

VILLANOVA PURCHASE ORDER TERMS AND CONDITIONS

1. **CONTRACT.** The Purchase Order includes these Purchase Order Terms and Conditions, the Purchaser purchase order form (the "Form") and any exhibits thereto and, if applicable, Owner accepted portions of Vendor's proposal in response to the Request for Proposal. The Contract Documents consist of the Purchase Order, and all of the following supplied by Purchaser; the General Conditions, Supplementary Conditions and the Specifications (where applicable), and all addenda issued before, and all Modifications issued after execution of the Purchase Order. These form the Contract, and all are as fully a part of the Contract as if attached to the Purchase Order or fully set forth therein. Commencing performance of or accepting the Purchase Order shall indicate Vendor's intent to be bound by the terms and conditions of the Contract Documents (the "PO Terms"), shall constitute an acceptance by Vendor of each of the PO Terms, and shall form a contract under the laws of the Commonwealth of Pennsylvania. The Contract Documents shall constitute the entire agreement between the parties with respect to the subject matter of this Contract and may not be modified, added to or rescinded except by a subsequent writing signed by Purchaser. Notice of objection is hereby given to any different or additional terms in Vendor's quotations, acknowledgments, invoices, or in any other communication from Vendor unless Purchaser expressly agrees to such terms in writing. Receipt of Vendor purchase order or contract form, payment, acceptance of goods, or inaction by Purchaser shall not constitute Purchaser's consent to or acceptance of any such terms.
2. **PARTIES.** a. Purchaser or Owner (terms are interchangeable): Villanova University. b. Supplier or Contractor or Vendor (terms are interchangeable): As set forth on the Form.
3. **TERMS.** a. The term "goods" includes goods, material, chattels, equipment, machinery, manufactured articles, merchandise, fixtures, products, appliances, plant, work and any other items to be supplied pursuant to the Purchase Order. b. The term "warranty" includes warranties, guarantees, representations and promises.
4. **DELIVERY.** a. The goods shall be tendered by delivery to Purchaser at the time and place specified in the "SHIP TO" Section on the Form. b. The times set forth for delivery are of the essence. c. Vendor is responsible for maintaining and providing proof of delivery. d. Packing lists must accompany each case or parcel, showing the applicable Purchaser PO number and a complete description of contents. e. Vendor shall prepay all transportation charges. f. Vendor shall bear all costs of transportation, packing, crating, delivery, off-loading, insurance, installation, storage, and service under warranty, F.O.B. prepaid destination to the appropriate designated delivery location (Owner's campus in Villanova, PA unless otherwise indicated on the Form). g. If transportation of the goods is undertaken by an entity other than Vendor, Vendor shall be responsible for and handle all claims against such entity for shortages, damages, theft and other such occurrences. All Orders being shipped by third party suppliers (drop shipments) must have Purchaser's Purchase Order Number on the Bill of Lading with full delivery address. h. Vendor and any 3rd party supplier making deliveries must be aware of tight maneuvering abilities on Purchaser's campus. It is Vendor's responsibility to assure a smooth delivery. i. If delivery and completion dates cannot be met, Vendor shall inform Purchaser immediately. If any item is not received or if any element of the work is not completed by the date specified, Purchaser, at Purchaser's option and without prior notice to Vendor, may either approve a revised date or may cancel the order and may obtain such goods or work elsewhere and in either event Purchaser shall be liable to Purchaser for any increased costs or any loss incurred by Purchaser. j. At Purchaser's discretion Purchaser may return partial shipments to Vendor for full credit and a refund of any advance monies paid by Purchaser. k. A packing slip must accompany each shipment showing all items listed on the Purchase Order. Each and every shipment should plainly show the Purchase Order Number and the name of any party shipped in care of. l. Vendor is responsible to review the Purchase Order Form for any special instructions.
5. **IDENTIFICATION/RISK OF LOSS/TITLE.** Identification of the goods shall occur as soon as the Purchase Order is received by Vendor. Risk of loss of and clear title to the goods shall pass to Purchaser at the time that conforming goods are received and accepted by Purchaser.
6. **PURCHASE PRICE.** The Purchase Order Total Price (also referred to as the Contract Sum) and Unit Prices shall be as specified on the Form, subject to Section 2 hereof. They shall not include sales and use taxes for which an exemption is applicable. Purchaser shall have no responsibility for payment of over shipments, goods not delivered due to shortages, theft, etc., or otherwise non-conforming shipments. Purchaser's count shall be accepted as final and conclusive for all shipments. If Purchase Price is omitted and is not covered by a blanket order or agreement, this order is to be filled at the lower of (i) the price last quoted or charged or (ii) the lowest prevailing market price. All prices are FOB Purchaser's on-Site receiving area unless otherwise specified Collect shipments will be returned at Vendor's expense.
7. **PAYMENT.** a. Payment shall be processed generally as follows except that in the event of a conflict with the terms of any applicable General Conditions, the terms of the General Conditions shall prevail. b. For contracts not requiring on-Site Work, payment shall be processed generally as follows subject to the General Conditions if applicable. The Purchase Order is valid only for the amount and quantity specified therein, except for Blanket Orders, which is a Contractual Agreement to cover purchases or services for an extended period of time, up to a specified dollar limit. Vendor shall send invoices to Purchaser in a timely manner. Vendor shall submit one invoice for the Purchase Order. No invoices will be processed for payment until Purchaser has received goods, has inspected them and has determined that they are conforming. Invoices shall be considered as dated the later of the day the invoice is received or the day the goods are received and accepted by Purchaser. Payment for conforming goods and/or services shall be paid within thirty (30) days of the later of (i) the date of final completion of services and/or receipt of goods or (ii) the date of receipt of the invoice. Purchaser will take advantage of early payment terms, which may be noted on Vendor's invoice but not noted on Purchase Order. With respect to invoices covering mechanical equipment and similar goods which cannot immediately be put into operation, Purchaser reserves the right to withhold from payment of such invoice pending approval of the operation of such equipment and/or goods. Purchaser shall pay for the goods by check. Payments on cash discount items will be rendered less any applicable cash discount. Each Purchase Order must be covered by an individual invoice, giving the description, part number, unit and extended prices, line items, prices, vendor name, vendor address and the like set forth on. Invoices should match the Purchase Order when possible. The Purchase Order number must appear on all invoices and packing slips. All invoices should be sent directly to the Procurement Department unless otherwise noted on the Purchase Order. Orders taken or services rendered without a Purchase Order are subject to delay and/or denial in payment. Acceptance by Vendor of any order from Purchaser without a Purchase Order is at Vendor's risk. If goods are rejected, any return shipping/transportation shall be borne by Vendor.
8. **WARRANTIES.** a. Vendor warrants to Purchaser that all items covered by the Purchase Order conform to the samples, drawings, specifications, plans, or other descriptions provided by Purchaser (collectively, "Specifications"). Vendors are not authorized to substitute without written consent of the Purchaser. All goods shall be new, merchantable; fit for Purchaser's intended purpose; of good material, workmanship and design; and free from defect. Vendor also guarantees that the goods are of sufficient size or capacity to perform as specified. b. Vendor agrees that Purchaser and any representative designated by Purchaser, for itself and on behalf of Purchaser ("Purchaser's Representative"), shall have the benefit of all manufacturers warranties, express or implied, issued on or applicable to the goods and Vendor authorizes Purchaser and/or Purchaser's Representative to obtain the customary services furnished in connection with such warranties and guaranties. Vendor hereby assigns such warranties to Purchaser. c. The Purchase Order incorporates by reference any and all warranties (express, implied, oral or written) made by Vendor prior to or at the time the Purchase Order is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event of a conflict, the warranty providing the most protection to Purchaser shall prevail. d. All warranties shall survive

inspection, acceptance and payment. e. Vendor agrees to repair or replace free of charge any goods or parts of goods which prove defective or which operate unsatisfactorily. This warranty does not apply to normal effects of corrosion or wear and tear. Such remedies shall be available to Purchaser in addition to all others afforded to it by this Contract or at law or equity.

9. RIGHT OF INSPECTION. a. Within a reasonable time after delivery of the goods in accordance with Section 4 Purchaser shall have the right to inspect the goods to determine their conformity with the Specifications. b. Thirty (30) days from the later of the date of delivery or installation is deemed to be the reasonable time for Purchaser to inspect the goods. c. If all or any part of the goods are found to be non-conforming, Purchaser may reject such non-conforming goods, whereupon such rejected goods promptly shall be removed by Vendor at Vendor's cost, and the Purchase Price with respect to such rejected goods either shall be refunded by Vendor if already paid, or shall be reduced if still owing. d. In either case, if Purchaser so directs in writing, Vendor shall promptly replace such non-conforming goods with goods conforming to the Specifications. e. All direct and incidental costs of rejecting and removing such non-conforming goods shall be borne by Vendor.

10. REMEDIES. a. In addition to remedies provided in the Contract Documents, Purchaser shall have all other rights and remedies available under applicable law. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE CONTRACT DOCUMENTS, IN NO EVENT SHALL VENDOR BE ENTITLED TO ANY PAYMENT ON ACCOUNT OF LOST PROFITS OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH ANY TERMINATION OF THE CONTRACT, OR OTHERWISE IN CONNECTION WITH THE CONTRACT.

11. INDEMNIFICATION. a. To the fullest extent permitted by law, Vendor shall indemnify and hold harmless Purchaser, Brothers of the Order of Hermits of St. Augustine (the "Order"), and any Purchaser's Representative and all of their respective trustees, directors, officers, employees and agents (collectively, "Goods Indemnities") from and against all claims, liabilities, injury to or death of any person, damages, losses, costs (including, without limitation, reasonable legal fees) and expenses (collectively, "Claims"), arising from or relating to the undertaking of Vendor hereunder or any defect(s) in the goods supplied, provided such Claims are caused in whole or in part by any negligent act, omission, recklessness or willful misconduct of Vendor or anyone for whose acts Vendor may be liable, or provided Vendor may be held responsible for same under products liability law or under other applicable legal or equitable principles. b. Vendor further agrees to assume the defense of any suit brought against Goods Indemnities and to protect Goods Indemnities from all Claims arising out of claims for infringement of any patent, invention, design, trademark or copyright in connection with the goods. c. In connection with its supply of goods and services and performance of its obligations under this contract, Vendor shall provide safety protection for persons and property in accordance with all applicable laws and regulations

12. Applicable Documents/Documents Contained Herein: Vendor's Certificate of Insurance – a. Vendor shall furnish a certificate of insurance evidencing to bodily injury/personal injury/liability coverage, property damage liability coverage, and workman's compensation coverage in coverage limits not less than those set forth below. b. This certificate must be on file in the Procurement Department prior to any commencement of work. Purchaser will not be liable for payment of any Vendor's invoice if the certificate is not submitted and accepted by Purchaser. The certificate shall evidence that **Villanova University is listed as an "additional insured"** for all coverage except workers' compensation and must provide the minimum limits set forth below. c. The certificate shall also indicate whether the General Liability Policy is written on a "claims-made" or "occurrence" basis. d. In addition, the certificate must indicate that it is the responsibility of a given carrier to provide Purchaser with 30 days notice prior to cancellation or expiration of a given policy.

Worker's Compensation:	Statutory
Employers' Liability:	\$100,000/500,000/100,000
Comprehensive General Liability:	\$3,000,000 Each Occurrence
Automobile Liability:	\$3,000,000 Each Occurrence
(Limits may be reached by means of an Umbrella Policy).	

13. REGULATORY COMPLIANCE AND NONDISCRIMINATION. a. Vendor must comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction ("Laws") including, without limitation the applicable provisions of the following and any Laws referenced in the General Conditions, all as amended and in effect as of the date of this order: the Anti-Kickback Act (41 U.S.C. Sections 51 *et seq.*), the Civil Rights Act of 1964 (42 U.S.C. Section 2000a *et seq.*), Executive Orders 11246 and 11375, the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and of all other applicable Laws dealing with labor and wages, workmen's compensation, employer liability, unemployment compensation, old age benefits, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of race, color, religion, gender, national origin, veteran's status or disability. Vendor represents that no law has been violated in the manufacture or sale of the items covered by this order. e. Vendor represents that any durable item purchased by this Purchase Order has a valid serial number and that the serial number has not been altered or removed, as the possession and sale of such items is prohibited by law.

14. WAIVER OF LIENS. a. Vendor, for itself and for all its subcontractors, agrees that no mechanic's or material man's lien or other claim shall be filed or maintained by Vendor or by any subcontractor, laborer or any other person, whatsoever, for or on account of any work done on goods furnished under this Contract. This agreement shall be an independent contract. b. In every subcontract entered into by Vendor after the execution and delivery of the Contract or in connection herewith, Vendor shall incorporate a provision similar to the foregoing subsection to the effect that neither the subcontractor nor any party acting through or under it shall file or maintain any mechanic's lien or other claim against Purchaser in connection with the work.

15. WAIVER OF BREACH. a. Waiver, forbearance or inaction by Purchaser of a breach by Vendor of any PO Term shall not be deemed a waiver of future compliance with all PO Terms, and all such PO Terms shall remain in full force and effect as to future performances.

16. CANCELLATION. a.. If the subject matter of the Purchase Order (or any design, prototype, drawing, or other sample) is subject to prior review and approval by Purchaser, Purchaser may cancel the Purchase Order upon its determination that such design, prototype, drawing or sample does not conform to any applicable project specifications; and Purchaser shall have no further obligations or liability hereunder.

17. TERMINATION OF PURCHASE: a. Purchaser may terminate the Purchase Order and/or contract in connection there with and any and all rights granted and obligations assumed herein without cause by giving ten (10) days written notice to Vendor provided that Purchaser shall compensate Vendor for reasonable costs that were necessarily incurred prior to the time of termination. b. Upon receipt of a notice of termination and except as otherwise mutually agreed, Vendor shall stop work under the Purchase Order on the effective date of the notice of termination. c. Termination for Cause: Purchaser may terminate the Purchase Order and/or contract in connection there with and any and all rights granted and obligations assumed herein at any time if Vendor fails to carry out its terms or fails to make substantial progress toward the fulfillment of terms, as specified in this document and related contract documents within (10) day written notice of conditions that endanger contract performance, notwithstanding the foregoing; Purchaser need not provide ten (10) day written notice in the event of a failure of vendor to timely deliver, in which

case purchaser may terminate pursuant to section 4i above. . If after such notice, Vendor fails to remedy these conditions, Purchaser may issue an order to Vendor for immediate cancellation of the contract.

18. ASSIGNMENT/DELEGATION. a. Vendor shall neither assign any right or interest in this contract, nor delegate any obligation owed by it hereunder, without the prior written consent of Purchaser. b. Any attempted assignment or delegation absent Purchaser's consent shall be wholly void and totally ineffective for all purposes.

19. COMMUNICATIONS. a. With the exception of invoices and monthly statements of account, which are to be directed to Villanova University Procurement Department, all communications and acknowledgments from Vendor concerning the Purchase Order must be directed to the Villanova University department or contact person listed on the Form (or if none is listed to the Villanova University Procurement Department).

20. DISPUTES: a. Any dispute arising under this Purchase Order and/or contract which is not settled by agreement of the parties shall be settled in the state or federal courts of the State of Pennsylvania, provided, however that Purchaser may require Vendor to submit to mediation or binding arbitration under the rules of the American Arbitration Association in Delaware County, Pennsylvania. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under the Purchase Order, Vendor shall proceed diligently with the performance of the Purchase Order in accordance with the direction of Purchaser.

21. FEDERAL, STATE and LOCAL TAXES. a. Purchases made by Purchaser are exempt from the payment of Pennsylvania State Sales and Use Taxes and Federal Excise Taxes. b. Certification of these exemptions will be provided to Vendor upon request. Vendor shall provide Purchaser with an executed IRS form W-9 prior to submission of the initial invoice.

22. NON-COLLUSIVE BIDDING. a. Vendor certifies that the Purchase Price has been determined independently without collusion with Purchaser's employees, other bidders, or any other supplier, and without effort to preclude Purchaser from obtaining the lowest competitive price.

23. RIGHT TO AUDIT. a. Vendor shall provide Purchaser reasonable access to its books, documents and records as necessary to ensure Vendor's compliance with the provisions of the Contract Documents.

24. MISCELLANEOUS. a. No agreement or other understanding in any way modifying the Contract Documents shall be binding upon Purchaser unless made by or accepted by Purchaser in writing. The Purchase Order shall be subject to modification, amendment and/or cancellation by Purchaser in event of fire, accident, strike, Government acts or other conditions beyond Purchaser's control. Purchaser shall promptly provide to Vendor written notice of the occurrence of such events requiring such modification, amendment and/or cancellation. b. This writing and the other Contract Documents is intended by the parties as a final expression of their agreement with respect to the subject matter hereof. c. Any provision in the Contract Documents that is held to be inoperative, unenforceable, voidable or invalid in any jurisdiction shall as to that jurisdiction, be ineffective, unenforceable, void or invalid without affecting the remaining provisions, or the enforce ability of all provisions in any other jurisdiction and to this end, the provisions hereof are declared to be severable. d. The contract resulting from the acceptance of the Purchase Order is to be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to the choice or conflict of laws provisions thereof. Vendor agrees to bring any state or federal legal proceeding arising under this Contract in which the Purchaser or Order is a party, in a court of competent jurisdiction within the County of Delaware, Commonwealth of Pennsylvania or Eastern District of Pennsylvania, respectively. This Section shall not be construed to limit any rights a party may have to intervene in any action, wherever pending, in which one of the others is a party. e. All indemnification, payment, warranty, lien waiver, title and remedies provisions shall survive the termination or expiration of the Purchase Order.

25. CONFLICT OF INTEREST. a. Vendor must disclose the name of any Vendor owner, agent or employee that is also an employee of Purchaser. Further, Vendor must disclose the name of any Villanova Employee who owns, directly or indirectly, an interest in Vendor or any of its affiliates.

26. SEXUAL HARASSMENT: a. Federal Law and the policies of Purchaser prohibit sexual harassment of Purchaser employees and students. b. Sexual harassment includes any unwelcome sexual advance toward a Purchaser employee or student, any request for a sexual favor from a Purchaser employee or student, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for Purchaser employees or a hostile or offensive academic environment for Purchaser students. c. Vendor shall exercise control over its employees so as to prohibit acts of sexual harassment of Purchaser employees or students. d. In the event that Purchaser in its reasonable judgment determines an employee or agent of Vendor or a Vendor affiliate or subcontractor has committed an act of sexual harassment, Vendor shall cause such person to be removed from the project site and from Purchaser premises and to take such other action as may be reasonable necessary to cause the sexual harassment to cease. Vendor shall consult and comply with the terms of Purchaser's Sexual Harassment Policy, a copy of which is accessible at: www.hr.villanova.edu/harass/harass.htm.

27. DRUG FREE WORKPLACE: a. Vendor acknowledges and certifies that it understands that the following acts by Vendor, its employees and/or agents performing services on Purchaser property are prohibited: the unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes). b. Vendor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by Purchaser in addition to any criminal penalties that may result from such conduct.

28. WORKPLACE VIOLENCE: a. Vendor acknowledges and certifies that it understands that Purchaser seeks to provide a safe workplace for all employees. To ensure a safe workplace, and to reduce the risk of violence, Vendor shall comply and cause its employees and agents performing services on Purchaser's property ("collectively, "On-site Personnel") to comply with all provisions outlined below: b. Prohibited Conduct: On-site Personnel shall not engage in any type of workplace violence committed against Purchaser's employees or students. c. On-site Personnel are prohibited from making threats or engaging in violent activities. This list of behaviors, while not inclusive, provides examples of conduct that is prohibited: physically assaulting, attacking or otherwise intentionally causing physical injury to another person; making threatening or intimidating remarks; aggressive or hostile behavior that creates a reasonable fear of injury to another person; intentionally damaging or threatening to damage Purchaser property or property of an employee or student; possession or concealment of a weapon while on Purchaser property, including bringing a weapon of any type onto campus.

