

MORAINE PARK TECHNICAL COLLEGE GENERAL PURCHASE ORDER TERMS AND AGREEMENT

In the terms and conditions below, Moraine Park Technical College shall be referred to as "MPTC" or the "College." The company/firm supplying goods and/or services to MPTC under this purchase order (the "Purchase Order") shall be referred to as the "Seller," and the goods and/or services described in and provided pursuant to this Purchase Order are referred to as "Goods" or "Services," as the case may be.

1. ACKNOWLEDGEMENT AND ACCEPTANCE

Acceptance of this Purchase Order by Seller constitutes acceptance of all of the terms and conditions stated herein and shall apply to this purchase order except where special requirements are stated elsewhere; in such cases, the special requirements shall apply.

To the extent that any project description document, attached hereto, if any ("Project Description"), quotation, order acceptance, confirmation, invoice or other document of Seller contains conflicting, differing or additional terms from the terms and conditions herein, the terms and conditions herein will control and all such conflicting, differing or additional terms are rejected by MPTC, are considered a material alteration hereof, and shall have no effect unless expressly agreed to in writing by MPTC. Seller's signed acknowledgement of the Purchase Order, or Seller's shipment of Goods, performance of Services, or acceptance of payment for Goods or Services shall conclusively affirm Seller's agreement to these terms and conditions. MPTC, at its option, may cancel this Purchase Order at any time.

If these terms and conditions are construed as a confirmation of an existing contract, the parties agree that these terms and conditions constitute the final, complete and exclusive terms and conditions of the contract between the parties. Regardless of its construction as an offer, acceptance, or confirmation of an order of goods and services these terms and conditions incorporate by reference all terms of the Uniform Commercial Code of Wisconsin providing protection to the College as purchaser including, without limitation, all express and implied warranty protection and all purchaser remedies under the Wisconsin Uniform Commercial Code.

2. FOB; DAMAGE DURING DELIVERY

Delivery of Goods under this Purchase Order shall be FOB MPTC designated campus or another destination as specified by MPTC and the risk of loss or damage shall remain with Seller until actual delivery to MPTC. Seller shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of Seller. Replacement of any damaged Goods shall be the sole responsibility of Seller.

3. PAYMENT TERMS

Unless otherwise indicated in this Purchase Order, MPTC shall render payment within thirty (30) days of the date of delivery and acceptance of Goods or provision of Services, or from the date of a conforming invoice, whichever

is later. In cases where a payment is questioned, the 30-day period begins with the date of problem resolution. **Invoice only for items shipped.** All invoices for payment shall be in U.S. Dollars and shall include the Purchase Order number, and a summary of the total Purchase Order value, total value of Goods provided or Services performed to date of the invoice, total value of invoicing to date and value of the current invoice. Invoices for payment not including such information may be returned to Seller without payment.

4. PACKAGING

All packages, cases, crates, etc., are to be marked with Seller's name and the applicable MPTC Purchase Order number. A packing list must accompany each shipment of Goods. MPTC shall not be responsible or liable for any packaging charges, unless otherwise agreed to herein by MPTC.

5. DELIVERY

The delivery and performance requirements, manner of delivery and specified dates of this Purchase Order shall be strictly adhered to and shall not be modified without the prior written acceptance of MPTC. No Saturday, Sunday, or Holiday deliveries. Time is of the essence. In the event of failure to deliver or perform by the dates specified in this Purchase Order, MPTC reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. Goods not shipped in time to meet the delivery requirements and dates under a Purchase Order, at MPTC's option, shall be delivered at the fastest means available, at the sole expense of Seller. Notwithstanding anything to the contrary herein, no delivery shall be made without at least twenty-four (24) hours advance notice being given by Seller to MPTC.

6. DELAY IN SUPPLY

In the event of failure by Seller to deliver any Goods or perform any Services contained in this Purchase Order, other than as a result of acts of God, force majeure, civil commotions, fire, war, perils of the sea, delay in transit, or MPTC's written request, MPTC shall have the right to cancel all or any remaining part of this Purchase Order, without payment of compensation, and obtain delivery or performance from other sources. Any and all increased costs and expenses thereby incurred by MPTC in obtaining such delivery or performance shall be set off against any moneys due or to become due to Seller or shall be recoverable as damages hereunder.

7. CHANGES

Except as otherwise provided herein, this Purchase Order may not be amended, modified, supplemented, cancelled or discharged, except in writing signed by MPTC and Seller. Except as modified herein, any modification of any Project Description shall be at Seller's sole cost and expense, unless Seller notifies MPTC of such modification and MPTC approves such modification in writing.

8. INDEMNITY

Seller shall protect, indemnify and hold harmless MPTC, its successors, assigns, affiliates, employees, agents, customers and users of its products and services (collectively, the "Affiliates"), of and from any claim, loss,

damage (whether for personal injury, property damage, or direct or consequential damage or economic loss), deficiency, action, demand, judgment, cost or expense (including, without limitation, reasonable attorneys' fees) arising out of or resulting from the Goods sold or Services rendered hereunder, or from any act or omission of Seller, its agents, employees or subcontractors, or which otherwise arises as a result of (i) Seller's performance of its obligations hereunder or (ii) any violation or infringement by Goods or Services provided hereunder of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party (collectively, any "Claim"). If any Claim should be asserted or action commenced against MPTC for which MPTC is entitled to indemnification hereunder, Seller (a) shall, upon MPTC's demand, promptly undertake the defense of any Claim, employing counsel reasonably satisfactory to MPTC or (b) agrees that MPTC, at MPTC's sole discretion, may elect to defend any Claim on its own behalf. In either case, Seller will, upon demand, pay all reasonable attorneys' fees and other costs or expenses incurred by MPTC in connection with such defense, any judgment or award resulting from any such claim or action and any settlement paid by MPTC with Seller's consent, which shall not be withheld unreasonably. This indemnification shall survive delivery of the Goods to or performance of the Services for MPTC, as the case may be, and any subsequent sale or other transfer of the Goods or Services to a third party. MPTC's remedies hereunder are cumulative and in addition to those provided by law or any other contract.

9. QUALITY REQUIREMENTS FOR GOODS

Seller shall provide and maintain an inspection system, including tests and test reports, acceptable to MPTC in its reasonable discretion covering the inspection of Goods provided under this Purchase Order, and Seller shall tender to MPTC for acceptance only such Goods that have been inspected in accordance with such inspection system and that have been determined by Seller to conform to the Purchase Order requirements. However, all Goods provided under this Purchase Order are subject to final inspection and acceptance within a reasonable time after actual delivery and MPTC shall have the right to reject any defective or nonconforming Goods despite any prior inspection by Seller. Payment for any Goods shall not be deemed an acceptance thereof.

10. QUALITY REQUIREMENTS FOR SERVICES

Seller shall provide and maintain a system of inspection and oversight acceptable to MPTC in its reasonable discretion to ensure all Services provided under this Purchase Order will be diligently performed in accordance with the Project Description, if applicable, and the applicable industry practices and standards of diligence, care and skill currently recognized in Seller's industry. Seller represents and warrants to MPTC that all work performed meets the standards of the Occupational Safety and Health Act of 1970, as amended. The adequacy of the performance of the Services provided under this Purchase Order are subject to final inspection within a reasonable time after actual performance and MPTC shall have the right to terminate any Purchase Order that fails to meet the oversight requirements and minimum quality standards provided in this Paragraph 10.

11. RETURN OF DEFECTIVE GOODS

All Goods supplied under this Purchase Order that do not meet with the approval of MPTC, that are shipped contrary to Purchase Order instructions, or that are in excess of the quantity or quantities ordered under this

Purchase Order, will be returned to Seller or held pending a mutual agreement between MPTC and Seller regarding their disposition, subject to Seller's risk of loss and sole expense.

12. EXECUTION OF PURCHASE ORDER

Only Purchase Orders sent in writing via fax, mail, courier or e-mail and signed by duly authorized MPTC personnel shall serve as an official intent of purchase by MPTC.

13. CHEMICALS & HAZARDOUS SUBSTANCES

All Safety Data Sheets required by applicable law (SDS) (each, a "Data Sheet"), shall accompany all Goods (including, without limitation, any chemicals or hazardous substances) provided under this Purchase Order. In addition, Seller shall provide a copy of each such Data Sheet to MPTC's Purchasing Department. Seller shall maintain a catalog of any and all applicable Data Sheets that are provided in connection with Seller's performance of work under this Purchase Order at a MPTC site.

14. COMPLIANCE WITH LAWS

Seller agrees to comply with all federal, state and local laws, rules and regulations, including, but not limited to, Executive Order 11246, the Equal Employment Opportunity Act and any amendments thereto, pertaining to nondiscrimination in employment, the Occupational Safety and Health Act of 1970, the Fair Labor Standards Act, any laws, regulations and executive orders related thereto, and any other applicable federal, state or local law or regulation. To the extent Seller's Goods or Services are provided within direct patient care settings, Seller shall also comply with all applicable requirements of the Joint Commission on Accreditation of Healthcare Organizations. Seller shall, in accordance with Paragraph 8, indemnify and hold MPTC harmless against any liability arising out of or resulting from Seller's failure to so comply. Upon request, Seller shall supply MPTC with copies of compliance reports and any other information necessary to demonstrate compliance with this Paragraph 14.

15. WARRANTY

Seller warrants it is a merchant as defined in the Uniform Commercial Code. Seller warrants that all Goods delivered hereunder, if any, will (i) be merchantable, (ii) be free from defect of design, material or workmanship, (iii) conform strictly to the specifications, descriptions, drawings, or sample specified or furnished to MPTC, (iv) be free from security interests, liens or encumbrances, (v) be fit and safe for their intended purpose, and (vi) be safe and appropriate for the purpose for which such Goods or Services are normally used. Seller warrants that all Services rendered hereunder, if any, will be performed in a professional and workmanlike manner in accordance with the applicable professional industry standards of diligence, care and skill currently recognized in Seller's industry. The warranties contained herein shall begin at the time of performance, receipt at the delivery location or installation, if applicable, whichever is later, unless a later time is specified in the manufacturer policy stated in the Project Description. Such warranties shall survive for greater of (a) one (1) year, (b) the standard warranty term provided by Seller to its customers, or (c) as provided under applicable law. Notwithstanding anything to the contrary contained herein, the foregoing shall not limit any additional warranty or warranty period otherwise

agreed to by the parties in writing. The warranties contained herein shall survive any inspection, delivery, performance, acceptance, or payment by MPTC of the Goods or Services. MPTC may, at its option, return for credit or require prompt replacement or correction of any of the Goods or Services which do not conform to the foregoing warranties at Seller's expense. In the event that Seller fails to make such replacement or correction, MPTC shall have the right to obtain such replacement or correction from other sources. Any and all increased costs and expenses thereby incurred by MPTC in obtaining such replacement or correction shall be setoff against any moneys due or to become due to Seller or shall be recoverable as damages hereunder. Corrected or replaced Goods or Services shall be subject to the terms and conditions of this Purchase Order in the same manner and to the same extent as Goods or Services originally delivered hereunder. If part of the Goods to be delivered or Services to be performed hereunder are defective or nonconforming, MPTC may cancel any unshipped portion of the Goods or cancel any unperformed Services, as the case may be, covered by the Purchase Order. The rights of MPTC provided in this Paragraph 15 shall be in addition to any other rights provided by law, this Purchase Order, or any other contract.

16. INDEPENDENT STATUS

Seller acknowledges that it is an independent business acting as an independent contractor. Though Seller may perform Services, no agent, representative or employee of Seller shall be or be considered an agent or employee of MPTC.

17. BANKRUPTCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then MPTC shall be entitled, at its sole option, to cancel any unfulfilled part of this Purchase Order without any liability whatsoever.

18. ASSIGNMENT

Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for the breach hereof, without the prior written consent of MPTC. Any such attempted delegation or assignment shall be void. Any change of control of Seller shall be deemed an assignment hereunder.

19. SET-OFF AND COUNTERCLAIMS

All claims for moneys due or to become due from MPTC shall be subject to deduction by MPTC for any setoff or counterclaim arising out of this or any other of MPTC's purchases from Seller.

20. TERMINATION

This Purchase Order, or any portion hereof, may be terminated by MPTC at any time with or without cause. As used herein, the term "cause" shall include, but not be limited to, (a) a breach by Seller of any of the terms hereof, including any warranty made in connection with the purchase ordered hereunder or (b) any allegation that any of

the Goods or Services furnished hereunder infringes any patent, trademark, copyright or other proprietary right of any third party, or violates any statute, ordinance or administrative order, rule or regulation. If MPTC terminates without cause, MPTC will compensate Seller for the actual and reasonable expenses incurred by Seller for work in process requested by MPTC up to and including the date of termination, provided such expenses do not exceed the agreed upon prices in this Purchase Order.

21. TAXES

Seller is responsible for payment to the proper taxing authority of all sales, use and similar taxes.

22. CONFIDENTIALITY

Seller will neither use any Confidential Information (as defined below) for any purpose other than in performing its duties hereunder nor disclose the existence of this Purchase Order or any information contained herein without the express written consent of MPTC. "Confidential Information" includes, but is not limited to, all designs, articles and other proprietary information developed by MPTC, supplied to MPTC or made according to MPTC's direction. Seller agrees not to refer to award of this purchase order in commercial advertising in such a manner that states or implies that the products or services provided are endorsed or preferred by MPTC.

23. LIMITATION OF LIABILITY

TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL MPTC (INCLUDING ANY SUBSIDIARIES OF MPTC OR OTHER RELATED ENTITIES) BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES RELATING TO THIS PURCHASE ORDER.

24. RECORDS

Pursuant to MPTC procedures, until the expiration of six (6) years after the furnishing of goods and/or services under this Purchase Order, both parties shall make available, upon written request of any other duly authorized Federal or State agency, a copy of this Purchase Order and such books, documents, and records as are necessary to certify the nature and extent of the costs of the Services provided under this Purchase Order.

25. EXCLUDED PARTY LAW

Seller represents and warrants that neither it nor its subcontractors is excluded from receiving or being a party to any Federal contract or subcontract pursuant to any Federal statute, rule, regulation, executive order or government instruction. Notwithstanding any other provision to the contrary, Seller agrees to indemnify and hold harmless MPTC, its directors, officers, employees, agents and affiliates from and against any and all damages, claims, costs, expenses (including reasonable attorneys' fees), and liability related to Seller being an excluded party from receiving or being a party to any such Federal contract or subcontract during the term of this Purchase Order.

26. NONDISCRIMINATION

In its performance of this Purchase Order, Seller will not discriminate against MPTC's students or any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, marital status, age, national origin, ancestry, citizenship, arrest record, conviction record, disability, genetic information, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or Wisconsin, use or nonuse of lawful products off employer's premises during nonworking hours, or other legally protected status, as required by law.

27. INSURANCE

Seller shall maintain in effect, at its expense, insurance of such types and in such amounts as is commercially reasonable in connection with the conduct of its business, including, without limitation, insurance coverage for its liability and indemnity obligations hereunder. Any vendor providing services to Moraine Park Technical College facilities is required to maintain Worker's Compensation Insurance as required by Wisconsin Statute for all employees engaged in the work, Commercial General Liability (CGL), including product liability and completed operations, and Automobile liability when applicable for all owned, non-owned and hired vehicles that are used in carrying out the contract. Minimum coverage's for CGL are Each Occurrence/General Aggregate – \$1,000,000. Automobile Liability minimum is: Combined Single Limit = \$1,000,000. Insurance must be provided by an insurance company licensed to do business in the State of Wisconsin, with a minimum AM Best rating of A-, and signed by an authorized agent. The College reserves the right to require higher or lower limits where warranted. Validity of this purchase order is dependent upon your meeting the insurance requirements stated above. *Reference Insurance Requirements document at [MPTC Purchasing site](#) for complete information.*

28. SEVERABILITY

If any provision of this Purchase Order shall under any circumstances be deemed invalid or inoperative, this Purchase Order shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

29. NONWAIVER

MPTC's failure to enforce any provisions of this Purchase Order or rights hereunder shall not operate as a waiver of such provisions or rights and the same shall remain in full force and effect for the duration of this Purchase Order.

30. GOVERNING LAW

This Purchase Order and the acceptance of it shall be a contract made in the State of Wisconsin and governed by the laws thereof, without giving effect to conflicts of law principles, and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order. Any proceeding arising out of or relating to this Purchase Order shall be brought in the courts of the State of Wisconsin, County of Fond du Lac, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Wisconsin and

each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of such proceeding shall be heard and determined only in any such court, and agrees not to bring any proceeding arising out of or relating to this Purchase Order in any other court. Each party acknowledges and agrees that this Paragraph constitutes a voluntary and bargained-for agreement between the parties.

31. INTERPRETATION

Seller shall notify MPTC, in writing, of any conflict in this Purchase Order for resolution by MPTC. MPTC shall resolve an conflict within this Purchase Order , in writing, in accordance with the following order of contract precedence: (a) drawings and technical documents; (b) the Purchase Order page(s) preceding these Terms and Conditions; and (c) these Terms and Conditions. If there is an irreconcilable conflict among the requirements of (a) through (c), the provision imposing the greater duty or obligation on the Seller shall govern.