These Purchase Order Terms and Conditions ("Terms and Conditions"), and the Purchase Order (with any and all appendices, and/or exhibits attached hereto or otherwise issued by Harvard in connection herewith, collectively, the "Purchase Order") by and between President and Fellows of Harvard College ("Harvard") and Seller (as defined in the Purchase Order) (Harvard and Seller, collectively, the “Parties,” each a “Party”), constitute the entire agreement between Harvard and Seller relating to the Goods and supersede and replace any and all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the Purchase Order and these Terms and Conditions, these Terms and Conditions shall govern. Capitalized terms used but not defined herein shall have the meanings ascribed in the Purchase Order. Harvard hereby gives notice of its objection to any different or additional terms other than those terms and conditions set forth herein.

1. Changes. Harvard may make changes to the Purchase Order at any time, and Seller shall accept such changes. Any changes to the Goods (as defined hereafter) shall be negotiated in advance by the Parties and agreed to in writing. If a change causes an increase or decrease in cost and/or time required for performance of the services, an equitable adjustment shall be made and the Purchase Order shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Purchase Order cannot be achieved or met by Seller, Harvard must be notified and must accept in writing any variation prior to shipment or delivery.

2. Prices. Prices or fees for conforming goods, items or services specified in the Purchase Order (collectively, the "Goods") shall include any applicable transportation charges, insurance costs, shipping and handling fees and taxes; provided, however, Seller shall not include sales tax on the Goods pursuant to the terms set forth in Section 14 herein.

3. Terms of Payment and Title. Upon Acceptance (as defined hereafter) of the Goods pursuant to Section 6 herein, Harvard agrees to pay all amounts due within thirty (30) days of receipt of Seller’s invoice (less any deposits paid to Seller (if any) unless otherwise agreed to by the Parties in the Purchase Order; provided, however, Seller shall invoice Harvard and Harvard shall only be obligated to pay such invoice if issued to Harvard subsequent to delivery, receipt and Acceptance of all Goods ordered under the Purchase Order.

4. Delivery of Goods. Seller hereby agrees to on-time delivery based upon the timeline set forth in the Purchase Order. If the Purchase Order does not specify a delivery date (the “Delivery Date”) or timeline, Seller shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from Harvard that prevents Seller from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Seller. If Seller anticipates a delay in the delivery of the Goods, Seller shall immediately notify Harvard. In the event that Seller fails to deliver the Goods by the Delivery Date, or Seller fails to deliver conforming Goods, Harvard may purchase substitute Goods elsewhere and charge Seller for any additional expense incurred relating to the purchase of such substitute Goods. Seller shall deliver all Goods in accordance with the terms of the Purchase Order. If delivery of the Goods is not complete by the Delivery Date, Harvard may, without liability, and in addition to its other rights and remedies, terminate the Purchase Order, by notice effective when received by Seller, as to Goods not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind Harvard to Accept (as defined hereafter) any future shipments nor deprive it of the right to return Goods already Accepted (as defined hereafter).

5. Shipping. Seller shall substantially pack, mark and ship all Goods 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. Seller 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.

6. Acceptance. As a condition precedent to payment for the Goods by Harvard to Seller, Harvard shall Accept those Goods (in whole or in part thereof) on the Delivery Date or as otherwise set forth in the Purchase Order. For purposes of these Terms and Conditions, “Acceptance” means the point at which Harvard accepts or is deemed to accept the Goods in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms “Accept”
and “Accepted”. The Goods shall be deemed to have
been Accepted (i) in the absence of written
notification of non-Acceptance by Harvard to Seller
within a reasonable period of time, or (ii) upon timely
delivery of the Goods identified herein to the
shipping address specified on the face of the
Purchase Order and the examination and
confirmation that the Goods conform to their
applicable specifications. Prior to Acceptance, title to
the Goods remains with Seller; all risks of damage,
injury, or loss thereto, or partial or complete
destruction thereof, will be borne and assumed by
Seller. By way of clarification, Harvard hereby
retains the right to reject any non-conforming Goods
and shall not be obligated to Accept any non-
conforming Goods.

7. Inspection. Payment for the Goods provided under
the Purchase Order shall not constitute Acceptance
thereof. Harvard may inspect and test such Goods
and reject any or all items that are, in Harvard’s sole
discretion, non-conforming. Goods rejected or
supplies in excess of quantities ordered may be
returned to Seller at its expense. Failure by Harvard
to inspect and/or test the Goods shall not be deemed
Acceptance by Harvard.

8. Warranty. In addition to Seller’s standard
warranty relating to the Goods, Seller warrants that
the Goods 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, rules and regulations (including, without
limitation, those concerning health, safety, and
environmental standards) which bear upon Seller’s
performance, (iv) shall be new and not refurbished or
reconditioned, unless expressly agreed in writing by
Harvard, 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,
Seller warrants that Harvard shall have good and
marketable title to all Goods (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 Harvard to use such
Goods. The terms of this Section 8 shall not be
waived by reason of Acceptance of the Goods or
payment therefore by Harvard.

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

10. Risk of Loss. Seller assumes all risk of loss of or
damage to all Goods ordered and all work in
progress, materials, and other items related to the
Purchase Order until the same are finally Accepted
by Harvard. Seller assumes all risk of loss of or
damage relating to any Goods, work in progress,
materials, and other items rejected by Harvard until
the same are received by Seller or Accepted by
Harvard.

11. Indemnification. To the fullest extent permitted
by law, Seller shall indemnify, defend, protect, and
hold harmless Harvard and its affiliates, employees,
faculty members, students, members of its governing
boards and 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 Seller’s: (a) performance of its
obligations under the Purchase Order, (b)
misrepresentation or breach of any representation,
warranty, obligation, or covenant of the Purchase
Order, or (c) any other negligent or wrongful act or
omission of Seller. Such Indemnified Claims shall
include, without limitation, all direct, actual, general,
special, and consequential damages. 12. Insurance.
Seller shall maintain adequate insurance in any and
all forms necessary to protect both Seller and
Harvard against all liabilities, losses, damages,
claims, settlements, expenses, and legal fees arising
out of or resulting from performance or provisions of
the Purchase Order. Although evidence of certain
minimum coverage may be required, nothing
contained herein shall abridge, diminish or affect
Seller’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 Purchase Order.

13. Use of Harvard Names; Advertising or
Publication. Neither Seller nor any of its
subcontractors or affiliates shall use, or cause or
allow to be used, the name "Harvard" (alone or as part of another name, and in any language) or any logos, seals, insignia or other words, names, symbols, images or devices that identify Harvard or any Harvard school, unit, division or affiliate (“Harvard Names”) in any advertising or promotional literature, electronic or otherwise, or in any publication whatsoever in connection with the Goods or the Purchase Order, without prior written approval of, and in accordance with restrictions required by, Harvard. Seller shall not register any Harvard Name in any jurisdiction as a trademark, service mark, domain name, trade name, business or company name or otherwise.

14. Taxes. Harvard is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts sales taxes (MA Taxpayer ID# 10798176) and federal excise taxes (# 04-73-0256F). Seller shall not charge Harvard for such taxes. Proof of Harvard’s exemption from Massachusetts sales taxes and federal excise taxes is available at Harvard’s Strategic Procurement website, www.procurement.harvard.edu, or such other website designated by Harvard.

15. Independent Contractor. Seller, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venturer of, or with Harvard, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor. Seller shall have no authority to incur any obligations or expenses on behalf of Harvard or to act in any other manner on behalf of Harvard or in its name. Seller’s employees and contractors shall not be entitled to receive any compensation or employee benefits from Harvard.

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

17. Severability. In the event that any provision of the Purchase Order shall be held invalid by any court, the remainder of the Purchase Order shall remain in force unless the invalid provision materially affects the rights of the Parties.

18. Successors and Assigns; Assignment. The Purchase Order is binding on Harvard and Seller and their respective successors, assigns, and legal representatives. Notwithstanding the foregoing, Seller shall not subcontract the work or assign the Purchase Order without the written consent of Harvard, and any assignment in violation of this Section 18 shall be void and of no effect.

19. Governing Law. The Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Seller submits to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the “Massachusetts Courts”) for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum. Notwithstanding the foregoing, Harvard may seek and obtain injunctive relief against a breach or threatened breach of Seller’s obligations in any court having jurisdiction.

20. Force Majeure. Harvard may delay delivery, performance, or Acceptance of the Goods ordered hereunder in the event of causes beyond its reasonable control. Seller shall hold such goods or refrain from furnishing such services at the direction of Harvard, and Seller shall deliver the goods when the cause effecting the delay is eliminated. Harvard shall be responsible only for Seller’s direct additional costs incurred by holding the goods or delaying performance of the services at Harvard’s request. Causes beyond Harvard’s reasonable control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, war, terrorism, civil commotion, failure of communications systems, fire or similar catastrophe, and severe weather or other acts of God.

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

22. Compliance With Terms of Federal Grant. If the Purchase Order is made with funds obtained by Harvard directly or indirectly from a Federal grant, Seller shall comply with all applicable provisions of Attachment A.