



## **PROCUREMENT OPERATIONS TERMS AND CONDITIONS OF PURCHASE ORDERS (REVISED OCTOBER 2009)**

### **1.0 AGREEMENT**

The Purchase Order, including these Terms and Conditions of Purchase, any referenced attachments, and any other documents incorporated by reference therein, shall constitute the complete agreement between the parties relating to the Goods, superseding all prior agreements or undertakings. Any exceptions or additional terms in Seller's acknowledgment of the Purchase Order are hereby rejected unless specifically agreed to in writing by the Purchaser and Seller. No course of prior dealing or performance between Purchaser and Seller or usage of trade shall be relevant to supplement, explain, interpret or modify any term, condition or instruction used in the Purchase Order.

### **2.0 DEFINITIONS**

As used in the Purchase Order, the following terms shall have the following definitions:

- 2.1 Drawings: The word "Drawings" means those drawings, data sheets, and all other technical documentation included or referenced in the Purchase Order other than the Specification.
- 2.2 Goods: The word "Goods" means the supplies, materials, equipment, or other items including all documentation that Seller is required to furnish pursuant to the Purchase Order.
- 2.3 Purchase Order: The words "Purchase Order" mean the written agreement between Purchaser and Seller for the supply of the Goods and the completion of all requirements thereof, including the requirements of the Specification and Drawings; the Terms and Conditions of Purchase (SFI); all exhibits, attachments and appendices thereto; all documents expressly incorporated into the Purchase Order by reference; any modifications to any of the foregoing; and any requirements that can be reasonably inferred therefrom.
- 2.4 Purchaser: The word "Purchaser" means the Houston Community College System identified in the Purchase Order.
- 2.5 Seller: The word "Seller" means the party providing Goods under the Purchase Order.
- 2.6 Specification: The word "Specification" or "Specifications" means the technical specifications for the Goods identified in the Purchase Order and any other codes, standards or specifications referenced in such technical specifications.
- 2.7 Vendor: The word "Vendor" means any individual, firm, partnership, corporation, or contractor having an agreement with Seller to perform a portion of Seller's obligations under the Purchase Order.

### **3.0 SELLER'S DUTY TO NOTIFY PURCHASER OF CONFLICTS**

Seller shall promptly notify Purchaser in writing of any conflicts, discrepancies, errors or omissions among the documents comprising the Purchase Order. Any work affected by such conflict, discrepancy, error or omission performed by Seller prior to resolution of the same by Purchaser shall be at Seller's risk.

### **4.0 SUBMITTALS**

- 4.1 Seller shall promptly submit to Purchaser in accordance with the schedule set forth in the Purchase Order all drawings, schematics, plans or other representations of the Goods and all technical data or performance specifications that Purchaser may require prior to fabrication, manufacture, assembly, packaging or shipment of the Goods. Upon receipt of such drawings and/or documents, Purchaser shall review them and return them to Seller also in accordance with the schedule set forth in the Purchase Order and marked "Approved," "Approved as Noted," or "Revise and Resubmit."



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- 4.2 Upon receipt of drawings and documents marked "Approved," Seller shall commence fabrication, manufacture, or assembly, as applicable. Upon receipt of drawings and documents marked "Approved as Noted," Seller shall incorporate into the drawings and documents the comments noted by Purchaser and commence fabrication, manufacture, or assembly, as applicable, in accordance with the revised drawings and documents. Seller shall resubmit to Purchaser within fourteen (14) days revised drawings and documents in which Purchaser's comments have been incorporated.
- 4.3 Upon receipt of drawings or documents marked "Revise and Resubmit," Seller shall immediately revise its drawings or documents in accordance with Purchaser's comments and resubmit its revised drawings and documents to Purchaser. In no event shall Seller fabricate, manufacture, or assemble the Goods until its revised drawings or documents have been returned to Seller marked "Approved" or "Approved as Noted."
- 4.4 Use of the term "Approved" or "Approved as Noted" shall not absolve or otherwise discharge Seller from its responsibility to supply Goods that comply with the requirements of the Specification and Drawings.

### **5.0 REPRODUCTION OF DRAWINGS**

Purchaser shall have the right to reproduce any and all drawings, prints, or other data received from Seller that are considered necessary for engineering, construction, start-up, commissioning, maintenance, or other purposes related to work despite any notice to the contrary appearing on the document.

### **6.0 EXPEDITING, INSPECTION AND REJECTION**

- 6.1 For the purposes of expediting and inspection, Seller shall provide Purchaser reasonable access to its and its Vendors' facilities. Seller shall provide at its own expense, and shall cause its Vendors to provide at their own or Seller's expense, the equipment, facilities and personnel necessary for the performance of the tests specified in the Purchase Order.
- 6.2 No Goods shall be shipped before all tests and inspections have been performed in accordance with the Purchase Order and the results of such tests or inspections have been accepted by Purchaser. Certified copies of the test results and inspection reports shall be transmitted to Purchaser in accordance with the required schedule date thereof set forth in the Purchase Order.
- 6.3 If any Goods are found to be defective or not in conformance with the Purchase Order, Purchaser shall have the right, upon giving notice and the basis for rejection, to either: (1) reject any or all defective or nonconforming Goods; or (2) accept and correct such Goods. Seller shall pay all costs and expenses associated with such rejection or correction.
- 6.4 Purchaser's inspection of the Goods shall not discharge Seller from its obligation to supply Goods that conform to the requirements of the Purchase Order.

### **7.0 TERMS OF DELIVERY AND PURCHASER'S RIGHT TO ROUTE**

- 7.1 The terms "FCA," "FOB," "CIF," "DDP," or other similar designations of terms of delivery of the Goods shall have the meanings assigned them in the International Rules for Interpretations of Trade Terms published by the International Chamber of Commerce, Paris, France, and commonly referred to as INCOTERMS, except as such terms may be specifically modified in the Purchase Order.
- 7.2 Notwithstanding the terms of shipment and delivery set forth in the Purchase Order, and except where such terms are DDP (Delivery Duty Paid), Purchaser reserves the right to specify the mode of transportation and specify the carrier routing assignments for each shipment.



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### 8.0 ASSIGNMENT

Seller shall not assign the Purchase Order, in whole or in part, without Purchaser's prior written consent.

### 9.0 SUBCONTRACTS

Except for materials and minor component parts and except for any portion of the Goods for which a Vendor is named in the Purchase Order, Seller shall not subcontract all or any part of the Purchase Order without first obtaining Purchaser's written approval to do so.

### 10.0 COMPLIANCE WITH LAWS, CODES & REGULATIONS

Seller and any Vendor shall comply with all applicable federal, state, provincial and local laws, codes and regulations in effect at the time of delivery of the Goods.

### 11.0 SHIPMENT AND DELIVERY

11.1 TIME IS A MATERIAL PROVISION OF THE PURCHASE ORDER and Seller acknowledges that Purchaser relies upon Seller's timely performance hereunder.

11.2 In the event of any delay or anticipated delay in Seller's performance, Seller shall immediately give Purchaser notice in writing of such delay or anticipated delay, including a description of the source or cause of the delay and of the actions Seller is undertaking to recover the delay, which actions shall be subject to Purchaser's approval.

### 12.0 SUSPENSION

12.1 Purchaser may at any time and for any reason direct Seller to suspend its performance under the Purchase Order, in whole or in part, by giving written notice to Seller specifying the portion of the work to be suspended.

12.2 If Purchaser suspends Seller's performance hereunder, the scheduled dates for Seller's performance set forth in the Purchase Order shall be adjusted to reflect the impact of any delays resulting from the suspension. Adjustment to the Seller's scheduled dates for performance shall constitute Seller's sole and exclusive remedy for any suspension directed by Purchaser.

### 13.0 TERMINATION FOR CONVENIENCE

13.1 Purchaser may, by written notice to Seller, terminate this Purchase Order, in whole or in part, at any time for its convenience. The written notice of termination shall specify that termination is for Purchaser's convenience, the extent to which performance of the work is terminated, and the date upon which such termination shall become effective. Upon receipt of such written notice, Seller shall stop work to the extent and on the date specified in the notice.

13.2 If the Goods subject to the termination for convenience are standard stock equipment, components, or materials of Seller or its Vendors, Purchaser shall have no obligation to make payment for the Goods so terminated.

13.3 If the Goods subject to the termination for convenience are equipment designed, engineered, fabricated, or manufactured to Purchaser's Specifications and Drawings or to specifications specially prepared by Seller for Purchaser and approved by Purchaser and such Goods are unfinished on the effective date of termination, Purchaser shall pay Seller's direct costs incurred to the effective date of termination, provided, however, that in no event shall the total amount paid by Purchaser upon the termination for convenience, plus payments already made against the Purchase Order, exceed that portion of the total purchase price of the Purchase Order that the work actually performed to the date of termination bears to the entire work specified in the Purchase Order. Upon payment under this Article.



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13.3 Seller shall transfer to Purchaser title to all unfinished Goods for which such payment is made.

13.4 In no event shall Seller be compensated for burden, overhead, indirect expenses, or anticipated profits for itself or for its Vendors for that portion of the work that is terminated.

### **14.0 TERMINATION FOR DEFAULT**

14.1 Purchaser may, by written notice of default sent to Seller and without prejudice to any other remedy for breach of contract, terminate the Purchase Order in whole or in part if: (a) Seller fails to deliver any or all of the Goods pursuant to the scheduled required dates specified in the Purchase Order or any extension thereof granted by Purchaser pursuant to Articles 12.0 or 15.0 or any other article of this Purchase Order; or (b) Seller defaults in its performance of any other material obligation under the Purchase Order, and Seller does not cure its default within a period of seven (7) calendar days after Seller's receipt of a notice of default from Purchaser; or (c) Seller becomes bankrupt or otherwise insolvent or makes an assignment for the benefit of its creditors, or assigns the Purchase Order or any part thereof without the written consent of Purchaser. If Purchaser terminates the Purchase Order only in part, Seller shall continue performance of the Purchase Order to the extent not terminated.

14.2 Upon termination under this Article 14.0, Purchaser shall not be required to make any additional payments to Seller unless and until replacement goods have been delivered and installed, and it has been determined that there are no excess costs. In no event, however, shall Purchaser be liable to Seller for the payment of any remaining balance of the total purchase price to the extent that the balance exceeds that portion of the total price attributable to that portion of the Goods conforming to the requirements of the Purchase Order and delivered and accepted by Purchaser prior to termination under this Article 14.0.

### **15.0 FORCE MAJEURE**

15.1 Neither Seller nor Purchaser shall be responsible or liable for, or deemed in breach of the Purchase Order because of any delay in the performance of their respective obligations hereunder if and to the extent that such delay is due to an event of Force Majeure, which is defined to be any event that causes such delay in performance and which is beyond the reasonable control of the party incurring the delay, such as war, civil insurrection, fires, floods, strong typhoons, epidemics, earthquakes, embargo restrictions, quarantine restrictions, strikes or other labor activities, actions or failures to act on the part of governmental authorities preventing performance, and transportation accidents. In no instance shall any event that is caused by the intentional act, error, omission or negligence of the Seller be considered Force Majeure entitling Seller to relief under this Article 15.0.

15.2 If a Force Majeure event occurs that will delay Seller in the performance of its obligations under this Purchase Order, Seller shall promptly notify Purchaser in writing of such condition and the cause thereof no later than ten (10) calendar days after the event of Force Majeure.

15.3 If Seller experiences a delay caused by a Force Majeure event and provided Seller has given Purchaser written notice thereof as set forth in Article 15.2, the required schedule date for delivery of the Goods and any other required dates for performance by Seller shall be equitably adjusted to reflect the delay caused by such Force Majeure event.

15.4 Seller's sole and exclusive remedy in the event of a Force Majeure event shall be limited to an equitable adjustment to the delivery schedule in accordance with this Article 15.0.



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### 16.0 WARRANTIES

- 16.1 "Warranty Period" means the one (1) year period of time after the Goods are placed in service for commercial use.
- 16.2 During the Warranty Period, Seller warrants: (a) that the Goods shall be new; (b) that the Goods shall be free from all latent and patent defects in design, material, and workmanship; (c) that the Goods shall conform to the requirements of the Purchase Order; and (d) that the Goods shall function in the manner represented by Seller and shall achieve the performance requirements stated in the Specification when operating within the design conditions described therein.
- 16.3 Subject to Article 16.6, if during the Warranty Period all or any portion of the Goods fail to conform to the warranties set forth in Article 16.2, the defective or nonconforming Goods shall be redesigned and/or repaired or replaced by and at the expense of Seller as soon as reasonably possible, but in any event within, or commencing within, ten (10) calendar days after Seller receives written notice from Purchaser that the Goods are nonconforming. All costs incurred to remove, disassemble, reassemble and re-install the Goods that are attributable to Seller's redesign, repair or replacement of the Goods shall be to the account of Seller.
- 16.4 Seller shall warrant any Goods that have been redesigned repaired or replaced for a period of one (1) year from the date the repair or replacement has been completed.
- 16.5 Seller shall not be required to redesign, repair, or replace Goods that are defective or that fail to conform to the warranties set forth in Article 16.2 by reason of Purchaser's failure to install, operate or maintain the Goods in accordance with Seller's instructions or by reason of normal wear and tear.
- 16.6 If the Purchaser in its sole discretion determines that the requirements of its schedule will be adversely affected if the repair, redesign, or replacement is not performed prior to the expiration of the ten (10) day period, then the redesign, repair or replacement may be made by Purchaser and all costs therefore shall be to Seller's account, provided, however, that Purchaser, as applicable, has given written notice thereof to Seller and afforded Seller the opportunity to redesign, repair or replace the Goods within the time determined by Purchaser to be required.

### 17.0 WARRANTY OF TITLE

Seller warrants it has good, marketable and clear title to the Goods, and that the Goods are subject to no liens, charges or encumbrances whatsoever.

### 18.0 WARRANTY AGAINST INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS, AND TRADE SECRETS

Seller represents and warrants that the Goods or any portion thereof do not infringe any patent, copyright, trademark or trade secret.

### 19.0 CHANGES BY PURCHASER

Purchaser shall have the right, at any time, to make changes in the Purchase Order that Purchaser may deem desirable. If such change causes a material increase in Seller's cost and/or the time for performance, Seller shall so notify Purchaser in writing within ten (10) calendar days from the date of Seller's receipt of Purchaser's notice of change, and an equitable adjustment in the price and/or the time of performance shall be mutually agreed upon between Purchaser and Seller. No such change shall be effective in the absence of express written direction of the Purchaser.



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### **20.0 CONSEQUENTIAL DAMAGES**

Except for those damages specifically recoverable by the Purchaser or Seller as set forth in these Terms and Conditions of Purchase or any other documents comprising the Purchase Order, neither the Seller nor the Purchaser shall be liable to each other, whether such liability arises out of contract, tort (including negligence), strict liability or any other cause or form of action whatsoever for any special, incidental, indirect or consequential loss or damage of any nature, arising out of or in connection with the Purchase Order, other than special, incidental, indirect or consequential damages resulting from the willful misconduct of Seller.

### **21.0 INDEMNIFICATION**

Seller agrees to protect, indemnify, defend, and hold Purchaser, and Purchaser's respective directors, officers, agents, employees, students and affiliated companies free and harmless from and against any and all claims, demands, causes of action, suits, or other litigation (including all costs thereof and attorneys' fees) of every kind and character arising in favor of any party (including, but not limited to, personnel furnished by Seller) on account of bodily injuries, death, or damage to property that results from the fault, negligent act or omission, or willful misconduct of Seller, its Vendors, and their respective directors, officers, agents, or employees arising out of or in connection with the Goods, and against all claims, demands, causes of action, suits, costs and damages resulting in any way from Seller's breach of the Purchase Order or arising from any claim or legal action based on a claim that the Goods or any portion thereof infringe any patent, copyright or trademark or constitute an unauthorized disclosure of any trade secret.

### **22.0 PURCHASER'S REMEDIES**

Except for any rights and remedies of the Purchaser that are designated as exclusive in the Purchase Order, all rights and remedies of the Purchaser set forth in the Purchase Order or existing at law or in equity shall be cumulative and may be exercised concurrently.

### **23.0 WAIVER OF LIENS**

Seller shall furnish all necessary lien waivers, affidavits, or other documents required to keep Purchaser's facilities and the Goods free from liens or claims for liens arising out of the furnishing of the Goods. If any such lien is filed or claim is made, Seller shall remove the lien or defend against any such claim. If Seller fails to remove such lien or claim within a reasonable period of time, Purchaser may proceed to remove such lien or claim, and Seller represents and agrees that the Purchase Order price shall be reduced by the amount required to remove the lien plus all costs and expenses, including attorneys' fees, incurred by Purchaser for the removal of such lien or claim.

### **24.0 CLAIMS**

No claim for extra compensation or for additional time for performance of the Purchase Order shall be presented by Seller or considered by Purchaser unless Seller shall first have provided written notice of such claim to Purchaser within ten (10) calendar days after the occurrence of the event giving rise to the claim. If Seller fails to give Purchaser such notice within ten (10) calendar days, Seller's claim shall be conclusively deemed to have been waived by Seller.



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### **25.0 PASSAGE OF TITLE AND RISK OF LOSS**

25.1 Title shall pass to Purchaser upon delivery of the Goods in accordance with the terms of delivery specified in the Purchase Order.

25.2 Notwithstanding Article 25.1, Seller shall be responsible for and shall bear any risk of loss of or damage to the Goods until delivery thereof to Purchaser in accordance with the provisions of the Purchase Order relating to shipment and delivery, provided, however, that any loss or damage, whenever and wherever occurring, that results from Seller's improper packaging or crating shall be and remain the responsibility of Seller.

### **26.0 FINAL PAYMENT**

Purchaser shall be entitled to withhold final payment from Seller until Seller has delivered to Purchaser all Goods as defined herein, including all drawings, reports and other documentation specified in and required by the Purchase Order. Payments terms are n45 after receipt of invoice.

### **27.0 ACCOUNTING REQUIREMENTS**

Seller agrees to furnish for accounting purposes such further itemization of its Purchase Order pricing as may reasonably be requested by Purchaser, provided, however, that Seller shall not be required to disclose proprietary information.

### **28.0 NON-DISCLOSURE**

All information obtained by Seller from or through Purchaser is proprietary information. All such information shall be treated as confidential by Seller and shall not be used for any purpose other than Seller's performance of the Purchase Order. Seller represents and agrees that it will not disclose to third parties, without the prior written consent of Purchaser, any information obtained from or through Purchaser unless said information is found to be already in the public domain.

### **29.0 OFFSETTING OF OUTSTANDING OBLIGATIONS OF THE SELLER**

Any and all payments due Seller hereunder may, at the discretion of Purchaser, be offset or charged against any outstanding obligations of Seller to Purchaser under this or any other purchase order, contract or agreement.

### **30.0 NON-WAIVER PROVISION**

Purchaser's waiver of any breach or failure to enforce any of the terms, conditions or other provisions of the Purchase Order at any time shall not in any way affect, limit, modify or waive Purchaser's right thereafter to enforce or compel strict compliance with every term, covenant or other provision of the Purchase Order, any course of dealing or performance or usage of trade notwithstanding.

### **31.0 SEVERABILITY**

The invalidity or unenforceability of any provision of the Purchase Order, including but not limited to these Terms and Conditions of Purchase (MM1), shall in no way affect the validity or enforceability of any other provision hereof.

### **32.0 NOTICES**

Any notice given by one party to the other shall be sent in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; or (c) sent by a recognized overnight mail or courier service, with delivery receipt. A notice shall be effective upon receipt or on the notice's effective date, whichever is later.



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### **33.0 ENGLISH LANGUAGE**

Seller hereby represents that it has sufficient knowledge of the English language to fully understand the Purchase Order. The Purchase Order shall be in the English language and all documentation related thereto, including without limitation any documentation to be provided by Seller or its Vendors will also be in the English language. Seller shall bear all costs of translation and assumes all risk of such translation.

### **34.0 APPLICABLE LAW**

The Purchase Order shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of law principles.

### **35.0 JUDICIAL FORUM**

Unless otherwise provided in the Purchase Order all disputes arising out of the Purchase Order shall be decided in judicial proceedings in the courts of the State of Texas, United States of America. Seller and Purchaser hereby waive any other venue to which each might otherwise be entitled to submit a controversy arising hereunder for adjudication.