

PURCHASE ORDER TERMS & CONDITIONS – GOODS

- 1. Definition and Acceptance of Terms** NCTD shall mean the North County Transit District. Contractor shall mean the person and/or company from whom the merchandise, Goods, and/or equipment (“Goods”) are ordered as shown on the face of this PO (“PO”). This PO constitutes an offer by NCTD to Contractor upon the terms and conditions stated herein and is a binding contract upon Contractor’s acceptance either by acknowledgement or performance.
- 2. Entire Agreement** This PO, which incorporates all applicable terms and conditions, specifications, scope and any other included attachments, constitutes the entire agreement between NCTD and Contractor. Any amendments to this PO must be in writing and executed by both parties.
- 3. Pricing** The total price shall include all taxes which either party is required to pay with respect to the sale and delivery of the Goods, including sales and use taxes, and shall include all charges for customs duties, freight charges and shipping unless specifically excluded. NCTD is not exempt from sales and use taxes, Federal Excise and Transportation Taxes. On out-of-state purchases, Contractor must show their Use Tax Permit Number issued by the California State Board of Equalization, which authorizes them to charge and collect California sales tax. Fuel surcharges or charges for cartage, pallets, boxing or packaging shall not be allowed unless Contractor disclosed them with specificity with submission of Contractor’s response to a solicitation or a request for quote.
- 4. Payment** NCTD will pay Contractor only upon satisfactory delivery or receipt of Goods. NCTD will review each payment request as soon as practicable after receipt. If any payment request is determined to be unsuitable for payment, NCTD shall notify Contractor as soon as practicable. NCTD shall not pay any interest charges for late payments of invoices unless permitted by law. Payments may be withheld or portions thereof may be deducted or set-offs made against Contractor if Contractor’s performance is not in accordance with the PO requirements.
- 5. Delivery** Timely performance and deliveries are essential. Time is of the essence. Contractor shall notify NCTD if there is any delay or shortage in shipment or of a partial shipment and of the date full shipment will be delivered. All Goods must be delivered within the time specified on this PO, or the revised delivery schedule approved by NCTD in writing. Delivery shall be made between 8:00 a.m. and 4:00 p.m. local time on weekdays unless otherwise agreed to by NCTD. Unless otherwise specified herein, all Goods acquired under this PO are sold F.O.B. location specified by NCTD. An original copy of the freight bill must be attached to the invoice. Contractor is not authorized to ship the Goods under a reservation and no tender of a bill of lading shall operate as a tender of the Goods. COD shipments are expressly prohibited. Shipment in greater or lesser quantity than ordered may be returned at Contractor’s expense unless authorized by NCTD.
- 6. Excusable Delays / Force Majeure** Contractor will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition, which is beyond Contractor’s reasonable control, without Contractor’s fault or negligence. Acts of God, such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war or riot, are examples of events excusable for being beyond Contractor’s reasonable control, only upon fulfillment of the following conditions within seven (7) calendar days of the commencement of any excusable delay: (a) Contractor shall provide NCTD with written notice of the cause and extent thereof, accompanied by a request for a schedule extension for the estimated duration; and (b) within seven (7) calendar days of the cessation of the event causing delay, Contractor shall provide NCTD with written notice of the actual delay incurred. Upon NCTD’s approval of a conforming excusable delay, Contractor’s time for performance will be extended for the time actually lost by reason of the excusable delay.
- 7. Inspection, Acceptance or Rejection of Goods** All Goods are subject to final inspection and acceptance by NCTD at the delivery location unless otherwise specified. NCTD will inspect the Goods and either accept or reject them within a reasonable time. If any specified inspection or testing is required to determine if the Goods meets the specifications, Contractor shall perform or shall have performed such inspections and tests at Contractor’s sole cost prior to the delivery to NCTD. Any Goods received damaged, or not in accordance with the instructions or specifications on the PO, will be rejected and returned to Contractor at Contractor’s risk and expense. NCTD will notify Contractor in writing stating the reason(s) why the Goods are deemed damaged or nonconforming. Contractor will have ten (10) business days or, if mutually agreed upon in advance, an agreed upon date to deliver conforming Goods. NCTD will hold the damaged or non-conforming Goods for a reasonable time not to exceed thirty (30) calendar days and Contractor must remove the rejected Goods at Contractor’s sole cost and expense.
- 8. Risk of Loss** Contractor shall bear all costs, loss or damage and assume all risk and liability associated with manufacture of, and delivery of, the Goods until NCTD accepts delivery. Upon delivery title passes to NCTD and Contractor’s responsibility for loss or damage shall cease, except for loss or damage resulting from Contractor’s negligence. Passing of title upon such delivery shall not constitute acceptance of the item by NCTD.
- 9. Material Safety Data Sheet (MSDS)** It is mandatory for Contractor to supply an MSDS with the shipment of any Goods that contains any hazardous material. If at any time, the content of an MSDS is revised, Contractor is required to provide the new information relevant to the specific hazardous material to NCTD.
- 10. Audit/Inspection of Records** Contractor shall retain complete and readily accessible records related in whole or in part to the PO, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type and supporting materials related to those records. Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Contractor shall maintain all books, records, accounts and reports required under this PO on a generally accepted accounting basis for a period of not less than four (4) years after the date of final payment by NCTD, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Contractor shall provide sufficient access to NCTD or any government or authorized representative to inspect and audit records pertaining to the performance of this PO as reasonably may be required.
- 11. Changes** NCTD may at any time by written notice or order make changes within the general scope of this PO in any of the following ways: 1) drawings, designs or specifications; 2) method of shipping or packing; 3) place of delivery; or 4) delivery schedule. If any change increases or decreases the cost or time required for performance of this PO, Contractor must assert its right to an adjustment under this clause within thirty (30) calendar days after the change is ordered. If Contractor requests an adjustment to the PO, the change must be authorized by NCTD in writing and Contractor must provide notice to NCTD prior to the time Contractor delivers the Goods and, where appropriate an equitable adjustment may be made.
- 12. Termination for Convenience** Performance under this PO may be terminated by NCTD in whole or, from time-to-time, in part, whenever NCTD shall elect. Any termination shall be by delivery to Contractor of a written Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise: (1) immediately discontinue performance on the date and to the extent specified in the notice; (2) place no further orders for materials other than as may be necessarily required for completion of such

portion of the PO that is not terminated; (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to NCTD of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon NCTD concurrence assign to NCTD those orders; and (4) assist NCTD, upon request, in the maintenance, protection and disposition of property acquired by NCTD under this PO. If Contractor submits a written claim within thirty (30) calendar days after Notice of Termination, NCTD will pay to Contractor an equitable adjustment to include (without duplication of any item): (1) all amounts due and not previously paid to Contractor for Goods completed in accordance with this agreement prior to such notice; (2) a reasonable amount for any Goods then in production; provided that no such adjustment be made in favor of Contractor with respect to any Goods which are Contractor's standard stock; (3) and for satisfactory work completed between the receipt of notice of termination and the effective date of termination pursuant to a specific request by NCTD for the performance of such work. If the Contractor has any property in its possession belonging to NCTD, the Contractor will account for the same and dispose of or return it in the manner NCTD directs. The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion—all claims for which Contractor agrees to waive.

13. Termination for Default In case of Contractor's breach or failure to perform, NCTD reserves the right to terminate the PO for default. NCTD may award the contract to the next lowest responsive, responsible bidder, solicit new bids, or pursue any other remedy authorized by law. In addition to any remedy authorized by law, NCTD may retain money due to Contractor under this PO, as considered necessary by NCTD, until disposition has been made of suits or claims for damages. The retention of money due to Contractor shall be subject to the following: (1) NCTD will give Contractor ten (10) business days' notice of its intention to retain funds from any partial payment which may become due to Contractor prior to termination by NCTD. Retention of funds from any payment made after acceptance may be made without such prior notice to Contractor; (2) No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments; and (3) If NCTD has retained funds, and it is subsequently determined that NCTD is not entitled to be indemnified and saved harmless by Contractor in connection with the matter for which such retention was made, NCTD shall be liable for interest earned on the amount retained for the period of such retention. NCTD may terminate the PO by serving a notice of termination on Contractor. Notice shall set forth the manner in which Contractor is in default and provide Contractor with (10) days to cure the default to the satisfaction of NCTD. This cure period may be adjusted if the parties agree in writing. If NCTD determines after the cure period that the default is not cured, NCTD shall have the right to terminate the contractor without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude NCTD from also pursuing all available remedies against the Contractor and its sureties for said breach or default. Contractor shall only be paid the PO price for Goods received and accepted in accordance the PO. If NCTD determines that Contractor had an excusable reason for not performing such as a strike, fire, flood or other events which are not the fault of or beyond the control of Contractor, NCTD may allow Contractor to continue work or terminate the PO for convenience.

14. Insurance Contractor will include the PO/contract number on all insurance-related correspondence, i.e., the insurance certificate itself. All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best. NCTD may utilize the services of a third-party insurance monitoring company. As a condition of PO award, Contractor shall submit any required insurance policies to NCTD. Except when the procurement involves a one-time purchase of goods with no services where insurance is not required, Contractor shall obtain: (A) **COVERAGE REQUIRED - ALL CONTRACTS:** (1) **Liability:** (a) **Commercial General Liability:** At all times during this PO and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by NCTD, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to NCTD. The coverage shall be on an "occurrence" basis, shall include all elements of Coverages A, B and C and contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work; limits no less than \$1,000,000 – per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit, and issued on a policy basis. (b) **Automobile Liability:** At all times during this PO, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage utilizing ISO form CA0001 covering any auto (Code 1); limits no less than \$300,000 – per accident, and issued on a combined single limit and issued on a combined single limit. (c) **Workers' Compensation/Employer Liability:** At all times during this PO, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against NCTD, and the policy form must permit and accept such waiver. (B) **ADDITIONAL COVERAGES MAY BE REQUESTED BY NCTD BASED ON PROJECT PURCHASE REQUIREMENTS.** All such policies shall name in the endorsement North County Transit System (NCTD), their directors, officers, agents, and employees as additional insureds as their interests may appear. Contractor's policies shall be primary. The specified limits are minimum amounts to be provided, and any insurance maintained by Contractor above such limits shall provide protection to NCTD to the same extent as provided to Contractor. The requirements as to the types and limits of insurance coverage to be maintained by Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Contractor including, but not limited to, indemnification.

15. Indemnification Contractor shall defend, indemnify and hold harmless, NCTD, and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which NCTD, or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or Subcontractors in its or their performance under this PO. In addition to any other remedy authorized by law, so much of the money due Contractor under this PO as shall be considered necessary by NCTD may be retained until disposition has been made of any claim for damages. **Infringement Indemnity:** Contractor shall defend at its expense, any suit against NCTD based on a claim that any item furnished under this PO or the normal use or sale thereof infringes any US Letters Patent or copyright and shall pay costs and damages finally awarded in any such suit, provided that Contractor is notified in writing of the suit and given authority, information, assistance to Contractor's expense for the defense of the suit(s). If the use or sale of the item is enjoined, Contractor, at no expense to NCTD, shall obtain for NCTD the right to use and sell said item, or shall substitute an equivalent item acceptable to NCTD and extend this patent indemnity thereto.

16. Warranties Contractor warrants that: (1) all Goods delivered under this PO will be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code and free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Contractor); (2) the Goods will be manufactured and delivered strictly in accordance with NCTD's specifications, drawings, and approved sample, if any; and (3) the Goods will be free from defects in design. Contractor agrees that the Goods furnished under this PO will be covered by the most favorable commercial warranties Contractor gives to any customer for the same Goods, but shall warrant the Goods for a period of one year or may substitute any third-party warranty that is longer. Contractor also warrants and agrees that title to all Goods furnished under this PO and accepted by NCTD will pass to NCTD free and clear of all liens, claims, security interests or encumbrances. Any goods failing to meet these standards shall be returned at Contractor's risk and expense. Contractor shall reimburse NCTD for all prior payments and/or costs in connection with delivery or return of such Goods. NCTD's rights and remedies as set out herein are in addition to and not limited by any rights NCTD may have under any other term of this PO or provision of law.

17. Governing Law: Contractor's quote, the resulting PO and the work performed under it shall be governed by these Terms and Conditions and the laws of the State of California. Contractor warrants that it shall comply with all applicable federal, state and local laws, ordinances, orders, rules and regulations thereunder. Any action or

proceeding to enforce or relating to this PO shall be brought exclusively in the courts located in San Diego County, California; and venue is proper in the North County Division of the San Diego Superior Court.

18. Disputes, Claims and Resolution NCTD and Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind Contractor or NCTD. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association, San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the northern division of the County of San Diego Superior Court, State of California. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by NCTD shall constitute a waiver of any right or duty afforded any of them under this PO, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing. Should litigation be necessary to enforce any term or provision of this PO, or to collect any portion of the amount payable under this PO, then all litigation and collection expenses, witness fees, court costs, reasonable costs incurred, and attorney's fees shall be paid to the prevailing party.

19. Survival Notwithstanding NCTD's acceptance of the Goods and any payment thereof, Contractor shall remain obligated under all clauses of this PO which expressly, or by their nature, extend beyond and survive such acceptance and payment.

20. Severability If any term, provision, or condition of this PO is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder shall not be affected thereby, and each term, provision, or condition of this PO shall be valid and enforceable to the fullest extent permitted by law.

21. Independent Contractor In the performance of any delivery of Goods, Contractor's relationship to NCTD shall be that of an independent Contractor and not an employee, agent or other representative of NCTD.

22. Assignments Any attempt by Contractor to assign, subcontract, or transfer either, voluntarily or by operation of law, all or part of this PO shall be void and unenforceable without NCTD's prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement. In the event of an authorized assignment by NCTD or applicable law, all terms, conditions, and provisions of this PO shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. No consent shall be deemed to relieve Contractor of its obligations to comply fully with the requirements of this PO.

23. Third Party Beneficiaries No provisions of the PO shall in any way inure to the benefit of any third party, including the public at large, so as to constitute such person a third-party beneficiary of the PO or of any one or more of the terms and conditions of the PO or otherwise give rise to any cause of action in any person not a party to the PO.

24. Subcontractors Contractor agrees to bind every subcontractor to the terms of the PO as far as such terms are applicable to subcontractor's portion of the Work. Contractor shall be as fully responsible to NCTD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in this PO shall create any contractual relationship between any subcontractor and NCTD. NCTD reserves the right to approve all subcontractors. NCTD's approval of any subcontractor shall not in any way relieve Contractor of its obligations.

25. Equal Employment Opportunity Program A. **NCTD's Equal Employment Opportunity Program.** NCTD is an Equal Opportunity Employer. As such, NCTD agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, NCTD agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. NCTD's Equal Employment Opportunity Program for Contractors, NCTD Policy No. 25, is part of this Agreement (a copy can be obtained from NCTD's Clerk of the Board). B. **Contractor's Equal Employment Opportunity Plan.** Each Contractor who provides NCTD labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity Plan to the Director of Human Resources and Labor Relations for NCTD each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract. The objective of this plan is to assure that Contractor will not discriminate against any employee or applicant for employment because of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age or status as a parent. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. C. **Regulations.** Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs; Comply with federal transit law, specifically 49 U.S.C. § 5332; FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients,"; and Follow any other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination.

26. Prohibited Interest Contractor covenants that no member of, or delegate to, the Congress of the United States shall have any interest, direct or indirect, in the PO or the proceeds hereof. Contractor further covenants that, for the term of this PO or proceeds from the PO.