

Florida Polytechnic University
Purchase Order Terms and Conditions
(Effective 9.7.17)

A. General Terms- Applicable to all Purchase Orders

These Purchase Order Terms and conditions (“PO Terms”) are incorporated into the Florida Polytechnic University (“University”) Purchase Order (“PO”). The PO Terms, the PO and the related proposal, quote, specifications attached to the PO or incorporated by reference (“PO Attachments”) constitute the entire and exclusive agreement (“Agreement”) between The Florida Polytechnic Board of Trustees (“University”) and the Supplier (“Supplier”) referenced in the PO unless there is a separate agreement signed by the University, in which case these PO Terms will apply only if specifically referenced in such signed agreement.

If the terms contained in these PO Terms conflict with terms in the PO or PO Attachments, the terms contained in these PO Terms shall supersede the other terms and control.

The Florida Polytechnic Board of Trustees’ approval of the Agreement is conditioned on Supplier’s agreement that any terms different from or in addition to the PO and these PO Terms, whether communicated orally or contained in any confirmation, invoice, acknowledgement, release, acceptance or other written correspondence irrespective of the timing, shall not form a part of the Agreement, even if Supplier purports to condition its acceptance of these PO Terms on the University’s agreement to such different or additional terms. Supplier’s electronic acceptance, receipt of payment, acknowledgement of these Terms, or commencement of performance constitutes Supplier’s acceptance of these PO Terms.

1. **Payment.** Payment will be made in arrears based on actual services and/or goods provided and in accordance with University regulation FPU-8.002 Prompt Payment to Contractor/Vendors. Supplier shall submit bills for compensation for goods, services or expenses in sufficient detail sufficient for a pre-and post-audit. If the University does not issue payment within 30 days of receipt of a proper invoice, the University will, upon Supplier’s request, pay Supplier an interest penalty at the rate established pursuant to §55.03(1) Florida Statutes if the interest exceeds one dollar (\$1.00). Suppliers experiencing payment problems may contact the Vendor Ombudsman at 863-874-8556. The University may require Supplier to accept payments via the University’s EFT/ACH payment process. Supplier is responsible for any taxes due under this Agreement; the University will provide a copy of its Certificate of Exemption upon request. The University’s performance and obligation to pay under the Agreement is contingent upon the Legislature’s annual appropriation.
2. **Relationship of the Parties.** Supplier is an independent contractor, and neither Supplier nor Supplier’s employees, agents, or other representatives shall be considered the University’s employees or agents. Supplier shall not use the University’s name, trademarks, logos, or marks without the University’s prior written approval. Supplier represents and warrants that it is not on the Convicted Vendor List (see Florida Statutes §287.133(2)(a)). Supplier must submit a vendor application and accurate W-9 or W8-BC (Foreign Vendor); the Supplier’s invoice will be deemed insufficient for payment until such information has been provided to the University.
3. **Assumption of Risk.** Each party hereby assumes any and all risk of personal injury and property damage attributable to the negligent acts or omissions of the acts or omissions of that party and the officers, employees, and agents thereof. Supplier also assumes such risk with respect to the acts or omissions of Supplier’s subcontractors or persons otherwise acting or engaged to act at the instance of Supplier in furtherance of Supplier fulfilling Supplier’s obligations under the Agreement. The University is not liable for the acts of third parties.
4. **Confidentiality of Information.** If Supplier is exposed to the University’s confidential information, Supplier will keep such information confidential and will act in accordance with any guidelines and applicable laws (such as HIPAA, FERPA and the Gramm-Leach Bliley Act.) Supplier will not use information for any purpose except as necessary in performance of services under this Agreement.

Confidential information shall not include information that is a public record pursuant to Florida law (Florida Statutes Chapter 119), and the University will respond to public records requests without any duty to give Supplier prior notice.

Upon termination of this Agreement for any reason, Supplier shall return to the University all confidential information received from the University or created, maintained or received by the Supplier on behalf of the University that the Supplier still maintains in any form. If Supplier must retain any of University’s confidential information, Supplier shall continue to use appropriate safeguards to prevent the use or disclosure of the University’s confidential information for as long as Supplier retains the University’s confidential information.

Supplier shall report within three (3) business days, to the University’s General Counsel, any use or disclosure of confidential information not provided for by this Agreement of which it becomes aware, including any privacy or

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security incident(s) known or suspected of which Supplier becomes aware. Notice of any breach of confidentiality shall be given to the Florida Polytechnic University General Counsel by email to OGC@floridapoly.edu or by delivery in hard copy to Florida Polytechnic University, Attention: General Counsel 4700 Research Way, Lakeland, FL 33805-8531. This provision shall survive termination of the Agreement.

5. Indemnification/Copyright and Intellectual Property. If Vendor uses any design, device, materials or documents covered by letters, patent, trademark, service mark, copyright or other intellectual property or other similar right (“Intellectual Property”), in Vendor’s performance of the Agreement, Vendor hereby represents and warrants that it owns, or is licensed to use and to authorize others to use, such Intellectual Property and it is mutually agreed and understood without exception that the purchase price indicated in the Agreement is inclusive of all royalties and/or costs arising from University’s use of such Intellectual Property. Vendor will, at its own expense, defend any suit brought against the University and will indemnify and hold the University, the University Board of Trustees and the University’s officers, employees, agents and/or servants harmless from and against any and all liabilities, actions, damages, suits, proceedings and judgments from claims instituted or recovered against the University by any person or persons whomsoever on account of the University’s use of such Intellectual Property in violation of rights under such patent, copyright, trademark, other intellectual property right or other right. This provision shall survive termination of the Agreement and Vendor’s liability for the above is not limited by any limitation of liability clauses in the Agreement.
6. Insurance. If Supplier provides services on University premises, at all times during the use of the premises Supplier shall maintain proper liability insurance, with an insurance carrier and insurance limits acceptable to the University, but in no event for less than \$1,000,000 each occurrence/\$3,000,000 general aggregate. The insurance certificate shall name the University and the University Board of Trustees as an additional insured. User shall furnish the University a copy of the insurance certificate at least 24 hours prior to commencement of the use of the Premises. University may, in writing, in its sole discretion, permit Supplier to deviate from the limits and requirements indicated above. The University is self-insured and is not required to obtain additional insurance for this Agreement.
7. Indemnity. Nothing in the Agreement shall be construed as the University’s indemnification of the Supplier or as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28. Supplier shall indemnify, defend, protect, and hold harmless Florida Polytechnic University, the Florida Polytechnic University Board of Trustees, the Florida Board of Governors, the State of Florida and their respective officers, trustees, agents, employees, and their respective successors and assigns (each an “Indemnitee”, and collectively, the “Indemnitees”) for, from and against all suits, claims, lawsuits, actions, proceedings, arbitrations, and other costs incurred by Indemnitees (including reasonable attorneys’ fees) (“Indemnified Claims”) arising from Vendor’s negligence, misrepresentation or breach of any representation, warranty, obligation, or covenant of the Agreement. Such Indemnified Claims shall include, without limitation, all direct, actual, general, and special damages. This provision shall survive the expiration or earlier termination of the Agreement.
8. Assignment/Modification. The Agreement may not be assigned by either party except as agreed to in writing and signed by the parties, and this Agreement shall be binding upon the parties’ successors and assigns. No subsequent alterations, amendments, changes or additions to the Agreement shall be binding upon either University or Supplier unless reduced to writing and signed by both parties and by direct reference made part hereof.
9. Automatic Renewals. Renewals of the Agreement are not automatic.
10. Travel Expenses. If the University is specifically responsible for reimbursing Supplier for travel expenses pursuant to the Agreement, such expenses shall only be paid by the University to the extent permitted by Florida Statutes §112.061 and University policy.
11. Software. If Supplier is providing software, the University may create and retain a copy of the software and related documentation for back up and disaster recovery purposes and for archival purposes for use after the Agreement is terminated.
12. Governing Law. This Agreement is governed by the laws of the State of Florida without regards to any conflicts of law principles. Venue of any actions arising in connection with the Agreement shall be exclusively in the state courts located in Polk County, Florida.
13. Compliance with Laws. Supplier shall, at its own expense, and at all times, comply with all applicable federal, state and University laws, rules, and regulations and other governmental requirements. Supplier has, and will at all times maintain all governmental permits, licenses, consents and approvals necessary to perform its obligations under the Agreement. This provision shall survive the expiration or earlier termination of the Agreement. The Supplier’s employment of unauthorized aliens is considered a violation of Section 274A of the Immigration and Nationality Act. If the Supplier

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knowingly employs unauthorized aliens, such violation shall be cause for the University's unilateral cancellation of the Agreement.

14. **Termination.** The University may terminate this Agreement by giving Supplier at least thirty (30) days prior written notice of termination. The University shall only be liable for payment of Goods received and services rendered and accepted by the University prior to the date of termination.
15. **Public Records.** The University is subject to applicable public records laws as provided by Florida Statutes Chapter 119 and will respond to public records requests without any duty to give the Supplier prior notice. If Supplier is a "contractor" as defined under Section 119.0701, Florida Statutes, supplier shall comply with the following requirements:
 - a. Keep and maintain public records that ordinarily and necessarily would be required by the University in order to perform the service;
 - b. Provide the public with access to public records on the same terms and conditions that the University would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - c. Ensure that public records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
 - d. Meet all requirements for retaining public records and transfer, at no cost to the University, all public records in possession of the Supplier upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the University in a format that is compatible with the information technology systems of the University. The University may unilaterally cancel the Agreement for Supplier's refusal to allow public access to all public records made or received by the Supplier in conjunction with the Agreement, unless the records are exempt from s. 24(a) of Art. I of the State Constitution and s. 119.07(1). This provision shall survive the expiration or earlier termination of the Agreement.
16. **Lobbying.** Pursuant to Florida statutes section 11.062 and 216.347, the Supplier is prohibited from using state funds or grants and aids appropriations for the purpose of lobbying the Legislature, the judicial branch, or a state agency. However, a supplier may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding any agreement to which the supplier and a state agency are parties, after contract execution and during the contract term.
17. **Miscellaneous.** All matters not authorized expressly by the PO Terms shall be reserved to the sole discretion of the University.

B. Special Terms-Applicable to Consulting Services.

1. All provisions in the General Terms in section A of these PO Terms are applicable, as well as the provisions in this section, and other applicable section, if the Supplier is providing consulting services.
2. **Work for Hire.** Supplier and the University intend the Agreement to be one for services and each considers the products and results of the services to be rendered by Supplier hereunder (the "Work") to be a work made for hire. Supplier acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the University.

C. Special Terms- Applicable to Hotel/Meeting Space.

1. All provisions in the General Terms in section A of these PO Terms are applicable, as well as the provisions in this section, and other applicable section, if the Supplier is providing hotel and/or meeting space.
2. **Deposit.** Unless non-state funds are being used to pay for the event, University cannot make deposits or prepay for any event. Any deposits made are refundable.
3. **Cancellation.** Cancellation fees, liquidated damages fees, etc. ("collectively referred to as cancellation fees") may only be assessed if University cancels this Agreement for the sole purpose of holding this event at another location, and University fails to give the Supplier 30 days advance notice (72 hours advance notice if Agreement is for meeting rooms

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only) and Supplier is unable to rent the meeting rooms to another person/entity. In any case, cancellation fees shall be limited to rental of meeting room only.

4. Food/Parking/Incidentals etc. University is not responsible for charges made by event attendees.
5. Americans with Disabilities Act.
 - a. **Compliance by the Supplier.** The Supplier is responsible for complying with the public accommodations requirements of the Americans with Disabilities Act (“ADA”) not otherwise allocated to University in this Agreement, including (i) the “readily achievable” removal of physical barriers to access to the meeting rooms (e.g., speaker’s platform and public address systems), sleeping rooms, common areas (e.g., restaurants, rest rooms, and public telephones); (ii) the provision of auxiliary aids and services where necessary to ensure that no disabled individual is treated differently by the Supplier other than other individuals (e.g., Braille room services menus or reader); and (iii) the modification of the Supplier’s policies, practices, and procedures applicable to all guests and/or groups as necessary to provide goods and services to disabled individuals (e.g. , emergency procedures and policy of holding accessible rooms for hearing and mobility impaired open for disabled individuals until all remaining rooms are occupied).
 - b. **Compliance by University.** University is responsible for complying with the following public accommodations requirements of the ADA: (i) the “readily achievable” removal of physical barriers within the meeting rooms utilized by University which University would otherwise create (e.g., set-up of exhibits in an accessible manner) and not controlled or mandated by the Supplier, (ii) any extraordinary costs for special auxiliary aids requested by the attendees/University shall be borne by University provided the Supplier notifies University in advance and in writing and (iii) the modification of University’s policies, practices and procedures applicable to participants as required to enable disabled individuals to participate in the program.
 - c. **Mutual Cooperation in Identifying Special Needs.** University shall attempt to identify in advance any special needs of disabled registrants, faculty, and guests requiring accommodations by the Supplier. Each party will notify the other party in writing of such needs for accommodation as soon as they are aware of such needs. Whenever possible, University shall copy the Supplier on correspondence with attendees who indicate special needs as covered by the ADA. The Supplier shall notify University in advance and in writing of requests for accommodations which it may otherwise receive to facilitate identification by University of its own accommodation obligations or needs as required by the ADA.

D. Special Terms-Purchase of Goods.

1. All provisions in the General Terms in section A of these PO Terms are applicable, as well as the provisions in this section, and other applicable section, if the Supplier is selling goods and/or equipment (“Goods”) to the University.
2. Delivery. Delivery shall be made to the designated “Ship To” location on the applicable PO. All Goods will be shipped FOB Destination; Supplier assumes all risk of loss of or damage to all Goods until they are they are received and accepted by the University. Unless University otherwise agrees in writing, delivery shall occur within the normal working hours (8am-5pm) of the University, Monday through Friday, excluding University and State of Florida holidays. The University retains the right to reject any non-conforming Goods. If delivery of the Goods is not complete by the Delivery Date, or Supplier fails to deliver conforming Goods, the University may, without liability, and in addition to its other rights and remedies, terminate the Agreement, by notice effective when received by Vendor, as to Goods not yet delivered or rendered.
3. PRIDE. In accordance with Florida Statutes section 945.515 related to corporations in a correction work program: IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS AGREEMENT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS AGREEMENT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS AGREEMENT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INSOFAR AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

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