

MONTGOMERY COMMUNITY COLLEGE

TERMS AND CONDITIONS OF PURCHASE

1. ASSURANCE OF NON-CONVICTION OF BRIBERY: Seller hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal Government.

2. AUDIT: Seller shall permit audit and fiscal and programmatic monitoring of the work performed under any contract issued. The College shall have access to and the right to examine and/or audit any records, books, documents and papers of Seller and any sub-contractor involving transactions related to this Agreement during the term of this Agreement and for a period of three (3) years after final payment under this Agreement.

3. BEHAVIOR OF CONTRACTOR'S EMPLOYEES, AGENTS AND SUBCONTRACTORS: The College is committed to providing a work and study environment that is free from discrimination and harassment on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, pregnancy or status as a disabled veteran or veteran of the Vietnam era. Behavior contrary to this philosophy, which has the purpose of effect of creating an intimidating, hostile, or offensive environment, will not be tolerated by the College, and it is the contractor's responsibility to ensure that such behavior by its employees, agents and subcontractors does not occur. This policy extends to maintaining an environment free from sexual harassment. Therefore, sexual advances or sexual remarks, requests for sexual favors, and other verbal or physical conduct of a sexual nature must not be condoned or permitted by the contractor. This prohibition extends to such harassment within the employment context as well as harassment of students, staff and visitors of the College. It should be assumed that all sexual behavior by the contractor's employees, agents and subcontractors on any campus facility of the College, whether owned, operated, maintained or leased by the College, is improper and unwelcome.

4. CHANGES: The President of the College or a designee may at any time, by written order, make changes within the general scope of the Agreement in the work and service to be performed. If any such changes cause an increase or decrease in Seller's cost of, or the time required for performance of this Agreement, an equitable adjustment shall be made, and the Agreement shall be modified in writing accordingly.

5. CLICK-THROUGH DISCLAIMER: The parties acknowledge that College users may be required to click "ACCEPT" or be presumed to have "ACCEPTED" seller's online terms and conditions as a condition of access to the seller's services, product or website. The provisions of such "CLICK THROUGH ACCEPT" agreement and other terms (including "TERMS OF USE", "PRIVACY POLICY", and similar impositions or proposed contractual obligations) referenced therein shall be null and void for the College. Any user accessing seller's services, product or website as an agent for the College, or as a user of the services, product or website through this agreement, does not have authority to contractually bind the College. Any "TERMS OF USE" or "PRIVACY POLICY" or any other policy referenced by online links, or terms or policy conditions for use of the services, product or website shall only apply to the extent such terms or policies exist as of the effective date, are not inconsistent with the provisions herein, and provide no additional obligation on the College or its agents or users. Such provisions shall not be subject to change by the contractor, and shall be subordinate and subject to the provisions of this agreement.

6. COMPLIANCE WITH LAWS: Seller agrees to comply, at no additional expense, with all applicable Executive Orders, Federal State, bi-county, regional and local laws, ordinances, rules and regulations in effect as of the date of this Agreement and as they may be amended from time to time, including but not limited to the equal employment opportunity clause set forth in 41 CFR 60-250.4.

7. CONTINGENT FEES: Seller hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Seller, to solicit or secure a contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this contract.

8. CONTRACT TERMS: The performance of this contract shall be governed solely by the terms and conditions as set forth in this purchase order notwithstanding any language contained on any invoice, shipping order, bill of lading or other document furnished the Seller at any time. The acceptance by the College of any goods or services furnished hereunder shall not be construed as acceptance by the College of any terms or conditions which are inconsistent with the terms and conditions here stated. All terms and conditions under the solicitation, and any amendments thereto, are made part of this contract. Any different or additional terms other than those herein contained in Seller's acceptance are hereby objected to.

9. DELIVERY AND PACKING: All prices quoted must include delivery. All goods delivered under this contract shall be packed in accordance with accepted trade practices. No charges may be made over and above the bid price for packaging, or for deposits or containers unless specified in the bid. No charge will be allowed for cartage unless by prior written agreement. Complete deliveries must be made by the successful bidder to the designated location as indicated on the Montgomery Community College purchase order. A packing slip shall be included in each shipment. All deliveries must be prepaid and must be delivered to each location designated on purchase order at no additional cost. DELIVERIES MUST BE MADE TO THE SPECIFIED LOCATION. NO COLLECT SHIPMENTS OR SIDEWALK DELIVERIES WILL BE ACCEPTED.

10. DISPUTES: Any dispute arising under this contract which is not disposed of by agreement shall be decided by the President of Montgomery Community College or a designee. Pending final decision of the dispute, the contractor shall proceed diligently with contract performance. Nothing hereunder shall be interpreted to preclude the parties from seeking, after completion of the agreement, any and all remedies provided by law.

11. HAZARDOUS AND TOXIC SUBSTANCES: Seller must comply with all

applicable Federal, State, County and bi-county laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Seller shall provide direct to the College Environmental Safety Office a "Safety Data Sheet" including reference to the Purchase Order number, or in the case of a controlled hazardous waste substance, a hazardous waste manifest for all hazardous chemicals listed or subsequently added to the Chemical Information List in compliance with applicable laws, ordinances and regulations.

12. IDENTIFICATION/INSURANCE: The contractor will be required to have proper identification, showing vendor name and technician name, at all times while on campus. The contractor shall maintain such insurance as will indemnify and hold harmless the College from Workmen's Compensation and Public Liability claims for property damage and personal injury, including death, which may arise from the contractor's operations under this contract, or by anyone directly or indirectly employed by him/her.

13. INSOLVENCY: If the College has reasonable cause to believe the Seller is insolvent, or if any petition in bankruptcy or under any law for the relief of debtors is filed by or in respect of Seller, then at the option of the College, the Agreement shall immediately terminate. In no event shall the Agreement become an asset in any such proceeding nor shall the College be bound hereby after any act of bankruptcy by Seller. Any delay by the College in the exercise of the right to terminate under this section shall not diminish or waive that right.

14. INSPECTION AND ACCEPTANCE: No goods received by the College pursuant to the purchase order shall be deemed accepted until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at Seller's expense for full credit or replacement, at the College's sole option. The College reserves the right to test any goods, or services delivered to determine that specifications have been met. No goods returned as defective shall be replaced without College authorization. If vendor fails to cure defect within ten (10) calendar days, the College reserves the right to purchase on the open market and Seller shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

15. INVOICES: A separate invoice for the purchase order or for each shipment thereon shall be forwarded directly to Montgomery College, Accounts Payable, 9221 Corporate Blvd., Rockville, MD 20850. The purchase order number must be shown by vendor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence. Failure to comply may result in refusal of shipment and/or delay in payment. The College has no liability for invoices not prepared in accordance with these requirements.

16. MARYLAND LAW: This contract shall be construed and interpreted according to Maryland Law.

17. MARYLAND PUBLIC INFORMATION ACT: Seller recognizes that the College is subject to the Maryland Public Information Act, *Title 4 of the General Provisions Article of the Annotated Code of Maryland*. Seller agrees that it will provide any justification as to why any material, in whole or in part, is deemed to be confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed pursuant to the Maryland Public Information Act.

18. NON-COLLUSION: Seller certifies that it has neither agreed, conspired, connived or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith; Seller also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Seller or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.

19. NON-DISCRIMINATION: Seller assures the College that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of sex, race, age, color, creed, national origin, religious belief, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. Seller further agrees to post in conspicuous places notices setting forth the provisions of non-discrimination clause and to take affirmative action to implement the provisions of this section. Seller further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

20. NON-HIRING OF EMPLOYEES: No employees of the College or of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or attending the subject matter of this Agreement shall, while being employed, become or be an employee of Seller.

21. PATENTS: Seller guarantees that the sale and/or use of the goods offered will not infringe upon any U.S. or foreign patent. Seller will at his/her own expense, indemnify, protect and save harmless the College, its trustees, employees, agents and students with respect to any claim, action, cost or judgment for patent infringement, arising out of the purchase or use of these goods.

22. PRODUCT TESTING DURING TERM OF CONTRACT: Goods delivered under the contract may be tested for compliance with specifications stipulated herein. Any shipment failing to meet or comply fully with the specification requirements shall be rejected and returned at Seller's sole expense. The cost of testing a representative sample of an order or shipment for acceptance shall be borne by the College unless the order is rejected for failure to meet specifications or purchase description. In such cases of rejection, the cost of testing will be charged back to the vendor.

23. QUANTITIES: The College assumes no obligation for articles or materials shipped in excess of the quantity ordered. Any over shipments will be subjected to rejection and will be returned at Seller's expense.

24. RECORD RETENTION: If awarded a contract, vendor shall maintain books and records relating to the subject matter of this Agreement, including but not limited to all charges to the College, for a period of three (3) years from the date of final payment under this Agreement.

25. TAXES: The College is generally exempt from Federal and Maryland taxes. Exemption Certificates are available upon request. Seller shall be responsible for the payment of any and all applicable taxes resulting from any award and/or activities hereunder, including but not limited to any applicable amusement and/or sales taxes.

26. TERMINATION BASED ON LACK OF FUNDING: Seller understands that Montgomery Community College is a public institution of higher education and its budget is subject to funding by governmental entities. This Agreement is subject to the continued appropriation of sufficient funds for this Agreement by the College's appropriating authority. For purpose of this Agreement, the College's appropriating authority is deemed to be the Board of Trustees of Montgomery Community College. Lack of funding shall be grounds for immediate termination of the Agreement.

27. TERMINATION FOR CONVENIENCE: The performance of the work or services under this Agreement may be terminated in whole or in part, whenever the President of Montgomery Community College shall deem that termination is in the best interest of the College. Such determination shall be in the sole discretion of the President. In such event, the College shall be liable only for payment in accordance with the payment provisions of this Agreement for work or services performed or furnished prior to the effective date of termination. Termination hereunder shall become effective by delivery of written notice of termination upon which date the termination shall become effective.

28. TERMINATION FOR DEFAULT: When the contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the College. Failure on the part of the contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the contractor is not entitled to recover any costs incurred by the contractor up to the date of termination.

29. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Agreement.

30. WARRANTY: Seller expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by the College and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive a contract and shall not be deemed waived either by the College's acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Seller further warrants all articles, material and work performed for a period of one (1) year, unless otherwise stated, from date of acceptance of the items delivered and installed. All repairs, replacements or adjustments during the warranty period shall be at Seller's expense.