

MANAGEMENT & TRAINING CORPORATION
TERMS AND CONDITIONS FOR CONTRACTS / PURCHASE ORDERS
ISSUED UNDER TEXAS DEPARTMENT OF CRIMINAL JUSTICE CONTRACTS (6/17)

1. DEFINITIONS

As used throughout this document, the following terms shall have the meanings indicated below:

- A. The term "contract" means these Terms & Conditions and the purchase order or contract to which the terms and conditions are attached.
- B. The term "MTC" means Management & Training Corporation.
- C. The term "TDCJ" means Texas Department of Criminal Justice.
- D. The term "Contractor" and/or "Seller" means the individual, partnership, corporation, or association contracting with MTC hereunder to furnish the article(s) and/or service(s) described in the contract.

2. CONTRACT

The provisions of this contract constitute the complete and exclusive agreement between the parties hereto and supersede all previous communications, representations, or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the terms and conditions of this contract will be binding unless in writing and signed by an authorized MTC representative. If any term in Seller's agreements or documents is contrary to the terms of this contract, this contract is controlling. This shall become a binding contract on the terms and conditions set forth herein, when it is accepted by Contractor, either by acknowledgement or commencement of performance. Contractor agrees at all times to comply with all applicable state, federal, and local laws.

3. MASTER CONTRACT

This Contract is subject to the contract between the Texas Department of Criminal Justice ("TDCJ") and Management & Training Corporation (the "Master Contract"). The Contractor agrees to comply with the terms of the Master Contract to the extent applicable with respect to goods and services being provided under this Contract. The Department's approval of a subcontract does not relieve the Contractor of its duty to perform under the Master Contract. It is the intention of the parties that Subcontractor shall stand in the shoes of Management & Training Corporation with respect to fulfilling the duties and obligations of Management & Training Corporation to TDCJ under the Master Contract.

4. MATERIAL

The material called for in the contract shall be packed in accordance with standard commercial practices unless otherwise stated in the contract.

5. ADMINISTRATION AND LIAISON

All inquiries, including technical inquiries and correspondence regarding all orders, will be directed to the attention of cognizant Buyer of the Procurement Office. MTC will not be bound by any agreements or changes to any part of any contract made as a result of inquiries and liaison between Contractor and MTC personnel, other than authorized Procurement Office personnel.

6. INVOICES AND PAYMENT

Contractor shall prepare at the time of shipment full and complete invoices of the goods sold and shall deliver a copy of said invoice by mail or otherwise to MTC. Contractor shall be paid in accordance with the terms of the contract, upon the submission of said invoices at the prices stipulated in the contract for material delivered and accepted, or services rendered and accepted. For purposes of discounts the effective date of the invoice shall be construed to be the date of receipt of the goods and actual acceptance at MTC (or such other destination as designated in the contract schedule) or the date of receipt by MTC of Contractor's acceptable invoice, whichever occurs later.

7. DELIVERIES, OVERAGES AND EXTRAS

Deliveries are to be made both in quantities and at the time and method specified in the contract or modification thereof. MTC will have no liability for payment for material or items delivered to MTC which are in excess of quantity specified in the delivery schedules, unless such excess is agreed upon by MTC in writing by an authorized Procurement representative. Except as otherwise provided in the contract, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by an authorized MTC representative.

8. WARRANTY

Contractor expressly warrants that all materials and work covered by the contract will conform to the specifications, drawings, sample or other description furnished or specified by MTC, and will be merchantable, of good material and workmanship, and free from defect. Contractor expressly warrants that all the material covered by the contract which is the product of Contractor or is in accordance with Contractor's specifications will be fit and sufficient for the purpose intended. The foregoing warranties are in addition to all other warranties, whether expressed or implied. The provisions of

this clause shall not limit or affect the rights of MTC under the clause hereof entitled "INSPECTION." All warranties shall run to MTC and its customers.

9. INSPECTION AND TITLE PASSAGE

A. Final inspection and acceptance of items delivered thereunder shall be made after delivery at the MTC designated point, notwithstanding any prior payment or inspection.

B. Title to all supplies and/or work provided under the contract shall vest in MTC at the F. O. B. point referenced elsewhere in the contract or on separate shipping instructions, provided, however, that in the event the supplies and/or work are subsequently rejected by MTC for reasons other than loss or damage caused in transit, title will be divested from MTC and will revert immediately to Contractor.

10. TAXES

Contractor agrees that, unless otherwise indicated in the contract, (a) the prices therein do not include any state or local sales, use or other tax from which an exemption is available for purposes of the contract under Public Law 105-220, and (b) the prices herein include all other applicable federal, state, and local taxes in effect at the date of this contract. In the event it shall ever be determined that any tax included in the prices therein was not required to be paid by Contractor, Contractor agrees to notify MTC and to make prompt application for the refund thereof, to take all proper steps to procure the refund and when received to pay the same to MTC. It is agreed that Contractor will be treated as an independent individual contractor and not as an employee of MTC for federal tax purposes.

11. INSURANCE AND INDEMNIFICATION

A. Insurance: Contractor shall maintain and provide proof of (1) worker's compensation insurance complying with State and Federal requirements with employer's liability limits of not less than \$500,000; (2) general liability insurance with a minimum limit of \$1,000,000 for each occurrence and an aggregate limit of \$3,000,000; (3) where appropriate, Comprehensive Business Automobile Liability insurance with a minimum combined single limit of \$1,000,000; (4) where appropriate, Professional Liability insurance with a minimum limit of \$1,000,000 for each occurrence and an aggregate of \$3,000,000.

B. Indemnification: Contractor shall defend, indemnify and hold harmless MTC and its officers, directors, employees, agents, shareholders, partners, joint ventures, affiliates, successors and assigns from and against any and all liabilities, obligations, claims, demands, suits, losses, expenses, damages, fines, judgments, settlements and penalties, including, without limitation, costs, expenses and attorneys' fees incident thereto, arising out of or based upon contract damages, property damage or bodily injury (including death at any time resulting therefrom) to any person, including Contractor's employees, affiliates, or agents, occasioned by or in connection with (1) Contractor's performance of (or failure to perform) the contract duties hereunder; (2) a violation of any laws or any negligent act or omission by Contractor or its affiliates, subcontractors, agents or employees during the performance of the contract duties hereunder; or (3) a breach of this contract by Contractor or any of its affiliates, subcontractors, agents, or employees. The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as all other reasonable costs, expenses and liabilities incurred by the party indemnified, from and after the time at which the party indemnified received notification (whether verbal or written) that a claim or demand is to be made or may be made. Contractor's obligation under this section does not extend to any liability caused by the sole negligence of MTC. This paragraph will survive the expiration or termination of this contract.

12. TRAFFIC ROUTING

Contractor is to adhere strictly to MTC's shipping instructions. Any losses or additional expenses accruing to MTC from deviation from MTC's shipping instructions contained herein shall be charged to the Contractor.

13. PROOF OF SHIPMENT

Upon request, if shipment by a third party is required, Contractor shall forward to MTC, with invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment was made.

14. DOCUMENTATION

Documentation, if required, is included in the unit price and will be supplied under MTC's specified format at no additional cost to MTC.

15. LICENSE

No licenses, expressed or implied, under any patents are granted by either party to the other.

16. ANTI-KICKBACK PROCEDURES

Contractor will comply with the Anti-Kickback Act of 1986 (41 U. S. C. 51-58) which prohibits any person from:

A. Providing or attempting to provide or offering to provide any kickback;

B. Soliciting, accepting, or attempting to accept any kickback; or

C. Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -OVERTIME COMPENSATION

This contract is subject to the Contract Work Hours and Safety Standards Act-Overtime Compensation as set forth in 41 CFR Part 52-222.4A which is incorporated by reference (as applicable by state).

18. EQUAL EMPLOYMENT, AFFIRMATIVE ACTION AND EMPLOYEE RIGHTS

This contract is subject to the Equal Employment Opportunity and Affirmative Action requirements set forth in 41 CFR Part 60-1.4(a) (equal opportunity), 41 CFR Part 60-250.5(a) (covered veterans), 41 CFR Part 60-741.5(a) (individuals with disabilities) and the Notice Clause of Executive Order 13496 regarding Employee Rights under the National Labor Relations Act (NLRA) (29 CFR Part 471, Appendix A to Subpart A). Additionally, the contractor shall not discriminate against any employee based on disability status, age, sexual orientation, gender identity, veteran status, political affiliation, or marital status.

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

Non-Discrimination. Contractor warrants that it shall not discriminate against any employee, subcontractor, participant or provider on account of race, color, handicap, religion, sex, national origin, genetic information or age, and in accordance with the following:

(A) Contractor shall not discriminate against employees, subcontractors, participants or providers who have or are perceived to have a handicap because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. Contractor shall post notices setting forth the provisions of this non-discrimination clause in conspicuous places, available to employees and applicants for employment.

(B) In all solicitations or advertisements for employees and/or the purchase of services, Contractor shall state that it is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of this requirement.

19. TITLE TO DRAWINGS AND SPECIFICATIONS

MTC shall at all times have title to all drawings and specifications furnished by MTC to Contractor and intended for use in connection with the contract. Contractor shall use such drawings and specifications only in connection with the contract and shall not disclose such drawings and specifications to any person, firm or corporation other than Contractor's employees or subcontractors. Contractor shall, upon MTC's request or upon completion of the contract, promptly return all drawings and specifications to MTC.

20. ASSIGNMENT

Contractor shall not delegate any duties, nor assign any rights or claims under the contract, or for breach thereof, without prior consent of MTC, and any such attempted delegation or assignment shall be voided.

21. OFFSET

MTC may offset any amounts due to MTC from Contractor against amounts payable hereunder. MTC reserves the right to deny payment for unauthorized work and/or costs incurred by Contractor.

22. CHANGES

A. MTC may at any time, by a written order, and without notice, make changes within the general scope of this contract, in any one or more of the following: (1) drawings, designs, or specifications, where supplies to be furnished are to be specially manufactured in accordance therewith; (2) method of shipment or packing; (3) place of delivery; and (4) number of items to be delivered.

B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any contract, an equitable adjustment shall be made: (1) in the price or delivery schedule, or both; and (2) in such other provisions of the contract as may be affected, and the contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by Contractor of the notification of change; provided, however, MTC may decide that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract.

23. NOTICE OF DELAYS AND LABOR DISPUTES

Whenever Contractor encounters any difficulty that is delaying or threatens to delay the timely performance of this contract (including actual or potential labor disputes), Contractor shall immediately give notice thereof in writing to MTC, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery schedule or be construed as a waiver by MTC of any rights or remedies to which it is entitled by law or pursuant to provisions of this contract. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery schedule because of such delay.

24. AGENCY

The relationship created by this contract between the parties is that of vendor and vendee and neither party, nor any of its representatives, agents, or employees, have any right of authority to assume or create any obligation of any kind addressed to or intended for the other, nor to bind the other in any respect whatsoever. Each party hereby indemnifies the other and agrees to hold it harmless from and against all claims, suits, expenses, damages, losses and liability arising out of any breach of this subparagraph by such party or its representatives, agents or employees. The prior sentence will survive the expiration or termination of this contract.

25. DEFAULT

In the event either party shall be in breach or default of any of the terms, conditions, or covenants of this contract, and such breach or default continue for a period of thirty (30) days after the giving of written notice by the other party hereto, then in addition to all other rights and remedies of law or equity or otherwise, the other party hereto shall have the right to cancel this contract without any charge or liability whatsoever, except as to payment for material already received and accepted by MTC.

26. ATTORNEYS FEES

If it shall become necessary for either party to engage attorneys to institute legal action for the purposes of enforcing its rights hereunder, the party prevailing in such litigation shall be entitled to receive all of its fees and expenses from the losing party.

27. FORCE MAJEURE

Neither party shall be held responsible for any delay or failure in performance of any part of this contract to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo government requirements, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control ("Force Majeure Conditions"). If any Force Majeure Condition occurs, the party delayed or unable to perform shall give immediate notice to the other party, and the party affected by the other's delay or inability to perform may elect to:

- A. Terminate this contract or the part of it relating to material not already shipped; or
- B. Suspend this contract for the duration of the Force Majeure Condition, buy or sell elsewhere material to be bought or sold under this contract and deduct from any commitment the quantity bought or sold or for which commitments have been made elsewhere; or
- C. Resume performance under this contract once the Force Majeure Condition ceases with appropriate schedule extension.

Unless written notice is given within thirty (30) days after the affected party is notified of the Force Majeure Condition, paragraph B shall be deemed selected.

28. WAIVER

Either party's failure to enforce any of the terms or conditions hereof, or to exercise any remedy hereunder, shall not constitute a waiver of said terms or conditions or of such party's right to exercise said remedies during the remaining term of the contract.

29. INSPECTION AND ACCEPTANCE

MTC, through any authorized representatives, has the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed and/or material delivered hereunder and the premises in which it is being performed, assembled or manufactured. If any inspection or evaluation is made by MTC on the premises of Contractor or its subcontractors, Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of MTC representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay Contractor's work.

30. INFORMATION CONCERNING ENROLLEES/PARTICIPANTS OR ACTIVITIES

Contractor agrees to keep confidential and not to use or disclose to others any information related to MTC, its enrollees/participants and/or activities or the terms of this contract, without prior written approval of MTC. This paragraph will survive the expiration or termination of this contract.

31. DUPLICATION OF EFFORT

Contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any charged against any other contract, subcontract, or other MTC source. Contractor agrees to advise MTC in writing of any other contract or subcontract it has performed, or is performing, which involves work directly related to the purpose of this contract.

32. STUDIES/EVALUATIONS

Contractor agrees that all studies, evaluations, proposals and data produced or developed in the performance of this contract for which reimbursement is appropriate hereunder shall become the property of MTC. This provision does not preclude Contractor from seeking copyright of materials, other than those described above, such as teaching material and curricula.

33. EXAMINATION OF RECORDS

MTC, until three (3) years after final payment under this contract, has the right to examine any of Contractor’s directly pertinent books, documents, papers, or other records involving transactions related to this contract.

34. AUTHORITY TO AUDIT

Contractor understands that acceptance of funds under this Agreement acts as acceptance of the Texas State Auditor’s Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the Texas State Auditor’s Office or its successor in the conduct of the audit or investigation, including providing all records requested.

35. TERMINATION DUE TO LOSS OF GOVERNMENT FUNDING

MTC has the right to cancel this contract immediately, should the applicable government agency no longer provide funding to this contract.

36. TERMINATION OF CONTRACT

MTC may terminate this contract for any reason upon giving of thirty (30) days written notice to the other party of such termination.

37. APPLICABLE LAW

This contract shall be governed by and construed in accordance with the laws of the state of Utah. Any action, suit, or other proceeding hereunder shall be brought in any court of competent jurisdiction in Salt Lake City, Utah.

38. FOREIGN CORRUPT PRACTICES ACT

A. Mindful of the principles of the United States Foreign Corrupt Practices Act (“FCPA”), the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions, and all related and implementing legislation that may be applicable to this contract, Contractor certifies, warrants, and represents that:

B. It has not made, authorized or offered (and will not make, authorize, or offer) any payment, or given, authorized, or offered (and will not give, authorize the giving of, or offer) anything of value, directly or indirectly, with respect hereto or otherwise,

- to any official or employee of any government, state-owned enterprise, or international organization
- to any person acting in an official capacity for or on behalf of any government, state-owned enterprise, or international organization, or
- to any political party or to any person known to be a candidate for any office in any government

in order to (a) influence any act or decision in any such person’s official capacity, (b) induce any such person to violate his/her lawful duty, or (c) induce any such person to use his/her influence with any government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, for the purpose of obtaining or retaining business or directing business to any person, or to secure any improper advantage.

Notwithstanding any other provision in this contract MTC considers non-compliance with this section to be a material breach of this contract and reserves the right to immediately seek appropriate interim relief or to terminate this contract, upon written notice, if it determines in MTC’s sole discretion that Contractor is in breach of this section.

39. SEVERABILITY

In the event that any term, condition, or provision contained herein shall be held to be invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall, to that extent be omitted from the contract and not affect the validity, legality, or enforceability of the remaining sections of the contract.

40. THIRD PARTY BENEFICIARY RIGHTS

The Texas Department of Criminal Justice (“TDCJ”) shall be deemed a third party beneficiary to this Agreement. Other than the third party beneficiary status conveyed to TDCJ, the provisions of this Agreement are for the sole benefit of the parties hereto and shall not be construed as conferring any rights on any third person other than TDCJ. This contract is not intended to create any rights or interest for any other person or entity other than the parties hereto and TDJC.

41. ACCEPTANCE OF CONTRACT. This Contract shall not be considered accepted, approved or otherwise effective until the required approvals have been given to MTC by the Texas Department of Rehabilitation and Corrections.

42. SIGNATURES AND COUNTERPARTS

This contract may be signed in counterparts or any number of counterparts including facsimile or PDF copies thereof and when so signed, such counterparts shall be effective and binding to the same extent as original signatures and all counterparts shall be deemed to constitute one instrument.