

COLGATE UNIVERSITY

PURCHASE ORDER TERMS AND CONDITIONS (May, 2020)

Colgate University (“Colgate”) purchases goods and services (“Deliverables”) only on the terms and conditions set forth herein, which constitute the entire agreement between it and a vendor/seller (“Seller”).

- 1. Offer and Acceptance; Terms Exclusive.** Seller’s commencement of work on, or Seller’s shipment of Deliverables in response to, Colgate’s purchase order (“Purchase Order”) shall be deemed an acceptance of the Purchase Order and these terms and conditions. Colgate expressly objects to any and all different or additional terms and conditions of sale which Seller may set forth on its website, order acknowledgement form, or on any other document or communication of Seller related to Colgate’s purchase of the Deliverables. Colgate will recognize no modifications or additions to these terms and conditions unless it specifically agrees to them in writing. **THIS OFFER IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS. IF THE PURCHASE ORDER IS DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY SELLER, COLGATE’S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON SELLER’S ASSENT TO THESE TERMS AND CONDITIONS.**
- 2. Deliverables Being Purchased.** The Deliverables being purchased shall be as specified in the Purchase Order and as may be further specified pursuant to such written specifications and/or drawings as may be referred to on the Purchase Order (collectively “Specifications”).
- 3. Time of Performance.** Performance of the Purchase Order at the date(s) specified for delivery of the Deliverables is an integral part hereof. Failure of Seller to make delivery of the Deliverables within the time specified on the Purchase Order, or within any extension agreed to in writing by Colgate, shall constitute a breach. Seller shall immediately notify Colgate in writing of any circumstance, event or occurrence which Seller believes or has reason to believe may result in the inability of Seller to deliver the Deliverables set forth in the Purchase Order on time. Colgate, at its option, may accept delivery at an earlier or later date or dates, but such acceptance shall not be deemed to waive any right or remedy available to Colgate under the Purchase Order. In the event of a breach, Colgate may, in addition to its other rights and remedies, reject any Deliverables and/or terminate its order in whole or in part, and purchase substitute goods and/or services elsewhere and charge Seller with any Loss incurred. The term “Loss” means every loss, liability, cost, damage and expense, including attorney’s fees and court costs. The term “Deliverables” means all goods and services to be delivered or provided as specified in Colgate’s Purchase Order. If no time is specified in an order, Colgate may, by reasonable advance notification to Seller, terminate an order in whole or in part if Seller fails to make delivery of the Deliverables within a reasonable time after the date of the Purchase Order.
- 4. Delivery and Transportation.** Unless otherwise provided in the Purchase Order, Seller shall have title and bear the risk of any loss or damage to any Deliverables purchased hereunder until they are received by us at the destination specified in the Purchase Order, or if no destination is specified, at Colgate’s principal location. Upon such receipt, title shall pass from Seller and Seller’s responsibility for loss or damage shall cease except for loss or damage resulting from Seller’s negligence. Passing of this title upon such receipt shall not constitute acceptance of any Deliverable by Colgate. All Deliverables shall be suitably packaged and prepared for shipment to secure the lowest transportation rates and compliance with standard carrier regulations. Ref. centralsupply@colgate.edu
- 5. Price, Invoicing, and Payment.** The price and terms of payment for the Deliverables shall be as set forth on the face of the Purchase Order. Unless otherwise specified, the price set forth on the face of the purchase Order includes all applicable taxes and all shipping costs, duties, and other charges. A proper invoice includes a Purchase Order number or responsible University official and pre-approved departmental budget code. Invoicing may be submitted to invoicing@colgate.edu. Payment thereof shall be made in accordance with the applicable provisions of the Purchase Order, or if none are stated, following the completion of all performance obligations of Seller. Colgate’s standard payment term is Net 30 (i.e. 30 days after the invoice date). Colgate’s methods of payment are:
 - *Electronic transfer of funds via its payment card at Net 15 payment terms
 - *Electronic transfer of funds via ACH at Net 20 payment terms
 - *Paper checks at Net 30 terms**Reference:** <https://www.colgate.edu/about/offices-centers-institutes/finance-and-administration/purchasing-department>
- 6. Changes.** Colgate may, at any time, by written notice to Seller, make changes to the Deliverables being purchased, or to the Specifications relating thereto, or to the method of shipment or packing, place of delivery, or delivery schedule. If any such

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change results in an increase or decrease in the cost of, or time required for, Seller's performance of the Purchase Order, an equitable adjustment shall be made to the purchase price of the goods or services being purchased. Any claim by Seller for such an adjustment to the purchase price for the applicable Deliverables must be made in writing to Colgate within seven (7) days from the date of Seller's receipt of the written change order.

7. **Quality.** All Deliverables shall conform strictly to all Specifications. Unless otherwise expressly stated, all Deliverables and all workmanship related thereto shall be the best of their respective kind. All Deliverables shall be subject to inspection and approval of Colgate; provided, however, no acceptance by Colgate of any Deliverables shall constitute a waiver of any right or remedy to which Colgate is otherwise entitled. If all or any portion of any Deliverables furnished to Colgate hereunder are rejected, they shall be held by Colgate for disposition at Seller's risk of loss and expense and any payment on account thereof previously made by Colgate to Seller shall be promptly refunded. Any inspection or approval of Deliverables at Seller's facilities or elsewhere prior to final acceptance by Colgate shall be provisional only and shall not constitute final acceptance or be construed as a waiver of any right of subsequent inspection or approval or any other right or remedy.
8. **Quantity; Count.** Colgate shall have no obligation to accept or pay for any Deliverables in excess of that specified in the Purchase Order. Colgate may return excess Deliverables to Seller, and Seller shall reimburse Colgate for all costs or expenses incurred with respect thereto. Colgate's count of Deliverables received shall be conclusive unless proven to be manifest error.
9. **Responsibilities of Seller.** Seller shall be available to provide the Services during Colgate's regular business hours or such other times as may be agreed by the parties, comply with all security, safety, and other applicable rules and regulations of Colgate (Reference: Environmental Health and Safety (EHS) Contractor Requirements Handbook, Rev May 20, 2018) when providing the Services, provide the Services diligently and in a professional and workmanlike manner, and devote such time and effort in the performance of the Services as reasonably requested by Colgate.
10. **Default.** Colgate may terminate the Purchase Order or any part thereof for cause, including any failure by Seller to comply with the Purchase Order or any of these terms and conditions. Upon such termination, Colgate shall not be liable to Seller for any amount, and Colgate shall be entitled to exercise all rights and remedies at law and at equity to which it may be entitled, including but not limited to the right to seek and obtain both actual, special and consequential damages, and the equitable relief of injunction.
11. **Insurance.** The insurance requirements shall be as set forth below:
 - Worker's Compensation insurance as required under the laws of the State of New York.
 - Disability Insurance as required under the laws of the State of New York.
 - Commercial General Liability, including bodily injury and property damage insurance, which shall specifically include contractual liability arising out of the operations performed by the contractor referring to this project, completed operations, and products liability with limits as follows:
 - Bodily injury: \$1,000,000 each person
 - \$1,000,000 each occurrence
 - \$2,000,000 aggregate
 - (and) Broad form property damage liability, including coverage for X-C-U hazards with limits as follows:
 - \$1,000,000 each occurrence
 - \$2,000,000 aggregate
 - (or) Combined Single Limits
 - \$1,000,000 each occurrence
 - \$2,000,000 aggregate
 - Automobile liability insurance covering owned, non-owned and hired vehicles, with limits as follows:
 - Property damage and bodily injury: \$1,000,000 combined single limit
 - Umbrella Liability with limits as follows: up to \$2,000,000 each occurrence
 - Builder's Risk for new construction or large renovations (if applicable).

The Contractor, and Sub-Contractors not covered by the Contractor's insurance, shall obtain and agrees to maintain at their expense all insurance required by the Contract, as well as that outlined above. All general and umbrella liability insurance policies shall name Colgate University as an additional insured and said coverage shall be primary with respect to the project to which these insurance requirements pertain. A Certificate of Insurance with evidence of additional insurance status, along with a copy of the Additional Insured Endorsement, shall be submitted to and approved by the Treasurer's Office at Colgate

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University prior to the commencement of work. Thirty days (30) prior written notice of cancellation of or any changes in any policy shall be given to Colgate University by contacting the Treasurer's Office.

Colgate requires limits of \$5 million for any Bus charter. Aircraft or watercraft travel that is not a ticketed event (e.g. charters) requires higher insurance limits and pre-approval from Colgate's Executive Director of Risk Management & Legal Affairs. Colgate University reserves the right to require higher level of insurance or lower levels of insurance as determined by the Executive Director, Risk Management & Legal Affairs or appropriate Colgate signatory authority

- 12. Force Majeure.** Neither party will be liable to the other party for a failure or delay in performance any event which includes, but is not limited to, an act of God, act or omission of carriers, embargo, explosion, fire, flood, order of civil or military authority, strike, war, or similar causes beyond its reasonable control ("Force Majeure Event"). If a Force Majeure Event renders impossible or delays a party's performance, that party will immediately notify the other in writing of such event.

Coronavirus Notice: Due to disruptions to global shipping caused by the Coronavirus outbreak and subsequent response thereto, parties will duly notify each other about delays and excuse delays beyond the reasonable control of either party; including but not limited to product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, general insurrection, acts of God or acts of any government or agency.

- 13. Patents and Proprietary Rights.** Seller represents and warrants that no Deliverables will infringe upon any patent right, copyright, trademark, or other proprietary right of any third person whatsoever. Seller shall indemnify and hold Colgate harmless from and against each and every loss, liability, cost, damage, or expense, including reasonable attorney's fees, of whatever kind or nature (each a "Loss"), which arise directly or indirectly out of or in connection with any allegation, claim, or charge that any Deliverables furnished by Seller to Colgate hereunder, or the use of same constitutes an infringement of any patent or patent right, copyright, trademark, or other proprietary right or interest of any other person or entity. Seller shall, upon Colgate's request, assume and pay for the defense of Colgate, against any such allegation, claim, or charge. Colgate shall promptly notify Seller of any action or proceeding commenced against Colgate with respect thereto. Colgate shall have the right to be represented in such matters by additional counsel of Colgate's choice, acting at Colgate's expense. Seller, at its expense, shall also use its best efforts to enable Colgate to continue to use such goods (a) by altering the Deliverables to make them non-infringing, provided such altered non-infringing Deliverables will fulfill the same function and perform the same as prior to such alteration or (b) by obtaining for Colgate non-infringing Deliverables which will fulfill the same function and perform the same as the infringing Deliverables or (c) by obtaining a settlement or license agreement permitting Colgate's use of any infringing Deliverables.

- 14. Warranties.** In addition to and without prejudice to all other warranties, expressed or implied by law, Seller warrants that all Deliverables delivered or specified within the Purchase order (i) will conform to all Specifications, (ii) will be free from all defects in material and workmanship, (iii) will be fit for the purposes for which they are intended, and (iv) will comply with all applicable federal, state and local codes, ordinances, rules and regulations (including, without limitation, the Occupational Health and Safety Act of 1970, all applicable environmental laws, and all rules and regulations related to each). All warranties, express or implied, shall survive inspection, acceptance and payment. In the event of Seller's breach of any such warranty, in addition to other rights and remedies available to Colgate, at law or in equity, Colgate may return any Deliverables for a full refund, or direct Seller to promptly correct the breach by repairing or replacing the applicable items. Colgate reserves the right to repair, alter or modify, at Seller's cost, items which fail to conform with the terms, conditions and Specifications of the Purchase Order when the same can be done by Colgate at a lesser cost than by returning the items to Seller. Seller warrants that it has and will convey to Colgate good and marketable title to the Deliverables subject to an order and that all such Deliverables are and shall be free from any liens or claims of any other person or entity.

- 15. Right of Termination.** Colgate may, at any time, upon notice to Seller, terminate or reduce the Purchase Order with regard to all or any part or parts of the Deliverables not then completed. Upon such notice, Seller shall cease work (including the manufacturing and/or procuring of materials for the fulfillment of the Purchase Order) in accordance with and to the extent specified in such notice. In such event, all work completed by Seller before the giving of such notice, shall be paid for on a percentage of completion basis, relative to the pricing for the Deliverables set forth in the Purchase Order. Seller shall have no other or additional claim for damages, compensation, loss of profit, allowance or otherwise by reason or directly or indirectly arising out of any action taken or notice given by Colgate under or pursuant to the provisions of this section.

- 16. Indemnification.** Seller shall indemnify and hold Colgate harmless from and against each and every Loss, of whatever kind or nature arising out of or in connection with any act or omission of Seller, its employees, agents or representatives or the

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failure of Seller to comply with any obligation, term, condition, or warranty set forth in the Purchase Order or in these terms and conditions.

- 17. Entire Agreement.** A Purchase Order, including the Specifications and these terms and conditions, constitutes the entire agreement between Colgate and Seller with respect to the Deliverables which are the subject matter thereof, and all prior or contemporaneous understandings or agreements, oral or written, are merged therein. No subsequent changes or modifications of the Purchase Order are binding upon Colgate unless accepted by it in writing. Seller expressly waives all provisions contained in correspondence, forms, or other writings relating to the sale of the Deliverables covered by the Purchase Order which negate, limit, extend, or conflict with the provisions thereof. In the event any term or provision hereof shall be deemed unenforceable, the remaining terms and conditions shall remain in effect to the fullest extent possible.
- 18. Financial Responsibility.** Seller warrants that it has and will at all times maintain and, upon request by Colgate, show that it has sufficient working capital and financial ability to perform and complete the Purchase Order. Seller warrants to Colgate that it is not insolvent within the meaning of the Federal Bankruptcy Laws and the laws of the states in which it conducts its business. In addition to any and all other rights and remedies which Colgate may have pursuant to the Purchase Order or at common law, Colgate reserves the right to terminate the Purchase Order without liability in respect of any undelivered Deliverables if Seller (i) becomes insolvent or bankrupt, (ii) makes any general assignment for the benefit of its creditors, (iii) if any trustee or receiver is appointed of any substantial part of Seller's assets or (iv) Seller is adjudicated bankrupt.
- 19. Modification.** The Purchase Order shall not be modified, altered, amended or waived in whole or in part except by a further writing signed by the party to be charged.
- 20. Controlling Law; Jurisdiction.** The Purchase Order shall be governed by and construed in accordance with the laws of the State of New York without effect given to its choice of law provisions. All disputes between Colgate and Seller relating to the subject matter of the Purchase Order shall be resolved exclusively in the state or federal courts located in Madison County, New York. Seller consents to the personal jurisdiction of such courts.
- 21. Assignment.** Seller may not assign or transfer any right or interest in or to the Purchase Order to any third party whatsoever without the prior written consent of Colgate.
- 22. Notices.** Any and all notices required to be given hereunder shall be in writing and hand-delivered (including by courier), with an appropriate receipt thereof obtained, or sent by United States certified mail, return receipt requested, to the addresses of the respective parties set forth on the Purchase Order, or to such other address as either party may designate to the other by written notice for such purpose from time to time.
- 23. Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to this agreement shall be subject to Litigation in a court of competent jurisdiction defined as New York State Supreme Court in Madison or Onondaga County, New York.
- 24. Non Discrimination.** It is the policy of Colgate not to discriminate against any employee or applicant for employment on the basis of their race, color, creed, religion, age, sex, pregnancy, national origin, marital status, disability, protected Veteran Status, sexual orientation and gender identity and expression, genetic information, victims of domestic violence and stalking, familial status, and all other categories covered by law. This policy shall apply to all employment actions, including but not limited to recruitment, hiring, upgrading, promotion, transfer, demotion, layoff, recall, termination, rates of pay or other forms of compensation and selection for training at all levels of employment. Colgate will not discharge or discriminate against employees or applicants who inquire about, discuss, or disclose their own compensation or the compensation of another employee or applicant. Seller shall not discriminate and shall comply with applicable laws and Institution policies prohibiting discrimination on the basis of race, color, religion, sex, sexual orientation, national origin or citizenship status, age, disability or veteran status.
- 25. Web Content Accessibility.** In accordance with the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, all information technology, including electronic information technology developed or provided under this Agreement must conform to the W3C Web Content Accessibility 2.1 Level AA Guidelines that can be found at <https://www.w3.org/WAI/WCAG21/quickref/>. Vendors hosting websites or providing web design services or web-based products must provide written evidence that their product or service addresses each of the WCAG 2.0, Level AA criteria. For any area of noncompliance, Vendor should describe any planned remediation roadmaps, including timelines and steps that

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will be taken to achieve full compliance, as well as interim workarounds to enable access by individuals with disabilities. Vendors may be required to demonstrate how to use the product with assistive technology, and may be required to undergo third-party accessibility testing. Vendor must provide contact information to facilitate more detailed inquiries. <https://www.w3.org/WAI/GL/WCAG20-TECHS/pdf.html> Improve accessibility of learning content and materials. Identify vendors that have the capability to provide accessibility remediation services for pdfs that comply with WCAG 2.1 Accessibility standards per the guidance afforded via the following resource: PDF Techniques WCAG Compliance Inc., 1-800-922-4107, accounting@wcagcompliance.com

- 26. GDPR Compliance.** If the Purchase order and/or Agreement, and/or the activities contemplated thereby involve the processing (as such term is defined under the Regulation (EU) 2016/679 (General Data Protection Regulation, or “GDPR”)) by the Vendor of personal data (as defined in the GDPR) of which Colgate is the controller (as defined in the GDPR), regardless of whether such personal data constitutes Colgate Data, then Colgate and the Vendor agrees to complete/execute a Personal Data Processing Agreement (PDPA) to the extent to which the GDPR applies to such processing (in addition to the provisions of the Purchase order and/or Agreement).
- 27. Confidential Information.** Colgate may disclose confidential information, whether orally or in physical form, to the seller as part of this purchase order for deliverables being purchased. Confidential Information includes information that is marked or identified as confidential and, if not marked or identified as confidential, information that should reasonably have been understood by seller to be proprietary and confidential to Colgate because of legends or other markings, the circumstances of disclosure, or the nature of the information itself.

Protection of Confidential Information. Seller will not use any Confidential Information for any purpose not expressly permitted by Colgate, and will disclose Confidential Information only to the employees or contractors of Seller who have a need to know such Confidential Information for purposes providing deliverables being purchased. Seller will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Seller protects its own confidential or proprietary information of a similar nature and with no less than reasonable care, by maintaining appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity.

Exceptions. Seller’s obligations with respect to protecting Colgate’s Confidential Information will terminate if and when Seller can document that such information: (a) was already lawfully known to Seller at the time of disclosure by Colgate; (b) is disclosed to Seller by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Seller has become, generally available to the public; or (d) is independently developed by Seller without access to or use of the Confidential Information. In addition, Seller may disclose Confidential Information to the extent that such disclosure is required by law, such as a public information act, or by the order of a court or similar judicial or administrative body, provided that Seller notifies Colgate of such required disclosure in writing prior to making such disclosure and cooperates with Colgate.

Return or Destruction of Confidential Information. Upon completion of this purchase order, or at any other time upon the Colgate’s request, the seller shall promptly return to Colgate any confidential information belonging to Colgate that is still in the Seller’s possession. Upon completion of this purchase order, if request to return confidential information has not been received by Colgate, then seller shall delete or destroy all copies of Colgate’s Confidential Information.

- 28. Sustainability.** Colgate University is committed to environmental sustainability and has a strong preference to procure ENERGY STAR qualified and Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products. Guidelines for purchasing environmentally responsible electronic equipment at Colgate University include:

1. Beginning DATE, consistent with the environmentally preferable purchasing policy adopted by COLGATE UNIVERSITY, departments, including ITS, shall preferably purchase IT products including personal computers, notebook computers, tablets, monitors, printers, copiers, scanners, MFDs, fax machines, televisions, and mobile phones that meet at least the EPEAT Bronze rating level, with a preference for Silver or Gold rating.
2. For all ICT equipment not currently rated according to EPEAT standards, such as computer servers and routers, COLGATE UNIVERSITY’S Purchasing and Contract’s Office will propose an application of criteria to guide environmentally preferable purchasing practices in consultation with the Chief Information Officer (CIO). These guidelines will seek to minimize levels of toxic components, ensure the highest level of energy efficiency, incorporate recycled content, facilitate end-of-life recycling, and minimize unnecessary packaging.

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3. For product categories where an EPEAT standard is in development, now or in future, once a product standard and registration process is in force, all products shall meet the minimum relevant EPEAT standard. Further consideration may be given to those products that meet higher levels of qualification under the product registration system.

4. COLGATE UNIVERSITY will develop a procedure to develop necessary exemptions to this policy, with the goal of allowing no more than 5% of purchase dollars in the product area(s) covered by the EPEAT rating system to be spent on non-EPEAT-registered products. Such exemptions may be allowed, for example, if no registered products meet the specific performance needs of a purchaser, or if the EPEAT registered product will not be cost-effective over the life of the product.

<https://greenelectronicscouncil.org/resources-guidance/>

<https://greenelectronicscouncil.org/>

<https://www.epa.gov/fec/model-contract-language-federal-acquisition-peat-registered-electronics-6142012>

29. Federal Awards and Grants. Colgate University is a recipient of grants and awards from US Federal Agencies and purchases under these awards and grants must comply with grant terms and the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called "Uniform Guidance"). All purchases with Federal funds must be allowable, allocable and reasonable. Principal Investigators named on Federal awards are responsible for ensuring that the purchase of goods and services are procured consistent with this policy. If the source of funds is uncertain at the time of the purchase but it is expected that Federal funds may be used to pay for all or part of a purchase, this policy and incorporated procurement standards shall be followed. If a purchase is not compliant with this policy, the associated expenses will be transferred to a non-federal source of funds. **Contract Provisions:** All contracts, regardless of value, may require specific language by the federal government as outlined by 2 CFR 200 Appendix A.

30. Safety and Environmental Compliance Contractor Requirements Handbook (May 14, 2020); and COVID-19 EHS Requirements for Commercial Service Providers and Contractors Conducting Work on the Colgate University Campus. In accordance with current federal recommendations and state requirements, anyone working on the Colgate University campus is required to wear a mask or face covering when interactions with the public are likely or when social (physical) distancing is not possible, including times of brief interaction between co-workers and/or campus community members. More specifically, commercial service providers and contractors are required to wear a face mask or face covering to prevent the spread of COVID-19 whenever the nature of their work on-campus involves coming within 6 feet of another person. A face covering is defined as any well-secured, non-medical paper or cloth (such as a bandana or scarf) mask that covers your mouth and nose. Surgical masks or N-95 respirators may be appropriate for personnel whose tasks may necessitate the use of a mask or respirator. Use of N-95 respirators require additional training and fit-testing under the employer's Respiratory Protection Plan. Employers are required to provide these face coverings for their employees and to provide training on their proper use. Commercial service providers and contractors must have all required PPE, including appropriate face coverings, before arriving on Colgate property to conduct their work. All commercial service providers and contractors working on campus should also routinely practice handwashing, social distancing, and good hygiene practices. In addition, contractors should continuously self-monitor for symptoms (including cough, fever, or difficulty breathing). It is the responsibility of all contractors to inform their employer if they are unable to continue working because they feel ill.