

## **TERMS AND CONDITIONS**

(Applicable to Purchase Orders under \$10,000.00)

1. **ACCEPTANCE:** Acceptance of this Purchase Order (hereinafter called the “contract”), must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgement or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the Contractor without an effective acknowledgement shall be deemed to be performance in accordance with the Terms and Conditions of this contract.
2. **PAYMENT:** Payment is contingent upon acceptance of materials and services. Cash discount period shall be calculated from date of receipt of acceptable materials or services, or acceptable invoice which ever is received later. Drafts will not be honored.
3. **WARRANTY:** Unless otherwise agreed to in writing by the parties, the Contractor warrants (1) that all workmanship shall be first class; (2) the item or items purchased will be supplied according to specifications; and (3) except as otherwise provided in the specifications, all items incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose. Such warranties together with the Contractor’s service warranties and guarantees, if any, shall survive inspection tests, acceptance of and payment for the articles and shall run to the Laboratory, its successors and assigns. The Contractor shall, within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost of the Laboratory any defects in materials workmanship which may appear during the period ending on a date twelve (12), months after delivery, unless a different warranty period is provided in the contract. The Laboratory, may, at its option either return for credit or require prompt correction or replacement of any defective or nonconforming article or part thereof. If the Contractor is unable to or refuses to promptly correct or replace such defective or nonconforming article or part thereof, the Laboratory, may, by contract or otherwise, repair or replace such work or materials and assess the Contractor the excess cost occasioned the Laboratory thereby. The one year warranty shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.
4. **DEFAULT- DELAYS:** The Laboratory may cancel this contract in whole or in part in the event that the Contractor fails or refuses to deliver any of the items purchased, within the time provided, or otherwise violates any of the conditions of this contract, or it becomes evident that the Contractor is not conducting work in accord with the specifications or with such diligence as to permit delivery on or before the delivery date. In the event the Laboratory cancels this contract in whole or in part as herein provided, the Laboratory may procure, upon such terms and in such a manner as the Laboratory may deem appropriate, materials or services similar to those cancelled and the Contractor shall be liable to the Laboratory for any excess costs for such similar materials or services; provided

that the Contractor shall continue performance for this contract to the extent not terminated under the provisions of this article. Delays in delivery due to causes beyond the control and without the fault of negligence of the Contractor will be excused by the Laboratory if the Contractor notifies the Laboratory in writing of the cause of such delay within a reasonable time from the beginning thereof. When such excuse is given, the Laboratory, by written notice of the Contractor, will extend the time for performance by such period as the Laboratory determines to be commensurate with the period of such delay. The rights and remedies of the Laboratory provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. If, after notice of termination of this contract in whole or in part under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued under the clause entitled "Termination for Convenience".

5. **TAXES:** Except as may be otherwise provided in this contract, the price includes all applicable Federal, State and local taxes in effect on the date of this contract but does not include any Federal, State or local sales, use or other tax directly applicable to the completed materials or services covered by this contract from which the Contractor or this transaction is exempt nor any other tax from which the Contractor or this transaction is exempt.
6. **TITLE - GOVERNMENT PROPERTY:** Materials furnished under this contract may be for the benefit of the United States Government and title thereto shall pass directly from the Contractor to the United States Government pursuant to the provisions of the contract between the Laboratory and the United States Government under which this contract is placed.
7. **RESPONSIBILITY- RISK OF LOSS:** The Contractor shall be responsible for the materials covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the Laboratory at the designated point and prior to acceptance or notice of rejection by the Laboratory, the Laboratory shall be responsible for the loss or destruction of or damage to the materials only if such loss, destruction, or damage results from the negligence of officers, agents or employees of the Laboratory acting within the scope of their employment. The contractor shall bear all risk as to rejected materials after notice of the rejection.
8. **CHANGES:** The Laboratory may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) drawings, design, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this section must be asserted within 30 days from the date of receipt by the Contractor of the notification of change;

provided, however, that the Laboratory, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Nothing in this section, changes, shall excuse the Contractor from proceeding with the contract as changed. Except as otherwise provided herein no payment for extra work shall be made unless such extras and the price thereof have been authorized in writing by the Laboratory.

**9. ASSIGNMENT:** The Contractor shall not assign or transfer this contract nor any claim or interest thereunder to any other party or parties except as authorized by the Laboratory. The Laboratory may assign the whole or any part of this contract to the Government or its designee.

**10. TERMINATION FOR CONVENIENCE:** The Laboratory by written notice may terminate this contract, in whole or in part, for its convenience. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Part 1-8 of the Federal Procurement Regulations (41 CFR 1-8), In effect on this contract's date. To the extent that this contract is for services and is so terminated, the Laboratory shall be liable only for payment in accordance with the payment provision of this contract for services rendered prior to the effective date of termination.

**11. COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Laboratory or the United States Government shall have the right to annul this contract without liability or in their direction to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**12. CONTRACT WORK HOURS AND SAFETY STANDARDS**

**ACT-OVERTIME COMPENSATION:** This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provision and to all other applicable provisions and exception of such Act and the regulation of the Secretary of Labor thereunder.

**Overtime requirements:** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman, or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

**Violation, Liability for Unpaid Wages, Liquidated Damages:** In the event of any violation of the provision of paragraph 12.1, the Contractor and any subcontractor responsible thereof shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with the respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph 12.1 in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph 12.1.

**Withholding for Unpaid Wages and Liquidated Damages:** The Laboratory may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph 12.2.

**Subcontracts:** The Contractor shall insert paragraphs 12.1 through 12.4 of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

**13. OFFICIALS NOT TO BENEFIT:** No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**14. BUY AMERICAN ACT:** The Contractor warrants that the material furnished under this contract insofar as required by the Buy American Act (41 U.S.C.10a-d) and regulation thereunder.

**15. INSPECTION AND ACCEPTANCE:** All materials (which term throughout this section includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Laboratory, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. If the materials or work are found to be defective, the Contractor shall promptly repair or replace such materials or work, or if the Contractor is unable or refuses to do so, the Laboratory may by contract or otherwise repair or replace such materials or work and assess the Contractor the excess cost occasioned the Laboratory thereby. Acceptance of all materials and serviced order hereunder shall be effected by the Laboratory within a reasonable time after delivery. Except as otherwise provided for in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistake as amount to fraud.

**16. LABORATORY FURNISHED PROPERTY:** The Laboratory may, from time to time, furnish Government owned property for use by the Contractor under this contract. If such property is furnished hereunder, the Contractor (I) shall maintained adequate property control records in accordance with sound industrial practice, (II) shall, unless otherwise provided, be liable for any loss or damage thereto except for reasonable wear and tear, and (III) shall upon

completion of this contract and to the extent not consumed thereunder, make such disposition thereof as the Laboratory may direct.

- 17. NOTICE OF LABOR DISPUTES:** Whenever an actual or potential labor dispute is delaying or threatens to delay delivery of materials or performance of services under this contract, the Contractor shall immediately notify the Laboratory in writing. Such notice shall include all relevant information concerning the dispute and its background.
- 18. CONVICT LABOR:** In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082 © (2) and Executive Order 11755, December 29, 1973.
- 19. EMPLOYMENT OF THE HANDICAPPED:**
  - (a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - (b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Rehabilitation Act of 1973, Public Law 93-112, as amended (hereinafter referred to as the "Act").
  - (c) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations and relevant orders for the Secretary of Labor issued pursuant to the Act.
  - (d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, and Department of Labor, provided by or through the Laboratory. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
  - (e) The contractor will notify each labor union or representative of workers with which it has collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Act and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
  - (f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to

section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.

- 20. PRICING OF ADJUSTMENTS:** When costs are a factor in any determination of a contract price adjustment pursuant to the “Changes” clause or any other provision of this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 9-15 of the Federal Procurement Regulations (41 CFR 1-15).
- 21. AUTHORIZATION AND CONSENT:** The government has given it authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (I) embodied in the structure or composition of any article the delivery of which is accepted by the Government or the Laboratory under this contract or (II) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Laboratory or the Government directing the manner of performance. The entire liability of the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.
- 22. APPLICABLE LAW:** To the extent that Federal law does not exist and State law should become applicable to this contract, the laws of the State of Michigan shall apply.
- 23. NON-DISCRIMINATION CLAUSE:** In filling this order the supplier agrees not to discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin or ancestry. The supplier further agrees that every subcontract or order given for the supplying of this order will contain a provision requiring non-discrimination in employment, as herein specified. This covenant is required pursuant to Section 4 of Act No. 251, Public Acts of the State of Michigan of 1955 as amended and any breach thereof may be regarded as a material breach of the contract or purchase order.
- 24. EXAMINATION OF RECORDS:** (This clause is applicable if the amount of this Purchase Order is \$2,500 or more). The Seller agrees that the University and the Comptroller General of the United States or any of his duty authorized representatives shall, until the expiration of three years after final payment under this Purchase Order, have access to and the right to examine and

copy all books, documents, papers, and records of the Seller, involving transactions related to this Purchase Order, which shall be carefully preserved by the Seller until such time, unless the University and the Government authorize their prior disposition.

**25. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT:**

- (a) The Seller shall report to the University, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement base on the performance of this Purchasing Order of which the Seller has knowledge.
- (b) In the event of any claim or suit against the Government or the University on account of any alleged patent or copyright infringement arising out of the performance of this Purchase Order or out of the use of any supplies furnished or work or services performed hereunder, the Seller shall furnish to the Government and the University, when requested by the University or the agency contracting officer, all evidence and information in possession of the Seller pertaining to such suit or claim. Such evidence or information shall be furnished at the expense of the Government and/or the university.

**26. PATENT INDEMNITY:** The seller agrees to indemnify the University and the Government, their respective officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability arising pursuant to Section 183, Title 35, U.S. Code, as amended, prior to the issuance of Letters Patent) occurring in the performance of this Purchase Order or arising by reason of the use or disposal by or for the account of the University or the Government of items manufactured or supplied under this Purchase Order, except, however (a) infringement necessarily resulting from the Seller's compliance with written specifications or provisions for other than standard parts or components manufactured for the purpose of directing a manner of performance of the Purchase Order not normally utilized by the Seller, and (b) infringement resulting from the use of the goods delivered under this Purchase Order in combination with other goods or materials in the operation of any process. In the event of any suit or proceeding for patent infringement, the University shall promptly notify the Seller thereof.

**27. RENEGOTIATION:**

- (a) To the extent required by law, this Purchase Order is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this Purchase Order or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this Purchase Order shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

- (b) The Seller agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

**28. UTILIZATION OF SMALL BUSINESS CONCERNS:**

- (a) It is policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government placed with small business concerns.
- (b) The seller agrees to accomplish the maximum amount of subcontracting to small business concerns that the Seller finds to be consistent with the efficient performance of this Purchase order.

**29. UTILIZATION OF MINORITY BUSINESS ENTERPRISES:**

- (a) It is the policy of the Government that Minority Business Enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts and purchase orders.
- (b) The Seller agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of the Purchase Order.