

# **PURCHASE ORDER TERMS, CONDITIONS AND CERTIFICATIONS**

The following Terms, Conditions and Certifications apply to all **HOUSING AUTHORITY OF BERGEN COUNTY** (Authority) Purchase Orders:

1. **ELECTRONIC/FACSIMILE TRANSMISSION** - If this order is transmitted by facsimile machine, or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original contract delivered to the Vendor. Furthermore, any notices from the Authority to vendor/contractor may be delivered by facsimile machine and shall be effective upon transmission thereof.
2. **TAXES** – Taxes shall not be included in any invoices rendered to the Authority. The articles covered by this Purchase Order are exempt from such taxes. Upon request, the Authority will issue an exemption certificate to the Vendor/Contractor.
3. **TERMINATION** – This Purchase Order may be terminated by the Authority in whole or in part at any time. Upon receipt of a notice of termination, the Vendor/Contractor shall take immediate action to stop all work in connection with this order, as well as notify all sub-contractors and/or suppliers in connection with any outstanding work or orders for which the Vendor/Contractor is committed, and which relate directly to the completion of this order, unless otherwise directed by the Authority.
  - i. The Authority may terminate this contract for the Authority's convenience or the failure of the Vendor/Contractor to fulfill the contract obligations (cause/default). The Authority shall terminate by delivering written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Vendor/Contractor shall: (1) immediately discontinue all services effected (unless the notice directs otherwise), and (2) deliver to the Authority all information, reports, papers and other materials accumulated or generated in performing the contract, whether completed or in process.
  - ii. If the termination is for the convenience of the Authority, the Authority shall be liable only for payment for services rendered before the effective date of the termination.
  - iii. If the termination is due to the failure of the Vendor/Contractor to fulfill its obligations under the contract (cause/default), the Authority may (1) require the Vendor/Contractor to deliver to it, in the manner and to the extent directed by the Authority, any work described in the Notice of Termination; (2) take over the work and prosecute the same to completion by contract of otherwise, and the Vendor/Contractor shall be liable for any additional cost incurred by the Authority; and (3) withhold any payments to the Vendor/Contractor, for the purpose of set-off or partial payment, as the case may be, of amounts owed to the Authority by the Contractor. In the event of termination for cause/default, the Authority shall be liable to the Vendor/Contractor for reasonable costs incurred by the Vendor/Contractor before the effective date of the termination. Any dispute shall be decided by the Contracting Officer.
4. **DELIVERY** – The Vendor/Contractor must effectuate delivery within the time and in accordance with the terms and conditions on this Purchase Order. If the Vendor/Contractor fails to comply, the Authority reserves the right to cancel the order, and to purchase the item(s) specified in this order elsewhere, and to charge the Vendor/Contractor with any loss incurred as a result of such action; or at the Authority's option to cancel and rescind the order without further action. In either circumstance, the cancellation will be without any obligation for reimbursement to the Vendor/Contractor. The right to cancel this order without obligation and/or to recover any loss sustained by the Authority for non-delivery by the Vendor/Contractor is waived when the product being supplied is to be manufactured to the specifications of the Authority, and the delay or non-delivery is the result of any action which is beyond the Vendor/Contractor's control; in the event of such cancellation, the Authority shall pay to the Vendor/Contractor such amount as may be agreed upon between them as consideration and reasonable compensation for the cancellation.

**Please note that all deliveries must be made through the loading dock located at the E. Kansas Street entrance, between the hours of 9:00 am to 11:30 am and 1:30 pm to 3:30 pm Monday to Friday. Deliveries made during any other times will be turned back. Upon unloading material, all delivery persons will be escorted by security to the office of the Authority.**

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5. LIENS – All items of material and/or equipment supplied, and/or labor performed under this order shall be free of any lien. The Vendor/Contractor shall furnish satisfactory evidence of freedom from any liens if requested to do so by the Authority.
6. ASSIGNMENT – This Purchase Order or monies payable hereunder shall not be assigned in whole or in part without the Authority's written consent which shall be signed by an authorized agent of the Authority.
7. DEFECTS & OVERSHIPMENT – The Authority has the right to return defective material or over shipments at the expense of the Vendor/Contractor.
8. BOXING CHARGES – No boxing or crating charges will be allowed unless specifically agreed to in this Purchase Order.
9. RETURNABLE CONTAINERS – All charges for returnable type containers are refundable less demurrage charges if applicable, unless otherwise specifically agreed to in this Purchase Order.
10. AGREEMENT – This Purchase Order constitutes the complete agreement between the Vendor/Contractor and the Authority with respect to the subject matter referred to herein. Any other Agreement, Service Contract, Policy or Contractual document of any nature whatsoever shall have no reference to the subject matter of the Purchase Order unless included in this Purchase Order by reference. If the Vendor/Contractor's acknowledgment of this Purchase Order contains terms and conditions which conflict with those contained in this order, the terms and conditions listed on this order shall take precedence over any set forth on the Vendor/Contractor's acknowledgment. Any changes or exceptions to the Purchase Order terms and conditions must be explicitly agreed to by the Authority in writing. Any such agreements must be signed by an authorized representative of the Authority. Failure of the Authority's representative to insist on strict performance or any terms and conditions herein shall not be deemed a waiver of any right or remedy that the Authority's representative shall have or of any subsequent default hereunder. The laws of the State of New Jersey shall govern the rights to the parties hereto as well as the construction and effect to be given to every provision hereof.
11. PENALTIES – Penalties in the form of interest charges placed upon invoices by the Vendor for tardy payment will not be allowed unless agreed to by the Authority and stated on the face of this order.
12. WORKMEN'S COMPENSATION – The Vendor/Contractor shall comply with all provisions of applicable Workmen's Compensation and other laws relating to or affecting the employment, hours of work or compensation of persons engaged in work under this order.
13. PATENTS – The Vendor/Contractor shall hold and save the Authority, its officers, agents, servants and employees harmless from patent liability of any nature or kind, including cost and expenses, for or on account of any patented or unpatented invention made or used in the performance of this order, including the use or disposal thereof by or on behalf of the Authority.
14. INSPECTION – All items covered by this Purchase Order shall be subject to inspection and test by the Authority to the extent practicable, at all times and places, including the period of manufacture, and in any event prior to acceptance. If any items are defective in material or workmanship, or otherwise not in conformity with the requirements of this order, the Authority shall have the right either to reject them or to require their correction or replacement at the expense of the Vendor/Contractor. Inspection and tests conducted by the Authority does not relieve the Vendor/Contractor from any responsibility regarding defects or other failure to meet the requirements of this order which may be discovered prior to acceptance.

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15. GUARANTY- Notwithstanding the provisions of condition 14 of this Purchase order entitled "INSPECTION", the Vendor/Contractor guarantees that at the time of delivery thereof, the items provided for under this Purchase Order, will be free from any defects in material, design or workmanship, and will conform to the requirements of this Purchase Order. Notice of any defect or non-conformance shall be given by the Authority to the Vendor/Contractor within one year after the delivery of the defective or non-conforming items. If required by the Authority within a reasonable time after such notice, the Vendor/Contractor shall with all possible speed correct or replace the defective or non-conforming items or part(s) thereof. When such correction or replacement requires transportation of the items or part(s) thereof, shipping costs, not exceeding usual charges, from the delivery point to the Vendor/Contractor's place of business and return, shall be borne by the Vendor/Contractor. This guarantee shall then continue as to the corrected or replacing parts, until one year after the date of redelivery. If the Authority does not require correction or replacement of defective or non-conforming items, the Vendor/Contractor, if required by the Authority within a reasonable time after notice of defect or non-conformance, shall repay such portion of the price of the item(s) as equitable in the circumstances. This clause shall not limit any rights of the Authority under the condition of this Purchase Order entitled "INSPECTION."
16. EQUAL EMPLOYMENT OPPORTUNITY STANDARD – If this purchase or the aggregate of all orders issue to this Vendor/Contractor in the past 12 months exceeds \$10,000, the Vendor/Contractor certifies that it is in compliance with the requirements of N.J.S.A. 10:5-31 et. seq. and N.J.A.C. 17:27 et. seq., as incorporated by reference. The Vendor/Contractor agrees to provide evidence of compliance upon request by the Authority
17. AUTOMATIC RENEWAL – No Agreement, Service Contract, Policy, Blanket Order or Contractual Agreement of any nature is automatically renewable. All transactions terminate in accordance with the limitations of the specific period stated and/or in the event that no chronological limit is established, by the expiration date of budget funds as set forth on this Purchase Order.
18. OCCUPATIONAL SAFETY AND HEALTH ACT – To the extent that the products and/or services rendered to the Authority under this Purchase Order are covered by standards or regulations promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970 (29 U.S. Code Sec. 651, Public Law 91-596), the Vendor/Contractor agree to comply with such standards or regulations.
19. TIME OF ESSENCE – At all times specified for the performance of the Vendor/Contractor's obligations, time shall be deemed of the essence.
20. INDEMNIFICATION - The Vendor/Contractor shall indemnify, protect and save harmless the Authority, its trustees, officers, employees and agents (1) against any and all liability for damage to property and persons arising out of goods or services provided by the Vendor/Contractor pursuant to this Purchase Order, (2) against any and all liability to any person or persons for or by reason of any act or omission of the Vendor/Contractor, its agents, servants or employees, and (3) against patent or copyright infringement claims or suits arising out of purchase or use of materials, supplies, equipment or services covered by this Purchase Order. The Vendor/Contractor shall pay any damages, costs and expenses, including attorney's fees, in connection with or resulting from claims or suits under this condition of this Purchase Order.
21. PROCUREMENTS ISSUED UNDER THIS PURCHASE ORDER – The following contract clauses are required in contracts pursuant to 24 CFR 85.36(i) and Section 6002 of the Solid Waste Disposal Act, as amended by the Resource conservation and Recovery Act. HUD is permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy. The Authority and Vendor/Contractor is also subject to other Federal laws including the U.S. Housing Act of 1937 as amended, Federal regulations, and state law and regulations.

**Purchase Order, Terms, Conditions and Certifications, page 4 of 4, continued**

Examination and Retention of Vendor/Contractor's Records. The Authority, HUD, or Comptroller General of the United States, or any of their duly authorized representatives, shall, until three years after final payment under this contract, have access to and the right to examine any of the Vendor/Contractor'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.

Right in Data and Patent Rights (Ownership and Proprietary Interest). The Authority shall have exclusive possession of all information, materials, documents discovered or produced by Vendor/Contractor pursuant to the terms of this Purchase Order, including, but not limited to, reports, memoranda or letters concerning the research and reporting tasks of the Purchase Order.

Energy Efficiency. The Vendor/Contractor 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 Public and Conservation Act (Pub. L. 94-163) for the State in which the work under this Purchase Order is performed.

Procurement of Recovered Materials.

- a. In accordance with Section 6002 of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act, the Vendor/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 compliance. The Vendor/Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Vendor/Contractor determines that such items:
  - i. Are not reasonably available in a reasonable period of time;
  - ii. 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
  - iii. Are only available at an unreasonable price.
- b. Paragraph (a) of this condition shall apply to items purchased under this Purchase Order where:
  - i. The Vendor/Contractor purchases in excess of \$10,000 of the item under this Purchase Order; or
  - ii. During the preceding Federal fiscal year, the Vendor/Contractor 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/or purchased a total of in excess of \$10,000 of the item both under and outside that contract.