

**STATE OF OREGON
STANDARD TERMS AND CONDITIONS
CONTRACTS FOR THE PURCHASE OF GOODS**

1. **DEFINITIONS:** “Contract” means the entire agreement between the parties, including but not limited to these Standard Terms and Conditions, the Invitation to Bid or Request for Proposal, the proposal or response thereto, and any purchase order, work order, or price agreement document; and any standard terms and conditions contained in, any exhibits, schedules and other attachments to and amendments and restatements of any of the above.

“Contractor” means the person or organization with whom the State has contracted for the purchase of goods pursuant to this Contract.

“State” means the state agency and any authorized ORCPP members making a purchase of goods pursuant to this Contract and is synonymous with “Buyer” as defined at ORS 72.1030(a).

“UCC” means the Uniform Commercial Code, ORS chapter 72, as amended from time to time.

2. **STANDARD AND SPECIAL TERMS AND CONDITIONS; ORDER OF PRECEDENCE:** These printed Terms and Conditions are the Standard Terms and Conditions for State of Oregon contracts for the purchase of goods. The State may also provide “special terms and conditions” elsewhere in the Contract which apply only to this Contract. Whenever possible, all terms and conditions are to be harmonized. 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. By signing this Contract, Contractor agrees that, in the event of a conflict, all the terms and conditions of this Contract supersede all preprinted terms and conditions on any forms used by the Contractor.

3. **PAYMENT:** Payment for completion of State 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. **CASH DISCOUNT:** If the State is entitled to a cash discount, the period of computation shall start on the date the entire order is delivered or the date the invoice is received, which ever is later.

5. **DELIVERY:** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the Contract. Responsibility

and liability for loss or damage shall remain with Contractor until final inspection and acceptance.

6. **INSPECTIONS:** Goods furnished under this Contract shall be subject to inspection and test by the State at times and places determined by the State. If the State finds goods furnished to be incomplete or not in compliance with the Contract, the State, at its sole discretion, may either reject the goods, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods to the State at a reduced prices, whichever the State deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the State, the State may reject the goods and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the State's rights as buyer under the UCC, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

7. **WARRANTIES:** Unless otherwise stated, all goods shall be free and clear of any liens or encumbrances and shall be new (and, if applicable, the current model) and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with the specifications set out in this Contract. All implied and express warranty provisions of the UCC are hereby incorporated by reference. Further, Contractor represents and warrants to State that Contractor has the power and authority to enter into and perform this Contract and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.

8. **INDEMNIFICATION:** Contractor shall defend, save, hold harmless, and indemnify the State of Oregon and its agencies and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract.

9. **BREACH OF CONTRACT:** Contractor shall be liable for any and all damages suffered by the State as the result of Contractor's breach of Contract, including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170.

10. **MATERIAL SAFETY DATA SHEET:** Contractor shall provide the State with a Material Safety Data Sheet as defined by the Occupational Safety and Health Administration (OSHA) for any goods provided under this Contract 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 goods.

11. **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 goods provided under this Contract, the State 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 Contract. The payment of a claim by the State pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

12. **FORCE MAJEURE:** Neither State nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, war, or any other cause which is beyond the party's reasonable control. Contractor shall, however, make all reasonable efforts to move or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The State may terminate this Contract upon written notice after reasonably determining that such delay or default will likely prevent successful performance of this Contract.

13. **TERMINATION:** A) This Contract may be terminate at any time by mutual written consent of the parties or State may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days notice to Contractor. B) State may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as State may establish in such notice, upon the occurrence of any other the following events: (i) State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under this Contract; or (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under this Contract is prohibited or the State is prohibited from paying for such goods from the planned funding source. Pursuant to this section 13, upon receipt of written notice of termination, Contractor shall stop performance under this Contract as directed by the State. C) Termination under any provision of this Contract shall not extinguish or prejudice the State's right to enforce this Contract with respect to any breach of a Contractor warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State to indemnification by Contractor. If this Contract is so terminated, Contractor shall be paid in accordance with the terms of the Contract for goods delivered and accepted.

14. **COMPLIANCE WITH APPLICABLE LAW:** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. State's performance under this Contract is conditioned upon Contractor's compliance with the clauses required in every public Contract as set forth in ORS 279.312, 279.314, 279.316, and 279.320 which are herby incorporated by reference.

15. **SAFETY AND HEALTH REQUIREMENTS:** Contractor warrants goods and services provided under this Contract 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. **RECYCLABLE PRODUCTS:** Contractor shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document. Contractor shall specify the minimum percentage of recycled product in the

goods provided under this Contract. Contractor agrees to abide by all covenants contained in ORS 279.555, which is incorporated by reference.

17. **ACCESS TO RECORDS:** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this Contract in such a manner as to clearly document Contractor's performance hereunder. The State and its agencies, 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 Contract 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 the State. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 3 years, or such longer period as may be required by applicable law following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

18. **AWARD TO FOREIGN CONTRACTOR:** If the amount of this Contract exceeds \$10,000 and if Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to this Contract. State shall withhold final payment under this Contract until Contractor has met this requirement.

19. **SEVERABILITY:** If any provision of this Contract 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 the Contract did not contain the particular provision held to be invalid.

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

21. **TIME IS OF THE ESSENCE:** Contractor agrees that time is of the essence under this Contract.

22. **GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State as defined herein (and/or any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Contract shall be brought and conducted solely

and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought and conducted solely and exclusively within the United states District Court for the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

23. MERGER CLAUSE; AMENDMENT; WAIVER: This Contract constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No waiver, consent, modification or change of terms of this Contract 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 the State to enforce any provision of this Contract shall not constitute a waiver by the State of that or any other provision.