

UNIVERSITY OF KING'S COLLEGE



Vendor: Purchase Order Terms and Conditions

Issued by:
Bursar's Office

1. Agreement

1.1 Unless waived or otherwise agreed in writing by the University, this Purchase Order and its terms and conditions shall not be altered, amended, varied, or modified. Any inconsistent or additional terms or conditions proposed by the Supplier are hereby rejected and shall not bind the University in any way. In the event that the terms and conditions of this Purchase Order are in conflict with, or differ from, the Supplier's terms and conditions, the terms and conditions of this Purchase Order shall prevail.

1.2 All documents, information, specifications, blueprints, tracings, or attachments provided by the University and pertaining to this Purchase Order must be treated in strict confidence by the Supplier and must not be transmitted to, or discussed with, a third party, nor reproductions made thereof, without prior written authorization of the University.

2. Delivery of Goods and Services

2.1 Unless otherwise specified, all shipments shall be delivered FOB destination, offloaded and installed (where specified), freight prepaid and included. It is the Supplier's responsibility to arrange full and complete protection of all shipments to the University. No additional charges of any kind, including charges relating to boxing, packaging or cartage will be allowed unless specifically agreed to in writing by the University. All packaging must adequately protect the goods given their specific nature. The Supplier shall ensure that University's property is kept clean of any rubbish or surplus materials resulting from the supply of goods or services. Title to goods, and the risk of loss or damage to such goods, shall transfer from the Supplier to the University upon delivery of the goods to, and acceptance of them by, the University.

2.2 The Supplier guarantees that goods or services will be delivered in accordance with the specification, drawing, sample, or quotation referenced or attached hereto, and agrees that this guarantee shall survive acceptance of goods or services by the University. Goods or services delivered which are not in accordance with this condition may be returned to the Supplier, or rectified by the Supplier, at the Supplier's expense, at the option of the University.

2.3 In the event of the Supplier's failure to deliver as and when specified, the University may cancel this Purchase Order in whole or in part without prejudice to other rights and remedies, and may return part or all of any shipment at the Supplier's expense.

2.4 Regardless of payment, all goods and services shall be subject to inspection and approval by the University without limitation as to time. The University may reject the goods and/or services, in whole or in part, and/or terminate the Purchase Order if, in the opinion of the University, the goods and/or services, in whole or in part, are unsatisfactory, non-conforming to Purchase Order specifications, or if the Supplier has breached any term or condition of this Purchase Order.

2.4.1 In the case of rejected goods, the University may either return the goods to the Supplier at the Supplier's risk and expense, or, advise the Supplier to remove the rejected goods, at the Supplier's risk and expense, whereupon any responsibility of the University with respect to the rejected goods shall absolutely cease.

2.4.2 In the case of rejected services, the University may either require the Supplier to re-perform the services at the Supplier's expense, or terminate the Purchase Order without payment and obtain the services from another source, at the Supplier's expense.

3. Price/Payment Terms

3.1 Payments will be made in Canadian funds unless otherwise stated on this Purchase Order. Where applicable, the dates and amounts of cash discounts shall be established by receipt of correct invoice or correct material according to the terms of the Purchase Order, whichever is later.

3.2 Where applicable, the University may withhold any and all payments due under this Purchase Order until the Supplier furnishes a statutory declaration as provided by a notary public stating that all invoices for labour and material provided to the Supplier relating to this Purchase Order have been paid in full.

4. Warranties

4.1 In addition to the University's rights at law and any Supplier warranties, and regardless of payment, the Supplier shall, at its own expense, replace any goods or parts thereof or redo any services which become defective or unusable as a result of faulty manufacture, design, material or workmanship for a minimum period of one (1) year (unless otherwise specified) from:

4.1.1 The date of acceptance of work and/or materials in the event such goods and services are purchased for the University's use; or,

4.1.2 The date of the acceptance by the University of the entire project for the purposes of which the University ordered the goods and services covered by this Purchase Order.

4.1.3 Specific warranties relating to goods or equipment shall survive this clause. The Supplier warrants that the goods or services covered by this Purchase Order are fit and safe for the purpose or use for which they are intended.

4.2 The Supplier warrants and agrees that it has complied, and will continue to comply, with all applicable Workers' Compensation and Employment Insurance Laws in the Province of Nova Scotia, and all other applicable laws, codes, regulations, rules and orders. The Supplier agrees to indemnify the University and save the University harmless if the Supplier fails to comply with the foregoing and, in the event of such failure, the University may cancel this Purchase Order without penalty. The Supplier

further warrants that the prices set forth in this agreement are valid under all pertinent laws, orders and regulations.

5. Insurance

5.1 Where work is performed on University premises, or is performed at other premises on behalf of the University, the Supplier may be required to provide proof satisfactory to the University that the Supplier has valid subsisting public liability and property damage insurance, and owned and non-owned automobile insurance, showing the types of coverage, and the amounts and the effective dates of the insurance, which shall not be less than \$2,000,000 (two million dollars) combined limit each accident or occurrence for bodily injury and property damage inclusive limits. Where the work to be performed warrants it, the University may require that the Supplier's liability insurance include the University as an Insured with respect to work performed by, or on behalf of, the Supplier.

5.2 The Supplier agrees to indemnify and hold harmless, the University, its Board of Governors, employees, students, servants and/or agents from and against all loss or expense by reason of the liability imposed by law upon the University, its Board of Governors, employees, students, servants, and/or agents, for damage, injury or expense because of bodily injury, including death, at any time resulting from, or sustained by any person or persons, or on account of damage to property, including loss of use thereof, arising out of or in consequence of the performance of this Purchase Order due to negligent or wrongful acts or omissions of the Supplier. The Supplier further agrees to indemnify and hold harmless the University, its Board of Governors, employees, students, servants, and/or agents from all claims, demands, losses, costs, damages, actions, suits, or proceedings initiated by third parties arising from the negligence or wrongful acts or omissions of the Supplier, its employees and other persons for whom the Supplier is in law responsible.

5.3 The Supplier shall pay all royalties and patent license fees required for the performance of this Purchase Order, and at the Supplier's own expense, defend all suits and proceedings against the University and indemnify the University against any award of damages, demands, losses, charges or costs made against the University if such suits or proceedings are based on any claim that any of the products or services supplied constitute an infringement of a patent by the Supplier. If any of the goods or services constitutes an infringement of patent and its use is enjoyed, the Supplier shall, at the Supplier's own expense, procure for the University, the right to continue using the product or service, replace or modify the product or service so it becomes non-infringing and meets the needs of the University, or pay the University for loss of use of the product or service.

5.4 Fire, flood, explosion, strikes, lock-out, epidemic, accident, shortage of transportation, or other causes beyond the reasonable control of the University or the Supplier, which prevent the Supplier from delivering or the University from receiving and/or using any of the items covered by this Purchase Order, shall operate to suspend deliveries during the period required to remove such cause, subject however, to the University's right to cancel any such delayed order.

6. Hazardous Materials

6.1 Dangerous goods shall be shipped in compliance with all applicable environmental laws, rules, regulations and procedures. For all goods or materials subject to Workplace Hazardous Material Information System (WHMIS) legislation, Material Safety Data Sheets shall accompany the goods, and all applicable packaging shall bear the appropriate WHMIS labels.

7. Gifts

7.1 It is the responsibility of the Supplier to ensure that no representative of the Supplier will extend entertainment, gifts, gratuities, discounts or special services, regardless of value, to an employee of the University, or any member of the University Board of Governors, Departments or Programs. The Supplier shall report to the Director of Finance, any attempt to obtain such favours. Further, the Supplier shall disclose if any University employee is involved with the Supplier's company in any way.

8. Sub-Contracting

8.1 The Supplier shall not assign or sub-contract its interest in this Purchase Order without the prior written consent of the University. The Terms and Conditions of this Purchase Order shall survive any assignment, and shall not relieve the Supplier of its contractual obligations.

9. Applicable Laws

9.1 The law applicable to this Purchase Order shall be the law in the Province of Nova Scotia, an appeal to the Supreme Court of Canada excepted. The agreement between the parties shall be binding upon them and their successors, executors and administrators.

10. Freedom of Information and Privacy

10.1 FOIP applies to and governs all records and may require the disclosure of such records to third parties. Furthermore, the Supplier agrees (a) to keep Records secure; (b) to provide Records to the Purchaser within seven (7) calendar days of being directed to do so by the Purchaser for any reason including an access request or privacy issue; (c) not to access any Personal Information unless the Purchaser determines, in its sole discretion, that access is permitted under FOIP and is necessary in order to provide the Deliverables; (d) not to directly or indirectly use, collect, disclose or destroy any Personal Information for any purposes that are not authorized by the Purchaser; (e) to ensure the security and integrity of Personal Information and keep it in a physically secure and separate location safe from loss, alteration, destruction or intermingling with other records and databases and to implement, use and maintain the most appropriate products, tools, measures and procedures to do so; (f) to restrict access to Personal Information to those of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors who have a need to know it for the purpose of providing the Deliverables and who have been specifically authorized by a University representative to have such access for the purpose of providing the Deliverables; (g) to implement other specific security measures that in the reasonable opinion of the Purchaser would improve the adequacy and effectiveness of the Supplier's measures to ensure the security and integrity of Personal Information and Records generally; and (h) that any confidential information supplied to the University may be disclosed by the University where it is obligated to do so under FOIP, by an order of a court or tribunal or pursuant to a legal proceeding and the provisions of this paragraph shall prevail over any inconsistent provisions in the Contract. For greater certainty, the University may not provide any authorizations under this paragraph for any information that is outside of their scope of control and responsibility. The Supplier shall ensure that it is obtaining all necessary permissions from the University as may be required in each particular situation.

11. Intellectual Property

11.1 The University shall be the sole owner of any Newly Created Intellectual Property. The Supplier irrevocably assigns to and in favour of the University and the University accepts every right, title and

interest in and to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time and irrevocably waives in favour of the University all rights of integrity and other moral rights to all Newly Created Intellectual Property in the Deliverables, immediately following the creation thereof, for all time. To the extent that any of the Deliverables include, in whole or in part, the Supplier's Intellectual Property, the Supplier grants to the University a license to use that Supplier Intellectual Property in the manner contemplated in the Purchase Order, the total consideration for which shall be payment of the Rates to the Supplier by the University.

11.2 For those parts of the Deliverables that are Supplier Intellectual Property, the Supplier grants to the University a perpetual, world-wide, non-exclusive, irrevocable, transferable, royalty free, fully paid up right and license: (a) to use, modify, reproduce and distribute, in any form, those Deliverables; and (b) to authorize other Persons, including agents, contractors or sub-contractors, to do any of the former on behalf of the University.

12. Severability

12.1 If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

13. Time

13.1 Time shall be of the essence in the performance of this Purchase Order.