

## **Terms and Conditions**

**1. ACCEPTANCE:** This Order is deemed accepted by Vendor upon receipt unless Vendor provides written contrary notice to the Authority within three (3) working days of Vendor's receipt of this Order. Notification of non-acceptance must be prior to delivery of any material that is the subject of this Order. If Vendor does not accept this Order, Authority shall not be responsible to Vendor or any other party for any costs, charges, or any other obligation associated with this Order. If Vendor makes any changes to the Order form, such action by Vendor shall be deemed a counter-offer. In the event the Vendor uses any other form to accept this Order, such form shall be deemed to be used for convenience only and any terms and conditions contained therein that are inconsistent with or in addition to the terms and conditions contained herein shall have no force or effect unless expressly approved in writing by the Authority. In addition, if the Vendor uses any other form to accept this Order, all terms and conditions contained herein shall be deemed to be contained in the form used by Vendor. Finally, if Vendor uses any other form, such contract shall not become binding upon Authority until Authority has provided Vendor with written acceptance. No contract shall exist except as provided herein.

### **2. COMPLETE AGREEMENT:**

This purchase order (this "Order") is the final, complete and exclusive agreement of the San Diego County Regional Airport Authority (the "Authority") and the Vendor (the "Vendor"), with respect to the subject matter hereof and merges all prior or contemporaneous proposal, discussions, negotiations, understandings, promises, representations, conditions, communications and agreements, whether written or oral, between the parties with respect to such subject matter and all past courses of dealing or industry custom. No alteration, modification or amendment to any of the provisions of this Order shall be binding unless set forth in writing and signed by duly authorized representatives of the parties.

### **3. DELAYS:**

Vendor agrees that time is of the essence for this Order. If Vendor fails to make deliveries within the time or the manner specified herein, then the Authority reserves the right to terminate this Order or such parts thereof which remain undelivered, and procure equivalents of the goods from other vendors. Vendor shall reimburse the Authority for any costs and expenses and any increase in the price of the replacement goods. The Authority shall be entitled to pursue any other remedies set forth in Section 11 hereof and shall incur no liability relative to Vendor for any termination of an Order under this Section.

### **4. DELIVERY:**

Vendor shall deliver the goods on or before the date specified herein. The Authority reserves the right to designate, in its sole discretion, the freight carrier and routing for the goods. The Authority shall reject any goods that are shipped C.O.D. All deliveries shall be packed to prevent damage or deterioration, to assure the lowest transportation costs and to comply with the freight carrier's classification. Damage resulting from improper packaging shall be charged to Vendor.

### **5. NO ASSIGNMENT:**

Except as otherwise provided herein, Vendor shall not assign its rights or delegate its obligations under this Order without the Authority's prior written consent, and any attempt to make such assignment or delegation without the Authority's prior written consent shall be null and void.

### **6. INVOICES:**

Invoices must be submitted to the Authority within thirty (30) calendar days after delivery. Failure to observe this time limitation may constitute a waiver of all claims for payment of the invoice.

### **7. INSPECTIONS:**

All material and workmanship shall be subject to inspection and testing by the Authority notwithstanding any inspection and testing conducted by Vendor. Payment will not constitute final acceptance of the goods, and the goods will continue to be subject to adjustments for errors, shortages, defects and set-offs. The Authority reserves the right to reject any goods that do not comply with the specifications of this Order or that contain defects in design, materials or workmanship. Rejected goods shall be removed at Vendor's sole cost (including round-trip shipping costs), expense and risk promptly after Authority's notification of rejection of such goods.

### **8. WARRANTY:**

Notwithstanding the Authority's acceptance or right of inspection and /or any other terms or conditions provided in this Order, Vendor warrants to the Authority that all goods furnished hereunder will (i) be free from any defects in design, material or workmanship, (ii) conform fully with all applicable specifications, (iii) be merchantable and free of any security interest or other lien or encumbrance, (iv) be suitable and fit for the use intended and (v) not infringe, misappropriate or violate any patent, copyright, trademark, trade secret, publicity, privacy or other rights of any third party.

### **9. INDEMNIFICATION:**

Except where caused by the sole negligence or willful misconduct of the Authority, Vendor shall indemnify, hold harmless, and, at the Authority's request, defend the Authority and its officers, directors, employees, agents and representatives (collectively, "Representatives") from and against any loss, damage, expense, reasonable attorney's fees, claim, demand of liability (collectively, "Claims") directly or indirectly relating to or against out of (i) any acts or omissions by Vendor or its Representatives in connection with this Order, including, without limitation, any Claims arising out of or relating to the acts, errors or omissions of Vendor or its Representatives, (ii) any breach by Vendor or its Representatives of any of the terms and conditions of this Order or (iii) any death or injury to any person or damage to property resulting from use of the goods.

### **10. COMMITMENTS:**

Vendor or its Representatives shall comply with any and all applicable federal, state and local laws and regulations in the performance of its obligations hereunder. There is and shall be no alleged or actual infringement on the part of Vendor or its Representatives of any patent, copyright, trademark, trade secret, publicity, privacy or other rights of any third party arising from the purchase by the Authority of the goods subject to this Order.

### **11. TITLE TO GOODS:**

All risk of loss and title to the goods under this Order shall pass at the F.O.B. point contained herein except as expressly ordered otherwise.

### **12. DEFAULT AND REMEDIES:**

In the event that Vendor breaches any of the terms and conditions of this Order, the Authority, in its sole discretion, may (i) withhold from any amount due to Vendor hereunder such amounts as are required, in the Authority's reasonable judgment, protect the Authority from loss or damage, (ii) immediately terminate this Order in whole or part and/or (iii) exercise any right or remedy provided for herein or by law. The rights and remedies provided herein shall be cumulative and in addition to any other rights and remedies, provided by law. The failure of the either party to insist upon strict compliance with the terms and conditions of this Order, or to exercise any of the rights or remedies provided herein, shall not be constructed as a waiver of such unasserted right or remedy or of such party's right to assert such rights or remedies in any other or subsequent instance. The rights and remedies provided to the Authority under this Order, including, without limitation, its right to damages and indemnity, shall survive any termination of this Order.

### **13. ARBITRATION:**

Any dispute between the parties arising out of or relating to this Order shall be resolved by binding arbitration, pursuant to the rules of American Arbitration Association. The arbitration shall be conducted by a single arbitrator in San Diego County, California.

### **14. MISCELLANEOUS:**

This Order shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to its conflict of law rules. This Order shall be binding on, and shall be for the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns. If any provision of this Order shall be determined to be invalid, unlawful, void or unenforceable to any extent, then the remainder of this Order shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.