

# Dickinson College

## Purchase Order Terms and Conditions

<b>Policy/Procedure</b>
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This policy covers:

- A. Introduction
- B. Terms and Conditions

### *A. Introduction*

Financial Operations does not require the use of a purchase order (P.O.) to procure goods or services through the Banner system. However, departments may choose to use P.O.'s in or outside of Banner for review purposes or to meet vendor requirements. Hard copy P.O.'s outside of the Banner system are produced in Financial Operations upon request.

Any P.O. submitted by Dickinson College to Seller shall be subject to the following terms and conditions and is an offer which supersedes all prior communications between the parties.

### *B. Terms and Conditions*

#### **ACCEPTANCE**

The issuance of any form of contract document against this offer or shipment of the goods or performance of the services referenced in the P.O. shall constitute an acceptance of the offer and not a counter-offer and shall create a contract of sale between the parties. Provisions contained in any document issued against this offer that materially alter, add to or subtract from the provisions of this offer are rejected and shall not be a part of the contract of sale unless specifically agreed to in writing by Dickinson.

#### **PRICE**

Dickinson shall not be billed at prices higher than stated in the P.O. unless approved in writing by Dickinson. Seller agrees that any price reductions made subsequent to placement but prior to payment shall be applicable to the P.O. Unless otherwise provided in the P.O., Seller shall bear the cost of shipping and packaging the goods.

#### **CHANGES**

At any time, Dickinson may make changes in the drawings, designs, specifications, quantities, delivery schedule, methods of shipment or packaging, place of inspection or acceptance and/or point of delivery of

any goods. No change shall be effective unless authorized in writing by Dickinson. If such changes result in a delay or an increase or decrease in expense to Seller, Seller shall notify Dickinson immediately and negotiate an equitable adjustment, provided that Seller shall, in all events, proceed diligently to supply the goods or perform the work or services referenced in the P.O. No claim by Seller for such equitable adjustment shall be valid unless submitted to Dickinson in writing within 30 days from the date of such notice of change and accompanied by an estimate of charges resulting from such changes.

#### **DELIVERY**

Time is of the essence hereof. Delivery of the goods must be made when specified in the P.O. or in written instructions issued by Dickinson. Dickinson may change or temporarily suspend delivery schedules. Seller shall notify Dickinson in writing of any anticipated delay beyond the scheduled delivery date. In the event of late delivery of any goods, Dickinson may, at its option and without any further liability hereunder, terminate the P.O. for cause, partially terminate the P.O. for cause, vary the delivery times set forth in the P.O., or obtain the goods from other sources. Any losses sustained or costs incurred by Dickinson as a result of late delivery shall be paid by Seller to Dickinson upon demand.

Unless otherwise stated herein, all shipments shall be properly packaged to ensure safe transport and shall be shipped to the destination specified on the face hereof. All shipments shall be made F.O.B. point of destination, and title to goods, as well as risk of loss, shall pass to Dickinson only upon delivery of goods to that point. Shipments made not in accordance with Dickinson's routing and shipping instructions may result in a chargeback to the Seller for freight and/or other charges not expressly authorized by Dickinson.

#### **INSPECTION**

Dickinson reserves the right to inspect and approve goods and services provided by the Seller, within a reasonable time after delivery or completion. Any goods or services not in conformance with Dickinson's specifications may be rejected and/or returned to the Seller at the Seller's expense, and payment of invoices rendered for same may be withheld pending acceptance of satisfactory product or services, at Dickinson's sole discretion.

#### **WARRANTY**

Seller expressly warrants that all articles, materials, goods and services provided under this P.O. shall be free from defects in material and workmanship; shall strictly conform to applicable specification, instructions, drawings, data, and samples, if any, including performance specifications; if of Seller's design, shall be free from design defects; and shall be merchantable and fit for the use intended by Dickinson. These warranties shall be in addition to all warranties, express, implied, or statutory. Neither inspection nor payment by Dickinson shall constitute a waiver of any breach of any warranty.

#### **INFORMATION**

Drawings, data, designs, specifications, recipes and other processing and technical information supplied by Dickinson shall remain Dickinson's property and shall be held in strict confidences by Seller. Such information shall not be reproduced, used or disclosed to others by Seller without Dickinson's prior written consent and shall be returned to Dickinson upon completion by Seller of its obligations under the P.O. or upon demand. Any information which Seller may disclose to Dickinson with respect to the design,

manufacture, sale, or use of the goods referenced in the P.O. shall be deemed to have been disclosed as part of the consideration for the P.O. and Seller shall not assert any claim against Dickinson by reason of Dickinson's use thereof. Dickinson does not agree to indemnify Seller for infringement of any patent, trademark, copyright, or data rights.

#### **INTELLECTUAL PROPERTY**

Seller warrants that it has good and clear title to the goods furnished hereunder, free and clear of all liens and encumbrances, and that the transfer of the goods referenced in the P.O. or the performance of the services referenced in the P.O. shall not infringe the rights of any third party. Seller warrants further that as to any goods furnished hereunder which are not manufactured or processed in accordance with detailed design specifications supplied solely by Dickinson, that its owns all right, title and interest in and to the goods, including, but not limited to all patents and copyrights.

Seller shall indemnify, defend and hold harmless Dickinson (and its officers, employees, representatives, successors, and assignees or any of them) from and against all liability, loss, cost and expense, including reasonable attorneys' fees, arising out of or related to any claim that Dickinson's use or possession of the goods intrigues or violates the patents, trademarks, copyright, trade secrets, or other rights of any third party. Dickinson shall give Seller prompt notice of any such suit or proceeding and shall also give Seller all necessary authority, information and reasonable assistance to enable Seller at Seller's option to settle or defend the same.

In the event that the use of said goods or any part thereof is enjoined, Dickinson at its election may require Seller, at Seller's sole cost and expense, to: (i) Procure within 30 days for Seller the right to continue using said goods or part; (ii) Modify same so it becomes non-infringing; (iii) Replace it with non-infringing goods or parts; or (iv) Remove the goods and refund that portion of the purchase price paid hereunder therefore by Dickinson for the goods.

#### **COMPLIANCE WITH LAWS**

Seller shall comply with all applicable laws, rules and regulations. On request, Seller shall furnish to Dickinson certificates of compliance with all applicable laws, regulations and orders of any governmental authority which apply to the P.O. Seller certifies that goods sold hereunder were manufactured or produced in full compliance with the Fair Labor Standards Act of 1938, as amended, and all applicable U.S. Department of Labor Regulations promulgated thereunder, and are sold in full compliance with the Federal Trade Commission Act and the Clayton Act, as amended, and all other federal and state antitrust statutes and all rules, regulations and orders issued pursuant thereto and the Occupational Safety and Health Act of 1970, as amended, and all other federal and state occupational safety and health statutes, and all standards, rules, regulations and orders issued pursuant thereto.

#### **PAYMENT**

Invoices may be paid according to discount terms, within 30 days after receipt and acceptance of the goods or completion and acceptance of services. Unless specified otherwise, discount periods will be computed from either the date of delivery plus 8 days allowance for inspection or the date of receipt of correct invoices prepared in accordance within the terms of the P.O., whichever date is later.

## **TERMINATION**

Dickinson reserves the right to cancel this P.O. or any portion thereof, without liability to Dickinson for undelivered goods covered by the P.O., for any reason or cause, including but not limited to the Seller's failure to (a) make delivery by Dickinson's stated delivery date(s), (b) supply goods or services according to Dickinson's specifications, or (c) supply goods or services at the price stated on the face hereof. In the event of termination, for cause, Dickinson may produce, purchase or otherwise acquire goods elsewhere on such terms or in such manner as Dickinson may deem appropriate and Seller shall be liable to Dickinson for any excess cost or other expenses incurred by Dickinson.

## **TAXES**

Seller shall assume exclusive liability for all taxes on the manufacture or sale of the goods to be furnished hereunder or on any services to be rendered by Seller, and to pay any and all such taxes except those Dickinson specifically agrees or is by law required to pay. Any taxes to be paid by Dickinson shall be separately stated on the invoice. Prices shall not include any taxes for which Seller can obtain, or Dickinson can furnish an exemption.

## **REMEDIES**

The remedies reserved to Dickinson herein, except where expressly stated to be exclusive, shall be cumulative and in addition to any other further remedies provided by law. No waiver of any breach to these terms shall be deemed to constitute a waiver of any other breach.

## **ASSIGNMENT**

Seller may not assign the P.O. or any right or obligation herein, or delegate the performance of any of its duties hereunder without Dickinson's prior written consent. The P.O., including these terms and conditions, shall bind any permitted successors and assigns. Any consent by Dickinson to assignment shall not be deemed to waive Dickinson's right to recoupment and/or setoff of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters without notice to its permitted successors and assigns.

## **FORCE MAJEURE**

Either party to the P.O. shall be free from liability for failing to perform hereunder if such failure is due to acts of God or other causes beyond the reasonable control of the affected party. In the event that Seller is unable to perform for any such reason beyond its reasonable control, Dickinson shall have the right either to extend the delivery dates until Seller is able to perform or to terminate the P.O.

## **INDEMNITY**

Seller agrees to indemnify, defend and hold Dickinson harmless from and against any and all claims, liabilities, losses, or damages of any kind whatsoever, including consequential damages, along with all costs including attorneys' fees connected therewith, brought by or on behalf of any person or persons arising out of, directly or indirectly, the performance of the P.O. including these terms and conditions, including but not limited to, any breach of Seller's warranties, failure of Seller to comply with any applicable laws, and claims or actions made or brought by or on behalf of Seller's employees, agents, representative, or assigns.

**INSURANCE**

When performing services hereunder, Seller shall carry and maintain comprehensive public liability insurance, including contractual liability, products/completed operations liability, automobile bodily injury and property damage, workers' compensation, and employer's liability insurance with coverage satisfactory to Dickinson. Prior to commencement of any services to be performed hereunder, Seller shall deliver to Dickinson certificates of such insurance which stipulate that not less than a 30 day notice will be given to Dickinson prior to termination or reduction of the limits of coverage.

**ENTIRE AGREEMENT**

The P.O. and these terms and conditions constitute the entire agreement between Dickinson and Seller and may not be amended unless in writing signed by representatives of Dickinson and Seller.

**CONSTRUCTION**

The P.O. and these terms and conditions shall be interpreted and construed in accordance with the laws of Pennsylvania