

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 forth herein. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such delivery by Buyer shall constitute a firm contract on the terms and conditions hereof.
- 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, DeptAcct_AccountsPayable@moffitt.org; Attn.: Accounts Payable. Failure to follow these instructions may result in delay in processing invoices for payment. Unless otherwise agreed to by Buyer in writing, 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 and guarantees that the Articles shall be merchantable as that term is defined by the Florida Uniform Commercial Code in effect on the date of this order. In addition to all warranties or guarantees which may be prescribed by law, the Articles shall conform to all specifications, drawings, and other descriptions and shall be free from defects in materials and workmanship. Seller also warrants and guarantees 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 and guarantees, including those 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 agreed to by Buyer in writing.
 - b) For all orders by Buyer for electrical equipment, the Seller further warrants and guarantees the following:
 - 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.
 - ii) The equipment shall meet the requirements of NFPA 101, Life Safety Code and NFPA 099 Standard for Health Care Facilities, as adopted by Rule 69A-3.012, Florida Administrative Code.
 - 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 harmless Buyer, its officers, directors, agents, employees, customers and users of the purchased Articles, from any property damage, personal injuries, or death arising out of the purchase or use of the Articles purchased hereunder or arising out of Seller's (or its subcontractor's) work or performance hereunder. Seller 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 harmless Buyer, its officers, directors, agents, employees, customers and users of the purchased Articles, from any claims by any third party of 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, its 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 by reason of any claim or findings by 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 41 CFR §§ 60-1.4, 60-250.4 and 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 warrants and guarantees to Buyer that both the Seller and the Articles comply with all federal, state and local laws, regulations, rules, declarations, interpretations and orders issued thereunder. Seller is specifically advised that federally funded transactions may be subject to special requirements including but not limited to the following:
 - a) Copeland "Anti-kickback" Act
 - b) David Bacon Act
 - c) Contract Work Hours and Safety Standards Act
 - d) 45 CFR §2543.85 and 37 CFR Part 401 (right of federal government to inventions made under an agreement)
 - e) Byrd Anti-Lobbying Amendment
- 8) **CONTROLLING LAW, VENUE AND JURISDICTION:** This order and the performance of the parties hereunder shall be controlled and governed by the laws of the State of Florida and the parties hereby submit to the jurisdiction of the state and federal courts in the State of Florida. The parties have selected Hillsborough County, Florida as the sole and exclusive venue for any proceedings brought in connection with this order.
- 9) **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 between the parties and supersedes any other written or oral agreements or understandings between the parties. The terms and conditions set forth herein are incorporated into any order or contract for the Article or services and Seller expressly agrees that any terms or conditions inconsistent with those set forth herein are null and void.
- 10) **ASSIGNMENT:** To the extent that any work is not recognized as a work-for-hire, Seller will assign, transfer and convey to Moffitt without reservation, all of Seller's right, title and interest throughout the universe in perpetuity in any work, including without limitation, all rights of copyright and copyright renewal in said work or any part thereof. Seller will take whatever steps and do whatever acts Moffitt requests, including, but not limited to, assisting Moffitt or its representatives in filing applications to register claims of copyright in such works. Seller will not reproduce, distribute, display publicly, or perform publicly any such work without the written permission of Moffitt.
- 11) **USE OF BUYER'S NAME:** 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.