

PURCHASE ORDER ("PO") STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS/SERVICES**Oregon Department of Transportation (Agency)**

1. DELIVERY: All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents or PO. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to Agency except as to latent defects, fraud and Contractor's warranty obligations.

2. INSPECTIONS: Deliverables furnished under this PO shall be subject to inspection and test by Agency at times and places determined by the Agency. If Agency finds Deliverables furnished to be incomplete, not in compliance with the solicitation specifications and this PO, or defective in any way, Agency, at its sole discretion, may either reject the Deliverables, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the Deliverables to Agency at a reduced price, whichever Agency deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by Agency, Agency may reject the Deliverables and cancel this PO in whole or in part. Nothing in this paragraph shall in any way affect or limit the Agency's rights as Buyer under the Uniform Commercial Code ("UCC"), including but not limited to the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080. Agency's review, approval or acceptance of, or payment for, the Deliverables required under this PO shall not be construed to operate as a waiver of any rights under this PO or of any cause of action arising out of the performance of this PO, and Contractor shall be and shall remain liable to Agency in accordance with applicable law for all damages to Agency caused by Contractor's negligent performance or failure of any of the Deliverables furnished under this PO.

3. PAYMENT: Payment for completion of Agency contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later. After 45 days, Contractor may assess overdue account charges up to a maximum rate of two-thirds of one percent per month (8% per annum) on the outstanding balance (ORS 293.462).

4. STATE PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the Deliverables provided under this PO, Agency may, but is not obligated to, pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this PO. The payment of a claim by Agency pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

5. REPRESENTATIONS AND WARRANTIES: All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants that –

- Contractor has the power and authority to enter into and perform this PO,
- Contractor is an independent contractor as defined in ORS 670.600(2);
- Contractor's provision of the Deliverables creates no potential or actual conflict of interest as defined in ORS chapter 244. Contractor shall immediately submit to Agency an accurate and complete Conflict of Interest Disclosure Form if any disclosures are required per the ODOT COI Guidelines (available at <https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>).
- Contractor has for the six years preceding the effective date of this PO complied with, and agrees that during the term of this PO shall comply with Oregon Tax Laws and applicable tax laws of political subdivisions of this State.
- Contractor has no undisclosed liquidated and delinquent debt owed to the State of Oregon or any department or agency thereof;
- this PO, when executed and delivered is a valid and binding obligation of Contractor, enforceable in accordance with its terms;
- unless otherwise stated in this PO, all Deliverables are free and clear of any liens or encumbrances and shall be new (and, if applicable, the current model) and carry full manufacturer warranties;– Contractor has full legal

title to the Deliverables and that no other person has any right, title or interest in the Deliverables, which shall be superior;

- all Deliverables provided are free from defects in labor, material and manufacture and in compliance with the specifications set out in this PO; and
- if Contractor is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under this PO.

These representations and warranties are cumulative and are in addition to and not in lieu of any other representations or warranties found in this PO or the law.

6. TERMINATION: (i) The parties may terminate this PO in whole or in part by mutual agreement. (ii) Agency may terminate this PO in whole or in part at any time upon written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Deliverables provided and accepted. (iii) Agency may terminate this PO at any time upon written notice to Contractor if Agency fails to receive funding, appropriations, or other expenditure authority. (iv) Agency may terminate this PO for cause upon written notice to Contractor if Contractor breaches any PO provision, representation and warranty, certification, obligation (including failure to cure deficiencies within the deadline set forth in a cure notice), or is declared insolvent. Contractor shall be liable for all damages resulting from its breach of the PO, including, but not limited to all incidental and consequential damages as provided in the UCC and ORS 72.7110 to 72.7170.

7. REMEDIES: Any violation or breach of this PO entitles Agency to terminate this PO (in whole or in part), to pursue and recover any and all damages that arise from the breach and the termination of this PO, and to pursue any or all of the remedies available under this PO, at law, or in equity, including but not limited to: termination of this PO in whole or in part; collection by administrative offset or garnishment, if applicable, or withholding amounts otherwise due and owing to Contractor without penalty. The remedies set forth in this Section 7 are cumulative.

8. INDEMNIFICATION/HOLD HARMLESS: Contractor shall indemnify, defend, save, and hold harmless the State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorneys fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Contractor or its subcontractors, or their respective agents, officers or employees, under this PO.

9. GOVERNING LAW, JURISDICTION, VENUE: This PO is governed by Oregon law, without resort to any other jurisdiction's laws. Any claim, action, suit, or proceeding between Agency and Contractor that relates to this PO (Claim) shall be heard exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it shall be brought and conducted solely and exclusively in the US District Court for the District of Oregon. CONTRACTOR CONSENTS TO THE IN PERSONAM JURISDICTION OF THESE COURTS. Nothing in this Section or any other provision of this PO shall be construed as a waiver by the State of Oregon of any form of defense, sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the US Constitution, or other immunity, from any Claim or from the jurisdiction of any court.

10. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this PO, in whole or in part, without the prior written approval of Agency. No such written approval shall relieve Contractor of any obligations under this PO, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to Agency under this PO as if no such transfer or subcontract had occurred. The provisions of this PO shall be binding upon and shall inure to the benefit of the parties to this PO and their respective successors and permitted assigns.

11. TIME IS OF THE ESSENCE: Contractor agrees that time is of the essence under this PO.

Purchase Order Terms and Conditions continued on next page...

12. FORCE MAJEURE: Neither party is responsible for delay or default caused by an event beyond its reasonable control. Agency may terminate this PO without liability to Contractor upon written notice after determining the delay or default reasonably prevents performance of this PO.

13. COMPLIANCE WITH APPLICABLE LAW: Contractor shall comply with all applicable federal, State and local laws, regulations, executive orders, and ordinances, as amended (Rules), including, without limitation, the provisions of: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (vii) ORS Chapter 659; (viii) ORS 279B.020 and 279B.270; (ix) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations; (x) all federal and State laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (xi) all regulations and administrative rules established pursuant to the foregoing laws. Agency's performance is conditioned upon Contractor's compliance with, 279B.220, 279B.225, 279B.230, and 279B.235, as applicable. All applicable Rules are incorporated by reference in this PO.

14. PAYMENTS REQUIRED By ORS 279C.505 AND 279B.220: For all Deliverables provided under this PO, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the industrial Accident Fund from the Contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the State, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

15. SAFETY AND HEALTH REQUIREMENTS: Contractor warrants Deliverables provided under this PO comply with all federal Occupational Safety and Health Administration ("OSHA") requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

16. WORKERS' COMPENSATION: Contractor shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless exempt under ORS 656.126(2). Contractor shall ensure that its Subcontractors, if any, comply with these requirements.

17. SAFETY DATA SHEET ("SDS") AND PRODUCT LABELING: Contractor shall comply with Hazard Communication requirements set forth in 29 CFR 1910.1200. As applicable, Contractor shall provide Agency with an SDS for any Deliverables provided or products used under this PO which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such Deliverables or products with required warnings.

18. RECYCLABLE PRODUCTS: Unless otherwise required, Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of this PO. These products shall include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

19. FOREIGN CONTRACTOR/BUSINESS REGISTRATION: If Contractor is not registered to do business or has no office in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the PO. Agency may withhold final payment under this PO until Contractor has met this requirement.

20. ACCESS TO RECORDS: Contractor shall maintain all fiscal records relating to this PO in accordance with generally accepted accounting principles and shall maintain any other records relating to this PO in such a manner as to clearly document Contractor's performance hereunder. Agency, the Secretary of State Audits Division and their duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this PO to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government shall be entitled to the same access as Agency. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law following final payment and termination of this PO, or until the conclusion of any audit, controversy or litigation arising out of or related to this PO, whichever date is later.

21. SEVERABILITY: If any provision of this PO is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and

obligations of the parties shall be construed and enforced as if this PO did not contain the particular provision held to be invalid.

22. WAIVER: No waiver, consent, modification or change of terms of this PO shall bind either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of Agency to enforce any provision of this PO shall not constitute a waiver by Agency of that or any other provision.

23. AMENDMENTS: All amendments to this PO must be in writing and signed by Agency.

24. TAX COMPLIANCE AND CERTIFICATION: Contractor's failure to comply with Oregon Tax Laws or applicable tax laws of political subdivisions of this State for the six years before Contractor executed this PO or during the term of this PO is a default for which Agency may terminate this PO and seek damages and other relief available under the terms of this PO or under applicable law. By entering this PO, Contractor hereby attests and certifies under penalty of perjury: (a) the number provided to Agency is the correct Federal Employer Identification Number; (b) Contractor is not subject to backup withholding because (i) it is exempt from backup withholding, (ii) it has not been notified by the IRS that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that it is no longer subject to backup withholding; and (c)(i) it has complied with and is not in violation of any Oregon Tax Laws including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, or applicable tax laws of any political subdivisions of this State, and (ii) for the six years preceding the date of this PO Contractor has been in compliance with Oregon Tax Laws and the applicable tax laws of political subdivisions of this State.

25. PERFORMANCE STANDARDS: Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the Deliverables required under the PO.

26. FAILURE TO PERFORM: The consequences for Contractor's failure to perform the scope of work identified in the PO, meet the delivery schedule requirements, meet established performance standards, or to cure deficiencies within the stated deadline, may include, but are not limited to:

(i) Reducing or withholding payment; (ii) Requiring Contractor to perform, at Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(iii) Declaring a default, terminating the PO and seeking damages and other relief available under the terms of the PO or other applicable law.

27. DEBT RECOVERY: The State may undertake collection by administrative offset, or garnishment if applicable, of all monies due for Deliverables to recover liquidated and delinquent debt owed to the State of Oregon or any department or agency of the State. Offsets or garnishment may be initiated after the Contractor has been given notice if required by law.

28. ORDER OF PRECEDENCE: The terms and conditions set forth in sections 1 through 28 are the Standard Terms and Conditions applicable to this PO. Agency may also provide "special terms and conditions" elsewhere in the invitation to bid, request for proposals, or PO which apply only to this PO. In the event of a conflict between the standard and "special terms and conditions", the "special terms and conditions" take precedence, unless the standard term(s) in question is/are required by law. In the event of any other conflict, 1) the special terms and conditions, 2) these Standard Terms and Conditions, 3) the Invitation to Bid or Request for Proposal, and 4) the proposal or response thereto shall be interpreted in the foregoing order of precedence. Contractor agrees that, in the event of a conflict, all the terms and conditions of this PO supersede all preprinted terms and conditions on any forms used by the Contractor. The rights and remedies of Agency provided for under this PO are in addition to any other rights and remedies provided by law.