

THE COLLEGE OF WOOSTER

TERMS AND CONDITIONS OF PURCHASE

1. Offer. This Purchase Order constitutes an offer by The College of Wooster (hereinafter "Buyer") to buy goods or services according to the description and other terms set forth on its face and this reverse side. Any conduct by Seller which recognizes the existence of a contract including, without limitation, the commencement of any work, delivery of any goods or performance of any services in accordance herewith, shall constitute acceptance of this Purchase Order and all of its terms and conditions. ANY TERMS PROPOSED IN SELLER'S ACCEPTANCE OF BUYER'S OFFER WHICH ADD TO, VARY FROM OR CONFLICT WITH THE TERMS HEREIN ARE HEREBY OBJECTED TO, AND ANY SUCH PROPOSED TERMS SHALL BE VOID, AND THE TERMS HEREOF SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF TERMS AND CONDITIONS OF THE CONTRACT BETWEEN THE PARTIES AND MAY HEREAFTER BE MODIFIED ONLY BY WRITTEN INSTRUMENT EXECUTED BY THE AUTHORIZED REPRESENTATIVES OF BOTH PARTIES. If this Purchase Order has been issued by Buyer in response to any offer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Purchase Order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and different terms here in and acknowledge that this Purchase Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer, and Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contract in writing within ten (10) days of the receipt of this Purchase Order.

2. Nonwaiver. Any waiver or failure of Buyer to require strict compliance with the provisions of this order in any respect shall not be deemed a waiver of Buyer's right to insist upon strict compliance in other respects or thereafter in the same respect.

3. Warranty. Seller warrants that all goods and services covered by this order will be furnished in strict accordance with the provisions of this order, and the specifications or drawings or other descriptions furnished by Buyer; or if not ordered to specifications, that the goods will be fit and sufficient for the purpose intended and fall within the standards of all laws and governmental rules and regulations relating to such goods or services, and will be free from defects in design, material and workmanship.

4. Inspection. During the manufacture or after delivery, Buyer may inspect any material, equipment or goods which have been or will be worked upon, produced or sold for this order. Goods or services which are nonconforming shall, at Buyer's option, be repaired, replaced or reperformed at Seller's sole expense. Any goods or services furnished pursuant to the foregoing repair, replacement or reperformance obligation shall be subject to the same warranty as provided in paragraph 3.

5. Rejection. Any goods which have been rejected or required to be corrected shall be removed and/or corrected by and at the expense of Seller, promptly after notice. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective goods, Buyer (a) may, by contract or otherwise, replace or correct such goods, and charge to Seller the cost occasioned Buyer thereby; or (b) may, without further notice, terminate this order for default without waiving any rights or remedies Buyer may have at law or in equity.

6. Intellectual Property. If Buyer has conducted, taken part in or paid for the design of a product, the intellectual property rights in the product shall wholly accrue to Buyer, unless otherwise regulated in a specific agreement.

In the event that Buyer does not own the rights to the product, the Seller guarantees that the product does not infringe any third party intellectual property right (including by way of example, but without limitation, patent, copyright or trademark) and Seller hereby indemnifies Buyer against all claims made by third parties and Seller shall be obligated to provide and pay any and all royalties, counsel fees, litigation expenses,

judgments, awards, settlements and all other costs and expense, incurred in defending Buyer against such demands, claims and litigation. The Seller also undertakes to replace such infringing products with non-infringing products or to obtain the rights necessary to permit Buyer to use such product.

7. Buyer's Premises. If any work under this order is to be performed on Buyer's premises, Seller shall perform such work in accordance with the safety rules of Buyer and all applicable federal, state and local laws and regulations, including, but not limited to, laws prohibiting discrimination on the basis of race, religion, color, national origin, gender, age, marital status, disability or any other characteristic protected by law. Seller shall comply fully with the applicable laws pertaining to worker's compensation and unemployment compensation or insurance; and Seller shall indemnify and save harmless Buyer, its employees, agents, licensees and invitees from any and all losses, costs, damages, claims and expenses (including reasonable attorney's fees) of any nature whatever arising from or relating to (a) injuries, occupational diseases or deaths of any employees or subcontractors of Seller, to the extent compensable under the worker's compensation laws of any state; (b) bodily injuries, deaths or property damage caused by the negligent or wrongful act of Seller, any subcontractor of Seller's, or any employees or agents of either; (c) unemployment compensation or insurance, social security taxes, or other federal, state or municipal taxes, contributions or benefit payments measured by or based on employment of such employees; or (d) any failure to comply with any anti-discrimination laws. The contract created by this order and its acceptance or confirmation are subject to the agreement of the Seller that all persons engaged upon the work hereunder, shall be considered servants of the Seller, and not of the Buyer.

8. Indemnification. Seller shall indemnify, defend and save harmless Buyer from and against all claims for loss or damage of any kind or for injury to any person or property (and any expenses, including attorney's fees, resulting therefrom) arising out of or in any way related to, the condition, use, repair, installation or design of the goods or services purchased hereunder, whether such claims are based on negligence, breach of warranty, strict tort liability or otherwise, and whether any such goods are in the same mode as when delivered hereunder. Seller agrees to and will assume on behalf of Buyer, upon its demand (without regard to the real or apparent merits of said action) the defense of any action which may be brought against Buyer.

9. Limitation of Buyer's Liability. Buyer shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental damages (except to the extent expressly provided in Section 13) or consequential damages. Without limiting the foregoing, Buyer's liability for any claim arising directly or indirectly under or in connection with the order shall in no event exceed the cost of the goods or services giving rise to the claim. Buyer shall have no liability for penalties of any kind.

10. Buyer's Identification. Seller agrees that Buyer's identification, such as trademarks, trade names, distinctive marking, or decorative styling shall be used only on articles supplied to Buyer.

11. Use of Information. Any specifications, drawings, sketches, models, samples, tools, technical information or data furnished to Seller by Buyer shall remain Buyer's property and shall be returned to Buyer upon its request. The Seller shall use information only in connection with this Purchase Order, agrees to keep the same confidential and shall not disclose any Buyer-furnished drawings and/or specifications to any person, firm or corporation other than the Buyer's or the Seller's employees, and/or subcontractor, only to the extent reasonably necessary to perform the work hereunder, all having been made aware of the confidential nature hereof, and being bound thereon.

12. Changes. Buyer may at any time, by written order, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) applicable drawings, designs or specifications; (b) method of shipment or packing; (c) place or time of delivery, including temporary suspension of shipments; (d) materials, methods or manners of production, or final product; and Seller shall comply therewith. If any such change causes an increase in the cost of or time required for performance, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Purchase Order shall be modified in writing accordingly. Where the cost of property made obsolete or excess as the result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the disposition of such property. Any

claim by Seller for adjustment hereunder must be asserted within ten (10) days from the date of receipt by Seller of the notification of change. However, nothing in this section shall excuse Seller from proceeding with the order as changed or modified.

13. 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. 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, subject to Section 9, 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.

14. Termination for Cause. Buyer may, by written notice to Seller, terminate the order, or any part thereof, if Seller breaches any of the terms and conditions of the order, becomes insolvent or files for bankruptcy protection. By way of example, (a) failure by Seller to make timely, complete and conforming delivery of goods and services, or (b) breach of the representations or warranties set forth in the order, shall entitle Buyer to terminate the order for cause. If Buyer terminates for cause, Buyer shall have no payment obligations to Seller. Should a court of competent jurisdiction subsequently determine that Buyer's termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section 13 and Seller shall have all rights under that provision, but no other rights or claims for damages.

15. Bankruptcy. If Seller becomes insolvent or a petition in bankruptcy is filed by or against it, Buyer may elect to terminate this Purchase Order and shall thereupon be relieved from all liability to any person or persons.

16. Packing. No charge for boxing, crating, packing, or cartage will be allowed without the specific written approval of the Buyer. All shipments must be adequately boxed or crated, with any special handling clearly marked, and the contents protected to prevent damage in transit.

17. Documents. Shipping documents in duplicate and a separate invoice in triplicate for each shipment on this order must be mailed to Buyer's office issuing this order on the same day shipment is made. ONLY INVOICES FROM THE COMPANY TO WHOM THIS ORDER HAS BEEN ISSUED SHALL BE HONORED FOR PAYMENT. When material is invoiced by Seller but shipped by another concern, the invoice shall bear the name of the shipper and the point from which shipment originated. ALL SHIPMENTS MUST CONTAIN PACKING LISTS GIVING DESCRIPTION OF MATERIAL, QUANTITY AND PURCHASER ORDER NUMBER. Buyer's count shall be accepted as final on all shipments not accompanied by packing lists.

18. Delivery Date. Shipment must be made to meet the required date specified. **Time is of the essence.** Production schedules established or commitments made to satisfy the required date must not contemplate production or procurement in advance of the current lead or procurement time required to meet such date, without the specific written approval of Buyer. On premature shipments, Buyer may return the goods at Seller's expense, and in any event payment will be withheld and any discount period will begin to run from the required date specified. Buyer, without waiving any other legal rights, reserves the right to cancel without charge or to postpone deliveries of any of the goods or services covered by this order which are not shipped in time to meet the required delivery date. Seller shall not be liable for any damages suffered by Buyer due to Seller's failure to deliver on the required delivery date if such delay in performance is due to causes beyond its control, such as act of God, war, act of government, government priorities or allocations, act of Buyer, fire, flood, strike, sabotage or delay in transportation, and if Seller gives Buyer notice in writing of the cause of the delay within a reasonable time after the beginning thereof.

19. Routing. Seller shall route shipments as instructed. In the absence of specific routing instructions, such instructions are to be requested from Buyer.

20. Title. Unless the face of this order expressly provides otherwise, title to the goods, free and clear or any and all liens and encumbrances, shall pass to Buyer from Seller at the FOB point specified by this order,

or at such other point as may hereafter be selected by Buyer. Passage of title shall not in any way relieve Seller of its obligations under this order, nor be treated as a waiver by Buyer of the right later to reject any part of the goods which fail to meet the warranty as provided in paragraph 3 hereof. Seller shall assume and pay for any loss or damage to the goods covered hereby until delivery at the FOB point specified by this order, or until title otherwise passes from Seller to Buyer, whichever occurs later. If any lien or encumbrance is asserted against the supplies or any part thereof, Buyer shall have the right to discharge the same by (a) filing a bond or other security; or (b) in its discretion, to pay the full amount thereof, whereupon Buyer shall have the right to deduct from the order price the amount thus paid; or (c) if the purchase price has been paid, Seller shall repay to Buyer the amount paid by Buyer to discharge such lien or encumbrance.

21. Price. Seller certifies that amounts invoiced under this Purchase Order will not exceed maximum levels established under any applicable government price control program. Any excess shall promptly be refunded.

22. Payment. Buyer's account with Seller generally will be paid within thirty (30) days after receipt of invoice or shipment, whichever is received later, except where other terms are specified.

23. Damages. Without limiting Buyer's rights and remedies at law or in equity, Buyer reserves the right to charge Seller for any loss, expense (including reasonable attorneys' fees) or damage sustained as a result of Seller's failure to deliver conforming goods or services or other breach of the order, including without limitation, expenses incurred in connection with Buyer's purchase of substitute goods, incidental damages and consequential damages resulting from Seller's failure or breach.

24. Conflict of Interest

- a. Buyer's policy requires avoidance of real or apparent conflict of interest. No employee, officer or agent of Buyer shall knowingly participate in the selection, award or administration of a contract with Seller if Buyer or any member of Buyer's relatives (including spouse, domestic partner, children, grandchildren, parents, grandparents, brother and sisters, half-brothers and half-sisters, brothers- and sisters-in-law, mother- and father-in-law, nieces and nephews, and any other person living in the same household as Buyer) has a material financial interest in Seller, or is negotiating, or has any arrangement concerning prospective employment with Seller.
- b. No officer, employee or agent of Buyer shall either solicit or accept gratuities, favors or anything of monetary value from Seller, including any contingent fee.
- c. If Seller has reason to believe any officer, employee or agent of Buyer has violated any provision of this paragraph, Seller immediately shall notify Buyer of the suspected violation by sending notice thereto to the Business Office, The College of Wooster, 1101 North Bever Street, Wooster, OH 44691, explaining the situation in full. Seller's failure to so notify Buyer shall be a material breach of this agreement and Buyer, at its option, may terminate this agreement.

25. Compliance with Laws. Seller shall comply with all federal, state, and local laws, ordinances, rules, and regulations in the manufacture and sale of the goods and performance of the services, including but not limited to the Truth in Negotiation Act, the Resources Conservation and Recovery Act and all applicable requirements of the Fair Labor Standards Act. Seller will defend and hold Buyer harmless from any loss, damages, or cost arising from or caused in any way by Seller's actual or alleged violation of any federal, state, or local law, ordinance, rule or regulation if this Purchase Order indicates it is placed under a United States Government Contract or Grant, this order is subject to all applicable FAR or DFARS regulations hereby incorporated by reference with the same effect as if they were fully set forth.

26. Equal Employment Opportunity. Seller agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

27. Clean Air Act and the Federal Water Pollution Control Act. If this order is in excess of \$100,000, Seller shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act

(42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

28. Material Safety Data Sheet. Seller shall provide to Buyer, or at or before the time of initial shipment, a completed Material Safety Data Sheet (OSHA Form 20 or equivalent) for any chemical substances sold hereunder as required by any and all applicable federal, state or local law, ordinance, rule or regulation. Such sheet shall contain all information necessary to comply with the Federal Hazard Communication Standard (29 CFR 1910.1200) and all applicable state regulations.

29. OSHA. Seller shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to the Occupational Safety and Health Act of 1970 which are applicable.

30. Non-Discrimination. Seller agrees: a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; b) to include a provision similar to that contained in subsection (a) above in any subcontract for standard commercial supplies or raw materials; and c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

31. Lobbying. If this order is in excess of \$100,000, Seller agrees that none of the funds obligated on this order shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Member of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

32. Access to Records. Seller agrees that Buyer, any Federal or State granting agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Seller which are directly pertinent to this order for the purpose of making audits, examination, excerpts and transcriptions.

33. Debarment and Suspension for purchases with Federal funds. No subaward or covered contract using Federal funds shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. A Seller involved in a purchase that exceeds the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees and shall provide immediate written notice to the Buyer if it or any of its principals are debarred, suspended, or proposed for debarment by any government during the performance of a contract or purchase order. The Seller shall also include similar terms or conditions in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

34. Taxes. Applicable State or Use or Federal Excise Tax shall be shown separately on the invoice.

35. Nonassignability. This order or the monies due thereunder may not be assigned in whole or in part without the written consent of Buyer.

36. Headings. The headings herein are for reference only.

37. Rights. Buyer retains generally all rights and remedies granted to it by operation of law in addition to those set forth herein

38. Choice of Law. This Purchase Order, the contract based hereon and any questions with respect to the construction interpretation or performance shall be governed by and determined in accordance with the laws of the State of Ohio.

39. No Third Party Beneficiaries. These terms and conditions are for the sole protection and benefit of Buyer, and no other person, persons, entity or entities shall have the right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary hereunder.

40. Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall comply with the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401 "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

41. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

42. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Contracts awarded in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Vendor Reporting for the American Reinvestment and Recovery Act of 2009 (ARRA).

General Background: The Buyer is a recipient of funds received by the American Recovery and Reinvestment Act of 2009 (ARRA). Some of these funds will be used for payment of goods and/or services to vendors. If possible, vendors will be notified before a purchase is made that ARRA funds are being used to purchase goods or services, however, such notification may not be possible until after the purchase is complete. Any vendors receiving payments using ARRA funding are responsible for 1512 reporting obligations mandated by the Federal Government.

For any individual vendor payments of \$25,000 or greater, the College will request information on jobs created and/or retained from the vendor. This will be requested either at the time of a payment or on a quarterly basis and will include both the number of jobs created/retained and a brief description.

Jobs or positions created means those new positions created and filled, or previously existing unfilled positions that are filled, as a result of ARRA funding.

Jobs or positions retained means those previously existing filled positions that are retained under ARRA funding.

The description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work. A job cannot be reported as both created and retained.

The information contained hereto is not designed nor intended to be a comprehensive list of the obligations and responsibilities under the ARRA. It is imperative that each vendor be familiar with Section 1512 of ARRA and the guidance materials available at <http://www.recovery.gov/?q+content/recipient-reporting>.

A1. Whistleblower Protection. The Sellor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal Grantees and Vendors utilizing ARRA funds, including the State of Ohio, and all vendors and grantees of the State of Ohio, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of 1) gross mismanagement of a contract or grant relating to ARRA funds; 2) a gross waste of ARRA funds; 3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; 4) an abuse of authority related to implementation or use of ARRA funds; or 5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant awarded or issued relating to ARRA funds. The Vendor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

A2. Compliance with ARRA. The Sellor must comply with all requirements specified in division A of the AARA (Public Law 111-5), including reporting requirements outlined in Section 1512 of the Act.