

H. LEE MOFFITT CANCER CENTER & RESEARCH INSTITUTE - TERMS AND CONDITIONS OF PURCHASE

- 1) **ACCEPTANCE:** This order is for the purchase and sale of the goods, (herein referred to as "the Article") and/or services, described on the front side hereof and is Buyer's offer to Seller. Acknowledgement hereof by Seller to Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions set out. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such deliveries by buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed overriding agreement between the parties.
- 2) **TERMS AND PAYMENT:**
 - a) **Taxes:** Buyer does not pay Federal Excise and Sales taxes of direct purchases of tangible personal property. This exemption does not apply to purchases of tangible personal property made by vendors who use the tangible personal property in the performance of contracts for the improvement of state-owned real property as defined in Chapter 192, Florida Statutes.
 - b) **Invoicing and Payment:** The vendor shall be paid upon submission of properly certified invoices to the purchaser at the prices stipulated on the contract at the time the order is placed, after delivery and acceptance of goods, less deductions if any, as provided. Invoices must be received within 30 days of shipment of goods or rendering services. In no circumstances will invoices more than 120 days from date of shipment be accepted. Invoices shall contain the purchase order number and the vendor's Federal Employer Identification Number. Send these required documents to: H. Lee Moffitt Cancer Center, 12902 Magnolia Drive, Tampa, FL 33612-9497, Attn: Accounts Payable. Failure to follow these instructions may result in delay in processing invoices for payment. Unless otherwise stated or negotiated, payment terms are Net 45 days after receipt of invoice.
 - c) Shipments are to be made FOB Destination; origin. Freight charges are not to be added to invoice and title shall pass at Buyer's dock..
- 3) **WARRANTY PRODUCT:**
 - a) The Seller expressly warrants that the Articles shall be merchantable within the meaning of Articles 2-314 (2) of the Uniform Commercial Code (See "CONTROLLING LAW") in effect on the date of this order. In addition to all warranties, which may be prescribed by law, the Articles shall conform to specifications, drawings, and other description and shall be free from defects in materials and workmanship. Seller also warrants that to the extent the Articles are not manufactured pursuant to detailed designs furnished by Buyer, that they will be free from defects in design. Such warranties, including warranties prescribed by law, shall run to Buyer, its successors, assigns and customers, and users of the Articles, for a period of one (1) year after delivery unless otherwise stated.
 - b) In addition to the warranties and conditions listed above all orders by Buyer for electrical equipment are subject to the following conditions to which the Seller hereby warrants and agrees:
 - i) Such equipment shall be certified by an OSHA approved, Nationally Recognized Testing Laboratory (NRTL), in accordance with the provisions in 29 CFR 1910.7. NRTL Program Regulations.
 - ii) The equipment shall meet the requirements of NFPA 101, Life Safety Code and NFPA 099 Standard for Health Care Facilities, as adopted by Florida Statute 69A-3.012, Fire Prevention
 - iii) Such equipment shall be provided with three prong heavy duty power cords not to exceed eight feet in length and shall have a hospital grade plug.
 - iv) In addition, suitable operator, user, and service manuals are to accompany all units when delivered. Payment is contingent upon receipt of this documentation. Said manuals shall include:
 - (1) Electrical schematic drawings
 - (2) Illustrations, which show locations of controls.
 - (3) Explanation of the function of each control.
 - (4) Illustrations of proper connection to the patient and other equipment.
 - (5) Step by step procedure for proper use of appliance.
 - (6) Safety precautions (or considerations) in application and in servicing.
 - (7) Effects of probable malfunctions on patient and employee safety.
 - (8) Difficulties that might be encountered, and care to be taken if the appliance is used on a patient at the same time as other electric devices.
 - (9) Circuit diagrams for the particular appliance shipped, if available.
 - (10) Functional description of the circuit.
 - (11) Power requirements, heat dissipation, weight, dimensions, output current, output voltage and other pertinent data.
 - v) Condensed operating instructions are to be clearly and permanently displayed on the equipment itself.
 - vi) Seller shall provide operator training and instruction by demonstration on the equipment supplied.
 - vii) Seller shall provide preventative maintenance and repair instruction to hospital personnel.
 - viii) Seller shall provide repair parts lists, ordering instructions, and information as to sources of supply for such repair parts.
 - ix) All equipment nameplates, warning signs, condensed instructions, labels, etc. are to be legible and remain so for the expected life of the equipment under the usual stringent hospital service and cleaning conditions. Labeling shall be clear and concise and free of misinterpretations.
- 4) **INDEMNITY AND INSURANCE:**
 - a) Seller shall defend, indemnify and hold buyer, its employees, its customers and users of the purchased Articles, harmless from any property damage, personal injuries, or death arising out of the purchase and/or use of the Articles purchased hereunder and/or arising out of Seller's (or its subcontractor's) work or performance hereunder and shall procure and maintain liability insurance with contracted liability coverage, with minimum limits of \$100,000/\$300,000/\$500,000 or with such higher limits as Buyer shall reasonably request. Seller shall on or before delivery of the Articles purchased hereunder, furnish to Buyer a Certificate of Insurance evidencing the foregoing coverages and limits.
 - b) Seller shall defend and hold Buyer harmless from the assessments by any third party of any liquidated damages or proven actual damages arising out of the failure of the Seller to timely deliver the Articles purchased hereunder.
 - c) Seller shall defend, indemnify and hold harmless Buyer, the officers, directors, agents and employees from and against any and all damages, charges, losses (including the cost of any Articles lost by libel, condemnation, or voluntary recall) actions, and proceedings brought by the United States of America or any state or local government or any agency or instrumentality thereof against Buyer, its officers, agents and/or employees or against any such Articles by reason of any claim or findings by and said public authority that any such Articles are not as herein guaranteed.
- 5) **AFFIRMATIVE ACTION NOTICE:** Sellers and Subcontractors are notified that they may be subject to the provisions of 41CFR Section 60-1.4, 41CFR Section 60-250.4 and Section 60-741.4 with respect to affirmative action program and plan requirements.
- 6) **TERMINATION:**
 - a) Buyer may terminate this order, in whole or in part without liability to Buyer, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof.
 - b) Buyer may terminate this order in whole or in part, at any time for its convenience, by notice to Seller in writing. On receipt by Seller of such notice, Seller shall, and to the extent specified therein, stop work hereunder and the placement of subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. Any termination claim must be submitted to Buyer within sixty (60) days after the effective date of the termination.
 - c) Any termination by Buyer, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller.
 - d) Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer on request all books, records, and papers relating thereto.
- 7) **COMPLIANCE WITH LAWS:** Seller guarantees to Buyer that the Articles comply with all federal, state and local laws, and all executive regulations, rules, declarations, interpretations and order issued thereunder.
 - a) Transactions involving federally funding are subject to the following:
 - i) Copeland "anti-Kickback" Act
 - ii) David Bacon Act, as amended
 - iii) Contract Work Hours and Safety Standards Act
 - iv) Right to Inventions Made under an Agreement
 - v) Clean Air Act and the Federal Water Pollution Control Act
 - vi) Byrd Anti-Lobbying Amendment
- 8) **CORPORATE COMPLIANCE.** Seller shall comply with state and federal law covering corporate compliance. Not adhering to this compliance mandate throughout the period specified, will result in termination of this transaction. By implementation or performance of this transaction (shipping of goods delivery of services for payment), Seller acknowledges of acceptance of this requirement and agrees to maintain full compliance with all applicable state and federal laws and regulations.
- 9) **CONTROLLING LAW:** This order and the performance of the parties hereunder shall be controlled and governed by the laws of the State of Florida.
- 10) **GENERAL:** All warranties shall be construed as conditions as well as warranties. No waiver of a breach or any provision of this order shall constitute a waiver of any other breach or provision. No modification or change in, or departure from, or waiver of the provisions of this order shall be valid or binding unless approved by buyer in writing. This order shall constitute the entire agreement
- 11) The Seller expressly agrees that any terms or conditions on any form or agreement, other than this agreement, which are not in full accord with the above stated agreement and its terms shall be null and void.
- 12) The Seller hereby assigns the entire right, title, interest, and all copyright in the work listed herein that is owned by Seller, to H. Lee Moffitt Cancer Center and Research Institute, Inc.
- 13) Seller shall not use the name "H. Lee Moffitt Cancer Center and Research Center," nor any variation or adaptation thereof, nor any trademark, tradename or other designation owned by Buyer nor the names of any of its trustees, officers, faculty, students, employees or agents, for any purpose without the prior written consent of Buyer.