

Dear _____:

Recently Tennessee Tech University sought to negotiate the terms of the following documents relative to establishing a shipping account with your company, hereinafter referred to as the "Agreement":

- Terms and Conditions: Shipping by _____
- Terms and Conditions: _____ Website
- _____ Special Terms and Conditions of Carriage Applicable to Shipments Destined to a U.S. Embargoed Country (OFAC Shipments) (Licensed and License Exempt Shipments)

As we have explained in previous communications, the Agreement contains provisions which are considered impermissible for the University as an agency of the State of Tennessee. These include the clauses regarding limitations of liabilities/warranties and indemnification by the University. In response to our request to amend the terms of the Agreement, you advised that _____ terms for shipping to embargoed countries are not flexible due to the nature of the circumstances. In that regard, the University considers this to be a contract of adhesion.

In view of the fact that the University recognizes that this Agreement is essential to acquiring certain shipping services, we must execute the Agreement. Please be advised, however, as an entity of the State of Tennessee, under the Constitution and laws of the State of Tennessee, the University possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Tennessee. The University asserts that the execution of the Agreement is not intended to be, nor shall it be construed to be, a waiver of the sovereign immunity of the State of Tennessee or a prospective waiver or restriction of any of the rights, remedies, claims and privileges of the State of Tennessee and the University reserves the right to raise the enforceability of the provisions of the Agreement under Tennessee law should the need arise.

Best Regards,

[Date]

[Address]

RE: _____ Software License and Maintenance Agreement

Dear [Name]:

On October 22, 2008, Cleveland State Community College issued an invitation to bid (FB0000) for simulation software as specified within the bid document, which also included the applicable standard procurement terms and conditions of the College. _____ responded to the invitation by submittal of a proposal and quotation for the acquisition and use of its product titled "_____". Upon review of the document, it was communicated to _____ that the terms and conditions of the Software License and Maintenance Agreement submitted to the College by _____ contained provisions that are considered impermissible for contracts to which the College is a party, as it is an agency of the State of Tennessee. Included among the issues of concern were those provisions relative to governing law and limitation of liability. In correspondence dated December 22, 2008, the College proposed alternative wording to address the impermissible clauses and bring the document into conformity with its governing laws. Subsequently, the College received notification from _____ dated January 7, 2009, stating that _____ would not accept those changes and would not amend its document.

In view of the facts that the College considers this simulation software essential for a component of its academic program and _____ was the only responder to the invitation to bid, and as _____ submitted documentation that it is the sole source for procurement of this item, we must accept your terms. Please be advised that the College reserves the right to raise the enforceability of the agreement provisions under Tennessee law should the need arise and considers this agreement to be a contract of adhesion.

Respectfully,