

# GREATER ORLANDO AVIATION AUTHORITY

## TERMS AND CONDITIONS OF PURCHASE

### ATTACHMENT A

**1. GOVERNING PROVISIONS.** All purchases of goods and/or services by the Greater Orlando Aviation Authority ("Purchaser") described on the face hereof shall be subject to these terms and conditions. If the terms and conditions are unacceptable, seller shall return this order to Purchaser. Purchaser hereby objects to any additional or different terms contained on any of the seller's quotation, acknowledgment, invoice or other forms, or in any other correspondence from the seller. Failure of seller to deliver in accordance with these terms and conditions may disqualify seller from receiving future orders from Purchaser. These terms and conditions together with the specifications on the face hereto, as supplemented by agreed prices and delivery dates, shall constitute the entire agreement between the parties on the subject of purchases by Purchaser from the seller, superseding all prior communications and negotiations. Any and all special terms and conditions attached hereto that vary from these terms and conditions shall have precedence over these terms and conditions. **EACH SALE BY THE SELLER TO THE PURCHASER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

**2. PRICE AND TIME FOR PAYMENT.** Purchaser shall pay the price set forth on the face hereof. Payment of all undisputed portions of such invoice shall be made within thirty days after receipt of seller's invoice, but, in no event, prior to receipt and acceptance of the goods or services.

**3. CHANGES IN ORDERS.** Purchaser reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings and data incorporated in this contract where the items to be furnished are to be specially manufactured for the Purchaser, (b) methods of shipment or packing, (c) place of delivery, and (d) time of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of an order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, or Purchaser may, at its option, cancel the order pursuant to paragraph 12 hereof if agreement on an equitable adjustment cannot be reached. Any claim by the seller for adjustment under this paragraph shall be deemed waived unless asserted in writing within twenty (20) days from receipt by the seller of the change order. Price increases or extensions of time for delivery shall not be binding on Purchaser unless evidenced by a purchase order change notice issued and signed by Purchaser. No substitutions, changes or modifications of the ordered item shall be made except upon Purchaser's written authority.

**4. DELIVERY, COVER, DELAY AND ANTICIPATION.** The seller shall deliver the goods in the quantities and shall deliver the goods and/or provide the services, within the time, which is of the essence, in accordance with the specifications on the face hereof, any drawings or approved samples, and at the prices agreed. All deliveries shall be made between 7:00 a.m. and 4:00 p.m., Monday through Friday. Failure of the seller to comply with such delivery requirements shall entitle Purchaser, in addition to any other rights or remedies, to cancel any order and be relieved of all liability for any undelivered portion. In the event of such failure, Purchaser shall also be entitled to effect cover by purchasing or agreeing to purchase goods in substitution for those due from seller in the open market and recover from seller the difference between the cost of such cover and the contract price together with any incidental or consequential damages less any expenses saved in consequence of seller's breach. The purchase or agreement to purchase must be reasonable and effected without unreasonable delay. In the event that, for reasons beyond Purchaser's reasonable control, shipment is delayed beyond the last date on which shipment by the method contemplated herein would result in delivery guaranteed on or before the required delivery date herein, the seller shall make shipment by the most expeditious available method of transportation. Any additional cost of such method of shipment shall be borne by the seller. If shipment is delayed for any cause, the seller must report the same to Purchaser promptly. Failure of Purchaser to insist upon strict performance shall not constitute a waiver of any of the provisions of any order or waiver of any default. Any failure by Purchaser to exercise its remedies with respect to any installment shall not be deemed to constitute a waiver with respect to subsequent installments. The seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Purchaser's delivery schedule. Items received in advance of Purchaser's delivery schedule may, at Purchaser's option, be returned at the seller's expense or be accepted and payment withheld until the scheduled delivery date.

**5. SHIPPING, PACKING AND RISK OF LOSS.** The shipping terms for all goods purchased hereunder are F.O.B. destination designated by Purchaser on the face hereof. If the Purchaser agrees in a separate writing that shipping is to be F.O.B. shipping point, seller shall pre-pay all shipping charges and add them to the invoice. Purchaser shall have the right to route all shipments. All goods shall be suitably packed, plainly marked with seller's name and Purchaser's purchase order number and shipped in accordance with shipping instructions specified herein and otherwise in accordance with the requirements of common carriers so as to obtain the lowest transportation cost. Packing slips must be included with all shipments showing order number, part number and quantity; and the last copy must state "Order Completed". The order number must be shown on each item, packing slip and invoice. No charge shall be made to Purchaser for boxing, packing, crating, carting, freight or express delivery unless separately itemized on the face hereof. Regardless of shipping terms, all risk that the ordered goods may be lost, damaged or delayed in transit shall be upon the seller until conforming goods have been actually received, inspected and accepted by Purchaser. The seller shall be liable to Purchaser for any loss or damage resulting from the seller's failure to act so as to provide adequate protection during shipment. Additional expenses, charges or claims incurred as a result of deviation from the specified route,

noncompliance with other shipping instructions, or improper description of the shipment in shipping documents shall be assumed by the seller. If seller ships based on a blanket purchase order, all packing lists shall reference the purchase order number, an itemized list and cost of materials delivered, and the total dollar amount of the delivery. Accepting released based on a blanket purchase order after the blanket purchase order expiration date or that cause the total expenditure to exceed the purchase order amount may delay payment.

**6. INSPECTION, ACCEPTANCE AND REJECTION.** All goods purchased hereunder (and work-in-progress relating thereto) shall be subject to inspection and testing by Purchaser at any reasonable time and from time to time before, during or after manufacture and delivery. If any inspection or test is to be made on the premises of the seller, the seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Notwithstanding prior inspections, all goods are subject to final inspection and approval at Purchaser's facility or other place designated by Purchaser and, notwithstanding any payment that may be made, no goods are deemed accepted until such final inspection and approval. Purchaser's inspection before, during or after manufacture and delivery shall not constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect. Purchaser may return rejected goods at the seller's expense. The seller shall not replace goods returned as defective unless so directed by Purchaser in writing.

**7. WARRANTIES, REMEDIES.** The seller warrants that the goods to be furnished hereunder shall (a) be free and clear of all security interests, liens and encumbrances, good and merchantable title thereto being in the seller; (b) be free from any defects in design, material or workmanship (latent or otherwise) and of good and merchantable quality; (c) conform to Purchaser's specifications or the sample approved by Purchaser, and with representations with respect thereto previously made by the seller, to the extent any of the foregoing are applicable, as the case may be, and be fit for the use intended by Purchaser; and (d) comply and have been produced, processed, packaged, labeled, delivered and sold in conformity with all applicable federal, state or other laws, administrative regulations and orders, including the Occupational Safety and Health Act of 1971 as amended from time to time. The foregoing warranties shall survive inspection, delivery and payment, and shall run in favor of Purchaser, its successors and assigns and its customers, whether direct or indirect. The seller shall determine the particular purposes for which all goods/services purchased by Purchaser are required, and shall utilize its skill and judgment to select and furnish suitable goods/services; the seller acknowledges that Purchaser is relying on the seller to do so. If any or all delivered goods are found to be unsatisfactory, defective or inferior in quality, or not to conform to Purchaser's specifications or any other requirements hereof (including the seller's warranties), Purchaser may, at its option and in addition to its other remedies, retain such goods at an adjusted price, hold such goods at the seller's risk and expense pending the seller's specific instructions, or return them to the seller for replacement, credit or refund, as Purchaser shall direct. Purchaser shall also have the right to cancel any unshipped portions of any order. Purchaser shall be reimbursed by the seller for all of its costs and expenses in connection with the storage, handling, packing and/or transporting of any such defective or otherwise nonconforming goods, and the seller shall assume all risk of loss or damage in transit to goods returned by Purchaser pursuant hereto.

**8. INDEMNIFICATION BY THE SELLER.** The seller shall indemnify Purchaser, its members, officers, agents, employees, successors, assigns, and customers (whether direct or indirect) against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any action at trial and on appeal) which they, or any of them, may sustain or incur as a result of any claim of negligence, breach of warranty, bodily injury or death, strict liability in tort or based on any other theory of law in connection with this order, the goods/services furnished by the seller hereunder, or as a result of any claim that the goods furnished by the seller fail to conform to or comply with any federal, state or local laws, regulations or standards, based upon or arising out of any construction, installation, services or facilities furnished by the seller under or in connection with any order, or based upon the existence of this purchase order.

**9. PURCHASER'S DAMAGES.** The seller shall be responsible for any and all losses, liabilities, damages and expenses, including incidental and consequential damages, and including attorneys' fees and other costs of investigating, negotiating, remedying, or prosecuting an action for breach, which Purchaser may sustain or incur as a result of any breach of contract by seller.

**10. PATENTS, TRADEMARKS AND COPYRIGHTS.** The seller warrants that the sale or use of goods furnished hereunder will not infringe or contribute to infringement of any patent, copyright, trademark, trade secret or other proprietary right or subject Purchaser or its customers (direct or indirect) to royalties in the United States or elsewhere, and shall indemnify, defend, and save harmless Purchaser, its successors and assigns and its customers (whether direct or indirect), against any and all losses, damages and expenses (including attorneys' fees and other costs of defending any infringement claim) which they, or any of them, may sustain or incur as a result of a breach of this warranty.

**11. FAIR LABOR STANDARDS CERTIFICATE.** The seller hereby certifies that all goods furnished hereunder shall have been produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof, and in accordance with all applicable state and federal laws and regulations governing general conditions for labor employed in the production of such goods.

**12. NON-ASSIGNABILITY.** The seller shall not assign, subcontract or sublet the work to be done hereunder without the prior written consent of Purchaser, but this provision shall not restrict the seller in the procurement of component parts or materials.

**13. CANCELLATION BY PURCHASER.** Purchaser shall have the right to cancel any order without cause, and Purchaser's liability for such cancellation shall be limited to the seller's out-of-pocket cost for work and materials applicable solely to the cancelled order which shall have been expended when notice of cancellation shall be received by the seller, reduced by the fair market resale value of such work-in-process. Purchaser may, at its option, cancel any order without liability to the seller (except for conforming shipments previously accepted by Purchaser) in the

event the seller shall cease to exist or become insolvent or the subject of bankruptcy, receivership or insolvency proceedings or shall commit a material breach in the performance of any part of its obligation hereunder.

**14. INGREDIENTS DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS.** Prior to and with the shipment of goods purchased hereunder, the seller agrees to furnish to Purchaser sufficient warning and notice in writing, including appropriate labels on goods, containers and packaging of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Purchaser and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the goods, containers and packaging shipped to Purchaser. If the goods purchased hereunder are or contain hazardous chemicals or substances classified as toxic pursuant to Chapter 442, Florida Statutes, seller shall furnish the Purchaser with a current Material Safety Data Sheet ("MSDS") at the time of or before delivery of each and every such hazardous chemical or toxic substance together with all appropriate labels. Each MSDS shall be delivered to Greater Orlando Aviation Authority, Material Control Center, 5983 Cargo Road, Building 811, Orlando, Florida 32827.

**15. OSHA.** Seller guarantees to Purchaser that all materials, supplies, and equipment as listed on this purchase order shall meet the requirements, specifications, and standards as provided for under the U.S. Department of Labor Occupational Safety and Health Act of 1970, as amended.

**16. PURCHASER'S PROPERTY; TOOLS, DESIGN WORK, DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION.** Purchaser shall have no obligation to furnish or pay for any design work, drawings, tools or other equipment required for the performance of any order; provided, however, that Purchaser may, at its option, purchase any such items especially required by the seller for any order at the current value thereof on the seller's books for income tax purposes and any item so purchased shall be deemed furnished to Purchaser hereunder. Any design, drawing, specification, photograph, tool or other equipment or material or part or engineering and manufacturing information heretofore or hereafter furnished to the seller by Purchaser, or the cost of which shall have been paid by Purchaser or included in the aggregate price of any order, whether or not separately itemized hereon, shall be and remain Purchaser's property, shall be conspicuously identified as such in the seller's records and by physical marking thereon, shall be promptly delivered to Purchaser upon request, shall be treated as confidential information, shall not be used in processing or manufacturing goods for anyone other than Purchaser and, while in the possession of the seller, shall be the seller's responsibility and shall be adequately insured at the seller's expense for the benefit of Purchaser against loss or damage by fire or other hazard. No change shall be made in any design, drawing, specification, tool or other equipment furnished by Purchaser without Purchaser's express written consent. Any information which the seller may disclose to Purchaser with respect to the design, manufacture or sale or use of the items covered by any order shall be deemed to have been disclosed as part of the consideration for that order, and the seller shall not assert any claim (other than a claim for patent infringement) against Purchaser by reason of Purchaser's use thereof.

**17. FORCE MAJEURE.** Purchaser shall not be liable for any damage as a result of any delay or failure to accept delivery due to any act of God, act of the seller, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown or other labor difficulties, war, riot, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials, or manufacturing facilities or, without limiting the foregoing, any other delays beyond the Purchaser's control which shall affect the Purchaser's ability to receive and use the goods or services. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay.

**18. TAXES.** Purchaser shall not be liable for any federal, state or local taxes, duties, customs or assessments in connection with the sale, purchase, transportation, use, or possession of the goods ordered hereunder. Purchaser's State of Florida tax exempt number is 85-8012668935C-5. The Purchaser's sales tax exemption does not apply to goods or services purchased or manufactured by seller for which seller is deemed to be the ultimate consumer.

**19. REMEDIES CUMULATIVE.** The rights and remedies of the Purchaser set forth herein shall be in addition to any rights or remedies which Purchaser may otherwise have.

**20.** At the option of the awarded Respondent, the products and/or services provided under the resulting Purchase Order (PO) or Blanket Purchase Agreement (BPA) from this solicitation may be provided to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties and cities, under the same prices, terms and conditions as submitted under this Request for Quotation (RFQ) solicitation. Each governmental agency allowed by the successful Respondent to purchase the products and/or services in connection with the resulting PO or BPA shall do so independent of the Authority or any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods and services ordered, received and accepted by it. The Authority shall have no liability to the Respondent or any governmental agency resulting from the purchase by that agency of the products and/or services from the Respondent in connection with the award of this RFQ.

**21. NON-DISCRIMINATION.** During the performance of this purchase order, the seller, for itself, its assignees and successors in interest agrees as follows: (1) Compliance with Regulations. The seller shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (herein after referred to as the "Regulations"), which are herein incorporated by reference and made a part of this purchase order. (2) Nondiscrimination. The seller, with regard to the work performed by it during the purchase order, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of any subcontractor, including procurement of materials and leases of equipment. The seller shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the purchase order covers a program set forth in Appendix B of the Regulations. (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the seller for work to be performed under a subcontract, including procurement of materials or leases of

equipment, each potential subcontractor or supplier shall be notified by the seller of the seller's obligations under this purchase order and the Regulations relative to nondiscrimination on the grounds of race, color or national origin. (4) Information and Reports. The seller shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources or information, and its facilities as may be determined by the Purchaser or the Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a seller is in the exclusive possession of another who fails or refuses to furnish this information, the seller shall so certify to the Purchaser or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information. (5) Sanctions for Noncompliance. In the event of the seller's noncompliance with the nondiscrimination provisions of this purchase order, the Purchaser shall impose such purchase order Sanctions as it or the FAA may determine to be appropriate, including but not limited to: (a) Withholding of payments to the seller under the purchase order until the seller complies, and/or (b) Cancellation, termination or suspension of the purchase order, in whole or in part. (6) Incorporation of Provisions. The seller shall include the provisions of subsections a. through in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The seller shall take such action with respect to any subcontract or procurement as the Purchaser or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a seller becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the seller may request the Purchaser to enter into such litigation to protect the interest of the Purchaser and, in addition, the seller may request the United States to enter into such litigation to protect the interests of the United States. The seller assures the Purchaser that it will comply with the pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, marital status or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision shall bind the seller from the period beginning with the initial solicitation through the completion of the purchase order.

**22. PUBLIC ENTITY CRIMES ACT.** Seller acknowledges the following notice: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of \$25,000 for a period of 36 months from the date of being placed on the convicted vendor list.

**23. CHOICE OF LAW.** This agreement shall be deemed to be made, construed and performed according to the laws of the State of Florida. Any suit or proceeding initiated for the purpose of interpreting or enforcing any provision of this agreement shall be brought only in a court of competent jurisdiction in Orange County, Florida.

**24. NOTICES.** All notices which either party is required or permitted to give shall be deemed to have been delivered if in writing and mailed via U.S. Certified Mail or by a nationally-recognized express delivery service. Notices to Purchaser shall be delivered to: Greater Orlando Aviation Authority, Attn: Executive Director, One Airport Boulevard, Orlando, Florida 32827-4399.

**25. BOOKS AND RECORDS.** Seller shall maintain complete and accurate books and records in a form consistent with good accounting practices of all matters relating to its performance of this agreement. Purchaser shall have the right to inspect such books and records upon reasonable notices for a period of three (3) years after the year to which such books and records pertain.

**26. LIABILITY INSURANCE.** If seller provides any service on Purchaser's property and upon request of Purchaser, seller shall provide a certificate of insurance evidencing that seller has insurance against such losses and in such amounts as Purchaser determines is appropriate considering the nature of the work to be performed.

**27. MEMBER PROTECTION.** No recourse under or upon any obligation, covenant or agreement contained in this agreement, or any other agreements or documents pertaining to the services of seller hereunder, as such may from time to time be altered or amended in accordance with the provisions hereof, or under any judgment obtained against Purchaser, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise, under or independent of this agreement, shall be had against any member, officer, employee or agent, past, present or future, of Purchaser, either directly or through Purchaser or otherwise, for any claim arising out of or in connection with this agreement or the services rendered pursuant to it, or for any sum that may be due and unpaid by Purchaser. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any Purchaser member, officer, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise for any claim arising out of or in connection with this agreement or the services rendered pursuant to it, or for the payment for or to Purchaser, or any receiver therefore or otherwise, of any sum that may remain due and unpaid by Purchaser, is hereby expressly waived and released as a condition of and in consideration for the execution of this agreement and the consideration to be paid to seller pursuant to this agreement.

**Revision date: 10/18/17**