



## **Purchasing Terms and Conditions**

These Purchasing Terms and Conditions of Purchase (“Terms and Conditions”) govern the provision of the equipment, materials, and supplies (“Goods”) and/or services (“Services”) furnished by Supplier (together, the “Goods and/or Services”) under the Santa Clara University Purchase Order (“PO”) or under a separate written agreement entered into by Santa Clara University and Supplier. These Terms and Conditions, together with any separate written agreement (including but not limited to any master agreement or master services agreement) entered into by authorized representatives of Santa Clara University and Supplier shall constitute and be referred to as the “Agreement.” Except for any proposals (in accordance with the next paragraph) and any Additional Terms, if there is a conflict between these Terms and Conditions and any such separate written agreement, then the terms of the separate written agreement shall govern.

The term “Supplier” includes Supplier and its sub-suppliers, and the term “University” refers to Santa Clara University. The University and Supplier individually will be referred to as a “Party” and collectively as the “Parties.” Supplier accepts all of the Agreement’s terms and conditions either by signing the Agreement, by shipping any portion of the Goods, or by performing any portion of the Services. If the Agreement refers to a proposal, then the terms of that proposal become part of the Agreement, but only to the extent the proposal’s terms specify the Goods and/or Services ordered, prices, and/or delivery, and to the extent that they are not inconsistent with the terms and conditions of the Agreement. .

Any additional terms that the Supplier includes on an order form or other document not incorporated into the Agreement, or in any click-through, or other end user terms and conditions or agreements provided with any Goods and/or Services (“Additional Terms”), will not be binding on the University, even if use of such Goods and/or Services requires an affirmative “acceptance” of such Additional Terms before access is permitted. Any such Additional Terms will be of no force and effect, unless the University expressly agrees to such Additional Terms in writing as provided for in these Terms and Conditions.

In consideration of the terms and conditions set forth herein, the Parties agree as follows:

**1. Goods and/or Services.** The University hereby retains Supplier to provide the Goods and/or Services specified in the Order. Supplier represents that it has sufficient staff available and that it has the background, training, and experience to properly supply the Goods and/or Services to be delivered under the Agreement, and that the Goods and/or Services shall be provided and/or performed in a professional and competent manner. If Supplier engages subcontractors to perform any services for the University, Supplier shall be responsible for the

acts of its subcontractors and any such engagement shall be subject to the terms and conditions of the Agreement. The Parties may agree in writing to modify the Goods and/or Services to be furnished, including any fee increase or decrease resulting from the modification. This is not an exclusive engagement, and nothing in the Agreement shall prevent either Party from engaging in similar agreements with others. If there is a conflict between the Agreement, and any other written instrument provided by Supplier, the terms of the Agreement shall govern. **FOB Destination:** Unless otherwise specified herein, Supplier shall furnish all Goods to be delivered under this Agreement using FOB (Free on Board) Destination Incoterms. Title and risk of loss shall pass to the University only upon delivery of goods to the University's designated delivery location and acceptance of the goods. All freight charges must be included in the total price unless otherwise agreed in writing. Supplier shall be responsible for all shipping-related damages or losses until delivery is complete and accepted by the University.

**2. Fee/Costs and Expenses.** The University shall pay to Supplier the agreed upon fee/costs for the Goods and/or Services specified in the Order. Supplier will invoice the University for the Goods and/or Services in accordance with the invoice schedule. Payment shall be made within 30 days of receipt of the invoice. Unless otherwise specifically provided for in the Agreement, all expenses shall be borne by Supplier. Final payment shall be subject to Supplier's delivery to the University of all deliverables in form and substance satisfactory to the University.

**3. Term and Termination.** The Term shall be as specified in the Agreement. The Agreement shall remain in effect for the period of performance identified in the Agreement and until the Goods and/or Services are furnished to the satisfaction of the University. The Parties may agree in writing to renew or extend the term of the Agreement. Unless an alternative termination provision is included in the Agreement, either Party may terminate the Agreement at any time and for any reason with ten (10) days' advance written notice to the other. Notwithstanding any other provision in the Agreement, either Party may terminate the Agreement upon written notice in the event of a material breach by the other Party of its responsibilities under this Agreement that is not cured within thirty (30) days' written notice of the facts and circumstances giving rise to the breach.

**4. Independent Contractor.** In the furnishing of the Goods and/or Services, Supplier and its employees, agents, and subcontractors will at all times act as independent contractors, and not employees or agents, of the University. The Agreement does not constitute and shall not be construed to constitute an agency, partnership, joint venture, association, or other affiliation or like relationship between Parties. Neither Party shall have the right to obligate or bind the other in any manner with respect to any third party.

**5. Insurance.** Supplier will maintain (and will require its subcontractors or third party vendors (collectively, its "Subcontractors"), if any, to maintain) at all times the following types and levels of insurance in connection with the Goods and/or Services it (or its Subcontractors) furnishes under the Agreement: (a) Commercial General Liability coverage with a limit of at least \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage; (b) to the extent applicable to the Goods and/or Services furnished under the Agreement, Automobile Insurance with a limit of at least \$1,000,000 per accident for

bodily injury and property damages; (c) Workers Compensation coverage in an amount no less than the minimum amounts required by applicable law; (d) Employer's Liability with a limit of at least \$1,000,000 per accident for bodily injury or disease; (e) Cyber Liability Insurance and Network Privacy Insurance with a limit of at least (i) \$5,000,000 if such Goods and/or Services entail access to, storage or processing of, University data, personal data or sensitive data, or entail provision of IT services and (ii) \$2,000,000 if such Goods and/or Services do not entail such activities; and (f) any additional insurance as may be reasonably requested by the University based on the nature of the Goods and/or Services. The general liability policy shall name THE PRESIDENT AND BOARD OF TRUSTEES OF SANTA CLARA COLLEGE DBA Santa Clara University and its subsidiaries, affiliates, trustees, officers, employees, agents, and volunteers (collectively, the "University Additional Insureds") as additional insureds. Supplier shall ensure that the insurance policies provide coverage for claims arising out of their (and its Subcontractors') operations, products, Goods or Services under this Agreement. Supplier's (and its Subcontractors') insurance shall be primary insurance with respect to the University and the other University Additional Insureds and all other insurance or self-insurance in force. The University's insurance or self-insurance shall be excess and noncontributory. Supplier shall provide the University with certificates of insurance evidencing the coverage required by the Agreement and such certificate shall be provided to the University before the commencement of the Services or delivery of the Goods under this Agreement. Supplier shall maintain (and shall ensure that its Subcontractors maintain) continuous insurance coverage throughout the duration of this Agreement and for a reasonable period thereafter. Should any of the policies required by this Agreement be canceled, modified, or non-renewed, Supplier agrees to notify (and shall ensure that its Subcontractors notify) the University immediately and provide evidence of continued coverage. Supplier, its Subcontractors and their respective insurance companies waive their rights to subrogation against the University Additional Insureds by endorsements.

**6. Indemnification.** Supplier shall be responsible for its acts and omissions and the acts and omissions of its employees, agents, and any subcontractors it engages to furnish the Goods and/or Services. Supplier shall defend, indemnify, and hold the University harmless from any and all liability, claims, demands, suits, costs, charges, damages, and expenses, including without limitation attorneys' fees, arising out of or relating to Supplier's performance under the Agreement, the negligence or willful misconduct of Supplier or its employees, agents, or subcontractors, or the breach of any warranties or representations made by Supplier in the Agreement.

**7. Representations and Warranties.** Supplier represents and warrants that any Goods furnished are: (a) owned by Supplier or Supplier otherwise has the right to transfer free and clear title to the University; (b) are free and clear from defects in materials, workmanship, installation, and design (even if the design is approved by the University); (c) are in good working order and condition; (d) conform to the applicable specifications, drawings, plans, prints, data, samples, or other instructions furnished by the University; (e) are new and merchantable; (f) are free and clear of all liens, claims, and encumbrances; (g) do not infringe, violate, or misappropriate any patent, copyright, trademark, or other intellectual property rights of any third party, and do not utilize misappropriated third party trade secret information; (h) that the manufacture, production, installation, sale, and use by the University are in compliance with any and all applicable laws, rules, and regulations. Supplier further represents and warrants that

any Services furnished (a) will be performed by personnel who have the necessary and appropriate training, background, expertise, and required licenses to furnish the Services; (b) will be performed in a good, workmanlike manner in accordance with the standard of care typically exercised within the Supplier's industry; (c) will be performed in accordance with applicable laws, rules, and regulations; (d) will conform to the applicable specifications, drawings, plans, prints, data, samples, or other instructions furnished by the University; (e) will be fit for the University's intended use and any use or purpose expressed in the Agreement; and (f) will be free and clear of all liens, claims, and encumbrances. In the event of any non-conforming Goods and/or Services, the University may, at its election and in addition to any other rights or remedies it may have at law or in equity, have the non-conforming Goods and/or Services repaired, replaced, or corrected at Supplier's sole expense. Supplier will promptly reimburse the University for all such costs upon receipt of an invoice from the University.

**8. Data Breach Costs.** Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against the University as a result of Supplier's Breach of University-provided information and/or failure to cooperate with the University's response to the Breach. For the purpose of the Agreement, "Breach" means: (a) any disclosure of University-provided information to an unauthorized party or in an unlawful manner; (b) unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of University information and/or University information or University technology services or resources; or (c) the acquisition, access, use, or disclosure of student education records, private personnel information, or other sensitive financial data that is protected under federal or California law.

In the event of a Breach, or if Supplier suspects a Breach, Supplier shall: (1) promptly, and in any case within 48 hours, notify University by telephone, in person, or by other real-time, in-person communication; (2) cooperate with University and law enforcement agencies, where applicable, to investigate and resolve the Breach, including without limitation by providing reasonable assistance to University in notifying injured third parties; and (3) otherwise comply with applicable laws governing data breach notification and response. Supplier shall give University prompt access to such records related to a Breach as University may reasonably request, provided that Supplier is not required to give University access to records that might compromise the security of Supplier's other customers. This Section 8 does not limit University's other rights or remedies, if any, resulting from a Breach.

**9. Ownership of Work Product.** Supplier agrees that all intellectual property that it creates or develops pursuant to the Agreement through its employees, agents, or subcontractors (collectively "Works") are works made for hire and shall be the sole and exclusive property of the University. If for any reason the Works are not considered works made for hire under applicable law, Supplier hereby irrevocably assigns, transfers, releases and conveys to the University, from the moment of its or their creation, in perpetuity, worldwide, all of Supplier's right, title and interest in and to the Works, as well as all intellectual property rights embodied in or pertaining to any of the foregoing and the complete right to exploit or otherwise use the Works, or any portion thereof, in any form of medium, expression or technology now known or hereafter known or developed. If Supplier has any rights in and to the Works that cannot be

assigned to the University, Supplier hereby grants to the University the non-exclusive, perpetual, irrevocable, and worldwide rights, title and interest to use the Works for any University-related purposes, including but not limited to on-line, digital or print use for public relations, promotional, advertising, fundraising, recruitment, administrative, academic, athletic or educational purposes, and use in any University publications. Supplier acknowledges that the University has the right to reprint, modify or otherwise change the Works at the University's sole discretion and to determine the final form of the Works and the final content of the publication in which the Works are printed. Supplier represents and warrants that the Works are original with Supplier as the artist or creator, or that Supplier has obtained all required permissions in connection with the Works, and that Supplier has violated no laws or privacy rights in preparing the Works. Supplier agrees not to sell or assign purported rights to the Works to any other third party or otherwise use the Works for any commercial purpose. The University will respond in good faith to reasonable requests for permission by Supplier to use the Works for non-commercial purposes.

**10. Infringement.** Should the Goods and/or Services become the subject of a claim or likely claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide prompt written notice to the University of the circumstances giving rise to such claim or likely claim. If the University receives notice of a claim of infringement, is made a party to, or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, the University will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will, at Supplier's cost: (i) procure for the University the right to continue to use the affected portion of the Goods and/or Services; (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing; or (iii) obtain a reasonable substitute product for the affected portion of the Goods and/or Services. Any replacement, modification or substitution under this paragraph shall not affect a material change in the Goods and/or Services' functionality. If none of the foregoing options is reasonably acceptable to the University, the University will have the right to terminate the Agreement without damage, penalty, cost, or further obligation. To the extent applicable, Supplier will refund to University a pro-rata refund of any prepaid and unused fees for the termination portion of the Term, or prepaid amounts for any Goods and/or Services that were not yet received by University at the time of such termination.

**11. Trademarks.** Supplier shall not use the name "Santa Clara University," "SCU," "Broncos," any University logo or trademark, or otherwise identify the University in any form of publicity, disclosure, or sale without the prior written consent of the University.

**12. Return of Property.** Upon termination of the Agreement, Supplier shall promptly return all property belonging to the University that was provided or otherwise obtained in connection with the performance of the Agreement.

**13. Supplier Property.** Supplier, and not the University, is solely responsible for the loss of, theft of, or damage to any property of Supplier or its employees, agents, or subcontractors that occurs on University property or in University facilities.

**14. Care and Maintenance of University Facilities and Equipment.** Supplier shall be responsible for the proper and adequate care and maintenance of University facilities and equipment. Supplier agrees that in the event Supplier (or its employees, agents, or subcontractors) damages any University facilities or equipment, Supplier will bear the sole financial responsibility for such damage. Additional costs may be charged by the University to Supplier for any damage to University facilities or equipment. Such additional costs shall be due and payable by Supplier to the University within ten (10) working days of Supplier's receipt of an invoice for the additional costs.

**15. Compliance with Laws and University Policies.** Supplier, its employees, agents, and subcontractors shall comply with all applicable federal, state and local laws, and University policies that relate in any way to Suppliers of the University or to the Goods and/or Services furnished by Supplier.

**16. Confidentiality.** Supplier acknowledges that in furnishing the Goods and/or Services, Supplier may receive or have access to nonpublic business information or other confidential or proprietary information of the University ("Confidential Information"). Supplier agrees that Confidential Information is the sole property of the University and agrees to protect and safeguard all such Confidential Information and not disclose such information to any third party during or after the term of the Agreement, except with the University's prior written approval. Supplier will require its employees, agents, and subcontractors who have access to Confidential Information to abide by this provision. Upon termination of the Agreement, Supplier shall promptly return to the University all copies of Confidential Information obtained in connection with performing the Services.

**17. FERPA.** Supplier understands that the University is subject to the federal Family Educational Rights and Privacy Act (FERPA). If Supplier has access to student educational records in connection with furnishing the Goods and/or Services under the Agreement, for the purpose of FERPA compliance only, Supplier shall be considered a "school official" of the University and shall comply with all applicable requirements under FERPA in carrying out its responsibilities under the Agreement. Supplier agrees to protect the privacy of student data provided by the University and shall not transmit, share or disclose any data about a student without the student's written consent, except as specifically permitted under FERPA.

**18. Taxes and Withholding.** Supplier understands that the University will issue to it a Form 1099 in connection with the payment for Services provided under the Agreement. Supplier shall be solely responsible for the payment of any and all taxes due as a result of the payments received for the Goods and/or Services. Supplier agrees and understands that the University will comply with all applicable California laws (including but not necessarily limited to California Revenue and Taxation Code Section 18662) that govern required withholdings from payments to nonresident independent Suppliers performing services in California. If Supplier believes it is exempt from this requirement, it should submit to the University a Withholding Exemption Certificate (California Form 590).

**19. Accessibility.** As applicable to the Goods and/or Services provided under the Agreement, Supplier represents and warrants that: (a) Supplier complies with California and

federal disability laws and regulations applicable to Supplier and the University; (b) the Goods and/or Services provided will, unless an exception applies or is approved by the University, meet or exceed the accessibility requirements of the Web Content Accessibility Guidelines (WCAG) Version 2.1., Level AA for all website and mobile app content, and all other such accessibility requirements required under applicable law for hardware, software, and any other information technology; (c) Supplier will promptly respond to and make all reasonable efforts to resolve complaints regarding accessibility of the Goods and/or Services within a reasonable and mutually agreeable timeline. To the fullest extent permitted by law, the indemnification clause set forth in the Agreement shall apply to any complaint, claim, or actions relating to the accessibility of Supplier's Goods and/or Services to persons with disabilities.

**20. Debarment, Suspension, U.S. Government Restricted Party Lists.** Supplier warrants and represents that Supplier is not on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither it nor its employees and agents is now nor has ever been debarred, suspended, excluded, sanctioned, or otherwise declared ineligible for award of federal contracts or participation in any government sponsored program, and no proceedings, investigations, or inquiries are currently pending or threatened by any federal or state agency as a result of which Supplier or its employees or agents could be excluded, sanctioned, debarred or otherwise made ineligible from participation in any government sponsored program or sanctioned for any violation of any rule or regulation of such programs. Supplier will immediately provide written notice to the University of any such pending or threatened investigation or inquiry upon becoming aware of such investigation or inquiry. Any breach of this provision shall constitute cause for immediate termination of the Agreement by the University.

**21. Equal Opportunity.** Supplier represents and warrants that it does not and will not discriminate against any person in the furnishing of the Goods and/or Services under the Agreement on the basis of race, color, national origin, sex, sexual orientation, gender expression, gender identity, disability, age, religion, veteran status, or any other characteristic protected under federal or California law or University policy.

**22. Records.** Supplier will maintain its documents, books, and records in connection with the Goods and/or Services for seven (7) years after the expiration or other termination of the Agreement. Supplier agrees to make such documents, books, and records available to the University upon reasonable advance notice for the University or its designated representatives to examine, audit, and copy any records to determine compliance with the Agreement, applicable laws or regulations, or to respond to any government inquiry.

**23. Governing Law/Dispute Resolution.** The Agreement shall be governed by the laws of the State of California. Any dispute between the Parties shall be subject to binding arbitration under the applicable rules of JAMS. The venue for the arbitration shall be Santa Clara County, California. Each party is responsible for its own attorneys' fees in connection with the dispute.

**24. Amendment/Severability/Assignment.** The Agreement may not be amended, except through a writing signed by authorized representatives of the Supplier and the University.

If any provision of the Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, which may be given effect without the invalid provision or part. To this extent, the provisions of the Agreement are severable. The rights and responsibilities granted herein are not assignable or transferable.

**25. No Third Party Beneficiaries.** The Agreement shall be binding upon and inure to the benefit of only by the Parties to the Agreement. No third party shall be a beneficiary of or have any right to enforce the terms of the Agreement.

**26. Force Majeure.** Neither Party shall be responsible for any delays or failure to perform its responsibilities under the Agreement due to acts of God, strikes, war, insurrection, embargoes, governmental restrictions, acts of government or governmental authorities, acts of terrorism, pandemic events, emergency declarations, outbreaks of infectious diseases, other disturbances, or other causes of any kind beyond the control of the Party.

**27. Entire Agreement.** The Parties declare and represent that no promise, inducement or agreement not herein expressed has been made to them and that the Agreement contains the full and entire agreement between and among them relating to the subject matter herein, and that the terms of the Agreement are contractual and not a mere recital.

**28. Signatures.** The Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute a single agreement binding on the parties. The Agreement is considered executed by a party when the signature of such party is delivered physically, by email or facsimile transmission to the other party, or through and electronic contracting software system (e.g. DocuSign, AdobeSign, or other similar system).

**29. No Purchase Order, No Pay Policy:** To promote fiscal accountability, compliance with University procurement policies, and timely payment processing, the University has adopted a No Purchase Order, No Payment policy for all orders \$5,000 or greater (including shipping and handling, delivery and taxes). Effective June 15<sup>th</sup>, 2025, all purchases of goods and services must be supported by an approved University Purchase Order (PO) prior to the supplier providing the goods or services. Failure to comply with this requirement may result in delayed or denied payment.