

Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions (“Terms and Conditions”) and the accompanying Purchase Order (including, any and all appendices, and/or exhibits attached hereto or otherwise issued by Buyer (as defined hereafter) in connection herewith, collectively, the “Purchase Order”) is by and between Emerson College, a Massachusetts non-profit educational corporation, (“Buyer”) and Vendor (as identified and defined in the Purchase Order) (Buyer and Vendor, collectively, the “Parties,” each a “Party”). The Purchase Order and these Terms and Conditions constitute the entire agreement between the Parties and supersede and replace any and all prior discussions and agreements between the Parties. By commencing the services and/or shipping any of the goods, items, products or components (the “Material”) set forth in the Purchase Order, Vendor irrevocably accepts these Terms and Conditions. Unless otherwise set forth herein, if any discrepancy, difference or conflict exists between the various provisions of the Purchase Order and these Terms and Conditions, these Terms and Conditions shall govern. The Purchase Order and these Terms and Conditions shall govern and control over any other writing between the Parties unless the Purchase Order (including, these Terms and Conditions) are specifically varied or contradicted by one of the following methods in the listed order of precedence: (i) varying terms on the face of the Purchase Order; (ii) a current existing Master Purchase Agreement between the Parties covering the Material; (iii) another valid agreement between the Parties to which the Purchase Order applies. BUYER HEREBY OBJECTS TO AND REJECTS ANY OTHER TERMS AND CONDITIONS THAT MAY BE PROPOSED BY VENDOR OR THAT APPEAR ON OR ARE REFERENCED IN VENDOR’S QUOTATION, BID, ACKNOWLEDGEMENT, OR OTHER DOCUMENTS OF VENDOR THAT ARE IN ADDITION TO OR OTHERWISE NOT CONSISTENT WITH THE TERMS SET FORTH IN THESE TERMS AND CONDITIONS.

1. CHANGES. Buyer reserves the right, by notice to Vendor pursuant to the issuance of change order (“Change Order”), to make reasonable changes to the Material. Prior to the commencement of the Change Order, the Parties shall agree upon any changes to the prices or fees relating to the Change Order.

2. PRICE/TAXES. Prices or fees for conforming Material are firm and shall remain firm until deliveries have been completed, unless otherwise expressly agreed to in writing by the Parties. Vendor agrees that any price reduction made with respect to Material covered by the Purchase Order subsequent to placement by Buyer shall be applied to the Purchase Order. Buyer is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes. Upon request, Buyer shall provide Vendor with a copy of its tax exemption certificate.

3. TERMS OF PAYMENT. Upon Acceptance (as defined hereafter) of the Material pursuant to Section 6 herein, Buyer agrees to pay all amounts due within sixty (60) days of receipt of Vendor’s invoice, less any deposits paid to Vendor (if any), unless otherwise agreed to by the Parties in the Purchase Order. Vendor shall invoice Buyer and Buyer shall only be obligated to pay such invoice if issued to Buyer subsequent to delivery, receipt and Acceptance of all Material ordered under the Purchase Order. All payments shall be in U.S. dollars. Unless otherwise agreed to by the Parties, alternative payment terms shall be approved by Buyer’s Office of Procurement Services. Unless otherwise directed by Buyer, invoices shall be e-mailed to Buyer’s Accounts Payable (accountspayable@emerson.edu) with the Purchase Order. The acceptance by Vendor of the final payment under the Purchase Order shall operate as a complete and unconditional release to Buyer of any and all existing or future claims or demands by Buyer for payment in connection with the Material provided under the Purchase Order.

4. DEBARMENT. Vendor certifies by entering into this transaction that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency (in accordance with Executive Order 12549 and any other federal statute, rules or regulation).

5. EQUAL EMPLOYMENT OPPORTUNITY. Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, disability, sex, national origin, age or any other unlawful criterion and shall comply with all applicable laws against discrimination and all applicable rules, regulations and orders issued thereunder or in implementation thereof. The Equal Opportunity Clauses set forth in 41 C.F.R., sections 60-1.4(a), 60-300.5(a), 60-741.5(a) and the “Employee Notice” provisions of 29 CFR Part 471, Appendix A to Subpart A. are incorporated herein by this reference.

6. ACCESSIBILITY. If Vendor provides any electronic technology, information technology and/or web technology (“Technology”), product or service to Boston University, Vendor agrees that the Technology will meet the accessibility standards of WCAG 2.0 Level AA and/or of Section 508 of the Rehabilitation Act and Americans with Disabilities Act (each, a “Standard”). Vendor further warrants that Technology complies with the applicable Standard and any applicable federal or state laws or regulations relating to accessibility for persons with disabilities.

7. DELIVERY/FORCE MAJEURE. Vendor hereby agrees to on-time delivery based upon the timeline set forth in the Purchase

Order. If the Purchase Order does not specify a delivery date for the Material (the "Delivery Date") or timeline, Vendor shall provide the Material as if time is of the essence. If any Material is not delivered or rendered by the Delivery Date, Buyer reserves the right, without liability, to terminate the Purchase Order as to any Material not yet shipped or rendered and to purchase substitute Material and charge Vendor for all losses incurred in connection therewith. Oral cancellation of the Purchase Order made by Buyer is effective when made. Buyer shall have the right to refuse deliveries of Material made by Vendor (or its agent) in excess of one (1) week in advance of the Delivery Date, unless otherwise agreed to by the Parties. Upon Buyer's receipt of a notice of force majeure from Vendor, the time for Vendor's performance shall be extended for a period of time reasonably necessary to overcome the effect of such delays; provided, further, that Buyer may terminate the Purchase Order by written notice to Vendor within ten (10) business days of receiving Vendor's notice of force majeure, in which event Buyer shall receive a refund of all monies paid hereunder for Material which has failed to deliver, which are non-conforming or which have failed to achieve Acceptance.

8. SHIPPING, PACKAGING AND LABELING. If applicable, deliveries of the Material shall be made without additional charge to Buyer for boxing, crating, carting or storage, unless otherwise agreed to by the Parties. Such Material shall be suitably packed to minimize breakage and transportation costs and to conform to the requirements of common carriers. Vendor shall mark on all containers, handling and loading instructions, shipping information, Purchase Order number and names and addresses of Vendor and Buyer. An itemized packing list must accompany each shipment. Vendor shall ship all Material in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order. Vendor shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein. If applicable, the Parties agree to assist each other in the prosecution of claims against Vendor's shipping agent or carrier relating to any damage to the Material caused by Vendor's shipping agent or carrier.

9. ACCEPTANCE. As a condition precedent to payment of the purchase price for the Material by Buyer to Vendor, Buyer shall Accept the Material. For purposes of these Terms and Conditions, "Acceptance" means the point at which Buyer accepts or is deemed to accept the Material in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms "Accept" and "Accepted" and words of similar import. The Material shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by Buyer to Vendor, within a reasonable period of time, or (ii) upon timely delivery of the conforming Material identified herein to the shipping address specified on the face of the Purchase Order. By way of clarification,

Buyer hereby retains the right to reject any non-conforming Material. Payment for Material provided under the Purchase Order shall not constitute Acceptance hereof. Buyer may inspect and test such Material and reject any or all Material that are, in Buyer's sole judgment, non-conforming. Material rejected or supplies in excess of quantities ordered may be returned to Vendor at its expense.

10. RISK OF LOSS; TITLE; RELEASE OF LIENS AND CLAIMS. Vendor assumes all risk of loss of or damage to all Material ordered and all work in progress and other items related to the Purchase Order until the Material is Accepted by Buyer. Terms of shipping are F.O.B. Buyer's shipping address unless otherwise noted within the terms of the Purchase Order. Upon Acceptance, Vendor hereby sells, assigns, grants and transfers to Buyer all right, title and interest in any and all Material, including without limitation, all propriety rights of Vendor embedded in the Material; provided however, the term "Material" shall not include any verifiably pre-existing materials, information or products of Vendor including, but not limited to software, schematics, prototypes, artwork, literature, signage, photography, videography, documentation, displays, and exhibits. Vendor shall furnish Buyer with a complete "Release of Liens and Claims" at such intervals requested by Buyer and before final payment is released. If any lien is filed or remains unsatisfied after final payment, Vendor shall indemnify Buyer for all costs incurred in discharging such lien.

11. WARRANTIES. Vendor warrants that any Material supplied hereunder shall conform to the generally recognized manufacturing and safety standards of Vendor's industry in the United States and shall meet or exceed Vendor's specifications on performance as detailed in Vendor's brochures, sales literature and other specifications as provided to Buyer. Vendor shall perform all services to the reasonable satisfaction of Buyer. In addition to any other express warranties, Vendor warrants that the Material furnished pursuant to the Purchase Order: (a) is free from defects in title, workmanship and material; (b) is free from defects in design except to the extent that such items comply with detailed designs provided by Buyer; (c) is of merchantable quality and suitable for the purposes, if any, which are stated on the Purchase Order; (d) shall conform to all specifications or other descriptions furnished to and approved by the Parties; (e) shall comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety and environmental standards) which bear upon the Material; (f) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Buyer; and (g) shall not be restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual right of any third party. In addition, Vendor warrants that Buyer shall have good and marketable title to all Material (including components thereof) purchased pursuant to the transactions contemplated under the Purchase Order, free of all liens and encumbrances and that no

licenses are required for Buyer to use such Material. If any Material covered by the Purchase Order is found not to be as warranted, Buyer may, by written notice to Vendor: (a) rescind the Purchase Order as to such non-conforming Material; (b) Accept such Material at an equitable reduction in purchase price; or (c) reject such non-conforming Material and require the delivery of suitable replacements at no additional charge to Buyer. If Vendor fails to deliver suitable replacements promptly, Buyer, with notice of five (5) business days, may replace or correct such Material and charge Vendor the additional cost incurred by Buyer thereby, or terminate the Purchase Order for material breach. Any items corrected or furnished in replacement are subject to all the provisions of this section to the same extent as items initially furnished or originally ordered. Cost of replacement, rework, inspection, repackaging and transportation of such corrected Material shall be at Vendor's expense. This warranty provision shall survive any inspection, delivery, Acceptance, payment, expiration or earlier termination of the Purchase Order and such warranties shall run to Buyer, its successors, assigns, trustees, faculty, employees, students, agents and users of the Material. Nothing herein, however, shall limit Buyer's rights in law or equity for damages resulting from delivery of defective Material or provision of services. Rights granted to Buyer in this Section 8 are in addition to any other rights or remedies provided elsewhere in these Terms and Conditions or in a court of law.

12. USE OF NAME; MEDIA CONTACT. Neither Vendor nor any of its agents, employees, affiliates, invitees, or representatives shall cause or allow the name of "Emerson" (or any variation thereof) or any Buyer logo or mark, or that of any of its schools, departments, or employees to be used in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever, without the prior written approval of Buyer. Neither Vendor nor any of its agents, employees, affiliates, invitees, or representatives shall make any mention of Buyer's involvement in these Terms and Conditions or the terms or subject matter of the Purchase Order without first obtaining Buyer's prior written approval in each instance. Vendor shall not communicate with members of the media or otherwise make any public announcement regarding the Material provided to Buyer, or the terms or existence of these Terms and Conditions or the Purchase Order, without the prior written consent of Buyer.

13. BUYER'S PROPERTY IN VENDOR'S POSSESSION. All tools, special dies, molds, patterns, jigs and any other property furnished to Vendor by Buyer or specifically paid for by Buyer for use in the performance of the Purchase Order, shall be (i) the property of Buyer; (ii) subject to removal at any time upon Buyer's demand; (iii) used only in filling orders for Buyer; (iv) maintained in good order and condition; and (v) clearly identified as the property of Buyer. Vendor assumes all liability for loss or damage to such property.

14. INDEMNITY. In addition to any indemnification obligations of Vendor set forth herein or any agreement between the Parties relating to the Purchase Order, to the fullest extent permitted by law, Vendor shall indemnify, defend, protect, and hold harmless Buyer, its corporations, trustees, officers, faculty, employees, students, representatives and agents (each an "Indemnitee", and collectively, the "Indemnites") from and against all claims, demands, losses, settlements, obligations, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from Vendor's: (a) alleged or actual negligence; (b) performance of its obligations under the Purchase Order (including, these Terms and Conditions); (c) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order (including, these Terms and Conditions); (d) gross negligence or willful misconduct; (e) violation of law; (f) actual or alleged infringement, misappropriation or other unauthorized use of a third-party's intellectual property of any kind whatsoever; (g) failure to pay withholding or other taxes resulting in a determination by a government agency that Vendor is not an independent contractor; or (h) injury to persons or property or other tort arising out of any act, omission or negligence of any Vendor Personnel (as defined hereafter). This section shall survive termination, cancellation, or expiration of the Purchase Order.

15. ASSIGNMENT/SUBCONTRACTING. Vendor shall not assign or transfer the Purchase Order, any rights under the Purchase Order or any monies due or to become due hereunder nor delegate or subcontract any obligations or work hereunder without the prior written consent of Buyer, including by merger or operation of law. No purported assignment or delegation by Vendor shall be binding on Buyer without such consent.

16. CANCELLATIONS/TERMINATION. In addition to the rights set forth herein, Buyer may for any reason and at any time, cancel any unshipped Material. To the extent the Purchase Order covers stock Material, Buyer's only obligation is to pay for Accepted Material prior to such cancellation. To the extent the Purchase Order covers Material manufactured or fabricated to Buyer's specifications, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default of the Purchase Order, Buyer shall reimburse Vendor for the actual, direct cost to Vendor of such Material which have, at the time of such cancellation, been wholly or partially manufactured. In the aforementioned scenario, upon payment of the reimbursement by Buyer, title to all such work in progress or completed Material shall pass to Buyer. Buyer may cancel the Purchase Order in whole or in part at any time for cause by written (including facsimile or email) to Vendor, effective when sent, in the event Vendor: (a) fails to comply with any term or

condition of the Purchase Order including, but not limited to, delivery terms; (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; (c) files a voluntary petition in bankruptcy; (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; (e) voluntarily ceases trading; (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Purchase Order to a third party without Buyer's advance written consent. Upon the occasion of any one of the aforementioned and in addition to any remedies which Buyer may have in law or in equity, Buyer may also cancel the Purchase Order or any outstanding deliveries hereunder by notifying Vendor in writing of such cancellation and Vendor shall thereupon transfer title and deliver to Buyer such work in progress or completed Material as may be requested by Buyer. Buyer shall have no liability to Vendor beyond payment of any balance owing for Material purchased hereunder and delivered to and Accepted by Buyer prior to Vendor's receipt of the notice of termination, and for work in progress requested for delivery to Buyer.

17. RESCHEDULING. Buyer may without liability at least fourteen (14) days prior to the scheduled Delivery Date appearing on the Purchase Order defer delivery on any or all Material under the Purchase Order by giving oral notice to Vendor (confirmed in writing within ten (10) working days) of any necessary rescheduling.

18. CONFIDENTIALITY. Any and all information provided by or on behalf of Buyer to Vendor in connection with the Purchase Order is deemed to be the confidential information of Buyer. Vendor shall not use or access such confidential information except in connection with the performance of its obligations set forth in the Purchase Order nor divulge such confidential information to any third party, unless Buyer consents in writing to such use or divulgence or such disclosure is required by law or required to perform the Purchase Order. Vendor agrees to protect and safeguard from and against unauthorized access, use or disclosure such confidential information of Buyer in the same manner that it protects the confidentiality of Vendor's own proprietary and confidential information of like kind (but in no event using less than reasonable care).

19. INDEPENDENT CONTRACTOR. Vendor shall perform the obligations of the Purchase Order as an independent contractor and under no circumstances shall it be considered an agent, employee, partner, or joint venture of Buyer, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Vendor is solely and personally responsible for all federal, state and local taxes, contributions and other liabilities with regard to payments by Buyer to Vendor.

20. STANDARDS OF CONDUCT. Vendor must reassign its employees, agents and subcontractors ("Vendor Personnel") working on Buyer's premises if any such personnel are deemed to be disruptive, dangerous, incompetent, or otherwise non-compliant with Buyer policies and procedures. Neither Vendor nor Vendor Personnel shall use or be under the influence of alcohol or drugs at any time while on Buyer's premises.

21. INSURANCE. Vendor shall maintain at its own expense public liability, personal injury, commercial automobile liability, property damage, employer's liability and compensation, and umbrella/excess liability insurance in each case in an amount necessary determined by Buyer to be appropriate, to protect Buyer from said risks and from any statutory liabilities whatsoever arising therefrom. Vendor shall produce evidence of such insurance upon request by Buyer.

22. WAIVER. Except as otherwise provided in the Purchase Order, the failure of Buyer to insist in any instance upon the strict performance of any provision of the Purchase Order, or to exercise any right or privilege granted to Buyer hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

23. NOTIFICATION OF HAZARDOUS PRODUCT. Vendor hereby agrees to notify Buyer of any inherent hazard related to the Material being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to purchasing@emerson.edu and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by Buyer or others and any additional information that Buyer should reasonably expect to know to protect its interest. All shipments of hazardous Material under the Purchase Order shall comply with current U.S. Department of Transportation ("DOT") regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration ("OSHA") regulations as published in 29 CFR 1910.1200, for the transporting and labeling of hazardous materials or such successor regulations as the case may be. Material Safety Data Sheets ("MSDS") shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made.

24. COMPLIANCE WITH LAWS. Vendor agrees to comply with all applicable international, federal, state and local laws and regulations applicable to the Purchase Order or to Vendor's provision of the Material to Buyer hereunder. Vendor shall be responsible for obtaining all licenses and permits required for the supply of Material to Buyer.

25. LIMITATION OF LIABILITY. In no event shall Buyer be liable to Vendor, its employees, officers, directors, representatives, agents, suppliers or subcontractors for any indirect, incidental, special or consequential damages relating to this Purchase Order including, but not limited to, loss of revenues and loss of profits. Buyer's total liability on any claim for loss, damage or expense arising under or in connection with the Purchase Order shall not exceed the purchase price paid by Buyer to Vendor for the Material under the accompanying Purchase Order, regardless of the theory of the claim or any notice to Buyer of such claim. Any action alleging any material breach of the Purchase Order by Buyer must be commenced within six (6) months after the cause of action has accrued.

26. EXPORT CONTROLS. Vendor shall notify Buyer if Vendor is or becomes listed in any denied party list or if Vendor's export privileges are otherwise denied, suspended or revoked in whole or in any part by any U.S. Government entity or agency. Vendor shall provide prior written notice to Buyer of all Material under this Purchase Order that are export-controlled under the U.S. International Traffic in Arms ("ITAR") or listed in an Export Control Classification Number ("ECCN") entry on the U.S. Commerce Control List of the Export Administration Regulations ("EAR") or similar U.S. Government export control list covering the Material.

27. GOVERNING LAW. These Terms and Conditions (and Purchase Order) shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of law principles. Each of the Parties hereby irrevocably and unconditionally (i) consents to submit to the exclusive jurisdiction

of the courts of the Commonwealth of Massachusetts and the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation arising out of or relating to these Terms and Conditions and the transactions completed in accordance with the Purchase Order (and agrees not to commence any litigation relating thereto except in such courts), (ii) waives any objection to the laying of venue of any such litigation in the Massachusetts Courts, and (iii) agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum.

28. INTERPRETATION. In these Terms and Conditions, unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders, and words denoting natural persons shall include corporations and partnerships and vice versa. Whenever the words "include," "includes," or "including" are used in these Terms and Conditions, they shall be understood to be followed by the words "without limitation." The words "hereof," "herein," and "hereunder," and words of similar import, when used in these Terms and Conditions refer to these Terms and Conditions as a whole and not to any particular provision of these Terms and Conditions unless otherwise specified. The definitions contained in these Terms and Conditions are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. If any ambiguity or question of intent or interpretation arises, these Terms and Conditions must be construed as if it is drafted by all the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of these Terms and Conditions.