

# CORNELL UNIVERSITY TERMS AND CONDITIONS OF PURCHASE ORDER

Updated October 1, 2012

**CONTRACT OF SALE** - This is an offer by Cornell University, an Equal Opportunity Affirmative Action Employer, acting through its Procurement Services (hereinafter called "Cornell"), to the Vendor to form a contract of sale. In making this offer, Cornell expressly limits the acceptance of said offer by Vendor to the following terms and conditions set forth in this Purchase Order. Cornell does not accept any prior offers from Vendor relating to the materials or services named herein which may be contained in Vendor's quotations, correspondence, specifications or discussions. The entire agreement between Cornell and Vendor relating to the purchase and sale of the materials or services described on the face hereof is expressly set forth in this Purchase Order offer, and no modification or addition to this Purchase Order shall be of any force or effect unless it is in writing and signed by an authorized purchasing agent of Cornell, and no modification of or addition to this Purchase Order shall be effected by any failure of either party to reject any form of acknowledgement or Purchase Order containing different or additional provisions. Acceptance by Vendor of this offer by Cornell may be signified by Vendor's transmittal and Cornell's receipt of the attached acknowledgement copy of this Purchase Order, signed by an authorized representative of Vendor, or by commencement of performance hereunder. The failure of either party to enforce any rights shall not constitute a waiver of such rights or any other rights under this Purchase Order.

**1. SPECIFICATIONS:** As used herein, the word "Specifications" shall mean the specifications, qualities, nature, type, properties, amounts, assortments and other descriptions of and requirements for the materials, articles and/or services (hereinafter called "Merchandise") as stated on the front of this Purchase Order and in the Request for Proposal (if any) pursuant to which this Purchase Order is issued.

**2. INSPECTION AND ACCEPTANCE:** All Merchandise shall be received subject to the right of inspection and rejection by Cornell. Payment for Merchandise by Cornell prior to its inspection shall not constitute acceptance thereof and is without prejudice to any and all claims which Cornell may have against Vendor. In the event Merchandise is received damaged, defective or not to specification or all or part of the work is done incorrectly, Cornell will notify the Vendor of the problem. Merchandise will be held for thirty days at Vendor's risk and expense pending Vendor's instructions. The vendor will have a reasonable time period to cure the problem in a manner satisfactory to Cornell. Vendor shall bear the entire cost of repair or replacement, whether it be direct or consequential. This includes any cost incurred as a result of Vendor's replacement efforts damaging or destroying other structures or materials. In the event the problem cannot be cured to Cornell's satisfaction within thirty days or any additional period of time to which Cornell consents, Cornell shall have the right to take all necessary steps consistent with law to cure the situation, and back charge the Vendor for any and all additional costs incurred.

**3. CANCELLATION FOR NON-PERFORMANCE:** If Vendor fails to supply the Merchandise as specified or fails to conform to these terms and conditions, Cornell reserves the right (in addition to its other remedies) (a) to purchase the Merchandise from another source and (b) to cancel this Purchase Order with respect to Merchandise not shipped.

**4. FORCE MAJEURE:** This Purchase Order is subject to cancellation or change on written notice to the Vendor in the event of causes beyond Cornell's reasonable control, including without limitation acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, and the like.

**5. CANCELLATION OR CHANGES FOR CONVENIENCE:** For its convenience, Cornell may cancel this Purchase Order in whole or in part or may change the Specifications or other terms and conditions dealing with quantities, shipment procedures or times or places of performance, by notice in writing to the Vendor specifying the date upon which such cancellation or change shall become effective and the extent to which such performance hereunder shall be canceled or changed. Cornell and Vendor shall act in good faith to attempt to agree upon a compensatory financial agreement, in lieu of the price or prices elsewhere specified in this Purchase Order as the parties mutually agree is fair and equitable under the circumstances; such agreement shall be subject to the written approval of any governmental authority concerned with this Purchase Order or the Merchandise.

**6. CANCELLATION FOR CONFLICT OF INTEREST:** This order is subject to cancellation if there is found to be a Conflict of Interest between a Cornell employee and Vendor. A Conflict of Interest is deemed present for many reasons, including, but not limited to: (1) a Cornell employee and/or his or her spouse or unemancipated and/or minor children own 10% or more of the assets of an unincorporated organization or 10% or more of outstanding stock of a corporation; (2) an employee receiving any personal financial advantage or compensation with any transaction in which the University might have an interest.

**7. SHIPPING AND ROUTING:** Shipping Terms are F.O.B. Cornell University unless otherwise stated on the face of the purchase order. Cornell reserves the right to specify a specific delivery location. Any shipments delivered to another location than specified will be the responsibility of the Vendor to have redelivered to the specific location or reimburse Cornell for any charges in moving the Merchandise to the specific location. All Merchandise must be forwarded by the route taking lowest reasonable transportation rate or in accordance with any special shipping instructions. Otherwise the difference in freight rate and extra cost of transportation will be Vendor's.

**8. EXTRA CHARGES:** No additional charges of any kind, including charges for boxing, packing, transportation or other extras will be allowed unless specifically agreed to in writing by an authorized purchasing agent of Cornell.

**9. PATENTS, COPYRIGHTS, TRADEMARKS AND WARRANTIES:** VENDOR EXPRESSLY WARRANTS THAT ALL MERCHANDISE IS IN ACCORDANCE WITH THE SPECIFICATIONS; IS FIT FOR THE PURPOSE FOR WHICH SIMILAR MATERIALS AND ARTICLES ARE ORDINARILY EMPLOYED, FIT FOR THE PARTICULAR PURPOSE FOR WHICH THE MERCHANDISE HAS BEEN PURCHASED, FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP, AND MERCHANTABLE, and 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. Vendor further warrants that the Merchandise does not infringe or violate any patents, copyrights, trademarks or the like, and does not unlawfully disclose or make use of any trade secrets and covenants and agrees to hold harmless, defend and indemnify Cornell, and its agents, servants, employees, successors, assigns, customers and users, against any and all claims, demands or suits and related damages, liabilities, costs and expenses (including attorney's fees) arising out of any such infringement or violation or unlawful use or disclosure of trade secrets. Such warranties shall survive and shall not be deemed waived by delivery or acceptance of, or payment for the Merchandise.

**10. SET-OFF:** Cornell shall at all times have the right to set-off any amount owing from the Vendor to Cornell against any amount owing from Cornell to the Vendor.

**11. INDEMNIFICATION:** Vendor agrees to hold harmless, defend and indemnify Cornell against any and all claims, demands or suits by any persons and against related loss, damages or injury to property or persons, liabilities, costs and expenses (including attorney's fees), which may arise out of performance under this Purchase Order or the use, possession or ownership of the Merchandise related thereto, caused or contributed to by either: (a) the actions or omissions (whether or not negligent) by Vendor or Vendor's agents or subcontractors including without limitation such acts or omissions, incident to the presence of the Vendor, its agents, and subcontractors upon Cornell's premises in the course of performance under this Purchase Order; or (b) defective, unsafe or non-conforming Merchandise supplied by Vendor or Vendor's agents or subcontractors; or (c) Vendor's use and possession of Cornell's property as designated in Section 16 below. The term "Cornell" as used in this section includes Cornell and its agents, employees, students, successors, assigns, customers and users.

**12. INSURANCE:** Vendor will carry insurance to indemnify Cornell as provided herein, and shall provide certificates of such insurance.

Minimum Insurance Coverage Requirements:

**Statutory workman's compensation:** Insurance under the laws of the State of New York and any other laws that may be applicable thereto. Coverage "B," Employer's Liability, must have limits of at least \$100,000.

*This coverage is required for all service providers providing services on the Cornell campus or Cornell owned property. Coverage from other States may be substituted by individuals, who are residents of other states but working on a temporary basis in New York. Individuals providing services on harbor fronts or the water should provide proof of US Longshoremen and harbor workers insurance and/or Jones Act insurance.*

**Comprehensive general liability insurance:** Subject to limits of \$1,000,000 for each occurrence. Coverage must be provided for bodily injury liability, broad form property damage liability, contractual liability, and products/completed operations coverage. Completed operations coverage is to be maintained for a minimum period of two years after the completion of the Cornell contract.

*High risk activities may require higher limits. Consult Cornell Risk Management and Insurance if services being provided could be considered to be high risk. Boat charters require \$5 million of Protection and Indemnity insurance.*

**Automobile liability insurance:** Subject to a combined single limit of \$1,000,000 for each occurrence for bodily injury and property damage. Such automobile liability insurance shall be for the contractor's owned, non-owned, and hired vehicles.

*Cornell requires limits of \$5 million for any Bus charter.*

**Cornell University must be added to the vendor's comprehensive general liability insurance policy as an "additional insured," and evidence of such will be provided in all certificates of insurance.** The insurance shall be considered to be primary for allegations of negligence for the acts or performance of the vendor in fulfilling the work order. These minimum requirements of the University shall not limit the liability or responsibility of the vendor. Cornell's failure to enforce the requirements shall not be considered to be a waiver of the requirement. Any changes to these requirements shall only be made in writing and agreed upon by all parties.

#### **Other Requirements**

All liability policies should be issued on an "occurrence" basis.

The vendor must indemnify Cornell University as stated in section eleven of the [Terms and Conditions of a Purchase Order](#).

All certificates of insurance must provide for a minimum of 30 days notice to Cornell University prior to the cancellation of, non-renewal of, or a change in policy terms and/or conditions.

A certificate of insurance for all policies required must be issued to Cornell University and received by Procurement Services prior to any work commencing under any contract subject to these requirements.

**13. TAXES:** Cornell is exempt from Federal Excise Tax - IRS Reg. No. 16-73-0034-F and New York State Sales and Use Tax EX-106514.

**14. ASSIGNMENT:** The Vendor agrees that it will not assign this Purchase Order without the prior written consent of Cornell.

**15. SALE OR BANKRUPTCY OF VENDOR'S BUSINESS:** If, during the life of this Purchase Order, the Vendor disposes of its business by sale, transfer, force of law or by any means to another party, all obligations are transferred to such party. In the event, the new owner(s) may, in Cornell's absolute discretion, be required to submit a performance bond in the amount of the open balance of the Purchase Order. In the event of any suspension of payment or the institution of any proceedings by or against Vendor, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Vendor, Cornell shall have, in addition to the rights stated in the two preceding sentences, the right to cancel this Purchase Order forthwith.

**16. CORNELL'S PROPERTY/ COPYRIGHT OWNERSHIP:** All equipment or material (including without limitation informational material) furnished by Cornell and all designs, drawings, output, processes, art work, negatives, engravings, electronic media, jigs, fixtures, dies, tools or patterns charged by the Vendor to Cornell shall, unless otherwise agreed in writing, be the property of Cornell, shall be returned to Cornell at its written request, and shall not be used by Vendor in any of its business except its business with Cornell under this or other Purchase Orders. Copyright ownership rights to any works developed specifically for Cornell under this purchase order is hereby transferred and assigned to Cornell University. Any use of the Cornell name, logo, artwork or trademark must be licensed by the Collegiate Licensing Company (CLC), or be authorized directly by Cornell.

**17. APPLICABLE LAW:** This Purchase Order and transaction are governed by the laws of the State of New York without regard to conflict of law principles. Vendor shall comply with all applicable federal, state and local laws and regulations.

**18. FEDERAL AND STATE FUNDING:** If this Purchase Order is funded by New York State or Federal Funds (designated on the face of the Purchase Order), it shall be deemed executory to the extent of State or Federal monies being available to Cornell and no liability on account thereof shall be incurred by Cornell beyond monies available for the purpose Vendor shall comply with all applicable federal, state and local laws and regulations. If this order is funded by the federal government (designated on the face of the Purchase Order) Vendors is subject to compliance with the standards and requirements as set forth in OMB Circular A-110, Section 48, Contract Provisions, and Appendix A, and OMB Circular A-133, Paragraph 5. All procurement requirements contained in the above referenced Circulars are incorporated herein by reference, and Vendors are required to comply with all applicable federal acquisition regulations, including, but not limited to, the following, as amended:

#### **Applies to all orders**

Pricing Adjustment - DFAR 252.243-7002

Notice to the Government of Labor Disputes - FAR 52.222-1

Preference for U.S. Flag Air Carriers - FAR 52.247-63

Use of U.S. Flag Commercial Vessels - FAR 52.247-64

Buy American Act Supplies - FAR 52.225.3

Disputes - FAR 52.233-1

Hazardous Materials Identification & Material Safety Data - FAR 52.223-3

Americans With Disabilities Act of 1990 PL 101-33642 U.S.C§ 12101 et seq.

Authorization & Consent - FAR 52.227-1

Duty Free Entry – DFAR 252.225-7013

Reporting of Overseas Subcontracts – DFAR 252.225-7025

Rights in Technical Data—Noncommercial Items – DFAR 252.227-7013

Rights in Noncommercial Technical Data and Computer Software— Small Business Innovation Research (SBIR) Program – DFAR 252.227-7018

Validation of Restrictive Markings on Technical Data – DFAR 252.227-7037

Drug Free Workplace Cost or Pricing Data – Modifications – FAR 52.223-6

Restrictions on Certain Foreign Purchases – FAR 52-225-13

Patents – Subcontracts – DFAR 252.227-7034

Patents--Reporting of Subject Inventions – DFAR 252.227-7039

**Applies if order is over \$2,500**

Contract Work Hours & Safety Standards Act-Overtime Compensation - FAR 52.222-4

Affirmative Action for Workers with Disabilities - FAR 52.222-36

Service Contract Act of 1965 as Amended – FAR 52.222-41

**Applies for Service and Construction Contracts over \$3,000**

Employment Eligibility Verification – FAR 52.222-54

**Applies if order is over \$10,000**

Equal Opportunity - FAR 52.222-26

Utilization of Small Business Concerns – FAR 52.219-8

Prohibition of Segregated Facilities – FAR 52.222-21

Instructions to Offerors—Competitive Acquisition - FAR 52.215-1

Audit and Records - FAR 52.215-2

Walsh Healy Public Contracts Act - FAR 52.222-19 & 20  
Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans - FAR 52.222-35

**Applies if order is over \$25,000**

Integrity of Unit Prices – FAR 52.215-14  
Notice & Assistance Regarding Patent & Copyright Infringement-FAR 52.227-2

Debarment and Suspension - FAR 52.209-5 & 6  
Responsibility for Supplies - FAR 52.246-16

**Applies if order is over \$100,000**

Anti-kickback - FAR 52.203-7  
Restrictions of Subcontractor Sales to Government - FAR 52.203-6  
Limitation on Payments to Influence Certain Federal Transactions – FAR 52.203-12  
Price Reduction for Defective Cost or Pricing Data - FAR 52.214-27  
Subcontractor Cost or Pricing Data - FAR 52.214-28  
Waiver of Limitation on Severance Payments to Foreign Nationals - FAR 52.237.9  
Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies – DFAR 252.203-7001

Oral Attestation of Securing Responsibilities- DFAR 252.204-7005

**LOBBYING:** Subcontractor certifies, to the best of its knowledge and belief that no Federal appropriated funds have been paid, by or on behalf of the Subcontractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, or Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federally-funded subcontract, the subcontractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as required by title 31 U.S.C., section 1352. The Subcontractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Execution of this Subcontract constitutes certification by Subcontractor as imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Applies if order is over \$500,000**

Small Business Subcontracting Program – FAR 52.219-9  
Subcontractor Cost or Pricing Data – Modifications - 52.215-12/13

**19. UNION LABOR:** Cornell University has entered into an agreement with the Tompkins-Cortland Building Trades Council which requires that all labor performed for Cornell within Tompkins County by certain trades be performed by union labor. These trades are: electricians and line workers, painters, plumbers, steamfitters, control mechanics, welders, refrigeration mechanics, carpenters, masons, sheet metal workers and building trade laborers. Vendors performing such work must comply with the Tompkins-Cortland Building Trades Council agreement.

**20. PAYMENT:** Vendor shall be paid after receipt of properly prepared invoices in accordance with Cornell's invoicing instructions for Merchandise delivered to and accepted by Cornell. Any adjustments in Vendor's invoice due to shortages, rejection or other failure to comply with the provisions of the Purchase Order may be made by Cornell before payment. Discount periods shall commence after the latest of final acceptance, delivery, receipt of any required documentation, or receipt of invoice. Delays in receiving invoice, errors or omissions on invoice, or lack of supporting documentation required by the terms of the Purchase Order, will be cause for withholding settlement without losing prompt payment discount privilege. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item. Invoices shall be mailed in duplicate immediately after each shipment in accordance with the instructions on the Purchase Order. Only one (1) of these invoices shall be identified as "Original."

**21. ANIMAL USE FACILITIES-HAZARD COMMUNICATION:** Certain facilities at Cornell may be used for research, testing or teaching with animals. Some individuals may be at greater risk for health symptoms and effects from direct or indirect exposure to animals. Individuals with medical conditions such as immunocompromised health status, allergies, pregnancy or anticipated pregnancy may be at greater risk. It is the responsibility of the Contractor to inform their employees of associated potential risks and take appropriate action with respect to their health and safety. Questions regarding the presence of animals in a specific facility may be directed to the Cornell Project Manager, Construction Manager or Facility Manager.

**22. Right to Audit:** Throughout the term of this Agreement, and for a period of three years after final payment, or longer if required by law, Cornell, at its own expense, shall be entitled to perform, or to have performed by a third party of Cornell's choosing, during normal business hours and upon five (5) business days' notice, an on-site audit of any and all records of Supplier necessary to permit Cornell to evaluate and verify Supplier's compliance with the requirements of this Agreement. Supplier grants Cornell permission to view and/or copy any books, documents, records, data and information (including data and information stored in electronic form) of Supplier which relate to or have been used in connection with the performance of this Agreement. Supplier also grants Cornell permission to interview Supplier's staff and agents as part of the audit. Supplier agrees to provide Cornell with adequate and appropriate workspace for conducting the audit. If Cornell, in its sole discretion, determines that an on-site audit is not necessary, Supplier agrees to complete, within 30 days of receipt, an audit questionnaire provided by Cornell. Any overcharges discovered by Cornell, or by a third party of Cornell's choosing, shall be paid within 30 days of Supplier's acceptance of Cornell's written notification of audit findings. Supplier may not unreasonably withhold acceptance of audit findings. Supplier shall include this audit provision in any subcontracts that it may issue under this Agreement.