

## State of Oregon - Terms and Conditions

### 1. DELIVERY

Deliveries will be F.O.B destination. Contractor shall pay all transportation and handling charges. Contractor is responsible and liable for loss or damage until final inspection and acceptance of the Goods. Contractor remains liable for latent defects, fraud, and warranties following acceptance of the Goods.

### 2. INSPECTIONS

Agency may inspect and test the Goods and related Services (collectively, "Goods"). Agency may reject non-conforming Goods and require Contractor to correct them without charge or deliver them at a reduced price, as negotiated. If Contractor does not cure any defects within a reasonable time, Agency may reject the Goods and cancel the PO in whole or in part. This paragraph does not affect or limit Agency's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).

### 3. PAYMENT

Agency will pay Contractor within 30 days from the date the Goods are delivered and accepted, and any applicable invoice is received. Payments are subject to ORS 293.462.

### 4. REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that: (i) unless otherwise agreed, the Goods are new, current, and fully warranted by the manufacturer, and Contractor shall transfer all warranties to the State; (ii) the Goods will comply with specifications and be free from defects in labor, material, and manufacture; (iii) Contractor shall comply with the tax laws of this State and all political subdivisions; and (iv) Contractor has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State. All UCC implied and expressed warranties are incorporated in this PO.

### 5. TERMINATION

(i) Agency may terminate this PO at any time with written notice to Contractor. Upon receipt of the written notice, Contractor shall stop performance, and Agency shall pay Contractor for Goods delivered and accepted. (ii) Agency may terminate this PO at any time via written notice if Agency fails to receive funding, appropriations, or other expenditure authority. (iii) Agency may terminate this PO for cause with written notice to Contractor, if Contractor breaches any PO provision, including the representations and warranties related to liquidated and delinquent debt, or is declared insolvent, (iv) Agency may terminate this PO, if Contractor fails to comply with the tax laws of this State or any political subdivision of this State.

### 6. REMEDIES

Agency may, at Agency's option, pursue any or all of the remedies available under this PO and at law or in equity, including, but not limited to: (i) termination; (ii) suspension of any related Services (provided, however, Agency may be liable to Contractor for demobilization or remobilization costs); (iii) withholding payment of any or all amounts; (iv) initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; or (v) exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor in an amount equal to the State's setoff right, without penalty. These rights and remedies are cumulative to the extent the remedies are not inconsistent and are in addition to any other remedies available at law or in equity. Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

### 7. INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless the State and its agencies, their divisions, officers, employees, and agents, from all claims, suits, or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents, or employees under this PO. This includes any defects in design, manufacture, materials, or

workmanship in any Goods manufactured, sold, or distributed by Contractor, and any failure of such Goods to perform as intended or advertised, including claims for personal injury, property damage, or economic loss arising after the sale or distribution of such Goods.

## **8. GOVERNING LAW, JURISDICTION, VENUE**

This PO is governed by Oregon law, without giving effect to its conflict of law provisions. Any claim, action, suit, or proceeding between the State and Contractor that relates to this PO (“Claim”) must be heard exclusively in the Circuit Court of Marion County for the State of Oregon. If the Claim must be brought in a federal forum, then it must be heard exclusively in the US District Court for the District of Oregon. Contractor hereby consents to the in personam jurisdiction of these courts. Neither this section nor any other provision of this PO is a waiver by the State 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 consent to the jurisdiction of any court.

## **9. 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.

## **10. INTENDED BENEFICIARIES**

The State of Oregon and Contractor are the only parties to this PO and are the only parties entitled to enforce this PO. Nothing in this PO gives any benefit or right to any third persons.

## **11. ASSIGNMENT/SUBCONTRACT/SUCCESSORS**

Contractor shall not assign, transfer, or subcontract rights or delegate responsibilities under this PO in whole or in part, without the prior written approval of Agency. This PO’s provisions are binding upon and inure to the benefit of the parties to the PO and their respective successors and assigns.

## **12. ACCESS TO RECORDS**

Contractor shall maintain all records relating to Contractor’s performance (“Records”) for six years from termination or as otherwise required. Contractor shall maintain all accounting records relating to this PO according to Generally Accepted Accounting Principles (“GAAP”) and the Governmental Accounting Standards Board (“GASB”). Contractor shall grant the State and its agencies, the Secretary of State Audits Division, the federal government, and their duly authorized representatives’ access to the Records, including reviewing, auditing, copying, and making transcripts.

## **13. COMPLIANCE WITH APPLICABLE LAWS**

Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, including as amended, inclusive 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) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975; (v) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974; (vi) ORS Chapter 659; (vii) ORS 279B.020, and 279B.270; (viii) all other applicable requirements of federal and state civil rights and rehabilitation statutes; (ix) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; and (x) all regulations 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 laws, regulations, executive orders, and ordinances are incorporated by reference in this PO.

## **14. INSURANCE**

Contractor shall obtain and maintain the following insurance coverages: (i) Workers’ Compensation: Contractor shall provide and maintain required workers’ compensation coverage in compliance with ORS 656.017, unless exempt under ORS 656.126(2). Contractor shall ensure that its subcontractors, if any, comply with these requirements. If Contractor is an employer subject to any other state’s workers’ compensation law, Contractor shall provide workers’ compensation

insurance coverage for its employees as required by applicable workers' compensation laws, including employers' liability Insurance coverage with limits not less than \$500,000, and shall require and ensure that each of its out-of-state subcontractors complies with these requirements. (ii) Commercial General Liability: Contractor shall provide and maintain insurance covering bodily injury and property damage, written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. This insurance must include personal and advertising injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this PO. (iii) Automobile Liability: Contractor shall provide and maintain insurance with a combined single limit of not less than \$1,000,000 for each accident for bodily injury and property damage, for owned, hired and non-owned vehicles, as applicable. The policy(ies) must name the State of Oregon as additional insured.

#### **15. SAFETY AND HEALTH REQUIREMENTS**

Contractor represents and warrants that the Goods comply with all federal and Oregon safety and health requirements.

#### **16. SAFETY DATA SHEET**

Contractor shall provide Agency with a Safety Data Sheet for any Goods which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 002-0360 and 29 CFR 1910.1020). Contractor shall label, tag, or mark such Goods.

#### **17. SUSTAINABILITY AND RECYCLABLE PRODUCTS**

Contractor shall minimize environmental impacts of products to the maximum extent feasible in performance of the PO, including lowering the amounts of embodied carbon and other greenhouse gas emissions, minimizing waste, using energy and water efficiently, fostering habitat and ecosystem restoration and resiliency, minimizing depletion of natural resources, and reducing toxic contamination. Contractor also shall use recycled and recyclable products to the maximum extent economically feasible in the performance of the PO. These products include recycled paper, recycled PETE products, other recycled products (ORS 279A.010(1)(gg),(hh),(ii)), and other recycled plastic resin products.

#### **18. AMENDMENTS**

In order to be effective, any amendment to this PO must be by written agreement of the parties.

#### **19. SEVERABILITY**

If a court of competent jurisdiction declares any provision of this PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

#### **20. WAIVER**

Agency's failure to enforce any provision of this PO is not a waiver or relinquishment by the State of its rights to such performance in the future or to enforce any other provisions.

#### **21. AWARD TO FOREIGN CONTRACTOR**

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 this PO. Agency may withhold final payment under this PO until Contractor has met this requirement.

#### **22. TAX CERTIFICATION**

Contractor hereby certifies under penalty of perjury: (i) the number shown on this form is the correct Federal Employer Identification Number; (ii) Contractor is not subject to backup withholding because (a) it is exempt from backup withholding, (b) 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 (c) the IRS has notified Contractor that it is no longer subject to backup withholding; and (iii) Contractor complies with and is not in violation of any Oregon tax laws.