

John Carroll University Purchase Order General Terms and Conditions

1. ACCEPTANCE AND MODIFICATION OF AGREEMENT

This Purchase Order (P.O.) becomes a binding contract, subject to these terms and conditions, when accepted by Vendor by acknowledgement to John Carroll University (JCU), or by delivery of materials or performance of services by Vendor, in whole or in part. Any document of Vendor containing terms and conditions shall not have the effect of adding to, modifying or deleting these terms and conditions. These terms and conditions replace and supersede all prior and contemporaneous understandings, agreements or terms and conditions, written or oral, regarding the purchase. To be valid, any addition to, modification of or deletion from the P.O. must be in writing and signed by JCU's authorized representative.

2. DELIVERY

The Vendor shall be responsible for delivery of the goods to JCU at the address set forth on the P.O. or as otherwise directed in writing by JCU. All risk of loss to the goods shall be borne by Vendor until delivered to and accepted by JCU. Time of delivery is and shall remain the essence for this P.O. Default in delivery caused by acts of God and other causes beyond Vendor's control and without its fault and negligence shall not make Vendor liable for default, provided Vendor immediately notifies JCU of the event and the estimated delay in delivery. JCU shall have the right to cancel all or any portion of this P.O. that has not been delivered on time or if Vendor fails to proceed with the P.O. Acceptance by JCU of a late delivery of either a whole or a part of the P.O. shall not constitute a waiver of its claim for damage caused by the late delivery or its right to cancel the remaining portion of the P.O. If deliveries are behind schedule, whether or not as a result of the fault of Vendor, JCU may request Vendor to ship by express. In such event, such deliveries shall be made by express, and Vendor shall pay or promptly reimburse JCU for the difference between regular freight and express freight rates.

3. SHIPPING AND PACKING

All items ordered shall be suitably packed and marked for shipping. Goods are to be shipped in accordance with any direction or instruction on the P.O. JCU shall not be charged for any packing, marking or boxing not separately itemized in the P.O. Vendor shall be liable to JCU for any loss or damage resulting from Vendor's failure to provide adequate protection during shipment.

4. INVOICES

Discount items must be stated on all invoices. P.O. number must appear on all shipping documents, invoices, quality certification, if any, and packing sheets.

5. PRICE

If price is omitted from the P.O., it is agreed that Vendor's price will be Vendor's lowest prevailing price provided such price is not higher than previously quoted to or charged JCU. If the price is to be higher, Vendor must first obtain JCU's written agreement to such higher price.

6. OVERSHIPMENTS

Materials shipped on this P.O. must not be in excess of quantity ordered unless authorized by JCU in writing. Overshipments may be returned at Vendor's expense.

7. CHANGES

JCU may at any time make changes in the drawings, specifications, samples, quantities, delivery schedules, shipments, or other descriptions to any article, material and work covered by this P.O. If any such change causes an increase or decrease in the amount due under this P.O., an equitable adjustment shall be made by mutual agreement, reduced in writing and executed by authorized representatives of both parties. Any claim by Vendor for adjustment under this clause must be asserted in writing within 30 calendar days from the date of receipt by the Vendor of the notification of change.

8. WARRANTIES

In addition to its standard warranty and/or service guaranty, if any, Vendor also warrants that all goods supplied hereunder shall:

- (a) conform to JCU's drawings, samples, descriptions and specifications, if any, whether set forth in the P.O. or in any documents attached to or referred to in the P.O.;
- (b) be free and clear of all liens and encumbrances;
- (c) be free from any defects in design, material or workmanship and be of good and merchantable quality;
- (d) be fit and safe for all purposes for which the goods and services are purchased, and of which Vendor is informed by JCU or is otherwise aware; and
- (e) comply and have been produced, processed and delivered in conformity with all applicable federal, state or local laws and regulations.

The foregoing warranties shall survive inspection, delivery and payment. JCU shall have the right to inspect and return all defective items to Vendor at Vendor's expense for repair, replacement or refund at JCU's option, as well as remedies permitted by law. If Vendor fails to take such action as to defective items, JCU may cancel any remaining balance of this P.O., and Vendor shall refund any payment made.

9. PROPRIETARY INFORMATION

All specifications, drawings, designs, know-how, trade secrets, sales information, technical data, inventions or other proprietary, non-public or confidential information that are disclosed by JCU to Vendor, or which are developed by JCU or Vendor in connection with the subject matter of this contract, shall be the sole and exclusive property of JCU, and Vendor agrees to retain all such proprietary information in confidence and not to disclose it to other parties without the written consent of JCU.

10. INDEMNITY, INSURANCE

Vendor, its heirs, successors, and assigns shall indemnify and hold harmless JCU, and its affiliated entities, their successors, assigns, employees and users of their products against all damage claims, suits at law or in equity, demands or losses of any kind arising out of or alleged to have arisen out of, or in connection with Vendor's performance of this contract, including any claims related to liens or encumbrances. This obligation shall include the costs arising out of or in connection with JCU's voluntary or involuntary recall, recovery, or withdrawal of products in compliance with any federal, state or local laws or regulations.

Vendor shall maintain, at a minimum, general liability insurance in the amounts of \$1 million per occurrence and \$2 million aggregate, as well as comprehensive/business automobile liability and worker's compensation insurance in the amount of \$1 million each. Vendor shall provide evidence of such insurance to the University, upon request. The certificates of insurance must include that contractual and products liability coverage is provided.

11. INTELLECTUAL PROPERTY

With respect to the goods and services provided in the P.O., Vendor agrees to indemnify and hold harmless JCU, its officers, agents, successors, assigns, employees and users against all damages, claims, demands, attorney's fees and costs of any kind for actual or alleged infringement of any trade-name, trademark, patent, or other intellectual property of a third party. The obligation shall survive inspection, delivery and payment.

12. TERMINATION AT JCU'S OPTION

This P.O. may be terminated by JCU in whole or in part at any time upon written notice. Upon receipt of notice of termination, the Vendor shall stop all work under this P.O. Any claim of Vendor shall be settled on the basis of the reasonable costs it has incurred in the performance of the P.O.

13. TERMINATION FOR DEFAULT

JCU shall have the unrestricted right to terminate this P.O. upon the occurrence of any one or more of the following events: (1) Vendor's insolvency or commission of an act of bankruptcy; (2) filing a voluntary or involuntary petition of bankruptcy by or against Vendor; (3) appointment of a receiver for Vendor by any court of competent jurisdiction; (4) Vendor's failure to make deliveries within the time specified by this

P.O.; or (5) Vendor's breach of any representation or warranty contained in these terms or any failure to perform any other provision in the P.O. or these terms. The acceptance of goods or performance of services after the occurrence of any of the above enumerated events shall not affect the right of JCU to terminate under this paragraph.

14. WAIVERS

Any waiver of strict compliance with the terms of this P.O. shall not be a waiver of JCU's right to insist upon strict compliance with the terms of the P.O.

15. PERFORMANCE BY VENDOR

Vendor agrees not to assign this order or delegate the performance of its duties without consent in writing of JCU. Any assignment or delegation without the written consent of JCU shall effect, at the option of JCU, a cancellation of all of JCU's obligations.

16. WORK ON JCU'S PREMISES

If any work under this P.O. is to be performed on JCU's premises, Vendor's personnel and agents shall comply with all reasonable requests, rules, and regulations of JCU regarding personal and professional conduct, and shall conduct themselves in a businesslike and professional manner. Vendor agrees to defend, indemnify and hold harmless JCU and its employees and agents from and against all claims, losses or damages due to injury or death to any persons, including Vendor's agents or employees, and damage to or the destruction of any property resulting from Vendor's negligent acts or omissions arising out of such work.

17. USE OF NAME, TRADE-NAME, AND TRADEMARKS

Unless authorized by JCU in writing, Vendor shall not use the name of JCU and/or any employee or any JCU trademark in any manner, including in any promotional or marketing materials.

18. TAXES

The JCU is generally exempt from federal, state and local taxes for purchases made in furtherance of its exempt mission, including Ohio sales and use taxes and federal excise taxes. Vendor shall not charge JCU for any taxes in connection with this P.O., unless otherwise agreed by JCU. Upon request, JCU will issue to the Vendor an Exemption Certificate.

19. CONDUCT AND COMPLIANCE WITH LAWS.

In the performance of this P.O., Vendor will comply with all applicable federal, state and local laws and regulations, as well as applicable University policies, including all laws and policies related to non-discrimination and harassment.

20. GOVERNING LAW

This P.O. shall be governed by the laws of the State of Ohio. Actions or proceedings arising from the P.O. shall be heard in Cuyahoga County in the State of Ohio.

21. NOTICES

Any notices to JCU pursuant to this P.O. should be sent in writing and shall be deemed given when delivered personally or via reputable national overnight carrier, or shall be deemed received after three days of mailing by certified mail, return receipt requested. Notices should be addressed to Lou Genovese, Director of Purchasing, John Carroll University, 1 John Carroll Boulevard, University Heights, OH 44118.

22. STATUS OF CONTRACTOR

In all matters relating to this P.O. and the performance of services hereunder, the status of the Vendor shall be that of an independent contractor and not that of an employee, agent or partner of JCU. The Vendor shall have no power or authority to act on behalf of JCU or in its name or to bind JCU, either directly or indirectly, in any manner.