

## WORCESTER POLYTECHNIC INSTITUTE (WPI) GENERAL TERMS AND CONDITIONS

- 1. ORDER AND CONTRACT: THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPRESSLY MADE CONDITIONAL ON, SUPPLIER'S ACCEPTANCE OF THE TERMS OF THE ORDER AND THESE PURCHASE ORDER TERMS AND CONDITIONS. WPI OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.** This purchase order shall not be valid unless it has been authorized by WPI. In the case of an invalid purchase order, WPI shall not be responsible for payment. PURCHASE ORDER NUMBER MUST APPEAR ON ALL CORRESPONDENCE.
- 2. RISK OF LOSS:** Risk of loss shall not pass to WPI until all goods, products and/or systems covered by this purchase order have been received and accepted by WPI at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking and transportation of all goods, products and/or systems covered by this purchase order, and full liability for loss or damage of any goods, products and/or systems in transit, notwithstanding (i) any specification herein of the method of such packing, crating, marking and/or transportation and/or (ii) any agreement by WPI to pay freight, express, or other transportation charges.
- 3. TIME OF DELIVERY:** Delivery hereunder must be made on or before the date specified in this purchase order (or, if no delivery date is specified elsewhere in this purchase order, delivery shall be made within a reasonable time, and in any event within one hundred twenty [120] days from the date of this purchase order). Time of delivery is of the essence. If any delivery date(s) cannot be met, Supplier must inform WPI immediately. Such notification shall not, however, constitute a change to the delivery terms of this purchase order, unless agreed to by WPI.
- 4. IMPROPER DELIVERY OR PERFORMANCE:** In addition to other rights and remedies provided under other provisions of this purchase order, or by applicable law, WPI shall have the right to refuse any goods, products, systems, services and/or work covered by this purchase order, and to cancel all or any part of this purchase order, if Supplier fails to deliver or perform with regard to all or any part of such goods, products, systems, services and/or work in accordance with the terms and conditions of this purchase order. WPI's acceptance of and/or payment for any part of the goods, products, systems, services and/or work covered by this purchase order shall not bind WPI to accept, or to pay for, any future goods, products, systems, services and/or work, and shall not deprive WPI of the right to return any goods, products, systems, services and/or work already accepted and/or paid for by WPI and shall not constitute a waiver of any rights of WPI.
- 5. WARRANTIES:** In addition to all other warranties made in other parts of this purchase order, or pursuant to applicable law, Supplier expressly warrants all goods, products, systems, services and/or work covered by this purchase order to be merchantable, to be fit for the purpose intended by WPI, to be free from defects in material and workmanship, and to be of the quality, size and dimensions represented and/or ordered. No warranty shall be deemed waived by reason of WPI's acceptance of, or payment for, any goods, products, systems, services and/or work.
- 6. SAFE AND LAWFUL PERFORMANCE:** All goods, products, systems, services and/or work covered by this purchase order must comply with all applicable governmental laws, rules, regulations, codes and ordinances, including but not limited to OSHA, ANSI, EPA and ENCON. Supplier certifies to this requirement and Supplier hereby warrants that the goods, products, systems, services and/or work covered by this purchase order comply (and will comply) with this requirement. In the event of any violation by Supplier of this requirement, then in addition to all other rights and remedies available to WPI by reason of such violation, WPI shall have the right, at its sole option, to order cessation of performance of all or any part of this purchase order, and WPI shall have no liability whatsoever to Supplier, or to any other person or entity, by reason of any such interruption. Nothing in this paragraph shall be construed as making WPI responsible for monitoring Supplier's compliance with this requirement, nor as imposing any obligation upon WPI to see to Supplier's compliance with this requirement, nor as imposing any liability upon WPI for any damages resulting from any failure by Supplier to comply with this requirement.
- 7. ASSIGNMENT, SUBCONTRACTING:** Neither party shall have any right to assign this purchase order or any benefits arising from this purchase order without prior written consent of the other party and, unless otherwise agreed upon by the non-assigning party in writing, the right of any assignee shall be subject to all setoffs, counterclaims, and other comparable rights arising hereunder.
- 8. INDEMNIFICATION:** Supplier agrees to indemnify, defend, and hold harmless WPI, its affiliates, subsidiaries, trustees, officers, employees, students and agents, and its successors, heirs and assigns, from and against all claims, liability, causes of action, actions, judgments, loss, and damages of any and every kind and nature, hereinafter "Claims," and expenses (including but not limited to reasonable legal fees and expert fees) arising directly or indirectly from or due to any Claim(s) with respect to all or any part of the goods, products, systems, services and/or work covered by this purchase order. Upon the written request of WPI, Supplier shall, at Supplier's sole cost and expense, defend any such Claim(s) or litigation brought against WPI. Supplier's obligation under this paragraph shall survive WPI's acceptance of, and payment for, the goods, products, systems, services and/or work.
- 9. CHANGES:** WPI may, at any time, by an authorized order, and without notice to the sureties, make changes to the general scope of this purchase order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or in the time required for the delivery or performance of, any part of the goods, products, systems, services and/or work covered by this purchase order, an equitable adjustment shall be made in the price, or the delivery schedule, or both, specified in this purchase order, and this purchase order shall be modified in writing accordingly. Any claim by Supplier for adjustment under this clause must be asserted within 30 days from the date of receipt by Supplier of the notification of change. Where the cost of property made obsolete or excess as a result of a change is included in the Supplier's claim for adjustment, WPI shall have the right to prescribe the manner of disposition of such property. However, nothing in this clause shall excuse Supplier from proceeding with this purchase order as changed.
- 10. INSPECTIONS:** Supplier shall issue an Inspection Report on the performance of the equipment before equipment is shipped to WPI. WPI shall have the right (but not the obligation) to inspect the goods, products, systems, services and/or work covered by this purchase order and the activities of Supplier under this purchase order, in such manner and at such reasonable time(s) as WPI may deem appropriate. Final inspection shall be at WPI's premises unless otherwise agreed by WPI in writing. Any goods, products, systems, services and/or work rejected as not conforming to this purchase order shall be returned at Supplier's expense, including transportation and handling charges, if any.
- 11. INSURANCE:** Suppliers performing services for WPI or providing transportation services for WPI shall provide and maintain insurance to indemnify WPI as provided below.
- A.** All Supplier-provided insurance must be considered to be primary for allegations of negligence arising from the acts or performance of the Supplier in fulfilling any work order. Such insurance shall be demonstrated by providing a copy of certificates of insurance and, upon request, insurance policies with endorsements naming WPI as an additional insured with first-party rights and benefits without contribution by WPI or its insurance carriers. These certificates and policies or endorsements must be mailed or electronically transmitted to: *Worcester Polytechnic Institute, Office of the General Counsel, 100 Institute Road, Worcester, MA 01609*
- B.** Suppliers are not to commence work or services for WPI prior to the submission of proof of adequate insurance.
- C.** Unless otherwise directed in writing, WPI's minimum insurance requirements are as follows:
- 1. Comprehensive General Liability:** \$2,000,000.00 per occurrence, \$2,000,000 aggregate. High risk activities, including but not limited to construction may, in the sole discretion of WPI, require higher limits. Suppliers should consult WPI Contractor Safety and Environmental Management Handbook at <https://www.wpi.edu/offices/environmental-health-safety> if services being provided could be considered high risk.
  - 2. Comprehensive Automobile Liability:** Supplier's owned, non-owned, and hired autos are subject to a combined single limit of \$1,000,000.00 for each occurrence for bodily injury and property damage. **WPI requires limits of \$5,000,000.00 for any bus, charter, chauffeur or limousine services.**
  - 3. Statutory Workers Compensation:** Insurance must be provided and maintained pursuant to the laws of the Commonwealth of Massachusetts and any other laws that may be applicable. This coverage is required for all Suppliers providing services to WPI. Insurance from other states may be substituted by individuals who are residents of other states but working for WPI on a temporary basis in Massachusetts.
- D.** These minimum requirements of WPI shall not limit the liability or responsibility of the Supplier. WPI's failure to enforce any contractual obligation of a

Supplier shall not be considered to be a waiver of the requirement. Any changes to these requirements shall be enforceable only if made in writing by authorized signatories of both parties.

**12. CANCELLATION:** Upon Supplier's failure to perform any of its obligations hereunder, WPI may cancel this purchase order in whole or in part. Upon notice of such termination, Supplier shall immediately stop all work, including shipment of goods under this purchase order and cause its suppliers and/or subcontractors to cease their work for this purchase order. In addition, but without limiting the foregoing, should this purchase order be unfulfilled, in whole or in part, as the delivery dates specified herein (or, if no delivery date is specified herein, within a reasonable time after the date of this purchase order, and in any event within ninety (90) days from the date of this purchase order), then in addition to all other rights and remedies available to WPI by reason of such default, WPI shall have the right to cancel this purchase order, either in whole or in part by giving Supplier notice of such cancellation. In the event of cancellation by WPI, WPI shall have no liability hereunder other than to pay for any usable portion of the goods, products, systems, services and/or other work delivered or performed by Supplier, and accepted by WPI, prior to such cancellation. Without limiting the scope or generality of the preceding portions of this paragraph, it is understood and agreed that back orders not fully delivered or performed within ninety (90) days from the date of this purchase order are subject to cancellation by WPI. WPI may also terminate this purchase order in whole or in part upon seven (7) days written notice if Supplier fails to comply with any material term or condition of this purchase order or fails to comply in a material way with the requirements of this purchase order. Late delivery of goods or services or delivery of goods or services that are defective or do not conform to this purchase order shall be, without limitation, causes allowing WPI to terminate. In this event, WPI will not be liable for any amounts, but Supplier shall be liable to WPI for all losses, damages and expenses, including, without limitation, the excess cost of re-procuring similar goods or services; shipping charges for any items WPI may return to Supplier, including items already delivered, but for which WPI no longer has any use because of Supplier's default; and amounts paid by WPI for any items WPI has received but returns to Supplier.

**13. TAXES:** Except as may be otherwise expressly provided in this purchase order, the price includes all applicable Federal, State, and local taxes and duties. Supplier warrants and represents that Supplier has any and all authorizations, licenses and/or permits required to collect such taxes and duties, and Supplier agrees that Supplier shall remit the appropriate taxes and duties to the appropriate taxing authorities on or before the date on which such taxes and duties shall be due.

**14. GOVERNING LAW:** This agreement shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws rules. The parties agree to submit to the exclusive jurisdiction of any Massachusetts State or United States District (Federal) Court sitting in Boston, Massachusetts with respect to any disputes between the parties arising under or related to this agreement.

**15. RIGHT TO WITHHOLD PAYMENT:** In the event that WPI receives notification (oral or written, formal or informal) that a subcontractor of Supplier claims that such subcontractor is owed payment by Supplier for goods, products and/or systems provided, or services and/or work performed, in furtherance of this purchase order, then in addition to all other rights and remedies available to WPI, WPI shall have the right (but not the obligation) to withhold any payment due Supplier until settlement of the dispute between Supplier and such subcontractor. In no event shall WPI be required to withhold any such payment, and in no event shall WPI be liable to any subcontractor by reason of any failure or refusal by WPI to withhold any such payment.

**16. USE OF THE NAME OF WPI:** The Supplier agrees not to use the name, logo, service mark or trademark of WPI, or the name, image or likeness of any WPI-owned property or of any of WPI's students or employees, in sales promotion work or advertising, or in any form of publicity, without the express written permission of WPI.

**17. EQUAL EMPLOYMENT OPPORTUNITY:** This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**18. ANTI-KICKBACK:** WPI complies with all provisions of the Anti-Kickback Act of 1986 (41 USC 51-58) and all regulations published regarding the Act. Any violation must be reported to the WPI immediately. Supplier agrees, by accepting this purchase order, to also comply with all provisions of the Act and all regulations regarding the Act and to reprint this paragraph in its subcontracts.

**19. REQUIRED NOTICES TO SUPPLIER'S EMPLOYEES UNDER FEDERAL LAW:** This purchase order is subject to the requirement of Executive Order 13201 and the rules and regulations promulgated thereunder at 29 CFR Part 470 which may require Supplier to provide required notices advising its employees of their rights under federal law pertaining to union membership.

**20. ACCEPTANCE – ENTIRE AGREEMENT – CAPTIONS: THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPRESSLY MADE CONDITIONAL ON, SUPPLIER'S ACCEPTANCE OF THE TERMS OF THE ORDER AND THESE PURCHASE ORDER TERMS AND CONDITIONS.**

**WPI OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.** This purchase order constitutes the entire agreement between WPI and Supplier. Any and all prior offers by WPI are withdrawn, and any and all prior offers by Supplier are rejected. Without regard to any provision to the contrary which may be contained in any form or document provided or to be provided by Supplier, Supplier's acceptance of this offer (i) shall be evidenced by Supplier's written acknowledgment of this purchase order (including but not limited to, electronic acknowledgment), or by Supplier's full or partial performance of this purchase offer, and (ii) shall be deemed to be Supplier's unqualified and unconditional acceptance of this purchase order and of all terms and conditions of this purchase order, without addition, deletion or other modification of any kind. In the event of any conflict between any term or provision set forth in this purchase order and any term or provision set forth in any document provided or to be provided by Supplier in connection with this transaction, the term or provision set forth in this purchase order shall control. Captions in this purchase order are for convenience only, and do not define, limit or expand the meaning of the captioned provisions. Any modification of this purchase order shall only be effective if made in writing and executed by the authorized signatories of both parties.

**21. PAYMENT TERMS:** In the case of products, payment shall not be due prior to thirty (30) days (a) from the date the invoice is received by the University at the address indicated in the "Bill To" field on the face of the purchase order or (b) from the date the products are delivered to the destination specified in the "Ship To" field on the face of the purchase order, whichever is later. Invoices presented for payment must be submitted in accordance with instructions contained on the purchase order including reference to the purchase order number and submittal to the correct address for processing. The University may withhold payment in whole or in part for products or services found by the University to be defective, untimely, unsatisfactory, or otherwise not conforming to the products description, or not in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations.