

CARNEGIE MELLON UNIVERSITY
FACILITIES MANAGEMENT SERVICES
STANDARD TERMS AND CONDITIONS

1. **INTRODUCTION:** The following Terms and Conditions shall govern the procurement of the products and/or services which are the subject matter any Purchase Order or PCard purchase (the “Order”) issued by Carnegie Mellon University, Facilities Management Services (“University”) to a supplier (“Supplier”). Please read these Terms and Conditions carefully. By accepting the Order and/or performing thereunder, Supplier will be deemed to have accepted these Terms and Conditions. The Order including the Terms and Conditions shall constitute the entire contract between the parties, and supersedes any and all prior written and oral agreements or understandings relating to such subject matter. It is expressly agreed that the terms of the Order and these Terms and Conditions shall supersede any additional or contrary terms, limitations or conditions set forth in any acceptance, quote, proposal or other non-University document, and no terms included in any such document shall apply. The Order and these Terms and Conditions may be amended or modified only by a writing executed by both parties. Notwithstanding the foregoing, if the University and the Supplier have also entered into a written agreement executed by the Supplier and an authorized signatory of the University that governs the procurement of the products and/or services which are the subject matter of the Order (the “Written Contract”), as specified in the Written Contract, then the terms and conditions of that Written Contract control and supersede the provisions of the Order and these Terms and Conditions to the extent inconsistent and/or conflicting therewith. By clicking the button, you will be agreeing to these Terms and Conditions.
2. **ELIGIBILITY:** This Site is available only to Suppliers who can form legally binding contracts under applicable law. By using this Site, you represent and warrant that you are (i) at least eighteen (18) years of age and/or (ii) otherwise recognized as being able to form legally binding contracts under applicable law.
3. **AUTHORITY:** If you are agreeing to these Terms and Conditions on behalf of a corporate entity, you represent and warrant that you have the legal authority to bind such corporate entity to these Terms and Conditions, in which case the term “Supplier” shall refer to such corporate entity. If, after your agreement to these Terms and Conditions, the University finds that you do not have the legal authority to bind such corporate entity, you will be personally responsible for the obligations contained in these Terms and Conditions. The University shall not be liable for any loss or damage resulting from the University’s reliance on any instruction, notice, document or communication reasonably believed by the University to be genuine and originating from an authorized

representative of your corporate entity. If there is reasonable doubt about the authenticity of any such instruction, notice, document or communication, the University reserves the right (but undertakes no duty) to require additional authentication from you.

4. **PAYMENT PROCEDURES:**

a. Carnegie Mellon will utilize VISA credit cards to make all payments.

b. Invoicing procedures:

i. All invoices must be sent directly to:

Carnegie Mellon University
Facilities Management Services
5000 Forbes Avenue
Pittsburgh, PA 15213-3890
Attn: Pina Olander FMSB2
Email: pina62@andrew.cmu.edu
Fax: 412-268-1611

ii. All invoices must be itemized, filled out properly, showing contract amount, retainage (if any), charges (if any), amount due, date submitted, etc.

iii. All invoices must show the correct Carnegie Mellon and Contractor Work Order number.

iv. All invoices for time and material work must be presented with complete back up records and must be in complete agreement with rate schedule submitted to Carnegie Mellon prior to beginning of work.

v. Invoices for monthly progress (percent complete) payments will generally be paid within 30 days net of invoice date if the amount invoiced corresponds to the amount of work completed.

5. **ORDERS:** Individual Orders shall be implemented by Supplier upon receipt of a telephone call, electronic transmission, or written Order issued by University's authorized buyer ("Buyer"). The Orders may be identified by number, and Supplier shall reference that number on its individual packing sheets and invoices.

6. **PERFORMANCE:** Supplier shall make deliveries or perform services in accordance with the date/dates specifically negotiated with University. In the event Supplier is unable to fulfill University's specific request, Supplier shall immediately advise University. Supplier shall not back-order or delay the shipment of goods or the performance of services without University's authorization, and if Supplier cannot make timely deliveries to University or perform services in a timely manner, in addition to any other remedies available to University at law or equity, University shall have the option to cancel, at no charge, the individual Order or service request or any portion thereof, and University may procure its requirement(s) elsewhere.

7. **LABELING:** Supplier will label the outside of each package with description, quantity, and Order number if applicable. Supplier will include this information on all packing slips and invoices.

8. **RETURNABLE CONTAINERS:** If containers are returnable, Supplier will label drum, case, bottle, etc. "RETURNABLE" including Supplier's name and University's Order number, if applicable. Supplier will pick up returnable containers from University upon notification and at Supplier's expense.
9. **DEFECTIVE OR NONCONFORMING MERCHANDISE:** University may, at any time, return defective or nonconforming merchandise. Transportation cost will be borne by Supplier and Supplier shall issue University a refund, at University's option, for full purchase price.
10. **WARRANTIES:**
 - a. In addition to any specific warranties agreed to by the parties and provided by law, Supplier warrants to University 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 Supplier hereunder, Supplier warrants to University 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, Supplier shall comply with, and all materials and work or services furnished thereunder shall be produced or furnished in full and complete compliance with, all applicable laws and regulations. In addition to other remedies that may be available at law or in equity, University, at its option, may return to Supplier any nonconforming or defective item(s), or have Supplier re-perform such nonconforming services, and/or require correction or replacement of the item(s) or services, all at no cost to the University. These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Supplier, expressed or implied, which are provided or exist by operation of law.
 - d. To the extent Supplier performs Services on premises owned or leased by or on behalf of University, Supplier agrees to comply with any and all facility access, use and/or security guidelines and/or procedures of which Supplier is informed.
11. **INSPECTION:** University shall have the right to perform inspection and/or expediting of the materials and the fabrication thereof at the facility of Supplier or its suppliers at any reasonable times. All materials or services are subject to final inspection and acceptance by University at destination, notwithstanding any prior payment or inspection at the source. Inspection and acceptance of items/services by University, or payment therefor, shall not relieve Supplier of its responsibilities under the Order.

12. **PRICE WARRANTY:** Supplier warrants that the price(s) and discounts for the articles or services sold to University hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar articles or services under similar situations. In the event Supplier reduces its price(s) or increases its discounts for articles or services, Supplier agrees to adjust the pricing for the Order accordingly as of the effective date of the change. Supplier warrants that prices shown on an Order shall be complete, and no additional charges of any type shall be added without University's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.
13. **INFRINGEMENT REPRESENTATION AND WARRANTY:** Supplier represents and warrants that no article, service or Work Product (as defined below) infringes or will infringe on any patent, copyright, trademark or other intellectual property rights of any third party, and that, to Supplier's knowledge, no claim of such infringement has been threatened or asserted, and no such claim is pending, against Supplier or, to Supplier's knowledge, any entity or person from which Supplier has obtained such rights.
14. **SOFTWARE LICENSE:** University has the right to perpetually use provided software with unlimited user access. Supplier warrants that Supplier holds all rights, titles and/or licenses necessary to provide any software hereunder without restriction. Supplier warrants that University 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, University's sole obligation with respect to software provided hereunder shall be to use such software in compliance with applicable laws and regulations, irrespective of any other license agreement including, but not limited to, any license agreement packaged with such software. Supplier warrants that any software provided hereunder does not contain any malicious code, program, or other internal component (e.g., computer virus, worm, time bomb, or similar component), which could damage, destroy, or alter any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, or alter any data or other information accessed through or processed by the software in any manner. Supplier also warrants that the software products which are licensed to University hereunder and used by University include accurate date capabilities. Supplier acknowledges that software, licensed by University hereunder, that may require modification in order to operate per specification(s), shall be modified by Supplier, in a timely fashion, at no cost to University.
15. **NON-ASSIGNMENT, NO SUBCONTRACTING:** An Order shall not be assignable by the Supplier. Any attempted assignment by Supplier shall be void and of no effect. In addition, Supplier may not utilize any

subcontractor or third party in connection with the provision of services under an Order without University's prior written approval. Neither University's approval of a subcontractor nor Supplier's use of a subcontractor shall relieve the Supplier from responsibility under an Order, and Supplier shall be fully responsible for all acts and omissions of Supplier's subcontractors (which will be deemed to be Supplier's acts and omissions under the Order).

16. **CONFIDENTIALITY; RETURN OF MATERIALS:**

- a. "Confidential Information" means all information disclosed to Supplier and/or to which Supplier has access that concerns or relates to the business, operations, financial condition or prospects of the University, regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form or is marked confidential. Without limiting the general nature of the prior sentence, "Confidential Information" shall specifically include without limitation
 - i. all information disclosed by University to Supplier and/or to which Supplier has access, in connection with the performance of an Order;
 - ii. all inventions, copyrighted material, patents, discoveries, trade secrets, processes, techniques, methods, formulae, ideas and know-how of University
 - iii. all records, drawings, tools, plans, designs or specifications for performing the Order designed for or by University; and
 - iv. any and all documentation relating to contracts between University and any third party.
 - v. "Confidential Information" shall also include third party information which is designated as (and/or should under the circumstances be understood to be considered) confidential and/or proprietary and that is made available to and/or accessible by University during the performance of an Order.
- b. At no time shall Supplier use or disclose to any third party any Confidential Information except as may be authorized in writing by an authorized agent of University. Supplier will put in place any and all safeguards and/or security procedures necessary to safeguard the Confidential Information from unauthorized use, access and/or disclosure. Upon completion or termination of an Order, Supplier will turn over to University all Confidential Information which are in Supplier's possession or under Supplier's control.
- c. Notwithstanding the foregoing, "Confidential Information" shall not include
 - i. information which is or becomes generally known to the public through no act or omission of Supplier or
 - ii. information which has been or hereafter is lawfully obtained by Supplier from a source other than University so long as, in the case of information obtained from a third party, such third

party was or is not, directly or indirectly, subject to an obligation of confidentiality at the time such Confidential Information was or is disclosed to Supplier.

17. **TERMINATION FOR CONVENIENCE:** The University may cancel any Order for any reason prior to its shipment by Supplier upon providing Supplier notice of cancellation without any cost or fee; provided, however, such right of cancellation shall not extend to products built to Supplier's specifications. In the case of services provided under an Order, University may cancel the Order for any reason at any time and shall pay Supplier for the services actually performed through the effective date of termination which have not previously been paid, but in no event shall such amount exceed the price set forth in the Order.
18. **TERMINATION FOR DEFAULT:**
 - a. University may, without prejudice to any other rights or remedies provided by law or under the Order, by written Notice of Default to Supplier, terminate any Order in whole or in part in any one of the following circumstances: If Supplier has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or If Supplier fails to perform the work or deliver the articles in accordance with the delivery or performance schedules specified herein or any extension thereof; or If Supplier fails to perform any of the other terms of this or any 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 fifteen (15) days (or such longer period as University may authorize in writing) after receipt of written notice from University specifying such failure; or If Supplier is in breach of the Order and/or these Purchase Order Terms and Conditions, which termination shall be effective if such breach is not cured within fifteen (15) days following written notice of the breach to Supplier by University.
 - b. In the event University terminates an Order in whole or in part as provided in paragraph (a) of this provision, University may procure, upon such terms and in such manner as it may deem appropriate, items, supplies or services similar to those so terminated, and Supplier shall be liable to University for any excess costs reasonably incurred for such similar supplies or services, in addition to any consequential and incidental damages incurred by the University.
 - c. Upon termination of an Order for any reason (whether for convenience or for cause), Supplier shall promptly provide to University any and all Work Product or other materials developed for University under the Order as of the effective date of termination.
19. **COMPLIANCE WITH DELIVERY SCHEDULE:** Time is of the essence under each Order. Any notice to Supplier by University as to possible delay and/or expediting action by University to accomplish on-time delivery shall not constitute a waiver of University's rights under any

Order, nor shall such actions in any way affect the responsibility of Supplier to deliver items or perform specified services in accordance with the delivery schedule prescribed by the Order. University reserves the right to reject the goods, materials or services, or reduce the price for Supplier's failure to meet the delivery provisions of the Order whether or not material delay or loss ensues.

20. **PROPERTY RIGHTS:** All materials, tools, equipment, and other property either furnished by University to Supplier or individually paid for by University, shall remain the property of the University, but the Supplier assumes the risks of, and shall be responsible for, any loss thereof or damage thereto, until returned in good order to the University. Such property shall, at all times, be safely stored and properly maintained by Supplier. Supplier, in accordance with the provisions of this or any Order, but in any event upon completion or termination thereof, shall return such property to University or to any other person as University may direct, in the condition in which it was received, manufactured or procured by Supplier 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.
21. **OWNERSHIP OF WORK PRODUCT:**
 - a. Any and all services and any and all materials, intellectual property, physical property, and/or other work product prepared, procured, or produced in the rendition of the services under an Order ("Work Product") related thereto are intended as "works made for hire" by Supplier for University and any right, title and interest to any and all Work Product shall vest exclusively in University. In the event any such Work Product may not, by operation of law, be considered works made for hire (or if ownership of all right, title and interest therein shall not vest exclusively with University), Supplier hereby confirms that without further consideration it shall be deemed to have automatically assigned upon creation the ownership of all such rights, title and interest to University. Supplier agrees further to execute any assignments or other documents reasonably requested by University from time to time in order to confirm University's exclusive ownership of such Work Product.
 - b. Supplier understands that the term "moral rights" means any rights of paternity, attribution or integrity, including any right to claim authorship of a copyrightable work, to object to a modification of such copyrightable work, and any similar right existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right." Supplier irrevocably waives and agrees never to assert any moral rights Supplier may have in any Work Product, even after any completion or termination of an Order.
22. **INDEMNIFICATION:** Supplier will defend, indemnify and hold harmless University, University's trustees, officers, employees, attorneys,

agents, successors and assigns (“University Parties”) from and against any damages, costs, liabilities, settlement amounts and/or expenses (including attorneys' fees and costs) incurred by and/or imposed upon any and/or all University Parties in connection with any claim, suit, action or demand arising out of or relating to:

- a. Supplier’s negligence or willful misconduct;
- b. any injury to persons or damage to property to Supplier and/or caused by the Supplier’s activities under these Purchase Order Terms and Conditions or any Order;
- c. products liability;
- d. allegations that the Work Product infringes and/or potentially infringes on any third party’s intellectual property rights; and/or
- e. a breach of any terms or conditions of an Order or these Purchase Order Terms and Conditions by Supplier, including a breach of the Supplier’s export control obligations specified herein.

23. **DELIVERY:** Delivery is to be made only to the destination stated in the Order and must be made during the University’s normal business hours during the University’s normal business work-week, legal and University’s holidays excluded, unless otherwise specified in the Order. The quantity term set forth in the Order shall be complied with strictly as stated. Supplier is responsible for maintaining and providing proof of delivery.

24. **FREIGHT:** Unless otherwise specified in the Order, the University’s freight terms are F.O.B. Destination, Freight Prepaid and Allowed. If shipment is indicated on the Order as F.O.B. Supplier’s plant, at the University’s request, the Supplier will prepay the freight charges and, if mutually agreed to, add them to the invoice. Separate freight invoices will not be accepted. Freight charges must be supported by receipts (including a valid tax receipt, where applicable).

25. **SHIPPING INSURANCE:** Unless otherwise specified in the Order, for all Supplier shipments for Orders indicated as F.O.B. Supplier’s plant over \$10,000 U.S. in value, Supplier will, at its expense, provide motor truck (air and/or ocean, as applicable) cargo liability insurance covering all shipments in accordance with domestic and/or international (as applicable) carriage of freight rules while en route in the custody of a common or contract carrier, while in the due course of transit, that is being delivered on any mode of transportation (including airlines, ocean-going vessels, barges and trucks) owned, operated or contracted by Supplier in the maximum amount of \$10,000 U.S. in value for each shipment. In the event of any loss, the University shall not incur any co-insurance and/or under insurance penalties by Supplier or Supplier’s transit insurance companies for losses that exceed \$10,000 U.S. in value. It is understood that the originating carrier issuing the bill of lading has the primary responsibility for the above insurance coverage as well as for the safe delivery of all shipped property for the University. Supplier will provide

advance notice to University of shipments exceeding \$10,000 U.S. in value.

26. **CONSOLIDATION:** Except where limited by the insurance clause above, Supplier shall consolidate all shipments to the delivery point specified herein, for any one day, on one Bill of Lading.
27. **PACKING, PACKAGING AND PACKING SHEETS:** Supplier shall use best commercial practice for packing and packaging of items to be delivered under this or any Order, unless otherwise specified herein. Supplier is to provide two (2) copies of each packing sheet with the shipment.
28. **HAZARDOUS MATERIAL, PACKING, LABELING AND SHIPPING:** Supplier shall package, label, transport and ship hazardous material, items containing hazardous materials, and any other regulated materials, in accordance with all applicable laws and regulations, and shall furnish any appropriate Material Safety Data Sheets. Supplier, prior to each hazardous or regulated material shipment, shall notify University of its nature and shipment data by such means of communication as will allow for the proper preparation for acceptance of delivery by the carrier of the material and shall identify same on all shipping documents.
29. **INVOICES:** Supplier shall render invoices as specified in the Order immediately upon delivery or completion of Order. Separate invoices for each Order must be rendered in duplicate.
30. **TAXES:** As a non-profit educational institution in the U.S., the University is exempt from a number of taxes (both U.S. based and non-U.S. based) including, unless otherwise specified in the Order, Pennsylvania Sales and Use Tax (exemption no. 75-086-010), various other states' sales and use taxes and the U.S. Federal Excise Tax (exemption no. A110656). The University will provide evidence of exemption from tax as relating to the purchase of goods or services under the Order, as applicable, upon request.
31. **MISCELLANEOUS:**
 - a. No delay or failure by either party to exercise any right, remedy or power herein shall impair such party's right to exercise such right, remedy or power or be construed to be a waiver of any default or an acquiescence therein, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power.
 - b. No waiver hereunder shall be valid unless set forth in writing and executed by the waiving party.
 - c. Suppliers performing services for the University are required to provide satisfactory evidence of appropriate and adequate general and/or professional (if applicable) liability and statutory insurance coverage (such as workmen's compensation or equivalent insurance) at levels reasonably satisfactory to the University prior to the commencement of any services, and the University must, unless otherwise agreed or not available by law, be named as additional insured on any required general liability insurance policy(ies).

Supplier's insurance shall apply on a "primary" basis and Supplier's insurance company(ies) shall be required to provide University prior written notice of cancellation or material change in any of the required insurance policy(ies).

- d. One (1) current Certificate of Insurance evidencing the required insurance coverages shall be provided to the University at the address provided to Supplier at the commencement of the performance of the services, and such other times as the University may from time to time reasonably request during the performance.
- e. In performing under any Order, the Supplier will act as an independent contractor and the method and techniques of performance shall rest in Supplier's discretion, subject to the reasonable satisfaction of the University.
- f. It is understood that neither the Supplier nor the University intends that Supplier shall be, or be deemed to be, an employee of University.
- g. The Order and these Terms and Conditions shall be governed by the laws of the Commonwealth of Pennsylvania, USA without regard to conflicts of laws principles.
- h. All claims and/or controversies of every kind and nature arising out of or relating to the Order and these Terms and Conditions, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled
 - i. at University's election, by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules and, in such case
 1. the arbitration proceedings shall be conducted before a panel of three arbitrators, with each party selecting one disinterested arbitrator from a list submitted by the AAA and the two disinterested arbitrators selecting a third arbitrator from the list,
 2. each party shall bear its own costs of arbitration,
 3. all arbitration hearings shall be conducted in Allegheny County, Pennsylvania, USA, and
 4. the provisions hereof shall be a complete defense to any suit, action or proceeding instituted in any Federal, state or local court or before any administrative tribunal with respect to any claim or controversy arising out of or relating to the Order or these Terms and Conditions and which is arbitrable as provided herein, provided that either party may seek injunctive relief in a court of law or equity to asset, protect or enforce its rights hereunder, or
 - ii. in the event that University does not elect binding arbitration as permitted in point (i) above, exclusively in the United States District Court for the Western District of Pennsylvania, USA

or, if such Court does not have jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania, USA and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

- i. The University actively and diligently promotes the effective use of Women-owned, Veteran-owned, Disabled Veteran-owned, HUBZone and other minority owned and/or disadvantaged business enterprises in its contracting and purchasing efforts.
- j. Supplier agrees to be subject to all applicable contract clauses required to be included in this Order by applicable laws or regulations relating thereto, including, but not limited to, the following clauses which are incorporated by reference herein: Equal Opportunity Clause (41CFR60-4, FAR 52.222-26); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41CFR60-250-4, FAR 52.222-35); Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Vietnam Era Veterans' Readjustment Assistance Act of 1972 [38 U.S.C. 4211 and 4212] (the Act), (FAR 52.222-37); Executive Order 11701, January 24, 1973 [3 CFR 1971 - 1975 Comp., p. 752]; the regulations of the Secretary of Labor [41 CFR Part 60-250 and Part 61-250]; and the Veterans Employment Opportunities Act of 1998, Public Law 105-339, FAR 52.222-37); Affirmative Action Clause for Handicapped workers (41CFR60-741.4); Certification of Non-segregated Facilities Clauses (41CFR60-1.8 and 41CFR1-12.803.10, FAR 52.222-21); Small Business Administration (13CFR-101); and HUBZone Program (13CFR-126, FAR 52.219-8).
- k. Supplier agrees and certifies, if applicable, that it has developed a written Affirmative Action Compliance Program (41CFR60-1.40(a) and 41CFR265.9, FAR 52.222-22) and annually files standard form 100 (EEO-1) (41CFR60-1.7(a)). Supplier certifies that it has not been found in noncompliance with Executive Order 11246 or Title IV of the Civil Rights Act of 1964 by any federal agency or court. If and to the extent applicable, Supplier agrees that it will abide by the provisions of the American with Disabilities Act.
- l. Supplier also agrees to require its permitted subcontractors to be bound by the foregoing contract clauses and requirements where applicable.

AGREED TO:

By: _____
Name: _____
Title: _____
Date: _____