

COLLEGE OF THE MAINLAND

PURCHASE ORDER TERMS & CONDITIONS

This is a purchase order issued by College of the Mainland herein referred to as "Buyer" or "COM". If you are unable to comply with these terms and conditions, notify Buyer's representative at once. Failure of Buyer or Seller to insist upon strict compliance to the terms, conditions, and provisions of this purchase order is not a waiver and does not imply that strict adherence will not be required on this or future purchase orders.

- (1) **PURCHASE ORDER VALIDITY:** This purchase order is valid only when an order number and a written or stamped signature of Buyer appear in the spaces provided. The purchase order number must appear on all invoices, bills of lading, packages, and correspondence. To the extent that terms and conditions appearing on the face of this purchase order are inconsistent with those set forth herein, the terms on the face shall govern.
- (2) **REPRESENTATION:** The party to which this purchase order is issued ("Seller") is an independent contractor and under no circumstances will Seller be considered or construed to be an employee, agent or representative of Buyer. Seller agrees that it is an equal opportunity employer and will comply with all applicable federal, state and local laws and regulations regarding contracting and employment practices.
- (3) **TAXES:** As an institution of higher education and a political subdivision of the State of Texas, in accordance with the State of Texas and Federal Tax Codes, Buyer hereby certifies it is exempt from the payment of property, sales, use, franchise, excise or other taxes. In the event it is determined that Buyer is legally liable for payment of taxes for which an exemption is claimed, Buyer will remit such taxes to the applicable taxing authority.
- (4) **ALTERNATE ITEMS/SUBSTITUTIONS:** No substitutions of goods, change of services, delivery dates or price increases of any nature shall be made without the prior written approval of the Buyer that signed this order, or by other authorized representatives of Buyer.
- (5) **PRICES:** Goods to be provided and/or services to be performed shall be in accordance with the terms, prices, delivery time and specifications as required under this purchase order. Unless shown otherwise on this purchase order, the price(s) shown includes the cost for: (a) freight, delivery, unloading and placement of the goods in the designated location within a building; and, (b) for equipment and furniture, uncrating, complete assembly, adjustment, testing and removal of all debris. Time is of the essence in the delivery of goods and/or providing of services.
- (6) **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: a) Seller's name and address; b) Consignee's name, address and purchase order number; c) Container number and total number of containers, e.g. box 1 of 4 boxes; and d) the number of the container bearing the packing slip (must accompany all goods delivered). The packing slip (or shipping ticket) must state clearly purchase order number, packing slip number, number of items, stock number, destination of delivery and delivery date. Seller shall bear cost of packaging unless otherwise provided.
- (7) **SHIPPING & HANDLING:** Unless otherwise stated on this purchase order, all shipments are to be made "F.O.B. destination" and risk of loss and/or title to the goods will not pass to Buyer until the goods are accepted at the delivery destination. Notwithstanding the F.O.B. point specified in this purchase order, Seller shall be liable for handling claims for, and the replacement of goods, lost or damaged prior to acceptance by Buyer. Unless specified otherwise on this order, deliveries shall be made to the Buyer's central receiving dock on regular business days between the hours of 8:00 am. and 5:00 p.m. No C.O.D. shipments or deliveries on Buyer's holidays will be accepted.
- (8) **DELIVERY:** a) The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery; b) Delivery terms are F.O.B. inside delivery, unless delivery terms are specified otherwise; c) The place of delivery shall be that set forth on the purchase order; d) Seller must provide goods or services within the term dates indicated on the purchase order. The terms of this agreement are "no arrival, no sale."
- (9) **INSURANCE:** Where Seller or its agent(s) have personnel making deliveries to or performing services at Buyer's premises, Seller or its agent(s) must carry public liability, property damage and workers compensation insurance with carriers authorized to provide such insurance under the laws of the State of Texas. Unless otherwise specified, minimum requirements are: (a) Commercial General Liability - \$100,000 bodily injury and \$100,000 property damage; and (b) Automobile Liability - \$100,000 bodily injury and \$100,000 property

damage. The Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Purchaser. Seller shall maintain all necessary coverage, including public liability and Workman's Compensation insurance. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph. Buyer shall be named as an additional insured.

- (10) **RIGHT OF INSPECTION:** In addition to other rights provided for herein and by law, Buyer reserves the right to: (a) inspect goods delivered and reject/return those which are damaged, incomplete, do not meet specifications or reasonable standards of quality, (b) reject goods shipped contrary to instructions or in containers which do not meet recognized standards; and (c) cancel the order if not filled within the time specified. Buyer may return rejected goods or excess shipments on this order, or may hold goods subject to Seller's directions, at Seller's sole risk and expense, and may in either event charge Seller with the cost of shipping, unpacking, inspecting, reshipping and other like expense, or offset such costs against amounts otherwise payable by Buyer to Seller. If the product, or any part thereof, is held to constitute an infringement and the use of the product, or any part thereof, is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using the product or replace same with an equivalent non-infringing product or modify the product so that it becomes non-infringing, or, if the foregoing options are not possible, refund to Buyer the sums paid to Seller for the purchase, or right to use said product.
- (11) **WARRANTY:** In addition to the warranties provided by law, Seller expressly warrants that it has the right to sell the goods and/or services provided under this purchase order and they: (a) will be in full conformity with the specifications, plans and samples approved by Buyer and will be new, of good quality, material and workmanship, merchantable, fit for the use and purpose for which they were intended and free from defects; (b) will be manufactured, sold, delivered and installed in compliance with the provisions of all applicable federal, state and local laws, ordinances rules and regulations; and (c) will not infringe on any valid patent, trade mark, trade name, or copyright. Any and all warranties made by the manufacturer or supplier of goods delivered by Seller are hereby assigned to Buyer and nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of Buyer. Seller will bear the cost of inspecting, testing and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance and payment and shall accrue to Buyer.
- (12) **INVOICES:** Invoices are to be submitted only for the goods that have been shipped or services that have been provided. Invoices will not be paid and will be returned to the Seller for correction if they: (a) do not reference this purchase order number; (b) are for a higher cost than shown on this order, (c) list goods or services other than those shown on this order; or (d) are damaged or incomplete. Invoices must show the quantity, description and unit cost of items. All invoices should be mailed in duplicate to:

College of the Mainland
Attn: Accounts Payable
1200 Amburn Road
Texas City, Texas 77591

- (13) **PAYMENT TERMS:** Within thirty (30) days from receipt of a property executed and undisputed invoice, or date of receipt of goods or services, whichever is most current, payment will be processed for goods or services provided hereunder. Any discounts will be calculated from the date of receipt of the invoice or receipt of the goods or services, whichever is most current. Payment for any goods or services does not constitute final acceptance.
- (14) **FORCE MAJEURE:** Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Purchaser's request.
- (15) **APPROPRIATED FUNDS:** This purchase order is a commitment by Buyer of funds in its current budget year. When applicable, Buyer will exercise its best efforts to obtain and appropriate funds for subsequent budget periods. In the event Buyer is unable to secure sufficient funds in subsequent budget periods to fulfill all of Buyer's obligations hereunder, this purchase order will automatically terminate at the end of the applicable budget period.
- (16) **INDEMNIFICATION:** To the fullest extent permitted by law, Seller agrees to indemnify, defend, and hold whole and harmless Buyer, its affiliates, and their respective trustees, officers, employees and agents (collectively, the "Indemnified Parties") from and against all claims, demands, causes of action, losses, costs

and expenses, including without limitation reasonable attorneys' fees and costs of defense (collectively, "Losses"), arising out of or incident to (a) Seller's performance hereunder, (b) the presence of Seller, its employees, agents or invitees on Buyer's premises, (c) any breach of any warranty of Seller contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or services provided by Seller hereunder, provided that Seller shall not be liable for Losses to the extent caused by the negligence or willful misconduct of any Indemnified Party.

- (17) CANCELLATIONS:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller; or if the Seller becomes insolvent or commits acts of bankruptcy. Such rights of cancellation are an addition to and not in lieu of other remedies which Buyer may have in law or equity.
- (18) TERMINATION:** The performance of work under this order may be terminated in whole or in part by Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller or a "Notice of Termination" specifying the extent to which performance of work under this order is terminated and the date upon which such termination becomes effective. Such right of termination is an addition to and not in lieu of rights of Buyers set forth in Clause 8, herein.
- (19) CONTROLLING DOCUMENTS:** This purchase order may be issued for the purpose of ordering goods and/or services under a separate agreement between Seller and Buyer. In such cases, the terms and conditions of such an agreement shall apply to this purchase order and shall control in the event of conflict.
- (20) GOVERNING LAW:** This purchase order shall be governed by, and any disputes shall be settled pursuant to, the laws of the State of Texas, with venue in Galveston County, Texas.

A PRINTABLE COPY OF THESE TERMS AND CONDITIONS MAY BE FOUND AT:

www.com.edu/purchasing