



# Purchasing Procedure Policy

## FIN 5.0

### Business Office

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Policy Type: Administrative  
Applies to: Faculty, Staff, Students

## POLICY DATES

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Issued:  
Revised: January 2020  
Edited:  
Reviewed: March 2019

This policy does not include any type of travel (i.e., hotels, conferences, flight, vehicle, and reservations), please see the **Travel Policy and Procedures Guide regarding any expenses related to travel.**

If you have a purchasing card, Purchase Orders are not needed unless the dollar amount exceeds \$1,000, or your authorized limit on the card. Please see the Purchasing Card Program Guide on the Policies section of iRaider for further details.

## Policy Details

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## PROCEDURE

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Issued:  
Revised: January 2020  
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### PURCHASING PROCEDURES

**The goal of the purchasing procedures at the University of Mount Union is to obtain the best value for the products and services provided to the institution from its suppliers. For assistance with the procedures or policies please contact the Purchasing Department or the Purchasing Delegate assigned to your area. Purchasing Delegates are assigned for the following areas:** Bookstore, Bracy Hall, Fine Arts, Nature Center, Marketing, Information Technology, Library, and Physical Plant.

#### **All Other Areas will forward to the Office of Business Affairs**

The primary method of communicating the need for goods and services with any vendor is a Purchase Order.

- A **purchase order** is an approval to order goods and services. It is an acknowledgement that the University has entered into a **legally binding contract** with an outside entity. No single individual is authorized to approve or commit to any contract or obligate the University on their behalf without the prior approval of the Purchasing Department or an assigned Purchasing Delegate.

#### **Purchase orders should be used for the following:**

1. Purchase of any supply item or equipment, even those products covered under any previously negotiated contract-pricing agreement. Examples include promotional items, uniforms, or lab supplies.
2. Establishment of a contract for services that are performed on a regularly scheduled basis that involves both performance and invoicing at scheduled intervals (weekly, monthly, quarterly, etc.).
3. One-time performance of a service or contracted labor (maintenance time and materials, speakers, consultants, etc.).

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4. Any purchase over \$1,000.

In order to obtain a Purchase order, an individual making the purchase on behalf of the University, must correctly and completely fill out a ***Purchase Requisition***, located on iRaider under Forms-> Purchasing, which provides a detailed description of the product/service needed, its quantity, cost or estimate there of, and delivery requirements. The form also requires the University's general ledger account that the purchase will be charged to. The following signature approvals are necessary according to the amount purchase. Failure to get all required signatures can delay issuance of the purchase order.

- **\$0 to \$999, *originator* and *budget officer* of the account to be charged.**
- **For Academic departments, \$1,000 to \$5,000 must be signed by the appropriate College Dean.**
- **For all other areas, \$1,000 to \$2,499, the, *Assoc./Asst. Dean, Assoc Vice President, Athletic Director, Controller, or Executive Director* must approve.**  
If one of these positions does not appear in your group, area Vice President must approve.
- **\$2,500 to \$9,999, the *area Vice President*, must approve.**
- **\$10,000 to \$99,999, the *VP for Business Affairs* must approve.**
- **\$100,000 to \$249,999 the *President* must approve.**
- **\$250,000 and above, must be approved by the *Board of Trustees*.**

**The University Controller, Directors of Purchasing, Physical Plant, IT, Library, have been given limits of \$5,000 to facilitate routine orders.**

Obtaining proper signatures on a requisition to purchase goods and services is a ***requirement*** established by our auditing procedures and is meant to standardize the purchasing process across campus. These limits include contractual obligations in which a recurring payment for services in a 12-month period exceeds a dollar limit. For example, if the purchase of a service requires 12 monthly payments of \$1,000 each then the purchase will be considered to be a \$12,000 transaction.

Also, we will enforce the requirement that a Purchase Order be obtained ***PRIOR*** to the placement of any order, with any vendor, for any items or services. Invoices that are received from any vendor without an authorized Purchase Order could be returned to the vendor without payment. We will be notifying vendors of this requirement within our policy as well. For those employees who are issued a purchasing card, the purchasing card is a method of payment not an authorization to order. Any purchases over \$1,000 need proper approvals before ordering.

### **REIMBURSEMENT**

In the event that products or services are purchased directly by an individual, reimbursement may be obtained with proper approval as described above. The Purchase Requisition/Order form is not intended to be a reimbursement form. A separate Reimbursement Form, available from the Office of Business Affairs, is the official means of obtaining reimbursement. This form should be accompanied with an explanation as to why proper procedures could not be used to obtain the needed goods and/or services. Reimbursements on purchases older than ***60 days*** will not be considered.

### **FINAL APPROVAL**

Approval of a purchase order request will be acknowledged by the issuance of a purchase order number by a purchasing delegate after review of the following: vendor selection, product/service specifications, account number, and signature authority.

### **RECEIPT**

Once goods/services are ***received*** by the appropriate party, the recipient will verify the contents to the purchase order. Authorization for payment of the invoice will be performed by the purchasing delegate after a three-way match (packing list – purchase order – invoice) is performed. Once verified, invoices should be signed, dated and coded to the proper account and forwarded to Accounts Payable.

### **PRE-PAYMENT**

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Pre-payment is strongly discouraged to any vendor. Mount Union maintains a strong credit rating and promptly pays all invoices in a timely manner. Pre-payment (either check or credit card) results in the transfer of responsibility from the Vendor to Mount Union. If there is an issue with either the goods received or services performed, Mount Union has reduced leverage in resolving any potential problem with a Vendor. Request for check pre-payments are to be handled directly with the Accounts Payable department, but still require authorized requisitions prior to approval.

#### **SMALL PURCHASES**

Employees may make small, up to \$250, purchases from their own funds for supplies, equipment, and services used for valid University business and then submit the original receipts to the Office of Business Affairs for reimbursement. Employees are reminded that the University is exempt from paying sales tax. Therefore, individuals making cash purchases for approved University business purposes should present a copy of the University's sales tax exemption certificate to merchants and request that sales tax not be charged. Sales tax exemption certificates are available through the Business Office. The University reserves the right to deduct the amount of sales tax paid when reimbursing individuals for such purchases.

#### **LOCAL BUSINESSES**

Mount Union maintains accounts with several local organizations, and purchases can be made without payment of sales tax, which is not reimbursable. Please contact the Business Office to secure the necessary items needed (purchase order, store credit card, etc.) in advance of the purchase. These vendors include Lowes, Wal-Mart, and Tractor Supply. A complete listing of local vendors can be obtained by contacting the Purchasing Office. Store Cards for the vendors need to be signed out with the Business Office. You must bring an approved requisition to the Business Office and you will then be instructed on procedures for using these cards.

#### **TRADEMARK - LICENSING**

Mount Union has entered into an agreement licensing all of its trademarked logos and word marks. Our trademark licensing program was formed to assist in the protection of all Mount Union trademarks, ensuring that the correct marks are used prior to manufacturing. In addition, this program is in place to help extend the market presence of Mount Union locally, regionally and nationally. Please contact the Office of Marketing for additional information.

#### **SPECIALIZED EQUIPMENT – SERVICE AREAS**

The request to purchase specific items or services that are related to, or, are the responsibility of an existing University Department requires the approval of that Department. These items/services include but are not limited to: Information Technology (Hardware and Software), Multi-Media, Audio-Visual, Telecommunications, Maintenance, Housekeeping, Public Relations, Fleet (Vehicles) and Mail Services. The University also maintains contracts for areas of service that are Campus-Wide. These include, but are not limited to: Office Supplies, Furniture, Copiers, Table and Chair Rentals. Please contact the Purchasing Department for details if you are unsure or unaware if a current contract is in place.

#### **REQUEST FOR PROPOSALS – RFP**

A Request for Proposal (RFP) is a document that details products and/or services (aka specifications) which may be more complex in nature or identifies contractual relationships that would exist over an extended period of time. RFP's are used to solicit proposals from prospective vendors on how they intend to carry out the request for specifications. RFP's contain both general and specific Terms and Conditions of purchase. Proposals in response to an RFP can be subject to negotiations after they have been submitted. These negotiated responses become part of the legal contract. The Purchasing Department must be involved in all formal RFP's issued by the University.

#### **PURCHASING PRACTICES**

##### **Competitive Bidding**

The most effective way to create competition is to solicit competitive quotes/bids. Three submitted proposals are preferred for purchases over \$1,000 (but not always possible). This method ensures the selected supplier is providing goods and services in the most cost-effective manner. If a quote is chosen that is not the lowest cost option, justification of other services provided should be included.

Telephone quotations may be used for purchases less than \$5,000. These quotations should be documented with the vendor name, name of the individual making the quote, phone number and date of conversation.

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Written quotations are required for purchases greater than \$5,000. Written quotations are required to be on the vendor's official paperwork, addressed to Mount Union complete with information on quantity, specifications, pricing, and delivery. Quotations should be submitted with the purchase order requisition and will be kept on file in the Business Office.

The University has preferred vendors already established that should be given priority when making purchases. If you would like to use a new vendor for a purchase, you must also get a quote from the established preferred vendor before the new vendor will be set up in the University purchasing system.

#### **VENDOR QUALIFICATION**

Prior to selection as a potential supplier for goods and services to Mount Union, potential vendors are required to be considered as holding a "qualified" status with the University. This may be accomplished in a variety of ways such as checking references, site visits, or trade publications. The financial stability of public entities may be investigated with publications or services such as Dun & Bradstreet. For privately held companies, audited financial statements, bank or trade references may be requested.

To comply with Federal regulations set forth in the Gramm-Leach-Bliley Act (GLBA), all vendors for IT purchases relating to computer software and systems, cloud software, and data back-up will be asked to provide SOC2 reports and a copy of their most recent audited financial statements. The Director of Information Technology for Security and the Purchasing Office will review these documents to determine vendor eligibility. Vendors that do not provide satisfactory copies of these documents may not be approved for use.

#### **VENDOR SELECTION**

The Purchasing Department reserves the right to establish competitive and non-competitive negotiated agreements, and long-term partnerships with vendors when it is in the best interest of the University. Business awarded to suppliers is not based on price alone. The Purchasing Department, in conjunction with the user department(s), carefully weighs other equally important factors (e.g. service, availability, performance, reliability, maintainability, quality, etc.). Vendor selection may be based on the maximum value obtained for each dollar disbursed. The elements of maximum value include more than price, quality and delivery. Technical assistance and innovation, assured supply and cost reduction assistance, are other factors impacting vendor selection. Vendors are encouraged to bring to attention those unique functions and features that are inherent in their products and services being offered to the University. The final selection of the vendor is the responsibility of the Purchasing Department.

#### **CONFLICT OF INTEREST**

A conflict of interest is defined as situations in which personnel or students use their positions for purposes of obtaining private gain for themselves or others, such as those with whom they have family, business, or other ties. Any actual or perceived conflict of interest either by the person initiating the request for goods or services, or by an individual approving the request must be disclosed to the Purchasing Department prior to a commitment to purchase goods or services. Please contact the Business Office regarding a detailed ethics policy if you are unsure regarding a potential conflict of interest.

#### **EMERGENCY PURCHASING**

An emergency is defined as a circumstance when the immediate demand for supplies, materials, or services is such as to seriously hamper the operation of the institution, and in spite of all remedial action possible, would result in damage more costly than the purchase involved, if purchased through normal procedures. In the event an emergency purchase is made, the supervisory employee shall make a full report of the circumstances to the Purchasing Delegate.

#### **CREDIT CARDS**

University issued Purchasing Cards are available to all full-time employees with supervisor approval. The Purchasing Card program is established and maintained by Mount Union as a method of payment to simplify approved ordering processes. Purchasing cards are especially useful for small dollar (less than \$1,000) purchases and while traveling. Please refer to the Purchasing Card Program Guide for full details.

#### **TAX STATUS**

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Mount Union is a private, tax-exempt, nonprofit, educational institution exempt from Federal income taxation under section 501(c)(3) of the Internal Revenue Code. This status allows the University to seek exemption from sales tax in states where items purchased for use in the host state. In most states, sales tax collection is not pursued for items purchased in one state then used in another (i.e., items shipped out of state). Tax exemption does not apply to retail Federal and State fuel tax, local hotel occupancy and food taxes, most transportation surcharges, user fees and meal taxes. Tax certificates of exemption are kept on file in the Purchasing Department and are available to any vendor requiring one to be kept on file. Mount Union maintains exemption status for purchases originating in the following states: Ohio, Kentucky, Florida, New York and New Mexico.

#### **LEASES**

**All forms of lease, lease purchase or rental agreements for the procurement of material or services must be authorized on behalf of the University by the Purchasing Department or the Business Office after receiving approval from the Board of Trustees. Please see the Business Office before entering into a lease or rental agreement.** Regardless of the time period involved in these agreements, a formal purchase order will be issued. The user department should indicate whether it is a new or renewal agreement. When possible a copy of the proposed lease agreement should accompany the requisition. Prior to accepting a lease agreement as submitted by the requisitioning department the Purchasing Department may solicit competitive lease rates. Consideration may be given to as to whether the goods should be leased or purchased. An analysis will consider the availability of funds.

#### **SALES AND SERVICE AGREEMENTS**

Only the Purchasing Department is authorized to sign a sales agreement. Terms and conditions governing a purchase are maintained in the Purchasing Department and are available upon request.

Certain items of equipment are covered by service contracts in order to assure continuing efficient operation. Forms required by service companies are to be signed on behalf of the University by the Purchasing Department and forwarded to the company with a purchase order.

#### **PERSONAL ORDERS**

The Purchasing Delegate will not issue purchase orders for personal purchases. Suggestions of possible sources of supply may be offered. Vendors are under no obligation to offer discounts to individuals and do so with the understanding that their offer places the University under no obligation to do business with them.

#### **MAINTENANCE - REPAIR ORDERS**

All request for building, structural and specified equipment repairs, are to be directed through the Physical Plant office. The Physical Plant will then determine if outside vendors are required and coordinate the required service as needed. Physical Plant work order requests can be submitted via iRaider.

#### **OFFICE SUPPLIES**

All routine office supply orders should be purchased through Office Depot. All members of the support staff should have access to the online system which has our contracted pricing. Orders can also be completed via telephone. Control mechanisms for this product line will be coordinated by both the Purchasing Department and the vendor. Please contact the Purchasing Department for current names of available staff in your area.

#### **CAPITAL EQUIPMENT**

All requisitions for capital equipment (any purchase over \$5,000) should be directed to the Purchasing Department.

#### **DIVERSITY SUPPLIERS**

It is the policy of the University of Mount Union, through its Supplier Diversity Program, to increase the business opportunities for Minority, Women and Physically Challenged Business Enterprises (M/W/DBE's). The University's commitment is to maximize M/W/DBE participation through the development of mutually beneficial business relationships with such firms. This policy can be found on the iRaider Portal under Institutional Policies.

#### **GROUP PURCHASING ORGANIZATIONS**

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Mount Union has membership in a number of Group Purchasing Organizations (GPO's). Please contact the Purchasing Department for contract information. A current list includes E&I, IUC, OFIC, and through our membership in the Ohio Association of Colleges, many State of Ohio contracts and pricing our extended to the University. Competitive bidding is not required when using any of these contracts.

### **GREEN-SUSTAINABILITY PURCHASING**

Responding to the growing need for environmental stewardship and the University's commitment for the implementation of sustainable practices, Mount Union has adopted a Green-Sustainability Purchasing Policy. This Policy can be found on the iRaider Portal under Institutional Policies.

### **TERMS AND CONDITIONS**

1. **ETHICAL STANDARDS OF CONDUCT:** Seller hereby represents that it has neither received or given gifts or gratuities to any member of the College community, nor participated in any other unethical conduct in connection with the order. If at any time Buyer determines that Seller is in violation due to the foregoing representation, Buyer may cancel the order upon written notice to Seller, and Buyer shall have no further obligation to Seller
2. **ACCEPTANCE:** The Purchase Order must be accepted in writing, or other means specified by the Buyer, by Seller within a reasonable time of Seller's receipt hereof, defined as no more than ten (10) calendar days following mailing date of the order. If for any reason Seller should fail to accept the order in writing, the shipment by Seller of any goods (or lots thereof) ordered hereby, the furnishing or commencement of any services called for hereunder (including preparation for manufacture), or the acceptance of any payment by Seller hereunder or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter hereof, may, at Buyer's sole election, be treated as an unqualified acceptance by Seller of the order and all terms and conditions hereof. These terms and conditions shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties. The terms and conditions of the order may hereafter be modified only by written instrument executed by authorized representatives of both parties.
3. **WARRANTIES:** a) In addition to any specific warranties agreed to by the parties, Seller warrants to Buyer that all items delivered and all services rendered hereunder will conform to the requirements and specifications hereof and will be merchantable, of first class materials and workmanship, free from defects including defects in design and fit, and suitable and sufficient for the intended purposes. b) If services or technical data are to be provided by Seller hereunder, Seller warrants to Buyer that such services and/or technical data shall be performed or prepared in a professional and workmanlike manner, and are fully in conformance with the requirements and specifications of the order. c) In performance of the order, Seller shall comply, and all materials and work or services furnished hereunder shall be produced or furnished in full and complete compliance, with all applicable federal, state and local laws, rules, ordinances and regulations. These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Seller, expressed or implied, which are provided or exist by operation of law.
4. **INSPECTION:** a) Buyer reserves the right to perform inspection and/or expediting of the materials and the fabrication thereof at the facility of Seller or its suppliers at any reasonable times. All materials or services are subject to final inspection and acceptance by Buyer at destination, notwithstanding any prior payment or inspection at the source. Such final inspection shall take place within thirty (30) days from the date of delivery or installation or completion of services, whichever is latest. b) In addition to other remedies which may be available at law or in equity, Buyer, at its option, may return to Seller any nonconforming or defective item(s), at no cost to the Buyer, and require correction or replacement of the item(s). If Buyer does not require correction or replacement of nonconforming or defective item(s), Seller shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. These rights of Buyer are in addition to and shall not be limited by Seller's standard warranties. Inspection and acceptance of items by Buyer, or payment, therefore, shall not relieve Seller of its responsibilities hereunder.
5. **PRICE WARRANTY:** Seller warrants that the price(s) for the articles or services sold Buyer hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services in similar quantities. In the event Seller reduces its price(s) for such articles or services during the term of the order, Seller agrees to reduce the prices hereof accordingly. Seller warrants that prices shown on the order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

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6. **INFRINGEMENT INDEMNITY:** In lieu of any other warranty by Buyer or Seller against infringement, statutory or otherwise, it is agreed that Seller shall defend, at its expense, any suit against Buyer based on a claim that any item furnished under the order or the normal use or sale thereof infringes a Letters Patent or copyright, or violates a trade secret, other than claims under Letter Patents covering combinations of such items with items not furnished by Seller, and shall pay costs and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information, and assistance at Seller's expense for the defense of same. If Seller fails after notice to defend any such suit, Buyer may, at its option, defend the suit at Seller's sole expense. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer the right to use and sell said item, or shall substitute an equivalent item acceptable to Buyer and extend these indemnities thereto.
7. **SOFTWARE LICENSE:** Seller warrants that Buyer is licensed to copy any software provided under the order onto a computer memory device and to make back-up copies of such software. Unless otherwise provided for in the order, or in a prior written agreement directed to the software provided hereunder, Buyer's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable U.S. copyright laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software.
8. **CHANGES:** By written order, Buyer may, from time to time, unilaterally order work suspension, or make changes within the general scope of the order, or in drawings, designs, specifications, statements of work, place of delivery, methods of shipment and packaging, and property and services furnished by Buyer. If any such change causes an increase or decrease in the price of the order or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within 15 days after the change is ordered, and an equitable adjustment shall be negotiated. Where the cost of property made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. However, nothing in this provision shall excuse Seller from proceeding immediately with the Order as changed. Whether made pursuant to this provision or by mutual agreement, changes shall not be binding upon Buyer except when specifically confirmed in writing by a member of one of Buyer's authorized Purchasing units. Information, advice, approvals, or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinions only and shall not affect Buyer's and Seller's rights and obligations hereunder unless set forth in a writing which is authorized by the Buyer and which expressly states that it constitutes an amendment or change to the order.
9. **ASSIGNMENTS AND SUBCONTRACTING:** a) Neither the order nor any interest herein nor claim hereunder may be assigned or delegated by Seller; nor may all or substantially all of the order be further subcontracted by Seller without the prior written consent of Buyer. b) Notwithstanding the above, Seller may, without Buyer's consent, assign monies due or to become due hereunder, provided that Buyer shall continue to have the right to exercise any and all of its rights hereunder, settle any and all claims arising out of, and enter into amendments to the order, without notice to or consent of the assignee. Buyer shall be given notice of any assignment and all invoices shall refer to the assignment.
10. **PROPRIETARY INFORMATION, DATA, DUPLICATION, AND DISCLOSURE:** a) Seller agrees that any information disclosed by Buyer to Seller for the purpose of the order shall be used only in the performance of the order. Seller will keep the information confidential, will not disclose it to any third party, except as authorized by Buyer, and will only disclose it to those within its organization who need to use it in performance of the Order. Upon completion or termination of the order, Seller shall return all such information to Buyer, or make such other disposition thereof as may be directed or approved by Buyer. b) No item furnished under the order, or tools, plans, designs, or specifications for producing the same, which have been specifically designed for or by Buyer, shall be duplicated or used by Seller. Upon completion or termination of the order, Seller shall return all items, tools, plans, designs or specifications to Buyer, or make such other disposition thereof as may be directed or approved by Buyer. c) Seller agrees that it will not, without prior written approval of Buyer, publicize the order or disclose, confirm or deny any details thereof to third parties, or use Buyer's name in connection with Seller's sales promotion or publicity without prior written approval from Buyer. d) Nothing in this provision shall restrict Seller's right to use or disclose any information which is or becomes generally known to the public without breach of this provision by Seller or is rightfully obtained without restriction from other sources.
11. **TERMINATION FOR CONVENIENCE:** The order may, at any time, be terminated in whole or in part by written notice from the Buyer. If such termination is for the convenience of the Buyer and is not caused by the Seller's failure to fulfill the requirements or make progress so as to endanger performance of the order, Buyer, deducting any amount(s) previously paid, shall pay a proportional price for all effort performed on such work but excluding profit on direct costs incurred due to the termination. The total amount to be paid by Buyer in the event of convenience termination shall be determined by negotiation, but it shall in no event exceed the price of the order. In the event of such termination,

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Seller shall use its best efforts to reduce costs incurred on terminated work and, to the extent not terminated, shall diligently continue performance of the work not terminated in accordance with the terms of the order.

12. **TERMINATION FOR DEFAULT:** a) Buyer may, without prejudice to any other rights or remedies provided by law or under the order, by written Notice of Default to Seller, terminate the order in whole or in part in any one of the following circumstances:
1. If Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
  2. If Seller fails to perform the work or deliver the items or supplies in accordance with the delivery or performance schedules specified herein or any extension thereof; or
  3. If Seller fails to perform any of the other terms of the order, or so fails to make progress as to endanger the performance of the order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- b) In the event Buyer terminates the order in whole or in part as provided in paragraph a) of this provision, Buyer may procure, upon such terms and in such manner as it may deem appropriate, items, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs reasonably incurred for such similar supplies or services; provided that Seller shall continue the performance of the order to the extent not terminated under the provisions of this article. Seller shall be obligated to pay any consequential and incidental damages incurred by the Buyer. c) Except with respect to defaults of Seller's subcontractors, Seller shall not be liable for any excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of, and despite the exercise of utmost diligence by Seller, provided Seller gives Buyer written notice of such causes within twenty (20) days of the occurrence thereof and within the period of delivery agreed upon. Such causes may include, but are not restricted to, acts of God or of a public enemy, acts of Buyer, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes; but in every case the failure to perform must be beyond the control and without the fault or negligence of, and despite the exercises of the utmost diligence by Seller. If failure to perform is caused by default of Seller's subcontractor, and if such default arises out of causes beyond the control of both Seller and its subcontractor, and without the fault or negligence of and despite the exercises of the utmost diligence by either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by Seller's subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. d) If the order is terminated as provided in this article, Buyer, in addition to other rights afforded in this article, may require Seller to transfer title to and deliver to Buyer, in the manner and to the extent directed by Buyer:
1. any completed items or supplies, and
  2. such partially completed items or supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or acquired for the performance of such part of the order as has been terminated, and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest.
- e) Payment for items or supplies completed by Seller prior to such termination and delivered to and accepted by Buyer shall be at the price specified in the Order. Payment for manufacturing materials delivered to and accepted by Buyer, and for the protection and preservation of property, shall be in an amount agreed upon by Buyer and Seller. Buyer may withhold from amounts otherwise due Seller under this paragraph such sum as Buyer deems necessary to cover the additional cost of completing the Order and to protect Buyer against loss because of outstanding liens or claims of former lien holders. f) The rights and remedies of the Buyer provided in this article shall not be exclusive and are in addition to any other rights and remedies provided at law, or in equity, or under the order.
13. **COMPLIANCE WITH DELIVERY SCHEDULE:** Time is of the essence as to delivery. Seller agrees to exert every effort, including overtime, to meet the specified delivery schedule without any additional cost to the Buyer. Any notice to Seller by Buyer as to possible delay and/or expediting action by Buyer to accomplish on-time delivery shall not constitute a waiver of Buyer's rights under the order, nor shall such actions in any way affect the responsibility of Seller to deliver items or perform specified services in accordance with the delivery schedule prescribed by the order. Buyer reserves the right to reject the goods, materials or services, or reduce the price for Seller's failure to meet the delivery provisions of the order whether or not material delay or loss ensues.
14. **PROPERTY RIGHTS:** All materials, tools, equipment, and other property either furnished by Buyer to Seller or individually paid for by Buyer, shall remain the property of the Buyer, but the Seller assumes the risks of, and shall be responsible for, any loss thereof or damage thereto, until returned in good order to the Buyer. Such property shall, at all times, be safely stored and properly maintained by Seller. Seller, in accordance with the provisions of the order, but in any event upon completion thereof, shall return such property to Buyer or to any other person as Buyer may direct,



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in the condition in which it was received, manufactured or procured by Seller except for reasonable wear and tear and except to the extent that such property has been incorporated in the items delivered or has been reasonably consumed in performance of work under the order.

15. **INDEMNIFICATION:** The Seller shall defend, indemnify and hold harmless the Buyer, its officers, employees, trustees, agents and representatives from and against any and all demands, claims, damages, liabilities, expenses, losses of every nature and kind, including, but not limited to, attorney's fees and costs, sustained or alleged to have been sustained in connection with or arising out of the performance of work hereunder by the Seller, its agents, employees, subcontractors and consultants, save and except for liability as may result from the sole negligence or willful misconduct of Buyer. Such indemnification shall extend to reasonable incidental and consequential damages and shall survive the termination or cancellation of the order or any part thereof.
16. **MISCELLANEOUS:** a) The order, and any attachments or any documents incorporated herein, constitute the complete and exclusive statement of the terms and conditions of the agreement between Buyer and Seller and supersede all prior representations, understandings, and communications relating hereto. The invalidity in whole or in part of any provision of the order shall not affect the validity of other provisions. Buyer's failure to insist, in any one or more instances, upon the performance of any term of the order, shall not be construed as a waiver or relinquishment of Buyer's right to such performance or to future performance of such a term or terms, and Seller's obligation in respect thereto shall continue in full force and effect; b) Conflicting provisions, if any, shall prevail in the following descending order of precedence: (1) typed and hand-written provisions initialed by an authorized representative of the Buyer, as set forth on the face of the order, (2) Buyer's Purchase Order Attachments or Exhibits, (3) the preprinted portion of the order including these Purchase Order General Provisions (ignore preprinted conditions on the back of the purchase order form), (4) Statement of Work, and (5) specifications attached or incorporated by reference. Buyer's specifications shall prevail over those of the Seller; c) Contractors performing work or services for Buyer on premises designated by Buyer, are required to provide evidence of coverage satisfactory to Buyer for Workmen's Compensation, Employee's Liability, and general liability. Seller shall not change the levels of coverage or permit coverage to expire until all the services or work have been completed and accepted. d) The order shall be construed, and all disputes hereunder shall be settled in accordance with the laws of the State of Ohio. In the event of a dispute hereunder, Seller shall either proceed diligently with, or halt performance hereunder as directed by Buyer. f) The College, as an educational institution and as an employer, values equality of opportunity, human dignity, and racial/ethnic and cultural diversity. Accordingly, the College prohibits and will not engage in discrimination or harassment on the basis of race, color, religion, national origin, ancestry, age, sex, marital status, familial status, sexual orientation, disability, or status as a disabled veteran or a veteran of the Vietnam era. Further, the College will continue to take affirmative steps to support and advance these values consistent with the College's mission. This policy applies to admissions, employment, access to and treatment in College programs and activities. This is a commitment made by the College and is in accordance with federal, state and/or local laws and regulations.
17. **FEDERAL AGENCY REGULATIONS:** If the order indicates it is placed under a United States Government Contract or Grant, it is subject to all applicable requirements of the Office of Management and Budget's Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations", Grant General Conditions (GC-1) 10/95, Federal Acquisition Regulations (FAR), and Defense Department Supplement to the Federal Acquisition Regulations (DFARS), incorporated herein by reference, with the same effect as if they were fully set forth.

END.

### Responsibilities

Position or Office	Responsibilities
Business Office	Purchasing

### Resources

# Purchasing Procedure Policy

## FIN 5.0

### Business Office

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Applies to: Faculty, Staff, Students

#### Contacts

Subject	Office	Telephone	E-mail/URL
Purchasing	Business Office	330.823.6572	<a href="mailto:businessoffice@mountunion.edu">businessoffice@mountunion.edu</a>

#### History

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All changes must be listed sequentially, including edits and reviews. Note when the policy name or number changes.

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Revised: January 2020, December 2015

Edited:

Reviewed: March 2019