

NON-CONSTRUCTION SMALL PURCHASE TERMS AND CONDITIONS

These Terms and Conditions, specifically for Non-Construction Small Purchase procurements, are an essential part of this Purchase Order ("Order" or "Contract"). Acceptance of this Order is acceptance of these Terms and Conditions, which shall supersede and replace any and all terms and conditions offered by Seller/Seller, without exception.

1. Seller's Obligation. The general obligation of the Seller shall be to transfer and deliver the goods and services specified in accordance with the terms, conditions, and specifications of the solicitation.

2. Buyer's Obligation. The general obligation of the Greater Cleveland Regional Transit Authority ("GCRTA") shall be to accept conforming delivery and conforming goods and services and to pay in accordance with the terms, conditions and specifications.

3. Indemnification. To the fullest extent permitted by law and to the full extent of Seller's intentional, reckless or negligent acts or omissions, the Seller shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless Licensor and its officials, agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits, for Seller's intentional, reckless or negligent acts or omissions arising out of or resulting from the subject matter of this Agreement, or the acts or omissions of any person or contracted entity directly or indirectly employed or contracted by Seller.

In the event of negligence or intentional acts or omissions by more than one entity, responsibility for such negligence or intentional acts or omissions will be allocated in accordance with the proportionate share of such entity(ies)' negligence or intentional acts or omissions. Nothing herein shall be construed as making Seller liable for any claims, actions, judgments, costs, penalties, liabilities, damages or losses and expenses caused by the sole negligence and/or misconduct of GCRTA.

To the extent that any portion of this provision is found to be in violation of any applicable law, said portion(s) of this provision are stricken but all remaining portions of this provision shall remain in full force and effect.

4. Patents. Seller shall pay all royalties and license fees attributable to the use of goods, materials, equipment or processes used to perform its obligations hereunder and, if it cannot timely secure the right for GCRTA to use them, it shall provide GCRTA equivalent non-infringing replacements at no additional cost to GCRTA. Seller agrees to defend and hold harmless the GCRTA from and against all claims of infringement

5. Warranties. Seller warrants that for a period of one (1) year (or for such longer period as prescribed by the specifications or commercially offered by the manufacturer or Seller) following first use of the goods and services delivered hereunder, the goods and services are free of defects in materials and workmanship and further warrants that such goods and services are suited for the particular purpose(s) intended and are of merchantable quality. Seller further warrants that it holds good and marketable title in the goods delivered, and that such goods are free of all liens, security interests or other encumbrances. Seller agrees that in the event the goods or services are not as warranted, it will promptly cure the defect at Seller's sole cost and expense. Seller further agrees to indemnify GCRTA for all costs and damages, both incidental and consequential, resulting from the delivery of goods and services that fail to meet the aforesaid warranties. It is agreed that the goods and services provided hereunder are regarded as consumer goods and services.

6. Quantity and Quality. Seller agrees to deliver goods and services of the kind and quality specified and in the quantities specified. In the case of a requirements Contract, the solicitation specifies estimates of the GCRTA's needs for the Contract duration. It is agreed that such estimates are not to be considered firm requirements. Actual requirements may exceed or be less than these estimates.

7. Delivery. Seller shall tender delivery in the manner and at the place and time specified in the solicitation. All deliveries are to be F.O.B. destination, or as otherwise designated on the bid form by GCRTA. It is agreed that the bid prices include freight.

8. Debarment & Suspension. For any transaction of \$25,000 and above, Seller must disclose to GCRTA any debarment and/or suspension.

9. Covenant Against Contingent Fees. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission or contingent fee, except a bona fide established commercial or selling agency maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the GCRTA shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

10. Prohibited Interest. No officer, member or employee of the GCRTA and no members of its governing body, and no other public office or employee of the governing body of the locality or localities included within the GCRTA, during his or her tenure, shall have any interest, direct or indirect, in this solicitation, any Contract negotiated subsequently, or the proceeds thereof.

11. Inspection. The GCRTA reserves the right and shall be at liberty to inspect all materials and workmanship to determine whether they conform with the specifications provided. However, the GCRTA is under no duty to make such inspection. Whether or not GCRTA conducts an inspection, no such inspection shall relieve Seller of any obligation to furnish materials and workmanship strictly in accordance with the specifications. GCRTA will receive conforming deliveries for purposes of inspection. Acceptance of goods and services will not occur until after inspection or until a reasonable time for inspection has elapsed. The risk of loss shall remain with Seller until acceptance.

GCRTA may test deliveries before or after acceptance for conformance with the specifications. Such tests may be performed by independent laboratories. Where test results indicate non-conforming goods, the delivery and the goods will be rejected and the cost of the test charged to Seller. Where acceptance has preceded testing, acceptance is deemed conditional and subject to revocation. GCRTA may reject goods and services and revoke its acceptance without testing.

12. Payment. GCRTA shall be entitled to any and all discounts stated on the face hereof. Payments will be made against approved invoices generally within thirty (30) days of receipt of invoice. Late payments will accrue no interest. Payment will only be made for goods and services accepted. For goods and services accepted, when acceptance is later revoked prior to payment, payment will be withheld until defects in the nonconforming goods or services are cured and accepted. In the case of serial deliveries and serial invoicing, GCRTA reserves the right to deduct overpayments from current invoice amounts. Payment does not constitute acceptance nor does it serve to waive a later revocation of acceptance.

All invoices submitted to GCRTA for payment shall include the purchase order number. Invoices shall be payable at Cleveland, Ohio and mailed to: Accounts Payable, Greater Cleveland Regional Transit Authority, 1240 West 6th Street, Cleveland, Ohio 44113-1331.

The GCRTA is exempt from all sales, excise and transportation taxes, except State of Ohio gasoline tax. The price or prices bid, whether a unit price, lump sum price, lot price or a trade discount from catalog list prices shall be exclusive of all such taxes and will be so construed.

13. Assignment. The Seller shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same or any part thereof without prior written consent of the GCRTA endorsed thereon or attached thereto, and any such attempt at assignment shall be void.

14. Compliance with Laws and Regulations. All materials and supplies furnished pursuant to the specifications shall be in compliance with the laws and regulations of the United States and State of

Ohio. Seller shall, if requested by the GCRTA, supply certification and evidence of such compliance. The Contract shall be construed pursuant to the laws of the State of Ohio. This Contract may be supported in part by Federal assistance under grants made by the Department of Transportation, Federal Transit Administration, pursuant to the Urban Mass Transportation Administration Act of 1964 and amendments (49 U.S.C. 1601 et seq.) and Surface Transportation Assistance Acts of 1982 and 1987. When so funded this Contract shall be subject to all rules and regulations promulgated pursuant thereto.

15. Governing Law/Venue. This Contract shall be governed by and interpreted pursuant to the laws of the United States, the State of Ohio, and the Courts of Cuyahoga County, as appropriate, notwithstanding any provisions or such law relating to jurisdiction. Should any part or parts of this Contract be held unenforceable by any court of competent jurisdiction, such determination shall not affect the remainder thereof and the balance shall remain in full force and effect.

16. Safety Belt Use. Pursuant to Federal Executive Order No. 13043, Seller is encouraged to adopt and promote on-the-job seat belt use for its employees and other personnel operating vehicles involved in the project.

17. Termination. The GCRTA may, by written notice to the Seller, terminate the whole or any part of this Contract.

18. Termination for Default. GCRTA may terminate this Contract for default, if within ten (10) days after receiving notice from the GCRTA, Seller fails to make delivery of conforming goods or to perform the services as required within the time specified herein or any extension thereof; or if the Seller fails to perform any of the other provisions of this Contract, or so fails to make progress so as to endanger performance of this Contract in accordance with its terms. Thereafter, the GCRTA may have the work completed and the Seller shall be liable for any resulting cost to the GCRTA.

19. Termination For Convenience. GCRTA may terminate performance of work under this Contract in whole or in part for its convenience for any reason or for no reason at all without obligation to Seller other than for Seller's prior performance. GCRTA requires Seller to perform prior to the date GCRTA gives notice of such termination to Seller.

20. Shipments. Should equipment, materials or commodities provided hereunder be transported by ocean vessel, Seller must ensure compliance with 46 U.S.C. § 55303 and Maritime Administration regulations, "Cargo Preference U.S. Flag Vessels," 46 CFR Part 381, implementing the codified Cargo Preference Act. Should persons acting pursuant to this contract, equipment, materials or commodities provided hereunder be transported by air carrier, Seller shall comply with 41 CFR Sections 301-10.131 through 301-10.143.

21. Non-Discrimination. Seller agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability in accordance with the following Federal Statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. 2000d) and VII (42 U.S.C. 2000e); Age Discrimination Act of 1975, as amended (42 U.S.C. 6102); Age Discrimination in Employment Act of 1967 as amended, (29 U.S.C. 623); Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12132 and 42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. 5332); Executive Order 11248, as amended by Executive Order 11375 (42 U.S.C. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). The Seller also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.

22. Socio-Economic Development. For purchases in excess of \$25,000, Seller agrees to comply with applicable federal and state laws/regulations that afford competitive opportunities for a Seller that qualifies as a disadvantaged business enterprise (DBE), minority owned firm, women's business enterprise, or small business.

23. Hazardous Materials. Where the goods or services procured involve the use or storage of hazardous materials on RTA premises in Cleveland, Seller agrees to meet the requirements of Cleveland Codified Ordinance Section 394. Seller shall:

- (a) Label the containers of hazardous or toxic substances that it delivers in accordance with the requirements of Federal and State 4.06 (A).
- (b) Provide labels and placards for use by GCRTA when deliveries are made in bulk and are to be stored by GCRTA in stationary containers pursuant to C.O.C. Section 394.06(B).
- (c) Provide the hazard warnings applicable to the delivered goods that are required C.O.C., Section 394.06(d).
- (d) Provide all material safety data sheets required C.O.C., Section 394.09

The delivery of the aforesaid information must accompany the delivery of the goods. Goods will not be inspected or accepted unless tendered in said manner.

24. Integrated Agreement. The Purchase Order in which these General Terms and Conditions are incorporated into, together with any other documents incorporated by reference, constitute the entire agreement between the parties and supersedes and replaces any prior written or oral communication. Additional terms and conditions submitted by the Seller are disregarded unless specifically accepted by GCRTA in writing. Seller acknowledges that to the extent of conflict the GCRTA terms shall prevail, take precedence over, supercede and replace any conflicting or additional terms or contingencies proposed by Seller.

This Contract may be amended in writing by change notice or by a replacement purchase order. Should any part or parts of this agreement be held unenforceable by any competent judicial body, such determination shall not affect the remainder thereof and the balance of this agreement shall remain in full force and effect.

25. Right to Audit. Seller shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulations, Parts 30 and 31, as applicable. GCRTA and its authorized representatives shall have the right to audit, to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Contract kept by or under the control of the Seller, including, but not limited to those kept by the Seller, its employees, agents, assigns, successors and subSellers. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Seller shall, at all times during the term of this Contract and for a period of three years after the completion of this Contract, maintain such records, together with such supporting or underlying documents and materials. The Seller shall at any time requested by GCRTA, whether during or after completion of this Contract, and at Seller's own expense make such records available for inspection and audit (including copies and extracts of records as required) by GCRTA. Such records shall be made available to GCRTA during normal business hours at the Seller's office or place of business. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for GCRTA. Seller shall ensure GCRTA has these rights with Seller's employees, agents, assigns, successors, and subSellers, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Seller and any subSellers to the extent that those subcontracts or agreements relate to fulfillment of the Seller's obligations to GCRTA. If the audit discovers substantive findings related to fraud, misrepresentation, or

non-performance, GCRTA may recoup the costs of the audit work from the Seller. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Seller's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GCRTA's findings to Seller.

26. Recycled Products/Energy Conservation. Seller agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the subject matter of this Contract. Seller further agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with 42 USC Sections 6321 et seq.

27. No Obligation by the Federal Government. Seller and GCRTA agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the GCRTA, the Seller or any other party pertaining to any matter resulting from the underlying Contract; Seller further agrees to include this clause, without modification, in any subcontract issued hereunder.

28. Program Fraud and False or Fraudulent Statements or Related Acts. Seller agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions and those of its subSeller(s) pertaining to this Contract. Seller further agrees to include this clause, without modification, in any subcontract issued hereunder.

29. Reporting of Fraudulent/Improper Acts. If Seller suspects or has knowledge of unethical, improper and/or fraudulent acts by GCRTA personnel, including, but not limited to, conflicts of interest, bribery, fraud, waste, abuse, extortion, and kickbacks, the Seller shall contact the GCRTA Executive Director of Internal Audit on the GCRTA Fraud Hotline (216-350-5130).

30. Documents and Records (Paper and Electronic). Documents and records, including electronic records, created and maintained by Seller under this Contract may be subject to the Ohio Public Records Act, Ohio Rev. Code § 149.43 et seq. Seller shall maintain all documents and records related to this Contract, including electronic records, in accordance with GCRTA's records retention policy and schedule. Under that policy, contracts are retained for fifteen (15) years. Prior to destruction of any documents or records related to this Contract, Seller shall comply with the provisions of GCRTA's records retention policy relating to destruction of records.

To the extent that the Seller becomes aware of actual or potential litigation related to this Contract, the Seller shall immediately notify the Authority's Deputy General Manager for Legal Affairs. The Seller shall preserve any and all records, including electronic records, created or maintained under this contract until advised by the GCRTA's Legal Department, in writing, that they are no longer needed. Any suspension issued under this paragraph shall supersede any previously or subsequently established destruction schedule for such records.

31. Resolution of Disputes, Breaches, or Other Litigation. In the event of a dispute and/or breach related to this procurement, Seller shall contact the GCRTA Director of Procurement. For federally-funded procurements, GCRTA and the bidder must abide by FTA Protest Procedures, as described in the GCRTA Procurement Manual.

32. Federal Funding Requirements & Required Provisions Deemed Inserted. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in Master Grant Agreement(s) between Owner and FTA as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Each and every clause required by Federal or State statute or regulation to be inserted into this Contract is deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

END OF TERMS AND CONDITIONS