

**Cuyahoga Community College  
Purchase Order Terms and Conditions**

1. **Acceptance:** The Purchase Order ("PO") must be accepted in writing by the Seller. If, for any reason, Seller fails to accept the PO in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof, including Seller's commencement of performance, shall constitute acceptance by Seller of the PO and all of the PO terms and conditions ("T&Cs"). Any terms proposed in Seller's acceptance of the PO which add to, vary from, or conflict with the PO and/or T&Cs, are expressly rejected by Buyer.

2. **Entire Agreement:** This PO, the T&Cs and any documents referred to on the face hereof constitute the entire agreement between Buyer and Seller. No modification of any term contained herein shall be binding upon the Buyer unless made in writing and signed by Buyer's authorized representative.

3. **Time is of the Essence:** Time for delivery of goods or performance of service under the PO is of the essence. Failure of Seller to meet delivery schedules, shall entitle Buyer to seek all remedies available to it at law or in equity. Seller agrees to reimburse Buyer for any expenses incurred in enforcing said rights. Seller further agrees that undiscovered delivery of non-conforming goods and/or services is not a waiver of Buyer's right to later insist upon compliance with all specifications.

4. **Changes:** Buyer may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of this PO. Should any such changes increase or decrease the cost or, or the time required for performance of the PO, an equitable adjustment in the price and/or delivery schedule will be negotiated by the Buyer 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 mutually agreed upon by the parties.

5. **Cancellation:** Buyer reserves the right to terminate this PO, in whole or in part, on default of Seller, if Seller enters bankruptcy, or for any or no reason, by giving Seller written notice of termination. If termination is for Buyer's convenience and not on Seller's default or bankruptcy, then Buyer shall reimburse the Seller for reasonable and necessary costs actually incurred as of the date of cancellation but shall not be responsible for any lost profits on the cancelled portion of the PO. If Buyer terminates and reimburses Seller its costs, then Buyer is entitled to receive any finished goods and/or work-in process which have been prepared pursuant to the PO.

6. **Warranty:** Seller expressly warrants to Buyer that the goods/services delivered under this PO will (a) conform to the specifications, drawings, samples or other description upon which this PO is based, (b) be merchantable and free from all defects in material and workmanship, (c) be free from defects in design, and (d) be fit for their intended purpose. All such warranties shall survive inspection, test, acceptance and use of the goods furnished under this PO. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. The Buyer reserves the right to reject any material or service that does not conform to specifications, and to return materials at Seller's expense.

7. **Indemnification:** Seller agrees to indemnify and hold harmless Buyer and its trustees, officers, employees and agents, and the successors and assigns of any of them, from and against any and all liabilities, claims, demands, lawsuits, settlements, judgments, costs, penalties, damages, losses or expenses (including, without limitation, court costs, attorneys' fees and costs of suit) that arise or are alleged to have arisen as a result of: (i) breach of this PO or these T&Cs by Seller; (ii) the negligence or misconduct of Seller; (iii) actual or claimed infringements of patent, trademark, copyright, or other rights, misappropriation of trade secrets or breach of confidential relationship, with respect to goods furnished under this PO; or (iv) Seller's failure to timely deliver such goods.

8. **Limitation of Liability:** Buyer's liability for damages arising out of or relating to this PO, whether in contract or in tort, will not exceed the total amount due to Seller under this PO or the amount of direct damages incurred by Seller, whichever is less. **IN NO EVENT WILL BUYER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, EVEN IF BUYER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.**

9. **Force Majeure:** Neither Buyer nor Seller shall be responsible for any delay or failure in performance resulting from any cause beyond their reasonable control, including, but not limited to war, strikes, civil disturbances and acts of God. When Seller has knowledge of any actual or potential force majeure or other condition which delays or threatens to delay timely performance under this PO, Seller shall immediately give notice thereof, including all relevant information with regarding the actions Seller is taking to complete delivery of the goods and/or services to Buyer.

9. **Proprietary Information:** Any specifications, drawings, designs, manufacturing data, and any other information transmitted to Seller by Buyer in connection with this PO are the property of the Buyer and are disclosed in confidence and shall not be disclosed, reproduced, or used for any purpose other than as required under this PO. Unless otherwise agreed upon in writing by Buyer, any information disclosed to Buyer or Seller in connection with this order shall not be considered proprietary and shall be acquired without restriction as part of the consideration for this PO.

10. **Intellectual Property:** Any specifications, drawings, designs, software, training programs or other intellectual property developed under this PO on behalf of the Buyer are the property of the Buyer and shall not be disclosed, reproduced, or used for any purpose other than as required under this PO, unless otherwise agreed upon in writing by Buyer.

11. **Assignment:** Seller may not assign, subcontract, or delegate Seller's rights or obligations under this PO without the prior written consent of Buyer. Any attempted assignment, subcontract or delegation will be null and void.

12. **Taxes:** Goods and services procured subject to this PO are exempt from Ohio sales tax (ORC Section 5739.02), and from federal excise tax. (Exempt ID #9171307)

13. **Discounts:** Any cash discount period will be computed from the latter of the date of delivery receipt or the receipt of an accurate and complete invoice.

14. **Compliance**

a. Seller represents and warrants that it and its employees and agents are in compliance with, and shall comply with, all applicable federal, state and local laws, regulations, ordinances, and licensing requirements. Without limiting the generality of the foregoing: (i) Seller and its employees or agents shall not discriminate or retaliate against or intimidate any person on the basis of race, color, religion, sex, age, disability, military status, pregnancy, genetic information, sexual orientation, gender identity and expression, veteran status, national origin or ancestry; (ii) Seller represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Seller further represents, warrants, and certifies that neither Seller nor any of its employees will do any act that is inconsistent with such laws; (iii) Seller shall, and shall instruct and require its employees and agents assigned to provide deliverables or services under this PO, to comply with all policies and procedures established by Buyer; (iv) Seller hereby certifies that neither Seller nor any of Seller's partners, officers, directors or shareholders, nor the spouse of any such person, has made contributions in excess of the limitations specified in R.C. 3517.13; and (v) if the requirements of the Standards for Safeguarding Customer Information (the "Financial Safeguards Rule") promulgated pursuant to the Gramm-Leach-Bliley Act apply to Seller under this PO, then Seller agrees to implement and maintain safeguards sufficient to ensure full compliance.

b. If, in any way relating to this PO, Seller's has access to "customer information" (as defined in the Financial Safeguards Rule), then: (i) Seller acknowledges that such customer information is confidential; (ii) Seller shall hold all customer information in strict confidence and use it only for the explicit purpose of performing its obligations under this PO; (iii) Seller shall disclose customer information only to its employees who need to know or need to have access to the customer information; (iv) within ten business days of the date this PO terminates or expires, or upon request by Buyer, Seller shall destroy or return to Buyer all customer information; and (v) Buyer shall be entitled to audit Contractor's compliance with the provisions of this Section.

15. **General**

a. The validity, interpretation, construction and performance of this PO will be governed by the laws of the State of Ohio without regard to its conflicts of law principles. Each party hereby irrevocably consents and submits to the personal jurisdiction of, and to the exclusive venue for any legal proceedings or actions arising out of this PO, in the state and federal courts located in Cuyahoga County, Ohio. Each party waives a jury trial in any matter arising out of or relating to this PO.

b. A waiver by any party of any breach or default by the other party under this PO shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

c. All notices under this PO 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 given upon receipt. Postage, delivery charges and other charges shall be paid by the sender. A party may change its notification address by written notice, as outlined in this section.



Where futures begin™

April 12, 2016

Subject: Federal Stimulus Funds / Ohio Ethics and Conflict of Interest Laws

Dear Supplier:

Cuyahoga Community College is the recipient from time to time of federal stimulus funds tied to project work that is occurring within the College. As a recipient of these types of funds and as a political subdivision of the State, we have certain responsibilities that go along with accepting those funds. It is critically important that we all maintain the highest level of integrity when conducting business and that we all effectively work together and do our part to prevent, detect, and punish fraud and other illegalities, in general, and specifically when connected to stimulus dollars in Ohio.

As our supplier, it is key that your company has ongoing practices and established internal controls for the prevention, detection, and punishment of fraud or other illegalities within your business environment. It is just as important that you are training your employees on those ethics, internal controls, and rules that apply when you are a supplier to a state organization and the recipient as well of public monies.

As our supplier, your firm is representing, warranting, and certifying that your firm and your employees engaged in the administration or performance of work within the College, are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Your firm is further representing, warranting, and certifying that neither your firm nor any of your employees will do any act that is inconsistent with such laws.

We look forward to many years of continued growth with business partners in the community that can mirror our vision and can uphold the highest ethical standards and practices within their organizations.

Sincerely

A handwritten signature in blue ink, appearing to read "DKuntz".

David Kuntz, CPA  
Executive Vice President/ Treasurer  
Cuyahoga Community College