

1. **ORDER/AGREEMENT.** These terms and conditions are made part of the attached purchase order ("Order") issued by Florida Institute of Technology, Inc. ("Florida Tech") to the supplier identified in the Order ("Seller") to purchase certain goods and/or services described in the Order ("Goods"). The Order is binding on the parties when Seller (i) returns written acceptance, (ii) makes any shipment of Goods to Florida Tech, or (iii) accepts the Order in any other manner. The terms of the accepted Order, including these General Terms and Conditions, shall constitute the entire agreement between the parties (collectively the "Agreement"). In the event of a conflict between any of the terms on the face of an Order and those contained in these General Terms and Conditions, the terms on the face of the Order shall control. Any additional terms in any proposal, quotation, invoice, acknowledgment or other communication from Seller are hereby objected to and rejected, and shall not be binding on Florida Tech.
2. **PRICE.** The total price of the Goods shall be as stated in the Agreement and unless otherwise specified therein, the price for Goods shall be fixed. No additional charges or assessments of any kind (including, without limitation, freight/shipping charges, packaging charges, surcharges or taxes (other than any applicable sales taxes)) will be allowed unless such charges are clearly specified in the Agreement.
3. **PACKING; SHIPPING.** Seller shall describe, mark and pack Goods in a manner appropriate to ensure the Goods' protection until delivered to Florida Tech. Each box or crate shall be marked with Florida Tech's purchase order number, shipping address and Seller's name. A copy of the packing list/invoice must be affixed to the outside of each shipment. Seller shall comply with any and all delivery directions and instructions set forth in the Order. If Seller fails to follow Florida Tech's directions and instructions, Seller shall compensate Florida Tech for any resulting increase in transport costs or other expense to Florida Tech.
4. **DELIVERY; INSPECTION; ACCEPTANCE.** TIME IS OF THE ESSENCE as to Seller's supply of Goods, and Seller shall be responsible for any related damages. All Goods shall be delivered in the quantities, to the location(s) and on the date(s) set forth in the Agreement within the specified lead times. Goods are subject to inspection and acceptance at Florida Tech's location notwithstanding any prior payment. Non-conforming Goods may be held or returned at Seller's risk and expense. Seller specifically agrees to pay Florida Tech all costs related to rejection of Goods. Seller shall not repair or replace nonconforming Goods unless Florida Tech so directs. Except for customary quantity variations recognized by trade practice, Goods in excess of those specified will not be accepted. Such excess Goods will be held and returned to Seller at Seller's risk and expense in the same manner as nonconforming Goods.
5. **BILLING.** Seller shall issue invoices, bills of lading and packing lists in accordance with Florida Tech's requirements. Time periods for payment (which shall be at least 30 days) and discounts shall begin upon receipt of both conforming Goods and complete and accurate invoices and all supporting documentation. Florida Tech may make payment using Bank of America's card payment system.
6. **SALES TAXES.** Unless otherwise stated, the prices do not include sales, use, excise and similar taxes applicable to the Goods. Florida Tech is exempt from the payment of sales and use tax under Florida law. Florida Tech's Florida sales tax Certificate of Exemption number is 85-8012646509C-2. If Florida Tech's exemption is not applicable, all such taxes and similar charges shall be shown separately on Seller's invoice.
7. **WARRANTY.** Seller expressly warrants that all the Goods covered by this Order will be (i) in exact accordance with the description, drawing and/or specifications provided in the Order, (ii) new and unused, (iii) free from defects in material and/ or workmanship, (iii) merchantable and of good material and workmanship, (iv) fit and sufficient for their intended purpose to the extent Seller knows or has means to know of such purpose; (v) in compliance with the standards in Seller's industry and with all applicable laws, rules or regulations; and (vi) in the case of services, performed in a professional and workmanlike manner. Such warranty shall survive delivery, acceptance, inspection, testing, payment and use of Goods. No disclaimer of warranty, limitation of warranty or liability, or exclusion of damages for breach of warranty appearing in any invoice or other form used by Seller shall have any effect on the warranties contained in this Agreement.
8. **REMEDIES.** If any of the Goods fails to meet the foregoing warranties, Seller, upon notice thereof from Florida Tech, shall promptly correct or replace the same at Seller's expense. If Seller shall fail so to do, Florida Tech may cancel the Order as to all such Goods, and in addition, may cancel the then remaining balance of the Order. After notice to Seller, all such Goods will be held at Seller's risk. Florida Tech may, and at Seller's direction shall, return such Goods to Seller at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller. Any payment for such Goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. In addition to the foregoing remedies for breach of warranty and other remedies provided for in the Agreement, (i) Florida Tech may require Seller to refund the purchase price for, or repair or replace at Florida Tech's option and at Seller's expense, any Goods (or re-perform any service) that fails to comply with the Agreement, (iii) Florida Tech reserves the right to return nonconforming Goods as provided for in paragraph 4 above, (ii) Florida Tech reserves the right to cancel all or part of the undelivered portion of any order if Seller does not make deliveries as specified or if Seller otherwise breaches the terms of this Agreement, and (iii) Florida Tech shall have the right to terminate this Agreement as provided in paragraph 9 below. All remedies herein are cumulative and in addition to all rights and remedies provided by law or equity.
9. **TERMINATION.** Florida Tech may by written notice to the Seller cancel the Agreement for default in whole or, from time to time, in part, (i) if the Seller fails to deliver the Goods or to perform the services within the time specified in the Agreement, (ii) if the Seller fails to deliver Goods which conform to the contractual requirements, or to perform any of the other provisions of the Agreement, or so fails to make progress as to endanger performance of the Agreement in accordance with its terms, or (iii) if the Seller becomes insolvent, or commits an act of bankruptcy. If the Agreement is terminated for default, Florida Tech shall have any and all rights and remedies which the law provides for failure to perform in accordance with contract requirements.
10. **MODIFICATION OR CANCELLATION OF ORDERS.**
  - a. **Modification.** Florida Tech may by written order make changes in drawings or specifications require additional work, increase or decrease quantities of Goods or direct the omission of work covered by an Order. No modification or amendment to an Order shall be binding or enforceable unless in writing and signed by an authorized representative of Florida Tech.
  - b. **Cancellation.** Florida Tech may cancel any Order at any time without cause and if such canceled Goods were stock merchandise, Florida Tech's sole liability shall be to pay for Goods shipped pursuant to the Agreement prior to cancellation. If such canceled Goods were manufactured to Florida Tech's specifications, then, upon notice, Seller shall cease all performance related to such Goods (unless otherwise directed by Florida Tech) and Florida Tech shall pay Seller its actual costs for work and materials incurred in accordance with the Agreement, consistent with applicable lead times. Upon such payment, title to any work, materials and Goods shall pass to Florida Tech.\*
11. **INFRINGEMENT.** Seller warrants that the sale and use of Goods will not infringe, directly or indirectly, any patent, trademark, trade name, trade secret, copyright or any proprietary right of another. If any Goods or the use thereof is held to infringe any proprietary right and its use enjoined, Seller shall, at its expense, procure for Florida Tech and its customers the right to continue using said Goods or replace said Goods with a substantially equal, but non-infringing product acceptable to Florida Tech. If further use of the Goods is not possible, Seller shall accept return of any unsold Goods and refund to Florida Tech all costs related to such Goods, including but not limited to the purchase price and transportation costs.
12. **INDEMNIFICATION.** Seller shall indemnify, defend (with counsel satisfactory to Florida Tech) and hold Florida Tech, its affiliates and subsidiaries, and their respective officers, trustees, employees, successors, assigns, insurers, customers and agents ("Indemnified Persons"), harmless against any and all claims, demands, actions, causes of action, liability, losses, damages, costs, expenses and reasonable attorneys' fees, which an Indemnified Person may incur in any way related to any Goods, or Seller's performance or negligent acts or omissions, including without limitation claims for personal injury, breach of warranty, infringement, strict liability, property damage, defect, or based on warning, instructions or government action. Seller agrees that its obligations herein shall survive the termination or expiration of the Agreement.
13. **COMPLIANCE WITH LAWS.** Seller, at its expense, shall comply with all laws, regulations and requirements applicable to Goods, to the supply of Goods to Florida Tech and to Seller's performance hereunder. Seller and its subcontractors shall comply with all wage, workers compensation, equal opportunity and reporting obligations. The Equal

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Opportunity and Affirmative Action Contract Clauses contained in Section 202 of Executive Order 11246, as amended, 41CFR 60-1.4 and 41CFR 60-250.4 are incorporated in this purchase order by reference. Buyer and Buyer's subcontractors shall abide by the requirements of 41 CFR 60-741.5(a), which is incorporate herein by reference. This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Buyer and Buyer's subcontractors shall abide by the requirements of 41 CFR 60-300.5(a), which is incorporated herein by reference. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

14. **LABELING LAWS.** Seller shall label containers of all Goods which are known to constitute a health, poison, fire or explosion hazard in accordance with all labeling laws of the state to which such Goods are shipped. In the absence of any such law, Seller shall label such containers in accordance with "American National Standard for Hazardous Industrial Chemical-Precautionary Labeling," published by the American National Standards Institute, Inc.
15. **FORCE MAJEURE.** Neither party will be held responsible for a breach, delay or failure of performance of any obligation hereunder that results from war, act of God or natural disaster (e.g. fire, earthquake or flood), or governmental action not due to the fault of the party (e.g. embargo).
16. **ASSIGNMENT.** Seller shall not assign or subcontract any of its rights, duties or obligations under the Agreement without Florida Tech's prior written consent. Such consent if granted shall not relieve Seller of its obligations under the Agreement.
17. **MISCELLANEOUS.** Failure to require strict performance of any provision of the Agreement shall not constitute a waiver or default by a party or diminish that party's right to subsequently demand strict compliance therewith. The headings herein are for convenience only and shall not affect interpretation. If any provision of the Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible. The Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to conflict of law provisions thereof). Seller consents to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Middle District of Florida or of the state courts in Brevard County, Florida for any legal or equitable action arising out of or in connection with the Agreement. Seller waives any and all objections to venue in such courts.