



NEW YORK UNIVERSITY
A private university in the public service

PURCHASE ORDER TERMS AND CONDITIONS

The Purchase Order Form, these Purchase Order Terms and Conditions, and any attachments hereto (collectively, the "Purchase Order") are the exclusive terms and conditions for the delivery of the specified goods or materials and/or performance of the specified services and/or work (collectively, "Goods and Services") by the named seller ("Seller") for the benefit of New York University ("NYU"). NYU and Seller are each a "Party" and together are the "Parties".

1. **Acceptance of Purchase Order by Seller.** Upon acceptance of this Purchase Order by the Seller as set forth herein, this Purchase Order is a valid and binding contract between NYU and Seller. This Purchase Order is deemed accepted by Seller upon the earlier to occur of the following: (a) the Purchase Order is sent to Seller and Seller does not object in writing to any of its terms or provisions within two (2) business days; or (b) Seller at any time otherwise delivers or performs all or any part of the Goods and Services. No change or alteration may be made to any term of this Purchase Order without the prior written consent of NYU.
2. **Acceptance by NYU.** Delivery of the Goods and Services will be deemed to be complete only when delivered pursuant to a valid Purchase Order and when actually received by NYU. All Goods and Services are subject to NYU's right of inspection following delivery and/or performance by Seller; payment for Goods and Services under this Purchase Order prior to inspection by NYU will not constitute acceptance by NYU. NYU may, at its option, reject all or any portion of the Goods and Services that do not, in NYU's discretion, comply with the terms and conditions of this Purchase Order or NYU's requirements. NYU may elect to reject all of the Goods and Services even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods and Services will not be deemed to be a waiver by NYU of its right to (a) cancel, reject or return all or any portion of the Goods and Services, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery, or breach or non-compliance with any of the terms or provisions of this Purchase Order.
3. **Time for Delivery.** Delivery or performance will be strictly in accordance with NYU's delivery or performance schedule. If Seller's delivery or performance fails to meet such schedule, NYU may, without limiting any of its other rights or remedies, direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing or performance and this Purchase Order's routing or performance costs will be paid by Seller upon NYU's demand. Time is of the essence with respect to Seller's delivery and/or performance under this Purchase Order.
4. **Risk of Loss.** Until delivered to NYU in accordance with Section 2, Seller will bear all risk of loss or damage. Shipment of goods or materials is D.D.P./F.O.B. Destination unless Purchase Order states otherwise.
5. **Cancellation for Breach by Seller.** NYU may terminate this Purchase Order, in whole or in part, for Seller's breach of this Purchase Order, including but not limited to, the failure to deliver the Goods and Services as and when specified. If NYU terminates this Purchase Order for Seller's breach, in addition to all of NYU's other rights and remedies under law, Seller will be liable to NYU for all damages, including but not limited to, the cost of securing replacement Goods and Services, shipping charges for returned Goods and Services, and any amounts previously paid by NYU to Seller. Cure of any non-conforming tender by Seller may only be made with the prior written consent of NYU. This right of termination is in addition to and not in place of any other rights or remedies that NYU may have at law or in equity.
6. **Cancellation for Convenience.** NYU, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for Goods and Services performed or delivered. Payment due will be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered.
7. **Pricing.** NYU will pay Seller only for such Goods and Services and at such prices as agreed upon pursuant to this Purchase Order. Prices include all amounts payable by NYU and no additional charges of any kind (including, without limitation, charges for transportation, delivery, boxing, packing or other extras) will be payable by NYU unless specifically set forth in this Purchase Order or otherwise specifically agreed to in writing by an authorized purchasing agent of NYU. Seller will submit all invoice(s) to NYU under this Purchase Order as set forth herein or as may be designated by NYU. If any of the Goods and Services consist of drugs or other pharmaceutical products, Seller acknowledges that federal law constrains the prices that may be charged by suppliers for Medicaid reimbursement under 42 U.S.C. § 1396f-8 or any successor statute.
8. **Representations and Warranties.** In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to NYU that: (a) all Goods and Services conform and will continue to conform to professional industry standards and to any description, sample, specifications or other documentation related to the Goods and Services made available to NYU; (b) the Goods and Services are and will be fit for the purposes for which purchased, free from defects in materials and workmanship, and safe for their intended use; (c) Seller has all right, title and interest in and to the Goods and Services necessary to fulfill its obligations hereunder; (d) the Goods and Services are free from any liens, claims and encumbrances of any nature and do not and will not infringe the intellectual property rights of any third party; (e) all Goods and Services will have been produced or manufactured in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and municipal laws, rules and regulations; and (f) Seller has not been excluded from participation in, nor is aware of any pending or threatened debarments or exclusions from, any federally or state-funded healthcare program. All of Seller's representations and warranties, both express and implied, also constitute conditions of this Purchase Order and will survive inspection, acceptance and payment by NYU.
9. **Proprietary Rights.** The Goods and Services will be deemed to be work made for hire and NYU will own all right, title, and interest in and to the Goods and Services and each part and component thereof, whether or not patentable or copyrightable, and any copyright therein and patent application or patent thereon. Seller agrees that all right, title and interest in and to the Goods and Services has been transferred and