

Terms and Conditions

CASE WESTERN RESERVE UNIVERSITY

Part 1: General Terms & Conditions

(Applicable to all Suppliers)

FOR ALL FACILITIES RELATED WORK, THE “OWNER'S GENERAL TERMS AND CONDITIONS” ALSO APPLY UNLESS AN AIA CONTRACT EXISTS. THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. BY ACCEPTING THIS PURCHASE ORDER, THE SELLER AGREES TO BE BOUND THEREBY.

1. Formation of Contract. Supplier's commencement of work or shipment of goods hereunder (whichever occurs first) shall be deemed an effective mode of acceptance of the University's offer to purchase contained in this purchase order (PO). Any acceptance of this PO is limited to acceptance of the express terms it contains. Any proposal for additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this PO in Supplier's acceptance is hereby objected to and rejected, but such proposal shall not operate as a rejection of this offer to purchase unless such variances are in the terms of the description, quantity, price, or delivery schedule of the goods or services. Such proposal for additional or different terms shall be deemed a material alteration thereof, and this offer shall be deemed accepted by the Supplier without such additional or different terms. If this PO shall be deemed an acceptance of a prior offer by Supplier, such acceptance is limited to the express terms contained in this PO. Additional or different terms or any attempt by Supplier to vary in any degree any of the terms of this PO shall be deemed material and shall be rejected. However, this PO shall not operate as a rejection of the Supplier's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods or services.

2. Cancellation. The University reserves the right at any time for its convenience to cancel this PO as to all or any portion of the goods then not shipped or services then not performed, subject to an equitable adjustment between the parties as to any work or materials (but not to include standard stock) then in progress. Supplier shall not be paid for any amount of lost profits on canceled orders, or for any avoidable costs incurred after receipt of notice of cancellation, including but not limited to any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. No termination for convenience shall relieve Supplier or University of its obligations as to any goods or services delivered hereunder. Any claim for adjustment hereunder must be asserted within thirty (30) days after the date of Supplier's receipt of notice of cancellation.

3. Termination for cause. The University may terminate this PO or any part hereof at any time for cause in the event Supplier fails to comply with any of the terms and conditions of this PO, including, without limitation, late delivery or performance, the delivery of defective or non-conforming goods or services, or failure to provide the University with reasonable assurances of

future performance. In the event of termination for cause, the University shall not be liable to Supplier for any amount, and Supplier shall be liable to University for any and all damages sustained by reason of the default which gave rise to the termination.

4. Warranty. Supplier expressly warrants that all goods and services furnished under this PO shall conform to all specifications and appropriate standards, and will be free from defects, including, where applicable and without limitation, defects in material, workmanship, and title. Supplier warrants that all goods and services furnished hereunder will be merchantable and will be safe and appropriate for the purposes for which goods and services of that kind are normally used. If Supplier knows or has reason to know the particular purpose for which the University intends to use the goods or services, Supplier warrants that such goods and services will be fit for such particular purpose. Supplier warrants that goods or services furnished will conform in all respects to samples, advertisements and other forms of representation made to the University regarding the goods or services purchased. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Supplier's obligation under this warranty, and such obligations shall survive inspection, test, acceptance and use. Supplier's warranty shall run to the University, its successors, assigns and customers, and users of products or services sold by the University. Seller may not negate, exclude, limit, or modify in any way any warranty otherwise available to University. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to the University, when notified of such nonconformity by the University, provided the University elects to provide Supplier with the opportunity to do so. In the event of failure of Supplier to correct defects in or replace nonconforming goods or services promptly, the University, after reasonable notice to Supplier, may make such corrections or replace such goods and services and charge Supplier the cost incurred by the University in doing so. These warranties are in addition to those otherwise offered by Supplier and Manufacturer.

5. Set-off. All claims for money due or to become due from the University shall be subject to deduction or setoff by the University by reason of any counterclaim or amounts owed by Supplier arising out of this or any other transaction with Supplier.

6. Waiver. The University's delay or failure to enforce any term or condition of this PO shall not operate to waive it. Any such waiver must be expressed by the University in an authorized writing.

7. Delivery. Wherever this PO sets a date or time for the delivery of goods and services, time is of the essence. The University may regard the failure to deliver in a timely manner as a material breach of these terms and conditions, entitling the University to all rights and remedies at law, in equity, and under the specific remedies of this PO. Title and risk of loss or damage to items ordered herein shall remain with Supplier until delivered to and accepted by the University. All packaging, carting, transportation, and insurance charges are to be paid for by the Supplier, unless otherwise specifically stated in the PO. All goods shipped shall be free of liens or encumbrances. The Supplier shall furnish satisfactory evidence of freedom from any liens if requested to do by the University.

8. Indemnification. Supplier shall defend and indemnify the University against, and shall hold the University harmless from, any claims made by any person or entity as a result of injuries, damages, expenses and losses incurred by such a person or entity, including without limitation such person's or entity's and the University's legal costs and attorney's fees (hereinafter collectively "Liabilities"), arising out of or relating to Supplier's performance or failure to perform pursuant to this PO, except where the Liabilities are a result of the direct and sole negligence of the University. This provision shall survive the termination or completion of the work or expiration of this PO.

9. Insurance. Supplier must provide to the University's Purchasing Department a Certificate of Insurance with proof of the following amounts of coverage:

a) Commercial General Liability insurance written on **occurrence basis** with the following limits:

General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000 aggregate
Personal Injury and Adv. Injury Limit	\$1,000,000 ea. person/organization
Bodily Injury & Property Damage Limit	\$1,000,000 each occurrence
Fire Damage	\$50,000 (any one fire)
Medical Expense	\$5,000 (any one person)

(Pollution Liability Endorsement of \$1,000,000 per occurrence will also be needed in the event hazardous materials are to be involved.)

No exclusions for: Product/Completed Operations; Contractual Liability; Independent Contractors; Personal & Advertising Injury.

b) Automobile Liability: Any Auto Owned, Hired and Non-Owned

(Pollution Liability of \$1,000,000 each accident will also be needed in the event hazardous materials are to be involved.)

Combined Single Limit for Bodily Injury & Property Damage	\$1,000,000
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c) Excess "Umbrella" Liability \$4,000,000 ea. occurrence/aggregate

The umbrella coverage should be no more restrictive than underlying coverage.

d) Workers' Comp. Statutory Coverage as required by law

e) Employers' Liability \$1,000,000 each accident; \$1,000,000 each employee – disease; \$1,000,000 aggregate disease University is to be named as an additional insured on all liability policies, except for Workers Compensation. The foregoing insurance and limits of coverage are

to be considered as minimum requirements under this Agreement, and in no way shall limit Supplier's liability. Each policy of insurance shall be issued in a company or companies licensed to do business in the State of Ohio, maintaining a Best's rating of at least A-, VII, and shall provide for written notification to University at least thirty (30) days prior to termination or restrictive amendment.

10. Assignment. None of Supplier's duties to perform its obligations under this PO may be delegated or assigned to another person or party without the prior written consent of the University's Purchasing Department. The University may assign this PO to any affiliate, or successor in interest to all or any part of its operations without prior notice to Supplier.

11. Access to Records. Supplier shall preserve and permit University or any of University's duly-authorized representatives to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this PO for the purpose of making audits, examinations, excerpts and transcripts for a period of three (3) years after final payment hereunder. Supplier agrees to refund to University any overpayments disclosed by any audit.

12. Publicity. Supplier shall not, in any way or in any form, publicize or advertise the fact that Supplier is supplying goods or providing services to University without the express written approval of the University.

13. Debarment. Supplier certifies that neither it nor any of its Principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including but not limited to Medicare and Medicaid and Federal Health Care Programs) by any Federal department or agency. (See Executive Orders 12549 and 12689, 45 CFR part 76, 48 CFR part 9; 42 USC sect. 1320a-7). To the extent necessary to assure the accuracy of its certification, Supplier agrees to conduct searches of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the General Services Administration (<http://epls.arnet.gov/>) and the List of Excluded Individuals and Entities maintained by the Department of Health and Human Services (<http://oig.hhs.gov>) prior to making its certification. Supplier acknowledges that the certification is a material representation of fact upon which University is relying in entering into this transaction. Supplier agrees to provide immediate written notice to University if it learns at any time that its certification was erroneous when submitted or if, during the term of this PO, it, or any of its Principals, is debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program. If subcontracting is permitted by this PO, Supplier agrees that it will include this clause, without modification, in all subcontracts and subprojects, and in all solicitations for subcontract and subproject proposals. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of Supplier, or any of its Principals or subcontractors, shall constitute cause for immediate termination of this Agreement by University.

14. Remedies not Exclusive. The remedies available to University under this PO are not

exclusive, but are in addition to such other remedies available to University by law, or in any way arising out of Supplier's performance under this PO.

15. Applicable law. This PO, and all disputes arising hereunder, shall be governed by the laws of the State of Ohio, and the parties commit to the jurisdiction and venue of the courts located in Cuyahoga County, Ohio, to adjudicate any dispute arising under or relating to this PO.

16. Modifications in Writing. The PO, when accepted as indicated herein, may not be modified, amended, rescinded, or in any way varied, except by a writing signed by the parties.

17. Electronic/Facsimile Transmission. If the PO is transmitted by electronic means of transmission, such transmission shall have the legal significance of a duly executed original delivered to the Supplier.

18. Sales and Use Taxes. University is a 501(c) (3) organization and is exempt from sales and use taxes. A Federal Tax Exemption Certificate will be furnished upon request.

19. Cancellation for Conflict of Interest. This PO is subject to cancellation if there is found to be a conflict of interest between a University employee and Supplier.

20. Conflict with Provisions in Written Agreement. In the event of a conflict between the terms of these terms and conditions and the terms and conditions of a separate written agreement executed by the University and Supplier in connection with a transaction governed hereby, the terms of such written agreement shall prevail.

21. Supplier Diversity Initiative Program (MBE/WBE). The University voluntarily maintains a Supplier Diversity Initiative Program as part of its efforts to increase participation of minority and women vendors (MBE/WBE). Case seeks to achieve this goal through primary and second-tier suppliers. All primary suppliers must submit a plan with their bids, indicating how they intend to use minority and women vendors as their second-tier suppliers. Each plan will be evaluated based on good-faith efforts and will consider the following factors:

-- Availability of minority/women vendors who can supply the goods and services requested in the bid documents

-- Competitiveness of the prospective second-tier suppliers.

The use of local minority and women-owned businesses strengthens our commitment to the local community. In all cases, however, it is expected that the vendors meet the criteria relating to price, service, and delivery. Supplier diversity will be one, but not the sole, consideration in all contract awards. Ultimately it will be left to the discretion of the primary supplier as to which second-tier suppliers it uses. When a contract is awarded, the supplier is required to maintain its second-tier effort and to submit monthly reports on its progress.

Part 2: Service Terms

(Applicable to all Suppliers providing Services)

S1. Independent Contractor. Supplier is an independent contractor, and shall not act or purport to act as an agent, representative or employee of the University. Supplier will determine the means and methods of performing its services. Supplier will supply all equipment, tools, materials, parts, supplies and labor (and the transportation of the same) required to perform except as the University has otherwise agreed in writing. University shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Supplier or its agents or employees that may be brought onto University premises or stored at University, except for damage caused by the direct and sole negligence of University.

S2. Standard of Care. Supplier will provide adequate and competent staff and supervision thereof, and will in all respects perform with at least that degree of care, skill and diligence normally exercised by persons regularly engaged in Supplier's business or profession.

S3. Lawful Compliance. Supplier will comply with all applicable laws, ordinances and regulations of governmental authorities and with the rules and regulations of the University and its insurers while on the University's premises. To verify compliance with the foregoing, Supplier will permit University officials to inspect Supplier's on site operations at any time.

S4. Hazardous Materials. If Supplier intends to bring onto the premises or take away from the University any hazardous chemicals or intends to engage in any activities which might reasonably be expected to create a danger or hazard to employees or other persons at the University, then in advance of any such activity, Supplier shall submit to the Department of Occupational and Environmental Safety (DOES) for review and approval its program for compliance with the hazard communication requirements of 29 CFR 1910.1200 and its schedule and methods for performing such activities. Supplier will adhere to its approved program in the performance of all work to be done on University premises. Supplier is given notice hereby that the University has a hazard communication program pursuant to the aforementioned regulation, and that Supplier should obtain further information regarding that program by calling DOES at 216-368-2907.

S5. Licensed Professions. Supplier represents and warrants that Supplier (and each person or entity, if any, acting for or on behalf of Supplier) has all licenses, certificates, and other professional credentials required by law to perform the purchased services. If Supplier, persons in Supplier's employ, or persons otherwise acting for or on behalf of Supplier are so required to maintain professional licensure, certification or similar credentials in order to perform the purchased services, then in addition to the requirements set forth in Part I, section 9 above, Supplier must maintain Professional Liability coverage on all professionals with limits of at least \$1,000,000 per occurrence and \$3,000,000 aggregate. If professional liability insurance is required under this section, then proof of such coverage shall be included in Supplier's Certificate of Insurance.

Part 3: Federal Compliance Terms

(Applicable To Suppliers Paid With Federally-Sourced Funds)

F1. Applicability. The terms of this Part 3 apply to the purchase of any goods and services by the University using federally-sourced funds. If Supplier is not otherwise aware of whether the funds are sourced from a federal grant or contract, then Supplier shall inquire of the University.

F2. Compliance. All goods and services sold hereunder shall be produced, sold, delivered and furnished in compliance with all laws and regulations applicable to procurement under loans, grants or other financial support of the United States government agency or agencies which have provided that support ("Funding Agency"). This includes, but is not limited to, the Procurement Standards set forth in Subpart C of OMB Circular A-110 and the applicable provisions of the Federal Acquisition Regulation, together with any additions or supplements thereto promulgated by the Funding Agency ("FAR").

F3. Access to Records. The access to records set forth in paragraph 11 of Part 1 above shall apply to the Funding Agency, the Controller General of the United States and any duly-authorized representatives thereof.

F4. Equal Opportunity. Supplier shall comply with E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR, part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

F5. Anti-Kickback. Supplier, if engaged hereby for construction or repair in an amount in excess of \$2000, shall comply with (a) the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor Regulations (29 CFR, part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

F6. Davis-Bacon. Supplier, if engaged hereby for construction or repair in an amount in excess of \$2000, shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7), as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

F7. Hours and Standards. Supplier, if engaged hereby for construction in an amount in excess of \$2000 or other work in an amount of \$2500 that involves the employment of mechanics or laborers, shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

F8. Inventions. All rights of the Federal Government and the University to any resulting inventions are reserved to them in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements" and any applicable implementing regulations.

F9. Environmental. Supplier, if engaged hereby for an amount in excess of \$100,000, shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations must be reported to Purchaser and/or federal agencies as required under OMB Circular A-110.

F10. Anti-Lobbying. Supplier, if engaged hereby for an amount in excess of \$100,000, shall comply with the requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), by providing to Purchaser all certifications required thereunder regarding the disclosure of the use of funds for lobbying.

F11. Flow-Down. Supplier will assure that any subcontract let hereunder includes clauses F3 through this F11, where such inclusion is required under OMB Circular A-110.

F12. Federal Acquisition Regulation. Incorporated herein by reference are those provisions of the FAR which by their terms are to be flowed down to a procurement of the sort provided for here. All such provisions are incorporated with the same force and effect as if they were given in full text and apply to Supplier as Contractor, including provisions for the further flow-down of such provisions to subcontracts entered into by Supplier. A listing of FAR provisions is available from Purchaser on Supplier's request or on-line at <http://www.arnet.gov/far/>. By their terms, not all listed provisions apply to this transaction. In particular, and without limitation to the foregoing, in the acquisition of "commercial items" or "commercial components" (as those are defined 48 CFR 52.202-1), FAR provisions are not required to be included, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under 48 CFR Part 15:

- 1) 52.219-8, Utilization of Small Business Concerns (15 U.S.C. 637 (d)(2) and (3))(see 52. 244-6 (c) (l)(i) for applications if any) to Supplier and sub-contractor of Supplier;
- 2) 52.222-26, Equal Opportunity (E.O. 11246);
- 3) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a));
- 4) 52.222-36, Affirmative Action for Workers with Disabilities (20 U.S.C. 793);
- 5) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241)(flow down not required for subcontracts awarded beginning May 1, 1996).

Part 4: Health Record Terms

(Applicable To All Suppliers With Access To Patient Care Information)

P1. Definitions. Terms used herein shall have the meanings ascribed to them in the federal privacy and security regulations issued pursuant to the Health Insurance Portability and Accountability Act ("HIPAA") and codified at 45 C.F.R. parts 160 and 164, as may be amended

from time to time (the "Rule"). "Case-PHI" shall mean Protected Health Information that Supplier receives, uses, creates, maintains or transmits on behalf of University under this PO.

P2. Permitted or Required Uses and Disclosures of Case-PHI by Supplier. Except as otherwise limited under this PO, Supplier may (a) use and disclose Case-PHI only as reasonably necessary to perform its obligations under the PO, provided that such use or disclosure would not violate the Rule if done by the University; (b) use Case-PHI for its proper management and administration and to carry out its legal responsibilities; and (c) disclose Case-PHI to a third party for the purpose of Supplier's proper management and administration or to carry out its legal responsibilities, provided that: (i) the disclosures are required by law; or (ii) Supplier obtains reasonable assurances from the third party that the Case-PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and the third party notifies Supplier of any instances of which it becomes aware in which the confidentiality of the Case-PHI has been breached.

P3. Restriction on Use or Disclosure of Case-PHI. Supplier will not use or disclose Case-PHI other than as permitted or required by this PO or as required by law.

P4. Safeguards. Supplier will use appropriate safeguards to prevent use or disclosure of Case-PHI other than as provided for by this PO. Supplier will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Case-PHI no later than April 21, 2005.

P5. Mitigation. Supplier will mitigate, to the extent practicable, any harmful effect that is known to Supplier of a use or disclosure of Case-PHI by Supplier in violation of the requirements of this PO.

P6. Reporting. Supplier will report to the University any use or disclosure of Case-PHI not provided for by this PO or security incident of which Supplier becomes aware.

P7. Agents and Subcontractors. Subcontractor will ensure that all of its subcontractors and agents that receive, use or have access to Case-PHI agree, in writing, to essentially the same restrictions and conditions on the use and/or disclosure of Case-PHI that apply through this PO to Supplier with respect to such information, and to implement reasonable and appropriate safeguards to protect such Case-PHI.

P8. Access. At the request of, and in the reasonable time and manner specified by, the University, Supplier will provide access to Case-PHI in a designated record set to the University, or, if directed by the University, to an individual in order to permit the University to meet the applicable Rule's access requirements.

P9. Amendment of Case-PHI. At the request of, and in the reasonable time and manner specified by, the University, Supplier will make amendment(s) to Case-PHI in a designated record set, in order to permit the University to meet the Rule's amendment requirements.

P10. Open Books. Supplier will make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of Case-PHI, available to the Secretary of Health and Human Services ("Secretary"), in the reasonable time and manner specified by the

Secretary, for purposes of the Secretary's determining the University's compliance with the Rule.

P11. Accounting of Disclosures. Supplier will document disclosures of Case-PHI and information related to such disclosures as would be required for the University to respond to an individual's request for an accounting of disclosures of Case-PHI in accordance with the Rule's requirements; and will provide such information to the University in a reasonable time and manner specified by the University, to permit the University to respond to an individual's request for an accounting of disclosures of Case-PHI in accordance with the Rule's requirements.

P12. Return or Destruction of Case-PHI. Within thirty (30) days of the termination of the PO, Supplier will return to the University or destroy all Case-PHI in its possession or control, including such Case-PHI that is in the possession of Supplier's subcontractors and agents, and if feasible, retain no copies of such Case-PHI. If Supplier considers return or destruction of the Case-PHI infeasible, Supplier will notify the University of the conditions that make return or destruction infeasible, and if the University agrees that return or destruction is infeasible, Supplier may retain the Case-PHI, provided that it will extend all protections contained in this PO to its use and/or disclosure of any retained Case-PHI, and limit any further uses and/or disclosures to the purposes that make the return or destruction of the Case-PHI infeasible.

P13. Remedies. In the event of a material breach of this Part 4 by Supplier, the University may at any time thereafter, and in its sole discretion, either: (a) notify Supplier of the breach in writing, providing an opportunity for Supplier to cure the breach, and terminate this PO if Supplier does not cure the breach within the time specified by the University in such notice; or (b) immediately terminate this PO on written notice to Supplier.