

## COLLEGE OF SOUTHERN MARYLAND PURCHASE TERMS AND CONDITIONS

1. **CONTRACT TERMS:** The performance of this contract shall be governed solely by the terms and conditions set forth in this purchase order notwithstanding any language contained in any invoice, shipping order, bill of lading, or other document furnished the contractor 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 herein stated. All terms and conditions specified in the solicitation, and any amendments thereto, are made a part of this contract.
2. **DELIVERY AND PACKING:** All prices quoted must include delivery. All goods delivered under this contract shall be packed and packaged in accordance with acceptable trade practices. No charges over and above the bid price will be made for packaging, packing, or for deposits made on containers unless specifically agreed to in writing. No charges 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 College of Southern Maryland Purchase Order. A packing slip shall be included in each shipment. All deliveries must be delivered to the specified location(s) designated in the purchase order. No collect deliveries will be accepted unless specified in writing.
3. **INSPECTION AND ACCEPTANCE:** No goods received by the College pursuant to this purchase order shall be deemed acceptable until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/nonconforming goods or services shall be rejected and will be returned at contractor'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 contractor fails to cure defects within 15 calendar days, the College reserves the right to purchase replacement goods or services on the open market and contractor shall be liable for any excess cost incurred for the replacement(s), plus associated/applicable expenses, if any.
4. **WARRANTY:** Contractor expressly warrants that all articles, material, and work offered shall conform in form, fit, and function to each and every specification, drawing, sample, or other description which is furnished to or adapted 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, goods, or services, in whole or in part, or by payment for them, in whole or in part. The contractor further warrants all articles, materials, and work performed for a period of one 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 contractor's expense.
5. **INTELLECTUAL PROPERTY:** Contractor guarantees that sale and/or use of the materials, supplies, equipment or services offered will not infringe upon any U.S. or foreign patent, trademark or copyright. Contractor will, at his 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, trademark or copyright violation, arising out of purchase or use of these materials, supplies, equipment or services covered by this contract.
6. **QUANTITIES:** The College assumes no obligation for articles or materials shipped in excess of the quantity ordered. All overshipments will be subject to rejection and will be returned at contractor's expense.
7. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this contract.
8. **INVOICES:** A separate invoice for this purchase order or for each shipment thereon shall be forwarded directly to College of Southern Maryland, Accounts Payable, 8730 Mitchell Road, P.O. Box 910, La Plata, Maryland 20646-0910. This purchase order number must be shown/referenced on all related invoices, delivery tickets, bills of lading, packages, and correspondence. Contractor agrees to include on the face of all invoices billed to the College, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations. Failure to comply may result in refusal of shipment and/or delay in payment. The College has/takes no liability for invoices (and etc.) not prepared in accordance with these requirements.
9. **PRODUCT TESTING DURING TERM OF CONTRACT:** Goods delivered under the terms of this contract may be tested for compliance with specifications stipulated herein. Any shipment failing to meet or comply fully with the specifications may be rejected and returned at contractor's expense. The cost of testing a representative sample of an order or shipment for acceptance shall be borne by the College unless the material is rejected for failure to meet specification or purchase order description. In such cases the cost of testing will be borne by the contractor.
10. **INSOLVENCY:** If the College has reasonable cause to believe the contractor is insolvent, or if any petition for bankruptcy or under any law the relief of debtors is filed by or on behalf of contractor, then at the College's option, this contract shall immediately terminate. In no event shall the contract become an asset in any such proceeding nor shall the College be bound hereby after any act of bankruptcy by contractor. Any delay by the College in the exercise of the right to terminate under this section shall not diminish or waive that right.
11. **COMPLIANCE WITH LAWS:** Contractor agrees to comply, at no additional cost to the College, with all applicable Executive Orders, Federal, State, County, regional and local laws, ordinances, rules, and regulations in effect as of the date of this contract and as they may be amended from time to time.
12. **MARYLAND LAW PREVAILS:** The place of performance of this contract shall be the State of Maryland. This contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
13. **TAXES:** The College is generally exempt from Federal and Maryland taxes. Exemption certificates, if required, will be furnished on forms provided by the bidder. Contractors who bid on construction projects may include allowances for the Maryland sales and use tax in their bid. Contractors are required to pay this tax on all applicable purchases made with their suppliers.
14. **NON-HIRING OF EMPLOYEES:** No employee of the College whose duties as such employee include matters relating to or affecting the subject matter of this contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the College within six months of termination of employment with the College.
15. **NON-DISCRIMINATION:** The Contractor agrees: a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; b) to include a provision similar to that contained in subsection (a) above in any subcontract for standard commercial supplies or raw materials; and c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
16. **ASSURANCE OF NON-CONVICTION OF BRIBERY:** Contractor 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.
17. **TERMINATION FOR CONVENIENCE:** The performance of the work or services under this contract may be terminated in whole or in part, whenever the President of College of Southern Maryland or an authorized designee shall deem that termination is in the best interest of the College. Such determination shall be at the sole discretion of the President. In such events, the College shall be liable only for payment in accordance with the payments provision of this contract for work or services performed or finished prior to the effective date and time of termination. Termination hereunder shall become effective by delivery of written notice of termination upon which date the termination shall become effective. The contractor shall not be reimbursed for anticipatory profits.
18. **TERMINATION FOR DEFAULT:** If the Contractor fails to fulfill its obligations under this contract properly and on time, or otherwise violates any provision of the contract, the College may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the College's option, become College property. The College shall pay the Contractor a fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the College can affirmatively collect damages.
19. **LIQUIDATED DAMAGES:** Time is an essential element of the contract and it is important that work be vigorously prosecuted until completion. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.
20. **NON-AVAILABILITY OF FUNDING:** If funds are not appropriated or otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this contract shall be canceled automatically as of the beginning of the new fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the College's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the College from future performance of the Contract, but not from their rights and obligations existing at the time of the termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The College shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.
21. **DISPUTES:** Any dispute arising under this contract which is not disposed of by agreement shall be decided by the Board of Trustees of College of Southern Maryland or a designee. Pending final decision of this dispute, the contractor shall proceed diligently with contract performance. Nothing hereunder shall be interpreted to preclude the parties from seeking, after completion of the contract, any and all remedies provided by law.
22. **NON-COLLUSION:** Contractor 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; contractor also certifies that it has not in any manner, directly or indirectly, entered into any contract, participated in any collusion to fix the bid price or price proposal of the contractor, or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the within bid or offer is submitted.
23. **MARYLAND PUBLIC INFORMATION ACT:** Contractor recognizes that the College is subject to the Maryland Public Information Act, Title 10 of the State Government Article of the Annotated Code of Maryland. Contractor 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 MD Public Information Act.
24. **RECORD RETENTION:** The Contractor shall retain and maintain all records and documents relating to the performance of this contract for three years after final payment by the College hereunder or any applicable statute of limitation, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the College, at all reasonable times.
25. **AUDIT:** Contractor 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 contractor and any subcontractor involving transactions related to this contract during the term of this contract and for a period of three (3) years after final payment under this contract.
26. **CONTINGENT FEE PROHIBITION:** The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bonafide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bonafide employee or agent, any fee or any other consideration contingent on the making of this Contract. For breach or violation of this warranty, the College shall have the right to annul this Contract without liability, or in its discretion, to deduct from the consideration otherwise payable to the Contractor the full amount of such fee or other consideration.
27. **HAZARDOUS AND TOXIC SUBSTANCES:** Contractor must comply with all applicable Federal, State, and County laws, ordinances, and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Contractor shall provide the College with a "Material Safety Data Sheet" 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.
28. **CHANGES:** The President of the College or an authorized designee may at any time, by written order, make changes within the general scope of the contract in the work and services to be performed. If any such changes cause an increase or decrease in contractor's cost of, or the time required for performance of this contract, an equitable adjustment shall be made, and the contract shall be modified in writing accordingly. Unless specifically authorized in writing, the contractor may not stop work as a direct result of a legitimate change or disagreement with what constitutes an equitable adjustment. In this case, the Dispute section of this contract prevails.
29. **PRE-EXISTING REGULATIONS:** In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.