

MASSACHUSETTS INSTITUTE OF TECHNOLOGY "M.I.T."
GENERAL TERMS AND CONDITIONS – PRODUCTS (REV 03/15)

1. OFFER AND CONTRACT

The following terms, together with such terms as are set forth within this purchase order "Order" and with such plans, specifications or other documents as are attached or incorporated by reference within this Order, constitute the offer of M.I.T. to Vendor and shall, when accepted, constitute the entire contract between M.I.T. and Vendor. This Order is valid only as written. Any inconsistencies in this Order shall be resolved by giving precedence in the following order: the Terms & Condition set forth within this Order; the MIT General Terms and Conditions; any plans, specifications or other documents attached to this Order; any documents incorporated by reference into this Order. If price, terms, shipping date or any other expressed condition of this Order are not acceptable, M.I.T. must be notified and must accept in writing any variation prior to shipment or delivery. This Order shall be deemed to have been accepted (i) in the absence of written notification of non-acceptance by the Vendor within a reasonable period of time, or (ii) upon delivery of the products/services identified herein. This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

2. TIME OF DELIVERY

Time is of the essence with respect to this Order. If delivery dates cannot be met, Vendor must inform M.I.T. immediately. Such notification shall not, however, constitute a change to the delivery terms of this Order. Vendor shall not be liable for damages arising out of either its failure to deliver or any delay in delivery occasioned by strikes, lockouts, fires, war, terrorism, or acts of God.

3. IMPROPER DELIVERY

In addition to other remedies provided by law, M.I.T. reserves the right to refuse any goods and to cancel all or any part of this Order if Vendor fails to deliver all or any part of the goods in accordance with the terms and conditions of the Order. Acceptance of any part of this Order shall not bind M.I.T. to accept any future shipments nor deprive it of the right to return goods already accepted.

4. RISK OF LOSS

Risk of loss shall not pass to M.I.T. until goods called for in this Order have been actually delivered to M.I.T. at the destination specified herein. Vendor assumes full responsibility for packing, crating, marking, transportation and liability for loss or damage in transit, notwithstanding any agreement by M.I.T. to pay freight, express, or other transportation charges.

5. WARRANTY

Vendor expressly warrants all goods delivered under this Order to be free from defects in material and workmanship and to be of the quality, size and dimensions Ordered. This express warranty shall not be waived by reason of the acceptance of the goods or payment therefore by M.I.T.

6. ASSIGNMENT

The Vendor shall have no right to assign this Order or any benefits arising from this Order without prior written consent of M.I.T., such consent not to be unreasonably withheld and provided further that Vendor may assign to a corporate parent, affiliate or subsidiary without such consent being required.

7. CHANGES

M.I.T. may at any time, by a written change to the Vendor, make changes within the general scope of this Order including but not limited to any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Order, mutual agreeable adjustments shall be made in the Order price or delivery schedule, or both, and the Order shall be modified in writing accordingly. Any claim by the Vendor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Vendor of the notification of change; provided, however, that M.I.T., if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Order. Where the cost of property made obsolete or excess as a result of a change is included in the Vendor's claim for adjustment, M.I.T. shall have the right to prescribe the manner of disposition of such property. However, nothing in this clause shall excuse the Vendor from proceeding with the Order as changed.

8. INSPECTIONS

M.I.T. shall have the right to inspect the work and activities of the Vendor under this Order in such manner and at all reasonable times as are deemed appropriate. Final inspection shall be at M.I.T.'s premises unless otherwise agreed in writing. Items rejected as not conforming to this Order shall be returned at Vendor's expense, including transportation and handling charges, if any.

9. INDEMNIFICATION

The Vendor agrees to indemnify, defend, and to hold M.I.T. harmless from and against all claims, liability, loss, damage, and expenses including legal fees, arising from or due to any actual or claimed trademark, patent, or copyright infringement and any litigation based thereon, with respect to any part of the goods and work covered by this Order. The Vendor shall defend any such litigation brought against M.I.T. provided that M.I.T. notifies the Vendor promptly of any such suit, and provided further that such goods have not been designed by or under instruction from M.I.T., and/or are not used in combination with other processes or goods. The Vendor's obligations hereunder shall survive acceptance of the goods and payment.

10. TAXES

Except as may be otherwise provided in this Order, the price includes all applicable Federal, State and local taxes and duties.

11. HOLD HARMLESS

The Vendor agrees to indemnify, defend and hold harmless M.I.T. from any and all claims, from the employees, agents or representatives of Vendor or M.I.T. that may be asserted, for personal injury or property damage or otherwise ("Claims") to the extent arising from the negligent act or omission of Vendor with respect to the goods or services provided by the Vendor pursuant to this Agreement. Vendor shall carry and maintain insurance coverages satisfactory to cover the above, and, upon request, shall furnish to M.I.T. appropriate evidence of such insurance. Vendor's obligation to indemnify, defend and hold M.I.T. harmless shall in no event apply to any Claims to the extent such Claims arise or are alleged to arise as a result of the sole, concurrent or contributory negligence of M.I.T., including its employees, agents and representatives.

12. OCCUPATIONAL SAFETY AND HEALTH ACT

By accepting this Order, Vendor certifies that all products supplied conform as of the date of shipment to current OSHA specifications.

13. USE OF THE M.I.T. NAME

The Vendor shall not use nor permit its subcontractors to use the name of "Massachusetts Institute of Technology," or any variation, adaptation, or abbreviation thereof, or the name of any of its trustees, officers, faculty, students, employees, or agents, or any trademark owned by MIT, in any promotional material or other public announcement or disclosure without the prior written consent of the MIT Technology Licensing Office. The Vendor shall not, without the prior written consent of MIT list MIT as a client in any written materials or disclose the name of MIT as a client reference to prospective customers or for any other reason. The Vendor will refer all inquiries from the press or public to the MIT News Office. Vendor shall not speak publicly on behalf of MIT, make any written, oral or electronic communications or issue any press releases referring to this Agreement or any aspect of its relationship with MIT unless specifically permitted in writing by the MIT Technology Licensing Office to do so on each occasion.

14. EQUAL EMPLOYMENT OPPORTUNITY

This Order is subject to the requirements of Executive Orders 11246, 11375, 13672, and the rules and regulations of the Secretary of Labor at 41 CFR 60-1 promoting Equal Employment Opportunities. This regulation prohibits discrimination against qualified individuals on the basis of their race, color, religion, sex, sexual orientation, gender identity, or national origin.

15. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

This Order is subject to the requirements of 38 U.S.C. 4212 and the regulations of the Secretary of Labor at 41 CFR 60-300. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

16. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES

This Order is subject to the requirements of Section 503 of the Rehabilitation Act of 1973 and the regulations of the Secretary of Labor at 41-CFR 60-741. **This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT-OVERTIME COMPENSATION

This Order to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the provisions of the Act, including overtime requirements and penalties for violation thereof.

18. ANTI-KICKBACK ENFORCEMENT ACT OF 1986

This Order is subject to the provisions of the Anti-Kickback Enforcement Act of 1986, Public Law 99-634 (41 U.S.C. 51-58). By accepting this Order, Vendor (1) certifies that it has not paid kickbacks directly or indirectly to any M.I.T. employee for the purpose of obtaining this or any other M.I.T. purchase order, and (2) agrees to cooperate fully with any Federal agency investigating a possible violation of the Act.

19. ANTI-LOBBYING (Where applicable)

This Order is subject to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

20. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES

This Order is subject to the restrictions in FAR 52.225-13 as applicable.

21. VENDORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT

This Order is subject to the requirements of FAR 52.209-6 as applicable.

22. TERMINATION FOR CONVENIENCE

M.I.T. may, at its sole convenience, terminate this contract by written notice to the other party. In the event of such termination, the Vendor shall immediately stop work to the extent required, and after delivery to M.I.T. of all work completed and/or in process, the Vendor shall be entitled to payment for all services satisfactorily performed prior to the effective termination date as stated in the notice.

23. AUDIT (applicable to Orders greater than \$100k awarded with Government funds)

The Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Vendor which are directly pertinent to this specific program for the purpose of making audits, examinations, excerpts and transcriptions.

24. RESTRICTIONS ON SUBVENDOR SALES TO THE GOVERNMENT (applicable to Orders greater than \$100k awarded with Government funds)

This Order is subject to the requirements of FAR 52.203-6 as applicable.

25. RESTRICTIONS ON HUMAN TRAFFICING

This Order is subject to the requirements of FAR Clause 52.222-50, "Combating Trafficking in Persons"