

Table of Contents

1. Purchase Orders General Terms and Conditions
2. Purchase Orders That Include Labor

1. **ORDER/AGREEMENT.** These terms and conditions are made part of the attached purchase order ("Order") issued by Florida Institute of Technology, Inc. ("Florida Tech") to the supplier identified in the Order ("Seller") to purchase certain goods and/or services described in the Order ("Goods"). The Order is binding on the parties when Seller (i) returns written acceptance, (ii) makes any shipment of Goods to Florida Tech, or (iii) accepts the Order in any other manner. The terms of the accepted Order, including these General Terms and Conditions, shall constitute the entire agreement between the parties (collectively the "Agreement"). In the event of a conflict between any of the terms on the face of an Order and those contained in these General Terms and Conditions, the terms on the face of the Order shall control. Any additional terms in any proposal, quotation, invoice, acknowledgment or other communication from Seller are hereby objected to and rejected, and shall not be binding on Florida Tech.
2. **PRICE.** The total price of the Goods shall be as stated in the Agreement and unless otherwise specified therein, the price for Goods shall be fixed. No additional charges or assessments of any kind (including, without limitation, freight/shipping charges, packaging charges, surcharges or taxes (other than any applicable sales taxes)) will be allowed unless such charges are clearly specified in the Agreement.
3. **PACKING; SHIPPING.** Seller shall describe, mark and pack Goods in a manner appropriate to ensure the Goods' protection until delivered to Florida Tech. Each box or crate shall be marked with Florida Tech's purchase order number, shipping address and Seller's name. A copy of the packing list/invoice must be affixed to the outside of each shipment. Seller shall comply with any and all delivery directions and instructions set forth in the Order. If Seller fails to follow Florida Tech's directions and instructions, Seller shall compensate Florida Tech for any resulting increase in transport costs or other expense to Florida Tech.
4. **DELIVERY; INSPECTION; ACCEPTANCE.** TIME IS OF THE ESSENCE as to Seller's supply of Goods, and Seller shall be responsible for any related damages. All Goods shall be delivered in the quantities, to the location(s) and on the date(s) set forth in the Agreement within the specified lead times. Goods are subject to inspection and acceptance at Florida Tech's location notwithstanding any prior payment. Non-conforming Goods may be held or returned at Seller's risk and expense. Seller specifically agrees to pay Florida Tech all costs related to rejection of Goods. Seller shall not repair or replace nonconforming Goods unless Florida Tech so directs. Except for customary quantity variations recognized by trade practice, Goods in excess of those specified will not be accepted. Such excess Goods will be held and returned to Seller at Seller's risk and expense in the same manner as nonconforming Goods.
5. **BILLING.** Seller shall issue invoices, bills of lading and packing lists in accordance with Florida Tech's requirements. Time periods for payment (which shall be at least 30 days) and discounts shall begin upon receipt of both conforming Goods and complete and accurate invoices and all supporting documentation. Florida Tech may make payment using Bank of America's card payment system.
6. **SALES TAXES.** Unless otherwise stated, the prices do not include sales, use, excise and similar taxes applicable to the Goods. Florida Tech is exempt from the payment of sales and use tax under Florida law. Florida Tech's Florida sales tax Certificate of Exemption number is 85-8012646509C-2. If Florida Tech's exemption is not applicable, all such taxes and similar charges shall be shown separately on Seller's invoice.
7. **WARRANTY.** Seller expressly warrants that all the Goods covered by this Order will be (i) in exact accordance with the description, drawing and/or specifications provided in the Order, (ii) new and unused, (iii) free from defects in material and/ or workmanship, (iii) merchantable and of good material and workmanship, (iv) fit and sufficient for their intended purpose to the extent Seller knows or has means to know of such purpose; (v) in compliance with the standards in Seller's industry and with all applicable laws, rules or regulations; and (vi) in the case of services, performed in a professional and workmanlike manner. Such warranty shall survive delivery, acceptance, inspection, testing, payment and use of Goods. No disclaimer of warranty, limitation of warranty or liability, or exclusion of damages for breach of warranty appearing in any invoice or other form used by Seller shall have any effect on the warranties contained in this Agreement.
8. **REMEDIES.** If any of the Goods fails to meet the foregoing warranties, Seller, upon notice thereof from Florida Tech, shall promptly correct or replace the same at Seller's expense. If Seller shall fail so to do, Florida Tech may cancel the Order as to all such Goods, and in addition, may cancel the then remaining balance of the Order. After notice to Seller, all such Goods will be held at Seller's risk. Florida Tech may, and at Seller's direction shall, return such Goods to Seller at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller. Any payment for such Goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. In addition to the foregoing remedies for breach of warranty and other remedies provided for in the Agreement, (i) Florida Tech may require Seller to refund the purchase price for, or repair or replace at Florida Tech's option and at Seller's expense, any Goods (or re-perform any service) that fails to comply with the Agreement, (iii) Florida Tech reserves the right to return nonconforming Goods as provided for in paragraph 4 above, (ii) Florida Tech reserves the right to cancel all or part of the undelivered portion of any order if Seller does not make deliveries as specified or if Seller otherwise breaches the terms of this Agreement, and (iii) Florida Tech shall have the right to terminate this Agreement as provided in paragraph 9 below. All remedies herein are cumulative and in addition to all rights and remedies provided by law or equity.
9. **TERMINATION.** Florida Tech may by written notice to the Seller cancel the Agreement for default in whole or, from time to time, in part, (i) if the Seller fails to deliver the Goods or to perform the services within the time specified in the Agreement, (ii) if the Seller fails to deliver Goods which conform to the contractual requirements, or to perform any of the other provisions of the Agreement, or so fails to make progress as to endanger performance of the Agreement in accordance with its terms, or (iii) if the Seller becomes insolvent, or commits an act of bankruptcy. If the Agreement is terminated for default, Florida Tech shall have any and all rights and remedies which the law provides for failure to perform in accordance with contract requirements.
10. **MODIFICATION OR CANCELLATION OF ORDERS.**
 - a. **Modification.** Florida Tech may by written order make changes in drawings or specifications require additional work, increase or decrease quantities of Goods or direct the omission of work covered by an Order. No modification or amendment to an Order shall be binding or enforceable unless in writing and signed by an authorized representative of Florida Tech.
 - b. **Cancellation.** Florida Tech may cancel any Order at any time without cause and if such canceled Goods were stock merchandise, Florida Tech's sole liability shall be to pay for Goods shipped pursuant to the Agreement prior to cancellation. If such canceled Goods were manufactured to Florida Tech's specifications, then, upon notice, Seller shall cease all performance related to such Goods (unless otherwise directed by Florida Tech) and Florida Tech shall pay Seller its actual costs for work and materials incurred in accordance with the Agreement, consistent with applicable lead times. Upon such payment, title to any work, materials and Goods shall pass to Florida Tech.*
11. **INFRINGEMENT.** Seller warrants that the sale and use of Goods will not infringe, directly or indirectly, any patent, trademark, trade name, trade secret, copyright or any proprietary right of another. If any Goods or the use thereof is held to infringe any proprietary right and its use enjoined, Seller shall, at its expense, procure for Florida Tech and its customers the right to continue using said Goods or replace said Goods with a substantially equal, but non-infringing product acceptable to Florida Tech. If further use of the Goods is not possible, Seller shall accept return of any unsold Goods and refund to Florida Tech all costs related to such Goods, including but not limited to the purchase price and transportation costs.
12. **INDEMNIFICATION.** Seller shall indemnify, defend (with counsel satisfactory to Florida Tech) and hold Florida Tech, its affiliates and subsidiaries, and their respective officers, trustees, employees, successors, assigns, insurers, customers and agents ("Indemnified Persons"), harmless against any and all claims, demands, actions, causes of action, liability, losses, damages, costs, expenses and reasonable attorneys' fees, which an Indemnified Person may incur in any way related to any Goods, or Seller's performance or negligent acts or omissions, including without limitation claims for personal injury, breach of warranty, infringement, strict liability, property damage, defect, or based on warning, instructions or government action. Seller agrees that its obligations herein shall survive the termination or expiration of the Agreement.
13. **COMPLIANCE WITH LAWS.** Seller, at its expense, shall comply with all laws, regulations and requirements applicable to Goods, to the supply of Goods to Florida Tech and to Seller's performance hereunder. Seller and its subcontractors shall comply with all wage, workers compensation, equal opportunity and reporting obligations. The Equal

Opportunity and Affirmative Action Contract Clauses contained in Section 202 of Executive Order 11246, as amended, 41CFR 60-1.4 and 41CFR 60-250.4 are incorporated in this purchase order by reference. Buyer and Buyer's subcontractors shall abide by the requirements of 41 CFR 60-741.5(a), which is incorporated herein by reference. 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. Buyer and Buyer's subcontractors shall abide by the requirements of 41 CFR 60-300.5(a), which is incorporated herein by reference. 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.

14. **LABELING LAWS.** Seller shall label containers of all Goods which are known to constitute a health, poison, fire or explosion hazard in accordance with all labeling laws of the state to which such Goods are shipped. In the absence of any such law, Seller shall label such containers in accordance with "American National Standard for Hazardous Industrial Chemical-Precautionary Labeling," published by the American National Standards Institute, Inc.
15. **FORCE MAJEURE.** Neither party will be held responsible for a breach, delay or failure of performance of any obligation hereunder that results from war, act of God or natural disaster (e.g. fire, earthquake or flood), or governmental action not due to the fault of the party (e.g. embargo).
16. **ASSIGNMENT.** Seller shall not assign or subcontract any of its rights, duties or obligations under the Agreement without Florida Tech's prior written consent. Such consent if granted shall not relieve Seller of its obligations under the Agreement.
17. **MISCELLANEOUS.** Failure to require strict performance of any provision of the Agreement shall not constitute a waiver or default by a party or diminish that party's right to subsequently demand strict compliance therewith. The headings herein are for convenience only and shall not affect interpretation. If any provision of the Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of the Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible. The Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to conflict of law provisions thereof). Seller consents to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Middle District of Florida or of the state courts in Brevard County, Florida for any legal or equitable action arising out of or in connection with the Agreement. Seller waives any and all objections to venue in such courts.



CONSTRUCTION GENERAL CONDITIONS Section B-1.1

For terms of this Agreement, the Contractor covenants and agrees with the Owner as follows:

1. In this Agreement the word “WORK” shall mean the work, labor, services, materials, and things required to be done and furnished by the Contractor under this Agreement.
2. The word “Owner” shall mean the Florida Institute of Technology.
3. The Contractor agrees to provide all labor, materials, scaffolding, equipment, systems, machinery, tools, apparatus, transportation and incidentals necessary to complete the WORK as described above and/or as described elsewhere within the Contract Documents.
4. The Contractor agrees to provide all necessary licenses (occupational or otherwise required for work within this Contract jurisdiction).
5. The Contract Documents consist of this written Agreement, Bid Documents, Drawings, Specifications and any Noted Addendum. Additionally, the Contractor shall visit the Florida Tech website at <http://www.facilities.fit.edu/standards.php> and review the “Design and Construction Standards” for Sections that apply to his Work, including Division 1 - General Conditions, for compliance.
6. Except as modified by this Agreement, the WORK shall be performed and completed in accordance with the Contract Documents, including the drawings, plans, specifications, Industry Standards, Codes, and this Agreement.
7. The Contractor upon execution of this agreement shall be bound to the Owner by the terms of all the Contract Documents implicit to his Work.
8. The Contractor shall provide adequate, competent, and experienced full-time, on-site supervision (satisfactory to the Owner) during the performance of the WORK to be performed under this Agreement. Such supervision shall have the authority to carry out directions from the Owner relating to the Contractor’s work, or responsibility.
9. The Contractor shall provide technical services as required to effect the operation of equipment and/or material furnished under this Agreement, including performance of specific testing, if any, and shall instruct the Florida Institute of Technology’s personnel in the operation, maintenance and control of such equipment.
10. All WORK shall be done to the final approval of the Florida Institute of Technology, and it’s decision as to the performance of the WORK in accordance with the plans and specifications and the true constructive meaning of the plans and specifications shall be final, subject to the limits stated in the Contract Documents.
11. The Contractor shall provide safe and sufficient facilities at all times for inspection of the WORK by the Owner and it’s designates, as well as, Code compliance personnel.
12. Contractor shall field dimension the WORK in any instance that accurate dimensions of fabricated components are required to guarantee a complete, high quality and compatible installation of the Contractor's WORK as required to meet the intent of Contract Documents and details provided.
13. The Contractor shall coordinate all work, and unless otherwise expressed or provided, the Contractor shall begin WORK covered by this Agreement as soon as the Project is ready for such WORK, or immediately upon verbal or written notice by the Owner, and shall carry on said WORK efficiently and at a rate that will not cause delay in the progress of the work of others.
14. The Contractor shall at all times, supply and promptly pay for, adequate tools, appliances, equipment, a sufficient number of properly skilled workers, and a sufficient amount of materials and supplies of specified quality to efficiently and properly prosecute the WORK.
15. It is further understood that subcontracts will be awarded and labor employed upon the job without discrimination as to whether the employees of any contractor or Contractor are members or are non-members of any labor organization.

16. The construction time allotted for each phase or portion of the Project will be mutually agreed upon prior to start of the Work. If, in the opinion of the Owner, the Contractor falls behind in the progress of the WORK to be done under this Agreement, the Owner may, upon seventy-two (72) hours written notice, direct the Contractor to take such steps as the Owner deems necessary to improve the rate of progress, including requiring the Contractor to increase the labor force, number of shifts and/or overtime operations, days of work, amount of plant or other remedies. If Contractor fails to comply with the requirements of this subparagraph to Owner's satisfaction, in addition to any other right or remedy Owner may have under this Agreement, Owner may employ such workers and purchase and lease such materials and equipment as Owner deems necessary in order to regain the proper rate of progress with respect to the WORK. All costs incurred by Owner in so regaining the proper rate of progress for the WORK shall be charged to the Contractor.
17. In performing this Agreement, the Contractor agrees that it will not discriminate against any employee or applicant because of race, creed, color, sex or national origin in the manufacture, assembly, delivery, erection and installation of materials and performance of the WORK covered by this Agreement.
18. The Date of Substantial Completion of the WORK or designated portion thereof is the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so that the Florida Institute of Technology can occupy or utilize the WORK or a designated portion thereof for the use for which it is intended.
19. The quantity and scope of WORK required herein is directed by the whole of the Contract Documents, and Contractor acknowledges its obligation under this Agreement to coordinate its WORK with materials and/or equipment to be furnished by others to ensure a completely compatible system.
20. Contractor shall be liable for any damages to adjacent surfaces caused by its WORK, including damages resulting from Contractor's cleaning of such surfaces.
21. The Contractor shall provide and be responsible for layout, including the accuracy thereof, necessary for the performance of the WORK covered by this Agreement.
22. The Contractor shall perform all cutting, fitting, patching, sleeving, grouting and sealing of its WORK that may be required to fit it to, receive, or be received by the work of others as shown, or reasonably implied by the Contract Documents, or as required, or reasonably implied by the rules and regulations, codes and requirements of all regulatory agencies having jurisdiction over the project; or as required or reasonably implied to achieve consistency and compatibility with the design of elements being penetrated.
23. In the event the Contract requests the Contractor to review a proposed modification to the Project which may affect the Contractor's WORK, the Contractor shall respond in writing within seven (7) calendar days after receipt of such request, or other reasonable time limits as the Parties may agree, stating the effect of the proposed modification upon its performance, including details of cost and time thereof. Otherwise, the Contractor shall accept the determination of the Owner as to the effect of the proposed modification or change.
24. The Owner may at any time, without notice to the Surety of this Agreement, by written order designated or indicated to be a change order, make any change in the WORK within the general scope of this Agreement.
25. In the event the Contractor is required by the Owner to perform additional WORK for which the amount of compensation is not previously agreed upon, the Contractor shall prepare and submit to the Owner, a proposal describing the estimated quantities and cost involved.
26. The Contractor shall keep accurate detailed and itemized records of the costs of any such change and shall report such costs to the Owner in the form and manner prescribed by the Owner.
27. Unless specified otherwise in the Contract Documents or the Scope of Work, should concealed or unknown conditions in an existing structure be at variance with conditions indicated in the Contract Documents, or should unknown physical conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim made within seven (7) days after the first observance of the conditions. Failure to serve written notice within seven (7) days of encountering the changed conditions shall constitute waiver and abandonment of any such claim.
28. Should the Contractor fail, in the opinion of Owner, at any time to supply a sufficient number of properly skilled workers or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the WORK with promptness and diligence, or fail to correct defective WORK promptly, or fail in the performance of any of the requirements herein, Owner may, at its option, provide such labor, materials and equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Contractor. Owner shall provide seventy-two (72) hours prior notice to Contractor of such failure and Owner's decision to so provide such labor, materials and equipment, except in an emergency.

29. If Contractor at any time shall refuse or neglect to supply sufficient properly skilled workers or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the WORK with promptness and diligence, or cause by any action or omission the stoppage or interference with the WORK of Owner or other Contractors, or fail in the performance of any of the covenants herein contained, or be unable to meet its debts as they mature, Owner may, at its option any time after serving written notice within three (3) calendar days of such default with the failure to cure the default, terminate Contractor's employment by delivering written notice of termination to Contractor. Thereafter, Owner may take possession of the plant and WORK, materials, tools, appliances and equipment of Contractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute Contractor's WORK, on such terms and conditions as shall be deemed necessary by Owner, and shall deduct the cost thereof, including all charges, expenses, losses, costs damages and attorneys' fees, incurred as a result of Contractor's failure to perform, from any money then due or thereafter to become due to Contractor. If Owner so terminates the employment of Contractor, Contractor shall not be entitled to any further payments under this Agreement until Contractor's WORK has been completed and accepted by Florida Institute of Technology. In the event that the unpaid balance due exceeds Owner's cost of completion, the difference shall be paid to Contractor after the expiration of all applicable warranties; but if such expense exceeds the balance due, Contractor agrees promptly to pay the difference to Owner.
30. Additionally, Owner shall have the right to terminate this Contract, by written notice, without Contractor being at fault, for any cause or for its own or the Florida Institute of Technology's convenience, and require Contractor to immediately stop work. In such event, Owner shall pay Contractor for that portion of the WORK actually performed in an amount proportionate to the total Contract Price including Contractor's Fee. Owner shall not be liable to Contractor for any other costs nor for prospective profits on WORK not performed. However, if the reason for the termination and cancellation is due to any default or action by Florida Institute of Technology, or as a result of court order or public authority, then Owner shall not be liable to Contractor for any sum greater than that which Owner receives from Florida Institute of Technology with respect to Contractor's performance, less any costs incurred by Owner.
31. The Contractor agrees to comply with all local, state and federal laws, codes, regulations and ordinances where they may apply to the project.
32. It is agreed that federal, state and local tax laws, social security laws, and unemployment compensation laws are made a part of this Agreement and the Contractor agrees to comply therewith.
33. In the event of the Contractor's violation of the above, the Contractor shall bear all costs resulting from such violation and shall hold the Owner harmless from any damages (including attorney's fees), claims, and causes of action arising from such violation.
34. Contractor shall be responsible for compliance with all applicable environmental protection requirements, codes, and regulations, and shall recognize the environmental requirements of the Project.
35. Should the Contractor be negligent in its responsibilities to preserve and protect these existing lands and waters as required by law, it will be solely responsible for paying any fines, penalties, fees, replacement/restoration costs, or any other costs or damages associated with satisfying governing authorities.
36. Prohibited drugs, drug paraphernalia, alcoholic beverages, firearms, explosives and weapons shall not be allowed in any office, work location, vehicle or vessel, or facility of Owner, Contractor(s), lower tier subcontractor(s) or Florida Institute of Technology.
37. Contractor shall comply with all safety standards, rules and regulations relating to safety, cleanliness and sanitation established by Owner for the Project as a whole and by the Florida Institute of Technology of the facility at which the WORK is performed. Contractor shall immediately stop work and take corrective action when directed by the Florida Institute of Technology because of any unsafe condition or practice. Contractor shall be responsible for the safety of its workers and the WORK and shall not create hazards for others or the work of others. Contractor shall provide first aid and ambulance facilities for its workers to the extent sufficient facilities are not provided for the Project as a whole by Owner. In case of an emergency, the Florida Institute of Technology may direct Contractor's personnel and resources for the protection of life and property.
38. Contractor shall promptly submit to Owner's safety coordinator at the site a written report covering all injuries to the employees of Contractor or its lower tier Subcontractors occurring on the site.
39. The Contractor shall be fully aware of all the latest OSHA regulations and shall maintain on site, a complete copy of all the updated OSHA requirements. Furthermore, all requirements covered by OSHA will be adhered to at all times and non-compliance will be cause to stop the Work.
40. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

41. The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the Florida Institute of Technology and users of adjacent utilities.
42. Contractor agrees to indemnify and hold harmless the Florida Institute of Technology against any loss, cost, damage or liability, including attorney's fees, arising from Contractor's failure to comply with the foregoing.
43. The Contractor shall secure and pay for the following insurance: See Contract Section "A".
44. Contractor shall require each lower tier subcontractor to provide and maintain at its expense, the above noted insurance meeting the same limits and requirements as the Contractor's insurance.
45. The Contractor's and each lower tier subcontractor's insurance must be endorsed to include the Contractor and Florida Institute of Technology as additional insured under this insurance.
46. All the above referenced insurance must remain in force for the duration of this Agreement and for the duration of the warranty period.
47. The Contractor shall turn the WORK over to the Owner in good condition and free and clear of all claims, encumbrances, or other liens and shall protect and hold harmless the Florida Institute of Technology from all claims, encumbrances or liens growing out of the performance of this Agreement, and the Contractor will, at its own cost and expense (including attorney fees), defend all suits to establish such claims, and pay any such claims or liens so established. In the event of failure by the Contractor to comply with this requirement, the Owner may, at its sole discretion, bond off any liens. All costs of such action will be for the account of the Contractor.
48. The Contractor shall, as often as requested by the Florida Institute of Technology, furnish a sworn statement showing all parties who furnish labor or materials to the Contractor, with their names and addresses and amounts due or to become due each of them. Like statements may, at Owner's option, be required from any lower tier subcontractor or supplier of the Contractor.
49. The Contractor shall furnish the Owner, if requested, evidence of the payment of all bills and expenses incurred by the Contractor for labor, services, equipment and materials used by the Contractor, in any way in connection with the Project.
50. Any and all transportation tax, sales tax, use tax or any other tax that might accrue through purchase of materials or amounts paid for labor by the Contractor or occasioned by performance of this Agreement, shall be borne and paid for by the Contractor.
51. The Contractor agrees that payment due hereunder is not assignable and that no part of this Agreement can be assigned, except by and in accordance with the written consent of the Owner.
52. Contractor warrants to the Florida Institute of Technology that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, and that all WORK under this Agreement will be of good quality, free from faults and defects and in conformance with the Contract Documents. Contractor agrees to promptly make good, without cost to the Florida Institute of Technology, any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period(s) established in the Contract Documents, and if no such period(s) be stipulated in the Contract Documents, then such guarantee shall be for a period of one (1) year from the date of Substantial Completion of the Project.
53. If, within any warranty/guarantee period, repairs or changes are required in connection with the WORK, which in the opinion of the Florida Institute of Technology is made necessary as a result of materials, equipment or workmanship which are defective, or not in accordance with the terms of the Contract Documents, Contractor shall, promptly upon receipt of notice, and at its expense, proceed to make good any WORK, materials, equipment, contents of structures, or site disturbed as a result of fulfilling any such warranty/guarantee.
54. Defects within the warranty/guarantee period shall be immediately remedied. Notification by the Owner of defects shall suspend the warranty/guarantee period. The warranty/guarantee period for that replaced or restored WORK shall be extended by the length of time used to complete the remedial work.
55. Failure to respond to warranty/guarantee WORK within forty-eight (48) hours' written notice and to diligently pursue corrective measures shall be considered a Contractor breach of its warranty/guarantee. The Owner may have the defects corrected, and the Contractor and the Contractor's Surety shall be liable for all expenses incurred therefore.
56. All warranties/guarantees shall become effective on the date of Project Substantial Completion unless a later date is required by Contract Documents. Extended warranties needed to supplement the use of equipment prior to Substantial Completion for start-up, completion of the Work, etc. shall be the Contractor's responsibility.
57. The failure of the Owner to enforce, at any time or any period of time, any one or more of the provisions of the Contract Documents shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

58. Contractor shall be responsible to the Florida Institute of Technology for the acts and omissions of its employees and all its lower tier subcontractors and their agents and employees and other persons performing any of the Work under a contract with the Contractor.
59. The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them. The Owner shall have the right to require any person to be removed from the site for cause.
60. It is expressly agreed that time is of the essence of the Agreement, and that the payment of the consideration is conditioned upon completion of this Agreement and completion of the WORK as herein specified.
61. The Owner agrees to pay the Contractor for the WORK the amount described on the first page of this Agreement. The sum shall be paid by the Owner to the Contractor as follows (unless otherwise agreed to): As the WORK progresses, an amount equal to ninety percent (90%) of the value of WORK completed from month to month (10% to be held as Retainage). Such payment is conditional upon the Contractor's delivery to the Owner on the twenty-fifth (25th) day (or such other day as the Owner may stipulate) of the preceding thirty (30) calendar days, a mutually agreed to estimate describing the Contractor's WORK performed during the month for which payment is requested. No request for payment will be processed unless the Contractor has furnished the Owner the following: 1) An executed (signed by both Parties) subcontract Agreement; 2) Current insurance certificate approved by the Florida Institute of Technology; 3) Waiver of liens from all material suppliers and/or lower tier subcontractors for work or materials that are included within said request.
62. No progress payment under this Agreement shall be conclusive evidence of the performance of this Agreement in whole or in part, and no payment shall be construed as acceptance of defective WORK or improper materials.
63. The Contractor shall pay for all materials and labor used in connection with the performance of this Agreement through the period covered by previous payments received from the Owner, and furnish satisfactory evidence, when requested by the Owner, to verify compliance with the above requirements.
64. The Owner, at its discretion and at the point at which 50% of the progress has been completed, may elect to reduce the amount of the Retainage from 10% to 5% (or less) for the remainder of the project. This, in part will be based on the Contractor's performance. Reduction by 50% of funds previously held may also be allowed based on Contractor performance and the expectation of completing the project in a timely and quality manner.
65. The final payment shall be made thirty (30) calendar days after completion of The Project and upon acceptance by the Florida Institute of Technology. Notwithstanding any provision of this Contract to the contrary, it is further expressly agreed that final payment by the Contractor to his Subcontractors/Suppliers is an absolute condition precedent to final payment by the Owner to the Contractor.
66. Final payment is further subject to the Owner's prior receipt from the Contractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees and warranties and bonds relating to the WORK, a final waiver of lien, complete releases, and a certificate of insurance covering the duration of the time of the warranty.
67. At the time of final payment, Contractor agrees to furnish to the Owner the following: 1) An affidavit on a form acceptable to the Owner certifying to the Contractor's payment in full for all items relating to the cost of the WORK hereunder. 2) A final waiver of lien from all lower tier subcontractors on forms acceptable to the Owner. 3) A final waiver of lien and complete release from the Contractor on forms acceptable to the Owner.
68. If at any time there shall be evidence of lien or claim for which, if established, Contractor or Florida Institute of Technology might become liable, and which is chargeable to Contractor, or if Contractor shall incur any liability to Owner, or Owner shall have any claim or demand against Contractor of any kind or for any reason, whether or not reduced to judgment or award, the Owner shall have the right to retain out of any payment due or to become due under this Agreement or any other agreement between the Owner and the Contractor, an amount sufficient to indemnify the Florida Institute of Technology against such lien or claim, and to compensate Owner for and fully satisfy such liability, claim, or demand, and to charge or deduct all costs of defense or collection with respect thereto, including reasonable attorneys' fees. Should any claim or lien develop after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such claims or liens, and all costs incurred in collecting said monies from the Contractor.
69. Any claim, dispute or other matter in question between the Owner and the Contractor relating to this Agreement shall be governed by the laws of the State of Florida. All venues shall in all events be in Brevard County, Florida.

INSURANCE

WORKERS' COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE

Limits of the Contractor's insurance shall not be less than the following limits:

WORKERS' COMPENSATION INSURANCE: STATUTORY BENEFITS as provided by statute; and EMPLOYER'S LIABILITY INSURANCE: \$1,000,000 per occurrence (minimum \$1,000,000).

COMPREHENSIVE OR COMMERCIAL GENERAL LIABILITY INSURANCE

Including but not limited to the following supplementary coverages: (i) Contractual Liability to cover liability assumed under this agreement, (ii) Product and Completed Operations Liability Insurance, (iii) Broad Form Property Damage Liability Insurance, and (iv) explosion, collapse and underground hazards (deletion of the X,C,U exclusions) if such exposure exist.

The limits of the Contractor's insurance shall not be less than the following:

Bodily Injury	\$ <u>1,000,000</u>	per occurrence (minimum \$1,000,000).
Property Damage	\$ <u>1,000,000</u>	per occurrence (minimum \$1,000,000).

If a Combined Single Limit is provided, the total coverage shall not be less than \$2,000,000 per occurrence (minimum \$2,000,000).

The most recent Rating Classification Financial Size Category of the Insurer as published in the latest edition of AM Best's Key Rating Guide" (Property-Casualty) shall be a minimum of A.

AUTOMOBILE LIABILITY INSURANCE REQUIREMENTS

The limits of the Contractor's insurance shall not be less than the following:

Bodily Injury	\$ <u>1,000,000</u>	per occurrence (minimum \$1,000,000).
Property Damage	\$ <u>1,000,000</u>	per occurrence (minimum \$1,000,000).

If a Combined Single Limit is provided, the total coverage shall not be less than \$ per occurrence (minimum \$2,000,000).

The most recent Rating Classification Financial Size Category of the Insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) shall be A.

EXCESS LIABILITY INSURANCE

The limits of the Contractor's insurance shall not be less than \$ N/A per occurrence.

The most recent Rating Classification/Financial Size Category of the Insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) shall be A .

Florida Institute of Technology Section B – 1.3

Safety

All contractors and vendors doing business on the Campus of the Florida Institute of Technology shall comply with all safety standards, rules and regulations relating to safety, cleanliness and sanitation established by Industry Safety Standards (i.e. OSHA, ANSI, EPA, etc) and the Florida Institute of Technology (visit <http://facilities.fit.edu/standards.php> and go to Division 1, Section 01200 – Safety, for additional information).

Contractors/Vendors shall immediately stop work and take corrective action when directed by the Florida Institute of Technology because of any unsafe condition or practice. In case of an emergency, the Florida Institute of Technology may direct Contractor/Vendors' personnel and resources for the protection of life and property.

Any safety and/or health violations found by a regulatory agency, such as OSHA, and any fines imposed on the Florida Tech due to the Contractor/Vendors failure to abide by the Industry Safety Standards, will result in a reimbursement or a direct payment to Florida Tech in the amount of the fine, by the Contractor/Vendor.

INDEMNIFICATION

To the fullest extent permitted by law and pursuant to Chapter 72-52 of the Laws of the State of Florida, the Contractor/Vendor shall indemnify, defend, and hold harmless the Florida Institute of Technology and their agents, representatives, and employees from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of or resulting from any unsafe conditions, failure to comply with OSHA rules, guidelines and regulations, and/or non-compliance with the Safety requirements noted herein. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist.