

TERMS AND CONDITIONS

The materials, supplies or services covered by this order shall be furnished subject to the following terms and conditions, which shall not be modified or rescinded except by written agreement of the parties and which Seller agrees to be bound by and to comply with in all particulars, and no other terms and conditions shall be binding upon the parties. By accepting the order or any part thereof the Seller agrees to and accepts all terms, prices, delivery dates, specifications and other conditions indicated.

1. It is also certified that all invoices submitted relative to this purchase order will represent materials and/or services that have been actually delivered and/or performed to the Mississippi Gulf Coast Community College, that no member or other officer of the District Board of Trustees or any person in the employ of the said District will have been interested therein; that said claim will be just, due and unpaid and that there will have been no offsets against same; that the item and specifications will be correct; that the sums charged will be reasonable and just; that no payment will have been made on account thereof, except as included or referred to in such invoice or statement.
2. **INSPECTION:** The materials, supplies or services furnished shall be exactly as specified in this order, free from all defects in Seller's design, workmanship and materials, and except as otherwise provided in this order shall be subject to inspection and test by College at all times and places. If prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, College may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies or services at a reduction in price that is equitable under the circumstances. Seller shall bear all risks as to reject materials, supplies and services and, in addition to any costs for which Seller may become liable to College under other provisions of this order, shall reimburse College for all transportation costs, other related costs incurred, or and payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.
3. **CHANGES:** College may make changes within the general scope of this order in quantities, drawings, specifications, time for performance, place of delivery, method of shipment, or packing of the order by giving notice to Seller and subsequently continuing such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made in writing. No change by Seller shall be recognized without written approval of College. Any claim of Seller for an adjustment under this Item 3 must be made in within thirty (30) days from the date of receipt by Seller of notification of such change unless College waives this condition. Nothing in this item 3 shall excuse Seller from proceeding with performance of the order as changed hereunder.
4. **TERMINATION:**
 - A. College may, by written notice stating the extend and effective date, terminate this order for convenience, in whole or in part, at any time, College shall pay Seller as full Compensation for performance until such termination.
 - (1) The unit or pro-rata order price for the delivered and accepted portion and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by College, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.
 - B. College may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, College may purchase or otherwise secure materials, supplies or services and except as otherwise provided herein, Seller shall be liable to College for any excess costs incurred by the College.

If, after notice of termination for default, College determines that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of the College, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of College, unless College shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.
 - C. If College determines that Seller has been delayed in the work in the opinion of College due to causes beyond the control and without the fault or negligence of Seller, College may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller, and if such delay due to failure of College, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under Item 4. Sole remedy of Seller in event of delay by failure of College to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. The rights and remedies of College provided in this Item 4 shall not be exclusive and are in addition to any other right and remedies provided by law or under this order.

TITLE: Title to the materials and supplies purchased hereunder shall pass directly from Seller to College at the f.o.b. point shown, subject to the right of College to reject upon inspection.

SELLER'S LIABILITY: Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any personal injury, or alleged personal injury (including death), and/or damage or destruction to property sustained, or alleged to have been sustained, in connection with or to have arisen out of the performance of the work by Seller, its agents, employees, subcontractors, and consultants, save and except liability as may result from, or be in connection with or to have arisen out of the negligent performance of the work by or willful misconduct of College, Seller shall indemnify and hold harmless College, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands and claims and shall defend any suit or action brought against any or all of them based on any alleged personal injury or damage and shall pay any damage costs and expenses, including attorney's fees, in connection with or resulting from such suit or action.

DISCOUNT PERIOD: The cash discount period available to College shall commence on the date of the receipt of the merchandise or on the date of receipt of the invoice, whichever may be the later.

PAYMENT: Seller shall be paid, upon submission of acceptable invoices, as follows:

- A. Under \$500.00 – 100% completion of order delivered and accepted;
- B. Over \$500.00 – materials, supplies or services delivered, accepted and invoiced if prior arrangements have been made and approved by College.

In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application therefor, Seller will indemnify and save harmless College from any and all loss, cost or expense on account of any and all claims, suits or judgements on account of the use or sale of such article in violation of rights under such patent, copyright or application. Seller agrees not to use the name of College or to quote the opinion of any College employee in any advertising without obtaining the prior written consent of College.

NON-DISCRIMINATION: During the performance of this contract, the Seller agrees as follows:

- A. The Seller will comply with all provisions of the Civil Rights Act of 1964, Executive Order No. 11246 of September 24, 1965, as amended, and relevant orders of the Secretary of Labor and all applicable Municipal State and Federal laws.
- B. The Seller will not discriminate against any employee or applicant of employment because of race, creed, color, national origin, sex, age, qualified disability not related to job performance, and Vietnam-era veterans. The Seller will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

College may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing to the contrary.

EOE/ADA/AA