

**PRESIDENT AND FELLOWS OF HARVARD COLLEGE (“HARVARD UNIVERSITY” OR “HU”)-  
GENERAL TERMS AND CONDITIONS**

**Offer and Contract:** The following terms, conditions and certifications apply to all Harvard University Purchase Orders, in addition to any terms set forth on the face of an individual purchase order (the “Order”), and any plans, specifications or other documents attached or incorporated by reference therein. HU hereby gives notice of its objection to any different or additional terms. Purchase Orders are valid only as written. If price, terms, shipping date or any other expressed condition of the Order is not acceptable, HU must be notified and must accept in writing any variation prior to shipment or delivery. The Order shall be deemed to have been accepted (i) in the absence of written notification of non-acceptance by the Seller within a reasonable period of time, or (ii) upon timely delivery of the products identified herein to the shipping address specified on the face of the Order. This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

**Changes:** HU may make changes to the Order at any time, and Seller shall accept such changes. If a change causes an increase or decrease in cost and/or time required for performance, an equitable adjustment shall be made and the Order modified accordingly.

**Termination for Convenience or Cause:** HU may terminate the Order or any part thereof for its sole *Convenience*. Upon notice of such termination, Seller shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work against the Order. Seller shall be paid a reasonable termination charge consisting of a pro rata percentage of the Order price reflecting the percentage of work performed prior to notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for work performed or costs incurred after receipt of notice of termination, nor for costs incurred by Seller's suppliers that Seller reasonably could have avoided. HU may terminate the Order or any part hereof for *Cause* if Seller 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 HU to terminate the Order for cause. In this event, HU will not be liable to Seller for any amounts; but Seller shall be liable to HU for all losses, damages, and expenses, including costs of cover, resulting from the default that caused the termination. If a determination is made that HU improperly terminated the Order for Cause, then such termination shall be deemed to have been for HU's Convenience.

**Delivery:** Time is of the essence of the Order. If delivery of goods or services is not complete within the time specified, HU may, without liability and in addition to its other rights and remedies, terminate the Order, by notice effective when received by Seller, as to goods not yet delivered or services not yet rendered: and HU may purchase substitute goods or services elsewhere and charge Seller for any additional expense incurred. Acceptance of any part of the Order shall not bind HU to accept any future shipments nor deprive it of the right to return goods already accepted.

**Force Majeure:** HU may delay delivery, performance, or acceptance of the goods or services ordered hereunder in the event of causes beyond its control. Seller shall hold such goods or refrain from furnishing such services at the direction of HU, and Seller shall deliver the goods when the cause effecting the delay is eliminated. HU shall be responsible only for Seller's direct additional costs incurred by holding the goods or delaying performance of this agreement at HU's request. Causes beyond HU's control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, fire or similar catastrophe, and severe weather or other acts of God.

**Warranties:** Seller expressly warrants all goods delivered under the Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered. This express warranty shall not be waived by reason of the acceptance of the goods or payment therefore by HU.

**Compliance:** Seller certifies that all goods or services furnished under the Order, including materials and incident thereto, shall comply with all applicable federal, state and local laws and regulations concerning health, safety and environmental standards and requirements. For Orders issued under US Government Contracts and Grants, compliance with all applicable provisions of HU **ATTACHMENT A** is required.

**Risk of Loss:** Seller 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 finally accepted by HU. Seller also assumes all risk of loss of or damage to any goods, work in progress, materials, and other items rejected by HU until the same are received by Seller or accepted by HU.

**Inspection:** Payment for goods or services provided under the Order shall not constitute acceptance thereof. HU may inspect and test such goods or services and reject any or all items that are, in HU's sole judgment, nonconforming. Goods rejected or supplies in excess of quantities ordered may be returned to Seller at its expense. Failure by HU to inspect and test the goods or services shall not relieve Seller of responsibility.

**Hold Harmless:** Seller shall defend and hold harmless HU, its directors, overseers, officers, agents and employees against and from any and all claims, liabilities, losses, damages, expenses, and legal fees whatsoever, without limitation, arising in connection with any goods or services purchased under the Order or from any act, omission, operation, product or service of Seller, its employees, agents, suppliers, and subcontractors.

**Insurance:** Seller shall maintain adequate insurance in any and all forms necessary to protect both Seller and HU against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance of this agreement. Although evidence of certain minimum coverage may be required, nothing contained herein shall abridge, diminish or affect Seller's responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or resulting from performance of this agreement.

**Limitations:** HU shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental or consequential damages. HU's liability on any claim for loss, damage or expense arising in connection with this agreement shall not exceed the price of the goods or services which give rise to the claim. HU shall not be liable for penalties of any kind. Any action caused by any alleged breach of this agreement by HU must be commenced within one year after the cause of action has accrued.

**Indemnification-Patents/Copyright:** The Seller agrees to indemnify HU and to hold HU harmless from and against all claims, liability, loss, damage, and expenses including legal fees, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by the Order. The Seller shall defend any such litigation brought against HU. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefor by HU.

**Independent Contractor:** If Seller's obligations under the Order require the performance of work by Seller, its employees, agents suppliers or subcontractors on HU property or elsewhere, Seller agrees that such work or services shall be performed by Seller, its employees, agents, suppliers or subcontractors as independent contractors, and not as employees of HU, and that such persons doing such work shall not be considered or represent themselves as employees or agents of HU.

**Use of the Name of Harvard:** The Seller shall not use the name of Harvard University or of any HU employee, or any HU trademark in its sales promotion, advertising, or any other publication without HU's prior written permission.

**Assignment:** No part of the Order may be assigned, transferred, or subcontracted by Seller without HU's prior written approval.

**Waiver:** HU's failure to insist on performance of the terms and conditions herein or to exercise any right or privilege, or HU's waiver of any breach hereunder, shall not thereafter waive the same or other terms, conditions, rights or privileges or affect any subsequent breach.

**Severability:** If any part of this agreement is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of the agreement shall be enforceable as written.

**Tax Exemption:** HU is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes (Cert. #E042203580) and federal excise taxes (#04-73-0256F). Seller shall not charge HU for such taxes. Proof of exemption is available upon request.

2/3/98

5/15/01 - removed Y2K paragraph