

# LONG ISLAND UNIVERSITY

## STANDARD TERMS AND CONDITIONS

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### I. SCOPE

The following terms and conditions apply to all work and services provided to Long Island University, in addition to the terms set forth in an individual purchase order, services contract and any plan, specification or other document incorporated by reference therein ("Contract Documents"). The term "Contractor" used herein shall include all subcontractors, suppliers and other third parties hired by the Contractor to perform the project work.

### II. REVIEW OF CONTRACT DOCUMENTS; SITE

All Contractors represent that they have carefully examined and understand the Contract Documents which govern the subject work project; have investigated the nature, locality and site of the work and conditions under which it is to be performed and are entering this agreement on the basis of their own examination, investigation and evaluation of the situation, and not in reliance on any opinions or representations of Long Island University ("University"), its employees, agents or representatives.

If the proper and accurate performance of the project work depends on the proper and accurate performance of other work not fully described in the Contract Documents, Contractor shall carefully examine such other work, and take such steps and measurements to ensure the proper matching and fitting of the work covered by this project with the contiguous work.

### III. RESPONSIBLE BUSINESS PRACTICES

If Contractor offers or provides any goods, service or item of value to any University employee or his/her family, or to any entity in which the employee or his/her immediate family has a financial interest, whether or not for payment, Contractor shall be considered to be in material breach of

University's responsible business practices policy. Such action shall be considered adequate grounds for termination of Contractor's services.

Contractor acknowledges, and shall insure that its subcontractors acknowledge, the University's policies on discrimination and harassment. See <http://liu.edu/About/Administration/University-Departments/Human-Resources/HR-Policies/Anti-Harassment-Discrimination-Policy.aspx>. Violation of University's anti-discrimination or anti-harassment policies shall be considered adequate grounds for termination of Contractor's services.

#### IV. SCHEDULES, INSPECTIONS AND TIME OF COMPLETION

To accommodate University operations, all Contractors shall:

- A. Participate and cooperate in the development of schedules and other activities to achieve timely completion of the work schedule; provide information for scheduling the times and sequence of operations required in a timely fashion, and minimize all disruptions to campus functionality.
- B. Continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of all work on the project.
- C. Execute the work in accordance with established project schedule requirements and any revisions thereto.

Contractor, University and subcontractors whose presence is necessary shall attend periodic meetings held at time and place designated by the University project manager to discuss the progress and execution of the work. The proceedings may be recorded and copies furnished to Contractor for use.

On completion of plumbing, HVAC, electrical roughing and fire stopping, Contractor shall contact University project manager to arrange for an inspection by the appropriate University representative before the framing is covered. For Brooklyn jobs, satisfactory clearance by applicable NYC Department of Building inspections must be obtained before the framing is covered.

#### V. PLANS, SPECIFICATIONS, ROLE OF ARCHITECT

If the project work is to be performed and furnished under the direction and to the satisfaction of the University and an Architect, the decision of the Architect as to the construction, meaning and intent of the Plans and Specifications shall be final and binding on the parties.

Should University and Contractor be unable to agree as to the value of any work changed, added or omitted in the project under Article 5(f) of the Construction Services Contract, Contractor shall proceed with the work promptly on written order of the University, and the determination of the value of the work shall be referred to the Architect, whose decision shall be final and binding on the parties.

## VI. SAFE WORKING CONDITIONS

- A. Contractor shall familiarize all employees/subcontractors with the University's prohibition on weaponry and the use or possession of alcohol or illegal drugs on the campus. Persons in the possession of weapons, or under the influence of drugs or alcohol shall be removed immediately from the premises.
- B. In accordance with the federal Occupational Safety and Health Act of 1970 as amended, and all other relevant federal, state, municipal and local health, safety and environmental standards, Contractor shall at all times provide sufficient, safe and proper facilities for performance of all project work in the University environment, and for the inspection thereof by University, Architect and their authorized representatives in the field, at shops or at any other place where work is performed, or materials, supplies or equipment for the project work are in the course of preparation, manufacture, treatment or storage.
- C. When so ordered, Contractor shall immediately stop or cause to be stopped any part of the work which University or its representatives deem unsafe, until corrective measures satisfactory to University have been taken. Within twenty-four (24) hours after receipt of any such notice from University, Contractor shall take down all portions of the work and remove from the premises all structures or materials which University or its representatives may condemn as unsound, defective or improper, or as in any way failing to conform to pertinent federal, state or local health, safety or environmental standards, or the Plans, Specifications or other Contract Documents. Contractor shall, at its own cost and expense, replace the same with proper and satisfactory work and materials, and shall make good all work damaged or destroyed by or as a result of such unsound, defective, improper or non-conforming work or materials.
- D. Contractors shall at all times take reasonable precautions for the safety and adequate protection of members of the University community who may be exposed to the project work during the normal course of University operations. Contractors and vendors shall at all times exercise due care with regard to all equipment, machinery and materials to prevent damage, loss or injury to persons and property and shall use such adequate protective devices, warning signs, crossover points and barriers as may be reasonably required under the circumstances.
- E. Contractor shall not bring on-site any hazardous or toxic materials without prior written notice to and approval from the University. If the substance is of a type which by law requires notification to workers on the project site, Contractor shall immediately provide written notice of its chemical composition (including a copy of applicable Material Safety Data Sheets) to University in sufficient time to permit compliance with such laws by the University and other employers on site.
- F. In the event that Contractor encounters on the project site any material reasonably believed to be hazardous (e.g., asbestos or PCBs) which has not been rendered harmless, Contractor shall immediately stop work in the affected area and immediately report the condition to University

in writing. Work in the affected area shall resume when the hazardous substance has been rendered harmless or removed as determined by University in its sole and absolute discretion.

- G. All hazardous materials (including waste) shall be transported, handled and stored in accordance with all federal, state and local environmental and permit requirements and in such a manner as to protect worker safety and health.

## VII. COMPLIANCE

- A. Contractor shall comply and insure compliance with all federal, state, municipal and local laws ordinances, codes, rules, regulations, standards, orders, notices and requirements which bear on any function of the work performed, including but not limited to those relating to safety (e.g., confined space, asbestos, hazard communication), discrimination in employment, fair employment practices, immigration laws and equal employment opportunity, whether or not provided for by the Contract Documents, Plans, Specifications, Instructions to Bidders or otherwise, at no additional charge or expense.
- B. Contractor shall at any time on demand furnish such proof to University as the University may require to demonstrate its safety and employment practice compliance (e.g., confined space, asbestos or lead permits, certificates, testing devices, PPE, MSDS materials, affirmative action plan) and the correction of any violations. Contractor agrees to indemnify and save harmless University from any and all loss, injury, claims, actions, proceedings, liability, damages, fines, penalties, costs and expenses, including legal fees and disbursements, caused or occasioned directly or indirectly by Contractor's failure to comply or insure compliance with any of said laws, ordinances, rules, regulations, standards, orders, notices or requirements, or to correct any violations arising in connection with performance of the project work.
- C. The Immigration and Nationality Act as amended by the Immigration Reform and Control Act (ICRA) makes it illegal for employers to knowingly hire workers who are not authorized to work in the United States. Employers are required to complete for all employees an Employment Eligibility Verification Form I-9 which requires the prospective employee to produce documentation that establishes identity and employment eligibility. Contractor agrees and warrants that it shall not knowingly employ any worker on a University project for whom Contractor has not completed and maintained I-9 verification. Contractor further agrees to incorporate this requirement into any subcontract it enters in connection with performance of the project work.
- D. Contractor shall not employ workers, means, materials or equipment which may cause strikes, work stoppages, delays or other interferences by workers employed by University or other contractors on or in connection with the work, the project or the location thereof. See Campus specific Protocols.

## VIII. PERMITS

For Brookville projects, University shall obtain the general building permit if one is required. All other permits are Contractor's obligation. For Brooklyn projects, Contractor shall apply to all New York City Departments for each permit or application required to complete the project work.

## IX. HOUSEKEEPING

All construction vehicles must be parked in designated locations and loading docks kept clear.

Contractor shall, at its own cost and expense:

- A. Keep University premises, buildings, construction sites and corridors free at all times from all waste materials, packaging materials and other rubbish accumulated in connection with performance of the project work, by coordinating placement of debris dumpsters with the University's project manager and collecting and depositing said materials and rubbish in designated locations or containers.
- B. Secure construction site from campus with barriers, drywall partitions and door(s).
- C. Clean and remove from its work area and from contiguous work of others, any soiling, staining, mortar, plaster, concrete or dirt caused by the execution of its work, and repair all defects resulting therefrom.
- D. Pollution control
  - 1. Place all fluorescent lamps in University supplied containers. Care must be taken to ensure no lamps are broken or thrown out. Remove all ballasts from fluorescent light fixtures and place in University supplied container. No ballasts are to be thrown out.
  - 2. Spent batteries shall be disposed of in University supplied containers. No batteries are to be thrown out.
  - 3. Mercury containing thermostats and equipment shall be disposed of in University supplied containers. Extreme care must be taken to ensure the glass capsule containing mercury is not broken. Improper disposal of mercury-containing equipment is strictly prohibited.
  - 4. Identified or presumed asbestos containing materials shall be handled in accordance with all federal, state and local regulations and guidelines, particularly US EPA 40 CFR Part 763 (Asbestos Hazard Emergency Response Act), Title 12 of the New York State Compilation of Codes, Rules and Regulations (12 NYCRR Part 56) and New York City Department of Environmental Protection Title 15 – Asbestos Control Program, as applicable.

5. Burning or burying rubbish and waste materials on the project site is prohibited.
  6. Disposal of volatile fluid wastes (mineral spirits, oil, paints or paint thinner) in storm or sanitary sewer systems is prohibited.
- E. At the completion of its work in each area, perform such cleaning as may be required to leave the area 'broom clean'.
- F. At the entire completion of the project work, remove all tools, equipment, scaffolds, shanties and surplus materials.

Should Contractor fail to perform any of the foregoing to University's satisfaction, University shall have the right to perform and complete such work itself or through others, and charge the costs thereof to Contractor.

#### X. FINAL PAYMENT

The University shall retain five percent (5%) of the amount of each progress payment until final acceptance of the project.

- A. Final payment will not become due and payable until the following express conditions have been met:
1. The completion and acceptance of the work by University;
  2. Production by Contractor of evidence satisfactory to University that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred in connection with the work (see Contract 5(j) and F1312);
  3. Execution and delivery by Contractor in a form satisfactory to University, of a general release running to and in favor of University (See F1311 and F1024) , and
  4. Complete and full satisfaction of all claims, demands and disputes, as well as all obligations and responsibilities of all subcontractors arising or related to any subcontract.
- B. If any claim or lien is filed against the University, the work project, the premises or project funds by any person claiming that contractor or any subcontractor has failed to make payment for labor, services, materials, equipment or the like, or if University in good faith believes that such a claim or lien may be filed or brought, University shall have the right to:

1. Retain from any payment then due or thereafter to become due, an amount which it deems sufficient to satisfy, discharge or defend against any such claim, lien or any action which may be brought or judgment recovered thereon, and
2. Demand that Contractor provide, within ten (10) days of University's request, proof that such nonpayment, claim or lien has been fully satisfied, dismissed and discharged. If the nonpayment, claim or lien is not timely satisfied, University in its sole discretion, may cure the situation by any means necessary, and contractor shall within ten (10) days of demand therefor, be liable for and pay to University all amounts (including legal fees and disbursements) incurred by University related thereto. Contractor further agrees to indemnify, hold harmless and defend University on demand, for any and all such claims, liens and the costs, expenses (including legal fees and disbursements), damages and liabilities arising out of or related to said nonpayment, claim or lien.

No payment (final or otherwise) made in connection with the work project shall be conclusive evidence of the performance of the work in whole or in part. No such payment shall be construed to be an acceptance of defective, faulty or improper work or materials, nor shall it release Contractor from any of its contractual obligations, nor shall use by the University prior to completion constitute acceptance of the project work or any part thereof.

XI. No Arbitration

Disputes involving the Contract Documents may not be submitted to binding arbitration, but must, instead be heard by a court of competent jurisdiction in the State of New York.

XII. Service of Process

In addition to the methods specified in the Construction Services Contract, Contractor shall consent to service of process by registered or certified mail, return receipt requested. Service shall be deemed complete on Contractor's actual receipt of process or on University's receipt of the return by the carrier as refused or undeliverable. Contractor must promptly notify University of each and every change of address to which service of process can be made. Service by the University to the last known address shall be sufficient.