

**Central Ohio Technical College (PURCHASER)
Purchase Order Terms and Conditions**

1. Certification of Funds

With issuance of this purchase order, the chief fiscal officer certifies that the amount required to meet the obligation in the fiscal year in which the purchase order is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.

2. Offer

This offer is subject to cancellation by PURCHASER without notice if not accepted by SELLER within fourteen (14) days of issuance.

3. Acceptance and Confirmation

This Purchase Order constitutes the entire agreement between the parties, unless otherwise specifically noted by PURCHASER on the face of this Purchase Order. Each delivery of goods and/or services received by PURCHASER from SELLER shall be deemed to be upon the terms and conditions in this Purchase Order.

No additional terms may be added and Purchase Order may not be charged except by written instrument executed by PURCHASER. SELLER is deemed to be on notice that PURCHASER objects to any additional or different terms and conditions contained in any acknowledgement, invoice or other communication from SELLER, notwithstanding, PURCHASER'S acceptance or payment for any delivery of goods and/or services, or any similar act by PURCHASER.

4. Inspection

All goods and/or services delivered hereunder shall be received subject to PURCHASER'S inspection and approval and payment therefore shall not constitute acceptance. All payments are subject to adjustment for shortage or rejection. All defective or nonconforming goods will be returned pursuant to SELLER'S instruction at SELLER'S expense.

To the extent that a purchase order requires a series of performances by SELLER, PURCHASER prospectively reserves the right to cancel the entire remainder of the Purchase Order if goods and/or services provided early in the term of the Purchase Order are non-conforming or otherwise rejected by PURCHASER.

5. Shipping

All goods are FOB destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. No charges will be paid by the PURCHASER for packing, crating or cartage unless otherwise specifically stated in this Purchase Order. Unless otherwise provided in Purchase Order, no invoices shall be issued nor payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice.

All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show this Purchase Order number. The container and Purchase Order numbers must be indicated on bill of lading. Packing slips must show Purchase Order number and must be included on each package of LCL shipments and/or with each carload of equipment. PURCHASER reserves the right to refuse or return any shipment or equipment at SELLER'S expense that is not marked with Purchase Order

numbers. SELLER agrees to declare to the carrier the value of any shipment made under this Purchase Order and the full invoice value of such shipment.

6. Time Is Of The Essence

Time for delivery of goods or performance of services under this Purchase Order is of the essence. Failure of SELLER to meet delivery schedules or deliver within a reasonable time, as interpreted by PURCHASER alone, shall entitle PURCHASER to seek all remedies available to it at law or in equity.

SELLER agrees to reimburse PURCHASER for any expenses incurred in enforcing its rights. SELLER further agrees that undiscovered delivery of nonconforming goods and/or services is not a waiver of the PURCHASER'S right to insist upon further compliance with all specifications.

7. Changes

PURCHASER may at any time by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of this Purchase Order. Should any such change increase or decrease the cost of, or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by the PURCHASER and SELLER. Notwithstanding the foregoing, SELLER has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by SELLER must be made within thirty (30 days) from the date the change is ordered or within such additional period of time as may be agreed upon the parties.

8. Warranties

SELLER expressly warrants that the goods and/or services covered by this Purchase Order will conform to the specifications, drawings, samples, or other descriptions furnished or specified by PURCHASER, and will be of satisfactory material and quality production, free from defects and sufficient for the purpose intended. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. These warranties shall survive inspection, acceptance, and passage of title and payment by PURCHASER.

9. Statutory Conformity

Goods and services provided pursuant to this Purchase Order, and their production and transportation, shall conform with all applicable laws, including but not limited to the Occupational Health and Safety Act, the Federal Transportation Act and the Fair Labor Standards Act, as well as any law or regulation noted on the face of the Purchase Order.

10. College Name

No SELLER providing goods and services to PURCHASER shall advertise the fact that it has contracted with PURCHASER for goods and/or services, or appropriate or make use of PURCHASER'S name or other identifying marks or property without the prior written consent of PURCHASER'S Department of Marketing and Public Relations.

11. Indemnification

SELLER shall indemnify and hold harmless PURCHASER from any and all claims, including claims of negligence, costs and expenses, including but not limited to attorney's fees, arising from, caused by or related to the injury or death of any person (including but not limited to employees and agents of SELLER in the performance of their duties or otherwise), or damage to property (including property of PURCHASER or other persons), which arise out of or are incident to the goods and/or services to be provided hereunder. Nothing herein shall require indemnification as

to any claims against PURCHASER arising from under the Ohio Worker's Compensation Law, unless the claim arises out of services performed by SELLER'S employees on College property.

12. Warrant of Non-Infringement

- A. SELLER represents and warrants that all goods sold, or services performed under this Purchase Order are a) in compliance with applicable laws; b) do not infringe any patent, trademark, copyright or trade secret; and c) do not constitute unfair competition.
- B. SELLER shall indemnify and hold harmless PURCHASER from and against any and all claims, including claims of negligence, costs and expense, including but not limited to attorney's fees, which arise from any claim, suit or proceeding alleging that PURCHASER'S use of the goods and/or services provided under this Purchase Order are inconsistent with SELLER'S representations and warranties in section A. SELLER'S defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.
- C. If any claim which arises from SELLER'S breach of Section A has occurred, or is likely to occur, SELLER may, at PURCHASER'S option, procure for PURCHASER the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing (without any material degradation in performance, quality, functionality, or additional cost to PURCHASER).

13. Non-Discrimination

In fulfilling the terms of this Purchase Order, SELLER agrees that it will not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to age, ancestry, color, disability, ethnicity, gender, gender identity or expression, genetic information, HIV/AIDS status, military status, national origin, race, religion, sex, sexual orientation, protected veteran status, and status as a parent. This covenant is required pursuant to federal laws and regulations, State of Ohio laws and regulations, and policy of PURCHASER. Any breach of this provision may be regarded by PURCHASER as a material and substantial breach of the contract arising from this Purchase Order.

14. Force Majeure

Neither PURCHASER nor SELLER shall be responsible for any delay or failure in performance resulting from any cause beyond their control, including, but without limitation to war, strikes, civil disturbances and acts of God. When SELLER has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of this Purchase Order, SELLER shall immediately give notice thereof, including all relevant information with respects to what steps SELLER is taking to complete delivery of goods and/or services to PURCHASER.

15. Confidentiality

SELLER agrees that it will keep confidential all information regarding the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by PURCHASER and will use such items only in the production of goods and/or services under this Purchase Order, or any other Purchase Orders issued by PURCHASER. Upon the completion or termination of this or other Purchase Orders, SELLER shall immediately return all confidential information to PURCHASER or shall make other disposition of the confidential information as directed by PURCHASER.

16. **Assignment**

SELLER may not assign this Purchase Order, not any money due without the prior written consent of the PURCHASER. Any assignment made without such consent shall be deemed void.

17. **General**

- A. This Purchase Order shall be governed by the laws of the State of Ohio, without reference to any choice of laws/rules.
- B. Failure of PURCHASER to act immediately in response to a breach of this Purchase Order by SELLER shall not constitute a waiver of breach. Waiver of PURCHASER by any default by SELLER hereunder shall not be deemed a waiver of any subsequent default by SELLER.
- C. All notices under this Purchase Order shall be sent to the respective addresses on the face page by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. Postage, delivery and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this section.

18. **Unresolved Findings**

SELLER warrants that it is not subject to an "unresolved" finding for recovery under O.R.C. 9.24. If the warranty is deemed to be false, the Purchase Order is void *ab initio* and the SELLER must immediately repay to PURCHASER any funds paid under this Purchase Order.

19. **Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization**

If the potential compensation to Seller under this Agreement exceeds \$100,000, Seller hereby represents and warrants Purchaser that it has not provided any material assistance, as that term is defined in R.C. Section 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion List and that it has truthfully answered "no" to every question on the "Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization." Seller further represents and warrants that it has provided or will provide such to Purchaser prior to execution of this Agreement. If these representations and warranties are found to be false, this Agreement is void *ab initio* and Seller shall immediately repay to Purchaser any funds paid under this Agreement.

For more information: <http://homelandsecurity.ohio.gov/dma/dma.asp>

20. **Background Check Policy Statement of Intent**

The College has established a background check policy to promote a safe and secure environment for the campus community. This policy applies to contractor employees, hired through third party staffing vendors that are intended to supplement our workforce.

21. **Tobacco Free Policy**

To support a commitment to general health and wellbeing of its faculty, staff, students, and visitors, the College intends to provide a tobacco free environment. Smoking and the use of tobacco and tobacco products are prohibited in or on all college owned or leased property including vehicles.