

GBA – GEORGIA BUILDING AUTHORITY
PURCHASE ORDER TERMS AND CONDITIONS

The accompanying agreement is issued by the Georgia Building Authority (“GBA”) and subject to the terms and conditions below and on the reverse side hereof, as well as the terms and conditions set forth on any solicitation form, any GBA terms and conditions form or other GBA contract document referenced in the agreement (the “contract documents”). GBA shall not be bound by any terms or conditions included in any vendor packaging, invoice, catalog, brochure, technical data sheet or other document which attempts to impose any term or condition at variance with or in addition to the terms and conditions issued by GBA. The following terms and conditions (hereinafter the “Terms and Conditions”) supersede any inconsistent provisions on the solicitation form used by the GBA.

1. **THE WORK.** Vendor agrees to provide all labor, materials, tools and equipment and to fully and faithfully perform the work specified in the contract or purchase order documents. No additional work shall be undertaken or performed by Vendor unless provided for by an amendment executed by an authorized representative of GBA.
2. **EXISTING CONDITIONS.** The Vendor in undertaking the work is assumed to have visited the premises and to have taken into consideration all conditions which might affect the work. No consideration will be given any claim based on lack of knowledge of existing conditions except where existing conditions are such as cannot be readily ascertained. Any claims relating to conditions which were not readily ascertainable shall be adjusted as provided for by an amendment executed by an authorized representative of GBA and Vendor.
3. **CORRECTION OF WORK.** The Vendor shall promptly correct any work rejected by GBA as defective or as failing to conform to the contract documents or requirements of this purchase order whether observed before or after completion and whether or not fabricated, installed or completed. Vendor shall correct any work found to be defective or nonconforming within a period of one year from the date of acceptance of the work by GBA or within such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the contract documents. The provisions of this paragraph apply to work done by subcontractors as well as to work done by Vendor.
4. **RIGHT TO TERMINATE FOR CONVENIENCE.** GBA may at any time and for any reason terminate this agreement by providing written notice in advance of such termination to Vendor. In the event of termination GBA shall pay Vendor for work fully and faithfully performed prior to the effective date of termination; provided, however, that payments otherwise due the Vendor may be applied by GBA against amounts due or claimed to be due GBA. Vendor shall be liable for any additional cost incurred by GBA as a result of deficiencies in the work to be provided under the contract documents. If the Vendor defaults or persistently fails or neglects to carry out the work in accordance with contract and machinery thereon owned by Vendor and may finish the work by whatever method it may deem expedient, and if the unpaid balance then due the Vendor exceeds the expense of finishing the work, such excess shall be paid to the Vendor, but if such expense exceeds such unpaid balance, then Vendor agrees to pay the difference to GBA.
5. **ACCESS TO WORK.** GBA and its representatives shall at all times have access to the work. Vendor shall provide proper facilities for such access and for inspection.
6. **DUTY TO PROTECT PROPERTY.** Vendor shall continuously maintain adequate protection of all work from damage and shall protect all other property from damage, injury, or loss arising in connection with the work regardless of who may be the owner of said property. Vendor shall make good any such damage, injury, or loss except such as may be caused directly by agents or employees of GBA.
7. **SAFETY PRECAUTIONS.** The Vendor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the work and other persons who may be affected thereby, (2) all the work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Vendor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. Vendor shall designate a responsible member of its organization on the work whose duty shall be the prevention of accidents.
8. **SUBCONTRACTORS.** Nothing contained herein shall create any contractual relation between GBA and any subcontractor or between GBA and any materialman, supplier, or employee of the Vendor or its subcontractors. Vendor must identify and advise the GBA prior to use of all subcontractors used on the work. If subcontractors are employed by Vendor in connection with the work and the contract amount is equal to \$100,000.00 then Vendor is required to furnish both a performance bond and a payment bond for 100 percent of the contract amount. The surety used must be one which is licensed to do business in the State of Georgia. Bonds must be submitted in acceptable form to GBA prior to commencement of work.
9. **WARRANTY.** Vendor hereby warrants and guarantees that all work executed under the contract or purchase order documents will be free from defects of material and workmanship for a period of one year from the date of final acceptance. In the case of work performed by subcontractors and also whenever specific guaranties, warranties, or bonds are called for in the contract or purchase order documents, the Vendor shall furnish guaranties, warranties, or bonds for such period of time as may be stipulated, on which Vendor is obligor, and Vendor shall obtain and furnish from the subcontractors or materialmen warranties, guaranties, or bonds for such period of time as may be stipulated, against the subcontractor or materialmen; provided, however, that in the latter instance the Vendor shall also be named as joint principal with such subcontractor or materialman in any such bond, warranty, or guaranty, and the instrument shall state that liability is joint and several. The calling for and the furnishing of specific written warranties, guaranties, or bonds shall in no way limit the obligations of the Contractor set forth in the contract documents. For elevators, moving walks, dumbwaiters, escalators, lifts, major components of air conditioning systems; major components of heating systems; major components of plumbing systems, and incinerator systems; start-up, testing, and placing into operation shall be performed by field representative(s) of the manufacturer(s), and certificate(s) of the manufacturer(s) shall be filed with GBA on the letterhead(s) of the manufacturer(s) in which the manufacturer(s) certifies or certify that “the equipment has been installed in strict compliance with the recommendations of the manufacturer(s) and is operating properly”. The manufacturer(s) shall list in the certificate the item or items furnished to the job. The Contractor expressly agrees that the aforesaid manufacturer(s) is (are) solely the agent(s) of the Contractor.
10. **COMPLIANCE WITH LAWS.** The Vendor shall comply with all federal, State and local laws, rules, regulations, ordinances and orders in the performance of the work and shall ensure the compliance of its subcontractors. Without limiting the generality of the foregoing, the following laws are specifically referenced: a) The Drug-Free Workplace Act, O.C.G.A. Section 50-24-1, *et seq.*; b) Preference for Georgia Supplies, materials, equipment, and agricultural products, O.C.G.A. Sections 50-5-60 through 61; c) Preference for Georgia forest products, O.C.G.A. Section 50-5-63; d) Preference to local sellers of Georgia products, O.C.G.A. Section 50-5-62; e) Standards and Requirements for Construction, Alterations, O.C.G.A. Section 8-2-1, *et seq.*; f) Control of Soil Erosion and Sedimentation, O.C.G.A. Section 25-2-1, *et seq.*; g) Regulation of Fire and Other Hazards, O.C.G.A. Section 25-2-1, *et seq.*; h) Regulation of Blasting Operations, O.C.G.A. Section 25-2-1, *et seq.* and 25-9-1, *et seq.*; i) Providing Safe Workplace, O.C.G.A. Sections 34-2-10 and 34-7-20; j) Underground Gas Pipes, O.C.G.A. Section 25-9-1, *et seq.*; k) High Voltage Safety Act, O.C.G.A. Section 46-3-30, *et seq.*; l) Access and Use by Physically Handicapped Persons, O.C.G.A. Section 30-3-1, *et seq.*; m) Small and Minority Business Enterprises, O.C.G.A. Sections 50-5-120, *et seq.* and 50-5-130, *et seq.*; n) Trading with the State or State Officials, O.C.G.A. Sections 45-10-20 to 45-10-71; o) Title VII of the Civil Rights Act; p) Age Discrimination in Employment Act; q) Americans with Disabilities Act; r) federal Occupational Safety and Health Act, 29 U.S.C., Section 651, *et seq.*; s) Federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C., Section 11001, *et seq.*
11. **SURVEYS AND PERMITS.** GBA shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the work shall be obtained and paid for by Vendor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by GBA unless otherwise specified.
12. **INDEPENDENT CONTRACTOR.** Vendor agrees that it is an independent contractor and shall not be considered or deemed to be the agent, employee, joint venturer or partner of GBA. Vendor alone shall be responsible for and pay all federal, state and local taxes, including but not limited to, employee withholding and unemployment taxes, social security and any other payroll taxes required by law, and shall prosecute such acts in a timely and diligent manner. In connection with the work performed

hereunder, Vendor shall not be entitled to unemployment protection or any other benefits available to GBA's employees, nor shall it have the power or right to bind GBA by any representation, promise, contract or other act.

13. **INDEMNIFICATION.** Vendor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and hold harmless GBA, the State of Georgia and any of their respective officers, members, employees and their successors (hereinafter collectively referred to as "Indemnitees"), of and from any and all claims, demands, liabilities, losses, costs or expenses for any loss or damage (including without limitation bodily or personal injury, death, property damage, libel, slander, defamation of character, and invasion of privacy) and reasonable attorneys' fees, caused by or occurring in connection with this agreement, or due to any act or omission (whether intentional or negligent, through theft or otherwise), or due to the violation of any pertinent federal, State or local law, rule or regulation on the part of the Vendor, its agents, subcontractors, employees or others working at the direction of Vendor or on its behalf. This indemnification extends to the successors and assigns of Vendor, and this indemnification and release survives the termination of this agreement and the dissolution or, to the extent allowed by law, the bankruptcy of Vendor. This indemnification does not apply to the sole negligence or the willful or wanton misconduct of the Indemnitees. Vendor shall procure an insurance policy satisfactory to GBA with specific insurance coverage to cover this indemnification, and Vendor's insurance shall provide for reimbursements to the State Tort Claims Trust Fund and other State trust funds (the "Funds") in the event of payment of a claim from such Funds for which Vendor is liable under this indemnity. The defense on behalf of GBA or its covered officers or employees (including any settlement discussions) shall be conducted through the Attorney General of Georgia as provided by law. No settlement or compromise of any claim, loss or damage asserted against Indemnitees shall be binding upon Indemnitees unless expressly approved by the Indemnitees and the Attorney General of Georgia. The foregoing indemnity shall not be reduced by reason of any deductibles or policy limits under any policy of insurance.
14. **LIABILITY INSURANCE.** Vendor shall procure and maintain in full force and effect at all times commercial general liability insurance, on an "occurrence basis," with liability limits of One Million Dollars (\$1,000,000.00) per occurrence and of Two Million Dollars (\$2,000,000.00) in the general aggregate. Each policy shall also specifically insure performance of Vendor's obligation to indemnify GBA as provided in the contract documents. A statement of policy limits herein shall not limit Vendor's liability hereunder. Vendor shall pay the cost of all insurance coverage and each such insurance policy shall: (a) be issued by an insurer authorized to transact casualty insurance in Georgia; (b) provide that the policy cannot be canceled as to GBA except after the insurer gives GBA 30 days' prior written notice of cancellation; (c) waive any right of subrogation against Indemnitees, the Funds and insurers participating thereunder; and (d) state that notice of any claim against GBA shall be deemed to have occurred only when an officer of GBA has received actual notice of the claim. Prior to commencement of any work under the contract and all purchase order and pertinent documents, Vendor shall deliver in a timely basis a certificate of such insurance to GBA, together with evidence satisfactory to GBA that the premiums have been paid for a period at least covering the period of performance of the work.
15. **PROFESSIONAL SERVICES.** If work to be provided under the contract documents is professional in scope, Vendor agrees that it will perform services by persons possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by members of Vendor's profession and further contracts that in the performance of duties, it will exercise such degree of care, learning, skill and ability as is ordinarily exercised by professionals under similar conditions and like circumstances and shall perform such duties without neglect. Vendor acknowledges and agrees that GBA does not undertake to approve or pass upon matters of professional judgment and that GBA assumes no responsibility therefor. Vendor acknowledges and agrees that GBA's approval or acceptance of Vendor's design, supervision or work product is limited to the function of determining whether there has been compliance with GBA's instructions. GBA does not undertake to inquire into the adequacy, fitness or correctness of engineering or architectural design or other work product. Vendor agrees that no approval of plans and specifications or other work product by any person, entity, or agency shall relieve Vendor of its responsibility for the adequacy, fitness, suitability and correctness of Vendor's work product (including without limitation architectural and engineering design) and for supervising the work (if required and authorized under the contract documents) in accordance with sound accepted professional principles (including without limitation architectural and engineering principles). To the extent that work to be performed is professional in scope, then to that extent only shall the warranty, bond and indemnity provisions herein be inapplicable; provided that Vendor shall provide evidence of errors and omissions insurance in amounts satisfactory to GBA, in its sole discretion.
16. **SECURITY.** GBA reserves the right to limit or restrict access to authorized personnel and to prohibit access to particular agents, servants, or employees of Vendor. The foregoing reserved right shall in no way impose any obligation or liability on GBA for the negligent or wrongful hiring or discharge by Vendor of any of Vendor's subcontractors, agents, servants or employees. When work or any portion of the work is to be performed in areas not available to the public or is to be performed after ordinary business hours, then Vendor shall be required to obtain from GBA a security identification badge for all who perform work on Vendor's behalf, to be worn at all times while at any GBA facility. The Vendor shall be assessed damages of \$50.00 per ID badge/day for those that are not returned as required within the specified time period. Vendor further agrees that it shall be subject to GBA's security measures while performing work at any GBA facility. Vendor shall obtain the consent in writing of each of its employees, agents or others performing work to release to GBA upon request such employee's personnel records, including, without limitation, any background investigation report or law enforcement agency report, but excluding any such records kept for income, employment and unemployment tax purposes.
17. **ACCESS TO RECORDS.** Vendor agrees to provide GBA and the State Auditor, through any authorized representative or agent of either, access to and the right to examine and audit all records, books, accounts, or other documents related to the work.
18. **CONFIDENTIALITY.** All proprietary information, including but not limited to, computer software and documentation owned by or licensed to GBA, financial information, security procedures, passwords, data and business records of GBA disclosed directly or indirectly to Vendor during the performance of work shall be deemed confidential information and the sole and exclusive property of GBA. Vendor covenants to limit access and to use all reasonable measures, including such measures as it uses to protect its own confidential information, to ensure that confidential information is maintained in confidence. Vendor acknowledges and agrees that all right, title and interest in and to confidential information, including the rights to reproduce, distribute, extract or exhibit to any third party, exist in and with GBA only.
19. **OWNERSHIP OF WORK PRODUCT.** Vendor agrees that all works of authorship (as defined at 17 U.S.C.A. Section 101 *et seq.*, the "Copyright Act") produced as a result of the work are hereby expressly considered and agreed to be "works made for hire." GBA shall acquire full and exclusive ownership of all software, manuals, documents, information, materials and the like which Vendor develops or prepares for use under these contract documents. GBA shall have the unfettered right, without any imposed conditions or restrictions whatsoever from Vendor, to use and distribute any part or all of the work product produced under these contract documents.
20. **DISPOSAL OF WASTES.** All waste material generated by the work or otherwise subject to the work in accordance with the contract documents shall be handled, transported, stored and disposed of off-site by Vendor at the end of each day's work. Such materials shall be disposed of in accordance with applicable federal, state, and local laws, rules, ordinances and regulations.
21. **EQUAL EMPLOYMENT OPPORTUNITY.** The Vendor agrees to comply with Executive Order No. 11246, as amended and as supplemented by U.S. Department of Labor regulations (41 CFR, Part 60-1, *et seq.*), which require that the Vendor not discriminate on the basis of race, creed, color, religion, national origin, sex, or age in the performance of the work. The Vendor further agrees to include the provisions of this paragraph in every contract, subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor.
22. **Illegal Immigration Reform and Enforcement Act of 2011.** Vendor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. §13-10-90 *et seq.* Vendor warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Vendor further agrees that it will contract for the physical performance of services in satisfaction of this contract only with subcontractors who present an affidavit as required by O.C.G.A. §13-10-91. Vendor warrants that it will include a similar provision in all contracts entered into with subcontractors for the physical performance of services in satisfaction of this contract."