

TERMS AND CONDITIONS
BY ACCEPTANCE OF THIS ORDER SELLER AGREES WITH BUYER AS FOLLOWS

Purchase Orders

- a. Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The University shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract.
- b. This order may be accepted only upon the terms and conditions set forth herein. If this purchase order is based upon a written Invitation for Bid or Request for Proposal, terms contained in those documents shall, if in conflict, supersede those contained herein. When so accepted, this order contains the complete and final agreement between the buyer and seller respecting the goods and services specified. Any additional or different terms proposed by the seller are hereby rejected unless accepted in writing by MUSC University Purchasing Office. This purchase order constitutes a contract on the part of the Medical University of South Carolina to pay the seller for the goods or services described.
- c. Purchase orders may be electronic. No particular form is required. Purchase order requirement may be waived if approved in writing by University Procurement Services.
- d. An order placed pursuant to the purchasing card provision qualifies as a purchase order.
- e. The seller, by acceptance of this order will be deemed to represent that seller has complied, or will comply, with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder.
- f. **Seller warrants that the prices stated herein or on his invoice are as low as any net prices now given by seller to any other customer for like goods or services and seller agrees that if at any time during the life of this order, he quotes or sells at lower net prices, similar goods or services under similar conditions, such lower net prices shall, from that time, be substituted for the prices provided herein.**
- g. This purchase order is not assignable by the seller without the prior consent of the University Purchasing Office.
- h. The failure of the buyer to enforce at any time any of the provisions of this agreement shall in no way be construed as a waiver of such provision nor in any way affect the right of the buyer thereafter to enforce each and every provision of this agreement.
- i. **Seller shall submit invoice and address any invoicing concerns to: Medical University of South Carolina, Accounts Payable, Charleston, SC 29425, (843)792-4343.**
- j. Address all other questions to the University Purchasing Officer noted at the top left hand section on the front of this form.

Performance/Delivery/Completion

- a. All shipments are to be made FOB destination, freight prepaid, to receiving point at the University unless otherwise indicated on this Purchase Order. If other than FOB destination, all transportation, insurance, crating and/or packing charges are to be entered as **separate items on seller's invoice.**
- b. Any materials shipped in excess of the quantity specified in the order may, at the University Purchasing Officer's option, be returned to the seller at seller's expense. The University will not be obligated to pay for services or labor provided in excess of that specified in this order.
- c. Complete shipments are preferred; however, partial shipments may be acceptable and payable. Final payment will not be made until this order is filled in its entirety or until unfilled items are canceled.
- d. Subject to conditions beyond the control of the seller, delivery or completion must actually be effected within the time stated on the purchase order. When completion is not timely, the University Purchasing Officer, may, if stipulated, obtain the goods or services elsewhere and charge the seller with any loss incurred as a result thereof or, at his option, to cancel the order. It is understood that time is of the essence under this agreement. Whenever the seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, seller shall so inform the University Purchasing Office.

Inspection/Warranties

- a. All goods purchased hereunder shall be subject to inspection by the buyer to the extent practicable at all times and places including the period of manufacture. Notwithstanding any prior inspection or payments hereunder, items shall also be subject to final inspection prior to acceptance within a reasonable time after delivery. No inspection or test made prior to the final inspection shall relieve the seller from responsibility for defects or other failure to meet the requirements of this order.
- b. Seller warrants that all items delivered hereunder shall be free from defects in workmanship, material and manufacture; shall comply with the requirements of this agreement, including any drawings or specification incorporated in design. Seller further warrants that all items purchased hereunder shall be merchantable quality and shall be fit and suitable for the purposes intended. **The foregoing warrants are conditions to this agreement and are in addition to all other warranties, expressed or implied and shall survive any delivery, inspection, acceptance or payment by the buyer. If any warranties specified herein or otherwise applicable are breached by the seller, the University Purchasing Office, may at its election, (1) require the seller to correct at seller's sole expense any defect or non-conformance by repair or replacement, or (2) return any defective or non-conforming goods to seller at the**

seller's expense and recover from the seller the price thereof. The foregoing remedies are in addition to all other remedies of law or as contained in this agreement and shall not be deemed to be exclusive. The foregoing representation and warranties shall survive acceptance of the goods or services.

- c. The manufacturer guarantees that the design of the equipment being purchased conforms to NFPA, UL, ANSI, OSHA and any other existing safety standards in effect at time of shipment.

Background Check

- a. If Vendor must bring one or more of its employees on to the Medical University of South Carolina campus or other property in order to fulfill the terms of this agreement, Vendor is required to conduct a criminal background check and drug screen on said employee(s) prior to bringing or sending the employee(s) to the Medical University of South Carolina campus or other property. Vendor agrees that any employee with a criminal history that Vendor reasonably believes poses a threat to property or persons will not be brought or sent to the Medical University of South Carolina campus or other property. Vendor agrees to impose this same criminal background check and drug screen requirements on any subcontractors used by Vendor to fulfill its responsibilities under this agreement. Medical University of South Carolina reserves the right to verify compliance by Vendor upon request.
- b. The drug screen must consist of a ten panel drug test screening from an independent accredited laboratory which includes THC (marijuana), Cocaine, Phencyclidine (PCP), Synthetic Opiates with extended opiates, Amphetamines, Barbiturates, Benzodiazepines, Methadone, Propoxyphene and Methamphetamines. The results must be within a 30 day period.

Bankruptcy

- a. Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the University. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all University contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.
- b. Termination. This contract is voidable and subject to immediate termination by the University upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

Discount For Prompt Payment

- a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offerer.
- b. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerers awarded contracts may include discounts for prompt payment on individual invoices.

False Claims

- a. According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

Certificate of Insurance

- a. A 'Certificate' of Insurance MUST be on file in University Purchasing for vendors visiting on-site at MUSC and those that are so located, and those providing on-site equipment maintenance, evaluation, or other for the protection of MUSC.
- b. A CONTRACTOR shall maintain throughout the performance of its obligations under an Agreement a policy or policies of Workers' Compensation Insurance with such limits as may be required by law, and a policy or policies of general liability insurance with limits sufficient to cover any loss or potential loss resulting from this contract insuring against liability for injury to and death of persons and damage to and destruction of property arising out of or based upon any act or omission of the CONTRACTOR or any of its subcontractors or their respective officers, directors, employees or agents and a policy or policies of Automobile Liability Insurance with such limits as may be required by law insuring against liability for injury to and death of persons and damage to and destruction of property arising out of or based upon any act or omission of the CONTRACTOR or any of its subcontractors or their respective officers, directors, employees or agents while operating their vehicle(s) on MUSC property.

Drug Free Workplace Certification

- a. Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended. [02-2A065-1]

Ethics Certificate

- a. By accepting this Purchase Order Contractor has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act).
- b. The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775,

prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract.

- c. **The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision.**
- d. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed. [02-2A075-2]

Smoking Policy

- a. Acting upon the recommendations of the Student Government Association and the faculty senate, our board of trustees recently determined that MUSC has become a totally tobacco-free campus effective March 1, 2012.
- b. As South Carolina's academic health center and home to the only National Cancer Institute-designated cancer institute in the state, it is a part of our mission to prevent cancer and to lead by example in providing the healthiest environment possible for everyone on our campus.
- c. Effective March 1, 2012, MUSC is a tobacco-free campus. Smoking is not permitted in any areas on campus. This includes the use of chewing tobacco and e-cigarettes.

Indemnification - Third Party Claims

- a. Notwithstanding any limitation in this agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder.
- b. Contractor shall be given timely written notice of any suit or claim. Contractors' obligations hereunder are in no way limited by any protection afforded under workers compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist.
- c. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance.
- d. As used in this clause, Indemnitees means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

Other

- a. Provisions of the South Carolina Consolidated Procurement Code have been complied with in issuing this purchase order. This purchase order shall not be modified except by written agreement of the University Purchasing Office and seller. If litigation arises out of or under this agreement, the seller agrees to submit to the jurisdiction of the State of South Carolina and agrees that the laws of South Carolina will control this agreement.
- b. The University is an equal opportunity/affirmative action employer and does not knowingly conduct business with suppliers who practice discrimination. Performance under this contract certifies that seller is an Equal Opportunity Employer.

IRAN DIVESTMENT ACT – CERTIFICATION (JAN 2015): (A) The Iran Divestment Act List is a list published by the Board pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at the following URL: <http://procurement.sc.gov/PS/PS-iran-divestment.phtml> (.) Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By accepting this purchase order, you certify that, as of the date you receive said purchase order, you are not on the then-current version of the Iran Divestment Act List. (c) You must notify the Procurement Officer immediately if, at any time during completion of this contract, you are added to the Iran Divestment Act List. [02-2A077-1].

OFFICE OF THE
GENERAL COUNSEL
MUSC/MUHA

- APPROVED AS TO FORM -
By: JCA
Date: 3-9-15