

IT Equipment Purchase Terms - Addendum

This IT Equipment Purchase Terms - Addendum applies whenever Contractor supplies Equipment (for purposes of this Addendum, Equipment shall also be referred to as “**Products**”) to WMATA. Capitalized terms used but not defined below in this IT Equipment Purchase Addendum will have the same meanings given to them in the Standard IT Terms and Conditions.

1. PURCHASE OF PRODUCTS

WMATA may purchase and Contractor shall supply Products from time to time as provided for in this Contract. WMATA shall have no obligation to issue Purchase Orders for any quantity of Products and WMATA may contract with other manufacturers and suppliers for the procurement of equipment or other products comparable to the Products made available under the Contract.

2. F.O.B. DESTINATION

- (a) Unless otherwise specified, (i) the Contractor shall furnish all Products to be delivered under the Contract “F.O.B. Destination”; and (ii) Products shall be delivered to WMATA’s warehouse unloading platform, or receiving dock, at the Contractor’s expense.
- (b) The Contractor shall:
 - i. Pack and mark the shipment to comply with this Contract’s specifications.
 - ii. Deliver the shipment in good order and condition to the delivery point specified by WMATA.
 - iii. Be responsible for any loss of and/or damage to the goods occurring before WMATA’s receipt of the shipment at the delivery point specified by WMATA.
 - iv. Furnish a delivery schedule and designate the mode of delivering carrier.

3. DELIVERY; ACCEPTANCE

- (a) The Contractor is not permitted to ship Products without first receiving an authorized Purchase Order. If WMATA receives any Products without first sending the Contractor an authorized Purchase Order, the Products may be refused without payment and the Contractor shall pay for the return shipping costs. If Contractor fails to deliver any Product under an accepted Purchase Order within five (5) business days of the delivery date specified in the Purchase Order (other than due to WMATA’s request for a deferred shipment), then, Contractor shall credit to WMATA as liquidated damages an amount equal to one percent (1%) of the net price of the Product per business day of delay (or until the Purchase Order is terminated by the Contracting Officer (“**CO**”)), but not to exceed aggregate liquidated damages equal to 25% of the net price of the Product.
- (b) For Products to be shipped pursuant to a Purchase Order, other than those addressed in Section 3(c) below, Contractor shall deliver the Products to the agreed-upon facility in the manner agreed in writing by the parties. Contractor shall ensure the Products are received by WMATA at the specified delivery point by the date specified in the Purchase Order. WMATA shall have ten (10) business days from receipt of the Products to inspect the Products for any defect or non-conformance with the specifications and service levels set forth or referenced in this Contract and the other quality requirements in any related documentation provided by Contractor or that may be reasonably discoverable by visual or basic functional inspection (collectively, the “**Specifications**”). If the Products fail to meet such requirements, WMATA will notify Contractor in writing and Contractor will

modify, adjust or repair the Products to conform with the Specifications within five (5) business days after such notice, or replace the defective or deficient Product in accordance with Section 5 below. If the new Products are still not compliant with the Specifications, the CO may terminate the Purchase Order and WMATA will receive a refund of any pre-paid fees or, at the CO's discretion, repeat the procedures in this Section.

- (c) For Products that include any customization or require any installation, maintenance, repair, restoration or other improvements by Contractor, Contractor shall, at its own expense, conduct appropriate tests in accordance with Contractor's standard practices to establish that they perform in accordance with the Specifications. Contractor shall provide the test results promptly to WMATA in writing, in a form and manner to be agreed upon by the parties. If Contractor's tests establish that any such Product does not perform in accordance with the Specifications, or WMATA reports to Contractor prior to acceptance or deemed acceptance thereof that it is not performing in accordance with the Specifications, Contractor shall promptly commence and diligently and continuously pursue efforts to bring it into compliance with the Specifications. Upon completion of these efforts, Contractor shall tender the Products to WMATA, which will again be subjected to the acceptance procedures set forth in this clause. Billing for any Products shall not commence until the Products are accepted by WMATA in accordance with the procedure described herein.
- (d) When Contractor notifies WMATA in writing that any such Products that include any customization or require any installation, maintenance, repair, restoration or other improvements by Contractor are ready for delivery, WMATA shall have at least three (3) weeks from such delivery to test the Products in a production representative environment to determine whether they comply with the Specifications. Upon completion of WMATA's testing, WMATA shall notify Contractor of its acceptance or, if it has identified any noncompliance with the Specifications, its rejection of the Products. If WMATA rejects the Products, WMATA shall provide a written list of items that must be corrected. On receipt of WMATA's notice, Contractor shall promptly commence, at Contractor's own cost and expense, all reasonable efforts to complete, as quickly as possible and in any event within five (5) business days from receipt of WMATA's notice (or such other period as may be agreed upon by the parties in writing), such necessary corrections, repairs, and modifications to the Products to bring them into full compliance with the Specifications. If any corrective measures are required, upon its completion of all such measures, Contractor shall notify WMATA in writing and the process set forth herein shall be repeated. If WMATA determines that the Products, as revised, still do not comply with the Specifications, WMATA, in addition to any other rights and remedies it has under the Contract, at law or in equity, shall have the right:
 - i. To direct the Contractor, at no increase in Contract price, to correct or replace the defective or nonconforming Products in accordance with a reasonable delivery schedule as may be agreed upon between the parties. The CO may reduce the Contract price if the Contractor fails to meet such delivery schedule; or
 - ii. Within a reasonable time after the Contractor's receipt of a notice of defects or nonconformance, the CO may in lieu of correction or replacement reduce the Contract price, as is equitable under the circumstances, or terminate the Contract in whole or in part with no liability, obligation or penalty (including cancelling any or all requests for Products). When Products are returned to the Contractor, the Contractor shall bear the costs of transportation.

4. TITLE AND RISK OF LOSS

- (a) Unless this Contract specifically provides for earlier passage of title to Products, title shall pass to WMATA upon acceptance (pursuant to the procedures outlined in Section 3 above), regardless of when or where WMATA takes possession. Risk of loss, theft, destruction of, or damage to, such Products remains with the Contractor until the transfer of title or at the time when WMATA takes possession, whichever is later.
- (b) In the event of loss or damage to any Product prior to the time when WMATA takes possession, the Contractor agrees to repair or replace it as soon as reasonably possible to restore the item to the same condition that pre-existed the loss or damage, in accordance with the Specifications and all other requirements of this Contract, without cost to WMATA. Nothing contained herein shall be deemed to require the Contractor's repair or replacement of any loss or damage occasioned solely by WMATA's negligent acts or omissions.

5. RETURN OF DEFECTS

- (a) With respect to non-customized Product purchases where Contractor is not providing installation, maintenance, repair, restoration or other improvements, WMATA shall be entitled, within ten (10) business days of receipt of delivery, to reject any Product that experiences an out-of-the-box or other material defect or failure to meet Specifications. WMATA's return of any such defective or deficient Products shall be directed to the location in the continental United States designated by Contractor.
- (b) Contractor shall provide, and WMATA shall obtain, a return materials authorization ("**RMA**") prior to the return of such Products. Following receipt of any such Product, Contractor shall ship a new replacement Product that complies with the Specifications to WMATA as soon as reasonably possible. Unless Contractor requests shipment by a designated carrier selected by WMATA and pays such carrier directly, inbound shipping charges shall be prepaid by WMATA and shall be reimbursed by Contractor. Contractor shall be responsible for outbound shipping charges. Notwithstanding any other provision of this Contract, WMATA shall be entitled to postpone payment of the price for any Product that is rejected in accordance with this clause, until WMATA has received a properly functioning new replacement Product and accepted it pursuant to Section 3(b) above.

6. PERFORMANCE WARRANTIES

- (a) In addition to any representations and warranties set out in the Standard IT Terms and Conditions (including, to the extent relevant to any Equipment purchased by WMATA, under the Artificial Intelligence (AI) Terms – Annex), Contractor hereby represents, warrants and covenants to WMATA that:
 - i. WMATA will receive good and valid title to all Equipment supplied under the Contract, free and clear of all encumbrances and liens of any kind.
 - ii. All Products shall for a period equal to the greater of (1) thirty-six (36) months, or (2) the duration of Contractor's standard warranty for the Products ("**Product Warranty Period**") function in conformance with their Specifications and be free from defects in materials and workmanship.
 - iii. All error corrections, upgrades, updates and releases provided, recommended, or otherwise approved by Contractor related to Software provided by Contractor accompanying any Equipment shall until the later of (i) "end-of-life" for the Software (per the Contractor's documented lifecycle management policy), or (ii) the conclusion of the Product Warranty Period, be compatible and interoperable with the Equipment supplied by Contractor hereunder that is used by WMATA in connection with such Software.

- iv. All Equipment delivered by Contractor shall following installation remain compatible and interoperable with all other Products provided, recommended, or otherwise approved by Contractor under the Contract for a duration of no less than the Product Warranty Period, and Contractor shall ensure that all Products supplied to WMATA remain compatible at all times with WMATA's cybersecurity and network data security standards.
 - v. Subject to the foregoing, Contractor agrees to obtain (or assist WMATA to obtain in its own name), prior to the delivery date for any Products all licenses, consents, approvals, and authorizations necessary for WMATA to use all such Third-Party Materials incorporated into the Products by Contractor. **"Third-Party Materials"** means any products, tools, materials, computer programs, software (including, without limitation, any software, tool, utility or template), warranty, support or similar services or other tangible or intangible item belonging to or provided by any third party that Contractor may incorporate into any Products.
- (b) The warranties set forth in subsections (a)(2), (a)(3) and (a)(4) shall apply for the stated period of time beginning on the date of WMATA's acceptance of such Product; provided, however, that the warranty period for any repaired or replacement Products shall commence on the date of receipt of such Products and shall end upon the later of (i) the expiration of the remaining warranty period stated above for the Product replaced thereby, or (ii) one hundred eighty (180) days after such repair or replacement.
 - (c) If Contractor fails to repair or replace any Products experiencing any material problem or deficiency during the relevant warranty period within a commercially reasonable time after acceptance thereof by WMATA, then WMATA may elect to receive a *pro rata* refund of all undepreciated (calculated based on WMATA's market research) amounts paid with respect to the affected Products (as well as a *pro rata* refund of all amounts paid with respect to any Products as to which the defective Product is necessary in order for such other Products to operate in accordance with their Specifications). Such refund shall be paid by Contractor within thirty (30) days of Contractor's receipt of such affected Products.
 - (d) EXCEPT AS OTHERWISE STATED IN THIS CONTRACT, CONTRACTOR MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE PERFORMANCE OF THE PRODUCTS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. EMBEDDED SOFTWARE

- (a) Contractor hereby grants to WMATA a non-exclusive, irrevocable, sublicensable, fully-paid up, perpetual license, to use all Software, in object code form, that is embedded in any Products for any lawful purpose provided that such use is solely in conjunction with WMATA's permissible use of the Products. No other license agreement for the same subject matter, executed by WMATA contemporaneously with, or purporting to become effective upon opening the delivery wrapper, any clicking to agree or other electronic manifestation of consent in connection with downloading the Software or otherwise, shall alter, modify or amend the terms of the licenses granted pursuant to this clause.
- (b) WMATA shall (i) limit its use of the Software to use in connection with the Equipment or other Products supplied by Contractor; and (ii) not attempt to decompile or reverse assemble all or any portion of the Software, nor shall it authorize or knowingly permit any others to do so.

- (c) WMATA may transfer or sublicense the Software licenses granted herein (including with respect to any Third-Party Materials) to any subsequent third-party purchaser of the Products on which such Software is installed that acquires such Products.

8. SURVIVAL

Each party's obligations under this Addendum which are not, by the express terms of this Addendum, fully to be performed during the term of the Contract (including, without limitation, Performance Warranties and Embedded Software), shall survive the expiration or termination of the Contract for any reason.