

The following are the terms and conditions ("Terms") upon which Finger Lakes Community College ("FLCC") will purchase from the identified supplier ("Supplier") and Supplier will sell to FLCC the goods or perform for FLCC the services identified on the face of a properly-executed purchase order ("P.O."). In addition, if FLCC has provided Supplier with any supplementary terms, conditions, or requirements in a request for proposal, bid specification, contract, or other writing concerning the subject matter of this P.O., those terms, conditions, or requirements shall also apply, and are incorporated herein by reference. Supplier's performance of service or provision of goods under P.O. constitutes Supplier's acceptance of the Terms without exception. No deletion, addition, or amendment of the terms and conditions of this P.O. whether contained in Supplier's acknowledgment, invoice, packing list, or delivery slip is binding without FLCC's express written approval.

1. Purchase Orders

FLCC will not be responsible for goods supplied or services performed by Supplier without a written P.O. FLCC may terminate a P.O. or any portion thereof for its sole convenience, subject to an equitable adjustment between Supplier and FLCC as to any services or goods then in progress (excluding standard stock). All claims for money due or to become due from FLCC shall be subject to deduction or setoff by FLCC by reason of any counterclaim arising out of this or any other transaction with Supplier.

2. Shipping and Routing

Shipping Terms are F.O.B. FLCC unless otherwise stated on the face of the P.O. FLCC reserves the right to specify a specific delivery location. Any shipments delivered to another location other than specified will be the responsibility of Supplier to have redelivered to the specific location or reimburse FLCC for any charges in moving the goods to the specific location. All goods must be forwarded by the route taking lowest reasonable transportation rate or in accordance with any special shipping instructions. Otherwise the difference in freight rate and extra cost of transportation will be Supplier's.

2. Timely Delivery

If the P.O. sets a date or time for the delivery or performance of goods and services, time is of the essence, and Supplier's failure to deliver or perform in a timely manner will constitute a material breach of these Terms. FLCC may, at its option, and without limiting its other rights, cancel all or any unfilled part of the P.O. if deliveries are not made within the time specified. FLCC reserves the right to charge Supplier for any loss or expense incurred as the result of Supplier's failure to make timely delivery.

3. Invoices

Send all invoices to: AccountsPayable@flcc.edu or Accounts Payable, Finger Lakes Community College, 3325 Marvin Sands Dr., Canandaigua, NY 14424. Invoices which do not bear FLCC'S P.O. number shall not receive consideration for payment.

4. Packaging

FLCC'S P.O. number must appear on the outside of each package and on all packing slips, invoices, and related papers. A packing slip must be included with each shipment.

5. Extra Charges

No additional charges of any kind including, but not limited to, charges for shipping, handling, packaging, fuel surcharges, or insurance will be allowed unless specifically stated on the P.O. Any added charges will be automatically deducted from invoices received and not paid.

6. Tax Exemption

As a governmental entity, FLCC is exempt from payment of all sales tax, whether state or local, imposed under Articles 28 and 29 of the New York Tax Law. FLCC P.O.s must be accepted in lieu of tax exemption certificates with the supplier retaining a copy to prove that the sale was exempt. Do not include taxes from which FLCC is exempt when submitting invoices.

7. Inspection and Rejection

In addition to all remedies permitted by law, FLCC reserves the right to reject and return to Supplier, for full refund and at Supplier's sole expense, all shipments in excess of quantities ordered and all goods that do not conform to FLCC's exact specifications or requirements. All goods and materials furnished under this P.O. shall be subject to FLCC's inspection, test, and approval or rejection prior to or after delivery due to nonconformance. Payment by FLCC shall not constitute an acceptance or approval of any nonconforming or defective goods or workmanship, nor shall it affect the right of FLCC to later reject the goods or services. Any goods returned by FLCC pursuant to this paragraph or any other paragraph of this P.O. shall be returned to Supplier at its own risk and expense.

8. Risk of Loss; Warehousing

Risk of loss and transfer of title shall not pass to FLCC until goods are delivered to and accepted by FLCC. If Supplier is warehousing goods which have been ordered under this P.O., regardless of warehouse location or whether title has been passed to FLCC, Supplier is responsible for any injury, loss, damage, or destruction to the goods until delivered to and accepted by FLCC.

9. Warranties

Supplier warrants and represents that all material, work, or goods supplied under this P.O. will conform to specifications, drawings, samples, or other descriptions furnished by FLCC, and shall be fit and serviceable for the purpose intended, of good

quality and workmanship, and free from defect. All material, work, or goods shall be subject to rejection if use reveals defects not apparent upon receipt and, if rejected, will be held at Supplier's risk and expense for storage and other charges until Supplier authorizes disposal or return. Supplier also warrants and represents that it (and each person or entity, if any, acting for or on its behalf) is not debarred from participation in any program of the government of the United States, has all licenses, certificates, and other professional credentials required by law to perform under the terms of this P.O. Furthermore, Supplier warrants and represents that it shall immediately notify FLCC if it (and each person or entity, if any, acting for or on its behalf) become subject to such debarment during the performance of this P.O.

10. Independent Contractor

Supplier shall be an independent contractor with no authority to bind FLCC and shall have no other relationship to FLCC. Supplier will determine the means and methods of performing its services and will supply all equipment, tools, materials, parts, supplies and labor required to perform under the terms of this P.O. FLCC shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to, equipment, tools, materials, supplies, and other personal property of Supplier or its agents or employees, which may be brought onto FLCC premises or stored at FLCC.

11. Non Appropriations Clause

In accordance with New York State General Municipal Laws, the College will not be liable for any purchases or contracts for goods or services for which funding is not available. As a result, the firm agrees to hold the College harmless for any contracts let for which funding either does not currently exist or for which funding has been removed prior to the issuance of a purchase order by the College. Issuance of a purchase order by the College indicates that the College currently has and has set aside adequate funds to procure the goods and services indicated in the purchase order or contract. Receipt of a resolution by the Finger Lakes Community College Board of Trustees is not in and of itself a binding contract with the College. Should it become necessary for the College to cancel a project or purchase after an order to proceed or purchase order has been issued, the College will only be liable for and the firm agrees to only assess those financial damages that it can prove to have incurred as a result of the cancellation.

12. Insurance

It is Supplier's responsibility to maintain adequate insurance coverage.

13. Indemnification

To the fullest extent permitted by law, Supplier shall defend with competent counsel, indemnify and hold harmless FLCC, its employees, officers, trustees, and/or agents from and against all liabilities, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the goods supplied or services performed by Supplier under this P.O., or by reason of Supplier's use of FLCC's premises, provided that any such liability, claim, damage, loss or expense (1) is attributable to loss, damage or destruction of property, or to

personal or bodily injury, sickness, disease or death (including any liability, claim, damage, loss or expense incurred under any workers' compensation law or regulation), and (2) is caused in whole or in part by any act or omission by Supplier or any subcontractor to Supplier, or by anyone directly or indirectly employed by Supplier, or by anyone for whose acts or omissions Supplier may be liable, regardless of whether or not it is caused in part by an act or omission of FLCC; but such indemnification shall not extend to any injury or damage to the extent it is attributable to the sole negligence of FLCC. In addition, Supplier shall hold and save FLCC and, if applicable, the U.S. Government, and their trustees, officers, agents, and employees, harmless from patent liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention or discovery made or used in the performance of this P.O., including the use or disposal thereof by or on behalf of FLCC or the U.S. Government, provided, however, that as to FLCC, this indemnification is not and shall not be applicable to any infringement of a U.S. patent to the extent resulting from Supplier's compliance with specific written instructions, plans, or specifications furnished by FLCC. The foregoing obligations shall survive the termination, completion or expiration of this P.O. Acceptance by FLCC of any other terms and conditions proposed by Supplier shall not abrogate or reduce the indemnification obligations specified herein.

14. Advertising

Supplier shall not, use the name, logos, or symbols of FLCC for purpose of advertising, promotion, or trade without the FLCC's prior written approval.

15. Hazardous Chemicals

If the goods or materials shipped to FLCC pursuant to this P.O. contain a "hazardous chemical," as that term is defined in 29 CFR §1910.1200(c), Supplier must provide to FLCC a Material Safety Data Sheet and any other information required by the Federal Hazard Communication Standard (29 CFR §1910.1200), and any other federal or state environmental law, rule or regulation, prior to or at the time of shipment to: Office of Environmental Health and Safety, Finger Lakes Community College, 3325 Marvin Sands Dr., Canandaigua, NY 14424. In addition, Supplier shall properly mark the hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200). Any shipment or transfer by the supplier of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT")), shall be conducted consistent with the requirements of DOT regulations.

16. Non-discrimination

FLCC neither affiliates with nor grants recognition to any individual, contractor, firm or organization, on or off campus, having policies that discriminate based on an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Supplier additionally agrees that it will comply with all Federal, State and Local regulations in this regard.

17. Compliance With Laws

Supplier warrants that all goods or services furnished hereunder will comply with all applicable federal and state laws (and the rules, regulations, guidelines, orders, and standards there under) including, where applicable, but not limited to, the Fair Labor Standards Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Occupational Safety and Health Act of 1970, and the Toxic Substances Control Act, and any amendments thereto. Supplier shall also give to FLCC all notices and reports and label all goods and services supplied under this P.O., as required by applicable laws, rules, regulations, guidelines, orders, or standards.

18. Termination

FLCC may terminate this P.O. in whole or in part at any time for cause if Supplier fails to comply with any of the Terms, including without limitation, by making late delivery or performance, or by delivering defective or non-conforming goods or services. If this P.O. is terminated for cause, FLCC shall not be liable to Supplier for any amount, and Supplier shall be liable to FLCC for any and all damages sustained by reason of the default which gave rise to the termination. FLCC may terminate this P.O. in whole or in part at any time for its sole convenience without cause. If this P.O. is terminated for convenience, FLCC shall make an equitable adjustment between Supplier and FLCC as to any services or goods then in progress (excluding standard stock). All claims for money due or to become due from FLCC for a termination for convenience shall be subject to deduction or set off by FLCC by reason of any counterclaim arising out of this or any other transaction with Supplier.

19. Patents, Copyrights, Trademarks and Warranties

SUPPLIER EXPRESSLY WARRANTS THAT ALL MERCHANDISE IS IN ACCORDANCE WITH THE SPECIFICATIONS; IS FIT FOR THE PURPOSE FOR WHICH SIMILAR MATERIALS AND ARTICLES ARE ORDINARILY EMPLOYED, FIT FOR THE PARTICULAR PURPOSE FOR WHICH THE MERCHANDISE HAS BEEN PURCHASED, FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP, AND MERCHANTABLE, and was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety. Supplier further warrants that the goods and services do not infringe or violate any patents, copyrights, trademarks or the like, and does not unlawfully disclose or make use of any trade secrets and covenants and agrees to hold harmless, defend and indemnify FLCC, and its trustees, agents, servants, employees, successors, assigns, students, and users, against any and all claims, demands or suits and related damages, liabilities, costs and expenses (including attorney's fees) arising out of any such infringement or violation or unlawful use or disclosure of trade secrets without limitation. Such warranties shall survive and shall not be deemed waived by delivery or acceptance of, or payment for the goods and services.

20. Force Majeure

This P.O. is subject to cancellation or change on written notice to the Supplier in the event of causes beyond FLCC's reasonable control, including without limitation acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, and the like.

21. Required Government Clauses

All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland "Anti-Kickback" Act. In addition the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and Contract shall be interpreted as necessary to apply to the U.S. Government or the Buyer and Seller, respectively.

FAR Number Title of Clause

Regardless of Amount

52.203.11 Certification & Disclosure Re: Payments to Influence Certain Federal Transactions

52.222.4 Contract Work Hours and Safety Standards Act

52.225.13 Restrictions on Certain Foreign Purchases

52.227.10 Filing of Patent Applications-Classified Subject Matter

52.227.11/12/13 Patent Rights

52.247.63 Preference for U.S. Flag Air Carriers

52.247.64 Preference for Privately Owned U.S. Flag Commercial Vessels

252.227.7034 DFAR Patents- Subcontracts DOD only

252.227.7039 DFAR Patents Reporting Subject Inventions DOD only

52.222.21 Prohibition of Non-Segregated Facilities

52.222.26 Equal Opportunity

52.222.35 Affirmative Action for Disabled Veterans of the Vietnam Era

52.222.36 Affirmative Action for Workers with Disabilities

52.222.37 Employment Reports on Disabled Veterans of the Vietnam Era

Orders over \$100,000 all of the above clauses plus

52.203.6 Restrictions on Subcontractor Sales to the Government

52.203.7 Anti-Kickback Procedures

52.203.12 Limitation on Payments to Influence Certain Federal Transactions

52.215.2 Audit and Records- Negotiation, Alternative II

52.219.8 Utilization of Small Business Concerns

52.227.1 Authorization and Consent Alternative I

52.227.2 Notice and Assistance Regarding Patent and Copyright Infringement

42 U.S.C. 7401, et. seq Clean Air Act

33 U.S.C. 1251, et. seq Federal Water Pollution Control Act

Orders over \$500,000 all of the above clauses plus

52.219.9 Small Business Subcontracting Plan

Orders over \$550,000 all of the above clauses plus

52.215.12/13 Subcontractor Cost or Pricing Data- Modifications

22. Access to Records

Supplier shall preserve and permit FLCC or any of FLCC's duly-authorized representatives (including, if applicable, the representatives of a U.S. Government funding sponsor) to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this P.O. for the purpose of making audits, examinations, excerpts, and transcripts for a period of six (6) years after final payment hereunder. Supplier shall refund to FLCC any overpayments disclosed by any audit.

23. No Assignment

In accordance with NYS General Municipal Law 109, Supplier shall not assign this P.O. or any interest relating to this P.O. without FLCC's written consent and any assignment made, with or without the knowledge of FLCC, shall be rendered null and void.

24. Sale or bankruptcy of Supplier's Business

If, during the life of this P.O any proceedings by or against Supplier, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Supplier, is commenced or threatened to be commenced, FLCC shall have the right to cancel this P.O. without notice.

25. FLCC's Property/Copyright Ownership

All equipment or material (including without limitation informational material) furnished by FLCC and all goods and services created by Supplier specifically for FLCC under the terms of this P.O. which is charged by the Supplier to FLCC shall, unless otherwise agreed to in writing, be the property of FLCC, shall be returned to FLCC at its written request, and shall not be used by Supplier in any of its business except its business with FLCC under this or other P.O.s. Copyright ownership rights to any works developed specifically for FLCC under this P.O. is hereby transferred and assigned to FLCC. Any use of the FLCC name, logo, artwork or trademark must be authorized in writing by FLCC.

26. Waiver

The failure of FLCC to enforce any of the provisions of this P.O. shall not be construed to be a waiver of such provisions or limit the right of FLCC thereafter to enforce each and every provision.

27. Governing Law

All matters concerning the validity and interpretation of the terms of this transaction shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. Jurisdiction of any litigation shall be in New York, with venue in a court of competent jurisdiction in Ontario County or the US Federal Courts located in the Western District of New York.

28. Factual Disputes

Except as otherwise provided in the P.O., any dispute concerning a question of fact arising under the P.O. which is not disposed of by good faith negotiations may, at the discretion of FLCC, or the U.S. Government funding sponsor, be arbitrated, and/or decided by the U.S. Government funding sponsor. Any decision rendered by the U.S. Government shall be final and conclusive unless, within 30 days from the date of receipt of such copy, Supplier or FLCC mails or otherwise furnishes to all parties a written appeal. The decision of the U.S. Government for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Supplier and FLCC shall, to the extent agreed to by the U.S. Government funding sponsor, be afforded an opportunity to be heard and to offer evidence. Pending final decision of a dispute hereunder, Supplier shall proceed diligently with the performance of the P.O. in accordance with the decision. This "Disputes" clause does not preclude

consideration of law questions in connection with decisions provided for above, and nothing herein shall be constituted as making final the decision of any administrative official, representative or board on a question of law.