1. **DEFINITIONS:** “Agreement” or “Contract” shall refer to these additional terms and conditions as well as the terms and conditions of the purchase order form (the “Form”) to which the following is attached. “Seller” shall refer to the person or entity as set forth in this Agreement and shall include Seller’s agents, employees, contractors, subcontractors and representatives.

2. **ACCEPTANCE:** This Agreement must be accepted in writing or by delivery of the goods or complete performance of the services ordered by the specified delivery date. Any terms proposed in Seller’s acceptance of Pratt Institute’s offer which add to, vary from, or conflict with the terms herein are hereby objected to and rejected. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.

3. **CANCELLATION/TERMINATION/ DEFAULT BY SELLER:** (a) In the event Seller defaults with respect to, or otherwise breaches any of, the terms and conditions of this Agreement, Pratt Institute shall be entitled to any and all relief, at law or in equity, including all reasonable attorney’s fees incurred by Pratt Institute in enforcing the terms and conditions of this Agreement, and all remedies shall be cumulative rather than exclusive. Seller agrees that Pratt Institute shall be entitled to recover all consequential and/or incidental damages resulting from Seller’s breach. Without prejudice to Pratt Institute’s rights or remedies, Pratt Institute may terminate this Agreement in whole or in part upon Seller’s breach of this Agreement. (b) Pratt Institute may at any time cancel this Agreement in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable cancellation charges, consisting of a percentage of the order price reflecting the portion of goods already delivered and accepted or the percentage of the work performed prior to cancellation, plus actual direct costs resulting from cancellation. THE FOREGOING STATES PRATT INSTITUTE’S ENTIRE LIABILITY FOR CANCELLATION. (c) Upon receipt of a termination or cancellation notice, Seller shall, unless otherwise directed, cease work and follow Pratt Institute’s directions as to disposal of work in progress and finished goods. (d) No failure or delay on the part of Pratt Institute in exercising any right, power or remedy or recognizing any breach or default hereunder shall operate as a waiver thereof or as a waiver of a subsequent or different breach, default, right, power or remedy.

4. **PRICING:** Seller warrants that the price(s) set forth herein are equal to the lowest price(s) afforded by Seller to any other customers for goods or services of comparable grade or quality during the term hereof. Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, similar or dissimilar, unless otherwise indicated in this Agreement.
5. DELIVERY/TITLE AND RISK OF LOSS: Time is of the essence to delivery and any other performance of any service required of Seller. Pratt Institute’s scheduled delivery or service dates are best estimates and are subject to change without advance notice. Pratt Institute shall have the option of specifying a later date for delivery or service schedules or may suspend scheduled delivery or service. All shipping is F.O.B. destination unless otherwise stated in this Agreement. Title and risk of loss shall pass to Pratt Institute upon delivery and acceptance at the F.O.B. point. Pratt Institute reserves the right to manage the transportation, and all shipments to the F.O.B. point shall be as directed on the face of this Agreement, freight prepaid and insured by Seller at Seller’s risk and expense. If Seller is unable to deliver goods or services on the date requested, it must notify Purchasing Department at 718-636-3430 immediately.

6. FORCE MAJEURE: Strikes, fires, accidents or other causes beyond the control of Pratt Institute which shall affect Pratt Institute’s ability to receive and use the material ordered shall constitute valid ground for suspension of shipment of this order, upon notification to the Seller and without penalty to Pratt Institute.

7. WAIVER OF LIEN: Prior to the commencement of work, Seller is required to furnish waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this Agreement.

8. RIGHT OF INSPECTION: Pratt Institute shall have the right to inspect and reject all nonconforming goods and services within a reasonable period of time after delivery or completion of performance without regard to whether payment has been made. Thirty (30) days from date of delivery or completion of service is deemed to be a reasonable time for Pratt Institute to exercise the right of inspection. Pratt Institute may choose, at Seller’s risk and expense, to hold nonconforming goods pending Seller’s instructions or ship them to Seller’s address first shown on the face of this Agreement. The purchase price with respect to such nonconforming goods rejected by Pratt Institute shall be refunded by Seller if already paid, or shall be reduced if still owing. In either case, if Pratt Institute so directs in writing, Seller shall promptly replace such nonconforming goods with goods conforming to the specifications. All direct or incidental costs of rejecting and removing such nonconforming goods shall be borne by Seller.

9. CONDITIONS OF PAYMENT: No payment (final or otherwise) made under this Agreement shall be construed to be an acceptance of defective, faulty or improper goods, services or materials, nor shall it release the Seller from any of its obligations under this Agreement.

10. WARRANTY: Seller expressly warrants that all goods and services covered by this order shall conform to the specifications, drawings, samples, or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect, and that goods and services of Seller’s design will be free from defect and design. Inspection, test, acceptance, or use of the goods furnished hereunder shall not affect the Seller’s obligation under this warranty, and such warranties shall survive inspection, test,
acceptance, and use. This warranty shall run to Pratt Institute, its successors, assigns, customers, and the users of its products. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Pratt Institute, when notified of such nonconformity by Pratt Institute. In the event of failure by Seller to correct defects in or replace nonconforming goods or services promptly, Pratt Institute, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Pratt Institute thereby.

11. CHANGES: Pratt Institute reserves the right to make changes to any services to be performed or goods to be delivered, including quantity. Such change notices shall be in writing and signed by a duly authorized representative of Pratt Institute. If such changes result in a decrease or increase in the Seller’s cost or in the time for performance, an adjustment in the price and time for performance will be made by the parties in writing. Unless Seller presents to Pratt Institute an itemized statement of claim against Pratt Institute within twenty (20) days after receipt of notice of such change, the Seller shall be conclusively deemed to have waived all claims against Pratt Institute with respect thereto.

12. INVOICES: Pratt Institute shall have no obligation to pay for any item until a correct invoice for the item is received at the address shown on the face of this Purchase Order. Payment terms commence upon receipt of a correct invoice. Notwithstanding the above, payment will not be authorized until Pratt Institute has received all warranties, liens, waivers, insurance coverages, bonds and indemnities associated with the work to be performed under this Agreement.

13. INDEMNITY: Except to the extent caused by Pratt Institute’s sole negligence, Seller agrees to defend at its own cost and expense, and shall indemnify and hold harmless Pratt Institute, its officers, directors, agents, representatives and employees from, any and all claims, liabilities, damages, and expenses (including attorneys’ fees) related to or in connection with any goods and services supplied, any infringement of any patent, trademark, copyright, trade secret or other proprietary right by reason of the sale of the goods and services, or any violations of federal, state or local statute, ordinance or administrative order, rule or regulation. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, tort, or otherwise. This indemnity shall survive delivery and acceptance of goods or services.

14. INSURANCE: Before the commencement of any work on Pratt Institute’s premises, at Seller’s expense, Seller shall obtain and file with the Pratt Institute Office of Finance & Administration certificates of insurance evidencing insurance for the types and in the amounts required by Pratt Institute, including but not limited to, certificates showing Pratt Institute as an additional insured on Seller’s general liability policy and showing errors and omissions insurance in the minimum amount of $1,000,000. The terms of the insurance requirements are incorporated herein by reference. A copy of the terms of Insurance Requirements is available upon request. All such insurance certificates shall provide that they shall not be cancelled or amended without thirty (30)
15. MATERIALS/INVENTIONS: Seller warrants title to all goods sold and services supplied. All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks (collectively, “Inventions”) created or prepared for Pratt Institute, shall belong exclusively to Pratt Institute. Seller hereby assigns all Inventions to Pratt Institute and its assigns, except for any works for hire which do not require an assignment to vest ownership in Pratt Institute. The extent copyrights exist in any works of authorship, such works shall be deemed, to the extent legally permitted, to be works made for hire as that term is used in the Copyright Act of 1976. Pratt Institute shall have the right, at Pratt Institute’s option and expense, to seek protection by obtaining patents, copyright registrations, trademark registrations, and/or other recordations, registrations and filings related to proprietary or intellectual property rights. Seller agrees at no charge to execute, and to cause its employees to execute, such documents including such further assignments, applications and conveyances and to supply such information as Pratt Institute shall request, in order to permit Pratt Institute to protect, perfect, record and maintain its rights in the Inventions and effective ownership of them throughout the world.

16. CONFIDENTIALITY: The terms and existence of this Agreement and everything supplied in connection with it by Pratt Institute shall be held in confidence by Seller. Seller shall not publicly announce or disclose this Agreement or its contents without Pratt Institute’s prior written consent. Seller shall not use Pratt Institute’s name in any way, including without limitation, a general or sample listing of Seller’s customers, without Pratt Institute’s prior written consent. Any violation of this paragraph shall be deemed a material breach of this Agreement.

17. LEGAL COMPLIANCE: Seller warrants that all goods and services furnished shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances. In accepting this order, and without in any way limiting Seller’s obligation under this Section, Seller represents that the goods to be furnished hereunder were or will be produced in compliance with the requirements of: (a) the Fair Labor Standards Act of 1938, as amended, including Section 12(a); (b) unless exempt, Executive Orders 11246 (Equal Employment Opportunity), 11701 (Contractor/Subcontractor Listing Requirements), 11625 (Utilization of Minority Business Enterprises), and 11758 (Employment of the Handicapped), all amendments thereof, and the rules, regulations and orders promulgated thereunder; and (c) if applicable, all OSHA Occupational Safety and Health Standards for General Industry (29 CFR Pt. 1910) or for Construction (29 CFR Pt. 1926). The contractual clauses required pursuant to said Executive Orders, and said rules, regulations and orders, are hereby incorporated by reference. Pratt Institute reserves the right to monitor the legal compliance required herein at its discretion.
18. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor and not an employee, partner, agent or representative of Pratt Institute. Seller and its employees are not Worker’s Compensation employees of Pratt Institute. Seller shall not make any representations on behalf of Pratt Institute without express written consent.

19. **MATERIAL SAFETY DATA SHEET (“MSDS”):** A MSDS is required by law on all products with a chemical composition. If applicable, Seller shall include MSDS information with each shipment. Seller acknowledges that any failure to comply with MSDS requirements shall result in a delay in payment with no right to late payment fees or interest for any such late payment. ALL CONTAINERS MUST BE LABELED.

20. **LIMITATION OF LIABILITY:** Any liability of Pratt Institute for direct damages, whether arising from a breach of this Agreement, negligence, indemnity, strict liability, tort or otherwise related to this Agreement shall be limited to an amount not to exceed the amount to be paid pursuant to this Agreement. In no event shall Pratt Institute be liable to any party to this Agreement, including any party related thereto or affiliated therewith, for any indirect, incidental, consequential, punitive or special damages, including but not limited to, lost profits.

21. **ASSIGNMENT & DELEGATION:** No right or interest in this Agreement shall be assigned by Seller without the express written consent of Pratt Institute, and no delegation of any obligation or of the performance of any obligation by Seller shall be made without the express written consent of Pratt Institute. Any attempted assignment or delegation shall be void and ineffective for all purposes unless made in conformity with this paragraph.

22. **ENTIRE AGREEMENT:** This Agreement, with such documents as are expressly incorporated herein by reference, is intended by the parties as a final expression of their Agreement with respect to such terms as are included herein, and is intended also as a complete and exclusive statement of the terms of their Agreement. This Agreement supersedes all prior agreements and communications, and no course of prior dealings between the parties and no usage of the trade shall be relevant to determine the meaning of this Agreement.

23. **SEVERABILITY:** Any provision of this Agreement prohibited or unenforceable in any jurisdiction shall be ineffective only to the extent of such prohibition and shall not invalidate the remaining provisions of this Agreement.

24. **GOVERNING LAW:** This Agreement shall be governed by and construed under the laws of, and under the Uniform Commercial Code as adopted by, the State of New York, without regard to its choice of laws or rules. The parties submit to the nonexclusive jurisdiction of the federal courts located in, and the state courts of, Kings County in the State of New York.
25. HEADINGS: Captions preceding particular sections are for convenience only and not to be construed as part of this Agreement or as a limitation of the scope of a particular section to which they refer.