

**LOUISVILLE REGIONAL AIRPORT AUTHORITY
PURCHASE ORDER TERMS AND CONDITIONS**

1. Acceptance. Seller has read and understands this Purchase Order (the "Order") and agrees that Seller's written acceptance or commencement of any work or service or supply of goods under this Order shall constitute Seller's acceptance of this Order and these terms and conditions only. All terms and conditions proposed by Seller which are different from or in addition to this Order are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become a part of this Order. Any modifications to this Order shall be made in accordance with Paragraph 24. Acceptance of the goods or services delivered under this Order shall not constitute acceptance of Seller's terms and conditions.

2. Pricing. Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling, and all other charges, whether similar or dissimilar, unless otherwise indicated on the face of this Order. Federal Excise and other taxes, on which exemption is allowed government agencies, must not be included or added to the price of any item on this Order unless otherwise authorized on the face of this Order. Necessary exemption certificates will be supplied upon request if more than what is contained on the face of the Order is needed. Any taxes later found to have been included and paid by the Buyer shall be refunded by the Seller in the amount of the tax so paid.

Terms of payment shall be net 30 days from the Buyer's receipt of the goods/services or from the Buyer's receipt of the Seller's invoice, whichever shall be the longer period of time, unless:

- (a) Seller's term of payment are noted.
- (b) Trade discounts acceptable to the Buyer are offered on the supplier's invoice, or
- (c) Special payment conditions are contained in this Order.

Seller warrants that the prices herein specified are as low as any net prices now given by Seller to any other customer for goods or services of like grade and quality in like quantities, and Seller agrees that if at any time during the pendency of this Order lower net prices are quoted under similar conditions, said lower net prices shall be from that time substituted for the prices herein. Seller agrees that any price reductions made in the goods or services covered by this Order subsequent to its acceptance but prior to payment thereof will be applicable to this Order.

3. Delivery. Time is of the essence to delivery and any other performance required of Seller. If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller shall, at Buyer's option, (a) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (b) allow Buyer to reduce its payment of Seller's invoice by such difference, or (c) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.

Unless otherwise stipulated in this Order, all sales shall be shipped FOB DESTINATION, FREIGHT PREPAID, Seller pays freight, bears freight costs, owns goods in transit and files claims on carriers (if any). Seller pays all expenses and assumes all risks until actual delivery of the merchandise at the point agreed upon with the Buyer. All packing cases, bales, carton, pallets, etc. in which the articles or materials may be shipped shall become without charge the property of the Buyer upon receipt, unless otherwise stipulated in the Order. The Seller must provide a current Material Safety Data Sheet (MSDS) on chemicals, equipment or hazardous materials at the time of delivery.

4. Changes. Buyer reserves the right at any time to direct changes, or cause Seller to make changes, to drawings and specifications of the goods or to otherwise change the scope of the work covered by this Order,

including work with respect to such matters as inspection, testing, place or time of delivery, or quality control, and Seller agrees to promptly make such changes; any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Any changes in this Order shall be made in accordance with Paragraph 24.

5. Inspection and Rejection. Seller agrees that Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials and any property of Buyer covered by this Order. Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods. Buyer may inspect and reject all nonconforming goods and services within a reasonable period of time after delivery without regard to whether payment has been made. Buyer may choose, at Seller's risk and expense, to either hold nonconforming goods pending Seller's instructions or ship them to Seller's address shown on the face of this Order.

6. Nonconforming Goods. To the extent Buyer rejects goods as nonconforming, Seller shall replace such goods with conforming goods. Buyer shall hold nonconforming goods for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the goods, without liability to Seller. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy or relieve Seller's responsibility for latent defects.

7. Invoices. Buyer shall have no obligation to pay for any item until a correct invoice for the item is received at the "bill to" address shown on the face of this Order. Payment terms commence upon receipt of a correct invoice subject to paragraph 2. Seller represents that the products and/or services covered hereby were produced in compliance with requirements of the Fair Labor Standards Act of 1938, as amended. Payment of invoices shall not constitute acceptance of the goods and/or services and shall be subject to adjustment for errors, shortages, defects in the goods and/or services, or other failure of Seller to meet the requirements of the Order. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer.

8. WARRANTY. SELLER WARRANTS THAT ALL GOODS AND ALL WORK PERFORMED HEREUNDER OR PURSUANT HERETO WILL BE OF MERCHANTABLE QUALITY; FREE FROM ALL DEFECTS IN DESIGN, WORKMANSHIP AND MATERIALS. WHEN SELLER HAS KNOWLEDGE OF A PARTICULAR PURPOSE FOR WHICH THE GOODS ARE PURCHASED, THEY WILL BE FIT FOR SUCH PARTICULAR PURPOSE. THE GOODS ARE PROVIDED IN STRICT ACCORDANCE WITH THE SPECIFICATIONS AND/OR SAMPLES, DRAWINGS, DESIGNS OR OTHER REQUIREMENTS (INCLUDING PERFORMANCE SPECIFICATIONS) PROVIDED BY BUYER. THE WARRANTIES CONTAINED IN THIS SECTION SHALL BE IN ADDITION TO, AND SHALL NOT BE CONSTRUED AS RESTRICTING OR LIMITING ANY WARRANTIES OR REMEDIES OF BUYER, EXPRESS OR IMPLIED, WHICH ARE PROVIDED BY LAW. ANY ATTEMPT BY SELLER TO LIMIT, DISCLAIM OR RESTRICT ANY SUCH WARRANTIES OR REMEDIES OF BUYER, BY NOTICE OR ACKNOWLEDGEMENT IN ACCEPTING OR PERFORMING THIS ORDER SHALL BE VOID.

9. Insolvency. Buyer may immediately cancel this Order without liability to Seller in the event of the happening of any of the following or any other comparable event: (a) insolvency of the Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against

Seller; (d) appointment of a receiver or trustee for Seller; (e) or execution of an assignment for the benefit of creditors by Seller.

10. Cancellation for Breach. Buyer reserves the right to cancel all or any part of this Order, without liability to Buyer, if Seller: (a) repudiates or breaches any of the terms of this Order, including Seller's warranties; (b) fails to perform services or deliver goods as specified by Buyer; or (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach.

11. Force Majeure. Neither party shall be liable for delay in its performance of its obligations and responsibilities under this Order due to causes beyond its control, such as, but not limited to, war, embargo, national emergency, insurrection or riots, acts of public enemy, fire, flood, or other natural disaster, provided that said party has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials shall not be considered as an excusable delay. If due to such cause, Seller should be unable to meet all of its delivery commitments for items ordered hereunder as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such items. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operation, Buyer may, at its option and without liability to Seller, cancel outstanding deliveries hereunder wholly or in part.

12. Termination. In addition to any other rights of Buyer to cancel or terminate this Order, Buyer may as its option immediately terminate all or any part of this Order, at any time and for any reason, by giving notice to Seller. Upon such termination, Buyer shall pay to Seller the Order price for all goods or services which have been completed in accordance with this Order and not previously paid for. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of this Order. THE FOREGOING STATES BUYER'S ENTIRE LIABILITY FOR TERMINATION.

13. Intellectual Property Indemnification. Seller agrees: (a) to defend, hold harmless and indemnify Buyer, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer; (c) to grant to Buyer a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered hereunder; and (d) assign to Buyer all right, title and interest in and to all trademarks, copyrights and mask work rights in any material created for Buyer under this Order.

14. Technical Information Disclosed to Buyer. Seller agrees not to assert any claim (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this Order.

15. INDEMNIFICATION. IF SELLER PERFORMS ANY WORK ON BUYER'S PREMISES OR UTILIZES THE PROPERTY OF BUYER, WHETHER ON OR OFF BUYER'S PREMISES, SELLER

SHALL INDEMNIFY AND HOLD BUYER, ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DEMANDS OR EXPENSES (INCLUDING ATTORNEYS' FEES) FOR DAMAGES TO THE PROPERTY OF OR INJURIES (INCLUDING DEATH) TO BUYER, ITS EMPLOYEES OR ANY OTHER PERSON ARISING FROM OR IN CONNECTION WITH SELLER'S PERFORMANCE OF WORK OR USE OF BUYER'S PROPERTY. SELLER SHALL INDEMNIFY AND HOLD BUYER, ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, LOSSES AND EXPENSES (INCLUDING ATTORNEYS' FEES) ON ACCOUNT OF DEATH OR INJURY TO ANY PERSON OR DAMAGE TO ANY PROPERTY ARISING FROM OR IN CONNECTION WITH ANY GOODS AND SERVICES SUPPLIED. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LIABILITY OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.

16. Insurance. Seller shall maintain insurance coverage in amounts not less than the following: (a) Workers' Compensation - Statutory Limits for the state or states in which this Order is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$250,000; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury, and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit; and (d) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit. At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

17. Good Title; Inventions. Seller warrants title to all goods sold and services supplied. All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks (collectively "Inventions") created or prepared for Buyer, shall belong exclusively to Buyer. Seller hereby assigns all Inventions to Buyer and its assigns, except for any works for hire which do not require an assignment to vest ownership in Buyer. To the extent copyrights exist in any works of authorship, such works shall be deemed, to the extent legally permitted, to be works made for hire as that term is used in the Copyright Act of 1976. Buyer shall have the right, at Buyer's option and expense, to seek protection by obtaining patents, copyright registrations, trademark registrations, and/or other recordation, registrations, and filings related to proprietary or intellectual property rights. Seller agrees at no charge to execute, and to cause its employees to execute, such documents including such further assignments, applications, and conveyances and to supply such information as Buyer shall request, in order to permit Buyer to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world.

18. Remedies. The rights and remedies reserved to Buyer in this Order shall be cumulative, and additional to all other or further remedies provided in law or equity.

19. No Implied Waiver. The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any succeeding breach of the same or any other provision.

20. Relationship of Parties. Seller and Buyer are independent contracting parties and nothing in this Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

21. Applicable Law. This agreement shall be governed by the laws of the Commonwealth of Kentucky regardless of its conflict of laws principals. Each of the parties consents to the personal jurisdiction of the Circuit Court of Jefferson County, Kentucky, and the United States District Court for the Western District of Kentucky in Louisville, waives any objection based upon forum non-convenience as to any action brought in such courts, and agrees that any action arising from or relating to this Order shall be brought in such courts. Seller hereby knowingly, voluntarily, and intentionally waives any right it may have to a trial by jury of any claim or controversy arising from or relating to this Order.

22. Confidential or Proprietary Information. Under Kentucky's Open Records Act, the records submitted to the Buyer will be subject to inspection by the public, unless an exception to the Open Records Act applies. KRS 61.878(1)(c)(1) excludes from the Act's disclosure requirements "records confidentially disclosed to an agency...generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." If records submitted to Buyer under this Order contain information Seller deems as confidential or proprietary, Seller shall clearly mark the records containing such information as "CONFIDENTIAL" or "PROPRIETARY." Seller may not classify all records submitted in connection with this Order as proprietary or confidential, but rather must designate only that material that qualifies as such. Seller's classifications of information as confidential or proprietary will not be binding upon the Buyer.

23. Severability. If any term of this Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Order shall remain in full force and effect.

24. Entire Agreement. THESE TERMS AND CONDITIONS SHALL SUPERSEDE ANY PROVISIONS, TERMS AND CONDITIONS CONTAINED ON ANY CONFIRMATION ORDER, OR OTHER WRITING SELLER MAY GIVE OR RECEIVE THAT IS NOT SIGNED BY BUYER, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED EXCLUSIVELY BY THE PROVISIONS, TERMS AND CONDITIONS HEREOF. BUYER MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THIS ORDER EXCEPT SUCH AS ARE EXPRESSLY CONTAINED HEREIN, AND THIS ORDER MAY NOT BE CHANGED OR MODIFIED ORALLY.

25. Non-Assignment. Seller may not assign or delegate its obligations under this Order without Buyer's prior written consent.

26. Legal Compliance. Seller warrants that all goods and services furnished shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

27. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

27.1 During the performance of this Agreement, the Company, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees to follow:

- A. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- B. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21 including amendments thereto.
- C. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- i. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - ii. Cancelling, terminating, or suspending a contract, in whole or in part.
- F. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

27.2 General Civil Rights Provisions. In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used, or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration.

27.3 Title VI List of Pertinent Nondiscrimination Act and Authorities. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- A. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- B. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964) including amendments thereto;
- C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- D. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- E. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- I. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

28. Disadvantaged Business Enterprises. It is the policy of Authority to encourage contractors to take all reasonable and necessary steps to ensure that Disadvantaged Business Enterprises, as defined by the U.S. Department of Transportation in 49 C.F.R. § 26.5 including any amendments thereto, have the maximum opportunity to compete for and perform all levels of subcontracts under agreements with Seller. Consequently, Seller shall not discriminate on the basis of race, color, religion, sex, creed, handicap or national origin in the performance of this Agreement or award of subcontracts hereunder.