

# West Virginia University and Its Affiliates Purchase Order Terms and Conditions

**Offer/Acceptance.** By fulfilling a WVU & AFFILIATED COMPANIES and Its Affiliates Purchase Order (PO), the party to which this PO is issued ("Vendor") agrees to furnish the goods or services covered by this PO and to be bound by and to comply with the terms and conditions herein, including all particulars. Written acceptance (including, but not limited to, signature on this PO or any related proposal, addendum, or agreement) or shipment of all or any portion of the goods or the performance of all or any portion of the services covered by this PO shall constitute unqualified acceptance of the terms and conditions herein. No other terms or conditions shall be binding upon the parties, unless such terms and conditions have expressly been agreed to in writing and signed by both parties. The terms and conditions of this PO shall prevail should any contradiction arise between any terms and conditions provided by the Vendor. The terms and conditions of any proposal or bid referred to in this PO are included and made part of the PO only to the extent of specifying the nature of the goods or services ordered, the price thereof and delivery date, and then only to the extent that such terms are consistent with the terms and conditions herein.

**Modifications.** This writing is the parties' final expression of intent. No modification of this PO shall be binding unless agreed to in writing by WVU & AFFILIATED COMPANIES Purchasing, Contracts, & Payment Services (PCPS).

**Packing and Shipping.** All items must be suitably packed and prepared for shipment to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by WVU & AFFILIATED COMPANIES for packing, crating or cartage unless stated in the order. All shipments to be forwarded on one day via one route must be consolidated. Vendor must ship goods through a properly insured carrier. The Vendor shall be totally responsible for any damages done to WVU & AFFILIATED COMPANIES property during delivery, assembly, installation/placement of the goods and/or the furnishing of the services described herein and shall repair or cause to be repaired at its expense any such damages in a manner satisfactory to WVU AND AFFILIATED COMPANIES.

**Delivery.** Unless otherwise stated on this PO, all shipments are to be prepaid "F.O.B. destination" and risk of loss and/or title to the goods will not pass to WVU & AFFILIATED COMPANIES until the goods are accepted at the delivery destination, subject to inspection and acceptance as defined herein. Delivery time is of the essence and delivery or performance shall be strictly in accordance with the schedules, terms and conditions and exact quantities as specified in this PO. The failure of Vendor to meet delivery schedules, as interpreted by WVU & AFFILIATED COMPANIES ; failure to make replacement of rejected goods or services as directed by WVU & AFFILIATED COMPANIES , or non-performance or violation of contract provisions shall permit WVU & AFFILIATED COMPANIES , at its discretion, to rescind or cancel the contract without any liability and purchase comparable goods or services on the open market and Vendor shall be liable for any excess price paid for the replacement, plus applicable expenses, if any. Whenever Vendor has knowledge that any situation or condition will delay or threaten the time performance of this order, Vendor shall immediately give notice thereof, including all relevant information with respect thereto, to WVU AND AFFILIATED COMPANIES. Neither WVU & AFFILIATED COMPANIES nor Vendor shall be liable for any default due to Acts of God, war, fire, flood, epidemic, strikes or freight embargo or other causes beyond control and without fault or negligence. Acceptance by WVU & AFFILIATED COMPANIES of late delivery of either whole or part of this PO shall not constitute a waiver of its claim for any damages resulting from late delivery.

**Quantities.** The quantity of goods or services specified on this PO must not be exceeded or reduced without first obtaining written consent of WVU AND AFFILIATED COMPANIES. WVU & AFFILIATED COMPANIES will not be responsible for any materials or services furnished without a written change order being issued by PCPS.

**Permits, Licenses and Taxes.** Vendor shall procure all necessary permits and licenses and abide by all applicable laws, regulations and ordinances of all federal, state, and local governments in which work under this PO is performed. The Vendor shall pay any sales, use, personal property, and other taxes arising out of this PO and the transactions contemplated hereby. Any other taxes levied upon this PO, the transaction, or the equipment, goods or services delivered pursuant hereto shall be the responsibility of the Vendor. West Virginia University

is exempt from Federal and WV State taxes and will not pay or reimburse such taxes.

**Payment.** WVU & AFFILIATED COMPANIES shall pay the Vendor, after the submission of proper invoices or vouchers, the prices stipulated in this PO for goods delivered and accepted or services rendered and accepted, less any deductions provided in this contract. A valid WVU & AFFILIATED COMPANIES PO Number must be shown on all acknowledgments, shipping labels, packing slips, invoices and correspondence associated with a PO. This order must not be invoiced at prices higher than those appearing hereon without authority in writing from WVU AND AFFILIATED COMPANIES. Pursuant to W. Va. Code § 12-3-10, payments may only be made after the receipt of goods or services.

**Warranties.** Seller expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by WVU & AFFILIATED COMPANIES and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive this contract and shall not be deemed waived either by WVU & AFFILIATED COMPANIES acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Vendor further warrants all articles, material and work performed for a period of one (1) year, unless otherwise stated, from date of acceptance of the items delivered and installed. All repairs, replacements or adjustments during the warranty period shall be at Vendor's expense.

**Inspection and Acceptance.** No goods received by WVU & AFFILIATED COMPANIES pursuant to this PO shall be deemed accepted until WVU & AFFILIATED COMPANIES has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at Vendor's expense for full credit or replacement, at WVU & AFFILIATED COMPANIES sole option. WVU & AFFILIATED COMPANIES reserves the right to test any goods, or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without WVU & AFFILIATED COMPANIES written authorization. If Vendor fails to cure defect within ten (10) calendar days, WVU & AFFILIATED COMPANIES reserves the right to purchase on the open market and Vendor shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

**Indemnification.** To the fullest extent permitted by law, Vendor agrees to indemnify, defend, and hold whole and harmless WVU & AFFILIATED COMPANIES , its affiliates, and their respective Board of Governors, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Vendor's performance hereunder, (b) the presence of Vendor, its employees, agents or invitees on WVU & AFFILIATED COMPANIES premises, (c) any breach of any warranty of Vendor contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or service provided by Vendor hereunder; provided that Vendor shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party. W. Va. Const. Art. VI § 35 and Art. X § 6 do not allow WVU & AFFILIATED COMPANIES to hold harmless or indemnify Vendor.

**Independent Contractor.** Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of WVU & AFFILIATED COMPANIES Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through WVU & AFFILIATED COMPANIES and WVU & AFFILIATED COMPANIES shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable federal and state employment taxes.

**Compliance.** Vendor shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established, including, without limitation, the Americans with Disabilities Act, laws applicable to discrimination, unfair employment practices, the use or handling of toxic or hazardous substances, and prevailing wage rates of the W. Va. Division of Labor, if

applicable. In addition, Vendor shall comply with all rules and regulations of WVU & AFFILIATED COMPANIES while on WVU & AFFILIATED COMPANIES premises.

**Insurance.** The Vendor shall procure and maintain, at its expense, at all times during the term of this PO, insurance as specified in the solicitation or PO. If insurance requirements are not specified in the solicitation or PO, the Vendor represents that at the time of acceptance of this order the Vendor maintains, at a minimum, comprehensive general liability insurance including coverage for premises-operations, products-completed operations and personal injury in an amount not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate; worker's compensation insurance as required by law; and automobile liability insurance in the amount of \$1,000,000 combined single limit for all vehicles to be used by the Vendor in the performance of services under this PO.

**Termination for Cause.** WVU & AFFILIATED COMPANIES may terminate this PO or any part hereof at any time for cause in the event Vendor fails to comply with any of the terms and conditions of this PO, including, without limitation, late delivery or performance, the delivery of defective or non-conforming goods or services, or failure to provide WVU & AFFILIATED COMPANIES with reasonable assurances of future performance. In the event of termination for cause, WVU & AFFILIATED COMPANIES shall not be liable to Vendor for any amount, and Vendor shall be liable to WVU & AFFILIATED COMPANIES for any and all damages sustained by reason of the default which gave rise to the termination.

**Termination for Convenience.** WVU & AFFILIATED COMPANIES reserves the right at any time for its convenience to cancel this PO as to all or any portion of the goods then not shipped or services then not performed, subject to an equitable adjustment between the parties as to any work or goods (but not to include standard stock) then in progress. Supplier shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after receipt of notice of cancellation, including but not limited to any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. No termination for convenience shall relieve Vendor or WVU & AFFILIATED COMPANIES of its obligations as to any goods or services previously delivered hereunder. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Vendor's receipt of notice of cancellation.

**Fund Availability.** If performance of this PO extends beyond the current fiscal year (ending June 30), Vendor acknowledges that financial obligations of WVU & AFFILIATED COMPANIES payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, budgeted or otherwise available for these goods or services, this PO becomes void and of no effect after June 30.

**Choice of Law.** The laws of the State of West Virginia and the Procedural Rules of West Virginia University shall govern all rights and duties under this PO, including without limitation, the validity thereof. Any provision incorporated herein by reference which purports to negate this or any other provision in this PO in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Vendor hereby expressly consents to the jurisdiction of the Court of Claims of the State of West Virginia.

**Assignment.** Vendor may not assign this PO or any moneys due or to become due hereunder without the prior written consent of WVU AND AFFILIATED COMPANIES, and any assignment made without such consent shall be void. WVU & AFFILIATED COMPANIES may assign this PO to any affiliate, or successor in interest to all or any part of its operations without prior notice to Vendor.

**Non-collusion.** Vendor certifies that it has neither agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith. Vendor also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Vendor or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.

**West Virginia Freedom of Information Act.** All records, documents, and information in WVU & AFFILIATED COMPANIES 's possession, including any document related to the performance of this PO, are subject to disclosure pursuant to the West Virginia Freedom of Information Act (W. Va. Code § 29B-1-1 et seq.).

**Non-Waiver of Default.** Waiver by WVU & AFFILIATED COMPANIES of any default hereunder by Vendor shall not be deemed waiver of any subsequent

default nor will it be deemed to be evidence of a course of conduct implying waiver of defaults of Vendor on any other transaction.

**Survival of Obligations.** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this PO shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by Indemnification and warranty provisions contained herein.

**Right to Audit/Access to Records.** Vendor shall preserve and permit WVU & AFFILIATED COMPANIES or any of WVU & AFFILIATED COMPANIES duly-authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Vendor involving transactions related to this PO for the purpose of making audits, examinations, excerpts and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to University any overpayments disclosed by any audit.

**Publicity.** Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or providing services to WVU & AFFILIATED COMPANIES without the express written approval of WVU AND AFFILIATED COMPANIES. Vendor shall not, in any way or in any form, use any of WVU & AFFILIATED COMPANIES trademarks or other intellectual property without prior written express consent of WVU AND AFFILIATED COMPANIES.

**Intellectual Property.** WVU & AFFILIATED COMPANIES will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising from this purchase, and Vendor will execute any assignments or other documents needed for WVU & AFFILIATED COMPANIES to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements administered by the WVU & AFFILIATED COMPANIES Office of Sponsored Programs, intellectual property rights will be governed by the terms of the grant or contract to WVU & AFFILIATED COMPANIES to the extent such grant or contract requires intellectual property terms to apply to subcontractors.

**MBE (Supplier Diversity Initiative Program).** WVU & AFFILIATED COMPANIES voluntarily maintains a Supplier Diversity Initiative Program as part of its efforts to increase participation of minority and women vendors. WVU & AFFILIATED COMPANIES seeks to achieve this goal through primary and second-tier suppliers. Vendor agrees to disclose on its invoice any minority or women Vendor or sub vendor utilized in the performance of this PO.

**Price Warranty.** Vendor warrants that the price(s) for the goods or services sold to WVU & AFFILIATED COMPANIES hereunder are not less favorable than those extended to any other customer for the same or similar goods or services in similar quantities. In the event Vendor reduces its price(s) for such goods or services during the term of this contract Vendor agrees to reduce the prices hereof accordingly. Vendor warrants that prices shown on this contract shall be complete, and no additional charges of any type shall be added without WVU & AFFILIATED COMPANIES express written consent.

**FERPA.** Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA") and WVU & AFFILIATED COMPANIES 's FERPA Policy found at <http://ferpa.wvu.edu/policy> . To the extent that Vendor receives personally identifiable information from education records as defined in The Family Educational Rights and Privacy Act (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in FERPA (34 CFR § 99.33 (a)(2) ) which states that the officers, employees and agents of a party that receives education record information from WVU & AFFILIATED COMPANIES may use the information, but only for the purposes for which the disclosure was made.

**Communications.** All communications and acknowledgments concerning this PO must be directed to the Buyer whose name appears on the face of this PO. Information, advice, approvals, or instructions by WVU & AFFILIATED COMPANIES personnel or representatives, other than the Buyer, shall be deemed expressions of personal opinions only and shall not affect WVU AND AFFILIATED COMPANIES and Vendor's rights and obligations hereunder unless set forth in a writing which is authorized by WVU & AFFILIATED COMPANIES Buyer and which expressly states that it constitutes an official amendment or change order to this PO.