



These Standard Terms and Conditions ("Terms and Conditions") shall apply to research or testing services performed by all units of the University of Dayton, including the University of Dayton Research Institute, under a purchase order ("Order"). Orders and related documents shall be written in English. The University of Dayton shall be referred to as the "Seller" and the customer shall be referred to as the "Buyer" (the Seller and the Buyer may be referred to collectively as "Parties" or individually as "Party").

- 1. **APPLICABILITY.** These Terms and Conditions shall apply in lieu of the terms and conditions appearing on any Order submitted by Buyer, except that work scope, price, quantity and delivery dates may be set forth in an Order accepted by Seller; or in the event a written agreement governing the relationship of the Parties specifies otherwise, that agreement will apply.
- 2. **ACCEPTANCE.** The failure of Seller to specifically object to any or all terms and conditions offered by Buyer shall not be deemed an acceptance of such terms and conditions.
- 3. **INVOICES, PRICE AND PAYMENT.** Price and payment shall be made in United States Dollars. Terms of payment shall be N30 days from Seller's invoice date.

Electronic payment may be made as follows:

via CREDIT CARD	via ACH
uPay: <a href="https://upay.udri.udayton.edu">https://upay.udri.udayton.edu</a>	J.P. Morgan Chase Bank 10 South Dearborn, Floor 37 Chicago, IL 60603 <ul style="list-style-type: none"> <li>▪ Account Name: University of Dayton</li> <li>▪ Account Number: 139327875</li> <li>▪ Bank Routing and Transit Number: 044000037</li> <li>▪ ACH Format: CTX with Addenda Records (indicating invoices being paid)</li> </ul>

Should Buyer's electronic payment fail to clear, Seller may assess a processing fee(s). Should Buyer fail to make payment when due, Seller may charge interest for the past due amount and terminate or suspend any portion or all of its services. Seller reserves the right to require payment per item completion for blanket Orders, minimum purchase amounts and/or prepayment of Orders.

- 4. **DELIVERY.** Delivery shall be in accordance with the schedule set out in the Order, unless extended by mutual agreement.
- 5. **INSPECTION.** Quality control exercised shall be in accordance with Seller's quality control policies, procedures and practices.
- 6. **FORCE MAJEURE.** Neither Party shall be held responsible for delay or default due to causes beyond its reasonable control. Such delays or defaults include, but are not limited to, acts of God, fire, explosion, flood, epidemics, war (declared or undeclared), riots, strikes, labor disputes, work stoppage, transportation delays or inability to timely obtain necessary labor, materials, fuels or components. If a default or delay due to a force majeure event continues for an unreasonable period of time, either Party may terminate the portion of the Order for the delayed services.

7. **WARRANTY.** Seller warrants services will be performed in a skilled manner and in accordance with high professional standards.
8. **LIABILITY.** Each Party will bear the costs and liabilities it incurs as a result of its obligations under any Order. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR LOST OR ANTICIPATED PROFITS, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER TYPE OF INDIRECT DAMAGES ARISING UNDER OR RELATING TO ANY ORDER.
9. **TERMINATION.** An Order may be terminated by mutual written agreement of the Parties.
10. **INTELLECTUAL PROPERTY AND CONFIDENTIALITY.** Each Party shall exclusively own all intellectual property (including trade secrets, copyrights, trademarks, moral rights, industrial property rights, database rights, and patents) it had prior to entering into an Order. The Parties anticipate it may be necessary for either to disclose to the other information of a confidential and proprietary nature including, but not limited to, technical data, know-how, trade secrets, computer programs and business practices ("Information"). The Information will be disclosed in writing and marked proprietary. Information disclosed verbally will be confirmed in writing, marked proprietary and forwarded to the receiving party within 30 days after such disclosure.

Each Party agrees that it will not disclose the Information to third parties and will maintain the Information in confidence, exercising at least the same degree of care used to protect its own confidential and proprietary information. The Parties agree to use such Information only for the purposes contemplated under these Terms and Conditions. Disclosure of such Information shall be restricted to those employees and agents of a party who are directly participating in work involving the other Party hereto. Both Parties agree to obtain agreement of those employees to protect the confidentiality of such Information.

The limitations on disclosure or use of Information by the receiving Party shall not apply to, and neither Party shall be liable for disclosure of Information which is (a) is available to the public at the time of such disclosure or use through no fault of the receiving Party; (b) is available to the receiving Party at the time of receipt of such Information by the receiving Party, as can be shown by prior written records; (c) prior to such disclosure or use has been disclosed to the receiving Party by a third party entitled to disclose it; or (d) is developed by or for the receiving Party independently of the disclosure hereunder.

11. **APPLICABLE LAW.** These Terms and Conditions shall be construed and interpreted solely in accordance with the laws of the State of Ohio, without regard to conflict of law principles that would require the application of any other state's laws. The Parties agree that the sole and exclusive jurisdiction for resolution of any disputes shall be the State of Ohio.
12. **WAIVER.** The failure of Seller to enforce any provisions of the Terms and Conditions shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of the Terms and Conditions, or any part thereof, or the right of Seller thereafter to enforce any such provisions.
13. **INDEMNITY.** With regard to any Order issued under these Terms and Conditions, neither Party shall be responsible to the other for any and all claims, demands, actions, suits, damages, judgments, liabilities, costs, and expenses, including reasonable attorney's fees and disbursements, arising out of or in connection with, whether directly or indirectly: (1) performance or non-performance (including the performance or non-performance of its subcontractors) under the Order; (2) representations,

warranties, or obligations related to the Order; or (3) violation of any applicable laws or regulations resulting from or in connection with the deliverables under the Order. Additionally, Buyer agrees to indemnify and hold Seller harmless against all liability to third parties (other than liability solely the fault of Seller) arising directly or indirectly from or in connection with any defect in the deliverables and/or actual or claimed violation or infringement of the third party's trade secrets, trademark, copyright, or patent rights in connection with the sale or use of the deliverables provided to or used by Buyer. This obligation shall survive performance, expiration or termination of the Order.

- 14. UNIVERSITY NAME AND LOGO.** Buyer shall not use or register the name "University of Dayton" alone or as part of another name or any logos, seals, insignia or other words, names, symbols or devices that identify the University of Dayton or any University of Dayton unit, division or affiliate for any purpose except with the prior written approval of, and in accordance with guidelines and/or restrictions required by, the University of Dayton.
- 15. MODIFICATIONS.** These Terms and Conditions may be modified from time to time, at Seller's discretion. The Terms and Conditions applicable to a specific Order shall be the Terms and Conditions in place on the date that Order is issued.
- 16. ASSIGNMENT.** Any assignment or delegation made without Seller's prior written consent shall be void.
- 17. ENTIRE AGREEMENT.** These Terms and Conditions, the Seller's proposal, the associated Order and applicable written agreement(s), if any, contain the entire agreement between the Parties relating to the services to be performed and supersede any prior or contemporaneous agreements, written or otherwise. If any provision of the Terms and Conditions is prohibited by law, such provision shall be deemed ineffective but such ineffectiveness shall not invalidate the remaining provisions of the Terms and Conditions.