

THE UNIVERSITY OF NORTH CAROLINA AT WILMINGTON
GENERAL TERMS AND CONDITIONS FOR PROCUREMENT OF
GOODS AND SERVICES

1. DEFINITIONS. As used herein,

(a) "Agreement" or "Contract" means these General Terms and Conditions for Procurement of Goods and Services and incorporating the University's Purchase Order and any Statement of Work executed by the Parties under this Agreement.

(b) "Goods" means anything purchased other than services.

(c) "Parties" means the University and the Vendor (each, individually, a "Party").

(d) "Products" means all equipment, merchandise, hardware, goods, and documentation to be delivered hereunder to University by Vendor in accordance with the Solicitation Document and/or Purchase Order(s), as applicable.

(e) "Purchase Order" means the document used by the University to order Products and/or any type of Service provided by Vendor in sufficient detail to allow Vendor to accept and accurately fulfill the University's order, and including terms describing price, quantity, invoicing and delivery addresses, and purchasing agent contact information.

(f) "Services" means all services to be performed by Vendor for University under this Agreement, the Solicitation Document, and/or the Purchase Order(s), as applicable.

(g) "Solicitation Document" means the University's request for proposal, request for information, invitation for bid, and/or other solicitation document issued by the University to solicit offers for the Products and Services.

(h) "Statement of Work" means a document that defines, for each project under this Agreement, the (1) work activities to be performed by Vendor, (2) payment rates, (3) additional payment terms (if any), (4) Products and/or Services, (5) work schedule governing Vendor's provision of Services, and any other relevant information the Parties wish to include.

(i) "University" means The University of North Carolina at Wilmington and its successors and assigns.

(j) "Vendor" means the Party providing the Products and/or Services to the University under this Agreement, and its successors and assigns.

2. PAYMENT TERMS.

(j) *Terms.* All invoices shall be submitted to the University's Systems and Operations Department unless otherwise instructed on the face of the Purchase Order. Payment terms are net thirty (30) days after the University's receipt of a correct invoice.

(k) *Payment to third party.* Upon written request approved by the University and solely as a convenience to the Vendor, the University may: (i) forward the Vendor's payment check directly to any person or entity designated by the Vendor, and (ii) include any person or entity designated by Vendor as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the University to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all contract obligations.

3. TAXES. Any applicable taxes shall be invoiced as a separate item. Invoices shall not include North Carolina Sales & Use Tax. The University is exempt from North Carolina Sales & Use Tax for all qualifying purchases. The University's North Carolina Sales & Use Tax exemption number is 400032. The University shall not be responsible for income or property taxes which are responsibility of the Vendor.

4. TRANSPORTATION OF PRODUCTS. Transportation of Products shall be Domestic shipping FOB Destination or International shipping DDP unless otherwise specified in the Solicitation Document or Purchase Order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the University. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the Purchase Order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

5. STANDARDS.

(a) *Manufacturing Requirements.* All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural; or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the

Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution. *Energy Star Compliance.* All Products constituting electronic office equipment, including but not limited to, computers, monitors, printers, scanners, photocopy machines, and facsimile machines, shall be Energy Star compliant. If any of the Products do not satisfy Energy Star requirements, Vendor shall provide a justification statement explaining why the Products are not Energy Star compliant.

(b) *Quality Assurance.* Vendor will provide and maintain a quality assurance system or program that includes any Products and will tender to the University only those Products that have been inspected and found to conform to the requirements of this Agreement. All manufactured items and/or fabricated assemblies comprising Products are subject to operation, certification or inspection, and accessibility requirements as required by State or federal regulation.

(c) *Site Preparation.* Vendors shall provide the University complete site requirement specifications for the Products, to the extent applicable. These specifications shall ensure that the Products to be installed shall operate properly and efficiently within the site environment. Any subsequent alterations or modifications required to be made to the site which are directly attributable to incomplete or erroneous specifications provided by Vendor shall be made at the expense of Vendor.

(d) *Specifications.* The apparent silence of the specifications in the Solicitation Document as to any detail concerning the Products shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Unless otherwise specified in the University's Solicitation Document, the Products shall be new and not refurbished, field-upgraded, previously opened, or otherwise used.

(e) *Information Security Compliance and Certifications.* At all times during the term of this Agreement, Vendor shall (1) use information security best practices for transmitting and storing potentially sensitive information; (2) employ information security best practices with respect to network security techniques, including, but not limited to, firewalls, intrusion detection, and authentication protocols; (3) comply with all applicable laws and regulations regarding privacy and data security to maintain database security on any online financial transactions conducted on University's behalf through the use of Vendor's Software or records belonging to University that contain sensitive and confidential information; (4) provide most current Statement on Standards for Attestation Engagements (SSAE) 16 attestation at least once every 2 years; (5) maintain ISO/IEC 27000 series information security best practices; and (6) in the event Vendor is acting as a Service Provider as defined by the Payment Card Industry Data Security Standard (PCI-DSS), comply with the Payment Card Industry Data Security Standard (PCI-DSS) and provide appropriate PCI attestation documentation. The University reserves the right to conduct or request the Vendor to have an independent third party security audit performed.

6. TRAVEL EXPENSES. Unless otherwise agreed by the Parties, Vendor may be reimbursed for documented travel expenses arising under the performance of this Agreement at the out-of-state rates set forth in North Carolina General Statute §138-6; as amended from time to time. Vendor personnel whose travel expenses are to be paid or reimbursed by University funds are subject to University travel regulations, which are located at <https://uncw.edu/travel/>. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles, and to require employees to share rental vehicles whenever the Services to be provided reasonably allow. Unless otherwise agreed by the Parties, all Vendor-incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt, and shall be paid by the University within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the University unless otherwise agreed by the Parties. The University will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services for which it is necessary to be on site under this Agreement.

7. OWNERSHIP OF WORK PRODUCT. All items delivered by Vendor hereunder shall consist of Vendor's pre-existing intellectual property.

8. SUBCONTRACTING. The Vendor may subcontract the performance of Services to third parties only with the Prior written consent of the University. The Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same regulatory obligations and standards required of the Vendor under this Agreement.

9. ASSIGNMENT. This Agreement may not be assigned by either Party without the written consent of the other Party, which shall not be unreasonably withheld, except that Vendor may assign this Agreement to an entity owned or controlled by Vendor upon written notice to University. For purposes of this Section, the term "assignment" includes any change in control transaction, such as a merger or acquisition of substantially all the shares or assets of a Party to this Agreement. An assignment will not relieve the assigning Party of its obligations under this Agreement.

10. QUALIFIED PERSONNEL; INTERVIEWS. For services procurements, Vendor shall ensure that qualified personnel of the Vendor will provide the Services under this Agreement in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the applicable industry. Prior to Vendor commencing the provision of the Services and upon the University's request, the University shall have the opportunity to review resumes and conduct interviews

of the personnel who Vendor proposes to deploy to provide the Services to the University. If the University is not satisfied with the proposed personnel, the University may request acceptable substitute personnel to be provided by Vendor.

11. KEY PERSONNEL. For Services procurements, Vendor shall not substitute key personnel assigned to the performance of this Agreement without prior written approval by the University's designated contract administrator. Any desired substitution shall be noticed to the University's contract administrator accompanied by the names and references of Vendor's recommended substitute personnel. The University will approve or disapprove the requested substitution in a timely manner. The University may, in its sole discretion, terminate the Services of any person providing Services under this Agreement. Upon such termination, the University may request acceptable substitute personnel to be provided by Vendor.

12. CARE OF PROPERTY. Vendor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this Agreement or purchased by it for this Agreement and will reimburse the University for loss of damage of such property.

13. INSPECTION AT VENDOR'S SITE. The University reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective vendor prior to Purchase Order award, and during the Purchase Order term as necessary for the University's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Agreement. If the University wishes to inspect the equipment at Vendor's factory, an additional charge shall be assessed for a Customer Witnessed Acceptance Test (CWAT). In addition, the University shall be responsible for all travel, lodging, meals, etc., associated with CWAT.

14. CONDITION AND PACKAGING. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

15. INDEPENDENT CONTRACTOR. Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent contractors and not employees or agents of the University. This Agreement shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

16. INSURANCE COVERAGE.

(a) *Generally.* Vendor's insurance policies shall meet all laws of the State of North Carolina and shall be obtained from companies licensed or approved to do business in the State of North Carolina with an A.M. Best rating of not less than A-VII. The minimum coverage limitations indicated below shall not be interpreted as limiting Vendor's liability and obligations under this Agreement. University shall not be deemed or construed to have assessed the risk that may be applicable to Vendor. Vendor shall assess its own risks and, if it deems appropriate, maintain higher limits and broader coverages. University shall be listed as an additional insured, but only to the extent required by written contract. Vendor will provide thirty (30) days advance notice to University, either directly or through the insurer, of any cancellation or non-renewal of a policy. The insurance policies must be written on a primary basis and any insurance or self-insurance maintained by University shall be non-contributing, but only to the extent Vendor is at fault and required by written contract.

(b) *Commercial General Liability.* Vendor, at its sole cost and expense, shall maintain Commercial General Liability (CGL) insurance (ISO form CG0001 or equivalent) with the following minimum limits of liability: (i) General Aggregate: \$2,000,000; (ii) Products/Completed Operations Aggregate: \$2,000,000; (iii) Personal/Advertising Injury: \$1,000,000; and (iv) Each Occurrence Limit: \$1,000,000. Umbrella or excess liability insurance may be used to meet the CGL coverage limit requirements.

(c) *Workers' Compensation Insurance.* Vendor, at its sole cost and expense, shall maintain Workers' Compensation Insurance in accordance with the limits and terms required by the laws of North Carolina, as well as Employers' Liability coverage with minimum limits of \$500,000, covering all of Vendor's employees who are engaged in any work under this Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under this Agreement.

(d) *Automobile Liability Insurance.* Vendor, at its sole cost and expense, shall maintain Automobile Liability Insurance, to include liability coverage, covering all owned, non-owned, employee non-owned, leased, and hired vehicles used in connection with this Agreement. The minimum combined single limit shall be \$1,000,000 bodily injury and property damage per accident. Umbrella or excess liability insurance may be used to meet the Automobile Liability coverage limit requirements.

17. AVAILABILITY OF FUNDS. Any and all payments to the Vendor are contingent upon and subject to the availability of funds to the University for the purpose set forth in this Agreement.

18. INDEMNIFICATION AGREEMENT. Vendor shall indemnify, defend and hold harmless the University, its trustees, officers, employees and agents (collectively, "Indemnitees") from and against any and all damages, costs, liabilities, losses and expenses incurred by Indemnitees arising from or related to (i) the Products delivered or the Services performed by Vendor in a negligent manner; (ii) a breach of this Agreement by Vendor; or (iii) any

misconduct or acts of negligence by Vendor. Vendor shall indemnify, defend and hold harmless University from and against any claim asserted against University alleging that the Products or Services as delivered by Vendor constitutes a misappropriation of any proprietary or trade secret information or an infringement of any patent, copyright, trademark or other intellectual property right. The University shall provide prompt written notice within 5 business days of any claim covered by Vendor's indemnification obligations hereunder. The University shall have the right to assume exclusive control of the defense of such claim or, at the option of the Vendor, to settle the same. The University agrees to cooperate reasonably with Vendor in connection with the performance by Vendor of its obligations in this Section.

19. PERFORMANCE AND DEFAULT.

(a) If, through any cause, the Vendor shall fail to fulfill in timely and proper manner the obligations under this Agreement, the University shall thereupon have the right to terminate this Agreement, but only after Vendor has had reasonable opportunity to cure by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this Agreement prepared by the Vendor shall, at the option of the University, become the University's property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. The University reserves the right to require a performance bond or other acceptable alternative performance guarantees from successful Vendor without expense to the University.

(b) In case of default by the Vendor, the University may cancel and procure the articles or Services from other sources. In addition, in the event of default by the Vendor, the University may initiate proceedings with the State of North Carolina to de-bar the Vendor from doing future business with agencies of the State of North Carolina.

(c) The Vendor shall be in default if it submitted a certification for price-matching preference under Executive Order #50 and G.S. § 143-59 that was false and/or contained materially misleading or inaccurate information, and/or the Vendor failed to provide information and documentation requested by the University to substantiate Vendor's certification. The State of North Carolina may take action against the Vendor under the False Claims Act, G.S. § 1-605 through 1-617, inclusive, for submitting a false certification for the price-matching preference under Executive Order #50 (including but not limited to treble damages and civil penalties).

20. TERMINATION (SERVICES AND INDEFINITE QUANTITY CONTRACTS ONLY). (a) Either Party may terminate this Agreement without penalty for any reason upon 30 days written notice. If this agreement is terminated by the University for Convenience, any remaining agreement coverage which may be due the University hereunder is refundable on a pro-rata basis. (b) If either party fails to perform its obligations under this agreement and such failure continues for a period of thirty (30) days after written notice of such failure, the non-breaching party shall have the right to terminate this Agreement and have no further obligation to the other party hereunder, and such termination shall be in addition to and not exclusive of other rights and remedies available to non-breaching party.

21. CANCELLATION (EXECUTIVE ORDER #50 CONTRACTS). A contract awarded to a North Carolina resident bidder pursuant to Executive Order #50 and G.S.143-59 may be cancelled by the University if the University determines that the bidder's certification or information in resident bidder's Certificate for Price- Matching Preference under Executive Order #50 is false, materially inaccurate or misleading.

22. FORCE MAJEURE. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, riot, strikes, civil insurrection, acts of public officials, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

23. CONFIDENTIALITY; CARE OF INFORMATION.

(g) *Confidentiality.* Any information, data, documents, studies and reports given to or prepared or assembled by the Vendor under this Agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the University.

(h) *Response to Third-party Requests for University Data.* If Vendor is served with a subpoena related to University data, then, unless prohibited by law, Vendor will provide prior notice of such subpoena to the University to allow the University an opportunity to seek injunctive relief before disclosure of the information.

(i) *Protection of Vendor Trade Secrets under NC Public Records Act.* The University will maintain the confidentiality of Vendor's "trade secrets", in accordance with N.C. Gen. Stat. §132-1, et. seq. (the "NC Public Records Act"). Trade secrets are defined by North Carolina statute as "business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that derives independent actual or potential commercial value from (i) not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (See N.C. Gen. Stat. §66-152). Vendor shall designate the portions of the materials it delivers to the University that meet this definition of "trade secrets," or that otherwise are exempt from disclosure under the NC Public Records Act, by printing "CONFIDENTIAL" in boldface at the top and bottom of the applicable pages or sections. Under the North

Carolina Administrative Code, price information shall not be deemed confidential (NCAC Title I, Chapter 5B.1501). In spite of what is labeled as confidential, the determination as to whether the information is subject to disclosure shall be determined by North Carolina law.

(j) *Protection of University's Sensitive and Confidential Information.* Vendor shall safeguard and protect Sensitive and Confidential Information of the University in accordance with all applicable laws and regulations and consistent with ISO/IEC 27000 series information security best practices. "Sensitive and Confidential Information" means any, but not limited to, the following: "Personal Information" under the North Carolina Identity Theft Protection Act of 2005, confidential "personnel information" under the North Carolina Human Resources Act, "Protected Health Information" under the Health Insurance Portability and Accountability Act (HIPAA), student "education records" under Family Educational Rights and Privacy Act (FERPA), "customer record information" under Gramm Leach Bliley Act (GLBA), "cardholder data" as defined by the Payment Card Industry Data Security Standard (PCI-DSS), and any information protected from disclosure under the North Carolina Public Records Act. Sensitive and Confidential Information must be restricted by Vendor to those with a legitimate business need for access to such information. For purposes of illustration, Sensitive and Confidential Information may appear in research data, public safety information, financial donor information, information concerning select agents, system access passwords, information security records, and information file encryption keys.

If Vendor becomes aware of a confirmed or suspected exposure of Sensitive and/or Confidential University Information, Vendor shall notify the UNC-Wilmington Information Security Director (910) 962-2660 within 24 hours any known or suspected exposure. Vendor shall provide a telephone number at which the reporting party can be reached for more detail. Vendor shall not provide any information regarding the risk to Sensitive Information or Confidential Information until contacted via telephone by a UNC-Wilmington incident handler. Upon being contacted by the incident handler, the Vendor agrees to provide UNC-Wilmington with access to any information that is pertinent to the investigation of the possible compromise of UNC-Wilmington's sensitive information or mission critical system, including, but not limited to: log data, metadata and forensic images. Vendor may be responsible for reimbursing cost to UNC-Wilmington associated with the known or suspected exposure.

(k) *Grant of Limited Right to Use University Data.* Subject to the terms and conditions of this Agreement, University grants to Vendor a non-exclusive, non-transferable, limited right to use University data received or accessed by Vendor in the course of performing services under this Agreement. All right, title and interest in the data shall remain with the University or end users, as applicable. Vendor may not access and/or duplicate the data for any reasons other than those stated herein without the prior written consent of University.

(l) *Limitations on Use of University Data.* Vendor shall not collect, mine, save, disclose, or otherwise use any end user personal information or University data for any purpose other than to provision and support the services expressly contemplated under this Agreement.

(m) *FERPA Acknowledgement.* If the Vendor's Services involve the hosting or accessing of student education records, Vendor acknowledges and agrees that (i) the University has outsourced to Vendor the performance of institutional services or functions for which the University would otherwise use its own employees, (ii) Vendor is considered to be a "school official" with "legitimate educational interests" in "personally identifiable information" from "education records" of University students, as those terms have been defined under FERPA (34 CFR 99), (iii) Vendor is under the direct control of the University with respect to Vendor's use and maintenance of data in the education records, and (iv) Vendor will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Vendor will use such data only for the purpose of fulfilling its duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the University.

24. IMPLEMENTATION; CONFLICTS/INCONSISTENCIES. This Agreement shall be implemented by a University Purchase Order. For purposes of construing a transaction as an integrated contract, the following shall be considered a single transaction and a legal and binding contract: (i) the University Purchase Order(s); (ii) any signed Statement of Work or other document directly related to this Agreement that has been signed by authorized representatives of both parties; (iii) the Solicitation Document; (iv) this Agreement; and (v) Vendor's technical and cost proposals submitted in response to the Solicitation Document. In the event of a conflict or inconsistency between these contract documents, the order of precedence shall be the order listed above, where clause "(i)" receives the highest priority and clause "(v)" receives the lowest priority.

25. AMENDMENTS/CONTRACT AUTHORIZATION.

(a) This Agreement may not be amended orally or by performance. Any amendment, in order to be effective, must be made in written form and signed by duly authorized representatives of the University and Vendor in accordance with this section.

(b) This Agreement is made subject to the shipment of quantities, qualities, and prices indicated on the Purchase Order and all conditions and instructions on the Purchase Order or the Solicitation Document, as applicable. Any changes made to this Agreement or Purchase Order proposed by the Vendor are hereby rejected unless accepted in

writing by the University's Purchasing Services Department or the Vice Chancellor for Finance and Administration. The University shall not be responsible for services or products delivered without a Purchase Order or authorization from the University's Purchasing Services Department. In order to be effective, contracts for University purchases of goods or services must be signed by a duly authorized officer of the University's Purchasing Services Department, or the University's Vice Chancellor for Business Affairs or his/her delegate.

26. ADVERTISING. Vendor shall not use the existence of this Agreement or the name, logo, images or trademarks of the University of North Carolina at Wilmington as a part of any marketing or commercial advertising without prior written approval of the University. Requests to use the University's name, logo, images or trademarks should be directed to the University's Office of Trademarks and Licensing. (<http://www.uncw.edu/licensing>).

27. EXPORT CONTROL CLASSIFICATION. Vendor shall not transfer or disclose to the University any equipment, information, substance or material that is controlled under the federal government's Export Administration Regulations (15 C.F.R. 730-774) or International Traffic in Arms Regulations (22 C.F.R. 120-130) (collectively, any "Export Controlled Material") without first informing the University of the Export Controlled Material's Export Control Classification Number ("ECCN"), or other applicable export control designation.

28. NONDISCRIMINATION. Vendor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or appropriate inquiries regarding compensation. Vendor will take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status, disability, or appropriate inquiries regarding compensation.

29. NOTICES. Any notices required under this Agreement should be delivered to the contract administrator for each Party. Unless otherwise specified in the Solicitation Document, any notices shall be delivered in writing by U.S. Mail, commercial courier or by hand.

30. COMPLIANCE WITH LAWS. Each Party shall comply in all material respects with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to its operations, including those of federal, state, and local agencies having jurisdiction and/or authority.

31. GOVERNING LAW AND VENUE. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. In the event the parties are unable to resolve any dispute relating to this Agreement, the exclusive venue for any judicial action or proceeding arising out of or relating to this Agreement shall be the state or federal courts located in the State of North Carolina.

32. SEVERABILITY. In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

33. RISK OF LOSS AND TITLE. Risk of Loss transfers to the University upon delivery in accordance with the International Chamber of Commerce Incoterms or Domestic FOB Destination. Title transfers to the University at the same time that Risk of Loss transfers upon delivery and acceptance.

34. CLICKWRAP AGREEMENTS VOID: "Clickwrap" or "Clickthrough" type agreements or licenses shall be void and shall not be deemed accepted by or binding on UNCW. To the extent any clickwrap or clickthrough agreement terms are determined by a court to apply, the terms of this Agreement shall control and take priority over any conflicting terms contained in the clickwrap or clickthrough agreement.

35. STRICT COMPLIANCE: UNCW may at any time insist upon strict compliance with these terms and conditions. No trade usage, prior course of dealing, or course of performance under other contracts shall be a part of this contract; nor shall such trade usage, prior course of dealing, or course of performance be used in the interpretation or construction of this contract.