

## Special Conditions for Projects

The Ohio State University  
2009 Millikin Road, Room 400, Columbus, Ohio 43210

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These Special Conditions for Projects (“Special Conditions”) apply to construction, improvement, addition, alteration, or installation Projects less than \$200,000, Design/Build Projects less than \$200,000, and Professional Services less than \$50,000. These Special Conditions DO NOT apply to Purchase Orders issued under Small Scope Project Agreements (also known as “IDIQ Agreements”).

These Special Conditions amend the Purchase Order/Supply Chain Standard Purchase Order Terms and Conditions (“Purchase Order T&Cs”), which are incorporated herein by reference. Conflicts between the provisions of the Special Conditions and the Purchase Order T&Cs are resolved as specified in the Purchase Order T&Cs.

For Projects governed by these Special Conditions,

The Contracting Authority is:

The Ohio State University  
Facilities Operations and  
Development 400 Central  
Classroom Building  
2009 Millikin Road  
Columbus, Ohio 43210  
614-292-4458 phone  
614-292-2539 fax  
<http://fod.osu.edu>

The Institutional Designee is:

Paul Sherwood  
Assistant Vice President

1. Use of Domestic Steel: SELLER shall comply with O.R.C. Section 153.011 regarding the specification and use of domestically produced steel products. Copies of O.R.C. Section 153.011 may be obtained from the Ohio Facilities Construction Commission.

2. Prevailing Wage: For each Purchase Order to which prevailing wage rates apply, SELLER shall comply with the prevailing wage requirements described under O.R.C. Chapter 4115.

3. Means and Methods: SELLER is solely responsible for and has complete control and charge of quality control, means, methods, techniques, sequences, and procedures, and for safety precautions and programs in connection with the Work.

4. Safety: SELLER shall take reasonable precautions to ensure the safety of people and property affected by the Work. SELLER is responsible for designing and implementing its own safety program, including compliance with OSHA and other Applicable Law. SELLER's safety plans, such as fall protection, hazards, communications, competent person, etc., shall meet or exceed PURCHASER's safety plan (if any). The Project Manager and SELLER will determine which plans need to be submitted for PURCHASER's review, comment, and approval.

Not less than 10 days prior to starting any Work, SELLER may be required to submit a copy of SELLER's site-specific safety plan and safety manuals for PURCHASER's review, comment, and acceptance. PURCHASER's site-specific critical safety plan checklist is available here <https://fod.osu.edu/resources>, under the section titled "Construction Site Safety Requirements." SELLER shall update its site-specific safety plan and safety manuals, as needed, to include any changes in Subcontractors or changes in the Work.

PURCHASER shall not accept any responsibility or liability for the safety of SELLER's employees or managing SELLER's safety on the Project. SELLER shall pay any fine or cost incurred because of SELLER's violation or alleged violation of Applicable Law.

5. Emergencies: In the event of an emergency affecting the safety of the Project, other property, or individuals, SELLER, without special instruction or authorization, shall act to prevent the threatened damage, injury, or loss.

SELLER shall report emergencies requiring medical attention, fire response, or police to University Police at 614-292-2121, or 911. SELLER shall report all emergencies to the Project Manager within 30 minutes after occurrence.

6. Emergency Call List: SELLER shall furnish and keep always current an emergency call list of SELLER's essential personnel and their contact information.

7. Labor: SELLER shall enforce strict discipline and good order among all people carrying out the Work. If the PURCHASER deems any person engaged in the Work unsatisfactory, in the PURCHASER's sole discretion, the SELLER shall transfer or require the transfer of that person from the Project immediately.

8. e-Builder Software: If PURCHASER decides, in its sole discretion, to utilize e-Builder project management software for the Project, SELLER shall use such software for all compatible services required under the Purchase Order. All costs for SELLER's use of the e-Builder project management software shall be included in its quote or proposal for the Purchase Order. If SELLER's staff or its Consultants are unfamiliar with the proper

use of such software, SELLER shall provide its staff and Consultants for training without additional compensation.

9. Building Information Modeling (“BIM”): If the Project is administered using BIM, SELLER shall follow the requirements described in The Ohio State University BIM Standards.

10. Permits: Unless the Purchase Order states otherwise, SELLER shall (a) secure and pay for all required structural, plumbing, HVAC, and electrical plan approvals from the Ohio Department of Commerce, Division of Industrial Compliance; (b) schedule and attend all intermediate and final inspections required for any permit applicable to the Work; (c) schedule the life safety inspection for occupancy permits; (d) give PURCHASER reasonable notice of the dates and times arranged for inspections; and (e) pay for any re-inspections required because of SELLER’s failure to receive approval of its Work.

11. Life Safety Inspection: All life safety inspections shall be performed in the presence of PURCHASER’s Emergency Management & Fire Prevention Specialist, or other designated Personnel. Pre-life and life safety inspections shall be scheduled through the Project Manager and coordinated with the building occupants.

12. Protection of the Work: SELLER shall protect the Work from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Final Completion. SELLER shall at all times cover or protect the Work. SELLER shall remove, and replace with new, any Work damaged because of SELLER’s failure to provide coverage or protection.

13. Protection of Existing and Adjacent Property: SELLER shall protect all existing and adjacent property from damage at all times and shall erect and maintain necessary barriers, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to that property. SELLER shall provide all temporary bracing, shoring, and other structural support required for safety of the Project and proper execution of the Work. SELLER shall repair or replace any existing or adjacent property (including without limitation roads, walks, shrubbery, plants, trees, or turf) damaged during performance of the Work.

14. Vibration, Noise and Dust Control: SELLER is responsible for vibration control and control of transmission of noise arising from the Work. The SELLER shall provide controls/barrier for vibrations, noise, and dust control in occupied buildings as required by the construction operations. The SELLER will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building outside the site. The Project Manager may limit or stop the Work if the SELLER does not maintain proper air quality standards.

15. Hot Work: If any welding, cutting, or spark generating activity is to be performed, SELLER shall comply with all aspects of OSHA Standard Subpart Q Welding, Cutting and Brazing 29 C.F.R. 1910.252, relating to fire prevention associated with hot work. SELLER shall obtain a hot-work permit from PURCHASER's Office of Environmental Health and Safety at <http://www.ehs.osu.edu> on the "Occupational Health & Safety" tab. SELLER shall notify the Project Manager 24 hours before the start of non-routine or nonrecurring hot work.

16. Flame and Flammable Materials: Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum. At the beginning of the Project, SELLER shall inform the Project Manager of SELLER's intent to use blowtorches, welding apparatus or similar exposed flame and sparking devices. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners. SELLER shall furnish an appropriate number of fire extinguishers (minimum of one), which shall be within the immediate areas where Work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by SELLER's operations. SELLER shall acquaint itself with and follow PURCHASER's established fire alarm procedures and the location of fire warning and extinguishing or control devices.

17. Hazardous Materials: SELLER shall not introduce Hazardous Materials to the Project or burn any fires on the Site. If SELLER encounters material that SELLER reasonably believes to be or contain a Hazardous Material which has not been rendered harmless, SELLER shall immediately stop Work in the affected area and verbally report the condition to PURCHASER, and within one business day deliver written notice of the condition to the Project Manager. SELLER shall resume Work in the affected area upon written notice that **(a)** the suspect material was evaluated and found not to be or contain a Hazardous Material, or **(b)** the suspect material has been removed or rendered harmless.

If SELLER knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, SELLER shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorney's fees, arising out of or resulting from performing the Work in the affected area.

The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

18. False Fire Alarms: As Liquidated Damages, and not as a penalty, SELLER acknowledges and agrees that PURCHASER shall be entitled to retain or recover from SELLER \$300 or actual costs, whichever is greater, for each false fire alarm that is determined to be a result of negligence by SELLER. This amount reflects PURCHASER's actual costs incurred in dealing with these false alarms, including, but not limited to, the costs of transportation, manpower, and loss of efficiency.

19. Utility Markings: SELLER shall comply with O.R.C. Sections 3781.25 through 3781.32. In addition, before starting excavation or trenching, SELLER shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval. SELLER shall follow all dig permit and Ohio Utilities Protection Service requirements including pre-marking the approximate excavation area in white at least 72 hours prior to the planned excavation.

20. Punch List and Completion: When SELLER considers the Work, or a designated portion thereof, substantially complete, the Project Manager or architect or engineer of record for the Project, as applicable, and SELLER shall walk through the Project and create a punch list ("Punch List") of defective, incomplete, or unacceptable Work. Within ten days thereafter and before the scheduled date of Final Completion, SELLER shall complete all items on the Punch List. As a condition precedent to achieving Final Completion of the Work, SELLER shall clean the site, remove waste materials and rubbish attributable to the Project, and restore the property to its original condition.

21. Project Document Submittal: As a condition precedent to PURCHASER's acceptance of the Work and to SELLER's entitlement to final payment, SELLER shall deliver to PURCHASER all Contract Documents; shop drawings, product data, samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; certificates of inspections, permits, and other Project-related documents, all marked currently and accurately to record field changes and selections made during construction and to show actual installation where installation varies from Work as originally shown.

22. Correction Before Final Completion. If SELLER provides defective Work or fails or neglects to perform the Work as scheduled, PURCHASER may issue a written notice to SELLER directing SELLER to correct the defective Work or recover schedule deficiencies. Unless otherwise specified in that written notice, SELLER shall correct the defective Work and recover the schedule deficiencies within no more than three days after PURCHASER issues the written notice ("72-Hour Notice"). If SELLER fails to promptly commence and diligently pursue correction of defective Work or recovery of schedule deficiencies as required, PURCHASER may correct the defective Work or take action to recover schedule deficiencies without giving further notice to SELLER.

23. Correction After Final Completion: After Final Completion, PURCHASER may correct defective Work itself without giving further notice to SELLER if SELLER fails to (a) notify the PURCHASER in writing of SELLER's intent to correct the defective Work within 14 days after PURCHASER issues a notice of defective Work to SELLER and (b) thereafter promptly commence and diligently pursue correction of defective Work.

24. Responsibility for Costs of Correction: SELLER shall pay all of the costs and damages associated with the correction of defective Work and the recovery of schedule deficiencies. Those costs and damages may include, but are not limited to,

the related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and the cost of correcting or replacing adjacent work. PURCHASER may deduct those costs and damages from payments then or thereafter due SELLER. If payments then or thereafter due SELLER are not sufficient to cover those amounts, SELLER shall immediately pay the amount of the insufficiency to PURCHASER.

25. Consultants and Subcontractors: After receiving PURCHASER's written consent, SELLER may provide a portion of the Work through one or more Consultants or Subcontractors, but SELLER will remain responsible for all of its obligations under the Purchase Order.

26. Assignments: SELLER hereby assigns to PURCHASER each contract between SELLER and a Consultant or Subcontractor provided that the assignment is effective only after PURCHASER terminates the Purchase Order and only for those contracts which PURCHASER accepts by notifying the Consultant or Subcontractor and SELLER in writing. PURCHASER may re-assign accepted contracts.

27. SELLER's Documents and Contract Documents: Except as provided in Paragraph 27(a), PURCHASER alone owns SELLER's Documents and the Contract Documents and every right, title, and interest in SELLER's Documents and the Contract Documents.

(a) PURCHASER does not own SELLER's standard details and specifications regularly used by SELLER or any of its Consultants in the normal course of business that are included in SELLER's Documents. SELLER grants to PURCHASER an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as, but not limited, to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of the Purchase Order.

(b) SELLER must execute and deliver and cause its employees, agents and all Consultants to execute and deliver, to PURCHASER any transfers, assignments, documents, or other instruments (if any) necessary to vest in PURCHASER complete right, title, interest in and ownership of all of SELLER's Documents and the license described under Paragraph 27(a).

(c) SELLER may retain copies, including reproducible copies of SELLER's Documents and the Contract Documents for information, reference, and the performance of the Work. PURCHASER grants to SELLER and its Consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the SELLER's Documents and the Contract Documents in relation to the performance of the Work.

(d) Submission or distribution of SELLER's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of PURCHASER's reserved rights in SELLER's Documents and the Contract Documents. Any unauthorized use of SELLER's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of SELLER's Documents and the Contract Documents.

28. Electronic Files: SELLER shall provide Electronic Files (in native format) to Separate Contractors and Separate Consultants for their use in connection with the Project. SELLER shall provide the Electronic Files (a) at no additional cost to the Separate Contractors, Separate Consultants, or PURCHASER and (b) without requiring the Separate Contractors, Separate Consultants, or PURCHASER to agree to any terms or conditions concerning the provision, receipt, or use of the Electronic Files that differ in any material respect from the Contract.

29. Waiver of Consequential Damages: PURCHASER and SELLER each waive against the other all claims for consequential damages that may arise out of or relate to this Purchase Order, except this waiver does not apply to: (a) any damages that would be covered by insurance provided in connection with the Project if the Purchase Order did not include this Paragraph 29; (b) SELLER's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that this Paragraph 29 would otherwise preclude; (c) claims for damages arising from PURCHASER's or SELLER's gross negligence or willful misconduct.

30. Termination: Notwithstanding any language to the contrary in the Purchase Order T&Cs, Termination of the Purchase Order is governed by these Special Conditions.

(a) Termination for Cause: PURCHASER may terminate the Purchase Order for cause after giving five days' written notice and an opportunity to cure if SELLER commits a material breach of the Purchase Order. If PURCHASER terminates the Purchase Order for cause, SELLER will not be entitled to any further payment until after the Work is completed. If the unpaid balance of the Purchase Order exceeds the costs of finishing the Work plus other damages PURCHASER incurs, PURCHASER shall pay the excess to SELLER. If those costs and damages exceed the unpaid balance of the Purchase Order, SELLER shall pay the difference to PURCHASER. This obligation for payment will survive termination of the Purchase Order.

If PURCHASER's termination of the Purchase Order for cause is adjudged to have been improper or unjustified, the termination will be deemed to have been a termination for convenience.

(b) Termination for Convenience: PURCHASER may terminate all or part of the Purchase Order without cause and for PURCHASER's convenience by giving written

notice of the termination to SELLER. If PURCHASER terminates the Purchase Order for convenience, PURCHASER shall pay SELLER on account of Work performed as of the date of termination plus the costs SELLER reasonably incurs to cancel contracts SELLER entered into in furtherance of the Work before the date of termination. SELLER shall provide written evidence of those cancellation costs to PURCHASER as a condition precedent to PURCHASER's obligation to pay for them.

PURCHASER will not be obligated to pay SELLER anything on account of any Work SELLER does not perform due to any termination of the Purchase Order.

### **Definitions**

**Applicable Law:** All applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders, and decrees (all as amended from time to time) of any government or quasi-governmental entity with jurisdiction over the Project.

**Consultant:** A Person engaged by SELLER or a Subcontractor to provide professional services of various types for the Project. The term includes the Consultant's authorized representatives, successors, assigns, and subconsultants regardless of tier

**Contract Documents:** All of the documents that constitute the substance of the Purchase Order.

**SELLER's Documents:** All Project-related documents, including those in electronic form, prepared by SELLER, its Consultants, or its Subcontractors.

**Electronic Files:** Information maintained in a computer system or format that is intended to facilitate use and manipulation of the information including but not limited to Word, Excel, PDF, Primavera, CAD, and BIM files all in their native format.

**Final Completion:** The stage in the progress of the Work when the Work or designated portion of it is totally complete and SELLER has satisfied every associated requirement under the Purchase Order.

**Hazardous Materials:** (1) Any material, substance, pollutant, or contaminant that is defined, regulated, referenced, or classified in the Comprehensive Environmental Response, Compensation and Liability Act, Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Clean Air Act, Hazardous Materials Transportation Uniform Safety Act, Toxic Substances Control Act, or any other Applicable Law relating to any hazardous, toxic, or dangerous waste, substance, or material; and (2) any substance or material that, after release into the environment or upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will, or may reasonably be anticipated to, cause death, disease, behavior abnormalities, cancer or genetic abnormalities and specifically includes but is not limited to asbestos,



polychlorinated biphenyls (“PCBs”), radioactive materials, including radon and naturally occurring radio nuclides, natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum- based derivatives and urea formaldehyde.

**Indemnified Parties:** The State, The Ohio State University, Separate Consultants, Separate Contractors, and their respective officials, officers, consultants, agents, representatives, and employees, in both individual and official capacities

**Person:** An individual, corporation, business trust, estate, partnership, association, or other public or private entity.

**Project:** All services to be provided under the Purchase Order.

**Project Manager:** An employee of PURCHASER assigned to the Project and authorized to perform specific responsibilities.

**Separate Consultant:** A Person under contract with PURCHASER to provide Project-related professional services other than the services under this Purchase Order. The term includes the Separate Consultant’s authorized representatives, successors, assigns, and subconsultants regardless of tier.

**Separate Contractor:** A Person under contract with PURCHASER to provide Project-related work other than the Work under this Purchase Order. The term includes the Separate Contractor’s authorized representatives, successors, assigns, and subcontractors regardless of tier.

**Subcontractor:** A Person (including vendors and material/equipment suppliers) under contract with SELLER to perform or provide a portion of the Work. The term includes Subcontractor’s authorized representatives, successors, and assigns and subcontractors to a Subcontractor regardless of tier.

**Work:** All labor, materials, equipment, and services, individually or collectively which are required by the Contract Documents, to be performed or provided by SELLER for the Project. The furnishing of all design services, material, labor, detailing, layout, supplies, plants, tools, scaffolding, transportation, temporary construction, superintendence, demolition, and all other services, facilities, and items reasonably necessary for the full and proper performance and completion of the requirements of the Project as set forth in the Contract Documents, and items reasonably inferable therefrom and consistent therewith for the proper execution and completion of the design and construction and other services required by the Contract Documents, whether provided or to be provided by the SELLER, a Consultant, or a Subcontractor, or any other entity for whom the SELLER is responsible, and whether or not performed or located on or off of the site.

**END OF DOCUMENT**