



MIAMI UNIVERSITY

Rules for Contracting

Office of General Counsel
MIAMI UNIVERSITY

Rules for Contracting Manual

This Manual is designed to help University staff negotiate, prepare, and maintain legal and effective contracts. Every individual participating in University contracting should be familiar with this manual and the University's purchasing policies and procedures. If you have any questions regarding contracts or this manual, please contact the Office of General Counsel.

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I. Authority to Sign Contracts

Generally, only the President and Vice President for Finance and Business Services have the authority to sign a contract on behalf of the University. No other individual has authority to enter into a contract for the purchase of goods or services or otherwise obligate Miami University to pay any sum of money, without at least one of the following:

- A resolution of authorization from the Board of Trustees; or
- A written delegation of authority from the President or Vice President for Finance and Business Services on file with the Secretary to the Board of Trustees; or
- A purchase order (PO or LPO) or other contract instruments issued by or under the direction of the Director of Purchasing (Purchasing Policy 1.00).

Please note that authority to sign a purchase order or approve a requisition is not the same as authority to sign a contract.

Failure to ensure that the appropriate signature authority is obtained may result in personal liability for the employee(s) involved in the transaction. Contracts for the purchase of goods and services where the price exceeds the delegated signature authority must be referred to the Department of Purchasing and Central Services. Contracts related to a grant or sponsored project must be administered through Grants and Contracts Administration.

The authority and procedures for purchasing most goods and services are outlined in the Miami University Purchases and Payments Handbook. Questions regarding signature authority should be directed to the Director of Purchasing, the Vice President for Finance and Business Services, the Secretary to the Board of Trustees, or the General Counsel.

II. Basic Requirements for all Miami University Contracts

This is an overview of the specific rules that apply to Miami University contracts. Please note that a Memorandum of Understanding/Agreement is in fact a contract and should be treated as one.

A. The Contracting Parties

In all contracts, the contracting party for Miami is “Miami University.” The reference may also include a specific department. For example: “Miami University and its Department of Intercollegiate Athletics.” Typically, this clause would be followed by a parenthetical, short-form of the name for use in the rest of the contract, e.g., (hereinafter “MU” or “University”).

If the other party is a corporation, organization or other legal entity, be sure that the title includes the correct, full legal name and a reference to its state of incorporation and/or its principal place of business. For example: “ABC Corporation, duly incorporated under the laws of the state of Ohio.” Or: “ABC, Ltd., with its principal place of business of 5140 W. Broad St., Columbus, Ohio.”

B. Basic Terms and Conditions

All contracts must contain the basic information necessary to understand the intent and agreement of the parties. These include:

- The names of the parties;
- The dates, or term, including any automatic renewal provisions of the agreement;
- The responsibilities and obligations of each of the parties;
- The terms (who, when, and how) of payment, if any;
- The procedure for termination of the agreement (e.g., 90 days notice or for defined cause); and
- A signature line and date for the individuals authorized to execute the agreement.

C. Prohibited Terms

- 1) **Indemnification/Hold Harmless.** In general, MU cannot indemnify or “hold harmless” the other party to a contract. Every effort should be made to delete such provisions from proposed contracts. If you are not able to exclude the provision, contact the Office of General Counsel.
- 2) **Insurance.** With respect to insurance coverage, MU is limited to the coverage it maintains through the IUCIC Insurance Program. Contract provisions calling for Miami to carry specific types or amounts of insurance or requiring Miami to provide a Certificate of Insurance may be in conflict with Miami’s coverage. You must contact Paul Allen to determine whether the insurance coverage maintained by Miami University meets the contractual requirement. If not it must be either changed or deleted. If the contract calls for the University to name the other party as an “additional insured” you must advise Paul Allen of this requirement and receive his consent for the provision.
- 3) **Choice of Law (Governing Law)/ Jurisdiction/Venue.** Any provision that calls for the application of the law of some other state or requires Miami to submit to the jurisdiction of a court other than the Ohio Court of Claims must be deleted. If you are not able to exclude the provision, please contact the Office of General Counsel.
- 4) **Arbitration/Mediation.** Any provision that requires the parties to submit any dispute regarding the contract to a third party or a panel to settle the dispute. If you are not able to delete the provision, please contact the Office of General Counsel.
- 5) **Confidentiality.** Any provision that calls for **the terms** of the contract to be confidential must be deleted. Some contracts may have a confidentiality or nondisclosure clause as to some specific information. Any such “nondisclosure” clauses must include an exception permitting disclosure “as required by law.” (**Please Note:** D. Required Terms below) If you have any questions regarding the terms of a confidentiality or nondisclosure provision, please contact the Office of General Counsel.
- 6) **Liquidated Damages.** Liquidated damage provisions will generally not be approved as they require the University to pay for goods or services not actually rendered. Any provision which

requires the University to pay liquidated damages must be specifically approved by the Vice President for Finance and Business Services.

D. Required Terms

- 1) **Nondiscrimination Clause.** Each contract should include a nondiscrimination clause which states, "Both parties will, in the performance of this Agreement, comply with all applicable laws, rules, regulations, and orders regarding equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act and Affirmative Action."
- 2) **Failure of Appropriation.** If Miami is expending money under the contract over a state budget biennium the following provisions should be included:

Non-Appropriation

- (a) If the University's Board of Trustees determines that the Ohio General Assembly has failed to appropriate sufficient monies in any fiscal year for payments due under this Agreement, then a Non-Appropriation shall be deemed to have occurred.
- (b) If a Non-Appropriation occurs, then the University will provide written notice of the same by its Board of Trustees immediately upon such occurrence and this Agreement shall terminate without penalty or expense to the University.

Funding Intent

The University represents and warrants that it presently intends to continue this Agreement. The parties acknowledge that appropriation of funds is a governmental function to which the University cannot contractually commit itself in advance and this Agreement shall not constitute such a commitment.

- 3) **Student or Financial Records.** If the terms of the contract call for access to the University's computing systems, student record, financial records regarding students (or their parents), or financial information regarding University employees, the following provision must be included:

Restriction on Use of Confidential Information

Any and all information, the release of which is prohibited by state or federal law or regulation, is subject to the protections of the Family Educational Rights and Privacy Act, or protected the Gramm Leach Bliley Act and obtained by Name of Company from the University, its students, faculty, or staff in the performance of this Agreement constitutes Confidential Information. Name of Company agrees to hold the Confidential Information in strictest confidence. Name of Company shall not use or disclose Confidential Information received from or on behalf of Institution or any of its students, faculty, or staff except as permitted or required by this Agreement or by law or as otherwise agreed to in writing by Institution.

Name of Company agrees that it will protect the Confidential Information it receives according to commercially acceptable standards and no less rigorously than it protects its own Confidential Information. Specifically, Name of Company shall implement, maintain, and use appropriate administrative, technical, and physical security measures to preserve the confidentially,

integrity, and availability of all electronically maintained or transmitted Confidential Information.

Within 30 days of termination, cancellation, expiration, or other conclusion of this Agreement, Name of Company shall return to University or if return is not feasible, destroy and not retain any copies of any and all Confidential Information that is in possession of Name of Company. The obligations of this Agreement shall not apply to any information which (a) is already in the public domain through no breach of this Agreement, including but not limited to information available through University's web site(s); (b) was lawfully in Name of Company's possession prior to receipt from University, its faculty staff or students; or (c) is received by Name of Company independently from a person or entity free to lawfully disclose such information other than University, its faculty, staff, or students.

Name of Company warrants and represents that it shall, at all times, comply with the Family Educational Rights and Privacy Act (FERPA), and the Gramm Leach Bliley Act and further agrees not to disclose or re-disclose to any person or entity for any purpose whatsoever any personally identifiable student information as that term is defined by FERPA.

4) **Provisions for Speaker/Lecturer Contracts.**

Open to Public/Media

Unless otherwise specifically stated in this agreement or dictated by security concerns as determined by the Miami University Police or other governmental agency (i.e. Secret Service), all University wide lectures are open to the public, including all credentialed media.

Miami University reserves the right to ban the use of flash photography or additional lighting. Recording of the lecture for broadcast, rebroadcast or distribution without express written permission of the speaker/lecturer is prohibited.

Permission to Record

If the University desires to record the lecture or speaker for rebroadcast or distribution for educational purposes, the following provision is required:

Name of Speaker/Lecturer hereby authorizes Miami University and those acting pursuant to its authority to:

- i) Record my participation and appearance on videotape, audio-tape, film, photograph or any other medium.
- ii) Use my name, likeness, voice and biographical material in connection with these recordings.
- iii) Exhibit or distribute such recording in whole or in part without restrictions or limitation for any educational or promotional purpose which the Miami University, and those acting pursuant to its authority, deem appropriate.

- 5) **Insurance.** When a contact calls for activities that will occur on University property or when the University is conducting activities on another party's property, it is highly advisable to insert a contract provision requiring the other party to provide the University with a Certificate of Insurance showing liability insurance of at least \$1,000,000, and which names Miami as an additional insured. When the activity includes use of motor vehicles, the certificate should include appropriate automobile insurance. The certificate should also include 30 days notification to Miami in the event the policy is cancelled. Any contract in which an entity or person other than Miami will provide airplane transportation for students or staff of the University (i.e. chartered flight) must contain a provision requiring them to show proof of insurance of at least \$5 million per passenger, and to name Miami as an additional insured. For more information regarding insurance requirements, contact the Director of Business Services at 529-4225.

E. Contract Routing Form

Please route the contract to the appropriate person for contract review and signature (see below). If the signing authority determines the contract should be reviewed by the Office of General Counsel, please use the Contract Routing Form as a cover and send it to Robin Parker, General Counsel. Please allow at least 10 working days for review. The Routing Form also contains a helpful checklist that can be used in the preparation of university contracts.

III. Contract Review and Approval Procedures

A. Personnel Contracts

1. Director of the Appropriate Personnel Office and, if required, the appropriate Vice President or President
2. General Counsel – as necessary

B. Goods/Services Contracts

1. Director of Purchasing or Senior Associate Vice President for Finance and Business Services
2. General Counsel – as necessary

C. Athletic Contracts

1. Business Manager for ICA
2. Director of ICA
3. General Counsel – as necessary

D. Art Museum

1. Director of Art Museum
2. General Counsel

E. Education Affiliation/Internship Agreements (Non-Monetary Agreements)

1. University Budget Officer

F. Entertainment/Travel/ Miscellaneous Contracts

1. All required signatures (See Contract Routing Form)
2. Manager of Administrative Services and Vice President for Finance and Business Services
3. General Counsel – as necessary

G. Grants/Research Contracts

1. Director of OARS
2. Institutional Research
3. Grants & Contracts Coordinator
4. General Counsel – as necessary

H. Information Technology Purchases

1. Vice President for Information Technology and/or Director of Purchasing
2. General Counsel – as necessary

I. Physical Facilities – Special Events

1. Director Special Facilities
2. Conference Services

J. Construction

1. Associate Vice President Facilities and Vice President for Finance and Business Services
2. General Counsel – as necessary

IV. LEGAL TERMS

Arbitration – A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.

As Is – In the existing condition without modification <the customer bought the car as is>. Under UCC Section 2-316(3)(a), a seller can disclaim all implied warranties by stating that the goods are being sold “as is” or “with all faults.” Generally, a sale of property “as is” means that the property is sold in its existing condition, and use of the phrase *as is* relieves the seller from liability for defects.

Breach – Violation of a contractual obligation, either by failing to perform one’s own promise or by interfering with another party’s performance.

Choice of Law – The question of which jurisdiction’s laws should apply in a given case. (*Also called Governing law*)

Consequential Damages – Losses that do not flow directly and immediately from the breach, but that result indirectly from the breach.

Consideration – Something of value (such as an act, a forbearance, or a return promise) received by a promisor for a promise.

Damages – Money claimed by, or ordered to be paid to, a person as compensation for loss or injury <The plaintiff seeks \$8,000 in damages from the defendant>.

General Damages – Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed.

Hold Harmless – To absolve (another party) from any responsibility for damage or other liability arising from the transaction. (See also INDEMNIFICATION)

Implied Warranty of Fitness for a Particular Purpose – A warranty – implied by law if the seller has reason to know of the buyer’s special purposes for the property – that the property is suitable for those purposes – sometimes shortened to *warranty of fitness*. (Often expressly excluded from the terms of a contract)

Indemnification – The act of compensating for loss or damage sustained.

Jurisdiction – A state’s power to exercise authority over all persons and things within its territory <Ohio’s jurisdiction>.

Liquidated Damages – An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. If the parties to a contract have agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages.

Mediation – A method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.

Performance – The successful completion of a contractual duty, usually resulting in the performer’s release from any past or future liability; EXECUTION

U.C.C. – *abbr.* 1) Uniform Commercial Code. 2) A uniform set of laws governing the sales of goods.

Venue – The proper or possible place for the trial of a lawsuit.

Warranty – An express or implied promise that something in furtherance of the contract is guaranteed by one of the contracting parties; esp., a seller’s promise that the thing being sold is as represented or promised.