



**Strategic Procurement & Contracts**  
**Box 1845**  
**Providence, RI 02912**  
**Purchasing@brown.edu**

**Brown University**  
**Purchase Order Terms & Conditions**  
(REV September 27, 2023)

**1. Agreement.** A Purchase Order or other instrument referencing these Purchase Order Terms and Conditions (the “**Purchase Order**”) has been agreed to by and between the seller, vendor, supplier, contractor or other entity named thereon (“**Contractor**”) and Brown University (“**Brown**”) (each individually a “**Party**” and collectively, the “**Parties**”). The Purchase Order, together with any and all attachments thereto, which are incorporated therein by reference, is governed by these Purchase Order Terms and Conditions. The Purchase Order and these Purchase Order Terms & Conditions are collectively referred to herein as the “**Agreement**”. The Agreement sets forth the exclusive terms and conditions for the purchase and/or license of the goods, works, materials and/or specified services and deliverables described in the Purchase Order (collectively, “**Purchases**”). Notwithstanding anything to the contrary contained herein or in the Purchase Order, any documents submitted by Contractor but not part of the Purchase Order, including, without limitation, Contractor’s purchase orders, terms and conditions, proposals, bid documents, performance specifications, technical product descriptions or bulletins, correspondence, memoranda, catalogs, price lists, or other materials shall not be deemed to supersede the Agreement. If any discrepancy, difference or conflict arises or exists between provisions under any other terms and conditions between Brown and Contractor and the Agreements, the Agreement shall govern. In the event of any discrepancy, difference or conflict between provisions of the Purchase Order and these Purchase Order Terms and Conditions, these Purchase Order Terms and Conditions shall govern. Brown hereby gives notice of its objection to any different or additional terms other than those terms and conditions set forth in the Agreement, unless Brown agrees in writing to different terms and conditions signed by an authorized signer of Brown.

**2. Acceptance of Terms:** Contractor’s written consent, commencement of work, shipment of goods, or performance of any services in accordance with the Purchase Order, whichever occurs first, shall be deemed acceptance of the Agreement. Any proposal for additional or different terms, or any attempt by the Contractor to

vary in any degree any of the terms of the Agreement in the Contractor's acceptance is hereby objected to and rejected, this includes the Purchase Order price.

**3. Shipping instructions:** All Purchases must be shipped to the address specified on the Purchase Order. All packing lists, packages, cartons, etc. must bear the Purchase Order number. Contractor shall substantially pack, mark, and ship all Purchases in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order and the requirements of common carriers. Contractor shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment. The Parties agree to assist each other in the prosecution of claims against carriers.

**4. Delivery Terms/Title:** All shipments will be FOB, Destination the location designated by Brown. Title to and risk of loss in transit shall remain with Contractor until Purchases are delivered to Brown’s designated location in acceptable condition. Contractor assumes full responsibility for packing, crating, marking, transportation, and liability for loss and/or damage even if Brown has agreed to pay freight, express or other transportation charges.

**5. Invoice Instructions/Taxes:** All invoices must be forwarded to Brown’s Accounts Payable Department at the following email address: [accounts\\_payable@brown.edu](mailto:accounts_payable@brown.edu) or to any specific email address provided on the Purchase Order. Brown is exempt from Federal Taxes under PL 85-859, Register # 0571 1256 F, and from R.I. State Sales and Use Tax under section 31- E, Permit No. 41. Contractor shall not charge Brown for such taxes. Proof of Brown’s exemption from sales taxes and federal excise taxes is available at Brown’s website (<https://www.brown.edu/about/administration/controller/state-sales-tax-exempt-certificates>), or such other website that may be designated by Brown.

**6. Delivery of Purchases.** Contractor hereby agrees to timely delivery based upon the timeline set forth in the



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Purchase Order. If the Purchase Order does not specify a delivery date (the “**Delivery Date**”) or timeline, Contractor shall provide the Purchases as if time is of the essence. If Contractor anticipates a delay in the delivery of the Purchases, Contractor shall immediately notify Brown. Such notification shall not, however, constitute a change to the delivery terms of this Purchase Order. In the event that Contractor fails to deliver the Purchases by the Delivery Date, or Contractor fails to deliver conforming Purchases, Brown may purchase substitute Purchases elsewhere and charge Contractor for any additional expense incurred relating to the purchase of such substitute Purchases. Contractor shall deliver all Purchases in accordance with the terms of the Purchase Order. If delivery of the Purchase is not complete by the Delivery Date, Brown may, without liability, and in addition to its other rights and remedies, terminate the Purchase Order, by notice effective when received by Contractor, as to Purchases not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind Brown to accept any future shipments nor deprive it of the right to return Purchases already accepted. Changes, modifications or any delay resulting from Brown that prevents Contractor from achieving the Delivery Date shall not constitute a breach of this Agreement by Contractor.

**7. Inspection.** Payment for the Purchases provided under the Purchase Order shall not constitute acceptance thereof. Brown may inspect and test such Purchases and reject any or all items that are, in Brown's sole judgment, non-conforming. Purchases rejected or supplies in excess of quantities ordered may be returned to Contractor at its expense. Failure by Brown to inspect and/or test the Purchases shall not be deemed acceptance by Brown.

**8. Warranty.** In addition to Contractor’s standard warranty relating to the Purchase, Contractor warrants that the Purchases to be delivered pursuant to the Purchase Order (i) are of merchantable quality and free from defects in material or workmanship, (ii) shall conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, and rules and regulations promulgated thereunder (including, without limitation, those concerning authorization to work where the Purchases are provided, health, safety, and environmental standards) which bear

upon Contractor’s performance (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Brown, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual rights of any third party. In addition, Contractor warrants that Brown shall have good and marketable title to all Purchases (including components thereof) purchased pursuant to transactions contemplated under the Purchase Order, free of all liens and encumbrances and other restrictions, and that no licenses are required for Brown to use such Purchases. The terms of this Section shall not be waived by reason of acceptance of the Purchases or payment therefore by Brown.

**9. Cancellation.** Brown may for any reason and at any time, at its option cancel any unshipped Purchases that have not been performed. To the extent the Purchase Order covers stock Purchases, Brown’s only obligation is to pay for accepted Purchases prior to such cancellation. To the extent the Purchase Order covers Purchases manufactured or fabricated to Brown’s specifications, Contractor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Contractor is not in default, Brown shall reimburse Contractor for the actual, direct cost to Contractor of such Purchases which have, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such Purchases shall pass to Brown. Unless Brown shall have otherwise instructed Contractor, Contractor agrees that it will not manufacture Purchases in reserve in an amount greater than the number of manufactured Purchases that it has shipped to Brown at any one time.

**10. Risk of Loss.** Contractor assumes all risk of loss of or damage to all Purchases ordered and all work in progress, materials, and other items related to the Purchase Order until the same are finally accepted by Brown. Contractor assumes all risk of loss of or damage relating to any Purchases, work in progress, materials, and other items rejected by Brown.

**11. Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify, defend, protect, and hold harmless Brown and its affiliates, employees, faculty members, students, members of its governing boards and



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agents (each an “Indemnitee”, and collectively, the “Indemnitees”) from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys’ fees and costs of suit) (“Indemnified Claims”) arising from Contractor’s: (a) performance of its obligations under the Agreement, (b) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Agreement, or (c) any other negligent or wrongful act or omission of Contractor. Such Indemnified Claims shall include, without limitation, all direct, actual, general, special, and consequential damages.

**12. Insurance.** Contractor shall maintain adequate insurance in any and all forms necessary to protect both Contractor and Brown against all liabilities, losses, damages, claims, settlements, expenses, and legal fees arising out of or resulting from performance or provisions of the Agreement. Although evidence of certain minimum coverage may be required, nothing contained herein shall abridge, diminish or affect Contractor’s responsibility for the consequences of any accidents, occurrences, damages, losses, and associated costs arising out of or resulting from performance or provisions of the Agreement. The coverage limits are specified minimum amounts of insurance required by Brown. Higher limits may be negotiated as part of the contracting process, if the risk of the work to be performed is determined to warrant higher limits or, if additional types of insurance coverage are appropriate. A list of Brown’s insurance requirements is available at Brown’s website, and in the “Brown University Insurance Requirements for Suppliers Policy” (<https://policy.brown.edu/policy/supplier-insurance>).

**13. Use of Brown’s Name/Publicity.** Neither Contractor nor any of its subcontractors or affiliates shall use, or cause or allow to be used, the name “Brown” or “Brown University” (alone or as part of another name, and in any language) or any of Brown’s marks including, any logos, seals, insignia or other words, names, symbols, or images that identify Brown or any Brown school, center, unit or division (“Brown Marks”) in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever in connection with the Purchase or the Purchase Order, except in accordance with the

“Brown University Name Use Policy” (<https://policy.brown.edu/policy/name-use>). Any use of Brown Marks that are not in accordance with Brown’s policies will be in breach of the Agreement.

**14. Independent Contractor.** Contractor shall be considered to be an independent contractor. Any agreement formed shall not be construed to form any relationship of agency, master-servant, employer/employee, partnership, joint venture, or association. Contractor shall be wholly responsible for the performance of its duties hereunder and for the supervision of its employees (if applicable) in connection with the Agreement. Contractor’s employees are not agents or employees of Brown for any purpose. Contractor shall be solely responsible and liable for all salary, workers compensation payments/benefits, income tax withholding, unemployment insurance, Federal Insurance Contributions Act (“FICA”), and all other aspects of employment of its employees. Contractor shall have no authority to incur any obligations or expenses on behalf of Brown or to act in any other manner on behalf of Brown or in its name.

**15. Non-Waiver.** Except as otherwise provided herein, any waiver by Brown of a breach of any provision of the Agreement must be in writing and shall not be deemed a waiver of any other or subsequent breach. No delay or omission by Brown in the exercise or enforcement of any right or remedy provided herein or by law shall be construed as a waiver of such right or remedy.

**16. Severability.** If any part of the Agreement shall be declared void, illegal, or unenforceable, the remaining provisions of the Agreement shall be valid and enforceable to the extent permitted by applicable law.

**17. Subcontracting, Assignment, and Transfer Prohibited.** Contractor shall not subcontract, assign, or transfer any interest in the Agreement without the prior written approval of Brown. In the event of such approval of subcontracting by Brown, (i) Contractor shall not be relieved of any responsibilities or obligations under the Agreement that are performed by any subcontractor; (ii) Contractor shall remain Brown’s sole point of contact and sole contracting party; and (iii) the subcontractor shall be subject to the same provisions of the Agreement as Contractor (as applicable).The Agreement is binding on



Brown and Contractor and their respective successors, assigns, and legal representatives. Any assignment in violation of this Section shall be void and of no effect.

**18. Governing Law.** The Parties agree that the Agreement shall be construed in accordance with and governed by the laws of the State of Rhode Island and the Parties consent to the jurisdiction and venue of the state and federal courts of Rhode Island.

**19. Force Majeure.** In the event that the performance of the obligations under the Agreement is prevented or delayed by reason of Force Majeure, the Parties are released from their obligations and neither Party shall be responsible for any damages or costs sustained and have no further recourse against the other party. Force Majeure shall mean fire, earthquake, hurricane, tornado, flood, tsunami, or other natural disasters or acts of God, infectious diseases, epidemics, pandemics, endemics, nuclear explosions, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, terrorism, power of government, or governmental agency or authority, or any other cause beyond the control of the impacted Party.

**20. Conduct of Personnel.** While at any Brown owned or controlled location, Contractor and Contractor’s personnel, agents, representatives, and subcontractors shall comply with all reasonable requests, standard rules, and policies of Brown, including but not limited to its:

- i. Supplier Code of Ethical Conduct (<https://policy.brown.edu/policy/supplier-code-ethical-conduct>);
- ii. Compliance with Laws, Codes & Regulations policy (<https://policy.brown.edu/policy/compliance>);
- iii. Nondiscrimination and Anti-Harassment Policy (<https://policy.brown.edu/policy/discrimination-and-harassment>);
- iv. Workplace Code of Conduct for Brown University Licensees (<https://policy.brown.edu/policy/workplace-code-conduct>);
- v. Brown University Insurance Requirements for Suppliers (<https://policy.brown.edu/policy/supplier-insurance>); and

- vi. Supplier Registration policy (<https://policy.brown.edu/policy/supplier-registration>)

as outlined herein and communicated to Contractor regarding personal and professional conduct, including without limitation any security or privacy requirements (including background checks), and shall otherwise conduct themselves in a businesslike manner.

**21. Survival of Terms.** The provisions of the Agreement, which by their explicit terms or their manifest intent are to survive, including without limitation those which relate to indemnification and use of Brown Marks, shall survive termination, cancellation, or expiration of the Purchase Order.

**22. Compliance with the Laws and Terms of a Federal Award.** In accepting Brown’s order(s) under the Agreement, Contractor represents and warrants that it has complied with and will continue to comply with all applicable Federal, state, and local laws and regulations in the production of Purchases or performance of services under the Agreement, including any flow down provisions required by applicable federal regulation or the terms of an applicable Brown federal contract, grant, or other award. Contractor will not provide covered telecommunications equipment or services, as defined in FAR 52.204-25 and 2 CFR § 200.216, to Brown in the performance of the Agreement. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor will immediately inform Brown. Contractor represents that is not suspended or debarred, or otherwise ineligible to perform as a Contractor in support of a federal or state government contract, grant, or other award.

**23. Confidentiality.** Contractor acknowledges that in connection with the Agreement, Brown may provide, and Contractor may acquire and make use of, certain Brown Confidential Information (as defined hereafter). Contractor shall have in place administrative, technical, and physical safeguards capable of maintaining the security of “Brown’s Confidential Information” or “BCI”, which is defined as all information provided by Brown or any directors, officers, employees, representatives, or



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agents thereof, to Contractor or its directors, officers, employees, affiliates, representatives or agents, whether provided orally or in writing (including electronic format), by electronic or any other means. Brown Confidential Information includes, without limitation, work product, Educational Records (as defined by the Family Educational Rights and Privacy Act of 1974), personally identifiable information ("PII") (as defined by the Brown University Human Research Protection Program Policies Glossary (<https://www.brown.edu/research/glossary#Glossary>)), Customer Data (as defined under the Gramm-Leach-Bliley Act), and non-public information regarding Brown's financials, investments, intellectual property, trade secrets, products, courses, courseware, features, trustees, officers, faculty, employees, customers, alumni, donors, students, applicants, clients, contractors, agents, systems, marketing plans, promotions, business practices and other information shared by third parties with Brown or its trustees, officers, faculty, employees, students, customers, clients, or agents in confidence to which Contractor may be provided access to or gathering/storing on behalf of Brown. BCI shall be held in the strictest confidence and may only be used by Contractor only as necessary to perform its obligations under this Agreement. Contractor will protect BCI in accordance with generally accepted commercial standards and no less rigorously that it protects its own confidential information. Contractor shall not release BCI in its possession to any other party unless authorized in writing by the appropriate data owner at Brown. Contractor devices used to transmit or store BCI (with written permission) must be patched and protected with up-to-date anti-virus and antispyware software. Remote access to BCI must be protected with a Brown approved encryption mechanism (e.g. VPN, SSH). Upon expiration or termination of the Agreement, Contractor shall not take nor retain, without prior written consent from Brown, any BCI or copies thereof in any form or medium of any kind. Upon termination of this Agreement, or otherwise upon the request of Brown, all BCI received by Contractor shall be promptly returned to Brown or, upon request of Brown, destroyed with such destruction confirmed in a form reasonably satisfactory to Brown. Any breach by Contractor of these obligations shall be cause for immediate termination of the Agreement. Contractor shall immediately notify Brown of any breach of its obligations of confidentiality. Contractor agrees that any breach of its obligations of confidentiality will cause

immediate and irreparable injury, and Brown shall be entitled to obtain injunctive relief in addition to any other remedies at law. If the Purchase Order is made with funds obtained by Brown directly or indirectly from a Federal grant or contract, Contractor shall comply with all applicable provisions.

**24. Cardholder Data.** If applicable, Contractor acknowledges and agrees that it is responsible for the security of all Brown's Cardholder Data (as defined in the Payment Card Industry Security Standards Council's Glossary of Terms, Abbreviations, and Acronyms ([https://www.pcisecuritystandards.org/document\\_library/](https://www.pcisecuritystandards.org/document_library/))) in its possession. Contractor represents and warrants that for the life of the Agreement and/or while Contractor is involved with Brown Cardholder Data, the software and services used for processing transactions shall be compliant with current standards established by the Payment Card Industry Security Standards Council (<https://www.pcisecuritystandards.org/>). Contractor shall, upon written request, furnish proof of compliance in the form of an Attestation of Compliance ("AOC") with the Payment Card Industry Data Security Standard ("PCI DSS") within ten (10) business days of the request. Contractor agrees that Brown may terminate the Agreement immediately, without penalty, upon notice to the Contractor in the event Contractor fails to maintain compliance with the PCI DSS or fails to maintain the confidentiality or integrity of any Cardholder Data.

**25. Termination for Cause – Cancellation.** Brown may, by written notice of default to Contractor, terminate the Purchase Order in whole or in part, should the Contractor fail to make satisfactory progress, fail to deliver within the time specified, or fail to deliver in strict conformance to specifications or requirements set forth herein. In the event of such termination, Brown reserves the right to purchase or obtain the Purchases elsewhere and the defaulting Contractor shall be liable for the difference between the prices set forth in the Purchase Order and the actual cost thereof to Brown. In such case, the prevailing market price shall be considered to be the fair repurchase price. The rights and remedies of Brown provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. If, after notice of termination of the Purchase Order under the provisions of this clause, it is determined for any reason that the Contractor was not



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in default under the provisions of this clause, the rights and obligations of the Parties shall be the same as if notice of termination had been issued pursuant to Section 27, Termination for Convenience.

**26. Cancellation for Conflict Interest:** The Agreement is subject to cancellation if Brown determines that there is a conflict of interest between a Brown employee and the Contractor or Contractor's conduct.

**27. Termination for Convenience.** Brown may, by written notice stating the extent and effective date, terminate the Purchase Order and the Agreement for convenience in whole or in part, at any time. Brown shall pay the Contractor, as full compensation for performance until such termination, the unit or pro-rata Purchase Order price for any delivered and accepted portion of the Purchase Order. In no event shall Brown be liable for any loss of profits on the order or portion thereof so terminated.

**28. Remedies.** Contractor acknowledges that (i) any remedy at law for any violation of the provisions of the Agreement including, but not limited to performance or the use of Brown Marks may be inadequate; and (ii) that Brown may suffer irreparable damage through any such violation. Therefore, in addition to any other remedies it may have, Contractor agrees that Brown may seek to obtain injunctive relief against a breach or threatened breach of such obligations of Contractor.

**29. Audit.** (applicable to Purchase Orders greater than \$100k awarded with federal government funds) The federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific program for the purpose of making audits, examinations, excerpts and transcriptions.

**30. Export Controls.** For all Purchases purchased under the Agreement that are subject to U.S. federal export control laws and regulations, the Contractor will provide the proper Export Control Classification Numbers ("ECCN") at time of order. Contractor's information will include the proper ECCN if the item is controlled under the U.S. Commerce Control List of the Export Administration

Regulations ("EAR") or the proper United States Munitions List Category if the item is controlled under the U.S. International Traffic in Arms Regulations ("ITAR"). The Contractor agrees that Brown shall have the right to terminate the Agreement, without penalty, and return any received product based on such notification.

**31. Nondiscrimination.** The Contractor shall comply with Brown's Corporation Policy Statement on Equal Opportunity, Nondiscrimination and Affirmative Action (<https://www.brown.edu/about/administration/corporation/corporation-policy-statement-equal-opportunity-nondiscrimination-and-affirmative-action>) and not discriminate, harass, or retaliate against qualified individuals based on their race, color, religion, age, national or ethnic origin, disability, veteran status, sexual orientation, gender identity, gender expression, sex (except where sex is a bona fide occupational qualification), or any other characteristic protected under applicable law and caste which is protected under the Policy.