

# COLLEGE OF WESTERN (CWI) IDAHO PURCHASE ORDER

## TERMS AND CONDITIONS

### SEC. 1 DEFINITIONS

The following terms shall have the meaning stated herein:

“Agreement” shall mean the CWI Purchase Order, the CWI Procurement Terms, and all attached and referenced documents;

“College” shall mean the College of Western Idaho, a political subdivision of the State of Idaho;

“Seller” shall mean the supplier named on the front of the Purchase Order, including its agents, sales personnel, shipping and receiving personnel, and other employees acting on its behalf.

### SEC. 2 CONFLICT IN TERMS

If the Vendor proposes or incorporates its own terms and conditions into the procurement which are different from or conflict with the CWI Terms and Conditions, the CWI Terms shall take precedent and apply to the procurement.

### SEC. 3 TERMINATION

CWI may terminate the procurement and this Agreement (and/or any order issued pursuant to the Agreement) when Vendor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Vendor will be responsible for any costs incurred by the College to replace the goods, including but not limited to placement of a new agreement. The College, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

### SEC. 4 CONTRACT RELATIONSHIP

It is understood and agreed that in the performance of the services under this Agreement, Vendor shall at all times act as an independent contractor with respect to CWI, and Vendor shall not be an employee of CWI for any purpose. The Vendor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of the Agreement, whether it may be for personal injuries or damages of any other kind. The Vendor will maintain any applicable worker’s compensation insurance as required by law and will provide certificate of same if requested.

### SEC. 3 PAYMENT TERMS

Invoices will be submitted monthly and clearly delineate what services are being billed for and during what period. Invoices will be paid by CWI on a net thirty (30) payment basis for goods or services that have been delivered, installed or accepted as specified.

### SEC. 4 CONFORMING GOODS OR SERVICES

The goods or services shall conform in all respects with the College's solicitation documents. In the event of nonconformity, and without limitation upon any other remedy, CWI shall have no financial obligation in regard to the non-conforming goods.

### SEC. 5 SELLER RESPONSIBILITY

The Vendor is responsible for furnishing and delivery of all goods or services included in the Agreement, whether or not the Vendor is the manufacturer or producer of such goods or services. Further, the Vendor will be the sole point of contact on contractual matters, including all warranty issues and payment of charges resulting from the use or purchase of goods and services.

### SEC. 6 SHIPPING, DELIVERY, AND INSTALLATION\*\*\*\*\*NOT SURE HOW TO WRITE THIS SECTION\*\*\*\*\*

All orders will be shipped directly to the department ordering the good or service at the location specified on the Purchase Order, shipping on an F.O.B. Destination Freight Prepaid and Allowed basis with all transportation, unloading, uncrating, drayage, and all other associated delivery and handling charges incidental to and associated with completion of the Agreement paid by the Seller. If installation is required, pricing shall include all charges associated with a complete installation at the location specified.

### SEC. 7 ACCEPTANCE/RISK OF LOSS<sup>[JG1]</sup>

When the Agreement does not require installation, acceptance shall occur ??? (??) calendar days after delivery of goods or service, unless the College has notified the Vendor in writing<sup>[JG2]</sup> that the product or service delivered does not meet the College's specification requirements.

Risk of loss and responsibility and liability for loss or damage will remain with Seller until final inspection and acceptance by College. Responsibility will pass to the College, except as to the latent defects, fraud and Seller's warranty obligations. Such loss, injury or destruction shall not release the Seller from any obligation under the Agreement.

### SEC. 8 GOVERNMENT REGULATIONS

Vendor shall comply with all requirements of federal, state and local laws and regulations applicable to Vendor or to the goods and services provided by Vendor pursuant to the Agreement. For the duration of the Agreement, the Vendor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

### SEC. 9 INDEMNIFICATION/INSURANCE

Vendor shall defend, indemnify, and hold the College, its administrators, agents, and employees harmless for all claims, losses, actions, damages, judgments, costs, expenses, and including reasonable

attorney costs for injuries to persons or property arising out of or in connection with any activities, acts, or omissions of Vendor, its officers, agents or employees, or arising out of a failure to comply with any state or federal statute, law, regulation or act. In the event College is alleged to be liable on account of any activities, acts, or omissions of Vendor, its officers, agents or employees, then Vendor shall defend such allegations through counsel chosen by College and Seller shall bear all costs, fees, and expenses of such defense, including, but not limited to, all attorney fees and expenses, court costs, and expert witness fees and expenses. Vendor shall have no indemnification liability under this section for death, injury, or damage arising solely out of the negligence or misconduct of the College.

#### SEC. 10 PATENTS AND COPYRIGHT INDEMNIFICATION

Vendor shall indemnify and hold the College harmless and shall defend at its own expense any action brought against the College based upon a claim of infringement of a United States patent, copyright, trade secret, trademark, or other intellectual property for goods or services purchased under the Agreement.

#### SEC.11 USE OF COLLEGE NAME

Vendor agrees that it will not, prior to, in the course of, or after performance under the Agreement use the College's name in any advertising or promotional media as a customer or client of Vendor without the prior written consent of the College.

#### SEC. 12 TAX EXEMPT STATUS

CWI is generally exempt from payment of Idaho state sales and use taxes. If the Vendor is required to pay any taxes incurred as a result of doing business with the College, it shall be the sole responsibility of the Vendor to pay the taxes. A State Sales Tax exemption form will be issued upon request.

#### SEC. 13 FORCE MAJEURE

Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the parties shall notify the other promptly in writing of any cause for delay. If reasonably possible, the Contractor shall make every reasonable effort to complete performance as soon as possible.

#### SEC. 15 MODIFICATIONS

This Agreement may only be released, change, amended, modified or supplemented in writing signed by a duly authorized representative of each party.

#### SEC. 16 ASSIGNMENTS

Vendor shall not assign the Agreement, any order, or any interest herein without prior written approval of the College. Assignment of the Agreement without approval shall, at the option of the College, cause

the annulment of the Agreement so assigned. All rights of action, for any breach of such Agreement assignment are reserved to the College.

#### SEC. 17 GOVERNING LAW

This Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho<sup>[UG3]</sup>. Any action to enforce the provisions of this Agreement shall be brought in the (Third/Fourth) District Court in (Canyon/Ada) County, Idaho.

#### SEC. 18 ENTIRE AGREEMENT

This Agreement shall constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids, proposals, or quotations, both oral and written, discussions, representations, commitments, course of dealing, and all other communications between the parties.

#### SEC. 19 SEVERABILITY

In the event any provision or section of the Agreement is found unconscionable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

#### SEC. 20 DEBARMENT

By submitting this bid/proposal, the bidder/proposer warrants and certifies that he/she is eligible to submit a bid/proposal because he/she is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal or State agency.

Public records<sup>[UG4]</sup>

Confidential Information

Government Entity Clause

Anti-Discrimination/Equal Employment