

OBERLIN COLLEGE
Purchase Order – Terms & Conditions

1. **Acceptance.** This Purchase Order is an offer to purchase the goods and/or services as set forth thereon. Any of the following acts by Vendor shall constitute acceptance of this Purchase Order: delivery of any of the goods ordered; commencement of performance; or written or verbal acknowledgment expressly accepting the terms set forth. Any additional or different term or condition on Vendor's acknowledgment form, or otherwise communicated by Vendor in accepting this Purchase Order, shall be deemed to be a material alteration of this Purchase Order and is hereby objected to by Oberlin College. Any such term or condition shall be totally inapplicable to this Purchase Order unless Oberlin College specifically agrees in writing. All changes to the Purchase Order must be made in writing and will be confirmed to the vendor by an Oberlin College Change Order form. Acceptance of the goods or services covered by this Purchase Order will not constitute acceptance by Oberlin College of Vendor's terms and conditions to the extent this Purchase Order is in any way deemed to be an acceptance of a quotation or other offer by Vendor. Any such acceptance is expressly conditional upon the consent of the Vendor to terms and conditions of this Purchase Order. Any terms in any of Vendor's documents which purport to reject some or all of Oberlin College's terms by virtue of standard form language shall not be sufficient objection. Oberlin College's failure to object to provisions in any of Vendor's documents or other communication from Vendor shall not constitute a waiver by Oberlin College of its terms, nor an acceptance by Oberlin College of any such provisions. No course of dealing, custom or usage, which is contrary to Oberlin College's terms shall apply.

2. **Patent, Trademark and Copyright Infringement.** In addition to Vendor's duties under Section 8, Vendor agrees to defend, at its expense, all claims, demands and actions which may be asserted against Oberlin College, its successors, assigns and customers (whether direct or indirect) for all alleged patent, trademark and copyright infringement resulting from the use or resale of goods covered by the Purchase Order, and to indemnify and hold Oberlin College harmless against all costs, expenses, legal fees, and judgments related to such claims, demands and actions.

3. **Cancellation.** Oberlin College shall have the right to cancel this Purchase Order without cause, and its liability for such cancellation shall be limited to Vendor's actual cost for work and materials applicable solely to this Purchase Order which have been expended when Vendor receives notice of cancellation. Oberlin College may, at its option, cancel this Purchase Order without liability to Vendor (except for conforming shipments Oberlin College previously accepted) in the event Vendor ceases to exist, becomes insolvent, the subject of bankruptcy or insolvency proceedings or shall commit a material breach in the performance of any obligation hereunder. If Vendor shall fail or refuse to proceed with this Purchase Order, or if Vendor shall fail to make delivery, according to the delivery schedule, Oberlin College may cancel the then remaining balance of this Purchase Order.

4. **Warranty.** In addition to its warranty relating to any specific products or services set forth on the Purchase Order, Vendor warrants that: (i) all goods supplied shall be free and clear of all liens and encumbrances, good and merchantable title thereto being in the Vendor; (ii) upon

receipt by Vendor of payment, good and merchantable title shall be vested in Oberlin College; (iii) all goods or services supplied shall be free from any defects in design, material or workmanship and of good and merchantable quality; (iv) all goods or services supplied shall conform to Oberlin College's specifications or the approved sample as the case may be, or be fit for the know purposes for which purchased; and (v) Vendor will not substitute anything without Oberlin College's written consent. These warranties shall survive inspection, delivery, and payment. Any disclaimer of warranties, express or implied, in previous documents supplied by Vendor shall be of no effect. Vendor shall assign to Oberlin College, to the fullest extent possible, any warranties relating to products received by Vendor from Vendor's suppliers. Vendor agrees to indemnify and save Oberlin College harmless from any and all liens and encumbrances arising out of or in any way connected with this Purchase Order and to keep Oberlin College's premises free from all such liens and encumbrances.

5. **Inspection.** Upon delivery, Oberlin College reserves the right to reasonable testing and inspection prior to payment or acceptance. Failure of Oberlin College to inspect and accept or reject goods, materials or articles shall not relieve Vendor from liability for tender or delivery of nonconforming goods nor constitute a waiver of any of Oberlin College's rights or remedies for breach of contract. Oberlin College reserves the right to reject any or all items not in conformity with the specifications noted within this Purchase Order, in any respect, whether material or not.

6. **Warranty Remedies.** If any of the goods, articles, material or work fail to meet the warranties described herein, Vendor, upon notice thereof from Oberlin College, shall promptly correct or replace the same at Vendor's expense. If Vendor shall fail to do so, Oberlin College may cancel any then remaining balance of this Purchase Order. After notice to Vendor, all such goods shall be held at Vendor's risk. Oberlin College may return such goods to Vendor at Vendor's risk, and all transportation charges, both to and from the original destination, shall be paid by Vendor. Any payment for such goods shall be refunded by Vendor unless Vendor promptly corrects or replaces the same at its expense.

7. **Shipment.** Prices are based on U.S. dollars and are F.O.B. Destination Oberlin College. Vendor shall select the method and carrier for delivery of all products. Risk of loss or damage to the products shall pass from Vendor to Oberlin College upon delivery. Time is of the essence in any agreement between the Vendor and Oberlin College relating to the Purchase Order. No charge for packing or cartage will be allowed except as stated herein or as deemed reasonable and customary by Oberlin College. If the goods are not shipped in accordance with the directions and instructions set out in this Purchase Order, Vendor shall pay to Oberlin College any excess costs occasioned thereby. All vendor documents pertaining to this Purchase Order must list the Purchase Order Number including but not limited to: Order Acknowledgement, Bill of Lading, Freight Bill, Packing Slip, Invoices, Credit Memos.

8. **Indemnification.** Vendor must defend, indemnify and hold harmless the College, its directors, officers, agents, employees, successors and assigns from and against any and all claims, damages, losses, expenses, actual attorney fees, costs, liabilities and causes of action, whether arising from tort, contract, or otherwise, brought against the College that occur directly or indirectly from (a) the negligence or willful misconduct of the Vendor's or its employees, agents, contractors or representatives, (b) the failure of the Vendor to comply with its obligations and

responsibilities, or (c) in any way out of the performance of this Agreement. Vendor agrees to observe the rules, regulations and procedures of Oberlin College and to comply and cooperate with the instructions and orders of its safety and security personnel.

9. **Confidential Information.** Any information, suggestions or ideas given by Oberlin College to Vendor are secret and submitted in confidence except as may be otherwise provided in writing, signed by Oberlin College. Vendor agrees that any such information is the property of Oberlin College and may not be utilized in any way without the prior written consent of Oberlin College. Vendor also acknowledges that all drawings, specifications, data, memoranda, calculations, notes and other materials or copies thereof made available to Vendor by Oberlin College or generated by Vendor using Oberlin College's information shall remain the sole and exclusive property of Oberlin College and will be returned at the completion or termination of this Purchase Order.

10. **Insurance.** Unless otherwise directed in writing, in the event Vendor is to perform labor on Oberlin College's premises, Vendor shall first take out and maintain the following minimum insurance at its expense for the duration of the services:

(a) Worker's Compensation	Statutory
(b) Employer's Liability	\$5,000,000 each occurrence
(c) Comprehensive General Liability	
Bodily Injury/Property Damage Combined Single Limit (CSL) Occurrence	\$1,000,000
Products/Completed Ops occ/agg	\$1,000,000
Personal & Adv. Injury	\$1,000,000
(d) Auto Liability	
Combined Single Limit (including hired and non-owned autos)	\$500,000

The general liability insurance specified in section (c) above shall include coverage for the Vendor's contractual liability under the section entitled Indemnification, with limits not less than that set forth above. Oberlin College has the right to demand a certified copy of any insurance policy. For all insurance required, if the Vendor carries higher limits, such limits must be shown on the certificate. Every contract of insurance providing the coverage required herein shall contain the following clause: "No reduction, cancellation or expiration of this policy shall become effective until ten (10) days after written notice is actually received by Oberlin College." Vendor shall not perform any work on Oberlin College premises until all required insurance has been obtained and original certificates confirming coverage and which show Oberlin College as an additional insured under the policies that have been furnished to Oberlin College. In addition, the certificate must specify: "The Trustees of Oberlin College, and any present or former trustee, administrator, employee, volunteer worker or agent is added as additional insured to the captioned policies as their interest may appear." This insurance requirement shall not be construed as limiting in any way the extent to which Vendor may be held responsible for the payment of damages to any persons resulting from its operations or the activities of any person or persons for which it is liable.

11. **Advertisement.** Without the prior consent of Oberlin College, Vendor shall neither disclose to any person outside of its employ, nor use for purposes other than performance of its obligations under this contract, any information pertaining to Oberlin College, Vendor shall not in any manner whatsoever disclose, advertise, or publish the fact that Vendor has furnished or contracted to furnish to Oberlin College the material and/or services ordered hereunder. This prohibition includes, but is not limited to, the publication of Oberlin College's name on a customer list and/or the verbal act of naming Oberlin College as one of your customers.

12. **Compliance with Applicable Laws.** Vendor shall comply with all federal, state, and local laws, ordinances, rules, and regulations in the manufacture and sale of the goods and performance of the services, including but not limited to the Occupational Safety and Health Act, the Truth in Negotiation Act, the Resources Conservation and Recovery Act and all applicable requirements of the Fair Labor Standards Act. Vendor will defend and hold Oberlin College harmless from any loss, damages, or cost arising from or caused in any way by Vendor's actual or alleged violation of any federal, state, or local law, ordinance, rule or regulation. If this Purchase Order indicates it is placed under a United States Government Contract or Grant, this Purchase Order is subject to all applicable FAR or DFARS regulations hereby incorporated by reference with the same effect as if they were fully set forth. Oberlin College adheres to an affirmative action/equal opportunity policy.

13. **Material Safety Data Sheets.** Vendor shall provide to Oberlin College, or at or before the time of initial shipment, a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any and all applicable federal, state or local law, ordinance, rule or regulation. Such sheet shall contain all information necessary to comply with the Federal Hazard Communication Standard (29 CFR 1910.1200) and all applicable state regulations. Products being purchased that are fire or safety related must meet federal, state, local and insurance requirements.

14. **Tax Exemption.** Oberlin College is tax exempt. A copy of Ohio Tax Exemption Certificate is available upon request. Oberlin College is not liable for taxes, customs, or assessments in connection with the purchase and/or delivery of goods ordered, except as expressly set forth on the Purchase Order.

15. **Severability.** Invalidity of any provision of these terms shall not affect the validity of any other provision hereof and any invalid provision shall be severed from the valid provisions.

16. **Waiver.** No failure by Oberlin College to exercise any right accruing to it by virtue of the manufacturer/purchaser relationship or under any contract of sale entered into with the Vendor shall operate as a waiver thereof or preclude the exercise of any other right or privilege by Oberlin College.

17. **Administrative Purchase Orders.** If the Parties have executed an Agreement and Oberlin College produced a Purchase Order to merely serve administrative functions, the Agreement and its terms shall govern the Parties' transaction without granting effectiveness nor

incorporation to the terms herein. To clarify all doubt, these Purchase Order Terms will only govern transactions when the Parties have not executed a separate, written contract.

18. **Notice.** Any notice required or contemplated hereunder shall be in writing and shall be delivered personally or sent by facsimile or by prepaid registered mail. Notice by facsimile shall be deemed to have been received when transmitted and any notice sent by registered mail shall be deemed to have been received on the second day following the date mailed.

19. **Integration.** Subject to Section 17, there are no other terms and conditions applicable to the purchase and sale of Vendor products and services other than those contained herein (including any specifications or other documents incorporated by reference herein or in the invoice). No modification, amendment, waiver or other change of any provision of Oberlin College's terms shall be binding on Oberlin College without Oberlin College's written consent.

20. **Governing Law.** The Parties acknowledge and agree that this transaction shall be governed by and construed exclusively in accordance with the laws of the State of Ohio, regardless of any choice of law requirements. The parties hereby consent to the jurisdiction of the state and federal courts of Ohio for the purpose of any suit, action, or proceeding arising out of or related to this Agreement and expressly waive any and all objections they may have as to personal jurisdiction and venue in any such courts.

21. **Uniform Commercial Code.** The Vendor and Oberlin College specifically intend that the provisions of Article 2 of the Uniform Commercial Code of Ohio will control as to all aspects of the agreement between them relating to this Purchase Order and its interpretation, and that all definitions contained in it will be applicable thereto except where the context clearly provides otherwise.

22. **Assignment.** Neither party shall assign or transfer this Purchase Order or any interest or moneys payable there under without the written consent of the other party, and any assignment made without such consent shall be null and void.

23. **No Remedies Exclusive.** No remedy hereunder provided shall be deemed exclusive of any other remedy allowed by law.

24. **Miscellaneous.** Notwithstanding any other documents exchanged by the parties before this Purchase Order to the contrary, Oberlin College provides no indemnification or agreement to hold Vendor harmless in connection with any work, articles, or goods provided pursuant to this Purchase Order. Vendor reserves the right to correct any typographical or clerical errors in prices, specifications, quotations, or acknowledgements.

25. **Damages.** The College explicitly rejects the availability of punitive, liquidated, and consequential damages to the Vendor. Vendor agrees it will not be entitled to either punitive, liquidated, or consequential damages under this Agreement.