Purchase Order Terms and Conditions

1. Offer/Acceptance. If this purchase order (“PO”) refers to vendor’s bid or proposal, this PO is an ACCEPTANCE of vendor’s OFFER TO SELL in accordance with the terms and conditions of the “Offer/Acceptance” identified in vendor’s bid or proposal. The solicitation includes an RFP, IFB, or any other form of order by buyer. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to vendor’s acceptance, demonstrated by vendor’s performance or written acceptance of this PO. Any CHANGE TO OFFER OR ACCEPTANCE WITHDRAWAL OF OFFER TO SELL OR ACCEPTANCE MUST BE WRITTEN AND SIGNED BY BOTH PARTIES. Vendor shall not have authorization, express or implied, to bind buyer to any agreement, liability or understanding, except as expressly set forth herein. Vendor shall (a) provide and keep in force workers’ compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof of insurance when requested by buyer, and (c) be solely responsible for its acts and those of its employees and agents.

2. Safety Information. All chemicals, equipment and materials proposed and/or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or representative of buyer or to have authority to bind buyer, or accept a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or part(s) thereof.

3. Changes. Vendor shall furnish products and/or services strictly in accordance with the specifications and requirements set forth herein. Buyer may make changes to the PO by writing signed by purchasing agent and accepted by vendor. Each shipment received or service performed shall comply with the terms of this PO, notwithstanding invoice terms or acts of vendor to the contrary, unless the PO has been modified, superseded or otherwise altered in accordance with this section.

4. Delivery. Unless otherwise specified in the solicitation or this PO, delivery shall be FOB destination. Buyer is relying on the promised delivery date, installation, and/or service performance set forth in vendor’s bid or proposal as material and basic to buyer’s acceptance. If vendor fails to deliver or perform as and when promised, buyer, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. Intellectual Property. Any software, research, studies, data, photographs, negatives or other documents, drawings or materials (collectively “materials”) delivered by vendor in performance of its obligations to the buyer shall be considered to be a work made for hire of buyer. Ownership rights shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the materials. Vendor shall comply with all applicable Colorado Security Policies of the State of Colorado (the “State”), or buyer, as applicable, and all confidentiality and non-disclosure agreements, security controls, and contracts regarding the use or disclosure of such materials.

6. Quality. Buyer shall be the sole judge in determining “equals” with regard to quality, price and performance. All products delivered shall be newly manufactured and the current model, unless otherwise specified in this PO. Vendor shall perform its duties hereunder as an independent contractor and not as an employee. Neither vendor nor any agent or employee of vendor shall be deemed to be an agent or representative of buyer or to have authority to bind buyer, or accept a counter-offer. This PO shall supersede and control over any vendor form(s) or part(s) thereof included or attached to any bid, proposal, offer, acknowledgment, or otherwise, in the event of inconsistencies or contradictions, regardless of any statement to the contrary in such form(s) or part(s) thereof.

7. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 (“UCC”), relating to implied and/or express warranties are incorporated herein, in addition to any warranties and remedies provided under this PO.

8. Inspection and Acceptance. Final acceptance is contingent upon completion of all applicable inspection procedures. If products or services fail to meet any inspection requirements, buyer may exercise all of its rights, including those provided in the UCCC. Buyer shall have the right to inspect performance provided under this PO at all places and times. “Services” as used in this section includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to PO requirements, buyer may require vendor to perform the services again in accordance with PO requirements. Additionally, if services cannot be corrected by re-performance, buyer may (a) require vendor to take necessary action to ensure that future performance conforms to PO requirements and (b) equitably reduce the payment due vendor to reflect the reduced value of services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity.

9. Cash Discount. The cash discount period will start from the later of the date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified location by an authorized buyer representative.

10. Taxes. Buyer and the State are exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code No. 64-830123K and from all State and local government sales and use taxes [CRS Title 39, §39-21-101, et seq. (and Part B)] and all local service taxes including but not limited to those of all Counties, Cities and Towns of the State, except that in certain political subdivisions (e.g., City of Denver) buyer may be required to pay sales or use taxes even though the ultimate product or service is provided to buyer. Buyer shall not be required to pay such sales or use taxes.

11. Payment. Buyer shall pay for all amounts due within 45 days after receipt of products or services and a correct notice of amount due. Interest on the unpaid balance shall begin to accrue on the due date and at the rate in CRS §8-17.5-101(3), 5% per annum, or any lower rate as specified in this PO. If vendor fails to deliver or perform within the time specified in the notice, terminate vendor’s right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. If after rejection, revocation, or other termination of vendor’s right to proceed under the UCCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to the notice of termination.

21. Termination in Public Interest. Buyer is entering into this PO for the purpose of carrying out the public policy of the State, as determined by its Governor, General Assembly, and Courts. If this PO ceases to have the purpose or effect for which it was intended, or if there is a material breach of this PO, or if vendor fails to perform or part of such performance shall not be deemed to be a breach of any buyer’s obligations hereunder. This section shall not apply to a termination for buyer’s breach, which shall be governed by §20. Buyer shall give written notice of termination to vendor specifying the part of the PO terminated and when termination becomes effective. If vendor does not accept termination within ten days after receipt of notice, the notice shall be deemed to have terminated the PO in the manner specified in the notice. Buyer shall not be liable for any interest, cost, expenses and legal fees incurred on account of any claims, legal actions or judgments arising out of or in connection with such termination.

22. Insurance. Buyer shall obtain, and maintain, at all times during the term of this PO, insurance as specified in the solicitation, and provide proof of such coverage as requested by purchasing agent.

19. Termination Prior to Shipment. If vendor has not accepted this PO in writing, buyer may cancel this PO in writing. Buyer may cancel this PO at any time prior to the date vendor provides or accepts the PO.

20. Termination for Cause. (a) If vendor refuses or fails to timely and properly perform any of its obligations under this PO with such diligence as will ensure its completion within the time specified in the notice, terminate vendor’s right to proceed with the PO or such part thereof as to which there has been delay or a failure. Vendor shall continue performance of this PO to the extent not terminated and be liable for excess costs incurred by buyer in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the price set forth in this PO. (b) Buyer may withhold amounts due to vendor as buyer deems necessary to reimburse buyer for excess costs incurred in curing, completing or procuring similar goods and services. (c) If after rejection, revocation, or other termination of vendor’s right to proceed under the UCCC or this clause, buyer determines for any reason that vendor was not in default or the delay was excusable, the rights and obligations of buyer and vendor shall be the same as if the notice of termination had been issued pursuant to the notice of termination.

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