

Purchase Order Terms & Conditions

1. **INSPECTION AND ACCEPTANCE** - All items are subject to final inspection and acceptance by NCTD at destination notwithstanding any payment or prior inspection at Seller's facilities. Final inspection will be made within a reasonable time after receipt of items hereunder.
2. **CHANGES** - By written notice or order, NCTD may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services furnished. If any such change causes an increase or decrease in the price of this agreement or in the item required for its performance, Seller or NCTD shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse Seller from proceeding immediately with the agreement as changed.
3. **SALES AND USE TAX** - Unless otherwise specified, Seller acknowledges that prices stated in the order portion of this agreement do not include sales or use tax.
4. **DEFAULT AND EXCESS REPROCUREMENT LIABILITY** - NCTD may terminate this agreement if a federal or state proceeding for the relief of debtors is undertaken by or against Seller, or if Seller makes an assignment for the benefit of creditors, or if Seller fails, after reasonable notice by NCTD to cure a deficiency in performance or lack of progress thereto, and NCTD shall have such additional remedies as may be available whether or not it so terminates this agreement, including, but not limited to, the payment by Seller to NCTD of expenses incurred by NCTD in reprocurring elsewhere the same or similar items or services defaulted by Seller hereunder, provided such Seller's reprocurement expenses obligation shall be limited to the excess over the price specified herein for such items or services.
5. **INDEMNIFICATION** - Seller shall indemnify, defend, and save harmless NCTD from and against any loss, damage, claim, or harm for bodily injuries, including death, or damage to property caused by Seller or its employees, subcontractors, or suppliers in connection with the performance of this agreement.
6. **ASSIGNMENTS AND SUBCONTRACTORS** - Neither this agreement nor any interest herein nor claim hereunder may be assigned by Seller either voluntarily or by operation of law, nor may all or substantially all of this agreement be further subcontracted by Seller without the prior written consent of NCTD. No consent shall be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.
7. **FEDERAL, STATE AND LOCAL LAWS** - Seller warrants that in the performance of this agreement it shall comply with all applicable federal, state and local laws and ordinances and all lawful orders, rules and regulations thereunder.
8. **INFRINGEMENT INDEMNITY** - In lieu of any other warranty by NCTD or Seller against infringement, statutory or otherwise, it is agreed that Seller shall defend at its expense, any suit against NCTD based on a claim that any item furnished under this agreement or the normal use or sale thereof infringes any United States Letters Patent or copyright and shall pay cost and damages finally awarded in any such suit, provided that Seller is notified in writing of the suit and given authority, information, assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to NCTD, shall obtain for Seller the right to use and sell said item, or shall substitute an equivalent item acceptable to NCTD and extend this patent indemnity hereto.
9. **SELLER'S WARRANTIES** - Seller warrants all goods and materials to meet the specification or other requirements of this order. NCTD may return any goods or materials which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods or materials shall, unless used by NCTD, remain the property of Seller and may be returned at Seller's risk and expense. Seller shall reimburse NCTD for all prior payments therefor and/or costs incurred in connection with delivery or return of such goods or materials.
10. **MATERIAL SAFETY DATA SHEET**: It is mandatory for Vendor to supply an MSDS with the first shipment of any merchandise that contains any hazardous material. Also, at any time the content of an MSDS is revised, Vendor is required to provide the new information relevant to the specific hazardous material to Purchaser.
11. **DELAYS** - Seller will not be held liable for failure or delay in the fulfillment if hindered or prevented by fire, strikes or Acts of God.
12. **TITLE AND RISK OF LOSS** - Unless otherwise provided in this agreement, Seller shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this agreement at the F.O.B. point specified herein, and upon such delivery title shall pass from Seller and Seller's responsibility for loss or damage shall cease, except for loss or damage resulting from Seller's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by NCTD.
13. **NOTICE OF LABOR DISPUTE** - Whenever Seller has knowledge that any actual or potential labor dispute may delay this agreement, Seller shall immediately notify and submit all relevant information to NCTD. Seller shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this agreement. However, any subcontractor need give notice and information only to its next higher tier subcontractor.
14. **EQUAL EMPLOYMENT OPPORTUNITY** - In connection with the execution of this agreement, the Seller shall not discriminate against any employee or applicant because of race, religion, color, gender, marital status or national origin. The Seller shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, gender, marital status or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
15. **PROHIBITED INTEREST** - Seller covenants that no member of, or delegate to, the Congress of the United States shall have any interest, direct or indirect, in the agreement or the proceeds hereof Seller further covenants that, for the terms of this agreement, no director, member, officer, or employee of NCTD during his tenure in office or one (1) year thereafter shall have any interest, direct or indirect, in this agreement or the proceeds thereof.
16. **TERMINATION**
 - a. **Mutual Termination**: This Agreement may be terminated by mutual agreement of the Parties. Any other act of termination shall be in accordance with section titled "Termination for Convenience" and "Termination for Default" of this agreement.
 - b. **Termination for Convenience**: NCTD may terminate the Agreement, in whole or in part, at any time and for any reason by giving written notice to notice to the Contractor and specifying the effective date thereof, at least fifteen (15) days prior to the effective date. If the Agreement is terminated for convenience as provided in this Section, Contractor shall be entitled to receive compensation for any satisfactory work completed up to the receipt by Contractor of notice of termination, less any payments theretofore made and not to exceed the amount payable herein, 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.
 - c. **Termination for Default**: NCTD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include: (a) a material violation of any of the covenants, agreements, or stipulations of this Agreement by Contractor, (b) Contractor, through any cause, failing to fulfill in a timely and proper manner its obligations under this Agreement, (c) any act by Contractor exposing NCTD to liability to others for personal injury or property damage, or (d) if Contractor is adjudged bankrupt, Contractor makes a general assignment for the benefit

of creditors, or a receiver is appointed on account of Contractor's insolvency. Written notice by NCTD of termination for cause shall contain the reasons for such intention to terminate and shall specify the effective date thereof. Unless prior to the effective date of the termination for cause the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall cease and terminate on the effective date specified in the written notice by NCTD.

In the event of such termination, Contractor shall be paid the reasonable value of satisfactory services rendered up to the date of receipt of the notice of termination in accordance with this Agreement, less any payments theretofore made, as determined by NCTD, not to exceed the amount payable herein, and Contractor expressly waives any and all claims for damages or compensation arising under this Agreement in the event of such termination, except as set forth herein.

If it is later determined by NCTD or any other decision maker including a court of competent jurisdiction and/or arbitrator, that the Contractor had an excusable reason for not performing, such as force majeure events which are not a default; NCTD, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience, at NCTD's sole option.

- d. **Rights of NCTD in the Event of Termination for Default:** In the case of a termination of the Agreement for default by the Contractor, the Contractor agrees that NCTD may procure the materials and services to complete the project from other sources at the sole discretion of NCTD and may be deducted from the unpaid balance due the Contractor, or, if applicable, may collect against the Contractor's bond of surety, or may invoice the Contractor for all costs so paid. The prices paid by NCTD to complete the project shall be considered the prevailing market price at the time such purchase is made or such Agreement is entered into.

Separate Agreement negotiations maybe entered into, at the sole discretion of NCTD, after the Agreement termination concerning the disposition and materials, supplies and equipment acquired by the Contractor for the requirements of the agreement.

- e. **Remedies and Rights of Contractor:** The Contractor shall not be relieved of any responsibility under the Agreement for work accepted by NCTD before the termination of the agreement. Furthermore, the termination of the Agreement shall in no way relieve the Contractor from any of its covenants, undertakings, duties and obligations under this Agreement nor limit the rights and remedies of the Board hereunder in any manner whatsoever.
 - f. **Work Stopped by Court or Other Public Authority:** If the work should be stopped under an order of any court or other public authority, for a period of three (3) months or more through no act or default of the Contractor or anyone employed by them, or if NCTD has failed to comply with its obligations in any way or if NCTD should fail to issue any certificate for payment within thirty-five (35) days after it is due, then the Contractor may, upon fifteen (15) days written notice to NCTD, stop work or terminate the Agreement and recover from NCTD payment for all work executed and all losses sustained, and reasonable profit.
 - g. **Opportunity to Cure:** In the case of a termination for breach or default, NCTD will allow the Contractor ten (10) days in which to cure the defect, except that if the nature of the cure requires more than ten (10) days to complete, then the cure period was in the sole and absolute discretion of NCTD be extended sufficiently to allow completion of the cure to be diligently pursued by the Contractor. If the Contractor fails to remedy to NCTD's satisfaction the breach or default of any of the terms, covenants, or conditions of the Agreement within ten (10) days or other cure period after receipt by Contractor or written notice from NCTD setting forth the nature of said breach or default, 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.
17. **AUDIT AND INSPECTION OF RECORDS** - Seller shall provide NCTD such access to Seller's books, records and facilities as may be deemed necessary to examine, audit, and inspect all work data, documents and activities related to the goods or services described herein. Seller shall maintain such books, records, data, documents and activities related to the goods or services described herein. Seller shall maintain such books, records, data and documents on a generally accepted accounting basis and shall clearly identify and make such items readily accessible to such parties during Seller's performance hereunder and for a period of four (4) years from the date of final payment by NCTD hereunder.
 18. **ENTIRE AGREEMENT; NO ORAL MODIFICATIONS** - This agreement constitutes the entire agreement and understanding between NCTD and Seller, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth in this agreement. Any amendments to this agreement must be in writing and executed by both parties hereto.
 19. **INDEPENDENT CONTRACTOR:** In the performance of any services to be provided hereunder, Vendor's relationship to Purchaser shall be that of an independent Contractor and not an employee, agent or other representative of Purchaser.
 20. **PROMPT PAYMENT (49 CFR 26.29)** - Not later than ten (10) days after receipt of each progress payment from NCTD, the Successful Proposer shall pay to any sub-consultant performing any Work, the respective amounts allowed to the Successful Proposer for work performed by the sub-consultant, to the extent of each sub-consultant's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the Successful Proposers receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107 the Successful Proposer shall pay each of its sub-consultants from whom retention has been withheld, each sub-consultants share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the Successful Proposer shall pay each of its sub-consultants from whom retention has been withheld, each sub-consultants share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-consultants.