

# FMU PURCHASE ORDER GENERAL TERMS AND CONDITIONS

FL. SALES TAX EXEMPTION #85-8012646658C-3

FED ID #59-0668483 NOT-FOR-PROFIT CORP. 501 © (3)

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

PURCHASE ORDER TERMS AND CONDITIONS – Florida Memorial University's Purchase Order Terms and Conditions apply to and are a part of this order, and are incorporated herein by reference, unless different terms and conditions are otherwise agreed to in writing as part of a separate agreement between University and Seller. This Purchase Order will be deemed accepted by Seller either upon: 1) Seller's acknowledgement of the Purchase Order; 2) shipment of goods; 3) commencement of performance hereunder.

1. **GOVERNING LAW, JURISDICTION, AND VENUE.** This order shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflicts of law principles. With respect to any action instituted by Seller or Buyer relating to this order, the parties accept the exclusive jurisdiction of the courts of the State of Florida, and agree that venue shall lie exclusively in Dade County, Florida.
2. **PACKING.** The products and materials shall be packed and shipped by Seller in accordance with Buyer's instructions and good commercial practice so as to ensure that no damage shall result from weather or transportation. Seller shall secure the lowest transportation cost.
3. **INSPECTION.** Products and materials hereunder are subject to inspection and approval at Buyer's destination. Buyer may return any products and materials which are defective, unsatisfactory, or of inferior quality or workmanship, or which fail to meet the specifications or other requirements of this order. Such products and materials shall, unless used by Buyer, remain the property of Seller and may be returned at Seller's risk and expense; and Seller shall reimburse Buyer for all prior payments thereof and/or costs incurred in connection with delivery or return of such products and materials.
4. **WARRANTY.** In addition to any statutory warranties or any warranty implied by law, Seller expressly warrants to Buyer that all products and materials covered by this order (i) do not violate any patent, trademark, copyright or other intellectual property right, (ii) shall strictly conform with all specifications, drawings, models, dimensions, statements on containers or labels, descriptions, and samples furnished to or by Buyer, (iii) shall strictly conform to all industry standards, (iv) shall be new and free from defects in design, materials used, and workmanship, (v) shall be merchantable and fit for the purposes intended, and (vi) shall be adequately contained, packaged, marked, and labeled. Seller also expressly warrants to Buyer that (i) Seller has the right, power, and authority to sell and transfer the products and materials to Buyer, and that the sale and transfer will not conflict with, be a violation of, or be prohibited in any way by any agreement under which Seller is subject to or bound by, and (vi) good title to such products and materials shall be conveyed to Buyer as the sole owner, free and clear of all liens, encumbrances, pledges, charges, security interests, and claims. All of the above mentioned warranties shall survive delivery, inspection, testing, acceptance, use, and payment by Buyer, and shall inure to the benefit of Buyer, its successors, assigns, and users. These warranties may not be limited or disclaimed. Seller shall provide to Buyer all manufacturers' warranties which shall inure to the benefit of Buyer.
5. **WORK AND SERVICES.** All work and services performed by Seller hereunder shall be done in a skillful, workmanlike, competent, and professional manner, in accordance with all applicable industry standards and all applicable laws, regulations, ordinances, and codes. Seller shall perform its work and services in accordance with any applicable specifications. Seller warrants to Buyer that (i) Seller has the right, power, and authority to perform the work and services, and (ii) Seller's performance of the work and services will not conflict with, be a violation of, or be prohibited in any way by any agreement under which Seller is subject to or bound by.
6. **CHARGES.** Seller warrants that the prices charged Buyer on this order, which shall not be higher than shown on the front side hereof, are no higher than prices charged on orders placed by others for similar quantities on similar conditions subsequent to the last general announced price change. Unless otherwise specified on the front side hereof, the contract price includes all applicable federal, state, and local taxes, charges, or duties.
7. **SHIPPING:** Unless specified on the front side hereof to the contrary, the prices charged to Buyer are F.O.B. Buyer's premises. Seller must include Purchase Order Number on all invoices, BoL, cases, bundles, packing lists and correspondence. Seller must include a packing list showing container contents of each box shipped. FMU will accept the delivery of goods only between 8:30am and 4:30pm EST – Monday through Friday at the Central Receiving Warehouse. No deliveries will be accepted on University or National holidays. Seller must receive prior approval from the Purchasing Department for changes in delivery times.
8. **INDEMNIFICATION AND INSURANCE.** Seller agrees that it will indemnify, defend, and hold harmless the Buyer and its trustees, officers, agents, and employees from any action, claim, loss, damage, liability, cost or expense (including, without limitation, reasonable attorney's fees) alleged against or incurred by Buyer by reason of bodily injury, death or property damage of whatsoever kind or character arising out of, resulting from or in connection with the acts or omissions of Seller or its employees, agents or subcontractors. Seller shall maintain (i) broad form primary and noncontributing commercial general liability insurance (including contractual and products liability coverage) as will protect Buyer from, among other things, the foregoing risks in limits (unless higher limits are specifically required) not less than \$ 1,000,000 per occurrence; (ii) appropriate workers' compensation insurance; and (iii) automobile liability (including coverage for owned, non-owned, and hired vehicles) in limits not less than \$1,000,000 combined single limit per occurrence. Seller shall submit satisfactory evidence of such insurance in the form of a certificate of insurance which shall name Buyer as an additional insured on the liability policies. In the event Seller engages a subcontractor as may be permitted herein, Seller shall ensure that a permitted subcontractor maintains the same insurance coverage as Buyer is required to maintain under this paragraph, and Seller shall provide to Buyer a certificate of insurance evidencing such coverage.
9. **ASSIGNMENT OF CLAIMS.** Seller shall not assign this order or any interest herein, including any performance or any amount which may be due or may become due hereunder, without Buyer's prior written consent.
10. **SUBCONTRACTORS.** Seller shall not subcontract the performance of any work or services without the prior written consent of Buyer.
11. **PAYMENTS.** Seller shall submit proper invoices for payment to the Accounts Payable Department. Payment shall be due and payable within thirty (30) days after (i) acceptance of such products, materials, work and/or services, or (ii) receipt of properly completed invoice, whichever is later.
12. **TERMINATION FOR CONVENIENCE.** Buyer may terminate this order in whole or in part, with or without cause, at any time by written notice to Seller. Such notice shall state the extent and effective date of such termination. Upon receipt thereof, Seller shall, as and to the extent directed by Buyer, stop work under this order. If this order is so terminated, Seller shall be paid in accordance with the terms of the order for materials or supplies delivered and accepted.
13. **ADVERTISING AND/OR PUBLICITY AUTHORIZATION.** Without prior written consent of Buyer, Seller shall not publish the fact that Buyer has placed this order with Seller and shall not otherwise publicize the relationship established by this order.
14. **COMPLIANCE WITH LAWS.** Seller represents and warrants to Buyer that Seller is in compliance with all applicable laws, regulations, orders, ordinances, and codes including, without limitation, those relating to discrimination. Seller further represents and warrants to Buyer that the products and materials furnished to Seller under this order are in compliance with all applicable laws, regulations, ordinances, and codes. Seller shall indemnify, defend, and hold Buyer harmless from any action, claim, loss, damage, fine, penalty, cost or expense (including, without limitation, attorney's fees) alleged against or incurred by Buyer arising out of, resulting from or in any way connected with Seller's violation of or failure to comply with, or the products or materials furnished by Seller hereunder violating or failing to comply with, any applicable law, regulation, order, or code.
15. **TAX.** Except as otherwise expressly provided herein, the contract price is deemed to include all federal, state, and local taxes (including fees and charges). Seller agrees to furnish Buyer with such information as to its payment or nonpayment of such taxes as Buyer may request.
16. **INTELLECTUAL PROPERTY RIGHTS.** Seller represents and warrants to Buyer that Seller owns the products and materials being provided to Buyer under this order or has all licenses and other rights to enable it to sell to Buyer the products and materials hereunder. Seller shall indemnify, defend, and hold Buyer, its agents, employees, officers, and trustees (collectively, the Indemnities) harmless from any action, claim, liability, damage, loss, cost or expense (including, without limitation, attorney's fees) alleged against or incurred by any of the Indemnities arising out of, resulting from or in any way connected with any claim to the effect that any of the products or materials provided by Seller infringes upon any patent, copyright, trademark or other intellectual property right of a third party. In the event of any such action or claim against any of the Indemnities, then in addition to any other remedies available to Buyer, upon Buyer's request Seller shall refund to Buyer all monies paid by Buyer to Seller for the products and materials subject to this order, and Seller shall remove the products and materials from Buyer's premises without any cost to Buyer and without causing any damage to the premises.
17. **ITEMS FURNISHED BY BUYER.** All designs, tools, patterns, drawings, information, and equipment supplied by Buyer in connection with this order are reserved solely to Buyer. Consequently, Seller shall not disclose, copy, reproduce, or use any such item without first obtaining Buyer's written consent, which consent may be granted or withheld in Buyer's sole discretion.
18. **SEVERABILITY.** If any provision or part thereof of this order is held invalid or unenforceable by a court of competent jurisdiction, then the remainder of the order shall not be affected thereby and shall remain valid to the maximum extent permitted by law.
19. **REPRODUCTION RIGHTS.** All designs, tools, patterns, drawings, information, and equipment supplied by Buyer under this order are the proprietary rights of Buyer. Seller shall not reproduce, use, or divulge any such property or information without first obtaining Buyer's written consent.
20. **RIGHTS IN DATA.** Seller agrees to and does hereby grant to Buyer the right to reproduce, use, and disclose for any purpose all or any part of the reports, drawings, blueprints, data, and technical information developed under this order, and Seller agrees that it will not use or disclose the same without Buyer's written consent.