

## PURCHASE ORDER TERMS AND CONDITIONS

### **1. Purchase Order Number**

This purchase order number must be shown on all related invoices, delivery memoranda, bills of lading, packages, and/or correspondence.

### **2. Incorporation by Reference**

All terms and conditions of the Solicitation, and any amendments thereto, are made a part of this contract.

### **3. Tax Exemption**

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

### **4. Specifications**

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations and to the specifications contained in the Solicitation.

### **5. Delivery and Acceptance**

Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation specifications shall be rejected. Rejected materials shall be promptly replaced. The University reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

### **6. Non-Hiring of Employees**

No employee of the State or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or affecting the subject matter of this contract shall, while so employed, become or be an employee of the party or parties hereby contracting with the University or any unit thereof.

### **7. Nondiscrimination in Employment**

The Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment and to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **8. Financial Disclosure**

The Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

### **9. Political Contribution Disclosure**

The Contractor shall comply with the provisions of Article 33, Sections 30-1 through 30-4, Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year under which the person receives in the aggregate \$10,000 or more, shall, on or before February 1 of the following year file with the Secretary of State certain specified information to include disclosure of political contributions in excess of \$100 to a candidate for elective office in any primary or general election.

### **10. Anti-Bribery**

The Contractor warrants that neither it nor any of its officers, directors, or partners, nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

### **11. Registration**

Pursuant to §7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21202, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

### **12. Contingent Fees**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

### **13. EPA Compliance**

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

**14. Occupational Safety and Health Act and Maryland Access to Information About Hazardous and Toxic Substances Act**

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards. Contractors must comply with the Maryland Access to Information About Hazardous and Toxic Substances Act, Art. 89, §§32A-32N of the Annotated Code of Maryland which requires notification regarding products including, but not limited to, encapsulating agents, spray adhesives, pesticides, herbicides, paints, paint removers, cleaning materials or compounds, oils, adhesives, and abrasives.

**15. Termination for Convenience**

Upon written notice to the Contractor, the University may terminate this contract, in whole or in part, whenever the University shall determine that such termination is in the best interest of the University. The University shall pay all reasonable costs incurred up to the date of termination and all reasonable costs associated with termination of the contract. However, the Contractor shall not be reimbursed for anticipatory profits. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**16. Termination for Default**

When the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the State. Failure on the part of a Contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**17. Disputes**

This contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the performance officer's decision.

**18. Multi-Year Contracts Contingent Upon Appropriations**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal period, this Contract shall terminate automatically as of the beginning of the fiscal year for which funds were not available. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The Contractor may not recover anticipatory profits or costs incurred after termination.

**19. Intellectual Property**

Contractor agrees to indemnify and save harmless the University, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this contract.

**20. Maryland Law Prevails**

The provisions of this contract shall be governed by

the laws of the state of Maryland.

**21. Contractor's Invoices**

A separate invoice in TRIPLICATE for this purchase order or for each shipment thereon shall be rendered immediately following shipment. All copies of invoices must be forwarded directly to the Accounts Payable Department, at the following address: 1700 E. Cold Spring Lane, Baltimore, Maryland 21251-0001. Contractor agrees to include on the face of all invoices billed to the University, its Taxpayer Identification Number which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organizations.

**22. Pre-existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

**23. Indemnification**

The State shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

**24. CONFLICTING TERMS**

ANY PROPOSAL FOR TERMS IN ADDITION TO OR DIFFERENT FROM THOSE SET FORTH IN THE PURCHASE ORDER OR ANY ATTEMPT BY THE CONTRACTOR TO VARY ANY OF THE TERMS OF THIS OFFER BY CONTRACTOR'S ACCEPTANCE SHALL NOT OPERATE AS A REJECTION OF THIS OFFER, UNLESS SUCH VARIANCE IS IN THE TERMS OF THE DESCRIPTION, QUANTITY, PRICE OR DELIVERY SCHEDULE, BUT SHALL BE DEEMED A MATERIAL ALTERATION THEREOF, AND THIS OFFER SHALL BE DEEMED ACCEPTABLE BY THE CONTRACTOR WITHOUT THE ADDITIONAL OR DIFFERENT TERMS. IF THIS PURCHASE ORDER IS AN ACCEPTANCE OF A PRIOR OFFER BY THE CONTRACTOR, THE ACCEPTANCE IS EXPRESSLY CONDITIONED UPON CONTRACTOR'S ASSENT TO ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED HEREIN. THE CONTRACTOR UNDERSTANDS AND AGREES THAT THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER MAY NOT BE WAIVED.

**25. Drug and Alcohol Free Workplace**

The Contractor warrants that the Contractor shall comply with COMAR 21.11.08, Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this purchase order.

**26. Delays and Extensions of Time**

A. The Contractor agrees to perform the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the work specified in this Contract.

B. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract

with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**27. Liquidated Damages**

Time is an essential element of the contract and it is important that the work be vigorously prosecuted until completion. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.

**28. Variations in Estimated Quantities**

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

**29. Suspension of Work**

The procurement officer unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the University.

**30. Payment of University Obligations**

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle I, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

**31. Retention of Records**

The Contractor shall retain and maintain all records and documents relating to this contract for three years after final payment by the University hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the University, including the procurement officer or his designee, at all reasonable times.

**32. Cost and Price Certification**

A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior

to the conclusion of any price discussions or negotiations for:

(1) A negotiated Contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

(2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

**33. Conflict of Interest Law**

It is unlawful for any State officer, employee or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice or investigation in any contract or other matter in which he, his spouse, parent, minor child, brother, or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, §§3-101 et seq. of the Annotated Code of Maryland.

**34. Truth-In-Negotiation Certification**

The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

A. The wage rates and other factual unit costs supporting the form's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other unit costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

C. If additions are made to the original price of the contract, such additions may be adjusted to exclude and significant sums where it is determined the price has been increased due to inaccurate, incomplete or nonconcurrent wage rates and other factual costs.

**35. Contract Affidavit**

Contractor agrees to execute the Contract Affidavit, a copy of which is attached hereto, and incorporated herein by reference.

**36. Rehabilitation Act of 1973**

Vendors and Contractors shall be subject to and comply with all contract/grant terms and conditions made applicable to them by virtue of Sections 503 and 504 of the "Rehabilitation Act of 1973," and all implementing federal regulations, including 20 CFR Sec. 741 and 45 CFR Sec. 84.

**37. Civil Rights Act of 1964**

Vendors and Contractors providing materials, equipment, supplies, or services to the State under this contract shall assure the State that they conform to the provisions of Section 13-406 State Finance and Procurement Article of the Annotated Code of Maryland, The Civil Rights Act of 1964, and Section 202 of Executive Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

**38. Contract Modifications**

The University may at any time, by written order and without notice to the sureties, make changes within the general scope of this contract including but not limited to changes (i) in any drawings, designs or specifications; (ii) in the method, quantity or manner of performance of the work; (iii) in any University-furnished facilities, equipment, materials, services or site; or (iv) directing acceleration in the performance of the work.

**39. Compensation**

Contractor shall be paid only for items or services that are specifically named in this contract. No additional costs for items or services will be paid by the University without its prior express written consent.

**40. Compliance with Laws**

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the state of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.