



SAINT PETER'S UNIVERSITY
PURCHASE ORDER
STANDARD TERMS AND CONDITIONS

1. DEFINITIONS:

"Supplier" shall mean any seller furnishing merchandise, services or other work to Saint Peter's University ("SPU").

"Merchandise" shall mean goods, products, materials or supplies.

"Services" shall mean design, engineering, installation, testing, evaluation, training, maintenance, repair, management, consulting and any other services necessary to fulfill Supplier's obligations under a Purchase Order.

"Work" shall mean "Merchandise" and "Services" required under this Purchase Order.

"Specifications" shall mean the specifications, qualities, nature, type, properties, amounts and other descriptions of and requirements for the Work as stated in this Purchase Order.

"Subcontractor" shall mean Suppliers, suppliers, and subcontractors of any tier contracting directly or indirectly with Supplier for the performance of Work under this Purchase Order.

2. CONTRACT TERMS AND RULES OF PRECEDENCE: The following terms and conditions, together with any, quotes, bid documents, specifications or other documents as incorporated by reference or as amended in any subsequent writing from SPU, shall constitute the entire contract between SPU and Supplier and will be referenced as the "Purchase Order". These terms and conditions shall prevail over any conflicting terms set forth by Supplier unless SPU approves in writing to the alternate terms and conditions. All terms and conditions of any Purchase Order shall prevail over the Uniform Commercial Code (UCC) Article 2.

3. OFFER AND ACCEPTANCE: The terms and conditions of the Purchase Order shall be deemed accepted if: (1) Supplier sends an acknowledgment or confirmation of the Purchase Order that agrees with the Purchase Order as to identification of Merchandise, quantity, price and delivery schedule; (2) Supplier commences work on the Purchase Order; (3) Supplier ships all or part of the Merchandise ordered in the Purchase Order; or (4) Supplier gives any other expression of acceptance of the terms and conditions hereof. SPU reserves the right to revoke the Purchase Order at any time before acceptance by Supplier.

4. CHANGES: No changes to a Purchase Order shall be made except in writing signed by an authorized representative of SPU.

5. DELIVERY AND TITLE:

- a) Time is of the essence in Supplier's performance of the Purchase Order. SPU is relying upon the promised delivery date, installation and/or service performance set forth in Supplier's quote, bid or proposal as material and basic to SPU's acceptance. If Supplier fails to deliver or perform as and when promised, SPU, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment made, and charge Supplier with any loss or expense sustained as a result of such failure to deliver or perform as promised.
- b) Delivery of Merchandise required by the Purchase Order must be made in the quantities specified by SPU. Unless otherwise specified in the solicitation or Purchase Order, delivery shall be made to the specified delivery point during SPU's normal business hours. Unless otherwise agreed, items received must be new, undamaged and in first class condition and, if type of materials normally packaged for protection and convenience in storage, shall be in proper container.
- c) Supplier certifies that it has all power and authority to convey ownership of the Merchandise to SPU in accordance with the Purchase Order, that the Merchandise is free and clear of all liens and encumbrances, and that Supplier has a good and marketable title to same.
- d) Title to and risk of loss shall remain with Supplier until receipt by SPU at the point of delivery, subject to SPU's right of inspection and rejection in the event of nonconformance. For a reasonable time after delivery and before acceptance, SPU shall have the right to inspect and test the Merchandise. SPU shall notify Supplier if the Merchandise does not conform to the Purchase Order. At its sole option, SPU may return to Supplier any rejected Merchandise. Such rejected goods shall remain at Supplier's risk until returned to Supplier at

Supplier's expense. SPU may, at its sole option, demand that Supplier promptly correct, repair or replace all nonconforming Merchandise at its sole expense. Payment for Merchandise by SPU prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that SPU may have against Supplier.

6. WARRANTIES:

- a) **Merchandise:** Supplier expressly warrants that all Merchandise: (i) is in accordance with the specifications; (ii) is fit for the purpose for which similar materials and articles are ordinarily employed; (iii) is free from defects in materials and/or workmanship, and merchantable; (iv) was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety; (v) will perform according to industry standards; and (v) will not infringe or misappropriate the rights of any third party. These Warranties shall survive acceptance of and payment for the Merchandise and shall be in addition to any other warranties or service guarantees, express or implied, given by Supplier to SPU. Replaced and repaired goods shall be warranted for the remainder of the warranty period or six (6) months from the date of delivery of the repaired or replaced merchandise to SPU, whichever is longer.
- b) **Services:** Supplier represents, warrants and guarantees that any services provided under the Purchase Order shall be: (1) provided in accordance with the Specifications and correct and appropriate for the purposes contemplated in the Purchase Order; and (2) provided in a skillful, workmanlike and professional manner and consistent with generally accepted industry practices and procedures
- c) **Equipment:** Supplier represents that the equipment offered is the manufacturer's latest model in production; that parts are all in production and not likely to be discontinued; that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request may emanate within a 48-hour period or within the time accepted as industry practice; and that during the warranty period the Supplier shall replace immediately any material which is rejected for failure to meet the requirements of the contract or purchase order.

7. CONFLICT OF INTEREST: Supplier warrants that there exists no actual, potential or appearance of conflict between Supplier and SPU. Furthermore, Supplier represents that it has not offered (and will not offer during the term of this Purchase Order) any compensation, reward, gift, favor, service, outside employment, reimbursement of expenses, loan, ownership interest, or anything else of value, to any officer, employee, or faculty member of SPU as an inducement to enter into this Purchase Order. Supplier will notify SPU in writing of any change in conditions that might give the appearance of a conflict of interest.

8. DEBARMENT: By acceptance of this Purchase Order, Supplier warrants that it is not debarred, suspended, proposed for debarment, or declared ineligible by any State or Federal agency.

9. INDEMNIFICATION: Supplier shall indemnify, hold harmless and defend SPU, its governors, officers, faculty, students, agents, and employees against any and all damages, suits, actions, claims, liabilities, losses, judgments, costs and expenses, including attorneys' fees and costs arising out of or relating to (i) any personal or bodily injury (including death) or property damage caused by Supplier's acts, omissions, or breach of this Purchase Order, (ii) any and all claims by Supplier's employees including those employees of any of its subcontractors, (iii) Supplier's use or possession of SPU property, or (iv) an infringement or misappropriation of any third party intellectual property or proprietary rights (including, without limitation, trademark, trade secret, copyright or patent) by the Services or Work Product. The indemnification obligation is not limited by but is in addition to the insurance obligations contained in this Purchase Order.

10. INSURANCE: Supplier shall, and cause its subcontractors of any tier, to maintain, at its own cost and expense, the insurance policies described herein and submit to SPU at execution of this Purchase Order evidence thereof in the form of current certificates of insurance certifying all coverage. All policies and certificates of insurance, except workers compensation, shall be endorsed to name SPU as an additional insured and provide for the insurer's waiver of subrogation in favor of SPU. Such coverage shall be deemed primary coverage irrespective of any insurance maintained by SPU. All policies and certificates shall contain the provision that the insurance shall not be cancelled for any reason, except after thirty (30) days written notice to SPU. The following insurance coverage is the minimum required and shall not relieve the Supplier of any liability where liability for injury, death, and property damage is greater than the insurance coverage

10.1 Minimum Limits of Insurance

General Liability	\$1,000,000 Each Occurrence
	\$2,000,000 General Aggregate
	\$2,000,000 Products-Completed Operations Aggregate
	\$1,000,000 Personal and Advertising Injury

General Liability should be written on an Occurrence policy form.

The General Aggregate should apply on a "per project" basis.

If higher limits are required, the Excess Liability (Umbrella) limits should be allowed to satisfy the higher limit requirements.

Automobile \$1,000,000 Combined Single Limit (Bodily Injury and Property Damage Per Accident)

Include Owned, Hired, and Non-Owned Auto Liability

Workers Compensation Statutory Benefits

Employers Liability \$500,000 Each Accident
\$500,000 Disease-Policy Limit
\$500,000 Disease-Each Employee

Excess/Umbrella: \$10,000,000 Aggregate Coverage

Should schedule the General Liability, Automobile Liability, and Employers Liability and follow form with the underlying terms.

Contractor's Pollution Liability (CPL)

Each Occurrence/Aggregate Limit \$ 2,000,000

Additional coverage requirements for Contractor's Pollution Liability (CPL):

1. CPL shall be written on an occurrence form policy.
2. If policy is written on a claims-made form, coverage for Completed Operations shall be provided for a period of not less than two (2) years following completion of all work under the agreement.

10.2 Other Provisions of Such Insurance

Cancellation Thirty (30) Day notice of cancellation of any insurance policies required herein shall be subject to ACORD 25 Certificate of Liability standards, and will be delivered, as applicable, in accordance with policy provisions.

Insurance Carriers Insurance companies should be rated A-VIII or better by A.M. Best. Insurance carriers should be lawfully authorized ("admitted") to do business in the jurisdiction where the work is being performed.

Additional Insured Saint Peter's University shall be included as an Additional Insured on the following required liability insurance policies of the Contractor: General Liability, Excess Liability, and Automobile Liability. Any insurance coverage (additional insured or otherwise) that Contractor provides for Saint Peter's University shall only cover insured liability assumed by Contractor in this Agreement; such insurance coverage shall not otherwise cover liability in connection with or arising out of the wrongful or negligent acts or omissions of Saint Peter's University.

Waiver of Subrogation A waiver of subrogation shall be granted in favor of the University for the CGL, auto and umbrella liability.

Primary Contractor's required insurance should be primary and non-contributory to Saint Peter's University.

11. ENVIRONMENTAL COMPLIANCE: If applicable to the Work to be performed under this Purchase Order, prior to commencement of any Work, Supplier shall provide to SPU a list of all hazardous or potentially hazardous substances and associated Material Safety Data Sheets that may be used or generated in connection with the Work. The term "hazardous substances" shall bear the meaning set forth in any applicable federal, state or local law, rule or regulation. Supplier and its Subcontractors shall comply with all applicable federal, state and local laws, ordinances, codes and regulations relating to the safety and protection of the environment including, but not limited to handling, protection, transportation and disposal of all hazardous substances and residual wastes.

12. PREMISES: Supplier shall confine its facilities, materials, tools and equipment in areas specified by SPU for that purpose. Supplier shall on a daily basis and on completion of Work, clean up and remove all waste materials, rubbish, tools and machinery and leave adjoining premises, driveways and streets free and clear from all obstructions. At the completion of the Work, Supplier shall return SPU's site to its original condition or as otherwise required in the scope of work.

13. PAYMENT: SPU shall pay undisputed invoices within thirty (30) days of receipt of invoice. If any portion of the Merchandise does not conform to the requirements of the Purchase Order, a corresponding portion of the price may be withheld by SPU until the nonconformity is corrected. No additional charges of any kind, including, but not limited to, charges for boxing, packing, transportation, insurance, or container charges, will be allowed unless specifically agreed to in writing signed by an authorized representative of SPU.

14. TAXES: SPU is not subject to any sales or excise taxes. Taxes are not to be included in any quotations or invoices to SPU.

15. TERMINATION OF PURCHASE ORDER:

- a) **Termination for Convenience:** SPU may terminate the Purchase Order for convenience and without cause at any time, in whole or in part, upon no less than ten (10) days' written notice to Supplier. SPU shall pay Supplier a proportionate amount of the amount due to Supplier for work completed up to the effective date of termination, plus costs necessarily incurred directly as a result of the termination, subject to SPU right to audit Supplier's books and records.
- b) **Termination for Cause:** SPU may terminate the Purchase Order for cause if Supplier fails to perform in accordance with the terms and conditions of the Purchase Order, fails to perform the Work with promptness and diligence, or is otherwise in breach of the terms of the Purchase Order, provided that prior to such termination SPU shall provide Supplier with prior written notice of its intent to terminate and the reasons therefore. If, after the time provided in such notice, if any, for correcting non-performance, such non-performance remains uncorrected, SPU may, at its sole option, complete or contract with a third party to complete all or part of Supplier's obligations under the Purchase Order, and Supplier shall be liable to SPU for the costs of performing such obligations and any other damages resulting from Supplier's failure to perform.
- c) **Limitation of Damages:** SPU's liability and Supplier's recovery for any damages arising out of the cancellation of any part of the Purchase Order shall be limited to the lesser of: (1) the reasonable costs incurred by Supplier prior to such cancellation; or (2) the contract balance remaining for the Purchase Order. In no event shall SPU be liable to Supplier for consequential or incidental damages.

16. CONFIDENTIAL/PROPRIETARY INFORMATION: Except as otherwise required by applicable laws or regulations the parties agree to, and to cause their respective affiliates to, keep confidential all non-public information relating to this Purchase Order.

17. USE OF NAME: Supplier shall not use SPU's name, insignia, or any logos or symbols of SPU, nor issue any publicity releases, including but not limited to, news releases and advertising, relating to this Purchase Order without the prior written consent of SPU.

18. TRADEMARK AND LICENSING: Supplier agrees to comply with all licensing and trademark policies and procedures for goods sold by Supplier with the SPU logo. All costs associated with this process will be borne by the Supplier.

19. FORCE MAJEURE: Neither party shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting there from, due to causes beyond its reasonable control, including but not limited to, acts of God, public enemy or government, riots, fires, natural catastrophe or epidemics. In the event of such failure or delay, the date of delivery or performance shall be extended for a period not to exceed the time lost by reason of the failure or delay; provided that SPU may terminate the Purchase Order if the period of failure or delay exceeds fifteen (15) days. SPU shall have no obligation to make any payments to Supplier during the period of failure or delay. Each party shall notify the other promptly of any failure or delay in, and the effect on, its performance.

20. NOTICES: Any notice required under the Purchase Order shall be in writing and sent to Supplier and SPU at their respective addresses identified on the Purchase Order.

21. INDEPENDENT CONTRACTOR: Supplier shall operate as an independent contractor under the terms of this Purchase Order and not as an agent or employee of SPU.

22. LAWS; CODES; RULES; REGULATIONS: Supplier must comply with all local, state, and federal laws, rules and regulations applicable to this Purchase Order. Supplier and its subcontractors, at their own expense, shall obtain all necessary licenses and permits relating to performance of the work.

23. NON-DISCRIMINATION IN EMPLOYMENT: SPU is an Equal Opportunity Employer. Supplier hereby represents that it is an Equal Opportunity Supplier and it and its subcontractors (if any) agree to comply with the laws and regulation pursuant to the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., the Civil Rights Act of 1964, Title VII,

42 U.S.C.A. S200e et seq., the Age Discrimination in Employment Act, 29 U.S.C.A. S621 et seq., the Americans with Disabilities Act, 42 U.S.C.A S12101 et seq., Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973, Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A) as applicable, relating to the notice of employee rights under federal labor laws, and all other laws guaranteeing equal employment.

24. PREVAILING WAGE:

- a) **“Public Works” Projects:** Vendors awarded Purchase Orders by SPU for all “public works” projects, as defined by the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.26 et seq. (“PWA”), shall adhere to all requirements of the PWA. The PWA, N.J.S.A. 34:11-56.26(5), defines “public works” as “construction, reconstruction, demolition, alteration, custom fabrication, repair work, maintenance work, including painting and decorating.” Vendor guarantees that neither it nor any Subcontractor it might employ to perform Work covered by this Purchase Order has been suspended or debarred by the Commissioner of Labor and Workforce Development for violation of the provisions of the PWA. Vendor agrees that it shall comply with the provisions of the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48, where required. Certified payroll records shall be submitted to SPU c/o the project manager for the project for each payroll period within ten (10) days of payment of wages in accordance with N.J.A.C. 12:60-62. The Vendor is also responsible for obtaining and submitting all Subcontractors’ certified payroll records.
- b) **Building Services:** With respect to any Purchase Order for “Building Services,” the employees of the Vendor or its Subcontractor shall be paid prevailing wage for “Building Service” rates, as provided in N.J.S.A 34:11.56.60. N.J.S.A 34:11-56.59 defines “Building Services” as “any cleaning or building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, engineering, securing, patrolling or other work in connection with the care, securing, or maintenance of an existing building.” The prevailing wage shall be adjusted annually during the term of this Purchase Order.

25. FEDERAL FUNDING: If this Purchase Order is funded by the federal government, Supplier is required to comply with all applicable federal laws, which are hereby incorporated by reference as if they were set forth herein, including, but not limited to all laws, regulations and rules. Procurements made with federal funds are subject to compliance with the standards and requirements as set for in 2CFR, Part 215, OMB Circular A-133, Paragraph 5. All procurement requirements contained in the above Circular are incorporated herein by reference.

26. ARRA FUNDING: If this Purchase Order is funded from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Supplier is required to comply with all applicable laws, hereby incorporated by references as if they were set forth herein including, but not limited to the Davis-Bacon Act and Buy American Act.

27. SUBCONTRACTING OR ASSIGNMENT: This Purchase Order may not be subcontracted or assigned by Supplier, in whole or in part, without the prior written consent of SPU’s University Purchasing Department. Any such attempt at assignment or delegation without SPU written consent shall be void. Nothing in this Purchase Order shall be construed as creating any contractual relationship between any subcontractor and SPU, nor shall this Purchase Order be construed as conveying any third party beneficiary rights on any subcontractor.

28. GOVERNING LAW; JURISDICTION: This Purchase Order shall be governed by the laws of the State of New Jersey, Each party irrevocably submits to the exclusive jurisdiction of the courts of the State of New Jersey and the United States District Court for the District of New Jersey for the purpose of any suit, action, proceeding or judgment relating to or arising out of the Purchase Order.

29. SEVERABILITY: If any provision(s) of the Purchase Order is found by a New Jersey court of competent jurisdiction to be illegal or otherwise unenforceable, such provision(s) shall be deemed not to be a part of the Purchase Order and the remaining provisions shall remain in full force and effect.

30. NON-WAIVER: The failure of SPU in any one or more instances to insist upon the performance of any of the terms or conditions of this Purchas Order or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such terms or conditions or the future exercise of any such right.

31. BANKRUPTCY: In the event the Supplier files for bankruptcy protection, this Purchase Order is automatically null and void, and is terminated without further notice.

32. MAINTENANCE OF RECORDS: Supplier shall maintain records for Merchandise and Services furnished under this Purchase Order for a period of three (3) years from the date of final payment. Such records shall be made available to SPU upon request for the purpose of conducting an audit.

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