

## General Terms and Conditions of Purchase Order

As used herein, "KCC" means Kellogg Community College, and "Seller" means the seller of the goods or services ("Products") that are the subject of this purchase order ("PO").

1. **Acceptance:** The PO is KCC's offer to purchase goods and/or services from Seller. KCC's placement of a PO with Seller is expressly conditioned upon Seller's acceptance of all the terms and conditions of purchase contained in this document and on the order itself. Seller accepts KCC's terms by acknowledging and fulfilling the order. Once accepted, the PO is a binding contract. Any additional or different terms or conditions which may appear in any communication from Seller are expressly disclaimed and shall not be effective or binding. No such additional or different terms or conditions in any form shall become part of the PO despite KCC's acceptance of goods or services, unless KCC specifically recognizes and assents to their inclusions.
2. **Price:** If any price is higher than specified on the face of the PO, do not ship without specific authorization in writing from KCC. If price is omitted, it is agreed that the goods or services shall be billed at the price last quoted or paid, or the prevailing market price at time of delivery, whichever is lower, unless otherwise specified. The price locks on issuance of the order. The price includes all costs and taxes associated with the goods and/or services including but not limited to shipping, delivery, expediated freight, taxes, tariffs, and import duties.
3. **Quantity:** The quantity of material or services ordered or released shall not be exceeded, and KCC shall not be liable for and may reject any material delivered in excess of that so ordered or released.
4. **Identifications:** All invoices, packages, shipping notices, instruction manuals and other written documents affecting the order shall contain the applicable PO number. Seller's stock number and KCC's stock number must appear on all invoices and packing lists. Packing lists shall be enclosed in each box or package shipped pursuant to the PO identifying the contents therein. An invoice will not be processed for payment until all items invoiced are received.
5. **Delivery:** Time, quantity, and accuracy of deliveries are of the essence. It is the Seller's responsibility to ensure time, quantity and accuracy terms are met using any means necessary. Seller shall immediately notify KCC in the event that Seller's timely performance under a PO is delayed or likely to be delayed, in whole or in part. The due date shown on the PO shall be the date on which the goods will be delivered to the KCC. The title and risk in the goods shall remain with Seller until the goods are delivered to the location specified in the PO and a delivery receipt is signed by an authorized representative of KCC, at which time title and risk in the goods shall transfer to KCC. Seller shall ensure the goods are suitably packed to avoid damage while in transit or storage. Delivery to KCC before the due date is encouraged and will be accepted without penalty. If the order has not been filled completely within 14 days of the original due date on the PO, KCC is entitled to withdraw the order with immediate effect, without being obliged to grant an extension. If a fixed delivery date other than the original due date noted on the order was confirmed and agreed upon by both parties in writing, then KCC can cancel the PO within 30 days of when that date has passed. In the case of Seller failing to meet these terms of delivery, KCC will have the right to cancel any or all open orders for the item regardless of whether the open orders are past due or have not yet met the delivery due date. Regular or frequent failure to meet delivery due dates, may result in cancellation of ALL open orders for ALL items from Seller.
6. **Payment:** The payment terms or cash discount period available to KCC shall commence on the date of receipt of the goods or performance of services or on the date of receipt of the invoice, whichever is later.
7. **Setoff:** Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other right it may have, KCC reserves the right at any time to setoff any amounts it owes to Seller under this Agreement against any amount payable by Seller to Seller. Seller must continue to perform on subsequent orders while the KCC withholds payments for another due to a bona fide dispute.
8. **Packing and Shipment:** Goods shall be packaged by Seller in a manner which assures that they are protected against deterioration or contamination. All deliveries shall be to the F.O.B. delivery point in the PO.
9. **Extra Shipping Costs:** No charges will be allowed for drayage, boxing, storage, or packing unless with KCC's prior written consent.
10. **Changes:** KCC reserves the right at any time to make changes in any one or more of the following: (a) methods in shipment or packing; (b) place of delivery; (c) time of delivery; (e) manner of delivery; and (f) quantities. If any such change causes an increase or decrease in the cost of, or in the time required for, performance of such order, an equitable adjustment shall be made in the price to be paid by KCC, or delivery schedule, or both. Any claim by Seller for adjustment hereunder must be approved by KCC in writing before Seller proceeds with such change. Changes made by Seller without KCC's authorized written consent shall be made at the sole risk of Seller with no right of financial or other recourse against KCC.
11. **Patent Indemnification/Intellectual Property:** Seller warrants freedom from patent infringement and from interference with any third party's intellectual property right and shall indemnify and hold harmless KCC against any costs (including reasonable attorney's fees), liabilities, or judgments arising from any claim of patent infringement or alleged violation of any third part intellectual property right when Seller's products are used for their normal process, in the form sold by Seller. KCC shall promptly notify Seller of any such claim or suit brought against it on account of its purchases or use of Seller's goods or materials. This section shall not apply in any instance where such claim or suit arises solely from Seller's good faith compliance with KCC's specification.

12. **Occupational Safety and Health Act:** Incorporated in this PO by reference thereto are all laws, interim and permanent standards, rules and regulations of the Occupational Safety and Health Act, and all state and federal laws and regulations relating to safety and health standards. By acceptance of this PO, Seller agrees to hold KCC harmless from any liability arising from the failure of such purchased supplies, articles or services to comply with such laws, standards, and regulations. every kind.

13. **Liens, Claims, and Encumbrances:** Seller warrants and represents that all the goods will, when delivered, be free and clear of all liens, claims, or encumbrances of every kind.

14. **Inspection and Acceptance:** All goods and services sold hereunder shall be subject to inspection and acceptance by KCC and delivery notwithstanding any payment. After receipt of the goods or services, KCC shall have a reasonable time (which time shall not be less than ninety (90) days) within which to inspect the good or services prior to KCC's acceptance. Nonconforming goods shall be returned freight collect, and Seller shall be debited for inbound transportation cost, handling, and packing expense.

15. **Warranty:** All goods and materials sold and delivered by Seller to KCC shall be in full conformity with KCC's specifications on the face of the PO or, if none, shall be in conformity with Seller's published specifications and samples provided to KCC and will be sufficient for the use intended by KCC and free from defects in material and workmanship. The foregoing warranty shall survive any acceptance of goods or materials and shall be in addition to any warranty expressly furnished to KCC by Seller and warranties implied by or available at law and shall continue notwithstanding any inspection or acceptances by KCC.

16. **Remedies:** The failure of either party to perform any term, condition, or covenant made or undertaken by it, or the violation of any warranty or representation in this agreement, will be deemed a default of this agreement. If a default occurs and remains uncured by the defaulting party for ten (10) days after the other party has given a notice of default, the non-defaulting party will have the right to terminate this agreement. The right to terminate will be cumulative and in addition to any and all other rights and remedies available to the parties.

17. **Termination:** This PO may be terminated by KCC in whole or in part with no obligation or liability due to the Seller's breach of any provision of this PO, including without limitation the Seller's failure to deliver the Goods or perform the Services in full conformance with the PO. In the event KCC terminates this PO without cause, KCC shall give the Seller thirty (30) days' notice of termination and shall pay the Seller for the Goods delivered and/or Services performed until the date of notice of termination. Upon receipt of the notice of termination from KCC, regardless of the reason for the termination, the Seller shall immediately stop all work in progress and use best efforts to mitigate any costs associated with the termination.

18. **Limitation of Liability:** The maximum liability of KCC to the Seller arising out of the PO regardless of the basis of liability or the form of action shall not exceed the fifty percent (50%) of the total price stated in the PO. To the extent permitted by local law, in no event shall KCC be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages, even if the Seller has been informed of their possibility.

19. **Indemnification:** The Seller shall indemnify KCC against any and all loss, costs, expenses and liabilities caused to KCC whether directly or as a result of the action, claim or demand of any third party, by reason of any breach by the Seller of any one or all of these terms and conditions. In the event of such a claim, demand, action or allegation the Seller shall at its expense defend or settle any such claim, action or allegation brought against KCC and shall pay any and all damages, attorney's fees and costs incurred and/or awarded against KCC provided that KCC gives written notice to the Seller of the alleged infringement. The Seller shall be entitled to defend any such claim, action or allegation and make settlement thereof at its own discretion and KCC may not settle or compromise such claim, action or allegation, except with prior written consent of the Seller. KCC shall give assistance and information as the Seller may reasonably require for settling or opposing such claims.

20. **Confidentiality:** Neither party shall disclose any information from the source party which is of a proprietary, confidential or technical nature ("Confidential Information") to any third party following the date of initial disclosure unless such disclosure is lawfully required by any governmental agency, is otherwise required to be disclosed by applicable law or is necessary in any legal proceeding establishing rights and obligations under the PO. Each party agrees not to provide copies of the PO or otherwise disclose the terms of the PO to any third party without the prior written consent of the other party unless for their internal use. The Seller further agrees not to publish or use such advertising, sales promotions, press releases or publicity matters without such prior written approval. Any approval required under this section shall not be unreasonably withheld or delayed by either party.

21. **Assignment:** The Seller may not assign or delegate its rights and obligations under the PO without the prior written consent obtained from KCC.

22. **Severability:** If any provision of the PO is invalid or unenforceable under any statute, regulation, ordinance, executive order or other source of law, such provision shall be deemed reformed or deleted as the case maybe, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of the PO shall remain in full force and effect.

23. **Entire Agreement:** The PO constitutes the entire agreement between the Seller and KCC with respect to the matters contained in the PO and supersedes all prior oral or written representations and agreements. Notwithstanding anything to the contrary contained herein, the PO shall not constitute a waiver or release of, any rights and claims against the Seller arising out of or relating to any fraud or duress in contraction with the formation of this PO or a breach or anticipatory breach of any previous existing contract between the Seller and KCC.

24. **Governing Law:** this PO shall be governed by and construed according to the laws of the state of Michigan . Venue for any cause of action related to this PO shall be in Calhoun County, Michigan.