

TERMS AND CONDITIONS:

WHEATON COLLEGE, Wheaton, Illinois

1. DEFINITIONS: "Agreement" shall refer to these additional terms and conditions as well as the terms and conditions of the Agreement to which the following is attached. "Seller" shall refer to the person or entity as set forth in this Agreement and shall include Seller's agents, employees, contractors, subcontractors and representatives.
2. ACCEPTANCE: This Agreement may be accepted only by a written or oral acceptance or delivering the goods or performing the services ordered by the specified delivery date. THIS ORDER IS LIMITED TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. [WHEATON COLLEGE DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION, OR DELETION BY SELLER. THIS AGREEMENT CAN BE VARIED ONLY BY A WRITING SIGNED BY WHEATON COLLEGE. ANY FAILURE TO RETURN AN ACKNOWLEDGEMENT COPY OF THIS ORDER OR ANY OTHER STATEMENT OR WRITING OF SELLER SHALL NOT ALTER, ADD TO, OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS.]
3. PRICING: Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, similar or dissimilar, unless otherwise indicated in this Agreement.
4. DELIVERY/TITLE: Time is of the essence to delivery and any other performance of any service required of Seller. Wheaton College's scheduled delivery or service dates are best estimates and are subject to change without advance notice. Wheaton College reserves the right to change delivery or service schedules and/or temporarily suspend scheduled delivery or service. All shipping is F.O.B. destination unless otherwise stated in this Agreement. Title and risk of loss shall pass to Wheaton College upon delivery at the F.O.B. point. Wheaton College reserves the right to manage the transportation, and all shipments to the F.O.B. point shall be as directed on the face of this Agreement, freight prepaid and insured by Seller at Seller's risk and expense. If you are unable to deliver goods or services on the date requested, please notify Purchasing Office at (630) 752-5014 immediately.
5. WAIVER OF LIEN: Prior to the commencement of work, a waiver of lien is required to be furnished by Seller to Wheaton College for any purchased material to be used by Seller.
6. INSPECTION AND REJECTION: Wheaton College may inspect and reject all nonconforming goods and services within a reasonable period of time after delivery or completion of performance without regard to whether payment has been made. Wheaton College may choose, at Seller's risk and expense, to either hold nonconforming goods pending Seller's instructions or ship them to Seller's address first shown on the face of this Agreement. [Or: All goods are ordered on thirty (30) day approval with full return privileges retained by Wheaton College.]

7. **CONDITIONS OF PAYMENT:** No payment (final or otherwise) made under this Agreement shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the Contractor from any of its obligations under this Agreement.
8. **WARRANTIES:** Seller warrants that all goods and services will conform with all proposals and descriptions, oral or written, as well as any drawings, specifications, samples, or models furnished by Wheaton College or furnished by Seller and approved by Wheaton College. Seller further warrants that all goods shall be merchantable and fit for their intended purposes and shall be new, not refurbished or reconditioned and that all services in relation to any goods shall be rendered in a good and workmanlike manner by skilled personnel. The performance of all warranties shall survive and be explicitly extended beyond delivery as to each good or service for a period of 365 days from the delivery of each item unless a longer warranty period is called for in any writing, including without limitation, specifications, drawings, or proposals furnished by or to Wheaton College. For the purpose of calculating warranty periods for services, delivery shall occur upon the completion of such services.
9. **CHANGES:** Wheaton College reserves the right to make changes to any services to be performed or goods to be delivered, including quantity. If changes requested by Wheaton College affect the delivery or service schedule or the amount to be paid, Seller shall immediately notify Wheaton College and shall not put any such changes into effect without the express written consent of Wheaton College. Changes which increase or decrease pricing shall be priced as mutually agreed to in writing.
10. **INVOICES:** Wheaton College shall have no obligation to pay for any item until a correct invoice for the item is received at the address shown on the face of this Purchase Order. Payment terms commence upon receipt of a correct invoice. Wheaton College shall have no obligation to pay for any item until a correct invoice for the item is received at the address shown in this Agreement. Notwithstanding the above, payment will not be authorized until Wheaton College has received all warranties, liens, waivers, insurance coverages, bonds and indemnities associated with the work to be performed under this Agreement.
11. **INDEMNITY:** EXCEPT TO THE EXTENT CAUSED BY WHEATON COLLEGE'S SOLE NEGLIGENCE, SELLER AGREES TO DEFEND AT ITS OWN COST AND EXPENSE, AND SHALL INDEMNIFY AND HOLD HARMLESS WHEATON COLLEGE, ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM, ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEYS' FEES) RELATED TO OR IN CONNECTION WITH ANY GOODS AND SERVICES SUPPLIED, ANY INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT BY REASON OF THE SALE OF THE GOODS AND SERVICES, OR ANY VIOLATIONS OF FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR ADMINISTRATIVE ORDER, RULE OR REGULATION. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO

WHETHER THE CLAIM, DAMAGE, LIABILITY OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES. [SELLER AGREES TO EXECUTE, ABIDE BY AND HAVE ON FILE WITH THE WHEATON COLLEGE PURCHASING DEPARTMENT, PRIOR TO THE COMMENCEMENT OF ANY WORK, A COPY OF THE WHEATON COLLEGE INDEMNITY AGREEMENT.]

12. **INSURANCE:** Before the commencement of any work on Wheaton College's premises, at Seller's expense, Seller shall obtain and file with the Wheaton College Purchasing Department certificates of insurance evidencing insurance for the types and in the amounts required by Wheaton College, including but not limited to, certificates showing Wheaton College as an additional insured on Seller's general liability policy and showing errors and omissions insurance in the minimum amount of \$1,000,000. The terms of the insurance requirements are incorporated herein by reference. A copy of the terms of Insurance Requirements is available upon request. All such insurance certificates shall provide that they shall not be cancelled or amended without thirty (30) days prior written notice to Wheaton College and shall be with insurance companies reasonably satisfactory to Wheaton College. Insurance shall be maintained for the period specified by Wheaton College or so long as work on the premises is ongoing, if no period is specified.
13. **MATERIALS/INVENTIONS:** Seller warrants title to all goods sold and services supplied. All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks (collectively, "Inventions") created or prepared for Wheaton College, shall belong exclusively to Wheaton College. Seller hereby assigns all Inventions to Wheaton College and its assigns, except for any works for hire which do not require an assignment to vest ownership in Wheaton College. To the extent copyrights exist in any works of authorship, such works shall be deemed, to the extent legally permitted, to be works made for hire as that term is used in the Copyright Act of 1976. Wheaton College shall have the right, at Wheaton College's option and expense, to seek protection by obtaining patents, copyright registrations, trademark registrations, and/or other recordations, registrations, and filings related to proprietary or intellectual property rights. Seller agrees at no charge to execute, and to cause its employees to execute, such documents including such further assignments, applications and conveyances and to supply such information as Wheaton College shall request, in order to permit Wheaton College to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world.
14. **CONFIDENTIALITY:** The terms and existence of this Agreement and everything supplied in connection with it by Wheaton College shall be held in confidence by Seller. Seller shall not publicly announce or disclose this Agreement or its contents without Wheaton College's prior written consent. Seller shall not use Wheaton College's name in any way, including without limitation, a general or

sample listing of Seller's customers, without Wheaton College's prior written consent. Any violation of this paragraph shall be deemed a material breach of this Agreement.

15. **LEGAL COMPLIANCE:** Seller warrants that all goods and services furnished shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances. In accepting this order, Seller shall be deemed to represent that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a). Unless exempt, Seller must comply with all applicable provisions of Executive Orders 11246 (Equal Employment Opportunity), 11701 (Contractor/Subcontractor Listing Requirements), 11625 (Utilization of Minority Business Enterprises), and 11758 (Employment of the Handicapped), all amendments thereof, and the rules, regulations and orders promulgated thereunder. If applicable, Seller must comply with all OSHA Occupational Safety and Health Standards for General Industry (29 CFR Pt. 1910) or for Construction (29 CFR Pt. 1926). The contractual clauses required pursuant to said Executive Orders, and said rules, regulations and orders, are hereby incorporated by reference. Wheaton College reserves the right to monitor the legal compliance required herein at its discretion.
16. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor and not an employee, partner, agent or representative of Wheaton College. Seller and its employees are not Worker's Compensation employees of Wheaton College. Seller shall not make any representations on behalf of Wheaton College without express written consent.
17. **MATERIAL SAFETY DATA SHEET ("MSDS"):** A MSDS is required by law on all products with a chemical composition. If applicable, please include MSDS information with each shipment. Seller acknowledges that any failure to comply with MSDS requirements shall result in a delay in payment with no right to late payment fees or interest for any such late payment. **ALL CONTAINERS MUST BE LABELED.**
18. **STANDARDS OF CONDUCT:** Seller agrees to abide by the Wheaton College Standards of Conduct for Contractors ("Standards of Conduct") while on the premises of Wheaton College. The terms of the Standards of Conduct are incorporated herein by reference. A copy of the Standards of Conduct is available upon request, and Seller agrees that a copy of the Standards of Conduct has been made readily available for review and no failure to request or review the Standards of Conduct shall operate as a defense to a breach of this provision by Seller.
19. **TERMINATION:** Wheaton College may terminate all or any portion of this order for any reason whatsoever, at any time by giving notice to Seller. In the event of such termination, Wheaton College's liability shall be the lesser of: (a) a reasonable price for raw materials, components, work in progress, and any finished units on hand; or (b) the contract price per finished unit, after giving

effect to any discount Wheaton College would otherwise be entitled to. In the event of termination of any separate services specifically ordered, liability shall be calculated according to the contract price for the services and the amount of completion of the services prior to the date of termination specified in the notice of termination. If any hourly or other time-based rate for services is specified in this Agreement, such rate shall be used in determining the amount due to Seller by multiplying the rate by the amount of time expended on the project by Seller prior to the date of termination specified in the notice of termination. Upon receipt of a termination notice, Seller shall, unless otherwise directed, cease work and follow Wheaton College's directions as to disposal of work in progress and finished goods. THE FOREGOING STATES WHEATON COLLEGE'S ENTIRE LIABILITY FOR TERMINATION.

20. **LIMITATION OF LIABILITY:** Any liability of Wheaton College for direct damages, whether arising from a breach of this Agreement, negligence, indemnity, strict liability, tort or otherwise related to this Agreement shall be limited to an amount not to exceed the amount to be paid pursuant to this Agreement. In no event shall Wheaton College be liable to any party to this Agreement, including any party related thereto or affiliated therewith, for any indirect, incidental, consequential, punitive or special damages, including but not limited to, lost profits.
21. **DEFAULT BY SELLER:** In the event Seller defaults with respect to, or otherwise breaches any of, the terms and conditions of this Agreement, Wheaton College shall be entitled to any and all relief, at law or in equity, including all reasonable attorney's fees incurred by Wheaton College in enforcing the terms and conditions of this Agreement, and all remedies shall be cumulative rather than exclusive. Seller agrees that Wheaton College shall be entitled to recover all consequential and/or incidental damages resulting from Seller's breach.
22. **GENERAL:** Seller acknowledges reading and understanding these terms and conditions and agrees to be bound by them. Seller shall not assign this contract or any rights, nor delegate any duties without the express written consent of Wheaton College. Any attempt to do so will be void. No failure or delay on the part of Wheaton College in exercising any right, power or remedy or recognizing any breach or default hereunder shall operate as a waiver thereof or as a waiver of a subsequent or different breach, default, right power or remedy. Section headings are for convenience only and shall have no legal or interpretive effect. Any provision of this Agreement prohibited or unenforceable in any jurisdiction shall be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions of this Agreement. This Agreement constitutes the entire understanding of the parties hereto, and supersedes all prior agreements and communications. This Agreement shall be governed by and construed under the laws of, and under the Uniform Commercial Code as adopted by, the State of Illinois, without regard to its choice of laws or rules. The parties submit to the nonexclusive jurisdiction of the federal courts located in, and the state courts of, the State of Illinois.