

Michigan State University's National Superconducting Cyclotron Laboratory and Facility for Rare Isotope Beams Purchase Order terms and Conditions

1. **ACCEPTANCE:** Acceptance of this Purchase Order (hereinafter called the “contract”) must be in accordance with and strictly limited to the Terms and Conditions contained herein. An attempted acknowledgement or acceptance which contains provisions conflicting or additional to the Terms and Conditions herein set forth or which varies any term or condition shall have no force or effect. Performance by the Contractor (hereinafter also referred to as subcontractor, recipient, sub-recipient) without an effective acknowledgement shall be deemed to be performance in accordance with the Terms and Conditions of this contract.

2. **PAYMENT:** Payment is contingent upon acceptance of materials and services. Cash discount period shall be calculated from date of receipt of acceptable materials or services or acceptable invoice whichever is received later. Drafts will not be honored.

3. **WARRANTY:** Unless otherwise agreed to in writing by the parties, the Contractor warrants; (1) the item or items purchased will be supplied according to specifications; and (2) except as otherwise provided in the specifications, all items incorporated in the work shall be new and of the most suitable grade of their respective kinds for the purpose. Such warranties together with the Contractor’s service warranties and guarantees, if any, shall survive inspection tests, acceptance of and payment for the articles and shall run to the University, its successors and assigns. The Contractor shall, within a reasonable time after receipt of written notice thereof, make good at its own expense and without cost to the University any defects in materials or workmanship which may appear during the period ending on a date twelve (12), months after delivery, unless a different warranty period is provided in this contract. The University, may, at its option either return for credit or require prompt correction or replacement of any defective or nonconforming article or part thereof. If the Contractor is unable to or refuses to promptly correct or replace such defective or nonconforming article or part thereof, the University, may, by contract or otherwise, repair or replace such work or materials and assess the Contractor the excess cost occasioned the University thereby. The one year warranty shall not operate to reduce the statutory period of limitations for suit for breach of contract nor is it intended to limit or eliminate any legal remedy, statutory or otherwise.



4. **DEFAULT-DELAYS:** The University may cancel this contract in whole or in part in the event that the Contractor fails or refuses to deliver any of the items purchased, within the time provided, or otherwise violates any of the conditions of this contract, or if it becomes evident that the Contractor is not conducting the work in accord with the specifications or with such diligence as to permit delivery on or before the delivery date. In the event the University cancels this contract in whole or in part as herein provided, the University may procure, upon such terms and in such manner as the University may deem appropriate, materials or services similar to those so cancelled and the Contractor shall be liable to the University for any excess costs for such similar materials or services; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this article. Delays in delivery due to causes beyond the control and without the fault or negligence of the Contractor will be excused by the University if the Contractor notifies the University in writing of the cause of such delay within a reasonable time from the beginning thereof. When such excuse is given, the University, by written notice to the Contractor, will extend the time for performance by such period of time as the University determines to be commensurate with the period of such delay. The rights and remedies of the University provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. If, after notice of termination of this contract in whole or in part under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued under the clause entitled "Termination for Convenience."

5. **TAXES:** Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State and local taxes in effect on the date of this contract but does not include any Federal, State or local sales, use or other tax directly applicable to the completed materials or services covered by this contract from which the Contractor or this transaction is exempt nor any other tax from which the Contractor or this transaction is exempt.

6. **RESPONSIBILITY-RISK OF LOSS:** The Contractor shall be responsible for the materials covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to the University at the designated point and prior to acceptance or notice of rejection by the University, the University shall be responsible for the loss or destruction of or damage to the materials only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the University acting within the scope of their employment. The Contractor shall bare all risk as to rejected materials after notice of the rejection.



7. **CHANGES:** The University may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this section must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the University, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Nothing in this section shall excuse the Contractor from proceeding with the contract as changed. Except as otherwise provided herein no payment for extra work shall be made unless such extras and the price thereof have been authorized in writing by the University.
8. **PATENT INDEMNITY:** If the amount of this contract is in excess of \$10,000, the Contractor shall indemnify the University, the Government and their officers, agents, and employees against liability, including costs, for infringement of any United States letter patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:
- (i) an infringement resulting from compliance with specific written instructions of the University or the Government directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
 - (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or



- (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.
9. **ASSIGNMENT:** The Contractor shall not assign or transfer this contract nor any claim or interest thereunder to any other party or parties except as authorized by the University. The University may assign the whole or any part of this contract to the Government or its designee.
10. **TERMINATION FOR CONVENIENCE:** The University reserves the right to terminate this contract in whole or in part for its convenience by written notice to the Contractor. If the contract is so terminated, the University shall make an equitable adjustment in the contract price to compensate the Contractor for all necessary work performed by the Contractor to the date it received notice for such termination. The University will pay for costs incurred prior to the date of termination on a case by case basis.
11. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the University or the United States Government shall have the right to annul this contract without liability or in their discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
12. **COPELAND "ANTI-KICKBACK" ACT** (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subcontracts in excess of \$2000 for construction or repair of buildings or works awarded by recipients and sub-recipients shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
13. **EQUAL OPPORTUNITY:** All contractors and subcontractors shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as



supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

14. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT** (40 U.S.C. 327-333) Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).
15. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)** – Contractors/Subcontractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
16. **RENEGOTIATION:** If this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended, the contract shall be deemed to contain all the provisions required by Section 104 of said Act.
17. **WALSH-HEALY PUBLIC CONTRACTS ACT:** To the extent that this contract requires the Contractor to furnish necessary materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healy Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.
18. **INSPECTIONS AND ACCEPTANCE:** All materials (which term throughout this section includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the University, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. If the materials or work are found to be defective, the Contractor shall promptly repair or replace such materials or work, or if the Contractor is unable or



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refuses to do so, the University may by contract or otherwise repair or replace such materials or work and assess the Contractor the excess cost occasioned the University thereby. Acceptance of all materials and services ordered hereunder shall be affected by the University within a reasonable time after delivery. Except as otherwise provided for in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

19. **NOTICE OF LABOR DISPUTES:** Whenever an actual or potential labor dispute is delaying or threatens to delay delivery of materials or performance of services under this contract, the Contractor shall immediately notify the University in writing. Such notice shall include all relevant information concerning the dispute and its background.
20. **PRICING OF ADJUSTMENTS:** When costs are a factor in any determination of a contract price adjustment pursuant to Section 8 or any other provision of this contract, such costs shall be adjusted in accordance with the applicable cost principles .
21. **REPORTING OF ROYALTIES:** If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to the University, the Contractor agrees to report in writing to the Government through the University during the performance of this contract and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or the University of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.
22. **AUTHORIZATION AND CONSENT:** The Government has given its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government or the University under this contract or (ii) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provision now or hereafter forming a part of this contract, or (b) specific written instructions given by the University or the Government directing the manner of performance. The entire liability of the Government for infringement of a patent of the United States shall be determined solely by the provisions



of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

23. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT -**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government, UNIVERSITY and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

24. **NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT**

INFRINGEMENT: The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

- a. The Contractor shall report to the Government through the University promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- b. In the event of any claim or suit against the University or the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government when requested by the Government or the University, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government or the University.

25. **USE of U.S. FLAG AIR CARRIERS:** The Comptroller General of the U.S., by Decision B-138942 of June 17, 1975, as amended March 31, 1981, provided guidelines for implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 USC §1517) that requires all Federal Agencies and Government contractors and subcontractors to use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefore. The Contractor agrees to utilize U.S. flag air carriers for



international air transportation of personnel (and their personal affects) or property to the extent service by such carriers is available. The Contractor must provide certification that meets the requirements of the law to support the use of carriers other than U.S. flag air carriers.

26. **CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 ET SEQ.), AS AMENDED:**

Contracts and subcontracts of amounts in excess of \$100,000 or when the University has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 shall requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

27. **DEBARMENT AND SUSPENSION (E.O.S 12549 AND 12689)** - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

28. **RETENTION AND ACCESS REQUIREMENTS FOR RECORDS.** University requires retention of and access to, for itself and the Comptroller General of the United States or any authorized representative of the Comptroller, all records for awards made. Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final invoice or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report. The only exceptions are the following:

- (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.
- (2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.
- (3) When records are transferred to or maintained by DOE, the 3-year retention requirement is not applicable to the recipient.



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- (4) Indirect cost rate proposals, cost allocations plans, and related records, for which retention requirements are specified in 10CFR600 Section 600.153(g).
 - (5) Copies of original records may be substituted for the original records if authorized.
 - (6) UNIVERSITY may request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping.

29. **RESOURCE CONSERVATION AND RECOVERY ACT (RCRA):** All procurements shall comply with applicable requirements of RCRA, including the requirements for when, using appropriated Federal funds, Contractor must purchase specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA).

30. **COMPLIANCE WITH APPLICABLE LAW:** Contractor shall comply with all applicable federal, state and local laws. To the extent that federal law does not exist and state law should become applicable to this contract, the laws of the State of Michigan shall apply.

31. **PREVAILING WAGE:** Procurements containing construction work will require compliance with Michigan's Prevailing Wage law for the construction work. The Laboratory requires the Contractor/Subcontractors to submit certified labor payrolls and may use an independent firm to verify compliance.

