

## **PURCHASE ORDER Terms and Conditions**

These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) and, if applicable, services (“**Services**”) by Philadelphia College of Osteopathic Medicine (“**PCOM**”) from the seller (“**Seller**”) named on any purchase order which makes reference to or otherwise incorporates these Terms (the “**Purchase Order**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with or in addition to these Terms.

The Purchase Order and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions, regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller’s acceptance to the terms and conditions of this Agreement, and any conflicting or additional terms are hereby REJECTED. Fulfillment of the Purchase Order constitutes acceptance of these Terms.

### **1. Delivery of Goods and Performance of Services.**

**(a)** Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If Seller fails to deliver the Goods in full on or before the Delivery Date, PCOM may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify PCOM against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. PCOM has the right to return any Goods delivered prior to the Delivery Date at Seller’s expense and Seller shall redeliver such Goods on the Delivery Date.

**(b)** Seller shall deliver all Goods to the address specified in the Purchase Order (the “**Delivery Point**”) during PCOM’s normal business hours or as otherwise instructed by PCOM. Seller shall pack all goods for shipment according to PCOM’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide PCOM prior written notice if it requires PCOM to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense.

**(c)** Seller shall provide all Services, if any, to PCOM as described and in accordance with the Purchase Order and in accordance with the terms and conditions set forth in these Terms.

**(d)** Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Goods and Services, including all performance dates, timetables, project milestones and other requirements in this Agreement.

**2. Quantity.** If Seller delivers more or less than the quantity of Goods ordered, PCOM may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s sole risk and expense. If PCOM does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

**3. Shipping Terms.** Delivery shall be made in accordance with the terms on the Purchase Order. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence, and any other documents pertaining to the Purchase Order.

**4. Title and Risk of Loss.** Title and risk of loss passes to PCOM upon delivery of the Goods at the Delivery Point.

**5. Inspection and Rejection of Nonconforming Goods.** PCOM has the right to inspect the Goods on or after the Delivery Date. PCOM, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If PCOM rejects any portion of the Goods, PCOM has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If PCOM requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, PCOM may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 15. Any inspection or other action by PCOM under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and PCOM shall have the right to conduct further inspections after Seller has carried out its remedial actions.

**6. Price.** The price of the Goods and Services is the price stated in the Purchase Order (the “**Price**”). If no price is included in the Purchase Order, the Price shall be the price set out in Seller’s published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, insurance, customs duties, and fees and applicable taxes, if any. For the avoidance of doubt, PCOM is a tax-exempt organization under Section 501(a) and 501(c)(3) of the Internal Revenue Code of 1986, as amended, and under applicable laws of the Commonwealth of Pennsylvania and the State of Georgia. Seller shall take all actions required to cause the provision and purchase of Goods and Services under this Agreement to be treated as a tax-exempt transaction, and in no event shall PCOM be responsible for any sales, use, property, gross receipts, excise, or similar taxes levied against any parties hereto. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of PCOM.

**7. Payment Terms.** Seller shall issue an invoice to PCOM on or any time after the completion of delivery and only in accordance with these Terms. PCOM shall pay all properly invoiced amounts due to Seller within sixty (60) days after PCOM’s receipt of such invoice,

except for any amounts disputed by PCOM in good faith. Without prejudice to any other right or remedy it may have, PCOM reserves the right to set off at any time any amount owing to it by Seller against any amount payable by PCOM to Seller.

**8. Seller's Obligations Regarding Services.** Seller shall:

- (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;
- (b) comply with all rules, regulations and policies of PCOM, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by PCOM to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures;
- (c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as PCOM shall approve. During the term of this Agreement and for a period of two (2) years thereafter, upon PCOM's written request, Seller shall allow PCOM to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;
- (d) obtain PCOM's written consent, which may be given or withheld in PCOM's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to PCOM (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). PCOM's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between PCOM and any Seller subcontractor or supplier;
- (e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement and, upon PCOM's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to PCOM;
- (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;
- (g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by PCOM; and
- (h) keep and maintain any PCOM equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with PCOM's written instructions or authorization.

**9. Change Orders.** PCOM may at any time, by written instructions and/or drawings issued to Seller (each a "**Change Order**"), order changes to the Services. Seller shall, promptly after receipt of a Change Order, submit to PCOM a firm cost proposal for the Change Order. If PCOM accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in Seller's compensation or the performance deadlines under this Agreement.

**10. Warranties.**

- (a) Seller warrants to PCOM that upon delivery and for a period of twelve (12) months from the Delivery Date, all Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, and samples, and any other requirements specified by PCOM; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by PCOM.
- (b) Seller warrants to PCOM that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry and professional standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- (c) The warranties set forth in this Section 10 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of PCOM's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If PCOM gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to PCOM, and, if applicable, (ii) repair or re-perform the applicable Services.
- (d) NO LIMITATION OF LIABILITY, DAMAGES, OR REMEDY SHALL BE VALID UNDER ANY CIRCUMSTANCES, EVEN IF PCOM HAS BEEN ADVISED THEREOF BY SELLER.

## **11. Insurance and General Indemnification.**

**(a)** Seller shall comply with PCOM's current Minimum Insurance Requirements, which are available via PCOM's website. For the avoidance of doubt, neither the issuance of any insurance policy required under this Agreement nor the minimum limits specified in the Minimum Insurance Requirements referenced in the preceding sentence shall be deemed to limit or restrict in any way Seller's liability arising under or out of this Agreement.

**(b)** Seller shall defend, indemnify and hold harmless PCOM and PCOM's subsidiaries, affiliates, successors or assigns and each of their respective directors, managers, partners, officers, shareholders and employees (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, willful misconduct, or breach of the Terms. Seller shall not enter into any settlement without PCOM's prior written consent.

**12. Intellectual Property Indemnification.** Seller shall, at its expense, defend, indemnify and hold harmless PCOM and any Indemnitee against any and all Losses arising out of or in connection with any claim that PCOM's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without PCOM's or Indemnitee's prior written consent.

**13. Limitation of Liability.** Nothing in this Agreement shall exclude or limit (a) Seller's liability under Sections 11 and 12 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

**14. Compliance with Law.** Seller shall comply, at its own cost and expense, with all applicable laws, regulations and ordinances. Goods furnished under this Agreement must comply with all federal, state and local codes and regulations covering educational institutions (or, if applicable, healthcare providers) in effect at the time of the purchase and the current applicable prescribed standards of the federal Occupational Safety and Health Act. Without limiting the generality of the foregoing, Seller shall: (a) comply with the Fair Labor Standards Act (FLSA) of 1938, as amended, including a certificate of compliance with that Act, if requested; (b) shall furnish Material Safety Data Sheets ("MSDS"), as required by law; (d) maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all applicable equal employment opportunity, civil rights, anti-discrimination, and anti-harassment laws, regulations and ordinances; (e) comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller, and Seller assumes all responsibility for shipments of Goods requiring any government import clearance; (f) comply with Seller's corporate conflict of interest and code of conduct/compliance policies; and (g) if Seller is providing any Service or any program, activity or event that involves Direct Contact with a minor for or on behalf of PCOM, Seller shall comply with the Pennsylvania Child Protective Services Law ("CPSL"), as amended, including but not limited to 23 P.S. Section 6344, requiring Seller to conduct (i) a federal criminal background check through the Federal Bureau of Investigation; (ii) a Pennsylvania state criminal history check; and (iii) a child abuse clearance report from the Department of Human Services. Seller shall not assign any person who has committed any of the offenses identified in 23 P.S. Section 6344(c) to provide any Service, activity, program or event to PCOM involving any Direct Contact with a minor.

**15. Termination.** In addition to any remedies that may be provided under these Terms, PCOM may terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods or Seller's delivery of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then PCOM may terminate this Agreement upon written notice to Seller. If PCOM terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by PCOM prior to the termination.

**16. Waiver.** No waiver by PCOM of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by PCOM. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**17. Confidential Information.** Seller shall comply with FERPA, HIPAA, Gramm-Leach-Bliley, and all other federal, state and local laws and regulations pertaining to the confidentiality and privacy of health care, student, personal and related information. Seller shall immediately, and no later than three (3) business days, notify PCOM of any actual or potential lack of compliance with any of the foregoing laws or regulations or of any actual or potential data breach of which it becomes aware. Where appropriate in the discretion of PCOM, and at PCOM's request, Seller shall execute a HIPAA Business Associate Agreement. All non-public, confidential or proprietary information of PCOM, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by PCOM to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by PCOM in writing. Upon PCOM's request, Seller shall promptly return all documents and other materials received from PCOM. PCOM shall be entitled to injunctive relief for any violation of this Section. This Section does

not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by PCOM on a non-confidential basis from a third party.

**18. Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, pandemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than thirty (30) days, PCOM may terminate this Agreement immediately by giving written notice to Seller.

**19. Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of PCOM. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. PCOM may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of PCOM's assets.

**20. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**21. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**22. Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

**23. Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the Commonwealth of Pennsylvania in each case located in the City of Philadelphia and Philadelphia County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**24. Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to PCOM at PCOM Procurement Services, Rowland Hall, 4190 City Ave., Philadelphia, PA 19131, with a copy to PCOM, Office of the Chief Legal Affairs Officer, 4170 City Ave, Philadelphia, PA 19131. Notice to Seller shall be to the address set forth on the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**25. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**26. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: the Preamble to these Terms and Sections 10, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

**27. Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.