

## SOUTH CAROLINA PURCHASE ORDER CLAUSE SET (DEC 2015)

**AGREEMENT** means any transaction or agreement arising out of, relating to, or contemplated by the relationship of which this purchase order forms a part. The terms and conditions of this document (including the attached purchase order) shall apply notwithstanding any additional or different terms and conditions in any invoice or other document, including without limitation, (i) a purchase order or other instrument submitted by the State, (ii) any invoice, confirmation, or other document submitted by Contractor, or (iii) any privacy policy, terms of use, or end user agreement. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

**ASSIGNMENT, NOVATION, AND CHANGE OF NAME, IDENTITY, OR STRUCTURE (FEB 2015):** (a) Contractor shall not assign this contract, or its rights, obligations, or any other interest arising from this contract, or delegate any of its performance obligations, without the express written consent of the responsible Procurement Officer. The foregoing restriction does not apply to a transfer that occurs by operation of law (e.g., bankruptcy; corporate reorganizations and consolidations, but not including partial asset sales). Notwithstanding the foregoing, contractor may assign monies receivable under the contract provided that the State shall have no obligation to make payment to an assignee until thirty days after contractor (not the assignee) has provided the responsible Procurement Officer with (i) proof of the assignment, (ii) the identity (by contract number) of the specific State contract to which the assignment applies, and (iii) the name of the assignee and the exact address or account information to which assigned payments should be made. (b) If contractor amends, modifies, or otherwise changes its name, its identity (including its trade name), or its corporate, partnership or other structure, or its FEIN, contractor shall provide the Procurement Officer prompt written notice of such change. (c) Any name change, transfer, assignment, or novation is subject to the conditions and approval required by Regulation 19-445.2180, which does not restricts transfers by operation of law.

**CHOICE-OF-LAW:** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. The UN Convention on the International Sale of Goods shall not apply to this agreement.

**CONTRACTOR:** means the business entering the contract of which this purchase order forms a part.

**CONTRACTOR PERSONNEL:** You shall enforce strict discipline and good order among your employees and other persons carrying out the Work. You shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

**CONTRACTOR'S USE OF STATE PROPERTY:** Upon termination of the contract for any reason, the State shall have the right, upon demand, to obtain access to, and possession of, all State properties, including, but not limited to, current copies of all State application programs and necessary documentation, all data, files, intermediate materials and supplies held by you. You shall not use, reproduce, distribute, display, or sell any data, material, or documentation owned exclusively by the State without the State's written consent, except to the extent necessary to carry out the Work.

**CONTRACTOR'S OBLIGATION - GENERAL:** You shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work. You must act as the prime contractor and assume full responsibility for any subcontractor's performance. You will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.

**DELIVERY / PERFORMANCE LOCATION:** F.O.B. Destination. Destination is the shipping dock of the State's designated receiving site, or other location, as specified herein. All services shall be provided at the location specified herein.

**DISPUTES:** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail addressed to Contractor at the address provided on the last invoice received by State from Contractor or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**DRUG FREE WORK PLACE CERTIFICATION:** You certify that you will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

**ILLEGAL IMMIGRATION:** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) By accepting this purchase order, you certify that you will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agree to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to you and your subcontractors or sub-subcontractors; or (b) that you and your subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. You agree to include in any contracts with your subcontractors language requiring your subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.

**IRAN DIVESTMENT ACT - CERTIFICATION:** (a) The Iran Divestment Act List is a list published pursuant to Section 11-57-310 that identifies persons engaged in investment activities in Iran. Currently, the list is available at [procurement.sc.gov](http://procurement.sc.gov). Section 11-57-310 requires the government to provide a person ninety days written notice before he is included on the list. The following representation, which is required by Section 11-57-330(A), is a material inducement for the State to award a contract to you. (b) By accepting this purchase order, you certify that, as of the date you accept, you are not on the then-current version of the Iran Divestment Act List.

**ETHICS CERTIFICATE:** By accepting this purchase order, you certify that you have and will comply with, and have not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The State may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the Procurement Officer at the same time the law requires the statement to be filed.

**INDEMNIFICATION-THIRD PARTY CLAIMS - GENERAL (NOV 2011):** Without limitation, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor's obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancellation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "Indemnitees" means the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees.

**LICENSES AND PERMITS:** You are responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State of South Carolina, county, city or other government entity or unit to accomplish the Work.

**MATERIAL AND WORKMANSHIP:** Unless otherwise specifically provided in the purchase order, all equipment, material, and articles incorporated in the Work are to be new and of the most suitable grade for the purpose intended.

**NO INDEMNITY OR DEFENSE (FEB 2015):** Any term or condition is void to the extent it requires the State to indemnify, defend, or pay attorney's fees to anyone for any reason.

**OWNERSHIP OF DATA & MATERIALS:** All data, material and documentation prepared for the State pursuant to this Agreement shall belong exclusively to the State.

**PAYMENT & INTEREST:** (a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified herein, including the purchase order, payment shall not be made on partial deliveries accepted. (b) Unless otherwise agreed, payment will be made by check mailed to the address appearing on the purchase order form. (c) Notwithstanding any other provision, payment shall be made in accordance with S.C. Code Section 11-35-45, or Chapter 6 of Title 29 (real property improvements) when applicable, which provides the Contractor's exclusive means of recovering any type of interest from the Owner. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable. Except as set forth in this paragraph, the State shall not be liable for the payment of interest on any debt or claim arising out of or related to this contract for any reason. (d) Amounts due to the State shall bear interest at the rate of interest established by the South Carolina Comptroller General pursuant to Section 11-35-45 ("an amount not to exceed fifteen percent each year"), as amended, unless otherwise required by Section 29-6-30. (e) Any other basis for interest, including but not limited to general (pre- and post-judgment) or specific interest statutes, including S.C. Code Ann. Section 34-31-20, are expressly waived by both parties. If a court, despite this agreement and waiver, requires that interest be paid on any debt by either party other than as provided by items (c) and (d) above, the parties further agree that the applicable interest rate for any given calendar year shall be the lowest prime rate as listed in the first edition of the Wall Street Journal published for each year, applied as simple interest without compounding. (f) The State shall have all of its common law, equitable and statutory rights of set-off.

**PROCUREMENT OFFICER** means the person executing this purchase order or the State's procurement director.

**PUBLICITY (JAN 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**STATE** means the governmental unit identified in the purchase order.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JAN 2006):** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**YOU and YOUR** means Contractor.

**WORK** means all labor, materials, equipment, services, or property of any type, provided or to be provided by the Contractor to fulfill its obligations under the Contract.

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