

## General Contract Standard Terms & Conditions

The Supplier shall be deemed to have examined the Specification and these General Conditions of Contract. No claims from the Supplier for additional payment will be allowed on the grounds of misinterpretation of the Specification (whether it was prepared by the University or by the Supplier) or these General Conditions of Contract.

Terms and conditions specified in a related University Purchase Order or contract, which conflicts with the terms and conditions found in this document, the University Purchase Order or contract takes precedence over this document; all other terms and conditions in this document remain in full effect.

### **Section I: The following clauses apply to all contracts:**

1. **DEFINITIONS.** See Appendix A.
2. **BASIS OF PURCHASE.**
  - a. An Order constitutes an offer by the University to purchase Goods and/or Services at the Price stated in the Order and subject to these conditions.
  - b. No Contract shall be concluded until the Supplier either expressly, by giving notice of its acceptance to the University, or impliedly, by fulfilling an Order in whole or in part, accepts the University's offer.
  - c. These conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been provided to the University or subject to which the Order is accepted or purported to be accepted by the Supplier unless otherwise agreed in writing by the University.
  - d. No variation or addition to these Conditions or an Order or the Contract shall be binding upon the University unless agreed in writing between an authorized representative of the University and an authorized representative of the Supplier.
3. **PRICES**
  - a. Unless specifically agreed in the Contract all prices shall be in US Dollars and shall be Fixed Prices for the duration of the Contract, inclusive of all costs, including, without limitation, handling, carriage, insurance, fuel surcharge, and packaging.
  - b. Prices not listed on quote shall not be charged unless University approves a modification to the Purchase Order or Contract.
  - c. Charges and fees other than listed on Supplier quote shall not be charged to invoice after Purchase Order has been issued.

**4. PAYMENT TERMS:**

- a. All invoices must reference the assigned Purchase Order/Contract number and will be submitted for approval and processing for payment, to the University's representative at the following address:

University of Louisiana at Lafayette  
Attn: Accounts Payable Manager  
PO Box 40400  
Lafayette, LA 70504

- b. Upon approval of each invoice, University agrees to pay Contractor within 30 days of the invoice submission date or Net30.
- c. Any University dispute of billing data must be submitted in writing to Contractor within 30 days of receipt otherwise invoice will be considered approved and therefore, payable to Contractor.

**5. RELATIONSHIP OF THE PARTIES:**

- a. The relationship between the parties hereto is that of Contractor and University, and this Agreement is not to be construed as creating a partnership, joint venture, master-servant, principal-agent, or other relationship for any purposes whatsoever. Except as may be expressly provided herein, neither party may be held for the acts either of omission or commission of the other party, and neither party is authorized to or has power to obligate or bind the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever.
- b. Contractor, its employees and subcontractors, if any, is/are independent contractors for whom no Federal or State Income Tax will be deducted by the University, and for whom no retirement benefits, social security benefits, group health or life insurance, vacation and sick leave, Worker's Compensation and similar benefits available to University's employees will accrue.

**6. COMPLIANCE WITH THE LAW:** Contractor shall maintain in full force and effect, all necessary licenses, permits and other authorizations required by applicable Law to carry out its duties and obligations under this Agreement. Contractor shall comply with all Federal and State laws applicable to its activities under this Agreement, including, without limitation, any requirements of any product license applicable to the Product and all applicable U.S. federal, state and local environmental health and safety laws then in effect.

**7. ADVERTISING AND PROMOTION OF CONTRACT:** Contract will not appropriate or make use of University's name or any of University 's trade or service marks or property, in any advertising or otherwise, without prior written consent of University. If University grants written consent to use University's name and/or trade or service marks, for advertising, endorsement, or promotion, University shall have the right to reject any such use proposed by Contractor which in University's sole discretion violates University's standards of advertising or is inconsistent with University's role and reputation as a public institution of higher education. University's permission to permit particular advertising shall not be unreasonably withheld.

## 8. ETHICS:

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any University employee or former University employee, or for any University employee or former University employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity University in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.
- b. Kickbacks. It shall be unethical for a Supplier or Contractor to offer any payment, gratuity, or offer of employment to be made as an inducement for the award of a subcontract or order. Supplier shall not offer or give a kickback or gratuity (in the form of entertainment, gifts, or otherwise) for the purpose of obtaining or rewarding favorable treatment as a University supplier.
- c. By accepting this Contract, Supplier certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 USC 51-58).

## 10. TERMINATION CLAUSES

- a. **TERMINATION FOR CAUSE:** University may terminate this Contract for cause based upon the failure of Contractor to comply with the terms and/or conditions of the Contract; provided that University shall give Contractor written notice specifying the Contractor's failure. If within thirty (30) days after receipt of such notice, Contractor shall not have either corrected such failure or, in the case of failure which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then University may, at its option, place Contractor in default and the Contract shall terminate on the date specified in such notice. Contractor may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of University to comply with the terms and conditions of this Contract; provided that Contractor shall give University written notice specifying University's failure and a reasonable opportunity for University to cure the defect.
- b. **TERMINATION FOR CONVENIENCE:** University may terminate the Contract at any time by giving written notice thirty (30) days before the effective date of such termination. Contractor shall be entitled to payment for deliverables in progress; to the extent approved work has been performed satisfactorily. Contractor reserves the right to stop work if compensation is not received within 30 days of issuance and receipt of any invoice.
- c. **EVENTS UPON TERMINATION.**
  - In the event of cancellation or termination of this contract, all University content shall immediately (within one week or less) be returned to University in the format developed by the Contractor, including but not limited to:

- In the event an employee recommended by Contractor is terminated for just cause within the twelve-months after first reporting to work, Contractor will agree to find suitable a replacement for that candidate without charge, except for expenses.
- d. **OWNERSHIP:** All records, reports, documents and other material delivered or transmitted to Contractor by University shall remain the property of University, and shall be returned by Contractor to University, at Contractor's expense, at termination or expiration of this Contract. Except as may be mutually agreed to in writing by the parties, all records, reports, documents, or other material related to this Contract and/or obtained or prepared by Contractor in connection with the performance of the services contracted for herein shall become the property of University, and shall, upon request, be returned by Contractor to University, at Contractor's expense, at termination or expiration of this Contract.

**11. CONFIDENTIALITY.** Each party agrees not to disclose the other party's Confidential Information and to protect its confidentiality using at least the same degree of care that party uses to protect its own Confidential Information, which shall under no circumstances be less than reasonable, including not disclosing it to a third party unless there is a "need to know," a "right to know," and a written obligation by the third party to maintain the confidentiality. If a party receives an order from a court or other governmental body, or via a public records or FOIA request that requires disclosure of the other party's Confidential Information then the party receiving the order shall notify the other party of the order in advance of making any such disclosure. For the purposes of this Contract, "Confidential Information" means any information, written or oral, that relates to either party's business, products, processes, or services, that is designated as confidential or proprietary or that a reasonable party would understand to be confidential or proprietary, including University Data, with the following exceptions:

- a. Information that was already known to the receiving party; (ii) information obtained from public or published information;
- b. Information received from a third party not known to be employed or affiliated with the disclosing party; and
- c. Information which is or becomes known to the public other than through a breach of this Contract.

**12. PROPRIETARY INFORMATION.**

- a. Contractor shall not provide any proprietary information to University without prior execution of a proprietary information agreement by the parties.
- b. Contractor warrants that the Work performed or delivered under this Contract will not infringe or otherwise violate the intellectual property rights of any third party in the United States or any foreign country. Contractor agrees to defend, indemnify, and hold harmless University and its customers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney fees, arising out of any action by a third party that is based upon a claim that the Work performed or delivered under this Contract infringes or otherwise violates the intellectual property rights of any person or entity.
- c. All data, copyrights, reports, and works of authorship developed in performance of this Contract shall be the sole property of University, shall be used by Contractor solely in work for

University. To the extent that any of the deliverable items may not, by operation of law, be works made for hire, Contractor hereby assigns to University the ownership of copyright in the deliverable items and University shall have the right to obtain and hold in its own name copyrights, registrations, and similar protection which may be available in the deliverable items. SUPPLIER agrees to give University or its designees all assistance reasonably required to perfect such rights.

- d. To the extent that any pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials are used, included, or contained in the Work or deliverable items and not owned by University pursuant to this or a previous agreement with Contractor.
- e. Contractor grants to University an irrevocable, nonexclusive, world-wide, royalty-free license to: (i) make, have made, sell, offer for sale, use, execute, reproduce, display, perform, distribute (internally or externally) copies of, and prepare derivative works based upon, such pre-existing inventions, technology, designs, works of authorship, mask works, technical information, computer software, and other information or materials and derivative works thereof; and (ii) authorize others to do any, some or all of the foregoing

**13. RETENTION OF RECORDS.** University shall have access to and the right to examine any books, documents, papers and records of a contractor involving transactions related to the contract for over billings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee clause of the contract. This authority shall expire 3 years after final payment.

**15. AUDITOR'S CLAUSE:** It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration, UL System auditors, and University auditors shall have the option of auditing all accounts of Contractor which relate to this contract.

**16. ALTERATIONS:** Any alterations, variations, modifications, or waivers of provisions of this Contract shall be valid only when they have been reduced to writing. No claim for services furnished or requested for reimbursement by Contractor, not provided for in this contract, shall be allowed by University.

**17. REMEDIES:** Any claim or controversy arising out of this contract shall be resolved by the provisions of LSA. R.S. 39:1524 -1526.

**Louisiana Revised Statutes Title 39:1524 states that, "Prior to the institution of any action in a court concerning any contract, claim or controversy, the commissioner of administration with the concurrence of the attorney general is authorized to compromise, pay, or otherwise adjust the claim by or against or a controversy with a contractor relating to a professional, personal, consulting, or social service contract entered into with the state under their respective authority, including a claim or controversy based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. Nothing herein shall limit the authority of the commissioner of administration, pursuant to rules and regulations to issue, negotiate, or accept changes in the terms and conditions of a contract. When authorized, such compromise, payments, or adjustments shall be promptly paid; however, subject to any limitations or conditions imposed by rule or regulation, the commissioner of administration shall charge back all or any portion of such payments to the department or departments for whose benefit the contract was let".**

**18. INDEMNIFICATION:**

- a. Contractor shall be fully liable for the actions of its agents, employees, or subcontractors and shall fully indemnify and hold harmless the University from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, or subcontractors in the performance of this contract, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the University.
- b. Contractor will not be responsible for the work product of third parties professionals in its role in assisting with the recruiting effort. The University also agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities, or costs, including reasonable attorney's fees and defense costs, arising out of or connected in any way with the services performed by other consultants or professionals engaged by the University.
- c. The University may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor to satisfy any claim for damages, penalties, costs and the like asserted by or against them.
- d. Contractor shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorneys' fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Contractor, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

**19. SUBCONTRACTORS:** Upon University's approval, the Contractor may enter into subcontracts with third parties for the performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the University for any Breach in the performance of the Contractor's duties. The Contractor will be the single point of contact for all subcontractor work. Contractor is responsible for ensuring Subcontract is aware of University policies and adheres to the same.

**20. ASSIGNMENT OF CONTRACT:** The Contractor shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment or novation), without prior written consent of the State, provided however, that claims for money due or to become due to the Contractor from the State may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State.

**21. FISCAL FUNDING:** The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

**22. FORCE MAJEURE:** Neither party of this contract shall be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

**23. DISCRIMINATION CLAUSE:**

- a. Contractor agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, the Davis-Bacon Act of 1931, and Contractor agrees to abide by the requirements of the Americans with Disabilities Act of 1990.
- b. Contractor agrees not to discriminate in its employment practices, and will render services under this Contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Contractor, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

**24. NOTIFICATIONS:** Any Contractor notice or demand under this contract will be made by courier or facsimile transmission at the following address:

University of Louisiana at Lafayette  
ATTN: Purchasing Department  
PO Box 40197  
Lafayette, LA 70504

**25. QUALITY ASSURANCE:** It is the intention of the University to ensure high performance standards of its Contractors as well as assuring a high level of quality.

- a. University will perform Contractor performance evaluations every thirty (30) days until completion of the project to assess on time accomplishment of tasks towards meeting milestones. Performance will be measured based upon deliverables and service level measured with the following criteria:
  - Level of service in terms of responsiveness to requests for information, timely submission of requested reports per schedules agreed upon by both parties.
  - Compliance to the terms and condition of this contract.
- b. Upon completion of each evaluation, University will provide Contractor a written report of the results to include recommendations for Contractor performance improvement. Such ratings will be excellent, satisfactory, marginal or unsatisfactory based on a subjective evaluation.
- c. Should University find any area of Contractor's performance unsatisfactory, University may require Contractor to develop an action plan in writing showing what measures will be

implemented to improve the level of quality. The action plan must be submitted to the University Representative within four (4) working days of the unsatisfactory notification.

- b. It is hereby agreed that the Legislative Auditor of the State of Louisiana and/or the Office of the Governor, Division of Administration auditors and/or the State auditors shall have the option of auditing all accounts of Contractor which relate to this contract.

## **26. INSURANCE**

All Contractor shall purchase and maintain for the duration of the contract insurance by a company or companies lawfully authorized to do business in the State of Louisiana with a A.M. Best's rating of A-: VI or higher against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. Failure to comply with all terms of this section for the duration of the Contract places the Contractor in breach of this Contract. Request for any variations to this section may be reviewed by the University's Risk Manager, who will make the final decision.

### **a. Minimum Scope of Insurance and Limits**

1. Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of Louisiana. (R.S. 40:1299.39).
2. Commercial General Liability insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.
3. Professional Liability, Errors and Omissions, Malpractice (if applicable) - this insurance is applicable for contracts that involve the following services:
  - Medical Professionals (Doctors, Nurse Practitioners, etc.)
  - Architects and Engineers
  - Attorneys
  - Accountants and Professional Financial Advisors
  - Real Estate Brokers and Appraisers
  - Insurance Agents
  - Consultants

Professional Liability shall have minimum limit of \$1,000,000. Claims-made coverage is acceptable. This is coverage for claims made after the contract has been completed but the incidents in the claim occurred during the contract.

4. Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.



b. Other Insurance Provisions

1. The Contractor shall either require each Subcontractor to procure and maintain all applicable insurance of the type and limits specified in this section or assure in writing that all activities of the Subcontractor are covered by the Contractor's own insurance policies.
2. Any deductibles or self-insured retentions must be declared to and accepted by the University. The Contractor shall be responsible for all deductibles and self-insured retentions. Any insurance or self-insurance maintained by the University shall be excess and non-contributory of the Contractor's insurance. The coverage shall contain no special limitations on the scope of protection afforded to the University. The Contractor's insurance shall be primary as respects the University, The University of Louisiana Board of Supervisors, its officers, agents, employees and volunteers.
3. The University and The University of Louisiana Board of Supervisors, its officers, agents, employees and volunteers shall be named as an additional insured as regards negligence by the contractor. ISO Form CG 20 10 (current form approved for use in Louisiana), or equivalent, is to be used when applicable.

Certificate(s) of Insurance shall be addressed to:

University of Louisiana at Lafayette

ATTN: Purchasing Department

P.O. Box 40197

Lafayette, LA 70504

4. Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the University. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy

c. Reduced Limits, Special Circumstances:

1. The scope of work for any bid may dictate that a reduction of insurance limits is necessary in order to facilitate competition and/or ensure the University's ability to hire qualified Contractors. Low risk activities such as, but not limited to any of the following:
  - a) Services in which the owner/operator is the only Contractor employee
  - b) Services that do not involve the use of a motor vehicle
  - c) Services in which there is no use of hazardous or radioactive materials
  - d) Services in which there is no use of power machinery or tools
  - e) Services in which there is no use of high voltage equipment
  - f) Services in which no work is actually performed on the University campus or University managed buildings.

2. For these bids/contracts, the Director of Purchasing, at his/her discretion may choose to reduce the insurance requirements as follows:
  - a) Workers Compensation: The University may not require officers of a corporation, partners in a partnership, members of a limited liability company, and sole proprietors to elect Workers compensation coverage on themselves if they are the only person employed by the contractor performing the work specified in the Contract.
  - b) Commercial General Liability insurance, including Personal and Advertising Injury Liability, shall have a minimum limit per occurrence of \$100,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, shall be used in the policy. Claims-made form is unacceptable.
  - c) Automobile Liability Insurance may be waived from the insurance requirements of the contractor only if the scope of work does not involve the use of a motor vehicle. Examples include but are not limited to:
    - Goods and/or services will be delivered to the University by a third party
    - Goods and/or services will be delivered to the University electronically

**27. SEVERABILITY:** If any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

**Section II: The following clauses apply to all Construction, Renovation, Installation and Repair Projects:**

1. Unless otherwise specified in an Attachment and/or otherwise agreed in writing and/or stated on the face of the Purchase Order, the Supplier shall be required to undertake a visit to the Site and shall:
  - a. Issue a report detailing work to be carried out to prepare the Site for the Delivery and/or Installation of the Goods in the designated place;
  - Issue a certificate, stating that the Site is suitable and acceptable for the Delivery and/or Installation or use of the Goods in the designated place to commence and proceed with the Delivery and Installation;
  - c. Include in the report and/or certificate confirmation that the Site conditions, layout and design and/or other provisions related to the Site are suitable and such that the Supplier can Deliver, set down and Install the Goods/Equipment in the designated place (and the University will be able to use the Goods in the designated place) or notification to the University of any work or requirements that need to be completed in order that the Supplier is able to gain access to and undertake Delivery and Installation of the Goods to, and at, the Site and the University is able to put the Goods to use at the Site. If the Supplier does not notify the University of any such work or requirements, the Supplier shall be deemed to have accepted that the Site is suitable and shall proceed with the Delivery and Installation.

2. The report issued by the Supplier in accordance with Clause 1.a, above must supply adequate information in sufficient time to enable the University to prepare the Site for the Installation, and enable the University to provide: -
  - a. A suitable supply of electric current and such other main services as maybe required;
  - b. All other required electrical and mechanical items and fittings, as specified by the Supplier at the time of awarding the Contract and agreed by the University (other than the Goods);
  - c. Such facilities and environmental conditions as defined on the Purchase Order and/or in any Attachment;
  - d. Access to, and egress from, the Site and/or the designated place for the Delivery and Installation of the Goods to enable the Delivery, off-loading and placing in position of the Goods (including, without limitation, appropriate access and egress that enables the Supplier to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing the Delivery and Installation of the Goods) which complies with any specific requirements set out in the report.
  
4. **INSPECTION AND ACCEPTANCE:** University reserves the right to inspect worksite at any time over the duration of this project. Any progress payment, if applicable will based on actual work completed per schedule and WBS as well as inspection results and acceptance of work completed. The University's Representative or his designated representative will determine acceptance of work completed. Contractor will provide a punch list approved by University to facilitate the acceptance process.
  - a. The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the University. All work shall be conducted under the general direction of the University's Representative and is subject to University inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
  - b. University inspections and tests are for the sole benefit of the University and do not:
    - Relieve the Contractor of responsibility for providing adequate quality control measures;
    - Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
    - Constitute or imply acceptance; or
    - Affect the continuing rights of the University after acceptance of the completed work under paragraph (i) below.
  - c. The presence or absence of a University inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the University's Representative's written authorization.

- d. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the University's Representative. The University may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The University shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full-size, and performance tests shall be performed as described in the contract.
- e. The Contractor shall, without charge, replace or correct work found by the University not to conform to contract requirements, unless in the public interest the University consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises at no cost to the University.
- f. If the Contractor does not promptly replace or correct rejected work, the University may:
  - (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or
  - (2) terminate for default the Contractor's right to proceed.
- g. Contractor shall not re-tender rejected Work without disclosing the corrective action taken.
- h. If, before acceptance of the entire work, the University decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the University's Representative shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- i. Unless otherwise specified in the contract, the University shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the University's Representative determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the University's rights under any warranty or guarantee.
- j. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The University reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The University may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the University may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The University must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

## **5. CONTRACTOR WARRANTIES.**

- a. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design

furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

- b. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the University takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the University takes possession.
- c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to University-owned or controlled real or personal property, when that damage is the result of--
  - The Contractor's failure to conform to contract requirements; or
  - Any defect of equipment, material, workmanship, or design furnished.
- d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- e. The University's Representative shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- f. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the University shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--
  - Obtain all warranties that would be given in normal commercial practice;
  - Require all warranties to be executed, in writing, for the benefit of the University, if directed by the Contracting Officer; and
  - Enforce all warranties for the benefit of the University, if directed by the Contracting Officer.
- h. In the event the Contractor's warranty under paragraph (b) of this clause has expired, the University may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- i. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the University or for the repair of any damage that result from any defect in University-furnished material or design.
- j. This warranty shall not limit the University's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.
- k. Defects in design or manufacture of equipment specified by the University on a 'brand name and model' basis shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the University.

## **6. WORK STOPPAGE**

- a. Contractor shall stop Work for up to ninety (90) days in accordance with any written notice received from University, or for such longer period of time as the parties may agree and shall take all reasonable steps to minimize the incurrence of costs allocable to the Work during the period of Work stoppage.

- b. Within such period, University shall either terminate in accordance with the provisions of this Contract or continue the Work by written notice to Contractor. In the event of a continuation, an equitable adjustment in accordance with the principles of the "Changes" clause shall be made to the price, delivery schedule, or other provision(s) affected by the Work stoppage, if applicable, provided that the claim for equitable adjustment is made within thirty (30) days after date of notice to continue.

**Section III: The following clauses apply to all Suppliers of commodities delivered to the campus:**

1. The University shall not be liable for any Purchase Order, variation, letter of intent, or instructions to proceed with a Purchase Order unless and until it has been authorized by the University Director of Purchasing or his authorized representative.
2. The University may cancel a Contract without liability to the Supplier at any time prior to the receipt of express or implied acceptance by the Supplier by giving written notice to the Supplier.
3. At any time after express or implied acceptance of an Order by the Supplier, the University shall be entitled to cancel a Contract in respect of all or part only of the Goods and/or the Services by giving written notice to the Supplier at any time prior to delivery or performance, in which event the University's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
4. The Supplier may not cancel the Contract.
5. Work shall not be supplied in excess of quantities specified in this Contract. SUPPLIER shall be liable for handling charges and return shipment costs for any excess quantities.
6. Unless otherwise specified, all Work is to be packed in accordance with good commercial practice. A complete packing list shall be enclosed with all shipments. Supplier shall mark containers or packages with necessary lifting, loading, and shipping information, including the University Contract number, item number, dates of shipment, and the names and addresses of consignor and consignee. Bills of lading shall include this Contract number. Unless otherwise specified, delivery shall be FOB Place of Shipment.
7. **Price.**
  - a. The price payable for the Goods or the Services shall be that stated on the Order and, unless otherwise so stated, shall be:
  - b. Inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Address and any taxes'
  - c. The price shall remain firm for the period of the Contract.
  - d. No increase in the price may be made (whether on account of increased material, labor or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the University.
  - e. The University shall be entitled to any discount for prompt payment, bulk purchase, volume of purchase or otherwise usually granted by the Supplier in such circumstances.
8. **Delivery**
  - a. The Goods shall be delivered to and the Services shall be performed at the Address on the date or within the period stated in the Order, in either case during the University's usual

business hours. The University reserves the right to make alternative delivery arrangements by written notice to the Supplier.

- b. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- c. Each delivery of Goods must be accompanied by a delivery note setting out full particulars of the Goods, delivery Address and quoting the University's Order number. The outside of each package will be clearly marked with the University's Purchase Order number, quantity, batch number and expiry date of contents (where applicable) and any other information appropriate to the Goods.
- d. All Goods and Services must be delivered or performed at the Address specified in the Order. If Goods or Services are incorrectly delivered or performed, the Supplier shall be responsible for remedying the situation and effecting redelivery or re-performance at the correct Address and for any additional expense occurred in delivery or performance at the correct Address.
- e. The Supplier shall supply the University on delivery of the Goods or performance of the Services with all operating, maintenance, repair and safety data sheets and instructions and other information as are necessary for the safe operation of the Goods which are required to enable the University to accept delivery of the Goods or performance of the Services.
- f. The University shall not be obliged to return to the Supplier any packaging or packaging material for the Goods whether or not any Goods are accepted by the University.
- g. If the Goods are to be delivered or the Services are to be performed by installments, a Contract shall be treated as a single contract and not severable.
- h. The University shall not be deemed to have accepted the Goods until the University has had a reasonable time to inspect them following Delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- i. The University reserves the right to mark the Goods immediately on Delivery for the purposes of security. The University will not be deemed to have accepted the Goods if it marks them nor shall the Supplier be entitled to raise an objection on this ground to any subsequent rejection of the Goods.
- j. The Supplier shall supply to University all operating manuals and other documentation necessary for the satisfactory operation of the Goods, and in any event all documentation as specified in the Purchase Order or any Attachment. If, after the Acceptance Date, the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the University of the availability of such updates or replacements, and shall supply them at reasonable prices, upon receipt of appropriate Purchase Order documentation. The Supplier shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.

## **9. Documentation and Marking**

2. Any Goods supplied or installed under an Order shall be designed, constructed, finished, packaged and marked in a proper manner and in accordance with the University's instructions, any statutory requirements and any requirements of the carriers.
3. All necessary warning notices clearly displayed so as to be safe and without risk to health and to reach the Address in an undamaged condition.

## **10. Payment**

- a. The Supplier shall only be entitled to invoice the University after delivery of the Goods or performance of the Services, as appropriate, unless otherwise agreed in writing by the University. It is the University's responsibility to ensure that each invoice is a Correct Invoice.

- b. Unless otherwise specified in the Contract, the University will pay for the Services. In the absence of any express condition in the Contract, University terms are that payment shall be due thirty (30) days from the beginning of the month following the date of the invoice, providing that the date of the invoice is not prior to the date of delivery. Payment shall not operate as a waiver of any of the University's rights under the Contract.

#### **11. Risk and Property**

- a. Risk of damage to or loss of the Goods shall pass to the University upon delivery to the University in accordance with these Conditions.
- b. The property in the Goods shall pass to the University upon delivery unless advance or progress payments are made for the Goods prior to delivery in which case:
- c. Property in any materials purchased or allocated by the Supplier for the purpose of an Order shall immediately vest in the University; and
- d. Property in any completed Goods appropriated to an Order shall immediately vest in the University. 8.3. If the Goods are rejected by the University for any reason, property and risk in the Goods rejected shall revert to the Supplier.

#### **12. Quality, Quality Control and Inspection**

- a. The quantity, quality and description of the Goods and the Services shall, subject to as provided in these Conditions, be as specified in the Order or in any applicable specification supplied by the University to the Supplier.
- b. The Supplier shall not unreasonably refuse any request by the University to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to dispatch and in the event of any such request the Supplier shall provide the University with all facilities reasonably required for inspection and testing.
- c. If, as a result of inspection or testing, the University is not satisfied that the Goods will comply in all respects with the Contract and the University so informs the Supplier within a reasonable time, the Supplier shall take such steps prior to Delivery as are necessary to ensure compliance.
- d. Any test and inspection certificates that are required by an Order shall be provided by the Supplier without charge.
- e. Notwithstanding any inspection or testing, the Supplier will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Supplier's obligations under the Contract.

#### **13. The Supplier warrants to the University that the Goods:**

- a. Shall be of satisfactory quality and fit for the purpose which the University has made known to the Supplier or, where the University does not make any purpose known to the Supplier, for the purpose for which the Goods are normally used;
- b. Shall be free from defects in design, material and workmanship;
- c. Shall comply in every respect with any relevant specifications, drawings, samples or descriptions; and
- d. Shall comply with any statute, statutory order, directive or regulation or relevant International, European or British Standard (or equivalent required by the University) and any voluntary codes of conduct relating to the Goods and their sale in force at the time of delivery.
- e. The Supplier warrants that it has free and unencumbered title and right to sell the Goods to the University and that the sale or use of the Goods for any purpose whatsoever by the University



shall not infringe any patent, copyright, trade name, trade mark, design right or any other intellectual property right whatsoever of any third party.

- f. The Supplier warrants to the University that the Services will be performed by appropriately qualified and trained personnel with competence and due care and diligence and in accordance with the University's instructions for the provision of such Services and will comply in every respect with all relevant specifications.

#### **14. Remedies**

- a. Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the University shall be entitled (whether or not any part of the Goods or Services has been accepted by the University):
  - b. To rescind an Order;
  - c. To return the Goods to the Supplier at the cost and risk of the Supplier on the basis that a full refund for Goods so returned shall be paid forthwith by the Supplier;
  - d. To require the Supplier at the Supplier's expense to remedy defects in the Goods or Services and carry out any other necessary work to ensure that the terms of an Order are fulfilled within 7 days or any other period agreed in writing by the University;
  - e. To refuse to accept any further deliveries of the Goods or the provision of any further Services with the University having no further liability to the Supplier.

#### **15. Health & Safety and Environmental Protection**

- a. The Supplier agrees to provide the University before delivery with written details of any harmful or potentially harmful properties or ingredients in the Goods supplied, together with any information concerning any changes that may take place in such properties or ingredients. The University will rely on the supply of such information from the Supplier in order to satisfy its own obligations under legislation relating to health and safety at work and the control of substances hazardous to health.
- b. The Supplier shall bring to the attention of all employees, agents, sub-contractors and representatives of the Supplier involved in any way in the provision of the Goods or performance of the Services, the University's health and safety requirements and contractors on site requirements and the Supplier shall be responsible for ensuring that such requirements are duly observed by all such employees, agents, sub-contractors and representatives of the Supplier.
- c. The Supplier shall:
  - In relation to all persons likely to be affected by the execution of an Order and coming into contact with the Goods, take all such steps as may be reasonably practicable to ensure their health and safety; and
  - During the execution of an Order take such steps as are reasonably practicable to avoid harm to the environment.

**Section IV: The following clauses apply to Work that includes Non-Employee Instructors:**

- a. Contractor must develop and submit to the University Representative, a lesson plan for review and approval not less than one (1) week prior to start date of assigned class unless otherwise directed by University Representative.
- b. Contractor shall include in the lesson plan a list of any audio-visual training aids required for the instruction; available training aids will be provided by University.
- c. Contractor shall be required to start classes on time, in accordance to a schedule agreed upon by both parties.
- d. Contractor will provide University Representative an updated resume to be maintained in University file.
- e. Contractor will ensure class participants are informed of the Department's safety procedures such as evacuation procedures to include location of exits and fire alarms.
- f. Contractor agrees to provide training assessments, reports and administrative documentation as required by the University Representative.
- g. Upon conclusion of each class session, Contractor agrees to return to University Representative, University property such as audio-visual training aids.
- h. Contractor makes no promises or warranties with regards to student performance as a result of instruction Contract provides.

**Section V: The following clauses apply to Work that includes the delivery of software:**

- a. As used herein, "Prohibited Software" means software that incorporates or embeds software in, or uses software in connection with, as part of, bundled with, or alongside any (1) open source, publicly available, or "free" software, library or documentation, or (2) software that is licensed under a Prohibited License, or (3) software provided under a license that (a) subjects the delivered software to any Prohibited License, or (b) requires the delivered software to be licensed for the purpose of making derivative works or be redistributable at no charge, or (c) obligates University to sell, loan, distribute, disclose or otherwise make available or accessible to any third party (i) the delivered software, or any portion thereof, in object code and/or source code formats, or (ii) any products incorporating the delivered software, or any portion thereof, in object code and/or source code formats.
- b. Unless Supplier has obtained University's prior written consent, which University may withhold in its sole discretion, Supplier shall not use in connection with this Contract, or deliver to University, any Prohibited Software.

- c. Supplier agrees to defend, indemnify, and hold harmless University, its customers and suppliers from and against any claims, damages, losses, costs, and expenses, including reasonable attorney fees, relating to use in connection with this Contract or the delivery of Prohibited Software.

# Appendix A – Definitions

For purposes of this Agreement, the following terms shall have the meanings indicated below:

- 1) “Address” means the delivery address stated in an Order, or such other address as the University may subsequently notify in writing.
- 2) “Authorized” shall mean the signature of an authorized representative of the University who is either named on the face of the Purchase Order and/or notified to the Supplier by the University as being an authorized representative.
- 3) “Award Letter” shall mean the letter issued by the University notifying the Supplier that it has been selected as a supplier for the supply and Installation of goods and/or the provision of services of the type specified in the Purchase Order subject to these General Conditions of Contract.
- 4) “Completion Date” shall mean the date specified on the Purchase Order, or in any Attachment, for the completion of the Delivery, and/or where applicable, the date by which it is intended that the Acceptance Certificate will be signed by the University.
- 5) “Conditions” means the standard Conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and Conditions agreed in writing between the University and Supplier.
- 6) "Contract" means the instrument of contracting, such as "Purchase Order", "PO", "Subcontract", or other such type designation, including these General Provisions, all referenced documents, exhibits and attachments. If these terms and conditions are incorporated into a "master" agreement that provides for releases, (in the form of a Purchase Order or other such document) the term "Contract" shall also mean the Release document for the Work to be performed.
- 7) “Data” means all designs, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, process information, manuals, photographs, negatives, tapes, discs or diskettes, software, or any other similar items.
- 8) “Delivery” means the receipt by the University of the Goods or performance of the Service at the Address. “Delivery” shall not under any circumstances imply acceptance of the Goods and/or Services.
- 9) "Documentation" means user guides, manuals, and materials developed for use with the Services.
- 10) "FAR" means the Federal Acquisition Regulation, issued as Chapter 1 of Title 48, Code of Federal Regulations.
- 11) “General Conditions of Contract” shall mean these general conditions of contract for the supply and installation of goods or supply of services.
- 12) “Goods” means all products, articles or materials specified in an Order to be supplied in accordance with the Contract.
- 13) “Goods” and “Services” shall mean the goods and services respectively as described in the Purchase Order, the Attachment and/or the Award Letter or any other document referenced in those documents.
- 14) “Installation” shall mean the installation of the Goods in the designated location and into the operating environment specified by the University at the Site; and
- 15) “Install” shall be interpreted accordingly.
- 16) “Intellectual Property Rights” shall mean patents, copyright, registered and unregistered design rights, utility models, trademarks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country, and all rights to apply for or register such

- rights.
- 17) "Manufacturer" shall mean a person, an enterprise, or an entity that manufactures some product.
  - 18) "OEM" means original manufacturer of the Goods or the person who attaches its brand to the Goods
  - 19) "Order" means the University's officially numbered purchase order incorporating these conditions together with all the documents attached or referred to therein.
  - 20) "Packaging" means the packaging for the Goods, including without limitation, bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
  - 21) "Personnel" shall mean all personnel employed by the Supplier (and including the personnel of any agent or sub-contractor of the Supplier) for the purpose of performing the Contract.
  - 22) "Price" means the price exclusive of Value Added Tax payable to the supplier by the University under the Contract for the full and proper performance by the Supplier of its obligations under the Contract
  - 23) "Professional Services" means work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, and claims adjusters.
  - 24) "Proprietary Information" means information such as: company confidential information such as technical and performance specifications, technical reports, product plans, projects in progress, project problems or product code names. Such information also includes information such as: technical and performance specifications, technical reports, product plans, projects in progress, project problems or product code names.
  - 25) "Purchase Order" shall mean the purchase order form issued by the University which details the instructions to the Supplier and the goods and services to be provided by the Supplier.
  - 26) "Services" means the services or work specified in an Order to be supplied in accordance with the Contract.
  - 27) "Site" shall mean the location(s) for the Delivery and Installation of the Goods as specified in the Purchase Order and/or Attachment.
  - 28) "Software" refers to all proprietary or Third Party software and/or base code that is used to provide the Service.
  - 29) "Specification" shall mean any technical specification for the Goods or Services contained and/or referenced on the Purchase Order; in an Attachment and/or referenced in the Award Letter, or any combination of the foregoing.
  - 30) "Supplier" shall mean the person, firm, or company to whom the Purchase Order is addressed.
  - 31) "Third Party" means any party other than Contractor and the University.
  - 32) "University ", "User", or "Users" refers to the University of Louisiana at Lafayette, but does not include any other entity which is or at any time becomes a subsidiary, parent, related but separate campus, or related entity of University.
  - 33) "University's Representative" shall be an individual or any member of the University's staff or department which shall use or maintain the Service under this Agreement.
  - 34) "User" or "Users" shall also refer to any faculty member, staff member, student or prospective student who uses the Service pursuant to this Agreement.
  - 35) "Warranty Services" shall mean such maintenance, repair and other services that are required to be provided in order to reinstate the Goods and/or the Installation or any part thereof to the standards of performance, and/or to provide the Services to standards, that are in accordance with, and as detailed in the Contract.
  - 36) "Work", "Service" means all required labor, articles, materials, supplies, goods, and services

constituting the subject matter of this Contract.