

PURCHASE ORDER TERMS AND CONDITIONS

These TERMS AND CONDITIONS (these “**Terms**”) are applicable to the attached Purchase Order (the “**Purchase Order**”) entered into by and between Baker University (“**Baker**”) and the Seller set forth in the Purchase Order (“**Seller**”).

1. These Terms and the Purchase Order constitute the entire contract between Baker and Seller. Baker shall not be bound by any other terms unless both parties have executed a separate written contract for purchases in which case the terms, conditions and specifications of the separate contract shall take precedence. In the event the Purchase Order is a result of the Seller's response to an Invitation to Bid, the terms, conditions, specifications, and pricing of the solicitation shall take precedent. In the event the Purchase Order is a result of the Seller's response to Request for Proposal, the terms, conditions, specifications, scope of work, pricing, and final negotiation shall take precedent. Acceptance of the Purchase Order constitutes acceptance of all conditions stated herein.

2. No modifications of the Purchase Order shall be binding upon Baker unless approved in writing by Baker's authorized level of authority. Quantities specified in the Purchase Order cannot be changed without Baker's prior written approval. Commodities shipped in excess of quantity designated may be returned upon Seller's written request delivered to Baker and at Seller's expense; provided, however, that if a return request is not received within thirty (30) calendar days of the date the commodities were shipped, such excess commodities shall be considered as donations to Baker.

3. Any assignment or amendment of these Terms, the Purchase Order, performance of work thereunder, in whole or in part, or monies due or become due thereunder, shall be void unless consented to by Baker in writing and Baker shall have no obligations to any assignee of Seller under any assignment not consented to in writing by Baker.

4. Baker reserves the right to terminate the Purchase Order and these Terms in whole or in part for default if Seller fails to perform in accordance with any of the requirements of the Purchase Order or these Terms. Any such termination will be without liability to Baker except for completed items delivered and accepted by Baker.

5. Baker expressly states that it will not be bound by any content on the Seller's website, even if the Seller's documentation specifically references said content and/or attempts to incorporate it into any other communication, unless Baker has prior knowledge of such content and the appropriate level of authority of Baker has expressly agreed to be bound by such content by written signature.

6. The Purchase Order shall be fulfilled at the prices proposed to Baker in writing. No increase from the proposed price will be authorized unless approved in writing by Baker.

7. In the event of a discrepancy between a unit price and an extended line item price, the unit price shall govern.

8. Substitution of any portion of the Purchase Order is not be allowed unless Baker is notified in advance in writing and gives written approval of the substitution.

9. Prices and FOB terms are F.O.B. DESTINATION with transportation charges prepaid by Seller unless alternate shipping terms are otherwise indicated and agreed to in writing by Baker.

10. Baker reserves the right to cancel the Purchase Order and purchase elsewhere if delivery is not timely as stated on the Purchase Order. Deliveries shall be made between the hours of 8 A.M. and 3 P.M. CST, Monday through Friday, excluding holidays, unless otherwise stated on the face of the Purchase Order or a separate contract. Deliveries shall be made to the address stated in the Purchase Order. In case of default by Seller, Baker may procure the commodities or services covered by the Purchase Order from other sources and hold the Seller responsible for any excess expense. As used in these Terms, “default” means any failure by Seller to perform or observe any term, covenant or agreement applicable to Seller contained in these Terms or the Purchase Order.

11. Title or Certificate of Origin for vehicles and equipment, if any, must be made and sent to Baker at **[Address]**.

12. By accepting the Purchase Order, the Seller agrees that payment terms shall be net 30 days unless otherwise stated. Payment will be made in accordance with Baker's policies and procedures. Payments will only be made to the Seller and address as set forth in the Purchase Order.

13. The Seller must render an original invoice to **[Baker email address for invoices]** or by U.S. mail to **[Baker mailing address for invoices]**.

14. The Purchase Order number must appear on all invoices, packing slips, shipping notices, freight bills and correspondence concerning the Purchase Order. Failure to include this information may result in delay of payment by Baker. Baker is not responsible for delays caused by missing required invoice information.

15. Baker is exempt from federal and state taxes for tangible personal property. The Seller is not authorized to use Baker's tax exemption number in acquiring such materials, unless prior written approval is provided.

16. *Warranty of Merchantability* - Commodities provided by Seller under the Purchase Order shall be merchantable. All commodities provided shall be of good quality within the description given by Baker, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by Baker, shall conform to the agreed upon specifications, shall conform to the affirmations of fact made by the Seller or on the container or label, and shall be free from all defects in material and workmanship and all defects due to design.

17. *Warranty of Fitness for a Particular Purpose* - When Seller has reason to know or knows any particular purpose, for which the commodities are required, and Baker relies on the Seller's skill or judgment to select or furnish suitable commodities, there is a warranty that the commodities are fit for such purpose.

18. *Warranty of Title* - Seller shall convey good title in those commodities provided to Baker and warrants the transfer is right and lawful. All commodities provided by Seller shall be delivered free from any security interest, lien, or encumbrance of which Baker,

at the time of contracting, has no knowledge. Commodities provided by Seller shall be delivered free of any rightful claim of any third person by infringement or the like.

19. *Acceptance of Commodities and Equipment* - All commodities and equipment delivered pursuant to the Purchase Order are subject to inspection upon receipt by a representative of Baker. Baker's signature for receipt of commodities or equipment does not constitute acceptance of same. If agreed upon terms, conditions and/or specifications are not met, the Seller shall arrange for the return of the non-conforming commodities or equipment at its expense and risk within thirty (30) calendar day of notification from Baker, and Seller shall pay all costs incurred by Baker inspecting and testing the non-conforming commodities or equipment. All non-conforming commodities shall remain the property of the Seller. If Seller fails to arrange for the return of the non-conforming commodities or equipment as provided herein within thirty (30) days from the date of the notification delivered by Baker pursuant to this Section, the non-conforming commodities will be deemed a donation to Baker.

20. Each phase of the services rendered under the Purchase Order, including quality of work, is subject to Baker's inspection during both the Seller's operations and after completion of the tasks. When the Seller is satisfied with the completion of the contracted work, and prior to acceptance of any phase of work, Seller shall submit a written request for an inspection to Baker. After inspection, Baker will issue a list of deficiencies, if any. Upon completion of the list, and correction of all deficiencies by the Seller, the Seller shall notify Baker that the work has been completed satisfactorily. Final inspection shall be performed prior to the completion date of the Purchase Order.

21. The Purchase Order and these Terms shall be construed, controlled, and interpreted according to the laws of the State of Kansas.

22. By accepting the Purchase Order, Seller understands and agrees that the commodities covered therein or the services to be rendered, shall be manufactured, sold or performed in compliance with applicable federal, state, county and local laws, statutes, ordinances, rules and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.

23. If the Seller is required to perform work on Baker's property, the Seller shall assume full responsibility and expense to obtain all necessary insurance and any licenses or permits as required by applicable law, and shall adhere to Kansas' prevailing wage laws current as of the date of the Purchase Order.

24. Each party to the Purchase Order represents and warrants that its representative(s) named therein are, in fact, bona fide and possess full and complete authority to bind said party.

25. Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulation, complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or power, and/or any other similar or difference occurrence beyond the reasonable control of the party so defaulting or delaying. The party whose performance is prevented by any such occurrence shall notify the other party hereof in writing as soon as is reasonably possible after the commencement of such occurrence, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other party of the cessation of such occurrence. No payment shall be made by Baker to Seller for any expenses incurred by Seller by reason of such default or delay.

26. The Seller shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify and hold harmless Baker, its employees, agents and assigns from claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate levels), arising from or relating to personal injury or death, and damage to real property or tangible personal property alleged to be caused in whole or in part by the Seller, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the Seller shall not indemnify for that portion of any loss portion of any loss or damages proximately caused by the grossly negligent acts or omissions of Baker.

27. To the extent applicable, the Seller shall fully indemnify and hold harmless Baker, and its agents, employees, and assigns from any claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate level), arising from or relating to a violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right by Seller or any of its affiliates; provided, however, that the foregoing obligation shall not apply to the misuse or modification of Seller's products by Baker or any of its agents, employees, and assigns, or to the operation or use of Seller's products by Baker or any of its agents, employees, and assigns in a manner not contemplated by the Purchase Order.

28. Baker shall promptly notify the Seller in writing of any claim under Section 26 or 27 above. Baker shall provide all available information and assistance that the Seller may reasonably require regarding any claim. Baker may, in addition to other remedies available to it at law or equity, and upon written notice to the Seller, retain such monies from amounts due the Seller as may be deemed by Baker to be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. Baker may set off any liability or other obligation of the Seller or its affiliates to Baker against any payments due the Seller under any contract with Baker. The rights and remedies of Baker set forth in these Terms and the Purchase Order are not exclusive and are in addition to all other rights and remedies of Baker.

29. In the event that there is a conflict between these Terms and any other applicable indemnification contract between Baker and the Seller, the contract which provides the most protection for Baker shall take precedence. The provisions of these Terms are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable by a court of competent jurisdiction, in whole or in part, the remaining provisions and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.

30. The Seller may not unilaterally modify the terms of the Purchase Order or these Terms by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Seller's order or fiscal forms or other

documents forwarded by the Seller for payment. Baker's acceptance of product or processing of documentation on forms furnished by the Seller for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

31. Except as otherwise mutually agreed to in writing, where transportation charges are separately charged to Baker by Seller, such charges shall in no event exceed the lowest legal freight charges via the carrier or routing specified, in effect on the date of shipment. Time is of the essence with respect to the Purchase Order and these Terms. No charges will be allowed for packing, crating, freight express or cartage unless specified on the face of the Purchase Order.

32. In the event that any of the goods requires, in connection with the installation thereof or work thereon, the services of a supervisor, expert or other person connected with or employed by Seller, and Seller agrees to furnish the same, either with or without charge, such supervisor, expert or other person in performing such services shall not be deemed to be the agent or employee of Baker, and Seller assumes full responsibility for its acts and omissions and exclusive liability for any payroll taxes or contributions imposed by any Federal or State law dealing with any of the subjects covered by the Federal Social Security Act approved August 14, 1935, as amended.

33. No waiver by either party of any breach of any of these Terms or the Purchase Order to be performed by the other party shall be construed as a waiver of any subsequent breach. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of these Terms or the Purchase Order.