

NSU PURCHASE ORDER GENERAL TERMS AND CONDITIONS

FLA. SALES TAX EXEMPTION #85-8012530285C-3

FED ID #59-1083502 FL NOT-FOR-PROFIT CORP. 501c3

EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

These Terms and Conditions ("Terms") shall govern the purchase of products and/or services from Vendor set forth on the attached quote, invoice, or proposal (the "Order"). Any terms or conditions stated in the Order or any other Vendor furnished document, including terms and conditions on Vendor's website referred to as applicable to the purchase, that are in addition to, inconsistent with or conflict with these Terms are hereby rejected, and these Terms shall govern. These Terms will be deemed accepted by Vendor upon 1) receipt of Vendor's written acknowledgement of the Order; 2) shipment of goods; or 3) commencement of performance of the services.

- SHIPPING.** Products and materials shall be packed by Vendor so as to ensure that no damage shall result from weather or transportation. Products shall be shipped in accordance with NSU's instructions, if any, and Vendor shall secure the lowest cost for shipping. Unless specified otherwise on the Order, delivery shall be F.O.B. Destination as instructed by NSU.
- INSPECTION.** Products and materials are subject to inspection and approval by NSU. NSU may return any products and materials which are defective, unsatisfactory, or of inferior quality or workmanship, or which fail to meet the specifications or other requirements of the Order. Such products and materials shall, unless used by NSU, remain the property of Vendor and may be returned at Vendor's expense to Vendor at Vendor's risk and expense; and Vendor shall refund any payments for returned products and materials and expenses for shipping or postage.
- WARRANTY.** In addition to any applicable statutory warranties or those implied by law, Vendor expressly warrants to NSU that all products and materials covered by the Order (i) do not violate any patent, trademark, copyright or other intellectual property right of a third party, (ii) shall strictly conform with all specifications, drawings, models, dimensions, statements on containers or labels, descriptions, and samples furnished to or by NSU, (iii) shall strictly conform to all industry standards and perform in accordance with documentation, (iv) shall be new, not refurbished or reconditioned unless expressly agreed in writing by NSU, and free from defects in design, materials used, and workmanship, (v) shall be merchantable and fit for the purposes intended, and (vi) shall be adequately contained, packaged, marked, and labeled. Vendor also expressly warrants to NSU that (a) Vendor has the right, power, and authority to sell and transfer the products and materials to NSU, and that the sale and transfer will not conflict with, be a violation of, or be prohibited in any way by any agreement under which Vendor is subject to or bound by, (b) price charged for products/services are no higher than prices charged for similar orders by others and any published pricing, and (c) good title to such products and materials shall be conveyed to NSU as the sole owner, free and clear of all liens, encumbrances, pledges, charges, security interests, and claims. Such warranties shall survive delivery, inspection, testing, acceptance, use, and payment by NSU, and shall inure to the benefit of NSU, its successors, assigns, and users. Except as prohibited by Florida law, these warranties may not be limited or disclaimed. Vendor shall provide to NSU all manufacturers' warranties that shall inure to the benefit of NSU.
- WORK AND SERVICES.** All work and services performed by Vendor shall be completed in a skillful, workmanlike, and professional manner, in accordance with all applicable industry standards and all applicable federal, state, and local laws, rules, regulations, ordinances, codes, and requirements of governmental agencies. Vendor shall also comply with all required NSU policies, procedures, and rules applicable to the Order, copies of which shall be provided or otherwise made available to Vendor. Vendor warrants to NSU that (i) Vendor has all approvals necessary to sell products and all licenses and permits required to perform the work and services, and (ii) Vendor's performance of the work and services does not conflict with nor are its performance of the work and services prohibited in any way under any other agreement to which Vendor is subject to or bound by.
- INDEMNIFICATION AND INSURANCE.** Vendor will indemnify, defend, and hold harmless NSU and its trustees, officers, agents, and employees from any action, claim, loss, damage, liability, cost or expense (including, without limitation, reasonable attorneys' fees) alleged against or incurred by NSU in connection with one or more of the following: (a) bodily or personal injury, death or property damage arising out of or resulting from the acts or omissions of Vendor or its employees, agents, contractors, or subcontractors, or any party acting under Vendor's direction or on its behalf (including, but not limited to, any third party shipping company); (b) any design fault or defect in the products or materials furnished; or (c) Vendor's breach of any one or more of these Terms, including, without limitation, infringement of third party intellectual property rights, or breach by any person acting under Vendor's direction or on its behalf. Vendor shall maintain (i) commercial general liability insurance (including bodily injury, death, property damage, contractual and products liability, cross liability, and completed operations coverage) in limits (unless higher limits are specifically required) not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate; (ii) if Vendor will perform any work or services on NSU's premises, workers' compensation insurance in accordance with applicable state law, and employers' liability insurance in an amount not less than \$1,000,000 bodily injury by accident, each accident, \$1,000,000 bodily injury by disease, policy limit, and \$1,000,000 bodily injury by disease, each employee; (iii) if applicable, professional/errors and omissions liability insurance in an amount not less than \$1,000,000 per occurrence/\$3,000,000 annual aggregate; (iv) if Vendor will enter onto NSU's premises, automobile liability insurance (including coverage for owned, non-owned, and hired vehicles) in limits not less than \$1,000,000 combined single limit per occurrence; and (v) excess/umbrella liability insurance in an amount not less than \$5,000,000 in excess of the limits stated in (i), (iii) and (iv) in this section. Vendor shall submit a certificate of insurance evidencing the required coverage and naming "Nova Southeastern University, Inc., its officers, trustees, employees, and agents" as additional insured on its liability policies. NSU reserves the right to require that Vendor maintain additional insurance coverage. In the event Vendor engages a contractor or subcontractor as may be permitted herein, Vendor shall ensure that the contractor or subcontractor maintains the same insurance coverage as Vendor is required to maintain under this section, and Vendor shall provide to NSU a certificate of insurance evidencing such coverage.
- ASSIGNMENT OF CLAIMS.** Vendor shall not assign the Order or any interest herein, including any performance or any amount which may be due or may become due hereunder, without NSU's prior written consent.
- SUBCONTRACTORS.** Vendor shall not subcontract the performance of any work or services without the prior written consent of NSU.
- PAYMENTS AND TAXES.** Vendor shall submit itemized invoices for payment. Payment to Vendor shall be the later of (i) thirty (30) days after receipt of the invoice; (ii) delivery of products or materials; (iii) installation of all equipment, or (iv) if services or work are being performed, upon completion to the satisfaction of NSU. Unless otherwise specified on the Order, the price includes all applicable federal, state, and local taxes, charges, fees, and duties. Vendor agrees to furnish NSU with information as to its payment or nonpayment of such taxes as NSU may request.
- TERMINATION OF SERVICES.** NSU may terminate the Order for services, in whole or in part, with or without cause, at any time by written notice to Vendor. Such notice shall specify the services terminated and effective date of such termination. Upon receipt thereof, Vendor shall, as and to the extent directed by NSU, cease work under the applicable Order, and Vendor shall be paid for services performed prior to the date of termination and for any materials or supplies delivered and accepted.
- BANKRUPTCY.** If Vendor shall default in any respect, or become insolvent, or if a petition in bankruptcy or insolvency is filed by or against Vendor under any state or federal law, NSU, in addition to any other rights or remedies it may have available, may terminate and cancel any and all applicable Orders with Vendor in its sole and absolute discretion and without any consequence.
- ADVERTISING AND/OR PUBLICITY AUTHORIZATION.** Vendor shall not publish that NSU has placed the Order or any other Order with Vendor and shall not otherwise publicize the relationship of the parties except with the prior written consent of NSU, which may be withheld in its sole discretion.
- COMPLIANCE WITH LAWS.** Vendor represents and warrants to NSU that Vendor's business practices, and the products and services provided to NSU comply with all applicable federal, state and local laws, regulations, orders, ordinances, and codes ("Laws"), including without limitation, those relating to non-discrimination. With respect to work and services performed, Vendor ensures that it and any individuals performing work or services hereunder possess all necessary licenses and permits. Vendor shall indemnify, defend, and hold NSU harmless from any action, claim, loss, damage, fine, penalty, cost, or expense (including, without limitation, attorneys' fees) alleged against or incurred by NSU arising out of, resulting from or in any way connected with Vendor's violation of Laws.
- HIPAA.** To the extent that Vendor may obtain or have access to any NSU Protected Health Information as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in connection with performing any services, Vendor will be deemed a Business Associate of NSU and agrees to enter into a Business Associate Agreement with NSU, and comply with all applicable requirements of a Business Associate under HIPAA.
- DEBARMENT, SUSPENSION, AND CRIMINAL PROCEEDINGS.** Vendor represents and warrants to NSU that neither Vendor nor any of its agents, employees, or subcontractors (performing services in connection with the Order) (i) are debarred or suspended, under investigation for debarment or suspension, or otherwise excluded from participation, with respect to any federal, state or local government program or any federal, state or local government entity, (ii) have been convicted of any criminal offense, nor is there any criminal proceeding pending against any of them, relating to any federal, state or local government program or relating to any federal, state or local government entity. Vendor's representations shall be ongoing during the entire period that Vendor is doing business with NSU. Vendor shall immediately notify NSU in writing of any change in such representations. If Vendor's representations are not at any time true in all respects, then NSU may immediately terminate its business arrangement with Vendor, and pursue any remedies available to NSU at law or in equity.
- INTELLECTUAL PROPERTY RIGHTS.** Vendor represents and warrants to NSU that the products and materials furnished are proprietary or that all consents and approvals required for Vendor to furnish the products and materials and NSU's use thereof shall not infringe upon the intellectual property rights of any third party. In the event of any claim alleging that any of the products or materials provided by Vendor infringes a third party intellectual property right, Vendor shall (at its sole cost and expense) (i) procure for NSU the right to use said products, materials, or software, (ii) replace with new products, materials or software or modify said products, materials, software or manner of provision so it is non-infringing but functionally equivalent, and reimburse NSU for any additional costs (including, but not limited to, any transportation and reinstallation costs) in connection therewith, or (iii) remove said products and materials, refund the purchase price and reimburse NSU for any associated costs (including, but not limited to, any transportation and removal costs).
- ITEMS FURNISHED BY NSU.** All designs, tools, patterns, drawings, information, and equipment supplied by NSU in connection with the Order are the property of NSU and only may be used as stated in the applicable Order. Consequently, Vendor shall not disclose, copy, reproduce, or use any such items without first obtaining NSU's written consent, which consent may be granted or withheld in NSU's sole discretion.
- DISPUTE RESOLUTION.** Vendor and NSU agree that before taking any legal action against the other party, the parties shall engage in good faith negotiations to resolve their dispute. If the matter is not resolved by negotiation within a reasonable time, then Vendor and NSU agree that the matter will proceed to mediation with a mediator acceptable to both parties. All costs and fees required by the mediator shall be split equally by the parties. Mediation shall occur in Broward County, Florida.
- GOVERNING LAW, JURISDICTION, AND VENUE.** These Terms shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflicts of law

principles. The parties accept the exclusive jurisdiction of the state courts of the State of Florida, and agree that venue shall lie exclusively in Broward County, Florida.

19. **RELATIONSHIP BETWEEN THE PARTIES.** Vendor is an independent contractor and no joint venture, partnership, principal-agent, or employment relationship exists or is implied between the parties.
20. **SEVERABILITY.** If any provision or part of these Terms is held invalid or unenforceable by a court of competent jurisdiction, then the remainder of these Terms shall not be affected thereby and shall remain valid to the extent not prohibited by law.
21. **SURVIVAL.** All provisions of these Terms (including, without limitation, the indemnification provisions) that by their nature or context should survive the expiration or termination of these Terms, shall survive.
22. **INTERPRETATION.** With respect to the interpretation of these Terms concerning an ambiguity or otherwise, there shall be no presumption against the drafter.
23. **RIGHTS IN DATA.** Vendor agrees to and does hereby grant to NSU the right to reproduce, use, and disclose for any purpose all or any part of any reports, drawings, blueprints, data, and technical information developed under the applicable Order, and Vendor agrees that it will not use or disclose the same without NSU's prior written consent.
24. **E-VERIFY.** By accepting the Order, Vendor is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Compliance with Section 448.095, Fla. Stat., includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all contractors and subcontractors to provide an affidavit attesting that such contractor or subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the Order. Vendor affirms and represents that it is registered with the E-Verify system, is using the system, and will continue to use the same as required by Section 448.095, Fla. Stat. Vendor's employment of unauthorized aliens is considered a violation of Section 274A(e) of the Immigration and Nationality Act. NSU may terminate any and all Orders immediately by written notice to Vendor for any violation of this provision.
25. **SCRUTINIZED COMPANIES.** Vendor certifies, represents, and warrants that it and its contractors and subcontractors are not included on any scrutinized companies lists referenced in Section 287.135, Fla. Stat., "Prohibition against contracting with scrutinized companies" and shall reasonably assist NSU in its compliance with Section 1010.25, Fla Stat., "Foreign gift reporting" if necessary. NSU may terminate any and all Orders immediately if Vendor is found to have submitted a false certification, or if Vendor or any of its contractors or subcontractors are placed on any such scrutinized companies lists during the term of the Order.
26. **PAYMENT AUDIT.** Vendor shall maintain accurate records of costs incurred under all Orders and retain such records for a period of seven (7) years after all services are performed, or for the period required by law or NSU's policies, whichever is greater. Upon request, Vendor shall provide copies of such records. Records of costs incurred shall include Vendor's general accounting records, together with supporting documents and records of Vendor and all contractors and subcontractors performing work or services under the Order and all contractors and subcontractors considered necessary by NSU for audit.
27. **COOPERATION WITH INSPECTOR GENERAL.** Pursuant to Section 20.055(5), Fla. Stat., Vendor will, and cause any of its contractors and subcontractors to comply with their duty to cooperate with the Florida Inspector General in any investigation, audit, inspection, review, or hearing in connection with the Order. Upon request of the Inspector General or any other Florida authorized official, Vendor shall provide any type of information the Inspector General deems relevant to Vendor's integrity or responsibility. Such information may include, but shall not be limited to, Vendor's business or financial records, documents, or files of any type or form that refer to or relate to the Order. Vendor shall retain such records for three (3) years after expiration of the Order or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer.
28. **CONVICTED AND DISCRIMINATORY VENDOR LISTS.** Vendor certifies, represents, and warrants that it and its contractors and subcontractors providing any services on its behalf in connection with the Order are not on the Convicted Vendor List nor the Discriminatory Vendor List maintained by the Florida Department of Management Services.
29. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** Vendor certifies, represents, and warrants that it complies, and that Vendor will cause its employees, agents, contractors, and subcontractors performing any work or services under the Order to comply with Section 200.216 of Subpart C of Part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Prohibition on certain telecommunications and video surveillance services or equipment.
30. **FEDERAL PROVISIONS.** Vendor acknowledges that NSU may be purchasing the products and/or services under the Order in connection with federal funding (grant, cooperative agreement, or contract) or using federal funds. If federal funds are applicable, Vendor hereby accepts and agrees to comply with all applicable provisions of the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* at 2 CFR 200 and the Federal Acquisition Regulations and the DFARS Flow Down Clauses.
31. **ORDER OF PRECEDENCE.** Any inconsistency in terms contained in documents related to the Order shall be resolved by giving precedence in the following order: (1) these Terms; (2) Statement of Work or Specifications related to NSU's request for proposal or request for qualification; (3) all other documents, including, but not limited to, drawings, descriptions, and or sample(s) approved by NSU in writing.