

SUNY EDUCATIONAL OPPORTUNITY CENTER AND HUDSON VALLEY COMMUNITY COLLEGE GENERAL CONDITIONS

1. **Terms and Conditions.** No purchase is valid unless it has been processed by our Purchasing Department. The proper purchase order number and coding will be assigned by the Office of Business Services. In the case of an invalid purchase order, the person ordering is individually responsible for payment. PURCHASE ORDER number must appear on all correspondence.

2. **All shipments must be prepaid for FOB destination.**

3. **Time of Delivery.** Time of delivery is of essence. If delivery dates cannot be met, seller must inform buyer immediately. Such notification shall not, however, constitute a change to the delivery terms of this order, unless agreed to by the buyer. Seller shall not be liable for damages arising out of either its failure to deliver or any delay in delivery occasioned by strikes, lockouts, fires, wars, or acts of God.

4. **Cancellation Clauses.** Should this order be unfulfilled as of the agreed delivery date, SUNY Educational Opportunity Center and Hudson Valley Community College reserve the right (upon notifying the seller) to cancel this order either in whole or in part without any liability other than making payments for any usable portion of the order already delivered. **Back Orders** not delivered in 90 days are subject to cancellation by SUNY Educational Opportunity Center and Hudson Valley Community College as its sole option.

5. **Improper Delivery.** In addition to the remedies provided by law, SUNY Educational Opportunity Center and Hudson Valley Community College reserve the right to refuse any goods in accordance with the terms and conditions of this order. Acceptance of any part of the order doesn't bind SUNY Educational Opportunity Center and Hudson Valley Community College to accept any future shipments nor deprive them of the right to return any goods already accepted.

6. **Risk of Loss.** Risk of loss shall not pass to SUNY Educational Opportunity Center and Hudson Valley Community College until goods called for in this order have been actually received and accepted by the buyer at the destination specified herein. Seller resumes full responsibility for packing, crating, marking, transportation, and liability for the loss or damage in transit, notwithstanding any agreement by buyer to pay for freight, express, or other transportation charges.

7. **Warranty.** Seller expressly warrants all goods delivered under this order to be free from defects in material and workmanship and to be the quality, size, and dimensions ordered. This express warranty shall not be waived by reason of the acceptance of the goods or payments therefore by SUNY Educational Opportunity Center and Hudson Valley Community College.

8. **Priorities, Allocations, and Allotments.** (This clause is applicable only when a "Priority Rating" under DMS Reg. 1 is shown on the face of the order.)

This contract shall follow the provisions of DMS reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

9. **Assignment; Subcontracting.** Neither party shall have any right to assign this order or any benefits arising from this order without prior written consent of the other and, unless, otherwise agreed upon in writing, the right of any assignee shall be subjected to all set-offs, counter-claims, and other comparable rights arising hereinafter.

10. **Renegotiation.** (a) To the extent required by law, this order is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended, and to any subsequent act of Congress providing for the renegotiation obligation with respect to this order or any sub contract hereunder which is not imposed by an act of Congress heretofore and hereafter enacted. Subject to the foregoing this order shall be deemed to contain all the provisions required by section 104 of the renegotiation act of 1951, and by any such other act, without subsequent amendment to this order specifically incorporating such provisions. (The seller agrees to insert the provisions of the clause, including this paragraph (b) in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

11. **Indemnification.** The seller agrees to indemnify SUNY Educational Opportunity Center and Hudson Valley Community College and to hold SUNY Educational Opportunity Center and Hudson Valley Community College harmless from and against all claims, liability, loss, damage, and expenses including legal fees, rising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any parts of the goods and work covered by this purchase order. The seller shall defend any such litigation brought against SUNY Educational Opportunity Center and Hudson Valley Community College provided that SUNY Educational Opportunity Center and Hudson Valley Community College notify the seller promptly of any such suit. The seller's obligation hereunder shall survive acceptance of the goods, and payment therefore by SUNY Educational Opportunity Center and Hudson Valley Community College.

12. **Notice and Assistance Regarding Patent and Copyright Infringement.** (a) The seller shall report to SUNY Educational Opportunity Center and Hudson Valley Community College promptly and in reasonable written detail, each notice of claim or patent or copyright infringement based on the performance of this contract of which seller has knowledge, (b) in the event of any claim or suit against SUNY Educational Opportunity Center and Hudson Valley Community College or the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies or work or service performed hereunder; the seller shall furnish to SUNY Educational Opportunity Center and Hudson Valley Community College when requested by the buyer, all evidence and information in possession of the seller pertaining to such suit or claim. Such evidence and information can be furnished at the expense of SUNY Educational Opportunity Center and Hudson Valley Community College except where the seller has agreed to indemnify SUNY Educational Opportunity Center and Hudson Valley Community College, (c) This clause shall be included in all sub contracts.

13. **Change Order.** SUNY Educational Opportunity Center and Hudson Valley Community College may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this purchase order in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packaging; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this purchase order, whether changed or not changed by any such order, an equitable adjustment shall be made in the purchase order price or delivery schedule, or both, and the purchase order shall be modified in writing accordingly. Any claims by the seller for adjustment under this clause must be asserted within 30 days of receipt by the seller of the notification of change, provided however that SUNY Educational Opportunity Center and Hudson Valley Community College decide that the facts justify such action, may receive an act upon any such claim asserted at any time prior to final payment under this purchase order. Where the cost of property made obsolete or excess as a result of a change is included in the seller's Claim for adjustment, SUNY Educational Opportunity Center and Hudson Valley Community College shall have the right to prescribe the manner of deposition of such property. However, nothing in this clause shall excuse the seller from proceeding with the purchase order as changed.

Since a purchase order is a contract, all changes must be processed through the Purchasing Department with the exception of construction of alteration projects which must be reviewed and have prior approval of the President of Hudson Valley Community College.

14. **Inspections.** SUNY Educational Opportunity Center and Hudson Valley Community College shall have the right to inspect the work and activities of the seller under this purchase order in such a manner and at all reasonable times as deemed appropriate.

15. **Taxes.** SUNY Educational Opportunity Center and Hudson Valley Community College are tax exempt organizations and therefore lack the authority to pay taxes.

16. **Hazardous Materials.** Any materials required by this order that are deemed hazardous will be packaged, marked, and shipped by the Seller to comply with all present and future federal, state, and local regulations and will further comply with any special company requirements.

17. **Insurance.** Before any work may be performed on SUNY Educational Opportunity Center and Hudson Valley Community College premises, evidence of the following insurance coverage in required amount must be in possession of the Purchasing Department:

- Bodily injury and property damage and liability: \$1,000,000. per occurrence; and \$2,000,000. aggregate;
- Workers Compensation as required by law, employee disability insurance, and employee liability insurance;
- Completed Operations Coverage.

18. **Safety and Health Devices.** All equipment shall meet the requirements of the State of New York and the County of Rensselaer Safety and Health Regulations as well as the local safety and health regulations of the City of Troy. Equipment shall conform to applicable standards of all national regulations.

19. **Offer and Contract.** The foregoing terms, together with such terms as are set forth on the face of this purchase order with such plans, specifications or other documents as are incorporated by reference on the face of this order, or as specified in item 20, and with such changes as are approved in writing by SUNY Educational Opportunity Center and Hudson Valley Community College in a change order issue to this order, constitutes the offer of buyer and Seller and, shall when accepted, constitutes the entire contract between the buyer and seller. Buyer hereby gives notice of its objection to any different or additional terms. This order shall be deemed to have been accepted upon buyers receipt of any acknowledgement executed by the seller. Any reference herein to any proposal, quotation, or other communication by the seller shall provide buyer with the Hudson Valley Communication College form entitled "Representations, Certifications, and Acknowledgements" completed by seller, and unless indicated to the contrary shall be deemed to be limited to the description of the products and/or services and to be limited by the terms set forth or incorporated herein.

20. This agreement shall be construed and enforced in accordance with the laws of the State of New York and the County of Rensselaer, and any legal proceedings concerning this contract shall be brought in New York State.

21. For additional terms or specifications contact the Office of Business Services.

22. **Examination of Records.** The seller agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the seller involving transactions related to this contract. This paragraph applies only to contracts exceeding \$5,000 and does not apply to agreements for public utility services at rates established for uniform applicability to the general public.

23. **Equal Opportunity.** During the performance of this contract, the seller agrees as follows:

(1) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or when otherwise qualified, physical or mental handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rate of pay, or other forms of compensation, and selection for training, including apprenticeship. The seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the seller setting forth the provisions for this nondiscrimination clause.

(2) The seller will, in all solicitations or advertisements for employees placed by or on behalf of the seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, Vietnam era veteran status or when otherwise qualified, physical or mental handicap.

(3) The seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advertising the labor union or workers representative of the sellers commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The seller will comply with all the provisions of Executive Order 11246 of September 24, 1965, and the rules regulations, and relevant orders of the Secretary of State.

(5) The seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the seller's noncompliance with the nondiscrimination clause, this contract may be cancelled, terminated or suspended in whole or in part, and the seller may be declared ineligible for further SUNY Educational Opportunity Center and Hudson Valley Community College contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The seller will include the provisions of Paragraphs (1) through (7) in every subcontract purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The seller will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanction for non-compliance; provided, however, that in the event the seller becomes involved in, or is threatened within, litigation with a subseller or vendor as a result of such direction by the contracting agency, the seller may request the United States to enter into such litigation to protect the interest of the United States.

24. **Minority Business Enterprise and Women-owned Business Enterprises.** It is the policy of SUNY Educational Opportunity Center and Hudson Valley Community College to take affirmative action to ensure that the minority business enterprises and women-owned business enterprises are given the opportunity to demonstrate their ability to provide SUNY Educational Opportunity Center and Hudson Valley Community College with goods and services at competitive prices.

25. **Fair Labor Standards.** Contractor warrants and represents that the goods covered by this contract have been manufactured in accordance with the requirements of the Fair Labor Standards Act and all other applicable federal, state, and municipal laws, rules, and regulations.

26. **Contract Work Hours and Safety Standards Act-Overtime Compensation.** This contract, to the extent that it is of a character specified in the contract Work Hours and Safety Standards Act (40 U.S.C. 327 333) is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder:

(a) Overtime Requirements: No seller or subseller contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek or work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such work in excess of forty hours in such workweek, whichever is the greater number of overtime hours;

(b) Violation, liability for unpaid wages, liquidated damages. In the event of any violation of the provisions, of paragraph (a), the Seller and any subcontractor responsible therefore shall be liable to SUNY Educational Opportunity Center and Hudson Valley Community College for liquidated damages. Such damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) on which employee was required or permitted to be employed on such work in excess of eight hours or in excess of this standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages: The contracting officer may withhold from the seller, from any moneys payable on account of work performed by the seller or subseller, such sum as may administratively be determined to be necessary to satisfy any liabilities of such seller or subseller for unpaid wages and liquidated damages as provided in the provisions of paragraph (b);

(d) Subcontracts. The seller shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion on all subcontracts of any tier.