

**H. LEE MOFFITT CANCER CENTER AND RESEARCH INSTITUTE, INC. (“MOFFITT”)
STANDARD TERMS AND CONDITIONS OF PURCHASE¹**

- 1) **ACCEPTANCE:** This order is for the purchase by Moffitt (herein referred to as “Buyer”) and the sale of the goods and/or services (referred to as the “Article(s)”) by the selling-entity (herein referred to as “Seller”), for the Article(s) set forth in the accompanying proposal, statement of work, or purchase order (hereinafter “Order”) 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, unless the parties enter into a formal agreement with respect to the Article(s) (herein referred to as the “Agreement”), in which case the terms and conditions herein will supplement the Agreement to the extent that the terms and conditions herein do not directly conflict with the terms and conditions of the Agreement. Unless otherwise set forth within the Agreement, in the event of any direct conflict between the Order and the Agreement, the Agreement shall prevail.** In the absence of such acknowledgement of Order or Agreement, commencement of delivery of the Articles 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 sellers 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: Seller shall be paid upon submission of a properly certified invoice to Buyer at the prices stipulated on the Order (or within the Agreement if so executed between the parties) at the time the order is placed, after delivery and acceptance of Article(s), less deductions if any, as provided. Invoices must be received within thirty (30) days of the shipment or rendering of the Article(s) as applicable. Under no circumstances will Buyer accept any invoices issued by the Seller exceeding one hundred twenty (120) days from the date of shipment, or the provision of the identified Article(s). Seller’s invoices shall contain Buyer’s identified purchase order number for the Articles, and Seller’s Federal Employer Identification Number. Seller shall send these required documents to: H. Lee Moffitt Cancer Center and Research Institute, Inc., 12902 Magnolia Drive, Tampa, FL 33612-9497, DeptAcct_AccountsPayable@moffitt.org; Attn.: Accounts Payable. Failure to follow these instructions may result in a delay in processing invoices for payment. Buyer’s payment terms are Net forty-five (45) days following receipt of a properly certified 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.
 - d) Changes in Fees. During the term, Seller may increase or adjust the basis for calculating fees for Articles annually (“Annual Adjustment”) by providing Buyer at least ninety (90) days prior written notice. If Seller increases the fees by the greater of two percent (2%) or the change in OECD CPI, Buyer may terminate the affected Articles by notifying Seller within thirty (30) days of the date of Seller’s invoice. Termination of such Articles by Buyer is deemed effective on the date when the increase or adjustment takes effect.
- 3) **REPRESENTATIONS AND WARRANTIES:**
 - 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 the 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 the 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, assignees 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 (3) 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/or service manuals (“Manuals”) are to accompany all units when delivered. Payment by Buyer is contingent upon receipt of the Manuals. The applicable Manuals shall include the following:
 - (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) Subject to Buyer’s NEMP Policy (as set forth in Section 12 herein) Seller shall provide operator training and instruction by demonstration on the equipment supplied.
 - vii) Seller shall provide preventative maintenance and repair instruction to Buyer’s designated 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, and labels 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.
 - c) Seller and its affiliates represent and warrant the following:
 - i) They are not “sanctioned persons” under any federal or state program or law;
 - ii) They have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities;
 - iii) They have not been listed on the General Services Administration’s list of Parties Excluded from Federal Programs; and
 - iv) They have not been convicted of a criminal offense related to healthcare (collectively referred to herein as being “Debarred”). Seller represents and warrants that it and its affiliates shall not knowingly employ, contract with, or retain any person or entity directly or indirectly to perform or provide the services hereunder if such a person or entity is Debarred or is, to Seller’s knowledge, under investigation for debarment. Furthermore, Seller represents and warrants that, to the best of its knowledge, it has not engaged in any conduct or activity which could lead to debarment actions.
- 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 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.
 - b) 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

¹ For a list of Moffitt’s contractual provisions and requirements, please refer to [Moffitt’s Memorandum of Vendor Contracting Policies and Requirements](#).

- instrumentality thereof by reason of any claim or findings by said public authority that any such Articles are not as herein guaranteed.
- c) 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 that the Articles infringe upon the intellectual property rights of such third party.
 - d) 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.
- 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:** The 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 the 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. Unless and to the extent the parties have executed an Agreement, the Order shall constitute the entire agreement between the parties and supersedes any other written or oral agreements or understandings between the parties.
 - 10) **INTELLECTUAL PROPERTY 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 Buyer.
 - 11) **USE OF BUYER'S NAME:** Seller shall not use the name "H. Lee Moffitt Cancer Center and Research Center, Inc." 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.
 - 12) **BUYER'S NEMP POLICY.** Seller agrees it and any applicable staff, as determined by Buyer, will abide by Buyer's Oversight of Non-Employed Moffitt Personnel Policy (herein referred to as the "NEMP Policy") for screening and certification prior to being granted access to Buyer's facilities and/or systems, or Buyer's data, on a hosted site, or beginning any work hereunder, whether such activities will be conducted on site or remotely.
 - 13) **CONFIDENTIALITY:** For purposes of the Agreement, "Confidential Information" includes, without limitation, any and all information provided by or which will be provided or disclosed (whether or not purposely, marked "confidential" or not) by the Seller or Buyer (referred to individually as a "Party" or collectively referred to as the "Parties"), one Party to the other Party. Confidential Information does not include any information that has become publicly known and made generally available through no wrongful act of the other Party or of others who were under confidentiality obligations. All Confidential Information made available or disclosed in relation to the Agreement shall at all times remain the sole property of the disclosing Party. Each Party shall take all reasonable precautions to maintain the confidentiality of the other Party's Confidential Information and each Party shall use the other Party's Confidential Information only to the extent required to perform its obligations under the Agreement. Unless required by law, each Party shall not disclose the other Party's Confidential Information to anyone other than those directly involved in the Agreement, including their employees, attorneys, consultants, and accountants, who are bound by obligations of confidentiality at least as stringent as those set forth in this Section. A Party may disclose Confidential Information of the other Party to the extent it is compelled by law, bona fide legal process, or a court of competent jurisdiction to do so, provided the Party gives the other Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.
 - 14) **COUNTERPARTS:** An Agreement between the Parties may be executed in two (2) or more identical counterparts, each of which shall be deemed to be an original and all of which taken together, shall be deemed to constitute the Agreement when a duly authorized representative of each Party has signed a counterpart. The Parties intend to sign and deliver the Agreement by facsimile or other electronic transmission. Each Party agrees that the delivery of the Agreement by facsimile or electronically shall have the same force and effect as the delivery of original signatures and each Party may use facsimile and or electronic signatures as evidence of the execution and delivery of the Agreement by all Parties to the same extent that an original signature could be used.
 - 15) **DEBARMENT WARRANTY:** Seller represents and warrants that it and its affiliates: (i) are not "sanctioned persons" under any federal or state program or law; (ii) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (iii) have not been listed on the General Services Administration's list of Parties Excluded from Federal Programs; or (iv) have not been convicted of a criminal offense related to healthcare (collectively referred to herein as being "Debarred"). Seller represents and warrants that it and its affiliates shall not knowingly employ, contract with, or retain any person or entity directly or indirectly to perform or provide the services hereunder if such a person or entity is Debarred or is, to Seller's knowledge, under investigation for debarment. Furthermore, Seller represents and warrants that, to the best of its knowledge, it has not engaged in any conduct or activity which could lead to debarment actions.