) safety standards or with American National Standards Institute (ANSI) safety standards.

11. Cancellation for Breach by Seller

Hofstra may terminate this Purchase Order, in whole or in part, for Seller's breach of this Purchase Order, including but not limited to, the failure to deliver the Goods and Services as and when specified. If Hofstra terminates this Purchase Order for Seller's breach, in addition to all of Hofstra's other rights and remedies under law, Seller will be liable to Hofstra for all damages, including but not limited to, the cost of securing replacement Goods and Services, shipping charges for returned Goods and Services, and any amounts previously paid by Hofstra to Seller. Cure of any non-conforming tender by Seller may only be made with the prior written consent of Hofstra. This right of termination is in addition to and not in place of any other rights or remedies that Hofstra may have at law or in equity.

12. Cancellation for Convenience

Hofstra, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for Goods delivered and Services performed. Payment due will be a percentage of the purchase price equal to the percentage of the work completed and/or units delivered.

13. Representations and Warranties

In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to Hofstra that: (a) all Goods and Services conform and will continue to conform to professional industry standards and to any description, sample, specifications or other documentation related to the Goods and Services made available to Hofstra; (b) the Goods and Services are and will be fit for the purposes for which purchased, free from defects in materials and workmanship, and safe for their intended use; (c) Seller has all right, title and interest in and to the Goods and Services necessary to fulfill its obligations hereunder; (d) the Goods and Services are free from any liens, claims and encumbrances of any nature and do not and will not infringe the intellectual property rights of any third party; (e) all Goods and Services will have been produced or manufactured in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and municipal laws, rules and regulations; and (f) Seller has not been excluded from participation in, nor is aware of any pending or threatened debarments or exclusions from any federally or state-funded program. All of Seller's representations and warranties both express and implied, also constitute conditions of this Purchase Order and will survive inspection, acceptance and payment by Hofstra.

14. Patents & Copyright

The Goods and Services will be deemed to be work made for hire and Hofstra will own all right, title, and interest in and to the Goods and Services and each part and component thereof, whether or not patentable or copyrightable, and any copyright therein and patent application or patent thereon. Seller agrees that all right, title and interest in and to the Goods and Services has been transferred and assigned to Hofstra. To the extent any background intellectual property rights of Seller are necessary for Hofstra to fully utilize the Goods and Services, Seller agrees they must be disclosed to Hofstra prior to Seller's commencement of work hereunder, and Seller agrees to grant Hofstra non-exclusive license rights thereto, sufficient for it to fully utilize the Goods and Services, without additional consideration. At Hofstra's request, Seller will promptly give, execute, deliver, file, and record any and all applications, assignments or other instruments, and will do such other acts and things, as Hofstra may deem necessary in order to confirm transfer, assignment, conveyance, and vesting in and to Hofstra all right, title, and interest in and to the Goods and Services, each part and component thereof, all copyrights therein, and all patent applications and patents thereon; in order to assist Hofstra in prosecuting or defending any litigation and proceedings relating to the Goods and Services, any part or component thereof, any copyright therein, or any patent application or patent thereon; or in order to evidence or preserve Hofstra's ownership of the right, title, and interest in and to the Goods and Services, each part and component thereof, all copyrights therein, and all patent applications and patents thereon. This Section will survive termination of this Purchase Order.

15. Publicity

Seller will not use (a) the names of Hofstra University, Hofstra, or any college, school division, unit, agent, employee or student thereof or (b) any logo, trademark, service mark or trade name owned or controlled by Hofstra without the prior written consent of a duly authorized representative of Hofstra.

16. Force Majeure

Neither Party will have responsibility to the other due to circumstances beyond that Party's reasonable control, including (without limitation) any act of God, war or public enemy, or any act of government or any agency thereof, or any fire, flood, explosion or other catastrophe, or any epidemic or quarantine restriction, or any act of sabotage or terrorism, or any strike, lockout or other work stoppage, slowdown or dispute.

17. Indemnification - Hold Harmless

To the fullest extent permitted by law, Seller agrees to defend, indemnify and save harmless Hofstra, and its agents, servants and employees, from and against any claim cost, expense, or liability (including, without limitation, attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with (a) any negligent or wrongful act, error or omission or breach of contract in connection with the operation of the Seller; or (b) performance of by Seller, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder. Seller's obligation hereunder shall not be limited by the provisions of any worker's compensation, disability benefits or similar employee benefits act. Nothing in this Purchase Order shall be construed to require any indemnification which would make this Purchase Order void or unenforceable or to eliminate or reduce any indemnification or rights which Hofstra or any other party indemnified hereunder have by law. Seller shall waive their right of subrogation against Hofstra its partners, directors, officers, servants, representatives and agents applicable to any claims brought against the owner by the Seller's employees.

18. **Insurance**

If fabrication, installation or other work is specified to be done on Hofstra's premises, prior to commencement of work, a contract must be signed and the Seller must furnish Hofstra with certificates of insurance, naming Hofstra as an additional insured, for comprehensive General Liability insurance providing minimum limits for Bodily Injury and Property Damage Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate, Worker's Compensation and Employer's Liability Insurance with a limit of at least \$1,000,000 and excess liability coverage of at least \$5,000,000. If contract specifies different coverage, the terms of the contract prevail.

19. **Confidential Information**

Seller and its employees, agents and subcontractors will hold in confidence and not disclose, distribute, sell, copy, share or otherwise use Hofstra's "Confidential Information," which includes (a) any information about or relating to the Goods and Services, and (b) any information obtained, learned, received, or developed by Seller that relates to the employees, students, research, development, plans, business affairs, property, records, processes, techniques, or equipment of Hofstra. Upon completion of its performance under or termination of this Purchase Order, Seller will return to Hofstra all Confidential Information, and any copies thereof. If there is a security breach of confidential information, Seller shall immediately notify Hofstra and reimburse Hofstra for any expenses incurred in notifying the affected individuals, defending any actions or claims brought against Hofstra and its agents, or damages arising out of, or relating to the breach.

20. **Infringement**

Seller guarantees and agrees that the goods, wares, and merchandise to be furnished hereunder, will not infringe any patents or trademarks, and that seller will, at Seller's own expense, defend any and all actions or suits alleging such infringements and will save us our associates and affiliates, and those for whom we may act as agents in the purchase of said goods, wares, and merchandise harmless in case of such infringement.

21. **United States Government Funding**

In the event that this order is terminated in whole or in part for the convenience of the Government, neither Hofstra nor the Government shall be obligated to pay any amount to the seller or subcontractor for anticipatory profits as a result of such termination.

22. **Clauses Applicable to Federal Grants**

If the Purchase Order involves funds from a United States Government grant or a subcontract at any tier relating to a United States Government grant, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"), are incorporated into the Purchase Order by reference where applicable, with the same force and effect as if they were given in full text, and form a part of the terms and conditions of the Purchase Order. The full text of the Uniform Guidance may be found at 2 CFR Part 200. Upon request, Hofstra will make the full text available to the Seller.

23. **Conflicts Between Clauses Applicable to the Purchase Order**

In the event of any conflict among the Hofstra clauses applicable to the Purchase Order, including those not applicable solely to federal grants and/or contracts, the most stringent Hofstra clause will apply.

24. **Payment Card Industry Data Security Standards**

Seller adheres to Payment Card Industry Data Security Standards (PCI-DSS). Seller employs PCI-DSS standards and security best practices, including but not limited to the use of the latest versions of encryption (e.g. TLS/SSL or greater) and other means, to insure the safety of confidential credit card information at all points during transaction processing. Seller works with only certified PCI-compliant e-commerce gateways and will not have access to capture or store credit card information. Seller will be held responsible for the security of cardholder data that passes through Seller's website. If there is a security breach of confidential or personally identifying information, Seller shall immediately notify Hofstra and reimburse Hofstra for any expenses incurred in notifying the affected individuals, defending any actions or claims brought against Hofstra and its agents, or damages arising out of, or relating to the breach.

25. **Assignment**

Seller shall not assign this Purchase Order, or any monies due or to become due hereunder, without the prior written consent of Hofstra. No assignment by Seller of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Seller under this Purchase Order. If Hofstra gives written consent to an assignment of this Purchase Order, in whole or in part, Seller shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Seller from engaging subcontractors to perform a portion of the Work hereunder. However, Seller shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors as Seller is for its own acts and omissions and those of its agents, servants and employees.

26. **Miscellaneous**

All matters relating to the validity, performance, or interpretation of this Purchase Order shall be governed and construed in accordance with the laws of the State of New York. Venue for any action, claim or dispute arising out of this Purchase Order shall be Nassau County, New York.

In the event that any term, provision, or part of the Purchase Order is held to be illegal, invalid or unenforceable, such term, provision, or part shall be deemed severed from the Purchase Order and the remaining terms, provisions and parts shall remain unaffected thereby. Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa. This Purchase Order, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof. In the event there are conflicting terms and conditions between this Purchase Order and an additional valid agreement fully executed by both parties (the "Other Agreement"), the Other Agreement will prevail through the term of the Other Agreement.

This Purchase Order may not be changed in any way except as herein provided or in writing signed by a duly authorized officer or agent of each party. No requirement of this Purchase Order may be waived except in writing signed by a duly authorized officer of the waiving party. This provision may not be waived orally by Hofstra. As to any claim which arises out of Seller's performance which is also caused by the acts or omissions of any third party, Seller's liability hereunder shall be joint and several. Hofstra and Seller each binds itself, their successors, assignees and legal representatives to the other party hereto and to the successors, assignees and legal representatives of such other party in respect to all covenants, agreements and obligations contained in this Purchase Order. The failure of Hofstra to insist upon performance or strict performance of any of the terms, covenants or conditions of this Purchase Order shall not be deemed a waiver of any rights or remedies that Hofstra may have, shall not be deemed to constitute an amendment of this Purchase Order, and shall not be deemed a waiver of any subsequent breach or default by Hofstra of any of the terms, covenants, or conditions of this Purchase Order.

Seller represents that no trustee, officer, employee or any other person affiliated with Hofstra and having involvement with this contract (1) is affiliated in any way with Seller; and (2) received, was promised, or will receive anything of value in connection with this Purchase Order or the performance thereof.