

ILLINOIS INSTITUTE OF TECHNOLOGY
Purchase Order Terms and Conditions Addendum

“Addendum”

1. **CONFLICTING TERMS.** If the University and Vendor have also entered a written agreement executed by both parties that governs the procurement of the products and/or services which are the subject matter of the Purchase Order (the “Agreement”), as specified in the Agreement, then the terms and conditions of this Addendum shall control and supersede the provisions of the Agreement but only to the extent inconsistent and/or conflicting therewith.
2. **CHOICE OF LAW.** This Agreement is governed by the laws of the State of Illinois (without regard to conflicts of law principles) for any dispute between the Parties or relating in any way to the subject matter of this Agreement. Any legal action or proceeding arising out of or relating to this Agreement or the subject matter hereof shall be instituted in any federal or state court located in Chicago, Illinois, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action or proceeding.
3. **VENDOR PERFORMANCE.** Vendor agrees to comply with all applicable laws in performing this Agreement and will obtain at Vendor’s sole expense all necessary licenses and permissions necessary for Vendor’s performance.
4. **TITLE/RISK OF LOSS.** Unless otherwise stated on the face of this Purchase Order: Title to supplies and risk of loss shall pass to University upon delivery at final destination and acceptance by University; all shipments must be fully insured by Vendor unless otherwise stated; and Vendor shall select the carrier and bear freight costs.
5. **INSPECTION AND ACCEPTANCE.** All services and supplies delivered under this Agreement must comply with applicable specifications and are subject to final inspection by University, notwithstanding any prior payments or inspections by University. University’s acceptance after final inspection shall be conclusive, except with respect to latent defects or fraud. University may, at its option and without invalidating the remainder of the Agreement, direct Vendor to (a) promptly remove defective supplies and issue a credit for the full value of the defective supplies; (b) repair or replace defective supplies; or (c) re-perform non-conforming services at Vendor’s expense and risk.
6. **CANCELLATION.** Right is reserved to cancel all or any part of this order if delivery is not made when and as specified by University or if Vendor fails to observe or comply with any of the other instructions, terms or conditions applicable to this order.
7. **MATERIAL SAFETY.** Prior to delivery, Vendor shall notify University of every article ordered which may contain toxic or hazardous materials. In addition, Vendor shall provide Procurement Services, either prior to or no later than the time of delivery, with a Material Safety Data Sheet (MSDS) for each item. These sheets must contain information regarding the composition of the material, physical data, health hazard data and safety and emergency procedures for handling such material.
8. **BILLING AND PAYMENT.** Address all communications to Procurement Services and refer to the IIT purchase order number. No changes or additions may be made unless duly authorized by Procurement Services. Render invoice in duplicate, immediately after shipment of any part of order. In cases where no price is shown hereon, this order shall not be filled at higher prices than last invoiced or quoted without consent of University. No charges will be allowed for packing or cartage unless designated hereon.
9. **USE OF NAME.** Vendor shall not use University’s name or protected marks for any commercial purpose without University’s advance written consent.
10. **TAXES.** University is exempt (unless otherwise stated) from payment of state and local Retailers’ Occupation Tax, state and local Service Occupation Tax, state Use Tax, and state Service Use Tax. University’s tax exemption identification number issued by the Illinois Department of Revenue is E99900939. Certificates of exemption will be provided upon written request.
11. **WARRANTIES.** Unless otherwise agreed in writing by the parties, Vendor warrants that all supplies furnished under this Agreement will be free of defects in material and workmanship, without liens or encumbrances of title, and will conform to applicable written drawings, specifications, and other data and, if not of University’s specified design, will

be free of design defects and will be fit and sufficient for the purpose intended. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. All warranties shall run to University and survive acceptance and payment. All services performed under this Agreement shall be of the highest quality and performed in a professional and workmanlike manner consistent with industry standards and practices. All warranties, whether express or prescribed by law, shall extend for the longer of: (a) 180 days from delivery; (b) the warranty period expressly provided by Vendor; or (c) the period set forth by law.

12. **INDEMNIFICATION AND INSURANCE.** Vendor shall indemnify University, its officers, employees, trustees, students, and agents against all demands, claims, damages, liabilities, expenses, and reasonable attorney fees and costs arising out of the performance of this Agreement by Vendor, its employees, subcontractors, and agents. This indemnification obligation shall survive the termination or expiration of this Agreement. Vendor shall maintain for the duration of this Agreement a policy or policies of insurance with coverage and limits adequate to satisfy all liabilities relating to Vendor's performance of the Agreement, whether arising under applicable law or specifically assumed under this Agreement, including but not limited to indemnification obligations. The insurance shall be commensurate with usual and customary industry practices for similarly situated businesses. Vendor shall comply with applicable laws governing workers' compensation and mandatory insurance for vehicles. At a minimum, at its sole cost and at all times during the Term of this Agreement, Vendor shall procure and maintain in full force and effect the following insurance: a) commercial general liability insurance with limits not less than \$2,000,000 combined single limit for personal injury, sickness or death or for damage to or destruction of property for any one occurrence; b) property insurance insuring the full replacement cost of all equipment, real and/or personal property owned or used by Vendor in connection with the services delivered under this Agreement, if any, with limits of not less than \$2,000,000; and c) Worker's compensation insurance in an amount not less than the required statutory limits and including employer's liability insurance with limits of not less than \$500,000 per occurrence. All such coverages shall name "Illinois Institute of Technology" as an additional insured on a primary and not contributory basis and shall require 30 days written notice to be given to University prior to any cancellation or material change thereto. The form of all such policies and deductibles thereunder shall be issued by insurers with an A.M. Best rating of "A- VIII". If Vendor is using a vehicle to perform services for the University, comprehensive automobile liability for all owned, non-owned and hired vehicles with bodily injury limits of no less than \$1,000,000 per person, \$1,000,000 per accident; and property damage limits of no less than \$1,000,000 per accident. University may request a certificate of insurance at any time.
13. **CONFIDENTIALITY.** Vendor must treat all information relating to this Agreement ("University Information") as confidential. Unless required by law or authorized by University in writing, Vendor shall not disclose University Information to third parties or use University Information for any purpose other than in performing the services or providing the supplies that are the subject of this Agreement.
14. **TERMINATION.**
- 14.1. **FOR CAUSE.** A party that defaults in performance or commits a material breach of this Agreement ("Defaulting Party") shall have 10 days to cure the default or breach after receiving notice from the other party. The non-defaulting party may terminate this Agreement without further notice and pursue other available legal remedies if the Defaulting Party fails to cure the breach within the prescribed period, or within such other period of time that is agreed by the parties in writing.
- 14.2. **FOR CONVENIENCE.** University may terminate this Agreement for convenience by providing not less than 30 days' advance written notice to Vendor.
- 14.3. **EFFECT.** In the event of early termination, Vendor shall stop performance in accordance with the notice of termination and shall submit to University a final bill for supplies delivered or services performed up to the date of termination. University is not obligated to pay Vendor for supplies or services until Vendor provides all work product that is in progress or completed as of the date of termination. Vendor must comply with University's instructions to either destroy or return to University all University Information previously furnished to Vendor.
15. **AMENDMENTS.** No modification of this Agreement shall be effective unless made by a written change order issued by University or an amendment signed by each party's authorized signatory.
16. **ASSIGNMENT.** Vendor cannot assign its obligations under this Agreement without the prior written consent of University.
17. **ENFORCEMENT AND INTERPRETATION.** The failure of either party to enforce any provision of this Agreement shall not waive the party's right to later enforce the provision or the Agreement. If any provision of this Agreement is

held by a court of competent jurisdiction to be unenforceable, the provision shall be severed from this Agreement so long as severance does not affect the enforceability or essential purpose of the remainder of this Agreement. Any rule of construction that would resolve ambiguities against University as drafter shall not apply in interpreting this Agreement.

18. **DELIVERY OF NOTICES.** To be enforceable, all notices must be in writing, reference the Purchase Order number, and be delivered to the postal address of Vendor or respective Procurement Services. Notices are effective upon receipt by the intended recipient. A party may change its representative at any time by written notice to the other party.

Illinois Institute of Technology

Procurement Services

10 W. 35th ST, 13th Floor

Chicago, Illinois 60616

19. **INDEPENDENT CONTRACTOR.** The parties are independent contractors with respect to each other. Nothing in this Agreement is intended to create any employment, association, partnership, joint venture, or agency relationship between them.

20. **INTELLECTUAL PROPERTY RIGHTS.** Vendor covenants to save University harmless from any and all claims of infringement that may be made on account of the University possessing, selling or using the herein purchased materials. Unless otherwise agreed in writing by University, all works of authorship delivered by Vendor under this Agreement (“Work Product”) shall be considered “works made for hire” under U.S. copyright laws and shall be the exclusive property of University with all rights to make, use, sell, reproduce, distribute, publish, display, and prepare derivative works without further obligation to Vendor. Vendor will not place any restrictive markings upon Work Product. Any inventions, discoveries, or improvements, whether patentable or unpatentable, made by Vendor or its personnel in performing this Agreement (“Inventions”), including all patent rights therein and any copyrights in materials related thereto, in all jurisdictions, shall belong to and are hereby assigned to University. Vendor shall promptly and fully disclose all Inventions to University and cooperate with University and its agents as may be reasonably required to obtain patent protection for such Inventions, including the signing of assignments of Inventions and patent rights therein, and the signing of any applications or declarations or similar documents related to an application for patent. University shall not claim any interest in Vendor’s materials, products, inventions or know-how existing prior to formation of this Agreement (“Preexisting Materials”). Vendor grants to University a royalty-free, nonexclusive, irrevocable, worldwide license to make, use, sell, and to reproduce, distribute, prepare derivative works, and perform, as the case may be, any Preexisting Materials that are included by Vendor in all supplies, including Work Product and Inventions, provided to University under this Agreement.

Vendor represents and warrants that the Work Product and Inventions do not infringe on third-party intellectual property rights. Vendor must obtain for University a license at no cost to University that will enable University to use the Work Product and Inventions without restriction. Vendor shall indemnify University, its officers, employees, trustees, students, and agents from all loss and liability, including reasonable attorney fees, costs, and expenses, resulting from any claim that the Work Product or Inventions infringe any third-party intellectual property rights.

21. **NON-DISCRIMINATION AND EQUAL OPPORTUNITY.** By acceptance of this order Vendor certifies that it will comply with all applicable provisions of E.O. 11246 and E.O. 11375, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974; E.O. 11701; the Rehabilitation Act of 1973; E.O. 11758; and the rules, regulations and relevant orders of the Secretary of Labor. Vendor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

22. **EXPORT CONTROL.** Vendor shall comply with all relevant laws, whether United States or foreign, governing the exports and re-exports of items and information made under this Agreement. Prior to providing University with any items subject to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, the Export Administration Regulations (EAR), 15C.F.R. §§ 730-774, or the Office of Foreign Assets Control (OFAC), Vendor shall notify University and identify the items at issue and the applicable categories and subcategories of the United States Munitions List or the Export Control Classification Number (ECCN) of the EAR. University may decline to accept any items or

information controlled under U.S. export regulations. Vendor shall direct all notices under this section to the appropriate University contact as follows:

Domenica G. Pappas, CRA
Associate Vice Provost for Research
Director, Export Compliance
10 W. 35th Street
Chicago, Illinois 60616
Phone: 312-567-3987
Email: exportcontrol@iit.edu

23. **EXCLUDED PARTIES.** Vendor certifies that neither Vendor nor any of Vendor's directors, officers, employees, agents, and subcontractors who may provide services pursuant to this Agreement (each, an "Agent") is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from transactions with the U.S. government or by any federal government agency. Vendor shall provide University immediate written notice if Vendor learns that this certification was erroneous when made or if Vendor or any Agent hereafter becomes debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from transactions with the U.S. government or by any federal government agency.
24. **WITHHOLDING.** University may withhold or may void any invoice to the extent University deems necessary to protect University from loss due to Vendor's: (a) unsatisfactory performance; (b) damage to University property; or (c) incomplete, inaccurate, or unauthorized billing. University may withhold final payment until Vendor has performed all services or all supplies have been delivered to University's reasonable satisfaction in accordance with the specification and requirement.
25. **LITIGATION HOLD ORDER.** Vendor shall, and shall cause Vendor's employees and subcontractors to, fully comply with any litigation hold order issued by University in anticipation of third-party litigation relating to this Agreement. Vendor shall promptly retrieve, recover, preserve, and retain, and, subject to legal privileges, deliver all information and documents, in any format, covered by a litigation hold order.
26. **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA), 20 U.S.C. § 1232g.** Unless authorized by law or by written permission of each affected student, Vendor shall not disclose to any third-party information concerning University students. Vendor shall protect all records containing student information in accordance with FERPA, its implementing regulations, and University policy. In addition to other remedies, University may terminate this Agreement immediately upon information that Vendor may have violated this provision.
27. **ILLINOIS PERSONAL INFORMATION PROTECTION ACT (PIPA), 815 ILCS 530.** If applicable, Vendor will cooperate in good faith with University to maintain security and integrity of personal information in compliance with PIPA.
28. **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) and HIPAA Administrative Simplification Regulations at 45 C.F.R. pts. 160, 162, and 164.** If Vendor is University's Business Associate, as that term is defined by the HIPAA Privacy Rule at 45 C.F.R. §160.103, then Vendor and University shall enter into a separate HIPAA Business Associate Agreement.
37. **CRIMINAL BACKGROUND CHECKS.** If Vendor will be performing any services at a University owned, rented, or leased property, Vendor certifies that it has performed criminal background checks that meet appropriate industry standards and are consistent with University policies and practices. University will not reimburse Vendor for the cost of criminal background checks.
38. **UNIVERSITY'S PLAN REGARDING MINORITY AND WOMEN BUSINESS ENTERPRISES.** University recognizes the importance of increasing access and opportunities in contracts for businesses owned by minorities and women. To the maximum extent practicable, University expects its vendors to share in its commitment to supporting and promoting and encouraging the participation of these businesses. University's MBE/WBE Plan and Local Employment Opportunity Plan information is available for review at: <https://www.iit.edu/procurement-services/vendor-resources>.