

STATE OF NEVADA
TERMS AND CONDITIONS FOR GOODS PURCHASES

The information contained in this Attachment does not need to be returned with vendor's proposal.

1. TERMS AND CONDITIONS FOR GOODS PURCHASES

1.1. TERMS

- 1.1.1. *Goods.* As defined in NRS 104.2105, and as specifically identified in this solicitation and includes, without limitation, supplies, materials, equipment, and commodities, as those terms are used in NRS Chapter 333.
- 1.1.2. *Purchase Order.* Buyer-generated document that authorizes a purchase transaction. It sets forth the descriptions, quantities, prices, discounts, payment terms, date of performance or shipment, other associated terms and conditions, and identifies a specific seller. When accepted by the seller, it becomes a contract binding on both parties; also called order.
- 1.1.3. *Proprietary Information.* Any trade secret or confidential business information that is contained in a Quote submitted on a particular Contract. See NRS 333.020(5) (a); NRS 333.333.
- 1.1.4. *Public Record.* All books and public records of a governmental entity, the contents of which are not otherwise declared by law to be confidential must be open to inspection by any person and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. See NRS 333.333; NRS 600A.030(5).
- 1.1.5. *Trade Secret.* Information including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain commercial or economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. See NRS 600A.030(5).

1.2. EXPRESS WARRANTIES. For the period specified in the Contract/Purchase Order, Vendor warrants and represents each of the following with respect to any goods provided under the Contract/Purchase Order:

- 1.2.1. *Fitness for Particular Purpose.* The goods shall be fit and sufficient for the particular purpose set forth in the Contract/Purchase Order.
- 1.2.2. *Fitness for Ordinary Use.* The goods shall be fit for the purpose for which goods of a like nature are ordinarily intended, it being understood that the purpose for the goods covered by the Contract/Purchase Order are ordinarily intended for use in general government administration and operations.
- 1.2.3. *Merchantable, Good Quality, No Defects.* The goods shall be merchantable, of good quality, and free from defects, whether patent or latent, in material and workmanship.
- 1.2.4. *Conformity.* The goods shall conform to the standards, specifications and descriptions set forth in the Contract/Purchase Order. If Vendor has supplied a sample to the State, the goods delivered shall conform in all respects to the sample and shall be identified by the word "sample" and Vendor's name.
- 1.2.5. *Uniformity.* The goods shall be without variation, and shall be of uniform kind, quality, and quantity within each unit and among all units.
- 1.2.6. *Packaging and Labels.* The goods shall be contained, packaged, and labeled so as to satisfy all legal and commercial requirements applicable to use by a government agency, including without limitation, Occupational Safety and Health Administration material safety data sheets and shall conform to all statements made on the label.
- 1.2.7. *Full Warranty.* The foregoing warranties are "full" warranties within the meaning of the Magnuson-Moss Warranty -- Federal Trade Commission Improvement Act, 15 U.S.C. 2301 et seq., and implementing regulations 16 C.F.R. pts. 700-703, if applicable to this transaction.
- 1.2.8. *Title.* Vendor has exclusive title to the goods and shall pass title to the State free and clear of all liens, encumbrances, and security interests.
- 1.2.9. *Infringement; Indemnity.* Vendor warrants the purchase or use of the goods shall not infringe upon any United States or foreign patent, and Vendor shall indemnify the State against all judgments, decrees, costs, and expenses resulting from any alleged infringement and shall defend, upon written request of the State, at its own expense, any action which may be brought against the State, its vendees, lessees, licensees, or assignees, under any claim of patent infringement in the purchase or use of Vendor goods. If the State is enjoined from using such goods, Vendor shall re-purchase such goods from the State at the original purchase price. The State shall notify Vendor promptly in writing of any such suit. If the State compromises or settles any such suit without the written consent of Vendor, Vendor shall be released from the obligations of this paragraph and from any liability to the State under any statute or other rule of law.
- 1.2.10. *Usage of Trade; Course of Dealings; Implied Warranties.* Vendor shall be bound by any implied warranty that, at the time of execution of the Contract/Purchase Order, prevails in the trade of government in the marketing area in and about the State of Nevada. Vendor shall also be bound by any other implied warranty arising through course of dealings between Vendor and the State from and after the execution of the Contract/Purchase Order. Vendor shall also be bound

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by all warranties set forth in Nevada's Uniform Commercial Code (NRS Chapter 104) in effect on the date of issuance of the Contract/Purchase Order.

- 1.2.11. *Warranties Cumulative.* It is understood that warranties created by the Contract/Purchase Order, whether express or implied, as well as all warranties arising by operation of law that affect the rights of the parties, are cumulative and may be construed in a manner consistent with one another.
- 1.2.12. *Priority of Warranties.* If it is held by a court of competent jurisdiction that there is an irreconcilable conflict between or among any of the warranties set forth in the Contract/Purchase Order and any warranties implied by law, the parties agree that the specifications contained in the Contract/Purchase Order shall be deemed technical and mere language of description.
- 1.2.13. *Beneficiaries of Warranties.* Benefit of any warranty made in the Contract/Purchase Order shall be in favor of the State, any of its political subdivisions or agencies, employee or licensee thereof who uses the goods, and the benefit of any warranty shall apply to both personal injury and property damage.

- 1.3. **COMPUTER WARRANTIES.** If the goods include computer software and/or hardware, the following warranties shall apply in addition to the express warranties set forth above.

- 1.3.1. *Software Warranty.* Contractor/licensor warrants that for the period specified in the incorporated attachments:

- A. Under normal use and service, the media on which the licensed software is delivered shall be free from defects in material and workmanship.
- B. If the licensed product fails to meet the media warranty, and the State as licensee gives licensor written notice thereof during the applicable warranty period, licensor shall replace such media.
- C. The licensed product shall meet licensor's published specifications therefore in effect on the effective date of the contract.
- D. If the licensed product fails to meet the warranty and licensee gives licensor written notice thereof, licensor shall correct the failure, if licensee gives licensor detailed information regarding such failure.
- E. However, licensor shall not be liable to licensee for the warranty provided herein if:
- F. Unanticipated or unauthorized modifications are made to the licensed product by someone other than licensor, or
- G. The media for the licensed product is subject to misuse or abuse.

- 1.3.2. *Hardware Warranty*

- A. Contractor warrants that, under normal use and service, the computer hardware and spare parts purchased from contractor shall be free from defects in material and workmanship, and the computer hardware shall meet the contractor's then current published specifications, therefore.
- B. If hardware warranted hereunder fails to meet the warranties herein and the State gives contractor written notice thereof during the applicable warranty period, contractor's sole obligation shall be to correct the failure by repair, replacement, or adjustment, as determined in contractor's sole discretion.
- C. However, contractor shall not be liable hereunder if:

- 1. Unanticipated or unauthorized modifications are made to the computer hardware by someone other than contractor;
- 2. Attachments, features, or devices are employed on the computer hardware that are not supplied by contractor or not approved in writing by contractor, including, without limitation, other components of the State's systems; or
- 3. The computer hardware is subject to abuse or misuse.

- 1.4. **DELIVERY, INSPECTION, ACCEPTANCE, TITLE, RISK OF LOSS.** Vendor agrees to deliver the goods as indicated in the Contract/Purchase Order, and upon acceptance by the State, title to the goods shall pass to the State. The State shall have the right to inspect the goods on arrival and within a commercially reasonable time. The State shall give notice to Vendor of any claim or damages on account of condition, quality, or grade of the goods, and shall specify the basis of the claim in detail. Acceptance of the goods described in the Contract/Purchase Order is not a waiver of UCC revocation of acceptance rights or of any right of action that the State may have for breach of warranty or any other cause. Unless otherwise stated above, risk of loss from any casualty, regardless of the cause, shall be on Vendor until the goods have been accepted and title has passed to the State. If provided by Vendor, the State agrees to follow reasonable instructions regarding return of the goods.

- 1.5. **NO ARRIVAL, NO SALE.** The Contract/Purchase Order is subject to provisions of no arrival, no sale terms, but proof

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of shipment shall be given by Vendor; each shipment to constitute a separate delivery. A variation of ten (10) days in time of shipment or delivery from that specified in the Contract/Purchase Order does not constitute a ground for rejection. The State may treat any deterioration of the goods as entitling the State to the rights resulting from a casualty to the identified goods without regard to whether there has been sufficient deterioration so that the goods no longer conform to the Contract/Purchase Order.

- 1.6. **PRICE; TAXES.** The price quoted is for the specified delivery, and, unless otherwise specified in the contract, is F.O.B. to the delivery address specified above. Unless otherwise specified in the contract, the price does not include applicable federal or State sales, use, excise, processing or any similar taxes, or duty charges, which shall be paid by the State, or in lieu thereof, the State shall provide contractor with a tax exemption certificate acceptable to the applicable taxing authority.
- 1.7. **ENERGY EFFICIENCY.** In accordance with NRS 333.4611, the State of Nevada, Purchasing Division shall require the purchase of new appliances, equipment, lighting and other devices that use electricity, natural gas, propane or oil, have received the Energy Star label pursuant to the program established pursuant to 42 U.S.C. 6294a or its successor, or meet the requirements established pursuant to 48 C.F.R. 23.203. These standards do not apply insofar as: (a) No items in a given class have been evaluated to determine whether they are eligible to receive the Energy Star label or have been designated by the Federal Government to meet the requirements established pursuant to 48 C.F.R. 23.302 or (b) The purchase of these items that have received the Energy Star label would not be cost-effective in an individual instance, comparing the cost of the items to the cost of the amount of energy that shall be saved over the useful life of the item.