

Bloomfield College

PURCHASE ORDER TERMS & CONDITIONS

1. **ENTIRE AGREEMENT:** The following Terms & Conditions and the attached Purchase Order (collectively, the “Agreement”) shall constitute the complete and exclusive statement of the Agreement between Bloomfield College and Seller with respect to the goods and/or services purchased hereunder (the “Goods” and/or “Services” as the case may be). This Agreement may be modified only pursuant to a written instrument signed by authorized representatives of both parties. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. To the extent that Seller’s terms and conditions, if any, shall conflict with this Agreement, the latter shall control. Either party’s failure to insist upon the performance of any term of this Agreement shall not be construed as a waiver of that party’s present or future right to such performance and each party’s obligations in respect thereto shall continue in full force and effect. The headings in this Agreement have been inserted solely for convenient reference and shall be ignored in its construction.
2. **GENERAL WARRANTIES:** Seller warrants that all Goods shall conform to the specifications of this Agreement and shall be merchantable, free from defects (including defects in design and fit), and suitable for the intended purposes. Seller further warrants that all Services shall conform to the specifications of this Agreement and shall be performed in a professional and workmanlike manner. These warranties shall remain in effect until the later of (i) one year following Bloomfield College’s final acceptance of the Goods or Services or (ii) the expiration of Seller’s standard warranty period. The foregoing warranties are in addition to, and shall not limit, any other warranties or Bloomfield College protections that exist by operation of law.
3. **PRICE WARRANTY:** In the event Seller reduces its price(s) for such goods or services before Seller fully performs under this Agreement, Seller agrees to reduce the prices stated herein accordingly. Seller further warrants that the prices stated herein are complete, and that no additional charges of any type, including but not limited to shipping costs, shall be added without Bloomfield College’s express written consent.
4. **TIMELY PERFORMANCE:** Time is of the essence such that Bloomfield College shall have an unrestricted right to reject the Goods or Services if Seller fails to meet the delivery date and conditions specified in this Agreement. Such failure shall be deemed a material breach of this Agreement.
5. **FINAL INSPECTION AND ACCEPTANCE:** All Goods or Services shall be subject to Bloomfield College’s final inspection and acceptance, notwithstanding any prior payment or preliminary inspection on the part of Bloomfield College. While Final Acceptance is pending, Bloomfield College may return to Seller any non-conforming Goods or Services, at no cost to Bloomfield College, and/or require Seller to correct or replace such non-conforming Goods or Services. In the event Bloomfield College does not require any such correction or replacement, Seller shall promptly refund all payments received for non-conforming Goods or Services that Bloomfield College returns. Such remedies shall not limit any other rights or remedies as may be available at law, in equity or under this Agreement.
6. **TERMINATION:**
 - a. Bloomfield College may terminate this Agreement at any time, in whole or in part, by written notice to Seller. If such termination is for Bloomfield College’s convenience, Bloomfield College, after deducting any amount(s) previously paid, shall pay for all Services rendered or Goods provided by Seller, as well as any reasonable costs incurred by Seller, up to the time of termination but not including Seller’s lost profits. Under no circumstances shall Seller be entitled to recover more than the price of the Goods or Services as stated in the Agreement. Upon receiving notice of Bloomfield College’s termination for convenience, Seller shall use its best efforts to reduce or mitigate any costs incurred in connection with the Goods or Services.
 - b. Either party may, without prejudice to any other rights or remedies provided at law, in equity or under this Agreement, by written notice to the other party, terminate this Agreement in whole or in part under any of the following circumstances:
 - i. If the non-terminating party applies for bankruptcy, makes an assignment for the benefit of creditors, or is in receivership; OR
 - ii. If the non-terminating party fails to perform any of the terms of this Agreement and so fails to cure such failure within thirty (30) days after receiving notice from the terminating party; OR

- iii. If the non-terminating party fails to make progress such that the terminating party has reason to question the non-terminating party's ability to perform and the non-terminating party fails to provide adequate assurance of its ability to perform within a period of thirty (30) days after receiving notice from the terminating party.

In the event Bloomfield College terminates this Agreement pursuant to this subparagraph b, Seller shall also be obligated to pay any direct damages, including but not limited to all additional costs that Bloomfield College may incur in finding replacement Goods and/or Services, as well as any consequential and incidental damages incurred by Bloomfield College. In the event Seller terminates this Agreement pursuant to this subparagraph b, Bloomfield College shall not be liable for consequential and incidental damages incurred by Seller and in no circumstances shall Bloomfield College's liability exceed the price of the Goods or Services as stated in this Agreement.

- c. Upon termination of this Agreement, Bloomfield College, in addition to any other rights or remedies available at law, in equity or under this Agreement, may require Seller to transfer title to and deliver to Bloomfield College, in the manner and to the extent directed by Bloomfield College, any completed or partially completed Goods as well as any plans, drawings, or other materials that Seller has specifically produced or acquired for the performance of the Agreement ("Performance Materials"). Payment for such Goods or Performance Materials shall be at the price specified in the Agreement or as otherwise agreed upon by the parties.
7. **CERTIFICATES, LICENCES AND PERMITS:** Seller alone is responsible for maintaining any and all certifications and/or licenses that are required under State and/or Federal law and any other appropriate organizational licenses for the conduct of Seller's business and agrees to notify Bloomfield College of the loss of any certification or organizational or individual professional licensure for any of these services, which may constitute a default under the terms of this Agreement.
 8. **COOPERATION:** Bloomfield College and Seller agree that to the extent compatible with the separate and independent management of each, they will at all times maintain an effective liaison and close cooperation with each other. Seller further agrees to cooperate with Bloomfield College in any evaluation of Seller's work, performance, or product and in any licensing matters, audit, governmental review, administrative appeal, litigation, or other legal matter related to this Agreement or the provision of Seller's services to Bloomfield College.
 9. **FORCE MAJEURE:** Except with respect to defaults of Seller's subcontractors, Seller shall not be liable for any excess costs incurred by Bloomfield College if Seller's failure to perform arises out of causes beyond the control and without the fault or negligence of Seller and despite the best efforts of Seller. Such causes include acts of God, acts of Bloomfield College, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes. If failure to perform is caused by default of Seller's subcontractor, and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the fault or negligence of and despite the best efforts by either of them, Seller shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by Seller's subcontractor were reasonably obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.
 10. **BLOOMFIELD COLLEGE EQUIPMENT:** All materials, tools, equipment and other property either furnished by Bloomfield College to Seller or individually paid for by Bloomfield College ("Bloomfield College Equipment") shall remain the property of Bloomfield College, but Seller shall assume all risks of and be entirely responsible for any losses or damages arising from its use of Bloomfield College Equipment. Upon completion or termination of this Agreement, Seller shall promptly return all Bloomfield College Equipment in the condition in which Seller received it, taking into account reasonable wear and tear.
 11. **INTELLECTUAL PROPERTY:** All copyright, trademarks, patent and other intellectual property rights that arise directly from Seller's performance hereunder shall belong to Bloomfield College, including but not limited to any works of authorship that Seller creates pursuant to this Agreement, which works shall be deemed works-for-hire under federal copyright law.

12. **CONFIDENTIAL INFORMATION:** Seller shall treat as confidential all non-public information disclosed by Bloomfield College in connection with this Agreement, including but not limited to written or oral communications, education records (as defined under the Family Educational Rights and Privacy Act of 1974 (FERPA), personal data, plans, specifications, and other data (collectively, "Confidential Information"). The terms and conditions of this Agreement shall also be deemed Confidential Information. Seller shall not disclose Confidential Information to any third party except as Bloomfield College authorizes, and shall only disclose it to those within Seller's organization who need to use it in performance of the Agreement. Upon completion or termination of this Agreement, Seller shall return or destroy all such Confidential Information (except for this Agreement), or otherwise dispose of it as Bloomfield College may approve. This provision is not intended to restrict Seller's right to use or disclose information that is already known to the public or rightfully obtained without restriction from other sources. Seller shall defend, indemnify and hold harmless Bloomfield College from and against any and all claims, demands, damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorney's fees and costs, sustained or alleged to have been sustained by Bloomfield College as a result of any disclosure or use of any Confidential Information in violation of this Agreement.
13. **USE OF BLOOMFIELD COLLEGE'S NAME OR MARKS:** Seller shall not use Bloomfield College's name or trademarks in connection with any advertising, marketing or other promotional efforts or materials without the prior written approval of Bloomfield College.
14. **INDEPENDENT CONTRACTOR:** In performing hereunder, Seller and its employees, agents, subcontractors and representatives shall be as independent contractors and not as employees or agents of Bloomfield College. All persons furnished or retained by Seller in connection with this Agreement are so furnished or retained as Seller's employees or agents. Seller shall not transact business, enter into agreements, or otherwise make commitments on behalf of Bloomfield College unless expressly authorized in writing by Bloomfield College. Neither Seller nor its employees, agents, subcontractors or representatives shall be entitled to benefits provided by Bloomfield College to its employees, including but not limited to fringe benefits, worker's compensation, health and unemployment insurance, and pension plans. Bloomfield College shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Seller or its employees, agents, subcontractors or representatives. Seller agrees to report and pay all applicable taxes.
15. **CHOICE OF LAW:** The parties agree that any dispute under this Agreement will be venued in the Superior Court of New Jersey, Essex County and governed by the laws of the State of New Jersey.
16. **ASSUMPTION OF RISK/INDEMNIFICATION:** Seller shall be liable for its own negligence and the negligent acts of his employees. Seller shall take all precautions necessary for the safety of and prevention of damage to any Bloomfield College's property and for the safety of and prevention of injury to persons, including Bloomfield College's employees and third persons. All work shall be done at Seller's risk, without regard to fault or allocation of negligence. Seller agrees to defend, indemnify and hold harmless Bloomfield College and its directors, officers, agents, volunteers, students, and employees against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses, including actual attorneys' fees, in whole or in part resulting from, arising from, or in any way connected with any act, error or omission or failure of Seller or Seller's assistants, employees or agents, including but not limited to any and all claims: (i) relating to the injury or death of any person or damage to any property; (ii) by Seller's employees for injuries or illnesses incurred in the course and scope of providing services under this Agreement; relating to the dishonest, fraudulent or criminal acts of Seller or its directors, officers, agents, representatives or employees, whether acting alone or in collusion with others in connection with the performance of their obligations under this Agreement. Bloomfield College agrees to indemnify and hold harmless Seller and its directors, officers, agents, volunteers and employees against any and all claims, lawsuits, settlements, judgments, resulting from the acts, errors or omissions, including the dishonest, fraudulent or criminal acts of Bloomfield College or its directors, officers, agents, representatives or employees, whether acting alone or in collusion with others in connection with the performance of Bloomfield College's obligations under this Agreement.
17. **INSURANCE:** If Seller shall provide Services on Bloomfield College's property, Seller, at its own cost and expense, shall obtain and maintain in force during the term of this Purchase Order, the following minimum insurance coverage:
 - a. A policy of workers' compensation insurance, in amounts required by law, covering all officers and employees of Supplier who are in any way engaged in or connected with the Purchase Order, and employer's

liability insurance in an amount of not less than Five Hundred Thousand Dollars (\$500,000). Supplier shall require its agents, sub-suppliers and subcontractors, who are in any way engaged in or connected with the Purchase Order to maintain the same insurance as required herein of Supplier.

- b. A policy of commercial general liability insurance with broad form property damage endorsement, personal injury and products completed operations coverage, affording protection in an amount of not less than Two Million Dollars (\$2,000,000) per incident and in the aggregate, with respect to personal injury, death, or damage to property.
- c. If this Purchase Order contemplates professional services, a policy of professional liability insurance, including errors and omissions, affording protection of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) in the aggregate.
- d. A policy of comprehensive automobile liability insurance covering the operation of all motor vehicles used by Supplier or its agents in connection with this Purchase Order, affording protection in an amount of not less than One Million Dollars (\$1,000,000) combined single limit with respect to personal injury, death, or damage to property.

Additional insurance coverage may be required dependent upon work being performed. Additional insurance requirements will be discussed with Seller and indicated on Purchase Order. All of these insurance policies shall be issued by insurance companies with an AM Best rating of "A" or higher and a financial strength rating of VII or higher, or equivalent ratings provided by a disinterested, generally recognized rating agency, which companies shall be licensed or permitted to conduct business in the State of New Jersey. The Trustees of Bloomfield College, including its officers, employees and agents" shall be named as additional insured in the General Liability policy specified above. Certificate(s) evidencing the above insurance coverage—with a statement that Bloomfield College is an additional insured and that the insurance afforded is primary insurance as to any other valid and collectible insurance in force—shall be sent to Bloomfield College's Purchasing Office. Upon request, Supplier shall furnish to Bloomfield College a current certificate of insurance for each of the policies required above. Insurance coverage(s) provided under this Purchase Order shall not limit or restrict in any way the liability of Supplier arising under or in connection with this Purchase Order. Such insurance shall not be canceled or terminated without ten (10) days prior written notice of any cancellation or termination.

18. **CONFLICTS AND ETHICAL STANDARDS OF CONDUCT:** Seller affirms that, to the best of Seller's knowledge, there exist no conflicts of interests between Seller and Bloomfield College or its employees. In the event of change in Seller's interests, Seller shall inform Bloomfield College regarding any conflicts of interest that arise or are likely to arise as a result of such change. Seller hereby represents that it has neither received nor given gifts or gratuities to any member of the Bloomfield College community, nor participated in any other unethical conduct in connection with this Agreement. If, at any time, Bloomfield College determines that Seller is in violation of any representation under this Paragraph, Bloomfield College may cancel the Agreement upon written notice to Seller, and Bloomfield College shall have no further obligation to Seller.
19. **SALES AND EXCISE TAX EXEMPTIONS:** As a non-profit educational institution, Bloomfield College is exempt from Federal Excise Tax, New Jersey Excise Tax and New Jersey Sales Taxes (Exemption No. 221-494-428) and certain other states' taxes as may be applicable, unless otherwise stated on the face of the Purchase Order. Seller shall take all steps necessary to ensure that these exemptions are utilized to the maximum benefit of Bloomfield College. Seller shall not charge Bloomfield College any tax for which an exemption is applicable.
20. **ASSIGNMENTS AND SUBCONTRACTING:** Neither party shall assign or delegate its rights and obligations under this Agreement without the prior written consent of the non-assigning or non-delegating party.
21. **SURVIVAL:** This and Paragraphs 1, 2, 3, 6, 10, 11, 12, 13, 14, 15, 16, 17, and 20 hereunder shall survive the termination of this Agreement for any reason.