



## Purchase Order Terms and Conditions

1. **Acceptance of Purchase Order** (P.O.) constitutes Buyer's offer to Seller and shall become a binding contract upon Seller's acceptance of its terms and conditions. Acceptance of the terms and conditions of this P.O. by Seller will occur by Seller sending an acknowledgment to Buyer confirming the P.O., by Seller's commencement of work on the goods, by Seller's commencement to furnish services, or shipment of such goods or delivery of services, whichever occurs first. Any acceptance of this P.O. is expressly limited to acceptance of the terms contained on its face and back. Any effort by Seller to vary the terms of this P.O., including any additional or different terms, material or non-material, will not be considered to be a rejection of Buyer's offer or as a counteroffer, but shall be deemed proposals for alteration and are hereby objected to and rejected by Buyer. If this P.O. is sent in response to an offer by Seller and there are any material differences in terms, the terms of this P.O. constitute a rejection and counteroffer to Seller's offer.
2. **Termination for Convenience of Buyer** - Buyer reserves the right to terminate this order or any part of it for Buyer's sole convenience. In the event of such termination, Seller shall immediately stop all work subject to the P.O., and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.
3. **Termination for Cause** - Buyer may also terminate this order or any part of it for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this offer. Causes allowing Buyer to terminate this order for cause shall include but not be limited to late deliveries, deliveries of goods or services which are defective or which do not conform to this order, and failure to provide Buyer, upon request, reasonable assurances of future performance. In the event of Seller's failure to deliver as specified, Buyer reserves the right to cancel this order, or any part of it, without prejudice to any other rights it may have. Seller also agrees that Buyer may return part or all of any shipment in the event of Seller's failure to deliver as specified and may charge Seller with any expense sustained by Buyer, including the additional cost of purchasing the goods elsewhere. It is understood that time is of the essence. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.
4. **Acceptable Invoices** - Buyer shall be under no legal obligation to pay principal or interest to Seller for goods or services covered by this P.O. until Buyer is in receipt of the goods or services and of an acceptable invoice. In order to be acceptable, Seller's invoice must comply with the following minimum requirements: 1) Invoice from Seller must be received by Buyer at the invoice address indicated on the face of the P.O.; 2) Seller shall submit the invoice covering this P.O., or part of it; 3) P.O. number, quantity, description and unit price must appear on all invoices referring to this order, or any part of it, in the same form and description as contained in the P.O. invoices not in compliance with minimum requirements may be returned to Seller by Buyer.
5. **Proprietary Information** - Confidentiality - Advertising - Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this P.O. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods or services from Seller, nor shall any information relating to the order be disclosed without receipt of Buyer's express written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed

secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

6. **Warranty** - Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, are free from any liens or encumbrances of title of any kind or description, will be new unless otherwise specified on the face of this P.O., and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods or services furnished will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If seller knows, or has reason to know, the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, approval, acceptance, use or payment for part or all of the goods or services furnished shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successors, assignees and customers, and users of goods or services sold by Buyer in any location. In the event the goods delivered or services furnished do not meet the warranties specified or otherwise applicable, Buyer may, at its option and at seller's expense, return the defective goods for credit, refund, or require Seller to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, upon Buyer's notification to the Seller of the nonconformity. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may, at its option, make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so. The possible remedies described in this section and elsewhere in this P.O. as available to Buyer are not exclusive and Buyer expressly reserves all remedies available at law or equity.
7. **Price Warranty** - Seller warrants that the prices for the goods and services sold Buyer are not less favorable than those currently extended to any other customer for the same or substantially similar goods and services in similar quantities. In the event Seller reduces its price for such goods or services during the term of this order, Seller agrees to reduce the prices hereof correspondingly and to immediately refund any amounts paid by Buyer in excess of such price. Seller warrants that prices shown on this P.O. shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, or crating.
8. **Payment Terms** - Unless otherwise stated on the face of the P.O., Buyer will make payment on a Net 30 day basis which period shall commence from the date of the receipt of the goods or services at Buyer's "Ship To" address as stated on the face of this P.O. or the date of receipt of an acceptable Seller's invoice, whichever is later. Buyer's Net 30 day payment period shall not commence on the date of Seller's invoice. Buyer may make earlier payment upon Buyer's acceptance of Seller's discount payment terms. For the purpose of determining the Seller's discount, Buyer acceptance will be from the mailing date of Buyer's payment.
9. **Force Majeure** - Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer at Seller's expense and shall deliver them when the cause affecting the delay has been removed. Causes beyond Buyer's control shall include but not be limited to government action or failure of the government to act where such action is required, strike or other labor trouble, fire, earthquake, flood or unusually severe weather.
10. **Patents and Copyright** - Seller agrees, upon receipt of notification, to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, or other vendors for alleged patent or copyright infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished Seller agrees indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding, if it so desires, and the costs of such representation shall be paid by Seller.

11. **Insurance and Licensing** - In the event of performance of services by Seller's employees or persons under contract to Seller, on Buyer's property or property of Buyer's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Buyer. Seller shall maintain all reasonable and necessary insurance coverages, including general liability, automobile liability, Workers' Compensation insurance, and any other types and levels of insurance and licensing as required by law and shall provide BYUH with valid certification of the same upon request for its review and approval. Seller shall indemnify, hold harmless, and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.
12. **Indemnification** - Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorneys' fees and court costs) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Seller, its agents, employees or subcontractors in the performance of this P.O.. This indemnification shall be in addition to the warranty obligations of Seller.
13. **Changes** - Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, an equitable adjustment shall be made. Modifications by Buyer of the terms and conditions of this P.O. must be made in writing. These modifications may be evidenced by facsimile or other means of electronic transmission. Seller agrees to accept any such changes subject to this paragraph.
14. **Acceptance of Goods** - Buyer shall not be deemed to have accepted nor be held responsible for any goods or services which, upon delivery, are found to be defective or for any reason do not conform to Buyer's qualitative, quantitative, or other specifications. Payment for the goods delivered or services furnished shall not constitute acceptance. Buyer shall have the right to inspect such goods and performance of services and to reject any or all of them which are in Buyer's judgment defective or nonconforming. Goods and services rejected or supplied in excess of quantities requested may be returned, in whole or in part, to Seller at Seller's expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. In the event Buyer receives goods or services whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this P.O. shall relieve the Seller in any way from the obligation of testing, inspection and quality control.
15. **Entire Agreement** - Except when issued to place an order pursuant to an existing written agreement between the parties, or except where modified by Buyer or with Buyer's express written consent, the terms and conditions of sale stated in this P.O., any documents referred to on its face, and any written change orders issued by Buyer shall constitute the entire agreement of the parties as to the subject matter of the agreement and shall govern the transaction, notwithstanding any conflicting term or condition of Seller's acknowledgment or any other document or communication to the contrary.
16. **Assignments and Subcontracting** - No part of this order may be assigned or subcontracted without prior written approval of Buyer.
17. **Set-off** - All claims for money due or to become due from Buyer shall be subject to deduction or set off by the Buyer by reason of any amount owing at any time from Seller to Buyer or any counterclaim arising out of this or any other transaction with Seller.
18. **Shipment** - Delivery shall be made and goods shipped as specified without charge for boxing, crating, carting or storage, unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the current National Motor Freight Classification. Goods shall be described on bills of lading in accordance with current Rail or Motor Freight Classification, whichever is applicable. Buyer's P.O. number, quantity and description of goods must be plainly marked on all packages, bills of lading, shipping orders and correspondence. Packing lists shall accompany each box or package shipment. Buyer shall not be responsible for any goods not delivered to the Buyer's "Ship To" address listed on the P.O. or without Buyer's P.O. number, and may return such goods to Seller at Seller's expense. Except as consented to by Buyer, Seller shall not ship in advance of schedule and shall ship exact quantities ordered. If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this P.O., any resulting increased

transportation costs shall be paid for by Seller unless otherwise agreed to by Buyer.

19. **Freight Discounts** - Seller agrees to charge Buyer only for actual freight costs incurred by Seller for goods shipped.
20. **Waiver** - Buyer's failure to insist on performance of any of the terms or conditions of this P.O., or to exercise any right or privilege or Buyer's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. Buyer may at any time insist upon strict compliance with the terms and conditions, notwithstanding previous custom, practice or course of dealing to the contrary.
21. **Limitation on Buyer's Liability** - Statute of Limitations – In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage (arising out of, or in connection with, or resulting from this agreement or from performance or breach) shall in no case exceed the price allocable to the goods or services which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer or for payment as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.
22. **Choice of Law, Venue and Attorney Fees** - The provisions of this P.O. and any contract, agreement, claim or dispute arising from it shall be governed by the laws of and adjudicated within the federal or state courts located within the state in which the Buyer's Purchasing Office, as indicated on the address noted on the face of this P.O., is located. Chapter 2 "Sales" of the applicable Uniform Commercial Code shall apply to the purchase of goods and services made pursuant to this P.O. The use of the term "goods" in this P.O. also means "services" when the context is appropriate. In the case of an adjudicated claim or dispute, the prevailing party shall be entitled to reasonable attorneys' fees from the non-prevailing party.
23. **Correspondence and Acknowledgments** - All correspondence and acknowledgments should be directed to the Buyer's Purchasing Office address listed on the face of this P.O.