

FAIRFIELD UNIVERSITY TERMS AND CONDITIONS

Notice from Fairfield University to its Suppliers:

NOTICE: These terms, conditions, and instructions shall be applicable to all current purchase orders, and to all subsequent purchase orders received by you ("Seller") from Fairfield University ("Buyer") whether received by mail, by telephone, or by electronic means (each a Purchase Order), from the date of your receipt of these terms until such time as you receive a revised edition of these terms and conditions or notice of revocation of the same. These terms, conditions and instructions shall apply to all transactions between you and Buyer until such further notice, unless your written objections are received by Buyer within thirty (30) days after you receive this document. For purpose of clarification, this Purchase Order may be issued by Buyer on behalf of itself or Fairfield Preparatory School where Buyer is acting as a purchasing agent.

Additional or different terms, conditions, or instructions applicable to a particular order may be agreed to in writing and specified in the body of the Purchase Order, or in an exhibit thereto, and, in the event of a conflict, shall take precedence over these terms, conditions, and instructions. Notwithstanding anything to the contrary contained herein, if Seller and Buyer have executed a master agreement which governs the purchase and sale of the goods in issue, the terms of such master agreement shall be controlling and shall take precedence over these terms, conditions, and instructions and any additional or different terms contained in any document generated by Seller.

Please retain this document in your company files for future reference.

ACCEPTANCE: Buyer's order expressly limits acceptance to the terms and conditions set forth on this document and the applicable Purchase Order. Any terms and conditions contained in a proposal, quotation or invoice of Seller shall not constitute a part of the contract of sale resulting from Seller's acceptance of Buyer's order unless such terms and conditions are specifically and expressly incorporated in Buyer's order. Any purported acceptance containing additional or different terms shall be deemed to be an acceptance of the terms and conditions contained in this document, notwithstanding such additional or different terms. Seller's shipment of goods or commencement of services in response to Buyer's order shall constitute acceptance on the terms and conditions set forth in this document and any additional or different terms contained in any acknowledgement or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller's acceptance.

CHANGES: No changes of any type may be made to the order, including changes in quantity, type of goods, delivery date, price, or any other provision of the order, without the Buyer's express written approval. If a change by the Buyer causes an increase or decrease in the cost or time required for Seller's performance, as soon as practical, the parties shall agree to an equitable adjustment of the purchase price and/or delivery, as applicable, and incorporate such changes as a revision change to the order. No other form of notification or verbal agreement shall be binding on Buyer.

MODIFICATION: Modification, rescission, or amendment of Buyer's order or the contract of sale resulting from its acceptance shall be ineffective unless approved in writing by an authorized representative of each party.

INSPECTION: All materials or services furnished must be as specified and will be subject to inspection and approval of University after delivery. The right is reserved to reject and return at the risk and expense of the vendor such portion of any shipment which may be defective or fail to comply with specifications without invalidating the remainder of the order/contract. Express warranties aside, the Seller must comply with relevant drawings, samples, or specifications and meet the highest professional standards.

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PACKING: Buyer's purchase order number and specific delivery location must appear on the outside of each package and on all packing slips, invoices, and allied papers. A packing slip must be included with each shipment.

STANDARD WARRANTIES: *Warranty of merchantability* – Goods provided by Seller under Buyer's order/contract shall be merchantable. All goods provided shall be of good quality within the description given by the Buyer, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given the Buyer, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

Warranty of fitness for a particular purpose – When Seller has reason to know or knows any particular purpose, for which the goods are required, and the Buyer is relying on Seller's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title - Seller shall, in providing goods to the Buyer, convey good title in those goods, whose transfer is right and lawful. All goods provided by Seller shall be delivered free from any security interest, lien, or encumbrance of which the Buyer, at the time of contracting, has no knowledge. Goods provided by Seller shall be delivered free of any rightful claim of any third person by of infringement or the like.

PRICE: Buyer's order shall be filled at the price specified on the Purchase Order, or at any lower price. If no price is specified, the order shall be filled at the lowest of (a) the price last quoted by seller, (b) the price last paid by Seller, or (c) the prevailing market price, unless a higher price is approved in writing by an authorized representative of Buyer's procurement department.

CHARGES: Prices are considered "F.O.B. Delivered" with transportation charges prepaid on all orders to the Buyer, unless otherwise indicated. Seller shall box, crate, or package as necessary for shipment without charge unless otherwise specified on Buyer's order. Seller shall bear the risk of loss of or damage to all goods purchased pursuant to the Order until they are received by Buyer.

CANCELLATION: Buyer reserves the right to cancel in whole or in part the contract resulting from the acceptance of this order if: Seller becomes insolvent; files a voluntary petition in bankruptcy, or an involuntary petition is filed to have Seller declared bankrupt and is not vacated within thirty (30) days from the date of filing; a Receiver or Trustee for Seller is appointed and such appointment is not vacated within thirty (30) days of the date thereof; Seller executes an assignment for benefit of creditors; or if Seller breaches any of the terms hereof including the warranties of Seller.

DELIVERY: If delivery of goods or performance of services by Seller is not completed within the time specified, Buyer without liability and in addition to its other rights and remedies, terminate an order, by notice effective when received by Seller, as to other goods not yet delivered or services rendered; Buyer may purchase substitute goods or services elsewhere and charge Seller for any additional expense incurred.

TERMINATION FOR CONVENIENCE: Buyer may, upon written notice to Seller, terminate the order, or any part thereof, for any reason, for Buyer's convenience. Upon notice of termination, Seller shall immediately stop all work and shipments of goods hereunder and cause its suppliers and/or subcontractors to cease their work or shipments in connection with the order. If Buyer terminates for convenience, Buyer shall pay Seller for goods and services accepted as of the date of termination, and, subject to Section titled "**LIMITATION of LIABILITY**", for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. Buyer shall have no responsibility for work performed after Seller's receipt of notice of termination.

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TERMINATION FOR CAUSE: Buyer may, upon written notice to Seller, terminate the Order, or any part thereof, if Seller breaches any of the terms and conditions of the Order, becomes insolvent or files for bankruptcy protection. By way of example, (a) failure by Seller to make timely, complete and conforming delivery of goods and services, or (b) breach the representations or warranties set forth in the Order, shall entitle Buyer to terminate the order for cause. If Buyer terminates for cause, Buyer shall have no payment obligations to Seller. Should a court of competent jurisdiction subsequently determine Buyer's termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section titled "**TERMINATION FOR CONVENIENCE**" and Seller shall have the rights under that provision, but no other rights or claims for damages.

INTELLECTUAL PROPERTY INDEMNITY: Seller shall indemnify, defend and hold Buyer harmless against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret, or other intellectual property, proprietary or contractual right of any third party with respect to the goods or services provided under the order.

LIMITATION OF LIABILITY: Buyer shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental or consequential damages. Buyer's liability on any claim for loss, damage, or expense arising in connection with this agreement shall not exceed the price of the goods or services, or units thereof, which give rise to the claim. Buyer shall not be liable for penalties of any kind. Any action arising from any alleged breach of this agreement by Buyer must be commenced within one year after the cause of action has accrued.

COMPLIANCE WITH LAW: Seller certifies that all goods or services furnished hereunder, including materials and work incidental thereto, shall comply with all applicable federal, state, and local laws and regulations concerning health, safety, and environmental standards and requirements.

GOVERNING LAW: Buyer's order and any agreement of sale resulting from its acceptance shall be governed by and construed according to the laws of the State of Connecticut,

TAX EXEMPTION: As a tax exempt 501 (c) (3) organization, Buyer is exempt from paying Connecticut sales and use tax (Permit # E 00780) and federal excise tax (Permit # 109066).

DISCOUNT TERMS: Time in connection with discounts offered will be computed from date of delivery or date of receipt of correct invoice, whichever is later. Payment or other terms identified on Seller's invoice which are contrary to those of the order shall have no force and effect unless acted upon or approved in writing by Buyer. Buyer will make every effort to pay invoices within the terms prescribed in the order, however, in no event will Buyer be obligated to pay late fees or penalties for invoices paid outside the Order terms.

PAYMENT: Buyer's standard terms for payment shall be **Net 30** days from the date of delivery, or date of receipt of correct invoice, whichever is later.

NONDISCLOSURE: Except to the extent provided in the section titled "**PUBLICITY**", NEITHER PARTY SHALL DISCLOSE ANY INFORMATION PERTAINING TO ANY TRANSACTIONS BETWEEN THE PARTIES, INCLUDING, BUT NOT LIMITED TO, Purchase Order(s), or the contract of sale resulting from acceptance of Purchase Order(s), including its existence, without prior written consent of the other party.

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CONFIDENTIALITY: Each party shall preserve as confidential all, and shall not disclose any, proprietary or confidential information of the other party (including information of a third party which a party is under an obligation to maintain confidence) to which each party may have access as a result of these terms and conditions, the Buyer's order, the contract of sale resulting from its acceptance or the presence of a party's employees at the other party's site. This confidentiality obligation shall apply to all such proprietary or confidential information of each party, whether in its original form or a derivative form, including work product resulting from Seller's performance of any order. Neither party shall take photographs of any portion of any work performed pursuant to any order or duplicate any drawings or specifications without the prior written approval of the other party. Nothing herein shall prevent the communication to others of any proprietary or confidential information which the receiving party can show was known to it or its representatives prior to its receipt from disclosing party hereunder, was lawfully obtained by the receiving party or its representatives other than by disclosure from the disclosing party, or became public knowledge through no fault of the receiving party.

PUBLICITY: Seller agrees to not use (a) Buyer's name, (b) the name of any employee, student or agent of Buyer, or (c) any trademarks, service marks or trade names owned or controlled by Buyer, in any sales, promotional, advertising or other publication, without the express prior written permission of Buyer. In no event shall Seller or its employees, agents or subcontractors represent themselves as employees or agents of the Buyer.

ASSIGNMENT: Except as otherwise provided herein, neither party shall, in any manner, delegate its duty of performance or assign its rights or obligations under Buyer's order without the prior written consent of the other party.

EQUAL EMPLOYMENT OPPORTUNITY: Fairfield University is an affirmative action employer and complies with all laws relating to Equal Employment Opportunity and Civil Rights, including Executive Order 11246, as amended; section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended. **This contractor and subcontractors shall abide by the requirements of 41 CFR ss 60-1.4(a), 60-300.5(a), and 60-741.4(a).** These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. This purchase order/contract is issued upon the condition that the Seller complies with all of the aforementioned laws and regulations.

SEVERABILITY: If any provision of the Order is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this agreement for each party remain valid, binding and enforceable.

CONFLICT OF INTEREST: Buyer's policy requires avoidance of real or apparent conflict of interest. No employee, officer or agent of Buyer shall knowingly participate in the selection, award or administration of a contract with Seller if Buyer or any member of Buyers immediate family has a material financial interest in Seller, or is negotiating, or has any arrangement concerning prospective employment with Seller. No officer, employee or agent of Buyer shall either solicit or accept gratuities, favors or anything of monetary value from Seller, including any contingent fee. If Seller has a reason to believe any officer, employee or agent of Buyer has violated any provision of this paragraph, Seller immediately shall notify Buyer of the suspected violation by sending notice thereto to the Purchasing Manager, at Fairfield University, 1073 North Benson Road, Fairfield, CT 06824, explaining

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the situation in full. Seller's failure to so notify Buyer shall be a material breach of this agreement and Buyer, at its option, may terminate this agreement.

WAIVER: Buyer's failure to insist on performance of the terms and conditions herein or to exercise any right or privilege, or Buyer's waiver of any breach hereunder, shall not thereafter waive the same or other terms, conditions, rights, or privileges, or affect any subsequent breach.

NOTICE: Any communications required by the Order shall be in writing and shall be delivered to Buyer at: Fairfield University Purchasing Department, 1073 North Benson Road, Fairfield, CT 06824.

UCC: The provisions of the Uniform Commercial Code ("UCC") covering the sale of goods are incorporated by reference if not otherwise provided herein. Unless stated to the contrary, the terms and conditions of this Order shall be interpreted according to the UCC.

If this order involves performance by Seller of installation, maintenance or other services, the following terms shall apply in addition to any applicable terms set out above:

LABOR FURNISHED BY SELLER: Seller acknowledges and agrees that in performing services, Seller will be acting solely as an independent contractor, and neither Seller nor any of its employees, associated consultants, subcontractors or employees of said consultants or subcontractors shall be deemed to be employees or agents of Buyer for any purpose. Subject to "SUBCONTRACTOR" Section, all persons employed by Seller in the performance of the services are employees of the Seller. Seller shall carry such employees on the payroll of Seller and make all required payments to state, federal and local authorities covering payroll taxes and any other payments relating to such persons' employment.

SUBCONTRACTORS: Seller shall not use any subcontractors without notifying Buyer in advance. Subject to the foregoing, if Seller should use a subcontractor, Seller shall be fully responsible for services performed by the subcontractor to the same extent as if the services were performed directly by Seller

INSURANCE: If seller will perform services on Buyer's property, Seller shall maintain in force during the performance of such services liability insurance for not less than the following limits of liability:

General Liability:	\$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
Product/Comp:	\$1,000,000.00 each occurrence, \$2,000,000.00 aggregate
Personal & Adv. Injury:	\$1,000,000.00 each occurrence
Fire Damage:	\$50,000.00
Medical Expense:	\$10,000.00
Auto Liability:	\$1,000,000.00
Workers Compensation:	Statutory

Fairfield University and Fairfield Preparatory School must be shown as *Additional Insured as respects liability*.

Thirty (30) days' **Notice of Cancellation** on all policies is required.

All Certificates should be emailed to purchasingdepartment@fairfield.edu or mailed to Fairfield University, 1073 North Benson Road, Fairfield, CT 06824, Attn: Purchasing Manager

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INDEMNIFICATION: Seller shall defend, indemnify and hold harmless the Buyer, its trustees, officers, agents and employees from and against any and all damages, claims, demands, suits, judgments, penalties, and costs (including reasonable attorneys' fees and expenses) and all liability imposed by law, for or on account of damage to property or death of or injury to any person or persons (including property and employees of Buyer), arising from the work, goods, or services provided by the Seller, its employees, agents or subcontractors pursuant to the order/contract.

LIENS: Seller agrees and warrants that no mechanics liens shall attach to Buyer's property by virtue of Seller's default in paying its employees, suppliers or subcontractors.

SECURITY: Seller shall observe all facilities access, safety, and security measures required by Buyer. Seller shall assure that its employees follow Buyer policies while at Buyer's site.

GIFTS, GRATUITIES & ENTERTAINMENT: Notice to Suppliers and Potential Suppliers of Fairfield University's Policy regarding gifts, gratuities, and entertainment.

Fairfield University greatly values the importance of good supplier relationships. These relationships are based on mutual respect and cooperation. We believe these relationships are most effective when our external business partners clearly understand the values, principles and policies which guide Fairfield University employees in the conduct of business.

One area in which we ask you to join us is vigilance in preventing real and/or perceived conflicts of interest associated with gifts, gratuities, and entertainment (theater, sporting events, fishing trips, golf, travel, etc.). Fairfield University expressly prohibits its employees from soliciting and/or accepting gifts, gratuities, or entertainment for private use, either directly or through a member of their immediate family (this includes any gratuitous payment, loan, service or accommodation of any value) from any external business partners doing business or seeking to do business with Fairfield University, even if connected to a site visit or training program. Business meals are acceptable if they are not frequent or lavish.

We have a long-standing request to our partners that no gift may be offered to any employee. The only exceptions are as follows:

- Product samples, so long as there is a legitimate business purpose.
- Calendars, desk novelties, or similar advertising items of nominal value.

Acceptance of monetary or near-money items such as cash, gift cards, gift certificates, business cards, tokens and other cash substitutes is strictly prohibited.

This conforms to Fairfield University organizational values and ethical standards of behavior. We ask you to abide by the policy throughout your relationship with Fairfield University. Disregard of this policy can lead to remedial actions including supplier disqualification.

Your continued Cooperation and support is greatly appreciated.