



**WILLIAMS COLLEGE  
STANDARD TERMS AND CONDITIONS**

**1. DEFINITIONS**

"Buyer" means the President and Trustees of Williams College ("Williams College"). "Seller" means the person, firm, or corporation supplying the goods or services under the purchase contract, and includes all sales or other agents, subcontractors, employees, and distributors thereof.

**2. ACCEPTANCE OF THE PURCHASE CONTRACT BY SELLER**

The purchase contract may be accepted only on the terms set forth herein. Terms, in any acceptance by Seller, which are in addition hereto or not identical with the terms hereof, will not become a part of any contract unless Buyer specifically and expressly agrees in writing that such other terms are accepted. By accepting this contract or any part hereon, Seller agrees to, and accepts all, the provisions of the purchase contract. If no price is stated, the goods and services shall be billed at the price last quoted to Buyer by Seller, or last paid by Buyer to Seller, or at the prevailing market price, whichever is lowest.

**3. ACCEPTANCE BY BUYER**

Buyer shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Seller. Buyer, at its option, may reject all or any portion of such goods or services which do not, in Buyer's sole discretion, comply in every respect with (a) Buyer's specifications or, if no specifications are given by Buyer, with industry standard specifications, and (b) with each and every term and condition of this purchase contract. Buyer may elect to reject the entire goods and services tendered, even if only a portion thereof is nonconforming. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. All expenses incurred by Buyer, as a result of rejections hereunder, shall be for Seller's account, and Buyer may return rejected articles at Seller's expense.

**4. RISK OF LOSS**

Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss or damage results solely from the active negligence of Buyer.

**5. SALES AND OTHER TAXES; OTHER CHARGES**

Unless otherwise specified herein, Seller warrants and represents that the price quoted herein does not include any federal, state, and local sales, use, excise, transaction, or other taxes, and that none will be billed to Buyer. Reference Williams College tax exempt number O42-104-847.

Unless otherwise specified herein, Seller will not charge for packing, packaging, handling, or delivery.

**6. CASH DISCOUNT PERIOD**

The cash discount period available to Buyer shall commence on the later of Buyer's receipt of all goods and services or receipt of the invoice.

**7. ASSURANCE**

If at any time Buyer, in good faith, determines that it is insecure with respect to Seller's ability or intent to fully perform, then Seller agrees to provide Buyer with written assurance fully satisfactory to Buyer in Buyer's sole discretion of Seller's ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by Buyer. Seller immediately shall notify Buyer of any circumstance which may cause Seller to fail to fully perform. Upon Buyer's good faith determination that Seller cannot or will not fully perform, then Buyer may deem this contract to be breached by Seller (unless performance is excused as provided below) and may re-procure from other sources.

**8. ASSIGNMENT**

Seller shall neither assign any right nor delegate any duty without the prior written consent of Buyer. Notwithstanding any notice of assignment, Buyer's tender of payment to the Seller named herein, or to any person reasonably believed by Buyer to be entitled to payment, shall fully satisfy Buyer's obligation to pay, and in no event shall Buyer be obligated to pay twice or be liable for any damages due to failure to pay the correct party.

**9. EXCUSE**

Seller shall be excused for any nonperformance due principally to circumstances which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods or services necessary for Seller's performance, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier, or any other person.

**10. NOTICE OF LABOR DISPUTES**

Whenever an actual or potential labor dispute delays or threatens to delay the performance of this order, Seller shall immediately notify Buyer in writing, presenting all relevant information concerning the dispute and its background.

**11. WARRANTY**

Seller represents and warrants that the goods and services set forth herein (a) are free from defects in design, material, and workmanship and of merchantable quality; (b) are fit for the intended uses and purposes of Buyer to the extent that such uses and purposes are known or reasonably should be known to Seller; (c) comply with the highest warranties, representations, and options expressed by Seller orally or in any written advertisement, correspondence, or other document provided to or in the possession of Buyer; (d) comply with all applicable federal, state, and local laws, codes, and regulations and with all standards published by any national or statewide association or group; and (e) do not infringe any United States patent and are not restricted in any way by patents, copyrights, trade secrets, or any other rights of third parties.

Seller further represents and warrants that (a) no article supplied hereunder is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or is an article which may not, under the provisions of the Act, be introduced into interstate commerce; (b) no article supplied hereunder is produced in violation of the Fair Labor Standard Act, as amended; (c) all articles supplied hereunder, which are so required, will be lawfully registered with the U.S. Department of Agriculture at the time of sale and delivery; and (d) all articles supplied hereunder are furnished in full compliance with the Federal Hazardous Substance Labeling Act, where applicable, as well as all other applicable federal, state, and local laws. If any of the foregoing warranties is breached, Seller agrees to correct all defects and nonconformities, to be liable for all direct, indirect, consequential, and other damages suffered by Buyer and any other persons, and to defend and indemnify Buyer from any claim asserted by any person resulting in whole or in part from such breach.

## **12. DEFAULT**

Buyer may, by written notice, terminate this purchase contract, in whole or in part, for failure of Seller to perform any of the provisions hereon, including failure to deliver as and when specified. If so terminated, Seller shall be liable for all damages, including, without limitation:

- (a) the excess cost of re-procuring similar goods or services;
- (b) shipping charges for any items Buyer may, at its option, return to Seller, including items already delivered but for which Buyer no longer has any use because of Seller's default; and
- (c) amounts paid by Buyer for any items Buyer has received but returns to Seller.

## **13. CHANGE OR CANCELLATION FOR CONVENIENCE**

Buyer by written notice may change or terminate all or any part of this purchase contract for Buyer's convenience. If such a change results in an increase or decrease in costs to be incurred or time needed to complete performance of this contract, then Buyer and Seller will make a fair and equitable modification of their rights and obligations under this agreement, provided however that Buyer will not compensate Seller for any services not performed or goods not shipped by the date of such change or termination. Seller's claim for an equitable adjustment under this paragraph must be submitted to Buyer in writing within 30 days of receipt of notice of change or termination, otherwise all such claims of Seller shall be deemed to have been waived.

## **14. CONFLICT OF INTEREST**

- (a) Buyer's policy requires avoidance of real or apparent conflict of interest. No employee, officer, or agent of Buyer shall knowingly participate in the selection, award, or administration of a contract with Seller if Buyer or any member of Buyer's immediate family has a material financial interest in Seller, or is negotiating or has any arrangement concerning prospective employment with Seller.
- (b) No officer, employee, or agent of Buyer shall either solicit or accept gratuities, favors, or anything of monetary value from Seller, including any contingent fee.

## **15. SAFETY**

In all cases where Seller delivers goods or performs work or services hereunder at any of Buyer's locations, Seller will comply with all applicable provisions of federal, state, and local safety laws and rules, and shall take all necessary precautions for safe performance. Buyer reserves the right to require Seller to abide by Buyer's safety standards on Buyer's premises. Failure to comply may, at Buyer's option, result in the termination of this order.

## **16. INDEMNITY**

Seller agrees to forever indemnify, defend, and save harmless Williams College from and against, and to waive any and all claims against Williams College for, any and all claims, suits, and demands of liability loss or damage whatsoever, including attorneys fees, whether direct or consequential on account of any loss, injury, death or damage to any person or persons of property (including without limitation all agents and employees of Seller and Williams College and all property owned by, leased to, or used by either Seller or Williams College or both) on or account of any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from Seller's performance hereunder or in any way connected therewith or in any way related thereto, and regardless of whether such loss, injury, death, or damage results in whole or in part from (a) the negligence or omission of Williams College or (b) any product liability of Williams College or any person or (c) any strict liability of Williams College or any person. There are excluded from the above indemnity and waiver provisions any such claims, suits, and demands of liability, loss, or damage resulting solely from Williams College's gross negligence or willful intent to injure. As used in this indemnity and waiver provision, and for purposes of Seller's insurance, "Williams College" shall be deemed to include Williams College, its Trustees, Directors, officers, employees, faculty, students, agents, affiliated organizations, and their insurance carriers, if any.

## **17. INSURANCE**

If any work is to be performed on any Williams College property by the Seller, the Seller shall provide evidence of general liability insurance as defined below. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance hereunder, Seller shall obtain and keep in force general liability insurance, including coverage for death, bodily injury, property damage, including product liability and automobile coverage, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for general liability for Purchase Orders and/or Contracts with a value of \$25,000 or greater. For Purchase Orders and Contracts under \$25,000, liability insurance, including coverage for death, bodily injury, property damage, including product liability and automobile coverage, with limits of not less than \$500,000 per occurrence and \$1,000,000 aggregate for general liability. Such insurance shall be primary insurance, and any liability or insurance of Williams College shall be excess only. Such insurance shall waive any right of subrogation against Williams College and shall specifically cover Seller's obligations to defend, indemnify, and hold Williams College harmless as provided herein. The Seller's insurance agent must provide a certified, dated copy of the general liability policy certificate with the President and Trustees of Williams College listed as an additional insured party.

## **18. USE OF BUYER'S NAME**

Seller agrees not to use the name of Buyer or any related organization or to quote the opinion of any of Buyer's agents or employees in any advertising, promotion, or other written or oral disclosure without the prior written consent of Buyer.

## **19. APPLICABLE LAW, ETC.**

This contract and the performance hereunder shall be construed according to the law of Massachusetts as applied to contracts made and performed within Massachusetts without regard to its choice of law provisions. The parties hereto agree that any dispute arising under this contract shall be resolved in the courts of Berkshire County or in the Federal District Court of Massachusetts, and Buyer and Seller hereby submit themselves to the personal jurisdiction of said courts. All rights and remedies of Buyer and Seller shall be cumulative.

## **20. COMPLETE AGREEMENT**

This purchase contract (including these Terms and Conditions), any specifications or additional terms and conditions attached or referenced, and the material described in paragraph 11 above ("Warranty") constitute the entire agreement between Buyer and Seller. Seller's quotation is incorporated only insofar, as is specifically so stated in the purchase contract hereof. No other terms or conditions are binding on Buyer unless accepted by it in writing.

## **21. PURCHASE ORDER NUMBER**

Seller will use best efforts to include Buyer's purchase order number as part of the delivery address on all goods and services delivered to Buyer. Failure to do so will cause Buyer significant delivery difficulties and delays.