

# Terms & Conditions of Purchase

## **1. Acceptance**

Vendor's commencement of services or shipment of goods related to this purchase order shall be deemed acceptance by Vendor of this offer and of the terms and conditions set forth herein. The absence of formal acknowledgement shall not release the Vendor from the following terms and conditions. Any proposal by Vendor for additional or different terms and conditions of this offer is hereby objected to and rejected, but such proposal or acceptance by Vendor shall not operate as a rejection of this offer unless such variances are in the terms of description, quantity, price, or delivery schedule of the goods or services. Instead, such proposal or acceptance by Vendor shall be deemed a material alteration of the offer, and this offer shall be deemed accepted by Vendor without the additional or different terms and conditions. No term or condition at variance with this order proposed by Vendor in acknowledging or accepting this order will be binding on Berklee unless accepted in writing and executed by Berklee. All exhibits, attachments, technical specifications, drawings, notes, instructions, or information referenced in the order are incorporated herein by reference.

## **2. Entire Agreement/Modification**

This order constitutes the entire agreement between Vendor and Berklee with respect to the goods described on the front of this order. No provision of this order, including, without limitation, this paragraph 2, may be changed or modified other than by written instrument signed by Berklee's authorized representative. Reference to Vendor bids and proposals, if noted on this order shall not affect the terms and conditions hereof.

## **3. Changes/Amendments**

Berklee shall have the right at any time, by written notice, to make any changes it deems necessary, including, but not limited to, changes in specifications, design, delivery, testing methods, packing or destination. If any such changes cause an increase or decrease in cost or the time required for performance, an equitable adjustment shall be made. Any claim by the Vendor for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Vendor of notice of change. Price increases, extensions of time for delivery and change in quantity shall not be binding on Berklee unless evidenced by a form of change order issued and signed by Berklee.

## **4. Delivery**

Time is of the essence, and Berklee may, without liability, and in addition to its other rights and remedies terminate the order if the delivery of goods or rendering of services is not completed by the date specified herein. No change in the scheduled delivery date or performance will be permitted without Berklee's written consent. If Vendor fails to deliver goods by the completion date, Berklee may purchase substitute goods or services elsewhere and charge Vendor for any loss or additional expense incurred. The risk of loss or damage in the course of delivery shall be upon the Vendor. Oral cancellation notices made by Berklee are effective when made, but must be confirmed in writing. Any provisions hereof for delivery by installment shall not be construed as making the obligations of the Vendor severable. Berklee shall have the right to refuse deliveries made more than one week in advance of any delivery schedule appearing in this order unless arrangements for such early delivery have been confirmed with the receiving party.

The Vendor shall notify Berklee in writing promptly of any delays or threats of delay (however caused) to the timely performance of this order.

## **5. Shipment**

If, to meet Berklee's required delivery date, Vendor must ship goods by a more expensive way than specified herein or anticipated by the parties, then any resulting increased transportation cost shall be borne solely by Vendor unless such rerouting or expedited handling and transportation cost is caused by Berklee.

All material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, Berklee's packaging specification.

The Vendor shall mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of the Vendor and Berklee. An itemized packing list must accompany each shipment.

All shipments of hazardous materials under this order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910. 1200, for the transporting and labeling of hazardous materials.

## **6. Inspection**

All material and work will be subject to final inspection and approval by Berklee after delivery, it being expressly agreed that payment will not constitute final acceptance. Failure by Berklee to inspect and accept or reject goods shall not relieve the Vendor from responsibility of goods not in accord with contract requirements. Berklee reserves the right to reject and receive full credit for any articles or services which are defective as to material, workmanship, quality or otherwise or which are not in conformity with the specifications, drawing or sample approved by Berklee. Rejected material may be returned to Vendor at Vendor's risk and expense at the full invoice price plus applicable transportation charges.

Any inspection records relating to material covered by this purchase order shall be available to Berklee during the performance of this purchase order and for such longer periods as specified by Berklee.

If any material covered by this purchase order is defective or otherwise not conforming with the requirements of this purchase order, Berklee may, by written notice to the Vendor: (a) rescind this purchase order as to such non-conforming material; (b) accept such material at an equitable reduction in price; (c) reject such non-conforming material and require the delivery of suitable replacements. If the Vendor fails to deliver suitable replacements promptly, Berklee, with notice of five business days, may replace or correct such material and charge the Vendor the additional cost occasioned Berklee thereby, or terminate this order for default.

No inspection (including source inspection) test, approval (including design approval) or acceptance of material shall relieve the Vendor from responsibility for defects or other failures to meet the requirements of this order. Rights granted to Berklee in this article are in addition to any other rights or remedies provided elsewhere in this purchase order or in Law.

#### **7. Termination for Cause**

Berklee may terminate this order or any part hereof for cause if Vendor defaults, fails to comply with any terms and conditions of this order, becomes insolvent, or files for bankruptcy or protection under applicable laws. In the event of termination for cause, Berklee shall not be liable to Vendor for any amount except to the extent of any balance due for goods already delivered or services already rendered.

#### **8. Termination for Convenience**

Berklee may terminate this order or any part hereof for its sole convenience. Upon notice of such termination, Vendor shall immediately stop all work or shipment of goods in accordance with this order, and shall notify its suppliers or subcontractors to do the same. Vendor shall be

paid a reasonable termination charge consisting of a pro rata percentage of the order price reflecting the work performed prior to notice of termination. Vendor shall not be paid for work performed or costs incurred after notice of termination, nor for costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided.

## **9. Warranties**

Vendor expressly warrants that all articles, materials, work, and services furnished hereunder will be free from defects in materials and workmanship; will conform to applicable specifications, drawings, sampling and/or descriptions; and will be suitable for the purpose for which intended, and if of Vendor's design will be free from design defects. These warranties shall survive any inspections, delivery, acceptance, and payment and shall run to Berklee, its successors, legal representatives, assigns, customers, and users of products or services sold or furnished by Berklee to others. If Vendor fails to correct all defects or replace all nonconforming goods or services promptly, Berklee, after notice to Vendor, may make such corrections or replace such goods or services and charge Vendor for the cost incurred by Berklee to do so.

## **10. Compliance**

Vendor warrants that in performance of work under this order, it has complied with or will comply with all applicable Federal, State, and local laws and ordinances, and all lawful orders, rules, and regulations. At the request of Berklee, Vendor will furnish certificates to the effect that it has complied with the same.

The Vendor further agrees to indemnify and hold Berklee and its customers harmless from any loss or damage that may be sustained by Berklee, by reason of the Vendor's failure to comply with any federal, state, county or local laws, ordinance, regulations and codes.

## **11. Indemnification**

Vendor shall defend, indemnify, and hold Berklee harmless against all claims, liabilities, losses, damages, and expenses (including attorneys' fees) arising out of or resulting from any defect in the goods or services purchased hereunder or from any act, omission, or operation of Vendor, its employees, agents, representatives, suppliers, and subcontractors. This indemnification shall be in addition to the warranty obligations of Vendor.

## **12. Insurance**

Vendor shall obtain and maintain, at its own expense, adequate insurance in any and all forms necessary to protect both Vendor and Berklee against all liabilities, losses, damages, claims,

settlements, and expenses (including attorneys' fees) arising out of or resulting from performance of this agreement. Although evidence of certain minimum insurance coverage may be required of Vendor, nothing contained herein shall abridge, diminish, or affect Vendor's responsibility for the consequences of any accidents, damages, losses, and associated costs arising out of or resulting from performance of this agreement. Vendor will furnish certificates of insurance to Berklee upon request. Vendor shall be adequately insured against theft, fraud, willful misconduct, and negligence. Vendor shall obtain and maintain the following Berklee minimum insurance requirements:

Worker Compensation -		Statutory Benefits
Employers Liability		\$1,000,000
Comprehensive Liability -		
Per Occurrence		\$1,000,000
General Aggregate		\$2,000,000
Products / Completed Operations		\$2,000,000
Personal / Advertising Injury		\$1,000,000
Fire Damage		\$300,000
Medical Expense		\$10,000
Comprehensive Automobile Liability -		

Bodily Injury and Property Damage		\$1,000,000
Combined Single Limit		
Umbrella Liability -		
Per Occurrence / Aggregate		\$2,000,000 / \$2,000,000
Professional Liability Note: Only required for Service Providers doing professional work (e.g. design services, legal work); not applicable to contractors who repair, restore, or renovate.		
Per Occurrence		\$1,000,000
Aggregate		\$2,000,000

### **13. Intellectual Property**

Vendor shall indemnify and hold Berklee, its employees, agents, customers, or other vendors, harmless against all losses, royalties, settlements, damages, and expenses (including attorneys' fees) resulting from any claim, suit, or proceeding, and promptly assume responsibility for defense of any claim, suit, or proceeding brought by a third party against Berklee, its employees, agents, customers, or other vendors for alleged infringement of a third party's patents, trade secrets, copyrights, trademarks, designs, or other proprietary rights by any of the goods or services furnished by Vendor hereunder. Berklee may participate in any counsel, and Vendor shall pay all costs of such representation.

### **14. Confidentiality**

Without the prior written consent of Berklee, the Vendor shall neither disclose to any person outside of its employ, nor use for purposes other than performance of this order, any information pertaining to Berklee. Without the prior written consent of Berklee, the Vendor

not in any manner disclose, advertise or publish the fact that the Vendor has furnished, or contracted to furnish Berklee, the material or services ordered hereunder.

#### **15. Assignment**

No part of this order may be assigned, transferred or subcontracted by Vendor without Berklee's written approval.

#### **16. Applicable Law**

This agreement shall be construed and governed by the laws of the Commonwealth of Massachusetts.

#### **17. Set-off**

Berklee shall have the right at any time to set-off any amount owed to Vendor by Berklee against any amounts due and owing to Vendor with respect to this order or any subsequent order.

#### **18. Force Majeure**

Berklee may delay delivery, performance, or acceptance of the goods or services ordered hereunder in the event of causes beyond its control. Vendor shall hold such goods or refrain from furnishing such services at the direction of Berklee and Vendor shall deliver the goods or furnish the services when the cause affecting the delay is eliminated. Berklee shall be responsible only for Vendor's direct additional costs incurred by holding the goods or delaying performance of this agreement at Berklee's request. Causes beyond Berklee's control shall include, without limitation, government action or failure to act where required, strike or other labor trouble, fire or similar catastrophe, and severe weather or other acts of God.

#### **19. UCC**

The provisions of the Uniform Commercial Code ("UCC") as adopted by the Commonwealth of Massachusetts covering the sale of goods are incorporated by reference. Unless stated to the contrary, the terms and conditions of this order shall be interpreted according to the UCC. If this order includes performance of services by Vendor, the parties acknowledge that the provisions of the UCC normally do not apply to performance of services as distinguished from the sale of goods. Notwithstanding the foregoing, the parties expressly agree that the provisions of the UCC shall apply to this order and that any dispute arising out of or resulting from this order shall be resolved according to the provisions contained herein and in the UCC.

#### **20. Severability**

If any part of this agreement is found illegal or unenforceable, that part shall be severed from the contract, and the rest of the agreement shall be enforceable as written.

#### **21. Waiver Provision**

Berklee's failure to insist on performance of the terms and conditions of this order, or to exercise any right or privilege, or Berklee's waiver of subsequent breach shall not be deemed as a waiver of future right. No provision of this agreement may be waived except in writing.

#### **22. Tax Exemption**

Berklee is a Massachusetts nonprofit, tax-exempt corporation and is exempt from paying Massachusetts Sales Tax (Cert.#409987072), New York Sales Tax (Cert. #EX 266877), Federal Excise Taxes (Exempt.#04-2300-472, dated 1/67), and Federal Fuel Taxes (Reg.#04-74-0181-F). Certificates are available upon request.

#### **23. Standards of Conduct**

The Vendor must reassign its employees, agents and subcontractors working on Berklee's premises if any such personnel are deemed to be disruptive, dangerous, incompetent, or otherwise noncompliant with reasonable conduct guidelines and College policies and procedures. At Berklee's request, the Vendor will distribute publications supplied by Berklee regarding Berklee's policies, practices, and procedures, including, but not limited to Sexual Harassment policies.

#### **24. Price Warranty**

Vendor warrants that the prices of goods or services furnished under this order are not less favorable than those prices currently extended to any other customer for the same or similar goods or services. If Vendor reduces its prices for such goods or services during the term of this order, Vendor shall reduce the prices for Berklee accordingly.

#### **25. Copyright/Trademark**

In no event shall Vendor obtain, or represent itself as having obtained, any rights in Berklee's trademarks, copyrights, or patents as a result of an order made upon this form. Furthermore, Vendor shall not and agrees not to copy, publish, modify, or otherwise use any of Berklee's copyrights, trademarks, or patents without the express written authorization of an officer at Berklee.

#### **26. Personal Information Data Security**

The Vendor represents that it is capable of safeguarding Personal Information transmitted to it by Berklee College of Music in accord with 201 CMR 17.00, Berklee College of Music's policy



regarding the safeguarding of Personal Information, relevant law including, where applicable, international privacy laws, such as the EU General Data Protection Regulation 2016/679 (GDPR), and will do so under the terms set forth therein. Upon request by Berklee College of Music, the Vendor shall provide a certificate of compliance with 201 CMR 17.00 and answer any security-related questions Berklee College of Music may have. Vendor will use the Personal Information solely for the purpose of performing its duties and exercising its rights under this Agreement and will not disclose or communicate the Personal Information, directly or indirectly, to any third party except as may be necessary or appropriate for the performance of its duties and the exercise of its rights hereunder. The Vendor further agrees that Personal Information will be disclosed only to such of its employees, agents and contractors who need access to the Personal Information for the purposes described herein. The Vendor shall implement and maintain information security measures to protect against unauthorized access to or use of Personal Information, and meet the requirements and objectives of the Massachusetts Privacy Law, 201 CMR 17.00 and any other relevant laws, rules, or regulations. These measures will be extended by contract to all subcontractors used by Vendor.