

SOUTHERN NEW HAMPSHIRE UNIVERSITY
TERMS AND CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES

- 1. MODIFICATION:** Unless otherwise specifically consented to in writing by Buyer, the terms and conditions herein, and no others, shall govern this purchase order (“Order”) for the purchase of certain goods (“Goods”) from Seller and/or the performance of certain services (“Services”) by Seller, including, without limitation, delivery and installation Services by Seller, all as described in the Order provided by Buyer. Any attempt by Seller to modify the terms and conditions of this Order, whether in an invoice or otherwise, or any attempt to make Seller’s acceptance conditional on Buyer’s assent to additional or different terms and conditions, is hereby rejected and shall be of no force or effect.
- 2. ACKNOWLEDGEMENT AND ACCEPTANCE:** Seller shall acknowledge this Order if such is indicated on the Order. However, the absence of a formal acknowledgement shall not release Seller from these terms and conditions.
- 3. WAIVER; CONFLICTS:** No waiver of any of the provisions contained in this Order shall be valid unless made in writing by the waiving party. Failure by Buyer to insist upon strict compliance with the terms of this Order shall not constitute a waiver of any provision of this Order or of any default by Seller. In the event of a conflict between these terms and conditions of this Order and any typewritten terms and conditions which may appear on the face of this Order, the latter shall prevail. To the extent there exists any signed contract or agreement for the Goods or Services covered under this Order, the terms and conditions of that contract or agreement shall prevail over any conflicting terms and conditions stated herein.
- 4. CHANGES; ADDITIONS; DELETIONS:** Buyer shall have the right, by written notice, to unilaterally make changes as to packing, packaging, testing, specifications, designs and delivery schedules of the Goods and Services, as applicable. If such changes cause an increase or decrease in the amount due under this Order or in time required for performance, an equitable adjustment shall be made, provided that any claim by Seller therefor must be asserted in writing within 15 days from the date of the notice of the change and must be approved by Buyer in writing. Seller shall not substitute other materials, alter quantities or revise specifications for the Goods or Services without Buyer’s prior written consent. Changes made by Seller without Buyer’s prior written consent shall be made at the sole risk and expense of Seller.
- 5. LIABILITY; INSURANCE:** If the Services involve operations by Seller at a facility of Buyer (or that of any of its customers or associates), or with material or equipment furnished to Seller by Buyer for execution of this Order, Seller shall take all necessary precautions to prevent the occurrence of an injury to persons or property during the progress of such work. Seller shall maintain adequate Workers’ Compensation, Employer’s Liability, General Liability, Personal Injury, Property Damage Liability, and other applicable insurance coverages in such amounts as is customary in connection with the manufacture of similar goods and/or services, adequate to cover any potential obligation of Seller pursuant to Section 15 below, unless otherwise detailed in Exhibit A to this Order, and all in accordance with all applicable laws. Certificates of such insurance shall be furnished to Buyer promptly upon request.
- 6. SHIPPING; PACKAGING AND PACKING:** All Goods and Services are to be delivered F.O.B., destination. Seller shall be responsible for safe packaging and packing of the Goods. Seller shall separately number all cases and packages, showing the corresponding numbers on the invoices. An itemized packing slip, bearing Buyer’s Order number must be placed in each container. No charge shall be made for packaging, packaging materials, crating or storage, unless stated on this Order. Seller shall be responsible for the safe delivery of all items to Buyer, and in the event of notification by Buyer of Goods damaged in shipment and proof of such damage, Seller shall replace such items or deduct their value from its invoice at Buyer’s option.
- 7. DELIVERY; CANCELLATION; RISK OF LOSS:** In the event that delivery is not made upon the date specified or, if no date is specified, within a reasonable time, Buyer shall have the option of voiding the Order

in whole or in part. Upon default by Seller in time, rate or manner of delivery, Buyer reserves the right to cancel this Order and purchase elsewhere, holding Seller accountable for any loss caused thereby. Buyer also reserves the right to refuse shipments made in advance of the delivery date specified. Delivery shall not be deemed complete until the Goods are received and subsequently accepted by Buyer. Seller assumes the risk of loss or damage to all Goods until delivered to and accepted by Buyer. Whenever any delay (or any threatened delay) in delivery is foreseeable, Seller shall immediately notify Buyer of such delay but no such notice shall affect the rights of Buyer hereunder.

8. TERMS OF PAYMENT; INVOICES: Invoices may be submitted to Accounts Payable for payment upon shipment of Goods or performance of Services. Invoices shall be paid 45 days from date of acceptance of Goods or performance of Services by Buyer, or receipt of invoice, whichever is later. Cash discounts, if any, shall be as indicated on this Order. After shipment of Goods, Seller shall mail to Accounts Payable copies of packing slips, and a Bill of Lading, Express Receipt or other document bearing the Buyer's Order number. Buyer shall have the right at any time to set-off any amount owed to Buyer by Seller against any amounts due and owing to Seller (or any of its associated or affiliated companies including agents and representatives) with respect to this Order or any subsequent Order.

9. SOFTWARE OR OTHER EDUCATIONAL MATERIALS: If Seller is providing software or other educational materials, Seller certifies that its product meets the accessibility standards set forth in WCAG 2.0 Level AA for web-based technology and Section 508 of the Rehabilitation Act and The Americans with Disabilities Act for other electronic and information technology.

10. WARRANTIES: Seller warrants, in addition to all warranties implied by law, that Goods shall (i) be free from defects in materials, design, workmanship, and fabrication; (ii) conform to applicable technical and other specifications, drawings, notes, samples and/or descriptions provided to or by Buyer; (iii) be fit for their particular purpose, suitable for use and manufactured in compliance with all applicable laws; (iv) not infringe on any third party's contractual, personal or proprietary rights, including, without limitation, patents, trademarks, trade names, copyrights or trade secrets; and (v) be free and clear of all third-party liens, claims and encumbrances of any kind. Seller further warrants that the Services shall be performed in a professional manner and that the Services shall be suitable for Buyer's specific purposes and in conformance with any performance criteria provided to or by Buyer. With respect to services, Seller warrants that all services shall be provided in a professional and workmanlike manner, with a degree of skill and care consistent with current, good and sound professional procedures. If a breach of warranty occurs, Buyer may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods or services. These warranties shall survive any inspections, delivery, acceptance, and payment.

11. INSPECTION: All Goods and Services shall be and are subject to inspection and testing within a reasonable time after delivery of the Goods or performance of the Services. Failure by Buyer to inspect and accept or reject Goods or Services shall not relieve Seller from responsibility for Goods or Services not in conformity with this Order.

12. REJECTIONS: Buyer reserves the right to reject and receive full credit for any Goods or Services that are not in conformity with the warranties described in Section 9. Without extra cost to Buyer, Seller shall be notified of defective Services and Goods. Upon such notification and Buyer's request, Seller, immediately, shall perform the rejected Services to Buyer's satisfaction and replace all rejected Goods, including Goods damaged in shipment. Such rejected Goods shall be returned to Seller at Seller's expense. Seller may advise Buyer of any preferred routing for return of rejected Goods and whether or not the shipment should be protected by insurance or full declaration of value at the time of acceptance of this Order. In the absence of such information from Seller regarding such shipments, Buyer reserves the right to declare full valuation or insurance (whichever is applicable) for the benefit of and at the expense of Seller.

13. PRICING: Prices indicated on this Order are firm; provided, however, that if Seller establishes lower prices prior to shipment, such lower prices shall apply. Any changes in pricing resulting from specification changes initiated by Buyer must be authorized in writing by Buyer.

14. BANKRUPTCY: Buyer reserves the right to cancel this Order, without expense or liability, if (i) Seller is or shall become insolvent, (ii) Seller shall make a general assignment for the benefit of creditors, or (iii) bankruptcy proceedings are instituted against Seller.

15. REMEDIES NOT EXCLUSIVE: The rights and remedies of Buyer set forth in this Order shall not be exclusive and are in addition to any other rights and remedies provided by law.

16. INDEMNIFICATION: Seller agrees to defend, hold harmless and indemnify Buyer from any fines, penalties, claims, suits, liabilities, losses or expenses, as incurred, including reasonable attorney and consultant fees and expenses, expenses of recall, inspection, testing and replacement or correction of Goods or Services, resulting from any (1) damage to property, personal injuries or death arising out of the purchase, sale, delivery or use of Goods supplied by Seller or the performance of the Services by Seller; or (2) breach of any warranty described in Section 9. Buyer shall give Seller reasonable notice of any such claims.

17. CONFIDENTIALITY: Without the prior written consent of Buyer, Seller shall not disclose to any third party, any information provided to Seller regarding Buyer or Buyer's affairs (including all drawings, blueprints, descriptions, specifications and the contents of this Order). Without the prior written consent of Buyer, Seller shall not in any manner disclose the fact that Seller has furnished, or contracted to furnish, to Buyer the Goods and/or Services ordered hereunder. Seller further agrees that Seller shall not to use Buyer's name or any other identifying characteristic in connection with any advertising or promotion related or pertaining to the Goods or Services provided under this Order, nor represent Buyer privately or publicly, nor advertise to third parties that Buyer endorses Seller's service or goods, without Buyer's prior express written permission.

18. COMPLIANCE WITH LAWS: Seller warrants that in manufacturing and supplying the Goods and/or in performing the Services, it has complied with and shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances. To the extent that the Services provided under this Order involves the Seller's presence on campus for services including, but not limited to, construction, installation, maintenance, or repairs, Seller also agrees to comply with Buyer's Contractor Safety Program, incorporated into this Order by reference, and available at <http://www.snhu.edu/~media/files/pdfs/snhu-contractor-safety-program>

19. INDEPENDENT CONTRACTOR: Seller agrees that Seller's relationship with Buyer is and shall be that of an independent contractor, and nothing in this Order shall be construed as creating the relationship of employer and employee or that of a joint venture, agency, or partnership between Buyer and Seller.

20. ASSIGNMENT. Seller shall not assign this Order in whole or in part without Buyer's prior written consent.

21. EQUAL EMPLOYMENT; AFFIRMATIVE ACTION: Seller hereby certifies that, with respect to this Order, Seller shall comply with the requirements of Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, the rules and regulations of the Department of Labor in promoting equal employment opportunities (41 CFR 60), the rules and regulations of the Department of Labor in promoting employment opportunities for disabled and Vietnam veterans (41 CFR 250), and all other applicable New Hampshire and Federal laws and regulations that prohibit discrimination in the workplace.

22. ANTI-KICKBACK ENFORCEMENT ACT: This Order is subject to the provision of the Anti-Kickback Enforcement Act of 1986, as amended (the "Act"). By agreeing to this Order, Seller (1) certifies that it has not paid kickbacks directly or indirectly to any Southern New Hampshire University employee for the purpose of obtaining this or any other Southern New Hampshire University purchase order or contract, and (2) agrees to cooperate fully with any Federal agency investigating a possible violation of the Act. Copies of the pertinent

regulations under the Act may be obtained from Buyer upon request of Buyer's Office of Affirmative Action and Government Regulation Compliance.

23. GOVERNING LAW; DISPUTES. This Order shall be governed and interpreted in accordance with the laws of the State of New Hampshire without regard to its conflict of law provisions. Any legal action arising out of or relating to this Order shall be brought either in the state or federal courts in the State of New Hampshire, and Seller and Buyer each expressly hereby consents to personal jurisdiction, service of process and venue in and of the State and Federal courts in the State of New Hampshire. Seller and Buyer each expressly hereby waives the right to trial by jury.

24. TERMINATION:

Termination for Convenience: Buyer may, by written notice to Seller, terminate the Order, or any part thereof, for any or no reason, for Buyer's convenience, with or without notice provided seven (7) days prior to the delivery date stated. Upon notice of termination, Seller shall immediately stop all work and cause its suppliers and/or subcontractors to stop all work in connection with the Order. If Buyer terminates for convenience, Buyer shall pay Seller for goods and services accepted as of the date of termination, and, for Seller's actual, reasonable, out of pocket costs incurred directly as a result of such termination. Buyer shall have no responsibility for work performed after Seller's receipt of notice of termination.

Termination for Cause: In addition, Buyer may, by written notice to Seller, terminate the Order, or any part thereof, if Seller (a) fails to comply with any term or condition of this Order including, but not limited to, delivery terms or (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; or (c) files a voluntary petition in bankruptcy; or (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; or (e) voluntarily ceases trading; or (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Order to a third party without the Buyer's advance written consent, with termination effective when sent. In the event of Termination for Convenience or Termination for Cause, Seller shall provide to Buyer a refund of any pre-paid amounts or deposits that were not used as costs incurred directly by the Seller for work performed under these terms and conditions.

25. FORCE MAJEURE. Neither Party shall be liable to the other or be deemed to be in breach of these terms and conditions for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence ("**Force Majeure**"). Such causes may include, but are not limited to, acts of nature or of a public enemy, fires, floods, war, embargo, epidemics, quarantine restrictions, strikes, boycott, lockout, accident, explosion, riot, insurrection, terrorist act, Act of God, acts of governmental authority, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this Section, provided that the Party whose performance is affected notifies the other promptly of the existence and nature of such delay. At its option, Buyer may terminate any delivery or service that is delayed more than thirty (30) days by Force Majeure events. In the event of cancellation or termination due to Force Majeure events, Seller shall provide to Buyer a refund of any pre-paid amounts or deposits.

Exhibit A

Southern New Hampshire University Minimum Insurance Requirements for Vendors as of January 2019

Seller agrees to maintain insurance policies of the type and including coverage and limits provided hereinafter during the provision of Goods and/or Services under the Order:

Commercial General Liability

Minimum Limit \$1,000,000 each occurrence and \$2,000,000 annual aggregate
Including operations/products/completed operations liability, contractual liability, personal and advertising injury, and damage to rented premises liability

Workers' Compensation

NH Statutory Requirements
Employers' Liability \$500,000/\$500,000/\$500,000

Business Automobile Liability

Minimum limit \$1,000,000
For owned (if any), hired, and non-owned vehicles

Excess Liability

Minimum limit \$5,000,000

Professional Liability

Minimum limit \$2,000,000 if professional service provided

Cyber Risk Insurance

If Contractor will use or disseminate Personal Information, regardless of how stored or transmitted, or access University's internal network, Contractor shall carry insurance in the minimum amount of \$1,000,000 per claim for the duration of this Contract and three years following its termination to respond to privacy and network security liability claims including, but not limited to: Liability arising from theft; Network security liability arising from (i) the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or (ii) the inability of an authorized third party to gain access to Southern New Hampshire University data, including denial of service, unless caused by a mechanical or electrical failure; liability arising from the introduction of a computer virus into, or otherwise causing damage to, an SNHU or third party computer, computer system, network, or similar computer related property and the data, software, and programs thereon; crisis management expenses (i.e. notification, public relations, reputation damage, forensics, etc.) for a data breach.

All insurance required hereunder shall have a rating of at least A-VIII in the latest edition of AM Best's Insurance Reports. It is the intent of the Buyer and Seller that all such liability policies purchased by Seller shall be primary with regard to any liability insurance carried by the Buyer. All such insurance policies must be paid and in force. The General, Excess, and Automobile liability policies shall be endorsed to include Southern New Hampshire University (SNHU), The Trustees of SNHU, its officers, employees, agents and assigns as additional insured. Each policy shall contain an endorsement waiving all rights of subrogation against Southern New Hampshire University. Seller shall provide to the Buyer a certificate of insurance contemporaneously with the acceptance of this Order setting forth the coverage as required above together with the insurance company's name, policy number and expiration dates of the insurance. Seller shall endeavor to provide at least thirty (30) days written notice to the Buyer of any policy cancellation, non-renewal, or material alteration. The above insurance requirements shall not be construed as limiting in any way the extent to which Seller may be held responsible for the payment of damages to Buyer or to any persons resulting from its operations or the activities of any person or persons for which it is liable. Any subcontractors hired by Seller will meet the requirements stated above or as agreed by Buyer. Failure of Seller to provide the certificates referenced hereunder, or failure of the Buyer to specifically request such certificates shall in no way limit or release Seller of its obligations or liabilities under this Order.