

TERMS AND CONDITIONS

This Purchase Order forms a contract of sale between New Jersey Innovation Institute (hereinafter "NJII") and Vendor. The following terms and conditions apply to all NJII Purchase Orders unless specifically deleted and initialed by an authorized NJII representative or amended in writing under separate agreement and signed by both parties.

1. **INSPECTION AND ACCEPTANCE** – All materials, goods and/or services (hereinafter "Merchandise") will be subject to the right of inspection and rejection by NJII. Merchandise which is defective or nonconforming to the specifications established by NJII will be held for thirty days for Vendor's instruction at Vendor's risk and expense, and returned to Vendor at its request and expense. Payment by NJII prior to inspection shall not constitute acceptance.
2. **TIME OF DELIVERY** – Vendor shall advise NJII of the delivery date(s) immediately upon receipt of this Purchase Order, which shall be reasonable, relative to the availability of the goods and NJII's stated needs. Time is of the essence and NJII may at its option, cancel all or any unshipped portion of this order without liability to Vendor for contractual or consequential damages and charge Vendor with any loss incurred if deliveries are not made within the time specified. For items requiring a certificate of Fire Resistive Rating, such document must be submitted to the Purchasing Department at the time of shipment.
3. **CANCELLATION FOR NON-PERFORMANCE**-If Vendor fails to supply the Merchandise as specified or otherwise fails to conform to NJII's specifications or the terms and conditions stated herein, NJII may, at its option cancel this Purchase Order with respect to unshipped Merchandise without liability to Vendor for contractual or consequential damages and charge Vendor with any loss incurred.
4. **CANCELLATION OR CHANGES FOR CONVENIENCE** – NJII may cancel this Purchase Order in whole or in part for its convenience or may change its specifications or other terms and conditions relating to quantities, shipment procedures, or time or place of performance by giving written notice to the Vendor prior to shipping.
5. **FORCE MAJEURE**-This Purchase Order may be cancelled by NJII on written notice to Vendor in the event of causes beyond NJII's reasonable control, including, but not limited to, acts of God, floods, fires, earthquakes, natural disasters, strikes, riots, curtailment of operations due to governmental order, or similar occurrences.
6. **DELIVERY COSTS**-All Merchandise must be sent by the route with the lowest reasonable transportation cost, unless otherwise specified in writing by NJII. All shipments FOB destination must be prepaid by Vendor. No charge for boxing, packing, cartage or other extras will be allowed unless specifically agreed to by NJII in writing. Merchandise shipped in excess of the specified order may be returned at Vendor's expense. NJII is not responsible for any damages or losses incurred in the delivery process, which shall be at Vendor's risk.
7. **WARRANTIES**-Vendor warrants that the Merchandise conforms to the specifications established by NJII, is fit for the purpose for which it was purchased, and is free from defects in materials and/or workmanship. All Merchandise must pass inspection for safety performance and compliance with specifications prior to acceptance. Payment to vendor will not be authorized until such criteria are met. Any warranty period provided by Vendor will be effective as of the date the Merchandise is accepted.
8. **INDEMNIFICATION**-Vendor agrees to hold harmless, defend and indemnify NJII, its trustees, agents and employees from and against any and all claims, demands or suits, including reasonable attorney's fees, arising or claiming to arise out of: (a) alleged defects in the design, materials, workmanship, or manufacture of the Merchandise supplied under this Purchase Order; (b) Vendor's possession and transport of NJII's property at all times until merchandise is accepted by NJII; (c) any claim made that the Merchandise infringes or violates any patents, copyrights, trademarks, license or other proprietary right of a third party or; (d) any employees' negligent or intentional acts or omissions.
9. **INSURANCE**-Vendor agrees to maintain adequate insurance to indemnify NJII against any claim for loss, damage or injury to property or persons arising out of the performance by Vendor under this Purchase Order or the use, misuse or failure of any Merchandise. Vendor shall provide certificate of such insurance to NJII at NJII's request.
10. **COMPLIANCE WITH LAWS**- Vendor assures compliance with all applicable federal, state and local laws, rules and regulations and executive orders, as amended, including but not limited to: (a) Non-Discrimination In Employment and Equal Employment Opportunity (N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq; Titles VI and VII of the Civil Rights Act of 1964; Executive Orders 11246 and 11375 as implemented by 41 CFR Part 60; Rehabilitation Act of 1973, Section 504; Age Discrimination Act of 1976; and Title IX of Higher Education Act of 1972); (b) Drug-Free Workplace Act of 1988 (34 CFR Part 85); (c) Byrd Anti-Lobbying Amendment (31 USC 1352); (d) Protection of Human Subjects (45 CFR Part 46); (e) Clean Air Act (42 USC 7401 et seq.); (f) Water Pollution Control Act (33 USC 1251 et seq.); (g) Notification of Employee Rights Under Federal Labor Laws (Executive Order 13496); (h) Fair Labor Standards Act of 1938 (29 CFR Part 5); (i) US Export Control (Arms Export Control Act, 22 USC 2751-2794; International Traffic and Arms Regulation, 22 CFR Part 120; Arms Administration Act, 50 USC 2401-2420; and Export Administration Regulations 15 CFR 730-774); and (j) Disclosure of Investment Activities in Iran P.L. 2012, c.25, (k) New Jersey's Diane B. Allen Equal Pay Act (P.L. 2018, c. 9).
This provision shall be included in all sub-award documents related to this Purchase Order at all tiers.
11. **SALE OR BANKRUPTCY OF VENDOR'S BUSINESS**- In the event of bankruptcy or insolvency proceedings involving Vendor, NJII has the right to cancel this Purchase Order prior to delivery of all Merchandise and services without incurring liability to Vendor for contractual or consequential damages.
12. **TAX CHARGES**-NJII is exempt from all New Jersey sales, use and local tax, as well as Federal Excise Tax. Taxes must not be included on invoices.
13. **GOVERNING LAW**-This Purchase Order and all matters relating thereto will be governed by and construed in accordance with the laws of the State of New Jersey and the parties agree that venue shall be in New Jersey courts, with jurisdiction in the County of Essex.
14. **VENDOR'S PROPOSAL** – Any terms and conditions contained in Vendor's proposal shall not be binding upon NJII to the extent that any provision of the same conflicts with this Purchase Order, this Purchase Order shall control.
15. **SURVIVAL OF TERMS** – Any provision of this Purchase Order, which by its nature extends beyond termination and/or expiration, e.g., without limitation indemnification, insurance, and work made for hire, shall survive such termination and/or expiration.
16. **INDEPENDENT CONTRACTOR** – Vendor shall be an independent contractor and not an employee of NJII. Neither Vendor nor any of its respective employees are authorized or empowered to act as agent for NJII for any purpose and shall not on behalf of NJII enter into any contract, warranty, or representation as to any matter.
17. **WORK MADE FOR HIRE** - All Merchandise delivered by vendor (including patentable) and for which Vendor receives payment by NJII, shall be the sole and exclusive property of NJII, Vendor agrees that performance of this Purchase Order constitutes "work made for hire" pursuant to U.S. copyright/patent law. Vendor grants NJII a free perpetual right to use any of Vendor's pre-existing and/or proprietary materials incorporated into the Merchandise.
18. **CONFIDENTIALITY** – In the course of providing Merchandise, NJII may disclose marked and/or identified confidential and/or proprietary information to Vendor which Vendor shall not disclose to third parties without the prior written consent of NJII. All Merchandise delivered by Vendor shall be confidential and proprietary as to NJII.
19. **PUBLIC RECORDS** - Vendor understands and agrees that NJII may be required to disclose information considered confidential and/or proprietary by Vendor as required by any federal or state law, regulation, statute, court or administrative order, including the N.J. Open Public Records Act, N.J.S.A. 47:1A-1et seq.
20. **NEW JERSEY BUSINESS REGISTRATION** – Vendor is hereby given notice that a business organization or individual entering into an agreement with a contracting agency such as NJII that fails to provide a copy of any required N.J. Business Registration Certificate (as required by N.J.S.A. 52:32-44 et seq.) may be liable for a penalty. No payment can be made by NJII until Vendor provides an acceptable N.J. Business Registration Certificate as required.
21. **NON-SOLICITATION** – Vendor represents that no person or selling agency has been employed or retained by Vendor to solicit or secure this Purchase Order upon an agreement for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide commercial or selling agencies maintained by Vendor for the purpose of securing business. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJII employee from Vendor is prohibited and shall be promptly reported to NJII.