

GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS

The following General Terms and Conditions shall be applicable to all Purchase Orders issued by Cuyahoga Metropolitan Housing Authority (CMHA), also referred to as "Purchaser". Vendor is the party providing goods or services to CMHA pursuant to this Purchase Order. The parties to this Agreement expressly intend to create an independent contractor relationship. The parties further agree that the conduct and control of the work to be performed will lie solely with the Vendor. Neither Vendor, its employees, servants, or agents is an agent or employee of CMHA for any purpose, and no partnership, joint venture, employment, principal-agent, trust, or other relationship is created by this Agreement. In no event shall either party have the right or power, either express or implied, on behalf of the other party or otherwise to bind the other party in any way whatsoever.

1. **CHANGES:** No change in any of the terms, conditions, price, quantity, or specifications of this order will be effective without the prior written consent of CMHA.
2. **PACKING:** No boxing, crating, or other handling charges will be allowed unless otherwise specified herein.
3. **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where specific authorization is granted to ship goods FOB Shipping Point, Vendor agrees to prepay all shipping charges, to route through the cheapest common carrier, and to bill Purchaser as a separate item on the invoice for said charges. Each invoice for shipping charges shall contain the original or a copy of the bill indicating that the payment for shipping has been made. Purchaser reserves the right to refuse COD shipments.
4. **DELIVERY:** For any exception to the delivery date specified on this order, Vendor shall give prior notification and obtain approval thereto from CMHA's Purchasing Division. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time. The acceptance by Purchaser of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor. Delivery shall be made Monday through Friday between the hours of 8:30 a.m. and 4:00 p.m. No Saturday, Sunday or holiday delivery shall be made without written approval.
5. **REJECTION:** All goods or materials purchased herein are subject to approval by Purchaser. Brand products quoted or specified shall not be substituted without CMHA's prior approval. Any rejection of goods or material resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by Purchaser or returned, will be at Vendor's risk and expense.
6. **IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this order shall contain the applicable order number. Brand products specified or quoted shall not be substituted without Purchaser prior approval. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein. Invoices will not be processed for payment until all items invoiced are received.
7. **ASSIGNMENTS:** This Order may not be assigned without the prior written consent of CMHA. Provisions of monies due under this contract shall only be assignable with prior written consent of Purchaser. Any subcontract shall impose the terms and conditions of this purchase order on the subcontractor.
8. **INFRINGEMENTS:** Vendor agrees to, identify, defend and save harmless CMHA against all claims for patent, trademark, copyright, or franchising infringements arising from the purchase, installation, or use of material ordered on this Purchase Order, and to assume all expense and damage arising from such claims.
9. **NONWAIVER BY ACCEPTANCE OF VARIATION:** No acceptance of nonconforming goods or services shall be deemed a waiver by Purchaser of a breach thereof as to any particular transaction or occurrence.
10. **WARRANTIES:** Vendor warrants articles supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed, however if a special condition, or particular purpose is stated, the material must also fit that condition or purpose.
11. **PAYMENT, CASH DISCOUNT, LATE PAYMENT CHARGES:** Invoices will not be processed for payment nor will the period of computation for cash discount commence until receipt of a properly completed invoice of invoiced items are received and approved for payment. If an adjustment in payment is necessary due to damage or dispute, the cash discount period shall commence on the date final approval for payment is authorized. If purchaser fails to make timely payment, Vendor may invoice for \$1, or .25% per month on the amount over due, whichever is greater. Payment shall not be considered late if a check warrant is available or mailed within the time specified; or if no items are specified, within 30 days from date of receipt of a properly completed invoice or goods, whichever is later. Normally payments to Vendor shall be remitted by mail. Purchaser shall not honor drafts nor accept goods on a sight draft basis.
12. **TAXES:** CMHA, a political subdivision of the State of Ohio, is exempt from property, sales and use taxes.
13. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials delivered herein are free and clear of all liens, claims of encumbrances of any kind.
14. **RISK OF LOSS:** Regardless of FOB Point, Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein occurring before deliver, and such loss shall not release Vendor from any obligation hereunder.
15. **PRICES:** If price is not stated on this order, it is agreed that the goods shall be billed at the price last quoted or paid, or prevailing market price, whichever is lower. If this order is for indefinite quantity, indefinite delivery, the price shall be firm for a period of one-year from the date the Purchase order is issued.
16. **PRICE WARRANTY FOR COMMERCIAL ITEMS:** Vendor warrants that prices charged Purchaser are based on Vendor's catalog or published price list of commercial items sold in substantial quantities to the general public.
17. **ACCEPTANCE:** This order expressly limits acceptance to the Terms and Conditions stated herein. All additional or different terms proposed by Vendor are objected to and are hereby rejected, unless otherwise provided in writing by CMHA's Purchasing Division.
18. **TERMINATION:** CMHA may terminate this Purchase Order in whole, or from time to time in part, for CMHA's convenience, lack of funding, for the failure of the Vendor to fulfill the obligations of this Purchase Order, or for other cause. CMHA shall terminate by delivering to the Vendor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Vendor shall immediately discontinue all services affected (unless the notice directs otherwise) and deliver to CMHA all information, reports, papers or other materials accumulated or generated in performing this Purchase Order, whether completed or in process. If the termination is for convenience of CMHA, CMHA shall be liable only for payment for services rendered or goods received before the effective date of termination. If the termination is due to the Vendor's failure to fulfill its obligations under this Purchase Order, CMHA may require the Vendor to deliver it, in the manner and to the extent directed by CMHA, any work described in the Notice of Termination; take over the work and prosecute the same to completion by contract or otherwise, and the Vendor shall be liable for any additional cost incurred by CMHA; the Vendor shall be liable for

damage suffered by CMHA, and CMHA may withhold any payments to the Vendor for the purpose of set-off or partial payment, as the case may be, of amount owed by CMHA to the Vendor.

19. **LAW AND VENUE:** This Purchase Order shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of Ohio, regardless of conflicts of laws principles. Should any portion of the Purchase Order be found unenforceable due to statute or administrative or judicial decision, the operation or effect of the remaining provisions shall continue unaffected. Venue for any claim or dispute arising under this Purchase Order shall be in a court of competent jurisdiction located in Cuyahoga County, Ohio. Vendor consents to and expressly accepts the personal jurisdiction of such court.

20. **AUDITS AND RECORDS RETENTION:** a.) CMHA, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this Purchase Order, have access to and the right to examine any of the Vendor's directly pertinent books, documents, papers, or other records involving transactions related to this Purchase Order for the purpose of making audit, examination, excerpts, and transcriptions.

b.) The Vendor agrees to include in first-tier subcontracts under this Purchase Order a clause substantially the same as in paragraph a) above. "Subcontract," as used in this clause, excludes purchase orders less than \$10,000.

c.) The periods of access and examination in paragraphs (a) and (b) above for records relating to litigation or settlement of claims arising from the performance of this Purchase Order, or costs and expenses of this Purchase Order to which CMHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such litigation claims, or exceptions.

21. **NON-DISCRIMINATION:** In accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C., sec. 2000d – 42 U.S.C. sec 20000d-4, and the relevant federal regulation adopted pursuant to Title VI, the Vendor shall not discriminate against any company, subcontractor, employee, or other person on the grounds of race, color, sex, or national origin under any project, program, or activity supported by this contract.

22. **EEO REQUIREMENTS:** For federally-funded Purchase Orders not less than \$10,000, the Vendor shall comply with Executive Order 11246 of September 24, 1965, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60), and agrees that the equal opportunity clause contained therein is incorporated in this contract by this reference.

23. **INDIVIDUALS WITH DISABILITIES:** Vendor certifies that it will comply with Sections 503 and 504 of the Rehabilitation Act, of 1973, 29 U.S.C. sections. 793 and 794, as amended, and with the Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101 et seq., regarding its programs, services, activities, employment practices. The Vendor agrees that the Affirmative Action Clause of section 503 of the Rehabilitation Act is incorporated herein by this reference.

24. **OSHA:** Vendor agrees to comply with the conditions of all applicable federal and state occupational and/or industrial safety and health acts, such as the Federal Occupational Safety and Health Act of 1970 (OSHA), the Ohio Revised Code, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Vendor further agrees to indemnify and hold harmless Purchaser from all damages assessed against Purchaser as a result of Vendor's failure to comply with the Acts and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

25. **PREVAILING WAGES:** For federally-funded Purchase Orders where the Vendor will be performing work subject to prevailing wage requirements, the Vendor shall pay its workers not less than the prevailing wage rates and shall comply with the following regulations: a.) The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented by Department of Labor regulations (29 CFR part 3). (All Purchase Orders for construction or repair). b.) The Davis-Bacon Act (40 U.S.C. 276a to 76a- 7) as supplemented by Department of labor regulations (29 CFR part 5)." c.) Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5)."

26. **RIGHT IN DATA AND PATENT RIGHTS (OWNERSHIP AND PROPRIETARY INTEREST):** CMHA shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive use and possession of all information, materials, and documents discovered or produced by the Vendor pursuant to the terms of this Purchase Order including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks, if any, of the Purchase Order.

27. **PROCUREMENT OF RECOVERED MATERIALS (Where Applicable):** (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

28. **ENERGY EFFICIENCY:** When applicable, the Vendor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163) for the State in which the work under this Purchase Order is performed.

29. **CLEAN AIR AND WATER:** On federally-funded Purchase Orders in excess of \$100,000, consistent with the provisions of 24 CFR 85.36(i)(12), the Vendor shall comply with all applicable standards, orders, or requirements issued under 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). These provisions shall also apply to any subcontract of the Vendor in excess of \$100,000

30. **CONFLICT OF INTEREST:** Vendor shall comply with CMHA's Conflict of Interest Policy which may be viewed online at www.cmha.net. Such Policy is incorporated herein and made a term and condition of this Purchase Order.

31. **INDEMNIFICATION:** Vendor agrees to at all times defend, indemnify, and hold harmless the Cuyahoga Metropolitan Housing Authority and its Board of Commissioners, Subsidiaries, Affiliates, directors, officers, agents, servants, and employees from and against any and all claims, actions, causes of actions, liabilities, losses, damages, costs, expenses, judgments or liens, including attorneys' fees, arising from bodily or personal injury, sickness, disease, death, or injury to property of any party arising directly or indirectly from, or in any way relating to, Vendor's supplying of goods and/or performance of the work whether caused in whole or in part by Vendor, its officers, employees, contractors, subcontractors, agents, or anyone for whose acts the Vendor may be liable.

In any and all claims against the Cuyahoga Metropolitan Housing Authority, its Board of Commissioners, Subsidiaries, Affiliates, directors, officers, agents, servants, or employees by any employee or agent of the Vendor or anyone for whose acts the Vendor may be liable, the indemnification obligation shall not be limited in any way by the limitation, if any, on the amount or type of damage compensation or benefits payable by or for the Vendor under workers' compensation, disability benefits, or other employee benefits provided by law. The provisions of this section will survive the expiration or earlier termination of this Purchase Order.

32. **INSURANCE:** Except when the Purchase Order is for goods only (no services) and Vendor will not enter onto CMHA property to complete performance, (a) Vendor shall maintain, at its sole expense, prior to commencing performance and throughout the term of the Purchase Order, the following insurance:

- Commercial General Liability Insurance with bodily injury and property damage limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. The coverage must extend to the completed operations of the Vendor.

- Automobile Liability Insurance in an amount not less than \$1,000,000 Combined Single Limit per accident.

- Workers' Compensation Insurance which meets Ohio statutory requirements and Employer's Liability Insurance in the amount of \$500,000 each accident and \$500,000 each disease.

(b) Other than Workers' Compensation and Employer's Liability insurance, all such policies shall name the Cuyahoga Metropolitan Housing Authority as an additional insured and shall state that Contractor's insurance is primary and non-contributory in favor of the Cuyahoga Metropolitan Housing Authority. **NOTE: THE APPROPRIATE POLICY ENDORSEMENT MUST BE INCLUDED WITH THE CERTIFICATE OF INSURANCE.**

(c) Prior to commencing the work, Contractor shall provide certificates of insurance evidencing the required coverage and shall submit such certificates for approval to the Cuyahoga Metropolitan Housing Authority, Attn: Office of Legal Affairs/Risk Management, 8120 Kinsman Road, Cleveland, Ohio, 44104, riskmgt@cmha.net. **Contact Information for the Cuyahoga Metropolitan Housing Authority**

Mailing Address
8120 Kinsman Road
Cleveland, Ohio 44104

Street Address
8120 Kinsman Road
Cleveland, Ohio 44104

Telephone: (216) 348-5000
Fax: (216) 348-1379