

# Purchase Order Terms and Conditions

Read the legal provisions that apply to all Central Midlands Regional Transit Authority also known as The COMET ("The COMET") contracts, including construction related purchases.

Seller (also known as "Contractor") and The COMET agree:

## 1. Shipment and Delivery

- a. SELLER TO PACKAGE GOODS. Seller at Seller's cost will package goods in accordance with commercial practice to secure the lowest appropriate transportation cost, with requirement of the common carrier and with applicable specifications. Each shipping container shall be clearly and permanently marked as follows: (i) Seller's name and address, (ii) Buyer's name and the address of the place of delivery referred to below, (iii) purchase order or purchase release number, if applicable, (iv) container number and total number of containers, for example, "box 1 of 4 boxes," and (v) the container bearing the packing list. The COMET's count or weight shall be conclusive on shipments not accompanied by packing list
- b. NO REPLACEMENT OF DEFECTIVE TENDER. Shipment under reservation is prohibited. Seller shall not ship goods under reservation. No tender of a bill of lading will operate as a tender of goods. Every tender of goods must fully comply with all provisions of the Purchase Order as to the time of delivery, quantity, quality and the like. If a tender is made which does not fully conform, it shall constitute a breach and Seller shall not have the right to substitute a conforming tender.
- c. PLACE OF DELIVERY. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Ship To". Any change thereto shall be effected by modification as provided for in the "Modifications," clause hereof. The terms of this contract are "no arrival, no sale."
- d. TIME OF DELIVERY. Delivery shall be made during normal working hours only, unless prior approval has been obtained from The COMET.

## 2. Payment

- a. INVOICE AND PAYMENT. Seller shall submit one original copy of an itemized invoice for each shipment or service. Invoice shall be submitted to The COMET Attention: Finance Director/CFO, 3613 Lucius Road, Columbia, SC 29201. Unless freight and other charges are itemized, any payment discount provided will be taken on full amount of invoice. Payment shall be subject to the provisions of The COMET Procurement and Contract Administration Policy. All invoices issued in reference to this purchase order shall identify and reference the purchase order number.
- b. INSPECTION AND TESTS. All goods will be subject to inspection and test by The COMET. Tests shall be performed on samples submitted with the bid or quote or on samples taken from regular shipment. All costs shall be borne by the Seller in the event goods fail to meet or exceed all conditions and requirements. Goods delivered and rejected in whole or in part may, at The COMET's option, be returned to the Seller or held for disposition at Seller's expense. Latent defects may result in revocation of acceptance.

- c. TRANSPORTATION CHARGES. F.O.B. Destination. Freight Prepaid and Allowed unless delivery terms are specified otherwise. If the quoted delivery terms do not include transportation costs, The COMET shall reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower. If transportation costs are based on actual costs, a copy of the freight bill showing actual charges for the shipment must be attached to the invoice. The COMET shall have the right to designate what method of transportation shall be used to ship the goods.
- d. SPECIAL TOOLS AND TEST EQUIPMENT. If the price bid, quoted or stated includes the cost of any special tooling or special test equipment fabricated or required by The COMET for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall be identified by Seller and shall become the property of The COMET.
- e. PRICE INCREASE. If prices are higher than specified in the purchase order, the new prices must be approved by The COMET in writing prior to shipment.
- f. TAXES. Seller shall pay all sales, use, and other similar taxes that are currently in effect on the date the Purchase Order was issued. Taxes shall not be assessed on goods and services provided to The COMET.

### 3. Warranties

- a. PRICE. The prices to be paid by The COMET shall be those contained in Seller's bid or, if no bid, in Seller's quotation, and Seller warrants that such prices are no higher than Seller's current prices on orders by other commercial purchasers for products of the kind and specifications covered by this agreement for similar quantities under similar or like conditions and methods of purchase. If Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by other purchasers, or The COMET may cancel this contract without liability to Seller.
- b. PRODUCT. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of The COMET. Seller warrants the goods furnished will conform to the specifications, drawings, and descriptions accompanying or referred to in the bid invitation or request for quotation and to any samples furnished by Seller, if any, and shall be fit for The COMET's purposes. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern. Manufacturer's standard warranty shall apply unless otherwise specified.
- c. SAFETY. All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA. Seller warrants the goods conform to any standards promulgated by the U.S. Department of Labor under the Occupational Health and Safety Act of 1970 or other applicable standards.
- d. HAZARDOUS MATERIALS. Seller must comply with WAC 296-62-054 by providing Material Safety Data Sheets (MSDS) on all applicable products sold to The COMET.
- e. NEW AND UNUSED. Unless otherwise specified, all goods will be new and unused.

#### 4. Default and Termination

- a. DELAY. If delay is foreseen, Seller shall give written notice to The COMET. Seller must keep The COMET advised at all times of status of order. Default on promised delivery (without accepted reasons) or failure to meet specifications authorizes The COMET to purchase goods or services elsewhere and charge full increase, if any, in cost and handling to defaulting Seller.
- b. TERMINATION. The performance of work under this order may be terminated in whole or in part by The COMET by the delivery to the Seller of a written "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. The COMET shall not be liable to Seller for any work done or materials purchased after such termination or for lost profits or other damages. Such right of termination is in addition to and not in lieu of rights of The COMET otherwise set forth in this contract.
- c. RIGHT TO ASSURANCE. Whenever The COMET has reason to question the Seller's intent to perform, The COMET may demand that the Seller give written assurance of this intent to perform. In the event that a demand is made, and no assurance is given within ten (10) business days, The COMET may treat this failure as an anticipatory repudiation of the Contract.

#### 5. General Provisions

- a. MODIFICATION. No modification of this purchase order shall bind The COMET unless The COMET agrees to the modification in writing.
- b. TITLE AND RISK OF LOSS. Title and risk of loss of goods shall not pass to The COMET until The COMET takes possession of the goods at the place of delivery specified on the purchase order.
- c. FORCE MAJEURE. If either Seller or The COMET is delayed in carrying out its obligations under this contract because of acts of God, war or riot or labor stoppages, the party shall give notice and full particulars of such delay supported by sufficient evidence in writing, to the other party within a reasonable time after occurrence of the delay and the time for performance by the party shall be extended by the number of days of the delay, except as hereinafter provided.
- d. INTERPRETATION. This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any item used in this agreement. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
- e. NON-DISCRIMINATION. Seller agrees not to discriminate against any employee or applicant for employment in violation of the terms of Federal Executive Order 11246, State Executive Order No. 9904.
- f. APPLICABLE LAW AND VENUE. This purchase order shall be governed by, and The COMET and Seller shall have, all remedies afforded each by the appropriate laws as adopted in the State of South Carolina, except as otherwise provided in this Purchase Order or in statutes pertaining specifically to the State. Venue for any litigation arising under this contract shall lie in Richland County, South Carolina.

- g. LICENSES. The Seller shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted.
- h. PATENTS OR COPYRIGHTS. The Seller agrees to protect The COMET from claims involving infringement of patents or copyrights.
- i. SUBSTITUTIONS. No substitutions permitted without written approval of The COMET.
- j. ADDENDA. The addendum or addenda attached to this contract are incorporated into and are a part of this contract.
- k. WAIVER. No waiver of a claim or right arising out of a breach of this contract shall be effective unless it is supported by consideration and is in writing signed by the aggrieved party.
- l. INSURANCE. In the event the Seller, its employees, agents or subcontractors enter premises occupied or under the control of The COMET in the performance of this contract, the Seller agrees that it will maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above, and will maintain worker's compensation coverage (either by insurance or if qualified pursuant to law, through a self insurance program) covering all employees performing this contract on premises occupied or under the control of The COMET.
- m. ADVERTISING. Seller shall not advance or publish without The COMET's prior written consent the fact that The COMET has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
- n. DEBARRED CONTRACTORS. Vendor certifies that it is not included on the U.S. Comptroller General's Consolidated list of persons or firms currently debarred for violations of public contracts.

## 6. Prohibited Conditions

- a. GRATUITIES. The COMET may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by The COMET that gratuities, in the form of entertainment, gifts or otherwise were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of The COMET with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is not canceled by The COMET pursuant to this provision, The COMET shall be entitled, in addition to any other rights and remedies, to recover or deduct from amounts due Seller the approximate cost to Seller of such gratuities.
- b. CODE OF CONDUCT. The parties hereto covenant agree that to their knowledge no Board member, officer, or employee of The COMET has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Seller and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such confirmation will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest.

- c. ASSIGNMENT-DELEGATION. No right or interest in this Purchase Order shall be assigned by Seller without the written permission of The COMET, and no delegation of any duty of Seller shall be made without permission of The COMET

**7. No Federal Government Obligation to Third Parties**

- a. The COMET and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to The COMET, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from this Contract.
- b. The Contractor agrees to include the above clause in each subContract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**8. Program Fraud and False or Fraudulent Statement and Related Acts**

- a. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C 3801 et seq. and U.S. DOT regulations, "Program Fraud civil Remedies," 49 CFR Part 31, apply to its actions on this Project. Upon execution of the Contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this Contract or the FTA assisted Project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b. The Contractor acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c. The Contractor agrees to include the above two paragraphs in each subContract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**9. Audit and Inspection of Records**

- a. The Contractor agrees to provide The COMET, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of the Contractor which are pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions.

- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until The COMET, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of such litigation, appeals, claims, or exceptions related thereto.
- d. Contractor further agrees to include in all of its Subcontracts under this Contract a provision to the effect that the Subcontractor agrees that The COMET, the FTA Administrator, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

## 10. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA(29) dated October 1, 2019) between The COMET and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

## 11. Civil Rights

- a. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:
  - (1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order

No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c. The Contractor also agrees to include these requirements in each subContract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 12. **Disadvantaged Business Enterprise (DBE) Program**

The COMET is committed to socially and economically disadvantaged, minority, women and small businesses participating in contracting opportunities. The COMET extends to each individual, firm, vendor, supplier, sSubmitter, and sub-contractor an equal economic opportunity to compete for The COMET's business and strongly encourages voluntary use of disadvantaged and/or minority- or women-owned businesses to reflect both the industry and community ethnic composition.

## 13. **Incorporation of Federal Transit Administration Terms**

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated July 1, 2010, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any The COMET requests which would cause The COMET to be in violation of the FTA terms and conditions. The appropriate FTA clauses are attached to this Purchase Order.

THE FOLLOWING APPLY TO CONSTRUCTION ONLY (over \$2,000):

14. **Davis-Bacon Act and Related Act Requirements**

For all construction contracts which are Federally-funded in excess of \$2,000, the Contractor agrees to comply with all applicable provisions of the Davis-Bacon Act (29 C.F.R. Part 5).

15. **Copeland 'Anti-Kickback' Act**

The COMET hereby incorporates by reference the Copeland 'Anti-Kickback' Act. See the following link: [www.dol.gov/whd/govcontracts/copeland.htm](http://www.dol.gov/whd/govcontracts/copeland.htm)

16. **Seismic Safety Regulations**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.