



## STANDARD PURCHASE ORDER CONDITIONS

**CONTRACT:** This form, when properly signed and bearing a Purchase Order number, is the only form which will be recognized by Purchaser as authority for charging merchandise to its account; supersedes all previous communications and negotiations, except as referenced herein, and constitutes the entire agreement between the parties, except as provided herein. The Seller, without the written consent of the Purchasing Agent, shall not make any changes, alterations, or variations in the terms of the Purchase Order. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser. Seller may not assign this order without Purchaser's prior written consent. No waiver by Purchaser of a breach of any provision of this order shall constitute a waiver of any other breach of such provision or of any other provisions.

**TIME IS OF THE ESSENCE:** Time is of the essence of this order. If it appears Seller will not meet required delivery schedule, Seller must promptly notify Purchaser and, if requested by Purchaser, ship via air or expedited routing to avoid or minimize delay to the maximum extent possible, the added cost to be borne by Seller. This is in addition to Purchaser's other remedies.

**ERRORS:** In case of error in calculating or typing, the quoted unit price will be used as basis for correction of this order.

**FREIGHT:** Unless otherwise specified herein, prices are F.O.B. destination, with freight prepaid and included.

**INSPECTIONS:** All merchandise is subject to the Purchaser's inspection within a reasonable time after arrival at the ultimate destination. If the merchandise fails to comply with the specifications imposed by Purchaser or is otherwise of an unsatisfactory condition, the Purchaser may return said merchandise to Seller at Seller's expense. Payment for material on this order shall not constitute acceptance.

**HANDLING CHARGES:** Purchaser will not allow charges for boxing, packing, or crating unless by written agreement.

**PAYMENT DEDUCTION:** Payment under this order will be subject to deductions of any valid claim of Purchaser against Seller arising from this or any other transaction.

**WARRANTIES:** Seller warrants that all materials, equipment and services provided under this contract are subject to all warranties arising by operation of law and additionally conform to the specifications imposed by Purchaser; all parts and materials are of a good marketable quality, of latest model and current date, exclude surplus remanufactured and used products unless so specified by Purchaser and are fit for the known purpose for which they are sold. Said warranty shall be as set forth in the specifications and if not set forth in the specifications, shall not be less than 12 months from the date that the materials or equipment

are placed in service or operation. Said warranty being in addition to any standard warranty or service guarantee given by Seller to Purchaser.

**FREE OF LIENS:** Any Goods/Items/Equipment/Components/Hardware/Software/Intellectual Property Rights, etc. delivered to SUB under this Contract, and Independent Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to SUB free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

**PATENTS, TRADEMARKS AND COPYRIGHTS:** The Seller warrants that the equipment and/or materials furnished on this order do not infringe any patent, registered trademark or copyright, and agrees to hold SUB harmless in the event of any infringement or claim thereof.

**TITLE:** Seller warrants that the merchandise is free and clear of all liens and encumbrances and that Seller has a good and marketable title to same.

**WORK PERFORMED:** The work to be performed by Seller includes services generally performed by Seller in his/her/its usual line of business.

**COMPLIANCE WITH LAWS AND REGULATIONS:** Seller warrants full compliance with all applicable local, state or federal laws and regulations regarding the performance of this contract.

**TAX DUTIES AND LIABILITIES:** Seller shall be responsible for all federal, state and local taxes, if any, applicable to any payments received pursuant to this Contract, including but not limited to income tax, payroll tax, social security and self-employment tax. SUB shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Seller.

**MSDS:** Material Safety Data Sheet to be included with shipment of any material requiring this documentation per OSHA regulations.

**INDEMNIFICATION AND HOLD HARMLESS:** Seller shall defend, indemnify and hold harmless SUB from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of this Contract by Seller except, pursuant to ORS 30.140, for losses, claims, or actions resulting from the sole negligence of SUB.

The Seller shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Seller, the SUB, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Seller shall assume defense of, indemnify and save harmless the SUB, its officials, agents, and employees

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from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Seller or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether any act, omission or conduct of the SUB connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Seller or Subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Seller shall not be liable for nor be required to defend or indemnify, the SUB relative to claims for damage or damages resulting solely from acts or omissions of the SUB, its officials, agents or employees. The absence of or inadequacy of the liability insurance required in the General Insurance section shall not negate Seller's obligations in this paragraph.

#### GENERAL INSURANCE:

A. Commercial General Liability Insurance. The Independent Contractor shall maintain in force for the duration of this Agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate for bodily injury, property damage, and personal injury. The policy will be endorsed with a "per project" aggregate endorsement. Coverage shall be occurrence basis only. Independent Contractors who provide computer consulting services or who provide solely grounds maintenance services shall at all times carry commercial general liability for at least \$500,000 per occurrence and at least \$2 Million in the aggregate, for Bodily Injury, Property Damage, and Personal Injury.

B. Automobile Liability Insurance. Contractor will at all times carry Automobile Liability (owned, non-owned, and hired) Insurance in the amount of \$2 Million per occurrence for bodily injury and property damage. Contractors who provide computer consulting services or who provide solely grounds maintenance services will at all times carry Automobile Insurance for at least \$500,000 per occurrence and at least \$2 Million in the aggregate for Bodily Injury, Property Damage and Personal Injury.

C. Additional Named Insured. SUB, its employees, official and agents will be named as Additional Insured's where operations are being conducted related to this Contract, on the Commercial General Liability and Automobile Liability policies as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Independent Contractor or the fault of the Independent Contractor's agents, representatives or subcontractors. SUB's additional insured status for Products and Completed Operations hazards shall extend for at least one year beyond the completion of the project. This insurance will be primary over any insurance SUB may carry on its

own. If SUB requires Professional Liability coverage, the Risk Manager must approve the terms, conditions and limits prior to commencement of any work.

**WORKERS' COMPENSATION:** No Workers' Compensation Insurance has been or will be obtained by SUB for Contractor or Contractor's employees and subcontractors. Contractor shall provide its own Workers' Compensation Insurance coverage if required by law (ORS 656.017 and 701.035(5)) and provide SUB with evidence of such coverage. If the Contractor is exempt from this coverage, a written statement signed by the Contractor explaining the reason for the exemption will be provided to SUB prior to the commencement of any work and Contractor shall assume full responsibility for any liability and exposure under law relating to Workers' Compensation because of any performance or services and will hold SUB harmless from and against liability for any industrial accidents that occur.

**PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS INSURANCE:** Independent Contractors who provide professional services shall at all times maintain a Professional Liability/Errors and Omissions type insurance policy with limits of at least \$500,000, and automobile liability insurance of at least \$2 Million per occurrence for bodily injury and property damage. If this policy is a "claims made" type policy, the policy type and company shall be approved by SUB prior to commencement of any work under this contract.

**COURSE OF CONSTRUCTION AND/OR INSTALLATION FLOATER:** In the event requested by SUB in the contract Specifications, due to unique requirements, or in the event the Independent Contractor requests advance payment by SUB for the purchase of materials, the Independent Contractor shall provide Course of Construction/Installation Floater insurance in an amount equal to the value of the advance payment requested. The policy shall provide coverage for all risks and shall be approved by SUB as to terms, conditions, and form covering the replacement cost of the applicable materials prior to the release of payment. The policy shall name SUB as Loss Payee. The coverage shall be maintained in full force for the duration of this Contract. SUB, at its option, may elect to obtain additional coverage.

**EVIDENCE OF COVERAGE:** Evidence of the required insurance coverages issued by an insurance company satisfactory to SUB shall be provided to SUB by way of a SUB approved certificate of insurance before any work or services commence.

**NOTICE OF CANCELLATION OR MATERIAL CHANGE IN COVERAGE:** The certificate of insurance shall contain a requirement that the Insurance company notify SUB 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30-day notice, the Contractor shall provide written notice to SUB within 2 calendar days after the Contractor becomes aware that their coverage has been canceled. Regardless of what circumstances caused Contractors insurance coverage to cease or be

modified, it is the contractor's responsibility to notify SUB. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract.

**EQUIPMENT AND MATERIAL:** Independent Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.

**SUBCONTRACTORS:** Independent Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverages equivalent to those required of the general contractor in this contract. Independent Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

**EXCEPTION OR WAIVERS:** Any exception or waiver of these requirements shall be subject to review and approval from SUB contracting representative. Specific exception is hereby provided as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(SUB Representative's Initials \_\_\_\_\_)  
(Independent Contractor's Initials \_\_\_\_\_)

**ASBESTOS ABATEMENT** (Only applicable to contracts where asbestos maybe present):  
The commercial General Liability policy shall be written on a form that meets the following criteria and must be ASBESTOS SPECIFIC as follows:

- A. A full occurrence form, or
- B. A limited occurrence form with at least a three-year (3) tail, or
- C. A claim made form with a three-year (3) tail.

**RAILROAD PROTECTIVE LIABILITY COVERAGE:** If work being performed under this Contract is near railroad tracks or a railroad right of way and the Railroad requires special insurance (for example: Railroad Protective Liability Coverage) Independent Contractor will be responsible for meeting the Railroad insurance requirements before any work commences. Any insurance required to be purchased by the Railroad is in addition to the insurance required by SUB.

**OREGON GOVERNMENTAL TORT CLAIMS ACT:** Independent contractor understands that SUB is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that SUB'S financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Independent contractor agrees that the limits regarding liability insurance set forth in these insurance requirements may be modified at SUB's request to

conform to such limits. Independent contractor and SUB shall sign an amendment to this Agreement incorporating such modification.

**ACCESS TO RECORDS:** SUB and its duly authorized representatives shall have access to books, documents, papers and records of Seller which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts and transcripts.

**WAIVER:** Failure of SUB to enforce any provision of this Contract shall not constitute a waiver or relinquishment by SUB of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

**AMENDMENTS:** The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of SUB. No modification of this Contract shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.

**NONDISCRIMINATION:** Independent Contractor shall comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations. Independent Contractor shall not discriminate against anyone on the basis of race, religion, physical or mental disability, sex, color, age, sexual orientation, national origin, marital status or association with anyone of a particular race, color, sex, national origin, sexual orientation, marital status, age or religion. Independent Contractor shall not discriminate against minority, women or emerging small business enterprises in the awarding of subcontracts. Independent Contractor's execution of the Contract shall also constitute certification that Independent Contractor has not discriminated against minority, women or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs disabled veterans as defined in ORS 408.225 in obtaining any required subcontracts. ORS 279A.110.

**TERMINATION:** The performance of work under this Contract may be terminated by SUB, in whole or in part, whenever for any reason SUB shall determine that such termination is in the best interest of SUB. Any such termination shall be effected by delivery to the Seller of a Notice of Termination specifying the extent to which performance of the work under the Contract is terminated and the date on which such termination is effective. Upon delivery to the Seller of a Notice of Termination under this paragraph, the Seller and SUB shall, by agreement, make an appropriate written modification to this Contract governing completion of portions of the Seller's work and payment therefore by SUB.

**ASSIGNMENT/SUBCONTRACT:** Seller shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of SUB. No such written approval shall relieve Seller of any obligations of

this Contract, and any transferee or subcontractor shall be considered the agent of Seller. Seller shall remain liable as between the original parties to this Contract as if no such assignment had occurred.

**CHOICE OF LAW, FORUM, CONSTRUCTION OF AGREEMENT:** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, apart from choice of law provisions. The parties agree that the Circuit Court for the County of Lane, State of Oregon, or the Federal District Court of the State of Oregon (Eugene) is the sole and proper forum for resolving any disputes involving this Contract, any breach of this Contract, or relating to its subject matter. The Parties agree to submit themselves to the jurisdiction of such courts without challenge to the jurisdiction of these courts. This Contract shall not be construed more favorably to SUB due to the preparation of this Contract by SUB. The headings and subheadings in this Contract are for convenience, do not form a part of this Contract, and shall not be used in construing this Contract.

**FORCE MAJEURE:** Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. SUB may terminate this Contract upon written notice after determining such delay or default will unreasonably prevent successful performance of the Contract.

**ENTIRE AGREEMENT:** This Purchase Order signed by both parties is the parties' final and entire Contract and supersedes all prior and contemporaneous oral or written communications between the parties, their agents and representatives. There are no representations, promises, terms, conditions or obligations other than those contained herein.

**OREGON TAX LAWS COMPLIANCE AND CERTIFICATION:**

**A. Contractor's Compliance with Tax Laws.**

1. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in Subsection B.3(i) through (iv) of this Contract.

2. Any violation of Subsection 1 of this Section A shall constitute a material breach of this Contract. Further, any violation of Independent Contractor's warranty, in Subsection B.3. of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle SUB to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and

owing to Independent Contractor, in an amount equal to State's setoff right, without penalty; and

c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. SUB shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement Services/replacement Goods/a replacement contractor].

These remedies are cumulative to the extent the remedies are not inconsistent, and SUB may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**B. Independent Contractor's Representations and Warranties.** Contractor represents and warrants to SUB that:

1. Independent Contractor (to the best of Independent Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the [date of closing of {bids/proposals} for/effective date of] this Contract, faithfully has complied with:

a. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

b. Any tax provisions imposed by a political subdivision of this state that applied to Independent Contractor, to Independent Contractor's property, operations, receipts, or income, or to Independent Contractor's performance of or compensation for any work performed by Independent Contractor.

c. Any tax provisions imposed by a political subdivision of this state that applied to Independent Contractor, or to goods, services, or property, whether tangible or intangible, provided by Independent Contractor; and

d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**IF THE PURCHASE ORDER IS FOR PUBLIC IMPROVEMENT, THE FOLLOWING PROVISIONS ALSO APPLY:**

**PREVAILING WAGE RATE:**

A. BOLI: If this Agreement is for more than \$50,000 and is for a public works project, the Independent Contractor and any subcontractors shall comply with all applicable provisions of ORS 279C.800 through 279C.870 and pay all workers not less than the prevailing rate of wage as established by the Oregon Bureau of Labor and Industries (BOLI). The most recent copy of the BOLI prevailing wage rate booklet shall be found at [www.oregon.gov/boli/whd/pwr](http://www.oregon.gov/boli/whd/pwr). Public works project includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is to serve the public interest. (ORS 279C.830(1)(c); OAR 839-025-0020(3)(a)).

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B. PROMPT PAYMENT: If the Independent Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Independent Contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of SUB may pay such claim and charge the amount of the payment against funds due or to become due the Independent Contractor by reason of the contract (ORS 279C.515 and OAR 839-025-0020(2)(a)).

C. HOURS: No person will be employed for more than ten (10) hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person(s) so employed must be paid at least time and one-half the regular rate of pay for all time worked. ORS 279C.540(1). These specific requirements are set forth in OAR 839-025-0020(2)(b)(A), (B), and (C).

D. NOTICE: The Independent Contractor shall give written notice to employees who work on a public works contract, either at the time of hire or before commencement of work on the contract, by posting a notice in a location frequented by employees, or the number of hours per day and days per week that the employees may be required to work (ORS 279C.520(2) and OAR 839-025-0020(2)(c)).

E. PAYMENT SCHEDULE: The Independent Contractor must make payment daily, weekly, weekend and holiday overtime as required in ORS 279C.540. ORS 279C.520(1); OAR 839-025-0020(2)(b).

F. WAGE DEDUCTION: The Independent Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Independent Contractor, of all sums which the Independent Contractor agrees to pay for such services and all monies and sums which the Independent Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, Contractor Agreement for the purpose of providing or paying for such service (ORS 279C.530 and OAR 839-025-0020(2)(d)).

G. PUBLIC WORKS BOND: The Independent Contractor shall have a public works bond filed with the Construction Contractor's Board before starting work on the project unless exempt under ORS 279C.836(4), (7), (8) or (9). (ORS 279C.836(1); OAR 839-025-0020(2)(e)). NOTE: Exemption (8) provides an election to Independent Contractor to not file a Public Works Bond for any project for which the contract price does not exceed \$100,000.

H. SUBCONTRACTOR/PUBLIC WORKS BOND: The Independent Contractor shall require in every subcontract that the subcontractor have a public works

bond filed with the Construction Contractor's Board, and before permitting a subcontractor to start work on the project shall verify such filing unless exempt under ORS 279C.836(4), (7), (8), or (9). (ORS 279C.836(2); OAR 839-025-0020(2)(e)(B)).

I. HIGHEST WAGE: If the project is subject to both ORS 279C.800 – ORS 279C.870 and to the Davis-Bacon Act (40 U.S.C. 314 et seq.), the Independent Contractor and all subcontractors must provide that the employee who the Independent Contractor, subcontractor, or other person is a party to the contract uses in performing all or part of the contract shall be paid the higher of the applicable state or federal prevailing rate of wage (ORS 279C.830(1)(d) and OAR 839-025-0020(3)(b)).

J. ELIGIBLE CONTRACTOR REQUIRED: As specified in ORS 279C.860 no Contractor, Subcontractor, or any firm corporation, partnership, or association in which the Contractor or Subcontractor has a financial interest who appears on the list of Contractors eligible to receive Public Works Contracts, as established by the Bureau of Labor and Industries, shall perform work under this contract. By signing this Contract, the Independent Contractor certifies that neither the Independent Contractor nor any Subcontractor who will perform work under this contract, appears on the most current list of Contractors Ineligible to Receive Public Works Contracts.

K. CERTIFIED PAYROLL: As specified in ORS 279C.845, the Independent Contractor or the Independent Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with SUB in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom the Independent Contractor or the Subcontractor has employed upon the public works, and further certifying that no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract. The certificate and certified statement shall be verified by the oath of the Independent Contractor or the Independent Contractor's surety or Subcontractor or the Subcontractor's surety that the Independent Contractor or Subcontractor has read the certified statement and certificate and knows the contents thereof and that the same is true to the Independent Contractor or Subcontractor's knowledge. Certified statements (also referred to as certified payroll reports) shall be submitted to SUB no later than the 5<sup>th</sup> day of the following month for which the certified statement and certificate are being presented. This information must be submitted to SUB and also retained by the Independent Contractor and Subcontractor(s) for three years.