

Queens Borough Public Library
General Terms & Conditions for Purchase Orders

These Purchase Order Terms and Conditions are the exclusive terms and conditions for the delivery of specified goods ("Goods") or services ("Services") by the named seller (the "Seller") for the benefit of the Queens Borough Public Library (the "Library"). The Seller and the Library are together referred to as the "Parties."

1. **Acceptance by the Library.** Delivery of Goods will be deemed complete only when delivered pursuant to a valid Purchase Order and when actually received by the Library. Delivery of Services will be deemed complete only upon completion of all Services to the Library's satisfaction. All Goods are subject to the Library's right of inspection following delivery by Seller. Payment for Goods under this Purchase Order prior to inspection by the Library will not constitute acceptance by the Library. The Library may, at its option, reject all or any portion of Goods or Services that do not, in the Library's discretion, comply with the terms and conditions of this Purchase Order or the Library's requirements. The Library may elect to reject all of Goods or Services even if only a portion is nonconforming. In any case, acceptance of all or any part of Goods or Services will not be deemed to be a waiver by the Library of its right to (a) cancel, reject or all or any portion of Goods or Services, or return any Goods, or (b) 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.

2. **Time for Delivery.** Time is of the essence with respect to Seller's delivery of Goods and/or Services under this Purchase Order. Delivery will be strictly in accordance with the Library's delivery schedule. If Seller's delivery fails to meet such schedule, the Library may, without limiting any of its other rights or remedies, direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing and this Purchase Order's routing costs will be paid by Seller upon the Library's demand.

3. **Risk of Loss.** Until delivered to the Library in accordance with Section 1, Seller will bear all risk of loss or damage to Goods. Shipment of Goods is D.D.P./F.O.B. Destination unless Purchase Order states otherwise.

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

5. **Cancellation for Convenience.** The Library, 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 and/or Services delivered and accepted. Payment due will be the unit prices for Goods and/or Services delivered and accepted by the Library.

6. **Pricing.** The Library will pay Seller only for such Goods and/or Services and at such prices as agreed upon pursuant to this Purchase Order. Prices include all amounts payable by the Library and no additional charges of any kind (including, without limitation, charges for transportation, delivery, boxing, packing or other extras) will be payable by the Library unless specifically set forth in this Purchase Order or otherwise specifically agreed to in writing by an authorized purchasing agent of the Library. Seller will submit all invoice(s) to the Library under this Purchase Order as set forth herein or as may be designated by the Library. The Library shall exercise reasonable efforts to pay invoices within forty-five (45) days after each such invoice is received and approved by the Library.

7. **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 the Library that: (a) all Goods conform and will continue to conform to professional industry standards and to any description, sample, specifications or other documentation related to Goods made available to the Library; (b) Goods 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 Goods necessary to fulfill its obligations hereunder; (d) Goods 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 will have been produced or manufactured in accordance with all applicable federal, state and municipal laws, rules and regulations; (f) Seller has the proper skill, training and background to perform in a competent and professional manner to perform the Services, and (g) all Services shall be performed in accordance with the terms of this Purchase Order. 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 the Library. In the event that Goods are found to be defective or fail within the warranty period, Seller will at its own expense promptly repair defective Goods. All warranty repairs, modifications, product improvements, corrections, and replacements made by Seller in accordance to the Purchase Order will be at Seller's expense, including, but not limited to, labor, materials, and freight.

8. **Guarantee.** Seller shall provide a two (2) year guarantee for materials and labor from date of written acceptance of work by the Library (the "Guarantee Period"), along with any written guarantees or warranties provided by equipment or materials manufacturers, as applicable. Any materials or work that is or becomes defective during the Guarantee Period shall be replaced by the Seller with the understanding that all replacements shall carry the same guarantee as the original materials or work. Such replacements shall be made immediately upon receiving notification from the Library.

9. **Proprietary Rights.** Unless otherwise agreed in writing, Goods will be deemed to be "work made for hire" and the Library will own all right, title, and interest in and to Goods 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 Goods has been transferred and assigned to the Library. If for any reason it is determined that any such material is not a "work made for hire," Seller hereby assigns all right, title and interest, including copyright or patent interest, therein to the Library.

10. **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.

11. **Compliance with Laws and the Library 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. Seller will not violate U.S. export control and economic sanctions laws, nor take any other action that would cause the Library to be in violation of U.S. export control and economic sanctions laws. Seller will obtain and maintain, and furnish to the Library upon request, any and all permits, licenses, approvals, certificates and other documents required by the Library or otherwise required by applicable law.

12. **Insurance.** Prior to delivering any Goods or Services, Seller shall provide the Library with a copy of its current certificate of insurance demonstrating coverage that meets the following requirements:

Commercial General Liability:

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| (1) Each Occurrence Limit: | \$ 1,000,000 |
| (2) General Aggregate: | \$ 1,000,000 |

(3) Fire Damage Legal Liability: \$ 100,000

(4) Medical Expense: \$ 5,000

Commercial Umbrella Liability:

Seller shall maintain Commercial Umbrella Liability Insurance coverage with a limit of no less than \$2,000,000 per occurrence;

and, where applicable:

Business Automobile Liability:

Where any motor vehicle is used in connection with the Purchase Order, Seller shall maintain Business Automobile Liability coverage with no less than a \$1,000,000 Combined Single Limit, which shall cover liability arising out of any motor vehicle, whether owned, hired, or non-owned; and

Workers' Compensation:

Where Seller employs any person(s) in connection with the Purchase Order, Seller shall provide and maintain statutory Workers' Compensation / Employer's Liability / Disability Benefits Law coverage during the life of this Release for all of Seller's employees engaged in the work under this Release and, if such work is sub-contracted, the contract shall require the sub-contractor(s) to maintain similar coverage for all of the employees required to be covered under such laws.

Seller will provide a certificate of insurance for all applicable insurance hereunder, naming the Queens Borough Public Library and the City of New York as additional insureds (together, the "Additional Insureds").

13. **Indemnification.** Seller agrees to indemnify, defend and hold harmless the Additional Insureds and any and all of their trustees, officers, employees, affiliates, and assigns from and against any and all liabilities, claims, actions, costs (including reasonable attorneys' fees), expenses, damages, and losses in connection with Seller's acts or omissions under this Purchase Order, including, but not limited to, those relating to property damage, personal injuries, alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the Services or Goods provided; Seller's failure to perform fully its obligations herein in a timely manner; or breach of any of Seller's representations and warranties herein.

14. **Governing Law.** This Purchase Order shall be governed by and construed in accordance with the laws of the State of New York and the laws of the United States of America, where applicable. The Parties agree that any and all claims asserted against the Library arising under this Purchase Order or related thereto shall be heard and determined in the courts of the State of New York located in the City of New York, County of Queens.

15. **The Library is Tax-Exempt.** The Library, a not-for-profit education corporation, is generally exempt from federal, state and local taxes for purchases made in furtherance of exempt mission, including New York sales and use tax and federal excise tax. Seller will not charge the Library for any taxes in connection with the Purchase Order to the extent permitted by law. The Library will supply its tax exempt number and/or copies of its exemption certificates to Seller upon request from Seller.

16. **Confidential Information.** Seller agrees to hold confidential, both during and after the completion or termination of this Purchase Order, all of the reports, information, or data, furnished to, or prepared, assembled or used by, Seller under this Purchase Order. Seller agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Library. Seller agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that Seller uses to preserve the confidentiality of its own confidential

information. In the event that the data contains social security numbers or other personal identifying information, Seller shall utilize best practices (e.g., encryption of electronic records) to protect the confidentiality of such data.

17. **Right to Audit.** Seller shall maintain complete and accurate records of all financial transactions associated with this Purchase Order, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this agreement. Seller shall retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of the Library may inspect and copy records pertaining to this agreement at the Seller's business office during normal business hours. Seller shall include this audit provision in any subcontracts that it may issue under this agreement.

18. **Notices.** All notices to be given hereunder to the Library will be in writing and will be delivered by overnight carrier or United States Mail, and addressed to Queens Borough Public Library, Director of Procurement, 89-11 Merrick Blvd., Jamaica, New York 11432. Notices to the Seller shall be sent to the address provided on the Purchase Order Form, if the Library has an email address for the Seller, the Library may send Seller notices by email.

19. **Product Recall Notification.** If there is a product recall affecting any Goods, Seller shall promptly send written notification of recall including instructions for disposal and replacement to the address listed in Section 17. Seller must also send a copy of recall notification to the end user as indicated on the ship-to information.

20. **Assignment.** Seller shall not assign this Purchase Order or any of the obligations entered into hereunder, to any other party without first obtaining written approval from the Library.

21. **Waiver.** The failure by the Library to exercise any right provided for herein shall not be deemed a waiver of any rights hereunder.

22. **Enforceability.** If any portion of this Purchase Order is held invalid or otherwise unenforceable, those other unaffected provisions shall remain in full force and effect.

23. **Complete Agreement.** This Purchase Order sets forth the entire understanding of the Parties as to its subject matter and may not be modified orally. This Purchase Order may only be modified in writing executed by authorized representatives of both Parties. This Purchase Order supersedes any and all prior or contemporaneous oral or written agreements, except to the extent that there exists an operative master services contract between the Parties covering the Services set forth in this Purchase Order (a "Master Services Contract"). In the event of any conflict or inconsistency between the terms of this Purchase Order and such Master Services Contract, the terms of the Master Services Contract shall control.