

**STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES
HUMBER INSTITUTE OF TECHNOLOGY & ADVANCED LEARNING**

These Standard Terms and Conditions and Humber Policy and Procedures govern all Humber purchasing and vendors agree to be bound by the terms and conditions set forth, except as may be amended by Humber in writing. Contact Purchasing for a copy of the Policy and Procedure.

1. **Definitions**

- 1.1 “Document” means the document describing the goods and/or services to be purchased and the terms upon which the goods and/or services are to be purchased and includes, without limitation, those documents referenced on the index of the Document and such addenda as may be issued by Humber from time to time.
- 1.2 “HSF” means Humber Student Federation.

2. **Vendor Submission**

- 2.1 The Vendor Submission must be made on the printed forms supplied by Humber for that purpose and must be clearly legible with all blanks filled in, using ink or type. Scanning is not permitted.
- 2.2 The Vendor Submission must be signed by a person or persons authorized to sign on behalf of the vendor and the same person or persons shall initial any erasures, overwriting or strikeouts within the Vendor Submission.
- 2.3 All pricing in the Vendor Submission must be expressed in figures, and must be in Canadian Dollars.
- 2.4 Prices in the Vendor Submission must include all costs necessary to complete the Work in accordance with the Document including customs and duties.
- 2.5 No oral or written alterations or variations in the terms and conditions of the Document and/or Contract shall be valid or binding upon Humber unless authorized by Humber in writing.
- 2.6 Vendor Submissions which are qualified or subject to any conditions, limitations or restrictions shall be rejected by Humber.
- 2.7 The vendor acknowledges that it is solely responsible for obtaining and reviewing all the Contract documents and all addenda issued by Humber pertaining to the Document.

3. **Humber Rights**

Humber reserves the right, in its sole and absolute discretion to:

- 3.1 Deem a Vendor Submission to be unbalanced and may reject any and all Vendor Submissions, which it so deems, and for this purpose, “unbalanced” shall include, without limitation, a Vendor Submission which does not reflect a realistic breakdown of the costs of each or any portion of the Work;
- 3.2 Adjust the totals in a Vendor Submission where there are errors in extensions, additions or computations. In such cases and in all cases, the unit prices shown shall govern;
- 3.3 Reject any or all Vendor Submissions, accept a Vendor Submission which is not the lowest price, reject a Vendor Submission even if it is the only one received by Humber; and cancel the purchase at any time either before or after the receipt of the Vendor Submission, without liability to itself, as the best interests of Humber may require, or as required in accordance with Humber’s policies or procedures;
- 3.4 Award the Contract in its entirety or in part, to one or more vendors, if in doing so the best interests of Humber will be served;
- 3.5 Inspect and have a demonstration of the goods and/or services offered prior to award of a Contract and request evidence of experience, ability or financial standing;
- 3.6 Waive formalities, technical defects, irregularities and omissions in a Vendor Submission and may accept a Vendor Submission, which does not comply with the formal requirements of the Document, if in doing so the best interests of Humber will be served;
- 3.7 Remove from Humber’s list of vendors, the name of any vendor for failure to accept a contract or for unsatisfactory performance or non-performance of a contract; and
- 3.8 Fully evaluate the Vendor Submission, which evaluation may include, without limitation, a review of references, past performance history, completion history (including extended completion dates), litigation history (including construction liens filed by subcontractors for non payment) and claims history of the vendor, and to reject a Vendor Submission if same is not satisfactory to Humber.

4. **Compliance with Laws**

The vendor shall comply with all applicable laws and by-laws including without limitation, the *Workplace Safety Insurance Act*, the *Occupational Health and Safety Act*, and the *Human Rights Code*, as amended from time to time. Any breach or breaches of any applicable laws or by-laws, whether by the vendor or any of its subcontractors, may result in the immediate termination of the Contract and the forfeiture of all sums owing to the vendor by Humber.

5. **Inconsistency, Conflicts and Omissions**

5.1 In the event of any inconsistency or conflict in the Document, the vendor shall notify Humber prior to the closing time.

5.2 The vendor shall not take advantage of any apparent error or omission in the Document. Any work not specified which is necessary for the proper performance and completion of any part of the Work contemplated, which may be implied as included in the Work, shall be done by the vendor as if it had been specified and shall not be construed as a variation in the Work to be done, and shall not be subject to any claim by the vendor for additional compensation.

6. **Acceptance/Rejection of Goods and Services**

Humber shall be entitled, in its sole and absolute discretion, to accept or reject goods or services which are substandard, defective, of inferior quality, or are otherwise not in accordance with the Contract, as the best interests of Humber may require.

7. **Force Majeure**

In the event that performance of the Contract in the reasonable opinion of either party is made impossible by an occurrence beyond the control of the party affected, then either party shall notify the other in writing. Humber shall either terminate the Contract forthwith and without any further payments being made, or authorize the vendor to continue the performance of the Contract with such adjustments as may be required by the occurrence in question and agreed upon by both parties. In the event that the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that the Contract shall be terminated. Delays in or failure of performance by either party under the Contract shall not constitute default hereunder or give rise to any claim for damages if caused by occurrences beyond the control of the party affected, including but not limited to, decrees of Governments, acts of God, fires, floods, riots, war, rebellion, sabotage, and atomic or nuclear incidents. Lack of finances, strikes, lockouts or other concerted acts by workers shall not be deemed to be a cause beyond a party's control.

8. **Assignment**

The vendor shall keep the Contract under its control and shall not assign, transfer, convey or sublet any portion of the Contract without first obtaining the written consent of Humber.

9. **Covenants and Indemnities**

9.1 The vendor agrees:

9.1.1 To perform the Contract in accordance with the documents under which the award is made;

9.1.2 To indemnify and hold harmless Humber, its officers, directors, agents, employees, Councillors, Chair and Board Members from and against all claims, costs, expenses, demands, losses, damages, actions, suits or proceedings, including all legal fees and disbursements, that arise out of, or are attributable to the acts or omissions of the vendor, its subcontractors, suppliers, agents, employees, officers, directors, and all other persons and other entities for whose acts the vendor may be liable or for whom it is responsible in law and their respective officers, directors, agents and employees.

9.1.3 To indemnify and to save Humber, its officers, directors, agents, employees, Councillors, Chair and Board members harmless from liability of any kind for the use of any composition, secret process, invention, copyright, patent, intellectual property, article or appliance, furnished or used in the performance of the contract of which the vendor is not Humber, patentee, assignee, or licensee;

9.1.4 To guarantee against defective goods and/or services and to replace any damaged or defective goods and/or services to the satisfaction of Humber;

9.1.5 To furnish adequate protection from damage for all work and to repair damage of any kind, for which it and its employees are responsible; and

9.1.6 To pay for all permits, licenses, approvals, and inspections, and to give all notices and comply with all regulations of Humber.

9.2 For greater certainty, and without limiting the intent of any other terms of the Contract, the obligations of the vendor in this paragraph 11 shall survive the expiry or other termination of the Contract.

10. **Guarantees and Warranties**

All Work shall be done with high quality of work. All materials, goods and services must meet the specifications. The vendor warrants and guarantees that all materials, goods; services and quality of work will be free from defects and fit for the purpose intended by Humber. All goods delivered by the vendor must be new, in good working order and of the latest model possessing all the accessories standard to the manufacturer's stock model. The goods and/or services must be covered by written guarantees and warranties acceptable to Humber. The warranties set out herein and any other warranties provided to Humber by the vendor as part of the Contract are and shall be in addition to all other warranties to which Humber may be entitled in law and in equity.

11. **Damage Claims**

The vendor shall be liable for the costs of all damages caused by it, its subcontractors, suppliers, agents, employees, workers, persons employed by it, officers, directors and all other persons and other entities for whose acts the vendor may be liable or for whom it is responsible in law, arising from the execution of the Work, by reasons including, without limitation, the existence, location, condition of work, or any materials, plant or machinery used thereon or therein, or which may happen by reason of its failure or the failure for those for whom it is responsible, to do or perform any or all of the several acts or things required to be done by them under the Contract, and shall indemnify and save Humber, its officers, directors, agents, employees, Board of Governors harmless from any claims arising thereby, including but not limited to costs of rectification incurred by Humber and any legal costs in connection therewith on a lawyer and client basis.

12. **Insurance**

The vendor shall maintain insurance as required by all applicable laws and regulations and shall maintain such further insurance as may be required by Humber pursuant to the terms of the Contract. The vendor shall furnish satisfactory proof of insurance when required by Humber.

13. **Liquidated Damages**

If the vendor fails, neglects or refuses at any time to supply all goods or services to Humber as specified within the Contract, or fails, neglects or refuses to replace goods or services rejected by Humber, then Humber shall be and is hereby empowered forthwith to procure such material elsewhere and to charge all costs for goods or services thereby incurred by it to the vendor as liquidated damages and to deduct the same from the monies due, or to become due to the vendor on any other contract, or to collect such costs from the vendor by any other method permitted by law.

14. **Right to Retain Monies**

Humber shall have the right to retain, out of monies payable to the vendor under the Contract the total amount outstanding from time to time of all claims arising out of the default of the vendor in any of its obligations to Humber, whether pursuant to this or any other contract between the vendor and Humber which has not been settled by the vendor or its insurers. For the purposes of this paragraph, a claim by the vendor has been settled if payment has been made to and accepted by the claimant and a complete release obtained from it, or the claim has been fully investigated and a complete denial of liability has been made to and accepted by the claimant.

15. **Termination**

15.1 This Contract may be terminated without notice by Humber should the vendor fail to comply with one or more of the Contract terms. In addition to cancelling the Contract, Humber shall be entitled to pursue any remedies to which it is entitled in law or equity for damages suffered as a result of the vendor's breach.

15.2 Where there is a question of non-performance, payment in whole or in part may be withheld at the discretion of Humber.

16. Notice

- 16.1 Any notice, direction, request or document required or permitted to be given by either party to the other shall be deemed to have been sufficiently and effectually given if delivered or mailed by prepaid registered post, or equivalent, or sent by facsimile transmission to the address and number shown in the Vendor Submission or to such other address or number of which either party hereto may from time to time notify the other in the manner set out in this paragraph.
- 16.2 If any such notice, direction, request, document or payment is so given, it shall be conclusively deemed to have been given and received on the date of delivery if delivered, on the next business day if transmitted by telefax, and on the fifth calendar day following the mailing thereof, if sent by mail as aforesaid.

17. Confidential Information

- 17.1 No information identified as confidential by Humber shall be disclosed by the vendor in any manner whatsoever without the prior approval in writing of Humber, which approval may be unreasonably withheld.
- 17.2 Notice that any confidential information supplied by a Vendor may be disclosed by the organization where it is obliged to do so under FIPPA, by an order of a court or tribunal or otherwise required by law.

18. Remedies

- 18.1 The rights and remedies of Humber as set forth in any provision of the Contract shall not be exclusive and are in addition to any other rights or remedies provided by law or in equity.
- 18.2 The exercise of any remedy provided by the Contract does not relieve the vendor or its sureties from any liability under the Contract.
- 18.3 Humber may take such steps as it considers necessary to remedy any breach of the Contract and any damages or expenditures thereby incurred by Humber plus a reasonable allowance for overhead may be collected in the manner provided for in the Document.
- 18.4 The failure of either Humber or the vendor to insist upon strict performance of any provisions of the Contract shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provisions on any future occasion.

19. Severability

In the event that any provision of the Contract is held invalid, illegal or unenforceable, the remaining provisions of the Contract will not be affected and shall continue in full force and effect.

20. Time is of the Essence

Time shall be in all respects of the essence of this Contract.

21. Trade Agreements

For goods, services and construction valued at \$100,000 or more is subject to Ontario's trade agreements.

22. Tie Bid / Debriefing

In case of a tie bid between responsible bidders with substantially equal qualifications, the tie bidders may be invited to resubmit written bids below their original bid. In the alternative, the tie may be decided by lot, or all bids may be rejected and new bids solicited. Any Vendor that has not been approved to proceed further in the procurement process may request a debriefing from Humber.