

***PURCHASE ORDER TERMS AND CONDITIONS***

1. Entire Agreement: (a) This Purchase Order including any addenda, sets forth the entire agreement relating to the purchased products or services (hereinafter “Deliverables”) and merges all prior understandings, agreements or documents. Except as provided in paragraph 1(b) below, amendments to any provision must be in a written addendum executed by a duly authorized representative of the party to be bound thereby. Any additional or inconsistent provision proposed by SUPPLIER shall be deemed of no force and effect unless this Purchase Order shall have been amended as provided in the preceding sentence. This Purchase Order is binding upon VANDERBILT only if signed (electronically or manually) by its duly authorized representative. VANDERBILT’s failure to enforce any provision shall not waive its right subsequently to enforce such provision.

(b) VANDERBILT reserves the right, upon written notice, to change at any time any drawings, specifications or instructions provided by it. If such changes affect the cost of furnishing the products or services, the price of such items shall be equitably adjusted by mutual agreement. SUPPLIER shall represent claims for adjustment in writing within ten (10) days of receiving VANDERBILT’s change notice.

2. (a) Price: EXCEPT AS PROVIDED ON THE FACE HEREOF, each specified price includes all costs and charges to be borne by VANDERBILT. SUPPLIER represents that the price charged (exclusive of transportation or shipping charges) is the lowest price charged by SUPPLIER to other customers in substantially similar transactions. Any price reductions made subsequent to placement of this Purchase Order, but prior to VANDERBILT’s acceptance of the delivered items, will be applicable to this Purchase Order.

(b) Taxes. SUPPLIER’s invoice to VANDERBILT shall include all applicable taxes resulting from this Purchase Order. Such taxes shall not include taxes based on SUPPLIER’s income. VANDERBILT represents that it is a non-profit corporation and is exempt from sales and use taxes in the State of Tennessee and various other states and, therefore, at least with respect to sales in Tennessee, invoices should not include sales or use taxes. VANDERBILT’S sales and use tax exemption certificate number is 100142007.

(c) Packing: EXCEPT AS PROVIDED ON THE FACE HEREOF, SUPPLIER shall pack, mark and prepare all shipments to meet the carrier’s requirements at SUPPLIER’s expense. All packing and containers shall conform to applicable laws and regulations related to the safety of persons and property. No charges to VANDERBILT shall be allowed for packing, cartage, unloading, assembling or installation unless specified on the face hereof.

(d) Shipping: EXCEPT AS OTHERWISE PROVIDED ON THE FACE HEREOF, THE PRODUCTS OR SERVICES ARE PURCHASED F.O.B. VANDERBILT’S DELIVERY LOCATION DESIGNATED ON THE FACE HEREOF. ITEMS PURCHASED F.O.B. SUPPLIER’S SHIP POINT SHALL BE SHIPPED THE LEAST EXPENSIVE WAY BY SUPPLIER, UNLESS OTHERWISE INSTRUCTED BY VANDERBILT.

Shipment and delivery shall be made in accordance with the instructions set forth on the face hereof. Absent such instructions, delivery shall be made within ten (10) days of the date of this Purchase Order.

SUPPLIER shall declare replacement value on all parcel post shipments and shall effect transit insurance on all other shipments. SUPPLIER shall be responsible for asserting claims for loss or damage against the carrier(s) involved.

(e) Risk of Loss. Title and risk of loss shall pass from SUPPLIER to VANDERBILT upon receipt by VANDERBILT at VANDERBILT’s delivery location designated on the face hereof.

(f) Acceptance and Payment. Except as otherwise provided on the face hereof or in supporting documents, VANDERBILT may inspect either before or after delivery but regardless of any earlier inspection, acceptance shall be final only after a final inspection within a reasonable time after the products or services are received at the delivery location designated on the face hereof. Rejected items will be held or returned at SUPPLIER’S risk without a formal replacement order. VANDERBILT’S inspection shall not relieve SUPPLIER or any responsibility for latent defects or from the warranties herein or in any other document containing warranties in favor of VANDERBILT.



Payment shall not be due until final acceptance. Payment prior to final inspection shall not constitute final acceptance.

3. Cancellation: (a) Time is of the essence. Without prejudice to any of its other rights, VANDERBILT reserves the right to cancel this Purchase Order in whole or in part and to purchase elsewhere and charge SUPPLIER for any increases, costs or expenses, if SUPPLIER fails to make complete delivery as provided herein.

(b) VANDERBILT may, with or without cause, suspend and/or terminate this Purchase Order (to the extent delivery or performance has not occurred), in whole or in part, effective upon SUPPLIER's receipt of written notice from VANDERBILT. VANDERBILT may suspend and/or terminate, in whole or in part, this Purchase Order without prior notice to SUPPLIER, effective upon VANDERBILT's discovery (i) that SUPPLIER has breached its warranties under this or any other order of VANDERBILT or (ii) that SUPPLIER's deliveries hereunder do not otherwise conform to the applicable specifications, drawings or instructions provided by VANDERBILT.

(c) Non-Exclusivity. Unless specially agreed to by the parties herein, this Purchase Order is a non-exclusive offer by VANDERBILT to buy Deliverables from SUPPLIER. VANDERBILT is free to contract with any other supplier for products or services that are similar or identical to the Deliverables.

4. Compliance With Law: SUPPLIER warrants that it is in compliance with all applicable federal, state and local laws, regulations and standards relating to the design, manufacture, testing, labeling, sale and transportation of the supplies or items, and provision of the services, purchased hereunder. SUPPLIER explicitly warrants that it is in compliance with all applicable Federal, state and local laws, as amended, including 41 CFR 60-1.4, 41 CFR 60-250.4 and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin or sex, equal opportunity, affirmative action, employment of disabled veterans and veterans of the Vietnam era, and employment of the handicapped. SUPPLIER warrants that no item or service provided hereunder infringes, separately or in combination with other materials or processes, any intangible rights of others.

5. Indemnification: Notwithstanding any terms or conditions of this Purchase Order to the contrary, SUPPLIER agrees at their own expense to indemnify, defend, and hold harmless VANDERBILT from and against any and all liability, loss, damage, expense, claims and demands of every kind and character, including reasonable attorneys' fees, arising out of the design (to the extent not designed by VANDERBILT), manufacture, transportation, installation, delivery, purchase or use by VANDERBILT of the products or services purchased hereunder.

6. Personal Injury and Property Damage Indemnity. SUPPLIER agrees at their own expense to indemnify, defend, and hold harmless VANDERBILT from and against any and all liability, loss, damage, expense, claims and demands of every kind and character, including reasonable attorneys' fees, for injury or death to person or damage to property, (hereinafter referred to as "damage claims"), arising out of or in connection with the negligent acts or omissions of the SUPPLIER, its officers, directors, employees, agents and representatives.

7. Quantity. SUPPLIER may supply only the quantity stated on the face hereof, any trade custom to the contrary notwithstanding without the explicit prior approval of VANDERBILT. Any excess shall be returnable at SUPPLIER's expense but VANDERBILT shall not be required to return such excess nor shall VANDERBILT be liable for the care of any excess or for its value or for any damage resulting to such excess. VANDERBILT's count shall be accepted as correct as to the quantity it received.

8. Additional Warranties: SUPPLIER further warrants that:

(a) Immediately prior to sale it had good title to the products or services, free from any lien or encumbrance unless otherwise specified;

(b) The products or services conform to the requirements of this Purchase Order, including any drawings or specifications herein incorporated and any samples furnished by VANDERBILT or SUPPLIER.



(c) The products or services are of good and merchantable quality, free from defects (including latent defects) in design, material and workmanship and are fit and suitable for the purposes for which they are intended, provided such purposes are known to SUPPLIER; and

(d) SUPPLIER is an independent contractor.

The warranties provided in this Purchase Order are in addition to all other warranties, expressed or implied, and survive any delivery, inspection, acceptance or payment. All warranties shall run to and be enforceable by VANDERBILT, its successors, assigns, clients and third parties injured in person or property by any breach thereof. All warranties run from the date of final acceptance by VANDERBILT.

9. Confidentiality Obligations of Supplier. Unless VANDERBILT advises SUPPLIER to the contrary, SUPPLIER shall treat any information including without limitation, financial, strategic, marketing, surveys, organizational, technical, client, faculty, staff, student and other sensitive information furnished by VANDERBILT to SUPPLIER as "Confidential Information". Confidential Information shall include not only written information but also information transferred orally, visually, electronically or by any other means, as well as any compilations, interpretations, notes, analyses and summaries thereof. SUPPLIER shall limit access to the Confidential Information to SUPPLIER's personnel or subcontractors assigned to VANDERBILT hereunder and shall not use, copy, or remove any Confidential Information from VANDERBILT's premises except to the extent necessary to carry out the purposes of the assignments hereunder, without the prior written consent of VANDERBILT. Upon completion or termination of each assignment hereunder, SUPPLIER shall return to VANDERBILT all documents or other materials, which contain VANDERBILT Confidential Information and destroy all copies thereof.

Confidentiality Exceptions. Confidential information shall not include, and these confidentiality obligations shall not operate as a restriction on SUPPLIER's right to use, disclose, or otherwise deal with information which:

- a. is or becomes generally available to the public through no wrongful act of SUPPLIER;
- b. was in SUPPLIER's possession prior to the time it was acquired from VANDERBILT and which was not directly or indirectly acquired from VANDERBILT;
- c. is independently made available as a matter of right to SUPPLIER by a third party;
- d. is required to be disclosed, in the opinion of SUPPLIER's legal counsel, by court order or operation of law; or
- e. is independently developed by or for SUPPLIER by persons not having exposure to VANDERBILT's Confidential Information not excepted above.

Period of Confidentiality. SUPPLIER's obligations of confidentiality regarding VANDERBILT's Confidential Information shall survive the expiration of this Purchase Order.

10. Intellectual Property of Vanderbilt: All right, title, and interest worldwide in any tangible work product or deliverable created by SUPPLIER in the course of performing this Purchase Order shall be the sole and exclusive property of VANDERBILT. It is the express intent of the parties that all Work Product or deliverables created by SUPPLIER hereunder shall be work made for hire as defined in United States copyright law, 17 U.S.C. § 101 et. seq. If for any reason SUPPLIER's work product or deliverables are deemed not to constitute work made for hire, SUPPLIER hereby assigns to VANDERBILT all right, title, and interest worldwide in and to the work product and deliverables, since it is the express intent of the parties that VANDERBILT be the sole party with the right to exploit SUPPLIER's work product and deliverables. As used in this Purchase Order, "Work Product" shall mean all materials, inventions, ideas, research results, information, improvements, works of authorship, and any other work product created, developed, made, conceived, reduced to practice or delivered by SUPPLIER in connection with this Purchase Order, in whole or in part, solely or in collaboration with others, including without limitation, the Deliverables, and all intermediate and partial versions thereof, as well as all program materials, flow charts, notes outlines, and the like created in connection therewith; and "Intellectual Property Rights" shall mean all copyrights, trademarks, trade secrets, know-how, patents, patent applications, continuations, continuations in part, divisions, reissues and extensions, all foreign counterparts, mask work rights and all other proprietary and intellectual property rights throughout the world.



11. Remedies: If any product or service fails to conform to any warranties specified herein or otherwise applicable, SUPPLIER shall, upon VANDERBILT's request (even if acceptance has been made by VANDERBILT) credit, replace or refund to VANDERBILT any payment already made or, at VANDERBILT's option, repair or replace such item at SUPPLIER's expense. VANDERBILT shall have the right to reject a portion of the items purchased and its partial acceptance of the balance shall not be deemed a waiver of any of the VANDERBILT's other rights or claims. These remedies are not intended to be exclusive and are in addition to all other remedies available under law.

12. Choice of Law: The internal laws of the State of Tennessee shall govern this Purchase Order. If any provision shall be deemed invalid or unenforceable, the parties intend that all other provisions shall remain unimpaired and unaffected thereby. The headings used are for convenience only and shall not affect the construction of this Purchase Order. Nashville, TN will be the point of venue for any required litigation resulting from this purchase order or contract

13. Use of Vanderbilt Name: SUPPLIER shall not use VANDERBILT's name, logos or trademarks in any marketing and/or advertising media without prior written approval from the Vanderbilt Office of Trademark Licensing.

14. Compliance With Anti-Kickback Act Requirements: To the extent that this Purchase Order constitutes a subcontract under a Federal prime contract, SUPPLIER shall comply with Federal Acquisition Regulation 52.203-7, Anti-Kickback Procedures, with the exception of subparagraph (c)(1) thereof.

15. Non-Assignment: This Purchase Order and the rights or duties arising hereunder may not be assigned, nor may the work contemplated be subcontracted without VANDERBILT's prior written consent.

16. Orders not fulfilled within 6 months from order date are null and void unless otherwise noted in the body of the Purchase Order.

17. It is expressly understood and agreed by SUPPLIER that none of VANDERBILT's covenants, undertakings or agreements herein are made or intended as personal covenants, undertakings or agreements by any of the administration or employees from time to time of VANDERBILT, and any liability of VANDERBILT for damages or break or nonperformance or otherwise arising under or in connection with this Purchase Order is hereby expressly waived by SUPPLIER against each and every one of the employees of VANDERBILT from time to time personally and individually, and in such instance SUPPLIER shall look solely to VANDERBILT and its assets and not to any individual administrators or employees, or any individual administrator's or employee's assets for discharge of any such liability.

18. General Supplier Procedures: To the extent they do not conflict with any provisions of this Agreement, SUPPLIER agrees to comply with all VANDERBILT Supplier Procedures as posted on the Vanderbilt University Purchasing Services Supplier web site: <http://www.vanderbilt.edu/procurement/suppliers/default.shtml>