

# **PURCHASE ORDER TERMS AND CONDITIONS**

## **FOR LAFAYETTE COLLEGE**

***By providing goods or services to the College, Supplier is acknowledging and accepting the terms and conditions found in this document, as well as any terms and conditions specifically agreed to in writing in any supplemental executed Agreement between your organization and the College. Supplier's standard terms and conditions, provided as part of quote or PO acknowledgement process, are hereby expressly DENIED, and DO NOT APPLY to any College purchases, unless specifically acknowledged and agreed to in writing, in whole or in part, by the College's procurement staff.***

This Purchase Order (or "Agreement") and these Terms and Conditions shall be deemed to have been fully and completely accepted by the Supplier if/when any of the following occur; (i) shipment of the goods or any portion thereof; (ii) commencement of any work onsite or; (iii) performances of any services hereunder. Any discrepancies regarding fulfilling the terms of this Purchase Order must be resolved between Lafayette College (herein after, "College") and Supplier **prior** to the delivery of any service or commodity to the College. The College reserves the right to change the Term and Conditions at any time, for any reason, at its sole discretion.

**1. General** –The Goods and/or Services furnished by the Supplier and covered by the Purchase Order are governed by all the Terms and Conditions set forth herein.

**2. Conflict in Terms and Conditions** - If any of these Terms and Conditions are not acceptable, Supplier must so notify College immediately **in writing**, setting forth the reason(s) and any proposed edit(s) for each specific requested modification. All technical specifications, drawings, notes, instructions, or information referred to on the associated Purchase Order shall be deemed to be incorporated herein by reference. In case of any conflict in Terms and Conditions, Lafayette College's Purchase Order Terms and Conditions found in this document shall prevail. Any notifications by supplier shall not be deemed accepted unless and until accepted in writing by the College.

**3. Acceptance and Inspection** – **All goods, supplies, and equipment, unless otherwise specified on the Purchase Order, shall be NEW and UNUSED, and satisfactory for the specified use.** No goods received by the College pursuant to the Purchase Order shall be deemed accepted until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at Supplier's expense for prompt full credit or replacement, at the College's sole option. The College reserves the right to test any goods or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without College's authorization.

**4. Delivery and Title** – All deliveries shall be FOB destination, pre-paid, or DDP. Delivery is to be made only to the destination stated in the Purchase Order and must be made between 8:45 A.M. and 3:30 P.M., Monday through Friday, legal and College holidays excluded, unless otherwise stated in writing by College. Supplier is responsible for maintaining and providing proof of delivery. Supplier is responsible for contacting contact name on Purchase Order for delivery appointments, required equipment at delivery site, and/or delivery clarifications.

**5. Quantities** – The College assumes no obligation for articles or materials shipped in excess of the quantity ordered. Any overage shipments will be subjected to rejection and will be returned at Supplier's expense.

**6. Packing** - Supplier assumes full responsibility for packing, crating, marking, transportation, proper documentation, and liability for loss and/or damage even if College has agreed to pay freight, express or other transportation charges. Packing slips with PO number must accompany all goods deliveries.

**7. Invoicing and Purchase Order Number** - *The College's Purchase Order number must appear on all invoices, packing slips, shipping documents, and labels.* Failure to provide the PO number may delay payment, at no cost or penalty to the College. Supplier will use best efforts to include College's PO number as part of the delivery address on all goods and services delivered to College. Failure to do so will cause College significant delivery difficulties and delays.

**8. Time and Performance** – Time is of the Essence in the performance of this Agreement. The College is relying on the promised delivery date, installation, and/or service performance set forth in supplier's bid or quote proposal as material and basic to the College's acceptance. Supplier warrants that it has the experience and skill to perform services in a professional manner as customary for their industry.

**9. Delays** - If delivery or completion dates cannot be met, Supplier shall immediately inform College in writing. Such notice shall not, however, constitute a change to the delivery or completion terms of this Agreement unless College modifies this Agreement in writing. If any goods are not received or if any element of the services are not completed by the date specified, College, at College's option and without prior notice to Supplier, may either approve a revised date or may cancel this Agreement and may obtain such goods or services elsewhere and in either event, the Supplier shall be liable to College for any resulting loss incurred by College. Supplier's sole remedy for a delay caused by College shall be an extension in the time for Supplier's performance equal to the duration of College's delay.

**10. Insolvency** – If the College has reasonable cause to believe Supplier is insolvent, or if any petition in bankruptcy or under any law for the relief of debtors is filed by or in respect of Supplier, then at the sole option of College, the Agreement shall immediately terminate. In no event shall the Agreement become an asset in any such proceeding nor shall College be bound hereby after any act of bankruptcy by Supplier. Any delay by College in the exercise of the right to terminate under this section shall not diminish or waive that right.

**11. Price Warranty (MFN)** - Supplier warrants that the price(s) for the goods or services stated herein are no less favorable than those extended to any other customer (whether government or commercial) for the same or similar goods or services in similar quantities. In the event Supplier reduces its price(s) for such goods or services before Supplier fully performs under this Agreement, Supplier agrees to reduce the prices stated herein accordingly. Supplier further warrants that the prices stated herein are complete, and that **no additional charges or surcharges of any type, including but not limited to shipping costs, shall be added without College's express written consent.** College will refuse payment of any such additional charges, without penalty.

**12. General Warranty** – Supplier expressly warrants that all articles, material, and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by the College and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive Agreement and shall not be deemed waived either by the College's acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Supplier further warrants all articles, material, and work performed for a period of one (1) year, unless otherwise stated, from date of acceptance of the items delivered and installed, whichever is later. All repairs, replacements or adjustments during the warranty period shall be at Supplier's expense.

**13. Payment** - Except as otherwise provided in the Agreement, payment shall be Net 30 days from the date of delivery, or date of receipt of correct invoice, or date of completion of service, whichever is later.

**14. Discount** - Discount time will be calculated from the date of performance of the service, delivery of the goods, or from receipt of the correct invoice, whichever is later. Discount terms must comply with all applicable laws and regulations, must be given at time of purchase, and must be stated on the invoice.

**15. Rebates and Credits** - Supplier rebates and credits, including but not limited to those for correction of invoice discrepancies, returned goods, good-faith or performance offsets, and volume/price tier rebates, must be issued in the form of a check made payable to Lafayette College. Checks must be: a) timely delivered and b) clearly labeled "Credit" specifying either the Supplier's Agreement or the applicable PO.

**16. Tax Exemption** - The Parties acknowledge that Lafayette College is a non-profit educational institution and tax-exempt entity, PA exemption 75-08039-4. Supplier will take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of Lafayette College. Nothing in this section is meant to exempt a construction contractor from the payment of any of the taxes or fees that are required to be paid with respect to the purchase, use, rental, or lease of tangible personal property or taxable services used or transferred in connection with the performance of a construction contract.

**17. Limitation of Liability** – Nothing in this Agreement shall limit the liability of Supplier under law or custom.

**18. Indemnification** To the fullest extent permitted by law, Supplier shall defend (to the extent permitted by Supplier's insurance coverage), indemnify, and hold harmless College, its trustees, officers, employees, and agents from and against any and all liabilities, claims, demands, causes of action, damages, losses, and expenses, including, without limitation, attorneys' fees, (collectively, "Losses") arising out of or in connection with: (a) any act or omission of Supplier or any of its employees, agents or Subcontractors in the performance of the Services being performed under this Agreement; (b) any breach of or failure to perform any of the terms or conditions of this Agreement by Supplier, its employees, agents or Subcontractors, and their employees and agents including, but not limited to Supplier's obligations concerning timely payment to Subcontractors; or (c) the inaccuracy or breach of any representation, warranty or covenant made by Supplier in this Agreement. Nothing contained herein shall be construed to impose upon Supplier the obligation to indemnify College to the extent the liability of College or the claim or judgment against it arises from the negligence of College, its agents or employees.

**19. Insurance** – If services are being procured under this Agreement, before any of the services outlined within this agreement are performed, Supplier, and any of its subcontractors) at its/their own cost and expense, shall provide and maintain during the performance of its services hereunder, insurance as described below with insurers rated A-, Class X or better by A.M. Best Company in a form satisfactory to Lafayette College. A failure to submit a Certificate of Insurance (COI) that fully conforms to the minimal or required insurance requirements may at the College's sole option render this Agreement immediately null and void. The COI must be submitted to Lafayette College prior to or at the same time as execution of this Agreement. Supplier warrants that its Insurance Carriers are accurately informed regarding the business activities of the Supplier and intends to cover those business exposures. Minimum insurance requirements are stated below. College reserves the right, at its sole discretion, to require additional insurance coverages or increased limits on a Purchase Order. The insurance carrier must be licensed to do business in Pennsylvania. **Supplier shall not commence work under this Agreement until it has obtained all of the insurance required under this Section.** Failure on the College's part to confirm receipt of the Certificates described, does not alleviate the Supplier or its subcontractor(s) from meeting the requirements of this Section. Any equipment of Supplier used in performance of Services must be adequately insured by Supplier while on College property, at Supplier's sole expense

a. Workers' Compensation and Employers Liability If applicable to the Services performed under the purchase order, Supplier shall maintain workers compensation and employers liability insurance. The workers' compensation insurance shall meet all applicable statutory requirements for the Commonwealth of PA. Coverage must apply to all employees including, but not limited to, sole proprietors, members, partners, officers, and directors. The employer's liability, and if necessary commercial umbrella, limits

shall not be less than \$1,000,000 for each employee for each accident, and not less than \$1,000,000 in the aggregate.

b. Commercial General and Umbrella Liability. If applicable to the Services performed under the purchase order, Supplier shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance all on an occurrence basis with a limit of not less than \$1,000,000 each occurrence. CGL insurance shall be written on ISO occurrence based form CG 00 01 10 93 (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, bodily injury, sexual misconduct, products liability, completed operations, contractual liability, and personal injury and advertising injury; \$3,000,000 aggregate limit for products/completed operations; and a \$3,000,000 general aggregate limit. This Commercial General Liability insurance is to include coverage for the hazards of Contractual Liability and Broad Form Property Damage.

In all cases where excess or umbrella policies are used in order to meet the minimum required levels of coverage, the coverage provisions of such excess or umbrella liability policies must exceed or follow form of the underlying policies. This insurance, including insurance provided under the commercial umbrella, if any, shall apply as primary, non-contributory, and not excess coverage with respect to any other insurance or self-insurance programs afforded to, or maintained by the College.

c. Business Auto and Umbrella Liability. If applicable to the Services performed under the purchase order, Supplier shall maintain business auto liability including comprehensive third party coverage for injury (including death) or property damage and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos).

Business auto coverage shall be written on an occurrence based ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

d. Cyber Liability. If applicable to the Services performed under the purchase order, Supplier shall maintain cyber liability technology Errors and Omissions (E&O) / technology products E&O with a limit of not less than \$1,000,000 and in the annual aggregate, inclusive of defense costs and breach response sub limits of at least 50% of the liability limit.

Such insurance shall cover liability arising out of network security / privacy liability including:

1. Computer or network systems attacks
2. Denial or loss of service
3. Introduction, implantation, or spread of malicious software code
4. Unauthorized access and use of computer systems
5. Privacy liability
6. Breach response coverage

If policy is written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the Agreement. Lafayette College must be named as an Additional Insured on the Cyber Liability policy. Further, an appropriate endorsement deleting the Insured v. Insured exclusion must be evidenced, so as not to impede a claim by College and subsidiaries for a wrongful act of the Provider.

e. *Crime* If applicable to the Services performed under the purchase order, Supplier shall maintain at its sole cost and expense, in full force and effect, Third Party Crime/Employee Dishonesty Insurance in an amount not less than \$1,000,000. The insurance shall name Lafayette College as a loss payee.

**20. Termination** - Either Party may terminate this Agreement giving 15 business days' notice for any reason or no reason. Supplier agrees that a violation by Supplier of any of the terms, obligations, or certifications under this Agreement shall be grounds for immediate termination by the College. Any deposits or pre-payments made by College must be immediately returned by Supplier via certified funds in \$US dollars.

**21. Change Order** – No modification or amendment of any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer or representative of each of the Parties.

**22. Equipment** - Equipment furnished under this Agreement must comply with all federal, state and local codes and regulations covering educational institutions (or, if applicable, healthcare providers) in effect at the time of the purchase. *All goods, supplies, and equipment, unless otherwise specified on the Purchase Order, shall be new and unused, and satisfactory for the specified use.*

**23. Compliance with Laws/Policies** – Supplier warrants and certifies that in performance of this Agreement, it will comply with all applicable statutes, rules, regulations, including laws and regulations pertaining to labor, wages, hours, safety, and other conditions of employment, and data security.

a. The Supplier shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of this Agreement.

b. EXPORT CONTROL LAW COMPLIANCE: To the extent Supplier is providing devices/technology or data under this Agreement, Supplier acknowledges that a foreign national(s) may use the device/technology/and or data at the College. Supplier shall comply with all U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, in the performance of this Contract. In the absence of available license exemptions/exceptions, Supplier shall be responsible for obtaining the appropriate licenses or other authorizations, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance. Supplier shall be responsible for all regulatory record keeping requirements associated with the use of licenses and license exemptions/exceptions. Prior to disclosing or transferring to College any hardware, technical data, software or product utilizing any such data which is subject to export controls under federal law, Supplier shall notify the College in writing of the nature and extent of the export control. The College shall have the right to decline any such technical data or product utilizing such data. In the event Supplier sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the College has the right to immediately terminate this Agreement without penalty.

**24. SDS** - All chemicals, equipment and materials proposed and/or used in the performance of this Agreement shall conform to the requirements of the Occupational Safety and Health Act of 1970. The SDS (Safety Data Sheets; formerly Material Safety Data Sheets: MSDS) must be sent along with applicable products to communicate the hazards of chemical products.

**25. Working on College's Campus** – The following additional conditions shall apply to work performed on campus property. All Suppliers and its workers are expected to perform work safely, efficiently, and meeting all OSHA guidelines.

a. Supplier shall maintain on the site at all times a sufficient workforce to carry out its obligations in an efficient and timely manner.

- b. Supplier is responsible for securing all applicable licenses, permits, and be in compliance therewith, and the price on this Agreement shall be deemed to include the cost of these items.
- c. Any property of Supplier left on the site upon completion of the services shall be considered abandoned by Supplier and may be discarded or appropriated by College.
- d. Supplier's employees assigned to provide services on site shall satisfy any health and immunization and background checks requirements established by College policy.
- e. When informed by College that such is required due to the location and nature of the services, Supplier will not assign to the site any person who fails to satisfy background checks or health requirements required by applicable College policy for the services or location.
- f. Keep shirts on while on property
- g. Refrain from using obscenities
- h. No cat-calls and refrain from approaching students
- i. Hard hats required when there is ANY chance of overhead hazards
- j. Refrain from entering buildings unless related to site work and without prior approval
- k. Hold a pre-construction meeting to review job specific requirements such as acceptable work hours, staging area, bathroom facilities, water access, designated parking, building access, etc.
- l. Avoid destruction of property-landscaping, signage, buildings, etc. Report any damage immediately to designated facilities representative.
- m. Park in designated areas
- n. Keep fire lanes open and unobstructed
- o. Keep work area clean and free of fire hazards, especially at end of daily work.
- p. Provide adequate lighting and security of worksite
- q. Ensure work areas are secured.
- r. Follow OSHA guidelines for work practices ([www.osha.gov](http://www.osha.gov))
- s. In the event of emergency, contact Lafayette Public Safety, 901 Bushkill Drive, (610) 330-4444 (Emergency) or (610) 330-5330 and provide the location. Follow emergency plans.
- t. Contact designated facilities representative if problems arise during work performance.
- u. Any changes to work plans in the field should first be discussed with Facilities Operations
- v. Have written safety plans for emergency response and fall protection. Keep plans onsite and immediately available. Keep a record of which workers are on site each day.
- w. Designate a competent safety representative, available to oversee this project

- x. Ensure workers are competent and properly trained
- y. Ensure workers are equipped with proper safety equipment/PPE and are trained in proper usage.
- z. Provide traffic control when necessary
- aa. Lafayette equipment may not be borrowed or used by Supplier for work. It is the Supplier's responsibility to provide all necessary equipment and materials unless specifically stated otherwise in writing by Lafayette College.
- bb. Special requirements may need to be followed for hot work, scaffolding, and confined spaces. Required safety precautions and actions should be reviewed prior to initiation of work. Follow applicable OSHA guidelines.
- cc. Supplier is strongly encouraged to follow the highest level of sustainable building practices for any construction, renovation or demolition project. This includes recycling construction and demolition debris to reduce the environmental impacts of renovation and new construction.
- dd. Contractors shall be committed in the conduct of their business to the highest ethical standards, which include, but are by no means limited to, honesty, integrity, trustworthiness, respect for the unique intrinsic value of each human being, and avoidance of improprieties and conflicts of interest, as well as the appearance of either.
- ee. Lafayette is committed to providing a work environment free from harassment of any kind. Harassment in the workplace is behavior that is unwelcome and offensive to specific individuals or groups or that unreasonably disrupts their work. Harassment can take many different forms and may include verbal or physical conduct that denigrates or shows hostility toward an individual and can reasonably be perceived as threatening, offensive, and/or insulting
- ff. Lafayette College believes in a safe and secure work environment that is free from violence and threats. Threats, intimidation and acts of violence are not tolerated, period. Supplier contractors and employees of supplier are prohibited from possessing firearms, explosives, other weapons, or illegal drugs while working on College property. This includes firearms carried inside an individual's personal automobile parked on campus, and parking areas utilized by both College employees and the public, unless otherwise permitted by state or local law.

**26. Limitation to the Use of the College's Name** - The College agrees that Supplier may use the College's name only in experience citations to current or prospective clients, but not in any public advertising, publications, social networking sites, or on the Internet, without the College's express prior written consent to the specific contemplated use. Such requests shall be directed to the College's Communications Office. This restriction shall extend to all tiers of sub-consultants / subcontractors of Supplier and any other party engaged by Supplier as a result of this Agreement.

Supplier shall not, without express prior written consent in each case, use any College trademark in advertising, publicity, promotional, or any other activities or context including social networking sites and the Internet. This restriction shall extend to all tiers of sub-consultants / subcontractors of Supplier and any other party engaged by Supplier as a result of this Agreement.

**27. Non-Waiver** - If College or Supplier waive any power, right, or remedy arising hereunder or under any applicable law, the waiver shall not be deemed a waiver of that power, right, or remedy upon a later recurrence of similar events. No act, delay or course of conduct by College or Supplier shall be deemed to constitute a waiver by College or Supplier. Any such waiver may only be effected by an express written waiver signed by the waiving party.

**28. Governing Laws/Venue** - All disputes regarding the construction, interpretation and the parties' obligations under this Agreement, shall be governed by the laws of the Commonwealth of Pennsylvania, notwithstanding any of that state's laws to the contrary. Any lawsuit arising out of the terms and conditions of this Agreement must be brought in the Pennsylvania Courts located in Northampton County, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania.

**29. Intellectual Property** - All deliverables shall be owned by, and shall be the exclusive property of, the College and considered a "WORK MADE FOR HIRE," as that term is defined for copyright and other purposes. Supplier hereby assigns without further consideration all right, title, and interest in and to the materials and/or deliverables developed pursuant to this Agreement finally and irrevocably to College, including, but not limited to any related patent or copyright rights therein. Supplier shall promptly execute any and all documents and take any additional actions that College may reasonably request in order to effect this assignment of rights. The deliverables must be new and original. Supplier must not use any pre-existing materials in the deliverables without College's prior written permission. In the event that Supplier uses any pre-existing materials in the deliverables in which Supplier has an ownership interest, College is hereby granted a nonexclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such pre-existing materials in connection with the deliverables.

**30. Confidentiality - Protection of Sensitive Information; FERPA, HIPAA, Computer System and Data Security**

a. Confidentiality - Each party will keep in confidence all confidential information of the other party and neither party will use or disclose to any person or entity, directly or indirectly, without the prior written approval of the other, any confidential information relating to the other party obtained by virtue of this Agreement or the services performed pursuant to the Agreement, except on a confidential basis to its business, legal and financial advisors or as required to be disclosed under applicable law or by legal process.

b. Protection of Sensitive Information - If College provides access to Supplier of confidential information with sensitive information, for example without limitation, bank and credit card account numbers, income and credit histories and social security numbers, student financial aid information, as well as "Personally Identifiable Information" from student education records as defined by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), Supplier shall maintain the confidentiality, integrity, and availability of all such information, through implemented administrative, technical and physical safeguards in compliance with law and industry best practices, and shall not re-disclose such sensitive information as directed by federal and state laws including without limitation, the Gramm Leach Bliley Act of 1999, FERPA, HIPAA/HITECH, and state laws on protection of such sensitive information.

c. HIPAA/HITECH - When applicable, while performing its duties and obligations under this Agreement, Supplier shall, and shall cause its employees, other members of its workforce, faculty, agents, and subcontractors, to comply with all laws and regulations that apply to the confidentiality and security of patient information, including HIPAA/HITECH, and regulations issued thereunder (including without limitation the Omnibus Rule), which are now in effect or which may subsequently be in effect. The parties agree that if necessary, they shall amend this Agreement to comply with or effectuate HIPAA and/or HITECH and the regulations issued thereunder.

d. Data Breach Notification - Supplier shall immediately, and no later than three (3) business days, notify College of any potential data breach of which it becomes aware.

e. Computer Systems and Data Security - Supplier represents and warrants that the computer systems it uses in conjunction with providing the goods and services under this Agreement, and the data housed therein or methods of transmission, have security protection from intrusion in accordance with applicable



federal government standards and are encrypted in accordance with NIST Standards for encryption and security of data. Any copies of data which are disposed of shall likewise be disposed of only in accordance with such standards.

**31. Electronic Signatures/Counterparts** - The parties acknowledge and agree that this Agreement may be executed using electronic or facsimile signatures, and that such a signature shall be legally binding to the same extent as a written signature by a party's authorized representative. Each party waives any legal requirement that this Agreement be embodied, stored or reproduced in tangible media, and agrees that an electronic reproduction shall be given the same legal force and effect as a signed writing.

**32. Gift Policy** - Suppliers should avoid excessive or frequent gift giving to any and all College employees; specifically, suppliers should ensure that any gift(s) to any College employee will not be perceived as a bribe, payoff, or any other attempt to gain an advantage in any sourcing or other purchasing decision. College employees cannot accept gifts of more than nominal value, and should not be soliciting gifts.

**33. Conflict of Interest** – In supplying goods or services to the College, Supplier represents that, to its knowledge, no College trustee, officer, employee or any other person affiliated with College and having involvement with this Agreement (1) is affiliated with Supplier, and (2) that, to its knowledge, no College trustee, officer, employee or any other person affiliated with College and having involvement with this Agreement has asked for, received, was promised, or will receive, anything of value from Supplier in connection with this Agreement or performance contemplated hereunder. When ethical concerns arise, report concerns to the Vice President for Finance and Administration, the College's General Counsel, or through the College's Ethics and Compliance Hotline at 1-800-539-6085.

**34. Assignment** - Neither party shall assign or delegate its rights and obligations under this Agreement or any part hereof without the prior written consent of the non-assigning or non-delegating party.

**35. Force Majeure** - In the event that either party is unable to perform its obligations under this Agreement as a result of a force majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "Force Majeure" shall mean fire, earthquake, flood, act of God, pandemics, strikes, work stoppages, or other labor disturbances, riots or civil commotions, acts of terrorism or other hostilities, litigation, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause above mentioned which is beyond the control of either party.

**36. Independent Contractor** - Supplier is an independent contractor and not an employee or agent of College. Supplier shall be solely responsible for any unemployment or disability insurance payments, or payments that may be required by Federal, State or local law with respect to any sums paid to Supplier hereunder. Supplier shall not be entitled to any College employee benefit of any nature whatsoever. Furthermore, the arrangements contemplated by this agreement shall not be deemed to constitute a partnership or joint venture between Supplier and College. Supplier will defend, indemnify and hold harmless College from and against any and all liability for the payment of taxes, interest and/or penalties, as well as damages and costs, including but not limited to attorney's fees, in connection with any claim that Supplier is an employee of College.

**37. Subcontractor Requirements** – Suppliers using subcontractors shall enter into written agreements with all subcontractors, which shall include:

a. A provision that the subcontractor assumes toward Supplier all of the obligations that Supplier assumes toward College under this Agreement;

b. A provision that the subcontractor is not in privity with College and shall not seek compensation directly from College;

c. A provision that College is a third-party beneficiary of the subcontract or agreement, entitled to enforce any rights thereunder for their benefit.

**38. No Authority** - Supplier shall have no authority to take any action, create any obligation, make any commitment, incur any indebtedness, or enter into any agreement that binds College. Supplier shall not in connection with any services provided to or on behalf of College represent to any person or entity that Supplier is associated with College in any capacity other than that of an Independent Contractor.

**39. Supplier Diversity and Sustainability**-The College has articulated a commitment to institutional diversity. The College encourages participation of suppliers to place business with firms that are Minority, Woman, Veteran, Service Disabled Veteran, LGBTQ, and Disability-Owned business enterprises, and encourages its suppliers to utilize such businesses. The College has also traditionally placed an emphasis on doing business with local firms, recognizing the interdependence between the College and the community and region.

Reflecting the College's institutional commitment to comprehensive environmental stewardship, the College also encourages its suppliers to practice excellent environmental stewardship, and to source from responsible businesses whose products and services further our environmental stewardship goals, and /or provide energy efficiency, long term sustainability, and contribute to and support other institutional sustainability goals.

Suppliers are strongly encouraged to follow the highest level of sustainable building practices for any services involving construction, renovation or demolition. This includes recycling construction and demolition debris to reduce the environmental impacts of renovation and new construction.

**40. Entire Agreement** - This Agreement contains the entire agreement of the parties unless specifically referred to in writing on the Purchase Order and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**41. Severability** - The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.