



Conditions of Purchase

B-80686 INCORPORATED IN ALL PURCHASE ORDERS OF BIOLA UNIVERSITY, INC.

1. ACCEPTANCE OF TERMS AND CONDITIONS OF ORDER

The materials, supplies or services covered by this order shall be furnished by Seller subject to the terms and conditions set forth herein. Seller in accepting this order agrees to be bound by and to comply with said terms and conditions. Written acceptance or shipment by Seller of all or any portion of the items and/or the performance of all or any portion of the services covered by this order shall constitute unqualified acceptance of the terms and conditions herein. Unless otherwise agreed, the terms of any proposal referred to in this order are included and made a part of the order only to the extent of specifying the nature of the materials, supplies, or services ordered, the price thereof, and the delivery therefore, and then only to the extent that such terms are consistent with the terms and conditions of this order.

2. INSPECTION

The materials, supplies or services furnished shall be exactly as specified in this order free from all defects in Seller's design, workmanship and materials, and except as otherwise provided in this order, shall be subject to inspection and test by Buyer for a reasonable period of time. Neither payment nor acceptance of the goods shall constitute a waiver of the Buyer's right to reject after such inspection. If prior to final acceptance, any, materials, supplies or services are found to be defective or not as specified, Buyer may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies or services at a reduction in price which is equitable under the circumstances. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any costs for which the Seller may become liable to Buyer under other provisions of this order Seller shall reimburse Buyer for all transportation costs, other related costs incurred or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and service. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud and the Seller's warranty obligations.

3. CHANGES

Buyer may make changes within the general scope of this order in drawings and specifications for specially manufactured supplies, place of delivery, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment for performance of this order and/or an equitable adjustment in the price and delivery or both shall be made. No change by Seller shall be recognized without written approval of Buyer. Any claim of Seller for an adjustment under this paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of

such change unless Buyer expressly waives this condition in writing. Nothing in this paragraph shall excuse Seller from proceeding with performance of the order as changes hereunder.

4. **PACKING AND SHIPPING**

Each container and accompanying packing list must show the order number specified in this order. The order prices includes all changes for packaging, packing and shipping, and no additional charge for such will be paid unless authorized in advance by Buyer in writing. All goods shall be packaged to assure safe delivery, to meet the carrier's requirements, and to obtain the most favorable transportation and insurance rates. Routing, shipping, and delivery instructions shown on the face of this order must be followed, and Seller shall be liable for any excess charges or damage resulting from deviation therefrom. Seller shall not declare excess value on shipment unless authorized by Buyer in writing or done for its own account.

5. **TAXES**

Except as may be otherwise provided in this order, the order price includes all applicable Federal, State, and local taxes and duties. With respect to transactions for which the Buyer may be exempt from any tax or duty the Buyer will provide upon request, evidence in support of its claim to such exemption.

6. **ASSIGNMENT OF RIGHTS**

This order is assignable by Buyer. Except as to any payment due hereunder, this order shall not be assigned or sublet by Seller without the prior written approval of Buyer. In the event such approval is given, it shall not relieve Seller from any of the obligations of this order and any assignee or subcontractor shall be considered the agent of Seller and, as between the parties thereto, Seller shall be and remain liable as if no such assignment or subletting had been made.

7. **INDEMNIFICATION AND INSURANCE**

Seller shall indemnify and hold harmless, the Buyer, its trustees, officers, employees and assigns from any loss, cost, damage, expense or liability by reason of property damages or personal injury of whatsoever kind or character, arising out of, as a result of, or in connection with Seller's performance hereunder caused by the negligence or other fault by act or omission, of the Seller, its agents, employees, subcontractors, or assigns. Seller further agrees that it and its subcontractors and assigns will maintain public liability and property damage insurance in reasonable limits covering the obligations herein, and will maintain worker's compensation coverage in the statutory amount covering all employees performing this order on premises occupied by or under the control of the Buyer.

8. **LABOR DISPUTES**

Seller shall give prompt notice to Buyer of any actual potential labor dispute which delays or may delay timely performance of this order.

9. **ADVERTISING OR PUBLICITY**

Seller shall not use the Buyer's name in any advertising or publicity releases, or publicize the fact that Buyer has placed this order with Seller, without the prior written consent of Buyer.

10. **TITLE**

Title to the material and supplies purchased hereunder shall pass directly from Seller to Buyer at the F.O.B. point shown on this order, subject to Buyer's rights under paragraph 2 herein.

11. **PAYMENT, EXTRA CHARGES, DRAFTS**

Unless otherwise provided in this order, Seller shall be paid within thirty (30) days upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. Buyer will not pay cartage, shipping, insurance, packaging or boxing expenses, unless specified in this order. Drafts will not be honored, invoices must be accompanied by transportation receipts, or facsimile of transportation shall be payable and charged as a separate item.

12. WARRANTY

Seller warrants that the items furnished under this order will conform to their description and any applicable specifications and shall be of good merchantable quality and fit for the known purpose for which it is sold. In addition to any express warranties Seller may make, Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services and article of this order. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the services or supplies by Buyer.

13. INFRINGEMENT

Seller represents that in furnishing all materials and supplies, including components thereof, and services covered by this order, Seller will not infringe upon the copyright patent or other proprietary rights of any third party. Seller shall indemnify and hold harmless Buyer, its trustees, officers, agents, employees and assigns against any loss or claim arising from such infringement, provided that, if any such claim of infringement is asserted against Buyer, Seller shall be notified of the same within twenty (20) days thereof and is given the right and option to conduct any defense against such a claim.

14. TERMINATION

- A. Buyer may by written notice stating the extent and effective date, terminate this order for convenience, in whole or in part, at any time Buyer shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion of this order and/or (2) a reasonable amount not otherwise recoverable from other sources by Seller as approved by Buyer, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.
- B. Buyer may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make delivery at the time specified or any written extension thereof. In such event, Buyer may purchase or otherwise secure materials, supplies, or services and except as otherwise provided herein. Seller shall be liable to Buyer for any excess costs occasioned Buyer thereby.
- C. If after notice of termination for default, Buyer determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not limited to, acts of God, acts of Buyer, acts of Government, fires, floods, strikes, freight embargoes), termination shall be deemed for the convenience of Buyer, unless Buyer shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

- D. If Buyer determines that Seller has been delayed in the order due to causes beyond the control and without the fault or negligence of Seller, Buyer may extend the time for completion of this order, when promptly applied for in writing by Seller. The rights and remedies of Buyer provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.
- E. In the event of the suspension of payment or the institution of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency or in the event of the appointment of a receiver or trustee or an assignee for the benefit of creditors of either party or their property, the other party may elect to cancel this agreement forthwith.

15. GENERAL

- A. As used in this order, the term "Seller" refers to the person, firm or corporation from whom the item of services has been ordered and includes Seller and its subsuppliers at any tier. The term "Buyer" refers to Biola University, Inc., a California non-profit corporation.
- B. Time is of the essence of this order.
- C. In the event legal action is instituted on this order, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred.
- D. This order shall be deemed to be a contract made in the State of California, and shall be construed in accordance with the laws of the State of California.
- E. This order, the terms and conditions contained herein, and the terms of any proposal referred to in this order shall constitute the entire agreement between the parties hereto, and supersedes any and all other agreements oral or written with reference to the subject matter contained herein.
- F. Except as provided in paragraph 3 herein, no changes shall be made in any of the terms and/or conditions of this order, nor any provision waived, without the prior written consent of both parties.
- G. In the event that one or more of the provisions of this agreement are determined to be unenforceable for any reason, such determination shall apply only to such provision and all other provisions shall remain in full force and effect.
- H. This agreement is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- I. This agreement may be executed in counterparts, each of which shall be deemed an original.