

Fairleigh Dickinson University Purchase Order General Terms and Conditions

1. **TERMS AND CONDITIONS:** This purchase order, along with any exhibits, appendices, addendums, schedules, attachments and amendments hereto (**Order**), encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. In the event of a conflict in terms and conditions between this Order and any other contract document, the most stringent terms and conditions in favor of Fairleigh Dickinson University (**FDU**) shall prevail. No modification of this Order or Assignment of any interest in this Order, shall be effective without FDU's written consent.
2. **DEFINED TERMS:** **Deliverables** shall mean the goods or services that are the subject of this Order. **Supplier** shall mean the provider of the goods or services identified in the Order. **Price** shall mean the entire compensation to be paid to Supplier including, but not limited to, delivery charges, insurance, packaging and container charges; and all quoted prices are for F.O.B. delivery point, unloaded and assembled.
3. **ACCEPTANCE AND TERMINATION:** All Deliverables shall be subject to the right of inspection and acceptance or rejection by FDU. FDU reserves the right to terminate this Order in whole or in part at any time upon 30 days' advance written notice (and any prepaid amounts shall be refunded to FDU pro rata, based on the remaining term of this Order). FDU shall have no liability for failure to perform under this Order due to events or conditions beyond the reasonable control of FDU, or which make an essential purpose of this Order impractical for FDU to achieve, including, without limitation, by reason of governmental order or regulation issued after the execution of this Order, state of emergency, act of war, terrorist activity, storm or other weather related or natural disaster, fire, labor shortage, Coronavirus or other communicable diseases, viruses or illnesses requiring quarantine or significant curtailment of activities, or other pandemics or epidemics.
4. **DELIVERY:** Time is of the essence in this Order and if delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, FDU reserves the right, in addition to its other rights and remedies, to cancel this Order, to reject such goods or services in whole or in part and/or to purchase substitute goods or services elsewhere and charge Supplier with any loss incurred. Shipments sent C.O.D. without FDU's prior written consent will not be accepted and will be at Supplier's risk. Title and all risk of loss or damage in transit shall remain with Supplier.
5. **PRICE:** FDU shall not be billed at prices higher than stated herein. Supplier represents that the prices charged for the goods or services covered by this Order comply with all applicable laws and government regulations in effect at the time of the quotations, sale, delivery and performance. Supplier agrees to notify FDU of any price reduction made in goods or services covered by this Order subsequent to the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this Order.
6. **WARRANTIES:** In addition to all warranties established by law, Supplier hereby warrants and agrees that all Deliverables (i) meet in all respects the highest applicable standards of the industry and conform to the specifications and requirements set forth in the Order; (ii) are merchantable and fit for the purposes for which similar goods and services are ordinarily employed; (iii) are free from defects in materials and workmanship; (iv) do not infringe or misappropriate the rights of third parties; (v) were not manufactured, sold, or delivered in violation of any law or regulation, including but not limited to those relating to health and safety. Supplier warrants that it has the authority to convey ownership of the Deliverables to FDU and it will protect and defend FDU's title to the Deliverables. Supplier warrants that any services provided pursuant to the Order will be performed in a diligent and professional manner, in accordance with applicable law, and through individuals qualified to perform the services. The forgoing warranties shall survive acceptance of goods and performance of services hereunder and payment for same.
7. **CONFIDENTIALITY:** Any proprietary or technical information furnished to Supplier by FDU pursuant to this Order, including without limitation samples, drawings, patterns and materials, shall remain the property of FDU, shall be held at Supplier's risk and shall be returned upon completion of the work and no disclosure or reproduction thereof in any form shall be made without FDU's prior consent in writing. No disclosure, description or other communication of any sort shall be made by Supplier to any third person of the fact of FDU's purchase of goods or services hereunder, or the details and characteristics thereof, without FDU's prior written consent.

8. **INDEMNIFICATION:** Supplier agrees to defend, hold harmless, and indemnify FDU, its trustees, officers and employees, from and against all liability, loss, cost and expense, including reasonable attorneys' fees, arising out of Supplier's performance of the Order or Supplier's provision of the Deliverables, including but not limited to claims alleging Supplier's provision of the Deliverables violates a law, regulation, or a third party's intellectual property rights. In the performance of any and all services, the Supplier, as an independent contractor, accepts responsibility for all persons and entities engaged by Supplier in connection with services rendered.
9. **INSURANCE:** Supplier must maintain at its own cost and expense the types and amounts of insurance set forth below with an insurer licensed to provide insurance in the State of New Jersey. Insurance Coverage shall be maintained for a minimum of two years following completion of all Services under this Order. A Certificate of Insurance in compliance with the following must be submitted to the Office of Risk Management, Fairleigh Dickinson University, 1000 River Road; H-DH1-01, Teaneck, NJ 07666, prior to Supplier performing, selling or distributing products and services under this Order. Supplier shall name FDU as additional insured on all liability policies except Workers Compensation, Employer Liability, and Professional Liability. The above required Certificate must also evidence waiver of subrogation on all policies. Supplier shall provide FDU with 30 days prior written notification if the required insurance is cancelled or materially changed. Required insurance includes:
 - a. **Commercial General Liability Insurance:** Including Bodily Injury and Property Damage Liability in an amount not less than \$1,000,000 per occurrence, and an aggregate amount not less than \$2,000,000. Supplier's coverage shall be primary and non-contributory and shall include a severability of interest provision or endorsement, as applicable. If work is onsite 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.
 - b. **Workers' Compensation:** If Supplier will be working onsite at FDU or at an FDU-sponsored event, policy with minimum limits of liability in accordance with state law, including an all states endorsement and Employer's liability coverage B, in an amount not less than \$1,000,000 annual aggregate.
 - c. **Business Automobile Liability:** Automobile Liability in an amount 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 Supplier will own, hire or lease an Auto in connection with the Services or Goods provided under this Order.
 - d. **Excess (Umbrella) Liability:** If Supplier is performing work onsite, Excess Liability insurance all on an occurrence basis with an occurrence/aggregate minimum limit of \$5,000,000 all to be following form over underlying Commercial General Liability, Business Automobile and Employer's Liability policies.
 - e. **Professional Liability:** \$1,000,000 each claim, for all professional services including, but not limited to, architects, engineers, and consultants and testing services, must include Contractual Liability Coverage and Defense and Indemnification.
 - f. **For Charter Bus Companies:** The following additional requirements shall be met: (i) a minimum limit of \$5,000,000 for Auto Liability; (ii) Medical payments insurance coverage; and (iii) a Satisfactory Safety Rating on the Federal Motor Carrier Safety Administration's website.
 - g. **Liquor Liability:** If Deliverables include supplying or serving alcoholic beverages, or if Supplier requires a liquor license in connection with the Order, Supplier must maintain liquor liability insurance in an amount not less than \$1,000,000 per occurrence, and \$1,000,000 in the aggregate.
 - h. **Cyber/Network Security & Privacy Liability:** If Supplier is handling FDU data and Confidential, Sensitive, or personally identifiable information is involved in the transaction, a minimum of \$2,000,000 per incident/claim/\$2,000,000 aggregate covering the Services contained within this Order to include, but not be 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 expenses and credit monitoring.
10. **PAYMENT:** All amounts due hereunder will be mailed to the Supplier's address listed herein, after Supplier's compliance with this Order and FDU's Finance Department payment processes, including delivering a timely invoice and the relevant IRS withholding forms.

11. **APPLICABLE LAW AND POLICY:** This Order shall be governed by the laws of the State of New Jersey. Supplier consents to the jurisdiction of the courts located within the State of New Jersey. FDU reserves the right to require Supplier to restrict any Supplier personnel from its property for any reason, including those deemed by FDU to be in violation of any FDU policy, including but not limited to, the Non-Discrimination and Anti-Harassment and Drug-free Workplace Policies as well as those deemed by FDU to be unqualified, disorderly, or otherwise apparently unable or unwilling to perform required services.
12. **NON-DISCRIMINATION.** FDU is an Equal Opportunity Employer. SUPPLIER hereby represents that it is an Equal Opportunity Employer. The provisions of 41 C.F.R. § 60-1.4(a), 41 C.F.R. § 60-250.5(a), 41 C.F.R. § 60-741.5(a), and 29 C.F.R. Part 470 are, if applicable, hereby incorporated by reference.