

Purchase Order Standard Terms and Conditions

1. **Parties.** The term “Seller” refers to the addressee set forth on the face of the Simons Foundation’s purchase order form, and the term “Simons Foundation” refers to The Simons Foundation, Inc. and/or any of its affiliates or subsidiaries.
2. **Scope.** The following Purchase Order Standard Terms and Conditions (“Terms and Conditions”) only apply to transactions that do not have a separate written agreement, duly executed by Seller and the Simons Foundation. If there is such an agreement, then those terms shall be the terms that govern the transaction and relationship of Seller and the Simons Foundation.

In the absence of such a separate written agreement, duly executed by Seller and the Simons Foundation, then these Terms and Conditions, in addition to any terms set forth on the face of an individual purchase order form or in any plans, specifications or other documents incorporated by reference (collectively, this “Purchase Order”) shall govern the purchase of the specified goods or materials (“Goods”) and/or performance of the specified services and/or work (“Services”) which are the subject matter of the accompanying Purchase Order issued by the Simons Foundation to Seller.

3. **Acceptance of Purchase Order by Seller.** Upon acceptance of this Purchase Order by the Seller as set forth herein, this Purchase Order is a valid and binding contract between the Simons Foundation and Seller. This Purchase Order is deemed accepted by Seller upon the earlier to occur of the following: (a) Seller indicates its acceptance of this Purchase Order in a written communication including any electronic communication; (b) this Purchase Order is sent to Seller and Seller does not object in writing to any of its terms or provisions within three (3) business days; or (c) Seller at any time otherwise delivers or performs all or any part of the Goods and/or Services. No change or alteration may be made to any term of this Purchase Order without the prior written consent of the Simons Foundation. This Purchase Order constitutes the entire agreement between Seller and the Simons Foundation regarding the subject matter of this Purchase Order and supersedes all other documents, writings, representations, agreements, proposals, promises, or other understandings, oral or otherwise, between Seller and the Simons Foundation with respect to the matters contained herein, including any prior or subsequent price quotation, invoice, confirmation, terms and conditions, or other document furnished by Seller; except that if a separate written agreement signed by both the Simons Foundation and Seller exists with respect to the Goods and/or Services covered by this Purchase Order, the terms of such written agreement shall govern and control. Acceptance of this Purchase Order is expressly limited to the terms set forth herein and the Simons Foundation gives notice of objection to any different or additional terms in any response to this offer. If this Purchase Order is construed to be acceptance of an offer, this acceptance is expressly conditioned upon Seller’s assent to any different or additional terms contained in this Purchase Order. Seller acknowledges and agrees that this Purchase Order is a non-exclusive agreement, and the Simons Foundation reserves the right to obtain the same or similar Goods and/or Services through the Simons Foundation’s own personnel or through other third parties.
4. **Acceptance by the Simons Foundation.** Delivery and/or performance of the Goods and/or Services will be deemed to be complete only when delivered and/or performed pursuant to a validly issued Purchase Order and actually received by the Simons Foundation. All Goods and/or Services are subject to the Simons Foundation’s right of inspection following delivery and/or performance by Seller; and the Simons Foundation shall not be deemed to have accepted the Goods and/or Services until it has had a reasonable period of time to inspect the Goods and/or Services following delivery and/or performance, or, in the case of a latent defect in the Goods and/or Services, until a reasonable time after the latent defect has become apparent; payment for Goods and/or Services under this Purchase Order prior to inspection by the Simons Foundation will not constitute acceptance by the Simons Foundation. The Simons Foundation may, at its option, reject all or any portion of the Goods and/or Services that do not, in the Simons Foundation’s sole discretion, comply with the terms and conditions of this Purchase Order or the Simons Foundation’s requirements. The Simons Foundation may elect to reject all of the Goods and/or Services even if only a portion is nonconforming. In any case, acceptance of all or any part of the Goods and/or Services will not be deemed to be a waiver by the Simons Foundation of its right to (a) cancel, reject or return all or any portion of the Goods and/or Services, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery and/or performance, or breach or non-compliance with any of the terms or provisions of this Purchase Order
5. **Changes.** The Simons Foundation shall have the right at any time to make changes in drawings, designs, specifications, payment methods, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for performance of a Purchase Order, an equitable adjustment will be made, and the applicable Purchase Order shall be modified in writing accordingly. Seller agrees to accept any such changes to any Purchase Order or decline such changes promptly in writing.
6. **Blanket Purchase Orders.** If a Purchase Order is issued as a blanket purchase order, any quantities listed thereon/total amounts indicated will be estimates/not-to-exceed amounts only, and the Simons Foundation reserves the right to increase or decrease the quantity ordered at any time in its sole discretion. Any such blanket purchase order will not create any commitment on the part of the Simons Foundation to purchase any goods and/or services from Seller. With respect to such blanket purchase orders, the Simons Foundation will only be obligated to purchase those quantities of goods and/or services that it specifically requests under separate subsequent release orders issued by the Simons Foundation to Seller.
7. **Time for Delivery and/or Performance.** Delivery and/or performance will be strictly in accordance with the Simons Foundation’s delivery and/or performance schedule. If Seller’s delivery and/or performance schedule fails to meet such schedule, the Simons Foundation may, without limiting any of its other rights or remedies, direct expedited routing or secure replacement delivery and/or performance by one or more third parties, and the difference between the cost of expedited routing or the replacement delivery and/or performance and this Purchase Order’s delivery and/or performance costs will be paid by Seller upon the Simons Foundation’s demand. Time is of the essence with respect to Seller’s delivery and/or performance under this Purchase Order.
8. **Title and Risk of Loss.** Until delivered to the Simons Foundation in accordance with Section 4, Seller will bear all risk of loss or damage to Goods. Seller shall bear all risks and cost associated with delivering the Goods to the name place of destination ready for unloading and cleared for import, unless this Purchase Order states otherwise. The Sellers shall deliver the Goods to such destination identified in the Purchase Order. At the time when risk of loss passes to the Simons Foundation, the Seller will pass to the Simons Foundation good and marketable title to any Good, free and clear of all liens, claims, security interests, pledges, charges, mortgages, deeds of trust, options, or other encumbrances of any

kind. The Simons Foundation is not responsible for lost or damaged Goods leased or consigned to the Simons Foundation unless the loss or damage is occasioned by the Simons Foundation's own negligence.

9. **Cancellation for Convenience.** The Simons Foundation reserves the right to terminate this Purchase Order for convenience, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the payment to Seller by the Simons Foundation in full for all undisputed amounts already incurred for Goods and/or Services provided to the Simons Foundation by Seller hereunder prior to said termination. Upon notification of termination by the Simons Foundation, Seller shall immediately stop all work and shall immediately cause any of its suppliers and/or subcontractors to cease such work in connection with the applicable Purchase Order. The Simons Foundation shall have no responsibility for work performed after Seller's receipt of notice of termination. Completed work or raw material included in Seller's cost shall be held for disposition in accordance with the Simons Foundation's instructions.
10. **Cancellation for Cause.** The Simons Foundation may terminate this Purchase Order immediately, in whole or in part: (a) for Seller's breach of this Purchase Order, including the failure to deliver and/or perform the Goods and/or Services in accordance with this Purchase Order; or (b) if Seller becomes insolvent or files for bankruptcy protection. If the Simons Foundation terminates for cause, the Simons Foundation shall have no payment obligations to Seller. Should a court of competent jurisdiction subsequently determine that the Simons Foundation's termination for cause was wrongful or unjustified, then such termination shall be automatically considered a termination for convenience under Section 9 and Seller shall have all rights under that provision, but no other rights or claims for damages. This right of termination is in addition to and not in place of any other rights or remedies that the Simons Foundation may have at law or in equity.
11. **Packaging.** The Simons Foundation's Purchase Order number must appear on the outside of each package and all packing slips. A packing slip must be included with each shipment.
12. **Pricing.** The price of the Goods and/or Services shall be as stated in this Purchase Order as agreed upon by the parties. Unless otherwise agreed to in writing by the Simons Foundation, all packing, labeling, storage, shipping, customs, duties, unloading, assembling and installation, insurance and any other similar charges are included in the purchase price set forth in this Purchase Order and the Simons Foundation shall not be charged any additional amounts for such services. No additional costs, fees, surcharges or expenses of any kind shall be added to this Purchase Order without the advance written consent of the Simons Foundation. All shipments on which freight charges are due shall be prepaid by Seller. Collect on delivery (i.e. COD) shipments cannot be accepted.
13. **Invoices; Payment and Payment Discounts.** Seller shall present the Simons Foundation with a written invoice for the amounts due and owing pursuant to the applicable Purchase Order. The Simons Foundation's Purchase Order number must appear on all invoices and payment will be due as set forth on the applicable Purchase Order or as otherwise agreed to in writing by the parties (less any deposits paid to Seller (if any)). The Simons Foundation shall have no obligation to pay any amount prior to the Simons Foundation's receipt of a correct and proper written invoice for such amount prepared in accordance with the applicable Purchase Order. Except as expressly provided in the Purchase Order, payment shall not be due until final acceptance by the Simons Foundation. The Simons Foundation shall have the right to reduce and set off against amounts payable under the Purchase Order any indebtedness or other claim which the Simons Foundation may have against Seller, however and whenever arising. Time, in connection with discounts offered by Seller, will be computed from the date of delivery, or date of receipt of correct written invoice, whichever is later. Acceptance by Seller of the final payment on the contract price shall be and shall operate as a release of the Simons Foundation from all claims of Seller arising out of or in connection with the applicable Purchase Order.
14. **Tax Exemption.** The Simons Foundation is tax exempt and will provide Seller with its exemption certificate on request. All invoices of Seller to the Simons Foundation shall exclude taxes that are excludable under the Simons Foundation's tax exempt status.
15. **Representations and Warranties.** In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to the Simons Foundation that: (a) all Goods and/or Services conform and will continue to conform to the highest applicable industry standards and to any description, sample, specifications or other documentation related to the Goods and/or Services that is included in this Purchase Order or otherwise requested or approved by the Simons Foundation, and that any Services will be provided in a diligent and highly professional manner by appropriately qualified and trained individuals; (b) the Goods and/or Services are and will be fit for the purposes for which purchased, free from defects in materials and workmanship, and safe for their intended use; (c) Seller has all right, title and interest in and to the Goods and/or Services necessary to fulfill its obligations hereunder; (d) the Goods and/or Services are free from any liens, claims and encumbrances of any nature; (e) all Goods and/or Services will comply with all applicable foreign, international, federal, state, municipal, and local laws, rules and regulations, including those relating to fair labor (including the Fair Labor Standards Act of 1938, as amended), health and safety, and environmental standards, including the Occupational Safety and Health Act and the standards promulgated thereunder; and (f) the Goods and/or Services do not and will not infringe or otherwise violate or misappropriate any copyright, patent, trademark, trade secret, or other proprietary right or privacy or publicity right of any third party. All of Seller's representations and warranties, both express and implied, also constitute conditions of this Purchase Order and will survive inspection, acceptance and payment by the Simons Foundation.
16. **Proprietary Rights.** With respect to any Goods and/or Services developed specifically for the Simons Foundation under this Purchase Order, Seller agrees that all such Goods and/or the results and proceeds of such Services, including any deliverables to be provided to the Simons Foundation, (collectively, "Work Product") shall automatically be the sole property of the Simons Foundation upon their creation or (in the case of copyrightable works) fixation in a tangible medium of expression, and the Simons Foundation shall own all rights, including all U.S. and foreign copyright, patent, trademark, trade secret and all other intellectual property or proprietary rights therein (the "Intellectual Property Rights"), title and interest. To the extent that ownership of any rights in and to any Work Product do not otherwise automatically vest in the Simons Foundation, Seller hereby irrevocably assigns to the Simons Foundation all right, title and interest that the Seller may have or may hereafter acquire in all Work Product, including all Intellectual Property Rights, and any registrations or applications relating thereto. Upon the Simons Foundation's request, Seller will provide such cooperation as the Simons Foundation may reasonably request to confirm, obtain, register, transfer, and/or preserve in the name of the Simons Foundation (or its designee) the Work Product and to assist in any proceeding or litigation relating to the Work Product.

- 17. Compliance with Laws and Simons Foundation Policies.** Seller shall comply, at its sole cost and expense, with all applicable international, foreign, and U.S. federal, state, municipal, and local laws, rules and regulations, including obtaining and maintaining any and all permits, licenses, approvals, inspections, certificates and other documents required in connection with the performance of Seller's obligations hereunder or as otherwise required by applicable law. Seller shall comply with all US export control and economic sanctions laws, all laws and regulations applicable to the parties relating to anti-bribery and/or anti-corruption, all applicable laws and regulations pertaining to privacy and confidentiality, including the EU General Data Protection Regulation ("GDPR"), and any other applicable data protection laws, enactments, directives, regulations, guidelines, orders or industry codes applicable to any part of the Goods and/or Services. Seller represents and warrants that neither Seller, Seller's officers, directors, managers, supervisory board members, partners or shareholders, or any party providing any Goods and/or Services to Seller for provision to the Simons Foundation under this Purchase Order are identified on any list of restricted parties maintained by the United States government or other applicable government, including the Specially Designated Nationals List administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), unless expressly authorized in writing by the Simons Foundation. Seller agrees to comply with all Simons Foundation policies and all reasonable instructions of Simons Foundation personnel.
- 18. Indemnification.** To the fullest extent permitted by law, Seller agrees to defend, indemnify and hold harmless the Simons Foundation, and its officers, directors, trustees, agents, employees, representatives, assignees, and licensees, from and against any claim, cost, expense, or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), caused by, resulting from, arising out of, or occurring in connection with any of the following by Seller or its employees, trustees, directors, officers, contractors, or any other party acting on its behalf: (i) breach of any term or provision of the Purchase Order including the representations and warranties; (ii) injury to or death of persons or damage to property caused by or arising out of or in connection with the Goods and/or Services provided by Seller hereunder, except to the extent caused by the negligence or willful misconduct of the Simons Foundation; (iii) violation of applicable laws, rules, or regulations; (iv) actual or alleged infringement or other violation or misappropriation of any intellectual or other propriety right or privacy or publicity right of any third party; or (v) any other acts or omissions or willful misconduct by Seller in connection with this Purchase Order.
- 19. Limitation of Liability.** The Simons Foundation shall not be liable to Seller, its employees, representatives, agents, suppliers, or subcontractors for any anticipated profits or incidental damages or consequential damages. Without limiting the foregoing, the Simons Foundation's liability for any claim arising directly or indirectly under or in connection with this Purchase Order and the Goods and/or Services delivered/provided thereto shall in no event exceed the cost of the Goods and/or Services giving rise to the claim. The Simons Foundation shall have no liability for penalties of any kind.
- 20. Insurance.** Unless expressly waived by the Simons Foundation, Seller shall maintain, at its sole cost and expense, commercial general liability, umbrella liability, workers' compensation, automobile liability, and, if applicable or otherwise required by the Simons Foundation, professional liability insurance, in commercially reasonable amounts and shall provide a certificate of insurance prior to providing any Goods and/or Services to the Simons Foundation for all policies in effect for the entire duration of this Purchase Order and the duration of delivery/provision of Goods and/or Services pursuant thereto. Such policies shall include The Simons Foundation, Inc. and its affiliates, officers, directors, trustees, members, employees, representatives, managers and agents as additional insureds and contain a waiver of subrogation by insurer with respect to the Simons Foundation and the above-referenced additional insureds (with respect to general liability, automobile liability, umbrella, and worker's compensation). If any of Seller's insurance policies require that Seller must have a written agreement with the Simons Foundation et al. to provide said parties with the protection of Seller's insurance, then for that purpose this Purchase Order shall be construed as such written agreement. All coverages shall be primary and non-contributory to any insurance that may be carried by the additional insured(s) whether collectible or not. The policies required above shall not contain any exclusions that limit the coverage for the Goods and/or Services under this Purchase Order. The Simons Foundation reserves the right to require other coverages and/or amounts of insurance if the Goods and/or Services contain additional exposures not contemplated herein. Seller agrees to notify the Simons Foundation within three (3) days of learning of cancellation or non-renewal or impending cancellation or non-renewal of said policies. Seller's procurement of the insurance hereunder will not relieve Seller of any obligation or liability assumed under this Purchase Order.
- 21. Force Majeure.** The Simons Foundation will not have responsibility or liability to the Seller due to circumstances beyond its reasonable control, including any act of God, war or public enemy, or any act of government or any agency thereof, or any fire, flood, explosion or other catastrophe, or any epidemic or quarantine restriction, or any act of sabotage or terrorism, or any strike, lockout or other work stoppage, slowdown or dispute.
- 22. Confidential Information.** Seller will hold in confidence and will not directly or indirectly disclose to any person or use for its own benefit any information provided by the Simons Foundation or its affiliates or otherwise obtained or developed by Seller as a result of this Purchase Order that is confidential or proprietary in nature, whether written, verbal or in any other form, including any information that relates to the employees, research and development, plans, business affairs, finances, fundraising, marketing, property, records, contracts, processes, techniques, inventions, trade secrets or know-how of the Simons Foundation ("Confidential Information"). Seller will only disclose the Confidential Information to those of its respective, employees, representatives and/or agents who need to know such Confidential Information in order for Seller to carry out its obligations hereunder, provided that such employees, representatives and/or agents are bound by confidentiality obligations that are no less stringent than those set forth herein and have been informed of their confidentiality obligations hereunder. Seller acknowledges that all right, title and interest in the Confidential Information remains the sole property of the Simons Foundation, and that Seller will not obtain any such right, title and interest by virtue of this Purchase Order or otherwise. Upon expiration or termination of this Purchase Order, Seller will, at the Simons Foundation's option, either return to the Simons Foundation any and all Confidential Information and any copies thereof or will destroy such Confidential Information and copies thereof. Seller agrees that the loss arising from a breach of the foregoing confidentiality obligations cannot adequately be compensated solely by money damages and will cause the Simons Foundation to suffer irreparable harm, that a remedy at law for such breach would not be adequate and that the Simons Foundation will be entitled to injunctive relief for such breach in addition to all other remedies that might be available to it.
- 23. Use of Name; Publicity.** Seller will not use any name, logo, trademark or other designation of the Simons Foundation or its affiliates, or any of their respective divisions, departments or other units, for any purpose, including in any marketing, advertising or publicity materials, without the Simons Foundation's prior written consent.

- 24. Notices.** All notices must be in writing and will be deemed given only when (i) hand delivered; (ii) one business day following the day sent by documented overnight delivery service to the party whom the notice is directed at its address indicated in the applicable Purchase Order or otherwise provided in writing; or (iii) sent by electronic mail to the party whom notice is directed at the electronic mail address specified in the applicable Purchase Order or otherwise provided in writing, provided, that if notice is provided to the Simons Foundation under subsection (iii) herein, written confirmation of such notice shall also be provided to the Simons Foundation as described in subsection (i) or (ii).
- 25. Governing Law.** This Purchase Order and all matters arising out of or relating to this Purchase Order will be governed by and construed according to the laws of the State of New York without regard to principles of conflicts of law. The courts of the State of New York in New York County and the United States District Court for the Southern District of New York will have exclusive jurisdiction over the parties with respect to any dispute, controversy, or claim between them arising out of or relating to this Purchase Order.
- 26. Miscellaneous.** This Purchase Order will be binding on the parties and their respective successors and permitted assigns. Seller may not assign this Purchase Order or any of its rights and obligations hereunder without the Simons Foundation's prior written consent. Any attempted assignment by Seller without such consent will be null and void for all purposes. If the Simons Foundation consents to an assignment, Seller will remain primarily responsible for any and all Goods and/or Services delivered and/or performed by such assignee or subcontractor as if performed and/or delivered by Seller. Seller may not modify, waive or supplement this Purchase Order or any term or condition thereof without the written agreement of the Simons Foundation. This Purchase Order may be changed or modified by the Simons Foundation by a written instrument signed by the Simons Foundation. The failure of the Simons Foundation to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Purchase Order, or to otherwise exercise any right or remedy under this Purchase Order or otherwise, will not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, or of the future exercise of such right or remedy, but rather the obligation of Seller with respect to that future performance will continue in full force and effect. If any provision of this Purchase Order is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof will continue in full force and effect. This Purchase Order is not for the benefit of any third parties. Nothing contained herein will create any agency, partnership, association, or joint venture between the parties. The relationship of Seller to the Simons Foundation is that of independent contractor solely and Seller is directly responsible for the mode, method, and manner of its activities. Under no circumstances, as a result of this Purchase Order or otherwise, will Seller or any of its employees, agents, or representatives be considered an employee, agent, or representative of the Simons Foundation. All provisions that expressly or by their nature should survive termination of this Purchase Order shall survive, including all representations and warranties, indemnification obligations, and confidentiality obligations. Use of the word "including" throughout this Purchase Order is intended to introduce a nonexhaustive list and will be deemed to include the phrase "but not limited to" in each instance. Any affiliate of Simons Foundation shall have the right to use the Goods and/or Services and/or to exercise any of Simons Foundation's rights under this Purchase Order.

(effective 7/16/2018).