

**CASE WESTERN RESERVE UNIVERSITY
OWNER'S GENERAL TERMS AND CONDITIONS**

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Section 1. Definitions

- (a) In addition to those documents enumerated in any agreement or purchase order to which these Owner's General Terms and Conditions are attached, the "Contract Documents" shall consist of the purchase order, Contractor's bid documents and any addenda thereto, these General Terms and Conditions, any Plans and Specifications relating to the Project which have been provided to Contractor by Owner and any modifications of any of the foregoing prior to issuance of any purchase order by Owner with respect to the Project. If Contractor finds a conflict, error or discrepancy in the Contract Documents, it will call the same to Owner's and any Project architect's attention in writing before proceeding with the work affected thereby. The Contract Documents collectively set forth the agreement between the parties, which constitutes the "Contract".
- (b) The term "Owner" means Case Western Reserve University.
- (c) The term "Contractor" means the party or parties named in the purchase order and any other party performing the Work herein defined.
- (d) The "Work" shall mean the supplying of all materials, supplies and equipment and the performing of all services, including engineering, design, scheduling, procurement, supervision and labor, necessary and desirable in order to design, construct, start-up and make operable the Project as described in the Contract Documents, as same may be amended from time to time. All Work shall be in accordance with the Contract and shall be so performed as to enable Contractor to meet its obligations under the Contract. Contractor shall not make any changes in the Work without the written consent of Owner.
- (e) "Technical Specifications" shall mean those specifications provided by Owner which set forth the physical requirements for construction and/or installation of the Project and all components thereof in addition to other technical or engineering requirements in relation to the Work.
- (f) The "Project" shall mean the object of the Work so designated in the Contract Documents.
- (g) The "Project Site" shall mean the location or locations designated by Owner for the performance of the Work.

Section 2. Protection and Maintenance of Owner's Property

In the event of any disturbance to Owner's property or any adjacent property, it is the sole responsibility of Contractor to restore that property to its "as was" condition. It is the sole responsibility of Contractor to provide all barricades, signs, notices and protection of Owner's property as well as adjacent property on both new and existing work.

Section 3. Assignment

Contractor shall not assign the Contract or any of its obligations hereunder, nor shall it make an assignment or pledge of any of the monies to be received by it from Owner hereunder unless it shall have procured the prior written consent of Owner to such assignment or pledge.

Section 4. Clean Up and Waste Disposal

- (a) Contractor shall at all times keep Owner's property free from accumulations of waste material or rubbish, and upon completion of the Work shall remove all tools, scaffolding, surplus materials and rubbish and leave the property in a clean and safe condition.
- (b) All waste shall be handled, stored, removed, and disposed of in accordance with all applicable federal, state, and local laws, regulations and ordinances. Unless otherwise agreed in writing, all such waste shall be removed daily. Contractor shall obtain Owner's prior written approval of all

disposal sites, and all transportation and disposal contractors, and shall submit satisfactory evidence of disposal prior to submitting invoices for any work involving disposal of waste.

- (c) If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered safe for work as determined by the Owner's Safety staff or consultants, Work in the affected area shall resume.

Section 5. Contractor Identification

Contractor shall be responsible for ensuring that each of its employees, agents, and subcontracted workers on the Project Site have proper contractor identification visible at all times. Guidelines for ID's are available from the Owner's Office of Access Services.

Section 6. Equal Opportunity Employment

During the performance of this Contract, Contractor shall maintain policies of employment as follows:

- (a) Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status. Actions which are subject to the foregoing prohibition shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by an appropriate agency of the Federal or State government setting forth the requirements of these non-discrimination provisions.
- (b) Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of Contractor, that all qualified applicants will receive consideration for employment without regard to race, color, sex, religion, national or ethnic origin, age, disability, sexual orientation, political affiliation, or veteran status.
- (c) Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the Owner, advising the labor union or worker's representative of Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 as amended and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (e) Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965 as amended, and by the rules regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records and accounts by an appropriate agency of the Federal Government and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of Contractor's noncompliance with the Equal Opportunity conditions of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or

suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or Federally assisted contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.

- (g) Contractor shall include paragraphs 6(a) to and including 6(f) in every Subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended so that such provisions will be binding upon such action with respect to any Subcontractor or vendor. The Contractor shall take such action with respect to any Subcontractor or vendor as the appropriate agency of the Federal or State government may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that, in the event the Contractor determines to initiate litigation against such party, it may request the United States to enter such litigation to protect the interests of the United States.

Exemptions to the requirements of the above Equal Opportunity conditions are construction contracts and subcontracts not exceeding \$10,000 and contracts and subcontracts with regard to Work performed outside the United States by employees who were not recruited in the United States.

Section 7. Indemnification

Contractor expressly agrees to protect, defend, indemnify and save harmless Owner and its employees, students, faculty, invitees, trustees, and agents from and against any and all liability, loss, damages, costs and expenses of every character whatsoever (including attorneys' fees), claims, actions, suits, fines, penalties and demands for any loss or damage to property or injuries to persons, including death, sustained by Owner, Contractor, their agents or subcontractors or their respective employees or by any other party, caused by, resulting from, arising out of, or occurring in connection with the performance of the Work or the furnishing of any material by Contractor or any of its agents, servants, subcontractors, invitees, licensees or their respective employees under the Contract, except to the extent such injury, damage or loss is due to the negligence of Owner. In the event of any such claim, suit or demand of any kind, Contractor agrees to assume at its expense, on behalf of Owner and at its demand, the defense of any action at law or in equity which may be brought against Owner and to pay on behalf of Owner, the amount of any judgment that may be entered against Owner.

Section 8. Independent Contractor

Neither Contractor nor its employees shall be deemed to be employees of Owner, but shall be independent contractors. Nothing in the Contract shall be construed as authority for Contractor to make commitments which shall bind Owner, or otherwise act on behalf of Owner, except as Owner may expressly authorize in writing.

Section 9. Inspection of Material and Workmanship: Punch list

- (a) All Work, including materials and workmanship performed, shall be subject at all times to inspection by Owner at any and all places where such part of the Work may be performed. Neither Owner's right of inspection, whether or not exercised, nor any such inspection, shall relieve Contractor of its responsibilities for the proper performance of the Work.
- (b) With respect to any portion of the Work that is to be performed away from the Project Site, Contractor shall notify Owner, in reasonable time, where such Work is to be performed and when it will be ready for inspection in order that such Work may be inspected from time to time before delivery to the Project Site.
- (c) When requested by Owner, any part of the Work which was covered by Contractor without reasonable opportunity for inspection by Owner, whether done by Contractor or by a Subcontractor or Contractor, must be uncovered for inspection at Contractor's expense.

- (d) All tests and inspections, if any, that may be required by public authorities shall be made by a properly qualified person or testing laboratory mutually acceptable to Contractor, Owner and to such public authorities, and the results shall be certified as may be required by such public authorities and copies delivered to all appropriate parties at Contractor's expense unless agreed to in advance, in writing, by Owner.
- (e) At the time of substantial completion of the Work, all items found to be defective or non-conforming shall be included in a punch list, and Contractor shall, at its expense, promptly make all corrections indicated by the punch list and re-test or re-inspect, as appropriate, any portions of the Project so corrected. Such retests and re-inspections shall be subject to verification by Owner.

Section 10. Insurance and Risk of Loss

- (a) Prior to completion, the Work shall remain at the risk of Contractor. Contractor shall be responsible for all loss and damage to the Work and shall repair, renew and make good, at its own option and expense, all such loss and damage whether or not due to the fault of Contractor. On completion of the Work, and acceptance thereof by Owner, risk of loss or damage shall pass to Owner.
- (b) Contractor is obligated to and shall provide and pay for the following insurance with the specified minimum limits, unless higher limits are specified in other Contract Documents. In that case, Contractor shall provide and pay for the highest limits specified:
 - (i) Worker's Compensation for occupational diseases and for injuries sustained by or death resulting to employees of Contractor and its subcontractors as required by law, including the laws of each state wherein any work hereunder is performed and where employment contracts of such employees were made and, in addition, employer's liability insurance in the amount of not less than \$1,000,000. If Contractor or subcontractor is self-insured, a certificate of the appropriate state agency of the State in which said labor is to be performed must be furnished by such state agency directly to Owner.
 - (ii) Commercial general liability including contractual liability coverage with minimum limits of liability of not less than \$1,000,000 per occurrence combined single limit on all operations for bodily injury and property damage arising out of said operations. Policy shall include coverage for Products and Completed Operations with all limits applying on a per project basis.
 - (iii) Automobile liability coverage (including coverage for owned, hired, and non-owned motor vehicles) in an amount not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
 - (iv) Umbrella liability policy in excess of coverage's provided in paragraphs (i), (ii), and (iii) above having a limit of not less than \$1,000,000.
 - (v.) For coverage in described paragraphs (ii), (iii) and (iv) above, Owner shall be added as additional insured for all claims including, but not limited to claims by Contractors' employees or their personal representative, heirs and beneficiaries. Contractor's insurance policies providing the required coverage shall be endorsed to provide that the coverage is primary to any coverage otherwise carried by Owner. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Ohio.
- (c) The certificate of insurance shall contain a provision that the coverage afforded under each such policy will not be cancelled without thirty (30) day's written notice (hand delivered or certified mail) to the Owner.

Section 11. Keys

Contractor shall sign for and be held responsible for all keys or other access devices issued to it by Owner's Key Shop (Physical Security Services) and/or Access Services Department upon written authorization from the Project Manager and/or Coordinator for Owner's facilities. Should Contractor fail to return the keys or other access devices on the specified date, Contractor shall be responsible for all resulting costs in accordance with Owner's Policies, Rules or Regulations.

Section 12. Legal Compliance, Permits, and Regulations

- (a) All Contractors are to observe and comply with and all Work is to conform to all governing or applicable building codes, laws, ordinances and regulations.
- (b) All building permits and all other permits and licenses of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by Contractor.
- (c) Contractor and suppliers, including subcontractors, are unconditionally required to comply with all local, state, and federal ordinances, codes, acts, regulations, and laws.

Section 13. Method of Payment

- (a) Payments shall be made by Owner to Contractor in accordance with the Contract Documents. No partial or final payment made by Owner shall be construed as a waiver of any breach hereof by Contractor or as any acceptance of defective portions of the Work or of any of the Work which is not executed in accordance with the Contract. By accepting final payment, Contractor extinguishes any claims Contractor has previously made in writing which remain unsettled at the time final payment is made.
- (b) Invoices for services ordered, delivered, and accepted by Owner shall be submitted by Contractor directly to the payment address shown on the Contract Documents. All invoices must show Owner's purchase order number, which has been assigned for the Work in order to be processed.
- (c) Any payment terms requiring payment in less than 45 days, will be regarded as requiring payment 45 days after Owner's receipt of the invoice or delivery of the respective materials or services, whichever occurs last. This provision shall not affect offers of discounts for payment in less than 45 days, however.

Section 14. Liens

Contractor shall timely pay for all materials, supplies, and labor. Contractor shall immediately satisfy and discharge and shall indemnify and hold harmless Owner against all liens, claims, demands or legal proceedings arising out of actual or alleged acts or omissions of Contractor and/or subcontractors, laborers or suppliers in relation to the Contract or the performance thereof. Contractor shall provide a waiver of lien, in form and substance satisfactory to Owner, for itself and its subcontractors and suppliers as a condition to receiving payment for the Work performed.

Section 15. Parking

- (a) Contractor shall be responsible for obtaining proper parking permits from Owner's Office of Access Services upon written authorization from the Project Manager and/or Coordinator for all vehicles that will be parked on campus. All costs for parking permits and for fines due to improperly parked vehicles is the responsibility of Contractor.
- (b) Contractor shall not park in any area not designated for vehicle parking unless given permission by Owner's Office of Access Services to do so. It will be the responsibility of Contractor to repair and/or reimburse Owner for any damage to Owner's property caused by Contractor's vehicle.

Section 16. Public Relations

All details of the Contract Documents are confidential and are not to be released by Contractor, its employees, or its subcontractors without the express written approval of Owner.

Section 17. Subcontractors and Suppliers

Owner has the right to approve all subcontractors employed for Work and suppliers of all items or material and equipment to be incorporated in the Work. All subcontractors and suppliers shall be subject to the terms and conditions of the Contract and Contractor shall cause such terms and conditions to be included in all subcontracts.

Section 18. Supervision

Contractor shall keep at the Project Site during the progress of the Work a competent project manager/superintendent and all necessary assistants, all of whom shall be satisfactory to Owner. Owner reserves the right to reject Contractor's construction superintendent and project management personnel if they are unsatisfactory to Owner and upon such rejection Contractor shall designate and provide competent successors.

Section 19. Personnel

Owner reserves the right to require Contractor to remove from the Project any of its personnel, or subcontractor's personnel, for violating University Policies, Rules or Regulations.

Section 20. Taxes

Owner is tax exempt, and shall, at Contractor's request, provide a certificate of exemption. Contractor shall include in its bid only applicable sales taxes or use taxes applicable to the Work. Contractor shall be responsible for payment of all taxes of whatever character and description applicable to the Work.

Section 21. Termination of Contract

- (a) In its sole discretion, Owner may terminate, in whole or in part, Contractor's further performance and Owner's obligations at any time, effective immediately, upon written notice to Contractor. Upon such termination, Contractor shall be entitled to all of its reasonable out-of-pocket costs incurred in furtherance of the Work, plus a reasonable amount for overhead and profit through the date of termination. In no event shall Contractor be entitled to receive further unrealized profits as a result of such termination.

Contractor shall:

- (i) Stop work on the effective date of the notice of termination;
- (ii) Place no further order or subcontract for materials, services, or facilities;
- (iii) Terminate all orders and subcontracts;
- (iv) Upon receipt of all monies due to Contractor hereunder, transfer title to Owner of all work in progress, completed work, supplies and/or other material produced as part of or acquired in connection with the performance of the Work;
- (v) Deliver to Owner such completed or partially completed plans, drawings, and other information which, if the Contract had been completed, would have been required to be furnished (or returned) to Owner; and

- (vi) Deliver to Owner a list of vendors, suppliers and subcontractors that have furnished materials, equipment, or services in connection with the Work. The list shall include the name of firm, address, phone number, fax number, and the name of a contact person.
- (b) If Contractor fails or refuses to supply enough properly skilled workers or proper materials for the diligent prosecution of the Work or shall fail to make prompt payment to its subcontractors for materials or labor, or shall disregard laws, ordinances, rules, regulations, or the instructions of Owner or shall otherwise be in breach of any provision of the Contract Documents, then Owner, without prejudice to any other right or remedy it may have, may immediately terminate the Contract and may take possession of the Project Site and of all materials, tools, and appliances thereon and may finish the Work by any method it may deem expedient. In the event of such termination, Contractor shall abide by the above sections (a) (i) through (a) (vi).

Section 22. Time of Completion

Time is of the essence for the performance by Contractor of all of its obligations under the Contract Documents and Contractor shall complete the Work in accordance with the Contract Documents so that, subject only to the performance by Owner of those obligations to be performed by it, the Work is completed no later than the date for completion set forth in the Contract Documents. Contractor agrees to plan and perform Work in a manner to effect the minimum interference with other contractors working in the area, and Contractor shall not interfere with operation of Owner's or anyone else's facilities except as otherwise specified herein. Contractor further agrees that it will exercise its best efforts to avoid and minimize labor disputes (including jurisdictional disputes) and disruptions on Owner's property.

Section 23. Right to Audit

Owner or its designee shall be entitled to audit all of Contractor's documents and records, in any form whatsoever, determined by Owner to be relevant to Contractor's services under this Agreement ("Records"), and shall be allowed to interview any of Contractor's employees, pursuant to the provisions of this article throughout the term of this Agreement and for a period of three years after final payment or such longer period as may be required under the terms of any financing or grant providing funds for the Project. Such audits shall include the right to inspect and copy any Records at reasonable times and places.

Section 24. Warranties

Contractor shall guarantee all Work and materials for a minimum of twelve (12) months after the date of final payment to Contractor under the Contract. Any item deemed to be defective shall at Contractor's sole expense, but at Owner's option and convenience, be repaired, replaced, or re-performed.