



## General Terms and Conditions (Rev. 04.11.17)

- 1.0 Not Used
- 2.0 Not Used
- 3.0 Not Used
- 4.1 Supplemental Conditions
  - 4.1.1 The Supplier shall comply with the University's policy and procedures (<http://www.gvsu.edu/purchasing>) and any additional instructions issued from time to time by the University.
  - 4.1.2 During the period of contract, no change is permitted to any of its conditions and specifications unless the Supplier receives prior written approval from the University.
  - 4.1.3 Should the Firm find at any time that existing conditions make modification in contract requirements necessary, it shall promptly report such matter to the University for its consideration and decision.
  - 4.1.4 The Firm shall comply with any and all federal, state or local laws, now in effect or hereafter promulgated which apply to the operation herein specified.
  - 4.1.5 The Firm's performance may be evaluated by a designee or an Advisory Committee of the University meeting from time-to-time during the period of contract. It will be the responsibility of the Firm to respond, in writing if so requested, to inquiries, requests for change, and recommendations.
  - 4.1.6 The Firm shall provide the University, with telephone numbers and addresses of management personnel and shall arrange for at least one such person to be available during the University's normal working hours by telephone. The Firm shall also provide sufficient backup in times of staff shortages due to vacations, illnesses, and inclement weather.
  - 4.1.7 The Firm shall maintain applicable insurance coverage with appropriate coverage limits. The Firm shall provide the name of the primary insurance carrier and their trade rating which may apply to the operation herein specified.

## 4.2 Termination

The University may terminate this agreement for any reason, including but not limited to, changes in the market price of the products and non-appropriation of federal or state funding to university, by delivering not less than thirty days prior written notice to Supplier.

If termination is due to default by Supplier, Supplier shall have ten days from receipt of notice to cure the default. If Supplier fails to cure within the ten-day period, university may terminate this agreement immediately.

The failure of university to exercise its rights of termination for default due to Suppliers failure to perform as required in any one instance shall not constitute a waiver of termination rights in any other instance.

## 4.3 General Terms and Conditions

The terms and conditions shall govern any agreement issued as a result of this solicitation.

Additional or attached terms and conditions which are determined to be unacceptable to the University may result in the disqualification of proposals. Examples include, but are not limited to: liability for payment of taxes, subjugation to the laws of another state, and limitations on remedies.

### 4.3.1 Interpretation, Enforcement and Forum of Laws

For disputes between University and Supplier, this agreement shall be governed by, construed, interpreted, and enforced solely in accordance with the laws of the State of Michigan and the venue shall lie in Kent County.

### 4.3.2 Compliance with Law

Supplier warrants and certifies that in the performance of this agreement, it has complied with or will comply with all applicable statutes, rules, regulations and orders of the United States, and any state or political subdivision thereof, including but not limited to, laws and regulations pertaining to labor, wages, hours and other conditions of employment.

### 4.3.3 Funding Provided by Federal Contracts or Grants

Where federal contracts or grants provide funding to University, it is the responsibility of the Supplier and University to comply with all FAR (Federal Acquisition Regulations) applicable laws and regulations by completing any certifications and disclosures and any other requirements. When federal contract or grant funds are used on purchases under this agreement, which exceed \$25,000, certification must be provided in writing that the Supplier is not debarred, suspended, or proposed for debarment by the Federal Government.

#### 4.3.4 Insolvency

In the event of any proceedings in bankruptcy or insolvency by or against Supplier, or in the event of the appointment (with or without its consent) of an assignee for the benefit of creditors, or a receiver, University may cancel this agreement without prior notice and without incurring any liability whatsoever to Supplier.

#### 4.3.5 Assignments

Supplier shall not assign this agreement or any of Supplier's rights or obligations hereunder, without University's prior written consent. Any purported assignment made without prior written consent shall be void and of no effect.

#### 4.3.6 Patent Trademark and Copyright Infringement

The Supplier warrants that the products/services hereby sold, either alone or in combination with other materials, do not infringe upon or violate any patent, copyright, trademark, trade secret, application or any other proprietary right of any third party existing under laws of the United States or any foreign country. The Supplier agrees, at its own expense, to defend any and all actions or suits alleging such infringements and will hold University, its officers, agents, servants, and employees harmless from any and all losses, expenses, claims, (including reasonable attorney's fees), or judgments arising out of cases of such infringement.

#### 4.3.7 Use of Name, Logos, etc. in Advertising

Supplier agrees not to make reference to this agreement or use University logo or trademarks in any advertising material of any kind without expressed written permission. University agrees not to make reference to this agreement or use the logo of Supplier in any advertising and marketing materials of any kind without the expressed written permission of the Supplier.

#### 4.3.8 Indemnification

Supplier agrees to indemnify and hold University harmless from and against all liability, losses, damages, claims, liens, and expenses (including reasonable legal fees) arising out of or connected with the products purchased, work or services performed, or resulting from damages or injuries incurred by or to University by reason of any defect in manufacture, construction, inspection, delivery, material, workmanship, and/or design of any goods and services furnished hereunder, excepting only such liability as may result solely from the acts of negligence of University or its employees. Supplier, at the request of University, shall undertake to defend any and all suits and to investigate and defend any and all claims whether justified or not, if such claim or suit is commenced against University or its respective officers, agents, servants, and employees.

#### 4.3.9 Insurance

If fabrication, construction, installation, service or other work is specified to be conducted on University premises, Supplier shall maintain in force during the period of such work limits of liability as required by law or as set forth herein, whichever is greater: (a) worker's compensation, as required by the laws of the State of Michigan; (b) commercial general liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence; (c) automobile liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence. Supplier shall provide a certificate of insurance naming University as additional insured. Supplier shall furnish to University satisfactory proof of such insurance coverage included with Supplier's proposal.

#### 4.3.10 Licenses/Permits/Taxes and Tax Exempt Status

Supplier shall be responsible for obtaining all permits, licenses and bonding, to comply with the rules and regulations of any state, federal, municipal or county laws or any city government, bureau or department applicable and assume all liability for all applicable taxes.

University is a 501(c) (3) not-for-profit corporation and is exempt from state sales and use taxes imposed for services rendered and products, equipment or parts supplied.

All prices listed and discounts offered are exclusive of sales and use taxes. Supplier has the duty to collect all taxes in connection with the sale, delivery or use of any items, products or services included herein from University (if for the purpose of resale), at the taxable rate in effect at the time of invoicing. Supplier shall comply with the tax requirements of the State of Michigan. University shall furnish to Supplier a certificate of exemption in form and timeliness acceptable to the applicable taxing authority.

#### 4.3.11 Americans with Disabilities Act

Supplier shall comply with all applicable provisions of the Americans with Disabilities Act and applicable federal regulations under the Act.

#### 4.3.12 Alcohol, Tobacco & Drug Rules and Regulations

Employees of the Supplier and its subcontractors shall comply with all instructions, pertaining to conduct and building regulations of the University. University reserves the right to request the removal or replacement of any undesirable employee at any time.

All buildings at all University locations are tobacco-free. Use of tobacco products is not permitted in any area inside any buildings. Smoking is prohibited within twenty-five (25) feet of any building, within twenty-five feet of any bus stop on University property and within twenty-five feet of the Little Mac Bridge on the Allendale campus. The Supplier is expected to respect this tobacco-free policy and fully comply with it.

The Supplier agrees that in the performance of this agreement, neither the Supplier nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including alcohol, in conducting any activity covered by this agreement. University reserves the right to request a copy of the Drug Free Workplace Policy. The Supplier further agrees to insert a provision similar to this statement in all subcontracts for services required.

#### 4.3.13 Equal Opportunity

The provisions of Section 202 of Executive Order 11246, 41 C.F.R. Sec. 60-1.1 C.F.R. Sec. 60-250.4 and 41 C.F.R. Sec. 60-741.4 are incorporated herein by reference and shall be applicable to this agreement unless this agreement is exempted under the rules, regulations, or orders of the U.S. Secretary of Labor.

#### 4.3.14 Non-Discrimination

The parties agree to comply with applicable state and federal rules governing Equal Employment Opportunity and Non-Discrimination.

#### 4.3.15 Sexual Harassment and Bias Incidents

Federal law and the policies of the University prohibit sexual harassment. Supplier is required to exercise control over its employees so as to prohibit acts of sexual harassment. If University in its reasonable judgment determines that any employee of Supplier has committed an act of sexual harassment, Supplier agrees as a term and condition of this agreement to cause such person to be removed from University's facility and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

#### 4.3.16 Compliance with Specifications

The Supplier warrants that all goods, services, or work supplied under this agreement shall conform to specifications, drawings, samples, or other descriptions contained or referenced herein and shall be merchantable, of good quality and workmanship and free from defect. The Supplier also warrants that all goods covered by this agreement which are the product of the Supplier or are in accordance with its specifications, will be fit and subject to University inspection before acceptance, and also to later rejection if use reveals defects not apparent upon receipt; and if rejected will be held at Supplier's risk and expense for storage and other charges after 60 days of storage, goods may be disposed of without cost to University. Neither receipt of goods nor payment therefore shall constitute a waiver of this provision.

#### 4.3.17 Gratuities

University may, by written notice to Supplier, cancel the agreement if it discovers that gratuities, in the form of entertainment, gifts or the like, were offered or given by Supplier

to any officer or employee of University with a view toward securing an agreement or securing favorable treatment with respect to the awarding of this agreement.

4.3.18 Covenant Against Contingency Fees

Supplier certifies that it has neither offered nor paid a contingency fee to any individual, agent, or employee of University to secure or influence the decision to award this agreement to Supplier.

4.3.19 Suspension or Debarment

University may, by written notice to the Supplier, immediately terminate the agreement if it is determined that the Supplier has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor by any public procurement unit or other governmental body.

4.3.20 Conflict of Interest

In order to avoid even the appearance of any conflict of interest, neither University nor Supplier shall employ any officer or employee of the other party for a period of one year from the date hereof.

4.3.21 Strikes or Lockouts

In the event Supplier should become involved in a labor dispute, strike or lockout, Supplier will be required to make whatever arrangements that may be necessary to insure that the conditions of this agreement are met in their entirety. Should the Supplier be unable to fulfill its obligations under this agreement, University shall have the right to make alternative arrangements to insure the satisfactory performance of the agreement during the time Supplier is unable to perform the required duties. Any costs incurred by University, as a result of such job action, shall be reimbursed by the Supplier.

4.3.22 Force Majeure

Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.

4.3.23 Modification of Terms

No waiver or modification of any of the provisions hereof shall be binding unless mutually agreed upon by University and the Supplier, in writing, with signatures of authorized representatives of all parties authorizing said modification.

#### 4.3.24 Continuation of Performance through Termination

Supplier shall continue to perform, in accordance with the requirements of this agreement, up to the date of termination, as directed in the termination notice.

#### 4.3.25 Proprietary/Confidential Information

University considers all information, documentation and other materials requested to be submitted in response to this solicitation to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure. Supplier is hereby notified that University adheres to all statutes, court decisions and the opinions of the State of Michigan regarding the disclosure of proposal information.

All information, documentation, and other materials submitted by Respondent in response to this solicitation or under any resulting contract may be subject to public disclosure under the Freedom of Information Act.

#### 4.3.26 Strict Compliance

The parties may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.

#### 4.3.27 Entire Agreement

This agreement together with the Exhibits annexed hereto constitutes the entire agreement between the parties and supersedes all prior agreements whether written or oral between the parties. Documents subject to Freedom of Information Act will only be released after award.

#### 4.3.28 Prevailing Wage Rates

If and where applicable prevailing wage rates apply. Prevailing wage rate information may be included with this document. However, if not, it is the responsibility of the bidder to obtain any and all appropriate prevailing wage rate information.