

PURCHASE ORDER TERMS AND CONDITIONS

1. AGREEMENT

Unless there is a separate written agreement between the Supplier and the College as indicated on the Purchase Order (PO) (an "Agreement"), this PO and any attachments are the sole agreement between the College and the Supplier with respect to the goods and/or services specified in this PO. Verbal agreements are not valid and all communication and any amendments relating to this PO must be in writing and signed by an authorized College employee. This PO may be terminated by the College with or without cause. If terminated without cause, the College will compensate the Supplier for actual and reasonable expenses incurred by the Supplier up to and including the date of termination so long as such expenses do not exceed agreed upon prices. If there is an Agreement and there is any conflict or inconsistency between such Agreement and this PO, the terms of the Agreement shall govern.

2. ACCEPTANCE

This PO constitutes an offer which becomes a contract on the terms and conditions contained herein when accepted by acknowledgement or upon delivery of services or shipment of goods by Supplier, whichever comes first. Acceptance of this offer is limited to the terms herein without modification. Any modification of these terms, including those with the Supplier's acceptance, shall not operate as a rejection of this offer but this offer shall be deemed accepted without such additional or modified terms and/or conditions. Any changes to the Contract shall be made only by written amendment signed by the parties or PO Change Order.

3. PRICE, TIME, SPECIFICATIONS AND INSPECTION

The price of the goods and/or services is stated on the PO. Time is of the essence with respect to delivery of the goods. The goods must be delivered (a) to the address specified in this PO ("Delivery Location") during the College's normal business hours; (b) strictly in accordance with the quantities, qualities and specifications shown; and (c) on the delivery dates specified. The College has the right to inspect the goods on or after the delivery date. The College has the right to reject and return, for full credit, at the Supplier's expense, all goods that are non-conforming or defective, late shipments, and excess goods. If the College rejects all or any portion of the goods or if the goods are not delivered by the Supplier on time, the College may purchase replacement goods elsewhere and the Supplier shall be liable for actual and reasonable costs and damages incurred by the College. The Supplier shall promptly notify the College if it will be unable to comply with the delivery date as specified in the PO.

4. SHIPPING TERMS, TITLE AND PACKAGING

Delivery shall be made Delivery Duty Paid (DDP) Delivery Location, Incoterms® 2020. Supplier shall give written notice of shipment to the College when the goods are delivered to a carrier for transportation. Supplier shall provide the College with all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the goods to the College within two business days after Supplier delivers the goods to the transportation carrier. The purchase order number must appear on all shipping documents, shipping labels, bills of lading/air waybill, packages and invoices. Title passes to the College upon delivery of the goods to the Delivery Location. All goods shall be packed for shipment according to the College's instructions or, if there are no instructions, in a

manner sufficient to ensure that the goods are delivered in undamaged condition and in accordance with applicable law and industry standards. Each shipment must include a packing slip and all packages containing Workplace Hazardous Material Information System (WHMIS)/Globally Harmonized System (GHS) designated substances must be properly marked with GHS compliant labels. The College makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables

5. COMPLIANCE WITH APPLICABLE LAW AND COLLEGE POLICIES

The Supplier and any subcontractors shall comply with all applicable federal, provincial and municipal statutes, regulations and by-laws pertaining to the goods and/or services or that govern the College's distribution of the Supplier's goods as, or as part of, a College product. Supplier shall obtain all applicable permits, licences, consents and approvals required for the Supplier to manufacture and deliver the goods and/or perform the services. All goods and services shall comply with Accessibility for Ontarians with Disabilities Act (AODA) Standards. Proof of completion of AODA Customer Service Training shall be provided upon request of the College. The Supplier must provide printed or electronic Safety Data Sheets (SDS) outlining order for any WHMIS/GHS controlled substance designated in regulations as issued by WHMIS or GHS. Supplier is also required to comply with the [College's Corporate Policies and Procedures](#).

6. CSA APPROVAL

All electrical equipment must be CSA approved, or bear Ontario Hydro special inspection label before acceptance. Equipment received without such approval may, at the discretion of the College, be returned for full credit or submitted to Ontario Hydro for approval at the Supplier's expense.

7. DOCUMENTATION

The Supplier agrees to furnish without additional charge, at the time of delivery of the goods, any and all permits required to complete the requested service, all technical documentation necessary to operate, repair, calibrate and maintain such goods. Documentation is to include the operating manual, service manual and all electronic circuit diagrams.

8. INSURANCE, PERMITS AND APPLICABLE LAWS

The Supplier shall, at its sole expense, obtain and maintain during the term of this Agreement, all permits, insurance coverage, licenses and approvals by law. Supplier represents and warrants that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods and services similar to those provided hereunder, including WSIB coverage and comprehensive. Such policies shall not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or material change is given by the Supplier to the College at least thirty (30) days before the effective date thereof. commercial general liability insurance of not less than \$5 million per occurrence. The supplier must send WSIB clearance certificate to email purchasing@mohawkcollege.ca

9. REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants that: (a) it has the right to

PURCHASE ORDER TERMS AND CONDITIONS

enter into this PO and at its own expense will comply with the terms of this PO; (b) no claim, lien, or action exists or is threatened against the Supplier that would interfere with the College's rights under this PO; (c) goods specified in this PO are, (i) of merchantable quality; (ii) fit for intended purposes; (iii) free from defects in design; (iv) in strict compliance with the specifications; and (v) from date of receipt will be free from defect in material and workmanship for the longer of the time period specified in this PO and the Supplier's standard warranty term; (d) services specified in this PO will be performed by the Supplier exercising the degree of professionalism, skill, diligence and care reasonably expected from an experienced provider of similar services and in accordance with the specifications; and (e) goods and services specified in this PO do not infringe any privacy, publicity, reputation or intellectual property right of a third party, the Supplier has disclosed to the College in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the goods and that the Supplier and the goods are in compliance with all licensing agreements applicable to such third party code and authors, if any, have waived all rights to the products and services' integrity and to be associated with them as authors. Supplier shall assign to the College all manufacturer's warranties for goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to the College. The services shall be performed in a professional, diligent and competent manner and shall meet or exceed those standards generally observed by reputable and competent members of the same industry providing similar services; it is an expert, trained, equipped and capable in providing the services and shall only use reliable, qualified and competent persons, as that term is defined in the Occupational Health and Safety Act (Ontario), to perform the services;

10. GOVERNING LAWS

This PO is governed by the laws of the Province of Ontario and the federal laws applicable therein. The parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario.

11. ASSIGNMENT

The Supplier may not assign or subcontract this PO, in whole or in part, without the College's prior written approval.

12. INDEMNITY

Supplier shall indemnify, defend and hold harmless the College, its respective officers, directors, employees and agents from and against all claims, fines, losses, damages, legal fees and other liabilities (including special and consequential damage and damages for loss of use) arising out of: (a) death, bodily injury, or loss or damage to personal property resulting from the use of the goods or services, or from the failure of the goods or services to comply with the warranties hereunder; (b) any claim that the goods or services infringe or violate the intellectual property rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its affiliates or subcontractors; (d) Supplier's breach of any of its obligations under this PO; and (e) any liens/encumbrances relating to the goods or services.

13. The Supplier unconditionally and irrevocably waives and releases all other claims, remedies, recourse or rights against the Crown in right of Ontario in respect of the PO, and agrees

that it shall have no remedies, recourse or rights in respect of the PO against the Crown in right of Ontario, any Ministry, Minister, agent, agency, servant, employee or representative of the Crown or any director, officer, servant, agent, employee or representative of a Crown agency or a corporation in which the Crown holds a majority of the shares or appoints a majority of the directors or members, other than against the College and its assets.

14. LIMITATION OF LIABILITY

To the extent permitted by applicable law, in no event will the College, including its subsidiaries or other related entities, be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages of any kind. The College's maximum aggregate liability for any and all claims and damages arising out of or related to this PO, whether arising in contract, tort, strict liability, statute or otherwise shall not exceed the total contract value. The limits of liability are exclusive as to all remedies and the liability cap shall not be increased under any circumstances.

The remedies, recourse or rights of the Supplier shall be limited to the College and to the right, title and interest owned by the College in and to all of its personal property, whether now existing or hereinafter arising or acquired from time to time.

15. INVOICES, PAYMENT AND SET OFF

Supplier shall send an invoice to the College at accountspayable@mohawkcollege.ca on or any time after the completion of delivery of the goods and/or performance of the services. All invoices submitted by the Supplier must reference the purchase order number and include the amount invoiced, exclusive of HST, and the amount of HST shown separately. The College shall pay properly invoiced amounts due to Supplier within thirty (30) days after College's receipt of such invoice, except for any amounts disputed by the College in good faith. The parties shall seek to resolve all such disputes expeditiously and in good faith. The College reserves the right to set off at any time any amount owing to it by Supplier against any amount payable by the College to the Supplier under the PO.

16. TERMINATION

If the Supplier fails to meet any material obligation of this Agreement, the College may, by written notice of default to the Supplier, and upon expiry of ten (10) days following notice without remedy, terminate this Agreement in whole or in part, and the College may in its discretion obtain goods and/or services similar to that terminated and the Supplier shall be liable to the College for all losses and costs that the College may incur as a result. The College shall also have the right to terminate this Agreement, for any reason upon thirty (30) days prior written notice. The termination of this Agreement shall not affect any rights or obligations which may have occurred prior to the termination or the event giving rise to the termination.

17. INDEPENDENT CONTRACTOR

It is expressly understood that the Supplier is an independent contractor and that this PO shall not make the Supplier an agent, employee, partner or joint venturer of or with the College; no such relationship shall arise or exist between the Supplier and the College during the term of this PO including any extension or renewal hereof; and, the Supplier will not

PURCHASE ORDER TERMS AND CONDITIONS

make any representations, public or otherwise, to the contrary.

18. FORCE MAJEURE

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the PO where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, global/national pandemics, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

19. SUBCONTRACTING

The Supplier may only subcontract any of the services or the manufacture or delivery of any goods under this Agreement with the prior written consent of the College. If subcontracting is permitted, the Supplier shall enter into agreements with such subcontractors to require them to perform the services and manufacture or deliver the goods in accordance with all applicable laws and the terms of this Agreement and the Supplier shall be liable for any acts or omissions of such subcontractors as if such acts or omissions were those of persons directly employed by the Supplier. The Supplier agrees to incorporate the terms of this Agreement into all subcontract agreements with its subcontractors. Any subcontract shall not relieve the Supplier from any of its obligations or liabilities under this Agreement.

20. PRIVACY COMPLIANCE AND CONFIDENTIALITY

As used herein, "Personal Information" shall have the meaning as defined in the Freedom of Information and Protection of Privacy Act (Ontario) (FIPPA). The Supplier shall comply with the Personal Information Protection and Electronic Documents Act (Canada), FIPPA and any other applicable privacy legislation (collectively the "Privacy Laws") with respect to any Personal Information accessed, collected, handled, used or disclosed in connection with this Agreement and shall indemnify, defend and hold harmless the College and its Representatives from and against any and all claims, demands, suits, losses, damages, causes of action, fines or judgments (including related expenses and legal costs) they may incur related to or arising out of any non-compliance by Supplier or its Representatives with this Section. The Supplier shall promptly notify the College in writing upon becoming aware of the loss, theft, or unauthorized access, disclosure, copying, use or modification of any Personal Information.

The parties agree and acknowledge that, subject to disclosure required by applicable laws or a court order, the Supplier shall maintain in strict confidence the terms of this Agreement and any and all proprietary and confidential information about the business, operations or customers of the College and any of its Affiliates, which it acquires in any form from the College by virtue of this Agreement ("Confidential Information") and will not disclose to any third party or make use of such Confidential Information for itself or any third party without the prior written consent of the College. The Supplier shall be responsible for any breach of this section by it or any other person to whom it discloses any Confidential Information. The College shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with any breach of Supplier's obligations pursuant to this section. Upon termination of this Agreement, or upon ten (10) days prior written notice from the College requesting return of Confidential Information to the College without retaining any copies thereof.