

DETROIT PUBLIC LIBRARY

PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order Terms and Conditions, and any attachments hereto (collectively, the "Purchase Order") are the exclusive terms and conditions for the delivery of the specified goods ("Goods") by the named seller ("Seller") for the benefit of The Detroit Public Library ("DPL"). DPL and Seller are each a "Party" and together are the "Parties".

1. **Acceptance by DPL.** Delivery of the Goods will be deemed to be complete only when delivered pursuant to a valid Purchase Order and when actually received by DPL. All Goods are subject to DPL's right of inspection following delivery by Seller; payment for Goods under this Purchase Order prior to inspection by DPL will not constitute acceptance by DPL. DPL may, at its option, reject all or any portion of the Goods that do not, in DPL's discretion, comply with the terms and conditions of this Purchase Order or DPL's requirements. DPL may elect to reject all of the Goods even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods will not be deemed to be a waiver by DPL of its right to (a) cancel, reject or return all or any portion of the Goods, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery, or breach or non-compliance with any of the terms or provisions of this Purchase Order.
2. **Time for Delivery.** Time is of the essence with respect to Seller's delivery of the Goods under this Purchase Order. Delivery will be strictly in accordance with DPL's delivery schedule. If Seller's delivery fails to meet such schedule, DPL may, without limiting any of its other rights or remedies, direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing and this Purchase Order's routing costs will be paid by Seller upon DPL's demand.
3. **Risk of Loss.** Until delivered to DPL in accordance with Section 1, Seller will bear all risk of loss or damage. Shipment of Goods is F.O.B. Destination unless Purchase Order states otherwise.
4. **Cancellation for Breach by Seller.** DPL may terminate this Purchase Order, in whole or in part, for Seller's breach of this Purchase Order, including but not limited to, the failure to deliver the Goods as and when specified. If DPL terminates this Purchase Order for Seller's breach, in addition to all of DPL's other rights and remedies under law, Seller will be liable to DPL for all damages, including but not limited to, the cost of securing replacement Goods, shipping charges for returned Goods, and any amounts previously paid by DPL to Seller. Cure of any non-conforming tender by Seller may only be made with the prior written consent of DPL. This right of termination is in addition to and not in place of any other rights or remedies that DPL may have at law or in equity.
5. **Cancellation for Convenience.** DPL, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for Goods delivered and accepted. Payment due will be the unit prices for Goods delivered and accepted by DPL.
6. **Pricing.** DPL will pay Seller only for such Goods and at such prices as agreed upon pursuant to this Purchase Order. Prices include all amounts payable by DPL and no additional charges of any kind (including, without limitation, charges for transportation, delivery, boxing, packing or other extras) will be payable by DPL unless specifically set forth in this Purchase Order or otherwise specifically agreed to in writing by an authorized purchasing agent of DPL. Seller will submit all invoice(s) to DPL under this Purchase Order as set forth herein or as may be designated by DPL. DPL shall exercise reasonable efforts to pay invoices within forty-five (45) days after each such invoice is received and approved by DPL.

7. **Representations and Warranties.** In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to DPL that: (a) all Goods conform and will continue to conform to professional industry standards and to any description, sample, specifications or other documentation related to the Goods made available to DPL; (b) the Goods are and will be fit for the purposes for which purchased, free from defects in materials and workmanship, and safe for their intended use; (c) Seller has all right, title and interest in and to the Goods necessary to fulfill its obligations hereunder; (d) the Goods are free from any liens, claims and encumbrances of any nature and do not and will not infringe the intellectual property rights of any third party; and (e) all Goods will have been produced or manufactured in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and municipal laws, rules and regulations. All of Seller's representations and warranties, both express and implied, also constitute conditions of this Purchase Order and will survive inspection, acceptance and payment by DPL. In the event that the Goods are found to be defective or fail within the warranty period, Seller will at its own expense promptly repair defective Goods. All warranty repairs, modifications, product improvements, corrections, and replacements made by Seller in accordance to the Purchase Order will be at Seller's expense, including, but not limited to, labor, materials, and freight.

8. **Proprietary Rights.** Unless otherwise agreed in writing, the Goods will be deemed to be "work made for hire" and DPL will own all right, title, and interest in and to the Goods and each part and component thereof, whether or not patentable or copyrightable, and any copyright therein and patent application or patent thereon. Seller agrees that all right, title and interest in and to the Goods has been transferred and assigned to DPL. If for any reason it is determined that any such material is not a "work made for hire," Seller hereby assigns all right, title and interest, including copyright or patent interest, therein to DPL.

9. **Force Majeure.** Neither Party will have responsibility to the other due to circumstances beyond that Party's reasonable control, including (without limitation) any act of God, war or public enemy, or any act of government or any agency thereof, or any fire, flood, explosion or other catastrophe, or any epidemic or quarantine restriction, or any act of sabotage or terrorism, or any strike, lockout or other work stoppage, slowdown or dispute.

10. **Compliance with Laws and DPL Policies.** Seller will comply with all applicable international, foreign, and U.S. federal, state and local laws, rules and regulations, including, but not limited to, all applicable laws and regulations pertaining to privacy and confidentiality. Seller will not violate U.S. export control and economic sanctions laws, including, but not limited to, the U.S. Department of Commerce's Export Administration Regulations and the economic sanctions programs administered by the U.S. Department of Treasury, nor take any other action that would cause DPL to be in violation of U.S. export control and economic sanctions laws. Seller will obtain and maintain, and furnish to DPL upon request, any and all permits, licenses, approvals, certificates and other documents required by DPL or otherwise required by applicable law.

11. **Indemnification.** Seller hereby agrees to indemnify and hold harmless DPL, its Commissioners, officers, agents and employees against any and all damages, claims, expenses or other liability, including attorneys' fees, arising out of any (a) alleged or actual infringement or misappropriation of any copyright, patent, trademark, trade secret or other right based upon the Services or deliverables provided by Seller pursuant to this agreement; (b) negligence or willful misconduct of Seller; (c) Seller's failure to perform fully its obligations herein in a timely manner; or (d) breach of any of Seller's representations and warranties herein. Seller shall select counsel reasonably appropriate for the defense of any such claim and shall pay all costs in connection therewith. DPL shall have the right to participate in the defense or settlement of any such claim with counsel of its choice at its own expense.

12. **Insurance.** Seller shall maintain the following coverages with the insurance limits as specified herein and Seller will also require that all of its subcontractors and vendors maintain the same coverages and limits:

A. Worker's Compensation insurance with Michigan statutory limits and Employer's Liability insurance with minimum limits of \$500,000.00 each accident, \$500,000.00 each disease, \$500,000.00 each disease/each employee.

B. Commercial General Liability insurance with a combined single limits of \$1,000,000.00 per occurrence subject to a minimum aggregate limit of \$2,000,000.

C. Automobile Liability insurance covering all owned, hired and non-owned vehicles with personal protection insurance and property protection insurance to comply with the provisions of the Michigan No-Fault Insurance Act, including residual liability insurance with a minimum combined single limit of \$1,000,000.00. Include MCS90 endorsement (if hazardous waste will be transported by vendor's auto) with minimum property damage limits of \$1,000,000.00 each occurrence.

13. **Governing Law.** This Purchase Order will be governed by and construed according to the laws of the State of Michigan without regard to principles of conflicts of law. Any and all actions or proceedings relating to the subject matter of this Purchase Order will be maintained by and subject to the jurisdiction of state and federal courts located in Wayne County, Michigan, and/or other such courts that have statutory jurisdiction for such purposes. The Parties waive the right to a trial by jury in any action or proceeding relating to this Purchase Order.

14. **DPL Tax-Exempt.** DPL, a Michigan Municipal Corporation, is exempt from federal, state and local taxes for purchases made in furtherance of exempt mission, including Michigan sales and use tax and federal excise tax. Seller will not charge DPL for any taxes in connection with the Purchase Order to the extent permitted by law. DPL will supply its tax exempt number and/or copies of its exemption certificates to Seller upon request from Seller.

15. **Confidential Information.** Seller and its employees, agents and subcontractors will hold in confidence and not disclose, distribute, sell, copy, share or otherwise use DPL's "Confidential Information," which includes (i) any information about or relating to the Goods, and (ii) any information obtained, learned, received, or developed by Seller that relates to the employees, patrons, research, development, plans, business affairs, property, records, processes, techniques, or equipment of DPL. Upon completion of its performance under or termination of this Purchase Order, Seller will return to DPL all Confidential Information, and any copies thereof.

16. **Right to Audit.** Seller shall maintain complete and accurate records of all financial transactions associated with this agreement, including, but not limited to, invoices and other official documentation which sufficiently support all charges under this agreement. Seller shall retain such records for six (6) years after final payment, or longer if required by law. Authorized representatives of DPL may inspect and copy records pertaining to this agreement at the Seller's business office during normal business hours. Seller shall include this audit provision in any subcontracts that it may issue under this agreement.

17. **Notices.** All notices to be given hereunder will be in writing and will be delivered by overnight carrier or United States Mail (if to DPL, addressed to The Detroit Public Library, Office of Purchasing, Attn:

Purchasing Administrator, 5201 Woodward Avenue, Detroit, MI 48202. Notices to the Seller shall be sent to the address provided on the Purchase Order Form, if DPL has an email address for the Seller, DPL may send Seller notices via email.

18. **Use of Name.** Unless specifically agreed to in writing by DPL, Seller agrees that it shall not use DPL's name or the name of any of its constituent parts or branches or any of DPL's marks or logos for any promotional or similar purposes without the prior written approval of DPL.

19. **Product Recall Notification.** If there is a product recall affecting any Goods, Seller shall promptly send written notification of recall including instructions for disposal and replacement to The Detroit Public Library, Office of Purchasing, Attn: Purchasing Administrator, 5201 Woodward Avenue, Detroit, MI 48202. Seller must also send a copy of recall notification to the end user as indicated on the ship-to information.

20. **Miscellaneous.** This Purchase Order will be binding on the Parties and their respective successors and permitted assigns. Seller may not assign this Purchase Order or any of its rights and obligations hereunder (including its right to receive payment) without DPL's express prior written consent. Any attempted assignment by Seller without such consent will be null and void for all purposes. If DPL consents to an assignment, Seller will remain primarily responsible for any and all Goods delivered or performed by such assignee or subcontractor as if performed or delivered by Seller. Seller may not modify, waive or supplement this Purchase Order or any term or condition thereof without the written agreement of DPL. This Purchase Order may be changed or modified by DPL by a written instrument signed by DPL's authorized representative. The failure of DPL to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Purchase Order, or to otherwise exercise any right or remedy under this Purchase Order or otherwise, will not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, or of the future exercise of such right or remedy, but rather the obligation of Seller with respect to that future performance will continue in full force and effect. If any provision of this Purchase Order is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof will continue in full force and effect. This Purchase Order is not for the benefit of any third parties. Nothing contained herein will create any agency, partnership, association, or joint venture between the Parties. The relationship of Seller to DPL is that of independent contractor solely and Seller is directly responsible for the mode, method, and manner of its activities. Under no circumstances, as a result of this Purchase Order, will Seller or any of its employees, agents, or representatives be considered an employee, agent, or representative of DPL. Notwithstanding the provisions of any other document, writing, representation, agreement, proposal, promise, or other understanding, oral or otherwise, between Seller and DPL, including but not limited to any prior or subsequent price quotation, invoice, confirmation or other document furnished by Seller (collectively, "Extraneous Terms"), this Purchase Order constitutes the entire agreement between Seller and DPL regarding the subject matter of this Purchase Order and supersedes all Extraneous Terms with respect to the matters contained herein. All provisions that logically ought to survive termination of this Purchase Order shall survive.

21. **Conflicts Between Clauses Applicable to the Purchase Order.** In the event of any conflict among the clauses applicable to this Purchase Order, and/or related contracts, and/or applicable cooperative contracts, the more stringent clause will apply.

February 8, 2017