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## **Horry County Purchase Order Terms & Conditions**

### **1. General**

Horry County Procurement Code and Regulation, which outlines our procurement policy and procedures, is available on our web site. The following terms and conditions, together with such terms as are set forth on the Purchase Order Form (hereinafter "PO" or "Form" sent via email, USPS, or other means), with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Horry County, shall constitute the entire contract (the "Purchase Order") between Horry County ("Horry County") and Supplier. If solicitation documents, quote requests, performance specifications, technical product descriptions or other similar descriptive materials submitted by Supplier in connection with the Purchase Order, or Supplier's proposal, have been incorporated by reference, these shall not be deemed to supersede any contrary requirements of Horry County, but to the extent that such materials are not inconsistent with Horry County's requirements, they shall constitute a part of the basis of this agreement. If the Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If the Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in the Purchase Order. If the Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. The Purchase Order shall be deemed to have been accepted by the Supplier upon receipt by the Horry County of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any work on site or (iii) performance of any services thereunder.

### **2. Payment**

Discount terms are as set forth in the Form. If no terms are specified as indicated on the Purchase Order issued, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming to the terms of the Purchase Order or (ii) invoicing. Except as otherwise provided in the Purchase Order, the price includes all applicable Federal, State and local taxes and duties. Supplier assigns to Horry County all rights to refunds of sales and use taxes paid in connection with the Purchase Order and agrees to co-operate with Horry County in the processing of any refund claims. Unless expressly otherwise provided in the Form, Horry County shall not be liable for any shipping, handling, fuel surcharges or similar fees.

### **3. Time**

If delivery or completion dates cannot be met, Supplier shall inform Horry County immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of the Purchase Order unless Horry County modifies the Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, Horry County, at Horry County's sole option and without prior notice to Supplier, may either approve a revised date or may cancel the Purchase Order and may obtain such goods or work elsewhere and in either event the Supplier shall be liable to Horry County for any resulting loss incurred by Horry County. Supplier's sole remedy for a delay caused by Horry County shall be an extension in the time for Supplier's performance equal to the duration of the delay. Supplier shall not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of Supplier, lock-outs not caused by or within the control of Supplier, fires, war or acts of God. WITH RESPECT TO ANY PURCHASE ORDER, TIME OF PERFORMANCE IS OF THE ESSENCE.

### **4. Shipping Requirements**

Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB (destination): the "Ship to" location designated in the PO Form. Risk of loss shall not pass to Horry County until goods called for in the Purchase Order actually have been received and accepted by Horry County at the destination specified therein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Horry County has agreed to pay freight, express or other transportation charges.

### **5. Improper Performance and Disputes**

In addition to other remedies provided by law, Horry County reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods, delivers non-conforming goods, or fails to perform any of the work in accordance with the terms and conditions of the Purchase Order. Acceptance of any part of the Purchase Order

shall not bind the Horry County to accept any future shipments or work, nor deprive it of the right to return goods already accepted. Any litigation that may ensue with respect to any matter arising in connection with the Purchase Order shall take place in South Carolina Circuit Court in Conway, South Carolina. The Agreement is not subject to arbitration.

## **6. Warranty**

Supplier expressly warrants all (i) goods delivered under the Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered, with NO SUBSTITUTIONS unless the purchase order expressly states otherwise and (ii) work performed under the Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of the Purchase Order. These express warranties shall not be waived by reason of acceptance or payment by Horry County. The Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of South Carolina (the "UCC"), including but not limited to all warranty protection (express or implied) and all of remedies provided thereunder. All goods and work shall also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated therein.

## **7. Indemnification and Hold Harmless**

The Supplier will indemnify and hold harmless Horry County and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the agreement provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused by any negligent or willful act or omission of the Supplier, and/or anyone directly or indirectly employed by him or anyone for whose acts any of them may be liable. In any and all claims against Horry County or any of its agents or employees by an employee of the Supplier, and/or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way to the amount or type of damages, compensation or benefits payable by or for the Supplier under workman's compensation acts, disability benefit acts, or other employee benefit acts. The obligation of the Supplier under this paragraph shall not extend to the liability of the Horry County or its agents or employees arising out of the reports, surveys, change orders, designs, or specifications.

## **8. Assignment/Subcontracting**

Neither party shall have any right to assign the Purchase Order or any benefits arising from the Purchase Order without prior written consent of the other party and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising thereunder. Supplier shall not, except in the case of raw materials, castings, forgings or rough welded structures, or standard commercial goods, or except as otherwise agreed to in writing by the Horry County, delegate or subcontract the work on any item of material or service to be delivered or performed under the Purchase Order.

## **9. Insurance**

Required for On-site work/services: The supplier shall provide, when required by the procurement that preceded the Purchase Order issuance, proof of all required insurance(s), including worker's compensation, premises liability and general liability. Worker's compensation shall include a minimum limit of \$100,000 per accident and comprehensive general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, independent contractors and vehicles used in premises/operations. Insurance shall indemnify County against any and all claims arising under or as a result of the performance of the contract. Horry County shall be named as an additional insured on all liability policies. Horry County must be provided with notice prior to cancellation, modification, or reduction in limits of any stipulated insurance.

## **10. Non-Discrimination in Employment**

In connection with the performance of work under the Purchase Order, the Supplier agrees to follow, and to furnish all information and reports required in regards to:

The nondiscrimination clause and reporting requirements contained in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967. Additionally, the conditions and regulations applicable in the Vietnam Era Veterans Readjustment Act of 1972 and the Rehabilitation Act of 1973 (Employment of the Handicapped) are likewise incorporated. The Supplier agrees to abide by the rules, regulations, and orders of the U.S. Secretary of Labor.

In the event of the Supplier's non-compliance with the non-discrimination clauses of the Purchase Order or with any of the said rules, regulations, or orders, the Purchase Order may be cancelled, terminated or suspended in whole or in part and the Supplier may be declared ineligible to conduct business with Horry County.

## **11. Compliance with Laws and Regulations**

The Supplier agrees to comply with all applicable federal, state, and local laws and regulations. If the Purchase Order is issued pursuant to a contract between Horry County and the federal government, the provisions of OMB Circular A-110 (1993, as amended) Appendix A shall apply in accordance with their terms. OMB Circular A-110 mandates compliance with the Copeland "Anti-Kickback" Act, the Davis-Bacon Act,

and the Contract Work Hours and Safety Standards Act. If the amount of the Purchase Order exceeds One Hundred Thousand Dollars (\$100,000) and any portion of the Purchase Order is funded by the federal government, Supplier shall file the certifications required by the Byrd Anti-Lobbying Amendment, and shall comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act and the Clean Air Act. Supplier shall provide certification regarding its and its principal employees' exclusion status upon request. INFORMATION REGARDING THE SOURCE OF FUNDS FOR THIS PURCHASE ORDER WILL BE PROVIDED TO SUPPLIER UPON REQUEST.

#### **12. Termination without Cause**

Horry County, in its sole discretion and without cause, may terminate the Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for work completed on site or goods delivered, to the extent such work and goods conform to the terms, conditions, and specifications of the Purchase Order. Supplier's warranties, and Supplier's liability for defective or non-conforming work or goods, as well as sections 4, 5, 7, and 9 of these Terms and Conditions, shall survive termination and remain in full force and effect.

#### **13. Additional Provisions for Work Performed on Site**

The provisions set forth in Paragraphs 13(a) through 13(d) below shall apply to work performed at locations owned, leased or otherwise controlled by Owner ("Owner's Site").

- a. The Supplier shall maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. The Supplier shall employ only competent, skilled, reliable and honest workmen who will work in harmony with other workmen on the Site. All persons furnished by Supplier shall be deemed Supplier's employees or agents, and Supplier shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor. At the Owner's instruction, the Supplier shall promptly remove from the Site any employee who, in the Owner's opinion, represents a threat to the safety or progress of the Project or persons on the Site, or who has engaged in any improper conduct, specifically including (without limitation) conduct which the Owner perceives as constituting harassment of employees or other persons.
- b. Supplier shall secure all materials and the Site where Work is performed, and shall leave all areas broom clean (unless a more stringent cleanliness standard is set forth in documents that are incorporated in the Purchase Order by reference) and in a safe condition at the end of each work day and upon completion of the Work. In case of dispute, Owner may remove waste at Supplier's expense.
- c. Supplier shall ensure that federal, state and county of residence criminal background checks are conducted on all persons performing Work at the Site, and shall exclude from the Site any dishonest, dangerous or otherwise unqualified persons.
- d. In the event of an emergency threatening health, life or property, the Supplier shall take such action as may be necessary to save lives and protect persons from injury and, this being done, to protect and preserve property. The Supplier shall notify the Owner of any such emergency as promptly as is practicable under the circumstances.

#### **14. Sensitive Personally Identifiable Information (SPII) and Privacy Requirements**

Supplier and Horry County both agree to maintain strict confidentiality concerning SPII in accordance with Federal, State, and local law. Both Supplier and Horry County shall maintain adequate administrative, technical and physical safeguards against unauthorized access, use, or disclosure of SPII Information.

#### **15. Freedom of Information Statement**

Procurement information shall be a public record to the extent required by Chapter 4 of Title 30 (The Freedom of Information Act), South Carolina Code of Laws, 1976, as amended, with the exception that commercial or financial information obtained in response to a procurement process which is privileged and confidential or proprietary if so designated by the supplier shall not be disclosed. Such information must be clearly marked as "**CONFIDENTIAL**" or "**PROPRIETARY**" by the supplier for each section of information so affected. Privileged and confidential or proprietary information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information would include:

- Customer lists;
- Design recommendations and identification of prospective problem areas under a bid;
- Design concepts, including methods and procedures;
- Biographical data on key employees of the bidder.