



STANDARD CONTRACT TERMS AND CONDITIONS – THESE TERMS AND CONDITIONS APPLY (I) UNLESS THE SUPPLIER HAS SIGNED A SEPARATE AGREEMENT WITH THE UNIVERSITY IN WHICH CASE THE SEPARATE AGREEMENT SHALL GOVERN; OR (II) UNLESS THE UNIVERSITY HAS ISSUED A PURCHASE ORDER FOR THE PURCHASED GOODS/SERVICES, IN WHICH CASE THE UNIVERSITY'S PURCHASE ORDER TERMS AND CONDITIONS SHALL APPLY TO THE TRANSACTION.

1. DEFINITIONS

- (a) **“Agreement”** means the terms and conditions contained herein, together with any schedules attached hereto, as well as the information contained in the relevant Contract;
- (b) **“Amendment”** means the standard form amendment used by the University, as amended from time to time, which sets out changes or modifications to an existing Contract;
- (c) **“Contract”** means the standard form contract used by the University, as amended from time to time, which sets out information relevant to the purchase, including (amongst other things) the name of the Supplier, the nature of the Purchased Goods/Services, and the associated cost;
- (d) **“Purchased Goods/Services”** means the good and/or services which are the subject matter of the Contract, as more specifically described on the face of the relevant Contract;
- (e) **“Supplier”** means the corporation, sole proprietorship, partnership, joint venture or individual listed on the face of the Contract as the independent contractor providing the Purchased Goods/Services; and
- (f) **“University”** means The University of Manitoba.

2. ENTIRE AGREEMENT

The following terms and conditions, together with the terms and conditions on any attached schedules and the face of the attached Contract form the entire agreement between the University and the Supplier, and shall be deemed to be accepted by the Supplier upon commencement of performance hereunder. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement.

3. TERMINATION

This Agreement may be terminated as follows:

- (a) By the University where:
 - (i) in the reasonable opinion of the University, the Purchased Goods/Services provided by the Supplier are unsatisfactory, inadequate, or are improperly provided;
 - (ii) in the reasonable opinion of the University, the Supplier has failed to comply with any substantive term or condition of this Agreement;
 - (iii) the Supplier is dissolved or becomes bankrupt or insolvent;
 - (iv) the Supplier's insurance coverage is cancelled, threatened to be cancelled, reduced or adversely changed;
 - (v) there has been a delay in performance of the Agreement as contemplated by section 8; or
 - (vi) the Purchased Goods/Services are provided in connection with a project, for which the University has been awarded funding from an external source, and that project has been terminated or funding reduced.
- (b) By mutual agreement of the parties, expressed in writing.

4. UPON TERMINATION Upon termination of this Agreement, the Supplier shall cease to provide any further Purchased Goods/Services. The University shall be under no obligation to the Supplier other than to pay, upon receipt of an invoice and satisfactory supporting documentation, such compensation as, in the reasonable opinion of the University, the Supplier may be entitled to receive under this Agreement for Purchased Goods/Services provided to the satisfaction of the University up to the date of termination.

5. AMENDMENT This Agreement may be amended at any time by the University issuing an Amendment, or with the mutual written consent of the parties. The University is not obligated to pay any amount for the Purchased Goods/Services in excess of the amount stated on the Contract, unless the Agreement is amended pursuant to this section.

Prior to the Supplier commencing performance under this Agreement, this Agreement may be replaced by the University issuing a Revised Contract.

6. COMPLIANCE WITH LAWS Supplier agrees to comply with all applicable Federal, Provincial and local laws, orders and regulations, which in any way, directly or indirectly, affect the price, production, sale or delivery of the Purchased Goods/Services. This Agreement shall be governed by the laws of the Province of Manitoba and any disputes hereunder shall be heard in the exclusive jurisdiction of The Court of Queen's Bench (Winnipeg Centre) in Manitoba. The Supplier may be asked by the University to furnish evidence of the Supplier obtaining certifications or permits that may be required by such laws, orders and regulations.

The Supplier shall be duly registered and qualified to do business wherever necessary to carry out the terms of this Agreement, and may be asked by the University to provide evidence thereof.

7. NO ASSIGNMENT

This Agreement or any of the rights or obligations hereunder, shall not be assigned, in whole or in part, by the Supplier without the prior written consent of the University.

8. CANCELLATION & NOTICE OF DELAY

Time is of the essence to this Agreement. The University reserves the right to terminate all or any portion of this Agreement if the Purchased Goods/Services are not delivered within the requested time, if stated. If the Supplier has reason to believe that the Purchased Goods/Services will not be delivered within the requested time, or if not stated, within a reasonable time, written notice setting forth the cause and extent of the anticipated delay and an alternate delivery date will be given immediately to the University. The University may, at its option, elect to accept or reject the alternate delivery date. In the event of rejection, the University may at its option, terminate this Agreement. It is the Supplier's obligation to obtain the University's response to the alternate delivery date, and failure of the University to respond to such notice will not be deemed to constitute acceptance of the proposed alternate delivery date.

Neither the University nor the Supplier shall be responsible for delays or failures to meet its obligations under this Agreement, including delivery, receipt, or payment obligations when the delays or failures are due to fires, floods, strikes, acts of God, acts of public authorities, or pandemic illnesses or conditions.

9. WARRANTY & INDEMNITY

The Supplier expressly warrants that all Purchased Goods/Services delivered under this Agreement will conform to any sample and any specifications, drawings or other description furnished or adopted by the University and will be fit and sufficient for their intended purpose, of merchantable quality, of good material and workmanship and free from defect.

The Supplier shall provide the Purchased Goods/Services in a good and workmanlike manner, with reasonable skill and care, and to the full satisfaction of the University; The Supplier shall defend, indemnify and save the University (including its employees, agent, representatives, and contractors) harmless from any and all losses, damages, and costs (including legal fees and disbursements on a solicitor/client basis) caused by reason of any action or omission of the Supplier related to its performance of this Agreement, or any alleged violation by the Supplier of any relevant laws, orders and regulations.

The Supplier may be required to carry insurance of a type and with limits and terms as set out on the Contract or an attached schedule, and may be asked by the University to provide evidence thereof.

These warranties and indemnities shall survive performance of the Agreement or termination, whichever is applicable.

10. INSPECTION & REJECTION

All Purchased Goods/Services shall be delivered subject to inspection by the University within a reasonable time. Payment by the University shall not constitute acceptance by the University as to quality or quantity. If any Purchased Goods/Services are rejected by the University on reasonable grounds, the Supplier shall forthwith replace or repair the relevant goods or properly perform the services at its own cost. The Supplier will bear the cost of any inspection of Purchased Goods/Services where such inspection leads to a rejection by the University.

11. EXCESS SHIPMENT

Goods shipped in excess of specified quantities may be returned to Supplier at Supplier's expense.

12. INTELLECTUAL PROPERTY LITIGATION

In the event that any suit or proceeding alleging infringement of any patent or copyright, or alleging unfair competition resulting from similarity in the design or appearance of Purchased Goods/Services is brought against the University, the Supplier agrees that it will promptly, on notification of such proceeding, assume defense thereof, and that it will pay and discharge all costs and expenses in defense thereof, and will also pay or satisfy all costs, damages, royalties or profits which may be decreed or awarded against the University (including its employees, agents, representatives and contractors) for or on account of any Purchased Goods/Services. If it so desires, University may be represented by its own counsel in any such suit or proceeding at its own cost.

13. SUPPLIER EXPENSES

The Supplier shall be solely responsible for making any arrangements and for paying any and all expenses incurred in connection with providing the Purchased Goods/Services (including telephone, office supplies, document copying, facsimile transmission, postage, overhead, salaries and all types of insurance).

The Supplier shall be solely responsible for all employer and employee contributions and deductions for the Supplier and any staff including Worker's Compensation, Canada Pension Plan, Employment Insurance and federal and provincial income taxes.

14. SUPPLIER NON-RESIDENT

If the Supplier is a non-resident of Canada supplying Services within Canada, the University must withhold fifteen percent (15%) of the contract price pursuant to the *Income Tax Act* (Canada) unless the Supplier has obtained and provided to the University prior to the payment being issued a CRA Waiver indicating that the University is not required to withhold tax on behalf of the Supplier. The related CRA website is <http://www.cra-arc.gc.ca/tx/nnrstdnts/cmmn/rndr/pyr-eng.html>

15. SUPPLIER LEGAL & POLICY REQUIREMENTS

(a) The Supplier must comply with all applicable University policies, procedures, guidelines, and rules which are available on the University's website, or of which the Supplier has been advised;

(b) The Supplier must comply with the University's policies regarding conflict of interest;

(c) Should the Supplier gain access to personal information (as that term is defined under *The Freedom of Information and Protection of Privacy Act*), or personal health information (as that term is defined under *The Personal Health Information Act*), the Supplier shall ensure that such information is kept confidential and is not disclosed without the written consent of the University. The Supplier shall take reasonable steps to ensure that all of its employees, contractors or agents are bound by the same obligation of confidentiality. This obligation shall survive the performance or termination of this Agreement, whichever is applicable.

(d) Acceptance of this Agreement does not constitute employment by the University or employment under *The Employment Insurance Act*. The status of the Supplier shall at all times remain that of an independent contractor.

16. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights to materials produced by the Supplier in the performance of this Agreement, including but not limited to documents, raw data, research results, processes, technology, programs and inventions shall belong to the University, unless specified in the relevant Contract or an attached schedule. The Supplier further waives any moral rights to materials produced in the performance of this Agreement, and the University shall be entitled to use such materials for any purpose, including modification, digitalization, distribution or sale.

17. ASBESTOS NOTIFICATION

The Supplier hereby acknowledges that the University of Manitoba has friable and non-friable asbestos-containing materials present throughout buildings owned, leased and/or otherwise occupied by the University. For a complete listing of any asbestos-containing or suspect asbestos material known to be present, refer to the most recent version of the Asbestos Survey Report maintained on file by the Environmental Health and Safety Office ("EHSO") (474-6633).

Any Supplier required to perform activities that may result in the disturbance of asbestos-containing materials must:

(a) review the most recent Asbestos Survey Report;

(b) advise their employees, agents, contractors and representatives as to the appropriate precautions and safety measures to be taken;

(c) give notice to EHSO that known or suspected asbestos-containing materials will be disturbed;

(d) request EHSO to provide any information or assistance with required training which may be available through the University;

(e) give notice to EHSO if the Supplier encounters unanticipated suspected asbestos-containing materials during the performance of its duties; and

(f) halt performance of activities if required to do so by EHSO.

A Supplier may not charge any amount for Purchased Goods/Services in excess of the amount stated on the Contract on account of having to deal with asbestos, unless the presence of asbestos was not disclosed on the

Asbestos Survey Report. If unanticipated asbestos-containing materials are encountered, the University may, at its option, issue an Amendment:

- (a) providing for payment of an extra amount deemed reasonable by the University, or
- (b) altering the Purchased Goods/Services, which alteration may result in a significant change in the scope of the project.

18. CONTRACTOR SAFETY ORIENTATION

To ensure that workers performing services for a Supplier are aware of University safety and health requirements, workers providing installation, repair and maintenance services may be required by the University to attend a health and safety orientation prior to commencing work. The orientation will be provided by the University without charge to the Supplier or the workers. Workers attending the orientation will be provided with personalized certificate of attendance, and may periodically be requested to produce the certificate while performing their work. The certificate will be valid for a fixed period of time, after which renewal will be required. Details on orientation requirements and scheduling can be viewed on the EHSO web site at: www.umanitoba.ca/admin/human_resources/ehso/geninfo/constructionsafety.html

or by contacting the Environmental Health and Safety Office via phone at 474-6633.