

## Howard Community College Terms and Conditions

**1. CONTRACT TERMS:** The performance of this contract shall be governed solely by the terms and conditions as set forth in this document, notwithstanding any language contained on any invoice, shipping order, bill of lading or other document furnished by the Seller at any time. The acceptance by the College of any goods or services shall not be construed as acceptance by the College of any terms or conditions which are inconsistent with the terms and conditions stated here. All terms and conditions in any College solicitation are made part of this contract, as applicable. Any different or additional terms other than those specified in this document that are contained in Seller's acceptance are hereby objected to.

**2. COMPLETE AGREEMENT:** The purchase order and these terms and conditions, together with any other documents incorporated by reference, constitute the sole and entire agreement between the College and Seller with respect to the subject matter, superseding completely any oral or written communications unless the terms are expressly incorporated into additional written documentation. Where Seller's quotation is referred to in the purchase order, such quotation is incorporated in the purchase order only to the extent of specifying the nature or description of the goods ordered and only to the extent such items are consistent with the other terms stated in this document.

**3. ELECTRONIC/FACSIMILE TRANSMISSION:** If the purchase order is transmitted by electronic means of transmission, such transmission shall have the legal significance of a duly executed original delivered to the Seller.

**4. DELIVERY AND PACKING:** All deliveries shall be FOB destination. All prices quoted must include delivery. All goods delivered under this contract shall be packed in accordance with accepted trade practices. No charges may be made over and above a quoted price for packaging, or for deposits or containers unless specified in the quote. No charge will be allowed for cartage unless by prior written agreement. Delivery shall be made in accordance with instructions on the Howard Community College purchase order. A packing slip shall be included in each shipment. All deliveries must be prepaid and must be delivered to each location designated on purchase order at no additional cost. **DELIVERIES MUST BE MADE TO THE SPECIFIED LOCATION. NO COLLECT SHIPMENTS OR SIDEWALK DELIVERIES WILL BE ACCEPTED.**

**5. INSPECTION AND ACCEPTANCE:** No goods received by the College pursuant to the purchase order shall be deemed accepted until the College has had reasonable opportunity to inspect said goods for hidden damage or failure to meet specifications. Damaged/unacceptable goods shall be rejected and will be returned at Seller'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 Seller fails to cure defect within ten (10) calendar days, the College reserves the right to purchase on the open market and Seller shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

**6. WARRANTY:** Seller expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted 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 or goods, in whole or in part, or by payment for them, in whole or in part. The Seller further warrants all articles, material and work performed for a period of one (1) 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 Seller's expense.

**7. PATENTS:** Seller guarantees that the sale and use of the goods offered will not infringe upon any U.S. or foreign patent. Seller will indemnify, protect and save harmless the College, its trustees, employees, agents and students with respect to any claim, action, cost or judgment for patent infringement, arising out of the purchase or use of these goods.

**8. QUANTITIES:** The College assumes no obligation for articles or materials shipped in excess of the quantity ordered. Any over shipments will be subjected to rejection and will be returned at Seller's expense.

**9. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this contract.

**10. INVOICES:** A separate invoice for the purchase order or for each shipment thereon shall be forwarded directly to Howard Community College, Accounts Payable, 10901 Little Patuxent Parkway, Columbia, Maryland 21044. The purchase order number must be shown by Seller on all related invoices, delivery memoranda, bills of lading, packages and correspondence. Failure to comply may result in refusal of shipment or delay in payment. The College has no liability for invoices not prepared in accordance with these requirements.

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**11. PAYMENT OF COLLEGE OBLIGATIONS:** Payments to Seller pursuant to this contract shall be made no later than 30 days after the College's receipt of a proper invoice from the Seller. Charges for late payment of invoices prior to 45 days after receipts of invoices are prohibited.

**12. CARE OF PREMISES:** Precautions taken for safety and protection shall be in accordance with the mandatory requirements of the safety codes prevailing within the jurisdiction in which the work is to be performed. During the performance of the contract, the Seller shall take the necessary precautions to protect all areas upon which or adjacent to which work is performed as a part of this contract. Any damage caused as a result of Seller's neglect, directly or indirectly, shall be repaired to the College's satisfaction at the Seller's expense.

**13. DELAYS AND EXTENSIONS OF TIME:** The Seller agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by the Seller for any delays or hindrances, from any cause whatsoever during the progress of any portion of the work specified in this contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Seller, including but not limited to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the College, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**14. INSOLVENCY:** If the College has reasonable cause to believe the Seller is insolvent, or if any petition in bankruptcy or under any law for the relief of debtors is filed by or in respect of Seller, then at the option of the College, the 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 Seller. Any delay by the College in the exercise of the right to terminate under this section shall not diminish or waive that right.

**15. TAXES:** The College is generally exempt from Federal and Maryland State taxes. Exemption Certificates are available upon request. Seller shall be responsible for the payment of any and all applicable taxes resulting from any award or activities hereunder, including but not limited to any applicable amusement or sales taxes.

**16. NON-HIRING OF EMPLOYEES:** No employees of the College or of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or attending the subject matter of this contract shall, during the pendency or term of this contract and while being employed, become or be an employee of Seller.

**17. NON-DISCRIMINATION:** Seller assures the College that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of sex, race, age, color, creed, national origin, sexual orientation, religious belief, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. Seller further agrees to post in conspicuous places notices setting forth the provisions of non-discrimination clause and to take affirmative action to implement the provisions of this section. Seller further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status, except as mandated by law.

**18. ASSURANCE OF NON-CONVICTION OF BRIBERY:** Seller 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.

**19. TERMINATION FOR CONVENIENCE:** The performance of the work or services under this contract may be terminated in whole or in part, whenever the Director of Procurement of Howard Community College, after consultation with appropriate College personnel, shall deem that termination is in the best interest of the College. In such event, the College shall be liable only for payment in accordance with the payment provisions of this contract for work or services performed or furnished prior to the effective date of termination. In no circumstances will the College be liable for anticipatory profits. Termination hereunder shall become effective by delivery of written notice of termination upon which date the termination shall become effective.

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**20. TERMINATION FOR DEFAULT:** When the contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the College. Failure on the part of the contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the contractor is not entitled to recover any costs incurred by the contractor after the date of the termination notice.

**21. TERMINATION BASED ON LACK OF FUNDING:** Seller understands that Howard Community College is a public institution of higher education and its budget is subject to funding by governmental entities. This contract is subject to the continued appropriation of sufficient funds for this contract by the College's appropriating authority. For purpose of this contract, the College's appropriating authority is deemed to be the Board of Trustees of Howard Community College. Lack of funding shall be grounds for immediate termination of the contract. The College shall promptly provide the seller written notice if a non-appropriation occurs.

**22. DISPUTES:** Any dispute arising under this contract which is not disposed of by agreement shall be decided by the President of Howard Community College or a designee. Pending final decision of the dispute, the contractor shall proceed diligently with contract performance. Nothing hereunder shall be interpreted to preclude the parties from seeking, after completion of the agreement, any and all remedies provided by law.

**23. NON-COLLUSION:** Seller 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 submitted; Seller also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Seller or offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with contract for which the within bid or offer is submitted.

**24. CONTINGENT FEES:** Seller hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Seller, to solicit or secure a contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this contract.

**25. MARYLAND PUBLIC INFORMATION ACT:** Seller recognizes that the College is subject to the Maryland Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. Seller 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 Maryland Public Information Act.

**26. FINANCIAL DISCLOSURE:** The Seller shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State or a state unit and receives in the aggregate \$100,000 or more during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

**27. POLITICAL CONTRIBUTION DISCLOSURE:** The Seller shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Administration Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**28. REGISTRATION:** Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston St., Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

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**29. RECORD RETENTION:** Seller shall maintain books and records relating to the subject matter of this contract, including but not limited to all charges to the College, for a period of three (3) years from the date of final payment under this Agreement.

**30. AUDIT:** Seller 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 audit any records, books, documents and papers of Seller 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.

**31. HAZARDOUS AND TOXIC SUBSTANCES:** Seller must comply with all applicable Federal, State, and County laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Seller shall provide the College with a "Material Safety Data Sheet" including reference to the purchase order number, 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.

**32. MARYLAND UNDERGROUND FACILITIES DAMAGE PREVENTION LAW:** When applicable, Seller shall coordinate and pay for all work required to comply with this law. Additionally, Seller shall be responsible for all locations of private utilities as required by the College.

**33. NON-DISRUPTION OF CAMPUS:** Seller understands that Howard Community College is an active college campus and that all delivery of services or work must be performed in a manner to minimize disruption of operations and classes. Under no circumstances shall any driveway, access road, or walkway be blocked by the Seller's vehicles to prohibit use of, or disruption to pedestrian or vehicular traffic to the buildings.

**34. CHANGES:** The Director of Procurement may at any time, by written order, make changes within the general scope of the contract in the work and service to be performed. If any such changes cause an increase or decrease in Seller'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.

**35. NON-ASSIGNMENT AND SUBCONTRACTING:** Seller shall not assign any contract or any rights or obligations hereunder without obtaining prior written consent of the College. No contract shall be made by Seller with any other party for furnishing the services to be performed under this contract without the written approval of the College. These provisions will not be taken as requiring the approval of the contract of employment between Seller and its personnel.

**36. INDEMNIFICATION:** The Seller shall defend and indemnify the College against, and shall hold the College harmless from, any claims made by any person or entity as a result of injuries, damages, expenses and losses incurred by such a person or entity, including without limitation such person's or entity's and the College's legal costs and attorney's fees (hereinafter collectively "Liabilities"), arising out of or relating to Seller's performance or failure to perform pursuant to this purchase order, except to the extent that the Liabilities are a result of the direct and sole negligence of the College. This provision shall survive the termination or completion of the work or expiration of this purchase order.

**37. INSURANCE:** Seller shall maintain such insurance as will indemnify and hold harmless the College from Workmen's Compensation and Public Liability claims for property damage and personal injury, including death, which may arise from the Seller's operations under this contract, or by anyone directly or indirectly employed by the Seller.

**38. COMPLIANCE WITH HOWARD COMMUNITY COLLEGE POLICIES:** While on the College's campus, the Seller agrees to comply with all applicable Howard Community College policies and procedures in effect as of the date of the purchase order and as they may be amended from time to time during the term of the contract.

**39. SMOKE AND TOBACCO-FREE:** Howard Community College is a smoke and tobacco free environment. Use of tobacco products is prohibited in all college owned, leased, and controlled properties including parking lots and garages, and at all college-sponsored activities. Smoking is prohibited in vehicles. This use prohibition extends to Contractors, employees, agents, subcontractors and vendors.

**40. EMPLOYMENT OF CHILD SEX OFFENDERS:** Howard Community College provides a number of programs throughout the main campus that involve minor children, including the Children's Learning Center and Kids on Campus.

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The State of Maryland requires certain child sex offenders to register with the State and with the local law enforcement agency in the county in which they will reside, work, or attend school. If a child sex offender, as determined by the definitions contained in the Criminal Law Article of the Annotated Code of Maryland, is employed by the Seller, the Seller is prohibited from assigning that employee to perform any type of service on the main campus. Violation of this provision may result in Termination for Cause of the contract.

**41. CONFLICT OF INTEREST:** As a condition of award of this contract, Seller represents and warrants that no employee, officer or agent of the college has or would have a conflict of interest associated with the selection, award, or administration of this or any contract between the college and the vendor. Such a conflict of interest would arise if an employee, officer, agent, or any member of their immediate family, their partner, or any entity, organization, or individual which employs or intends to employ any of the aforementioned individuals indicated herein, has a financial or other interest in or has or will receive a personal benefit from Seller.

**42. FORCE MAJEURE:** Neither party shall be responsible for delays or failure to perform resulting from causes beyond the reasonable control of such party, including without limitation, fire, explosion, flood, earthquake, storm, war, strike, riot, terrorist attacks, civil commotion, discontinuity in the supply of power, court order or governmental interference, or by any other cause of like or unlike nature and without fault or negligence of such party.

**43. COMPLIANCE WITH LAWS:** Seller agrees to comply, at no additional expense, with all applicable Executive Orders, Federal, State, 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, including but not limited to the equal employment opportunity clause set forth in 41 CFR 60-250.4.

**44. MARYLAND LAW:** This contract shall be construed and interpreted according to Maryland Law. The parties commit to the jurisdiction and venue of the courts located in Howard County, Maryland, to adjudicate any dispute arising under or relating to this purchase order.

**45. SEVERABILITY:** If any term or condition of this contract is held invalid by any court, such invalidity shall not affect the validity of other terms and conditions of this contract.