

**GENERAL CONDITIONS  
FOR PURCHASING  
(DOCK DELIVERY)**

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## **ARTICLE 1 -- DEFINITIONS**

### **Section 1.01 - Definitions**

The following terms as used in the Purchase Order Documents shall be defined as follows:

***Addendum or Addenda*** – Additional provisions of the Purchase Order Documents issued in writing prior to the receipt of bids or quotes.

***Bid*** – An offer submitted in response to an Information for Bidders to furnish a described Commodity at a stated price in accordance with the Purchase Order Documents.

***Bidder*** – Any person, partnership, firm, corporation or other authorized entity submitting a Bid or Quote to the Owner.

***Change Order*** – Written notice, issued in the form of a Purchase Order followed by the sequential change number to the Purchase Order, to the Vendor, executed by the Owner, changing the Purchase Order Documents in accordance with these Purchasing General Conditions. A Change Order includes any form of an amendment to a Purchase Order, including a deduct Purchase Order, scope change or other modification to a Purchase Order.

***Client*** - The entity for whom the Owner is performing services, including subsidiaries, agents, related corporations, or fiduciaries of the entity.

***Contract*** – the agreement between the Owner and Vendor consisting of the Purchase Order Documents.

***Commodity*** – Materials, supplies and/or equipment.

***Dormitory Authority*** - Dormitory Authority of the State of New York, a public benefit corporation established by the laws of the State of New York with its principal office located at 515 Broadway, Albany, New York, 12207-2964.

***False Claim*** – Any claim which is, either in whole or part, false or fraudulent.

***False Representation*** – This action takes place when a person knowingly misrepresents a fact concerning the Commodities or has knowledge of the value of the work and materials supplied, performed, or proposed (the “Information”) constituting the Change Order or invoice and either:

- A. acts in deliberate ignorance of the truth or falsity of the Information or
- B. acts in reckless disregard of the truth or falsity of the Information.

***Furnish*** - To supply and deliver to the Site.

***Hazardous Material*** – any substance (gas, liquid, or solid) or agent (biological, chemical, radiological, physical, or having two or more of the preceding characteristics) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors, including but not limited to heavy metals, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), pesticides, herbicides, dioxins, biological wastes, carcinogens, asbestos or any substance containing asbestos, polychlorinated biphenyls, lead, urea formaldehyde, explosives, radionuclides,

radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials, and any item defined as a hazardous, special, or toxic material, substance, or waste under any Hazardous Material Law, including, but not limited to, the NYS Environmental Conservation Law and Title 6 of the New York Code of Rules and Regulations.

**Hazardous Material Laws** – collectively, any present federal, state or local law, including all valid amendments, relating to public health, safety, or the environment, including without limitation, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1215 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. §651 et seq.; the Atomic Energy Act, 42 U.S.C. §2201 et seq.; the NYS Environmental Conservation Law; the NYS Labor Law; the NYS Public Health Law; and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter enacted or promulgated under any such statute.

**NYS** – New York State

**Owner** - Dormitory Authority of the State of New York.

**Owner's Representative** - A natural person, partnership, limited liability company, corporation, or other legal entity so designated by the Owner to act on behalf of the Owner. See Purchasing General Conditions Section 2.03 for limitations and further provisions on the Owner’s Representative.

**Project** - The work at or near the Site(s).

**Purchase Order** - The official form used by the Dormitory Authority when placing an Order for Work.

**Purchase Order Documents** - The Notice and Information for Bidders, Bid Breakdown and Schedule, Purchase Order(s), Purchasing General Conditions, General Requirements, Site Logistics Information, Detailed Product Specifications, Addenda, Change Orders and all provisions of law deemed to be included in the Purchase Order Documents.

**Quote** - An offer to furnish a described Commodity at a stated price in accordance with the Purchase Order Documents.

**Resume Work Order or Directive** – Written notice, signed by the Owner, to the Vendor, to recommence or continue Work of the Purchase Order Documents.

**Site** - the location where the Commodities are to be delivered by the Vendor.

**Site Logistics Information** – Information provided by Owner to Vendor that sets forth logistics details which the Vendor must review and incorporate into planning and making a delivery of Commodities to the Site.

**Stop or Suspend Work Order or Directive**- Written notice, signed by the Owner, to the Vendor, to cease or hold Work of the Purchase Order Documents.

**Subcontractor** - A natural person, partnership, limited liability company, corporation, or other legal entity

with whom the Vendor enters a subcontract to perform at least a portion of the Work.

**Vendor** - A natural person, partnership, limited liability company, corporation, or other legal entity with whom the Owner enters into the Purchase Order to perform the Work.

**Work** - All obligations explicitly and implicitly imposed upon the Vendor by the Purchase Order Documents.

## **ARTICLE 2 -- PURCHASE ORDER DOCUMENTS**

### **Section 2.01 - Captions**

The table of contents, titles, captions, headings, running headlines, and marginal notes contained herein and in the Purchase Order Documents are solely to facilitate reference to various provisions of the Purchase Order Documents and in no way affect the interpretation of the provisions to which they refer.

### **Section 2.02 - Electronic Data Transfer**

- A. Electronic data includes, but is not limited to, all digital versions of any Purchase Order Document, all digital files produced by mechanical, facsimile, electronic, magnetic, digital or other programs, programming notes or instructions, activity listings of electronic mail receipts or transmittals, output resulting from the use of any software program, including but not limited to, word processing documents, spreadsheets, database files, charts, graphs, drawings, specifications, outlines, electronic mail, personal digital assistant messages, instant messenger messages, PDF files, PRF files, batch files, ASCII files, DWG files and any other type of files now or hereafter allowed by Owner.
- B. The Owner reserves the right to implement an electronic payment program for payments due the Vendor. Prior to implementation, the Owner, in writing, shall notify the Vendor one hundred twenty (120) calendar days prior to the effective date of the electronic payment program. Commencing on or after the electronic payment effective date, all payments, due the Vendor, shall only be rendered electronically, unless payment by paper check is authorized in writing by the Owner. Commencing on or after the electronic payment effective date, the Vendor, further acknowledges and agrees that the Owner may withhold payments, if the Vendor has not complied with the Owner's policies and procedures relating to the electronic payment program in effect at such time, unless payment by paper check is authorized in writing by the Owner.
- C. Electronic data produced in connection with the Purchase Order Documents is proprietary information of the Owner and to be treated as confidential and not to be disclosed to or shared with others outside the limits of the Purchase Order Documents without the express written consent of the Owner. The Owner makes no warranty, express or implied, as to the accuracy of the information transferred.
- D. The Vendor shall pay, on behalf of the Owner, any loss which the Owner becomes legally liable to pay as a result of a claim by any person or entity against the Vendor or Owner, which results directly from an act, error, or omission of the Vendor in the provision of electronic data in respect to the Purchase Order Documents.

### **Section 2.03 - Owner**

- A. The Purchase Order Documents constitute the entire agreement and understanding between the Vendor and the Owner with respect to the Project and supersedes all prior agreements, arrangements and understandings, and all trade custom and trade usage, and the construction of any provision of the Purchase Order Documents shall not be affected by the wording of any other agreement, whether

between the Vendor and the Owner or involving other parties. The Purchase Order Documents may not be amended, modified, supplemented, or changed in any way except in accordance with Purchasing General Conditions Article 8 – Changes in the Work or a Contract Amendment. The legal relationship between the Owner and the Vendor shall be governed solely by the Purchase Order Documents and no rights shall arise on any other basis, including but not limited to, oral agreement, partial performance, estoppel, conduct of the parties, course of conduct or any other course of dealing involving the Project or any other project. The meaning and intent of the Purchase Order Documents shall be interpreted solely by the Owner.

- B. The Owner shall give all orders and directions contemplated under the Purchase Order Documents relative to the execution of the Work. The Owner shall determine the amount, quality, and acceptability of the Work and shall decide all questions which may arise in relation to said Work. The Owner's estimates and decisions shall be final except as otherwise expressly provided herein.
- C. The Owner may, at its sole and exclusive discretion, waive certain provisions of the Purchase Order Documents. Such waiver shall only be done by written instrument signed by a duly authorized officer of the Owner, and any such waiver shall apply solely in accordance with its terms and shall not act as a waiver of any provision of the Purchase Order Documents, or estoppel against the enforcement thereof, in connection with any subsequent or separate event involving the Project or other projects.
- D. Any differences or conflicts concerning performance which may arise between the Vendor and Other Vendors performing work for the Owner shall be analyzed and resolved by the Owner as warranted by the circumstances. The Owner's exercise of discretion in this regard shall be sole and exclusive and its decision concerning such differences and conflicts shall be final and binding.
- E. The Owner may act through an Owner's Representative designated as such in writing by the Owner. Unless otherwise designated by the Owner, the Owner's Representative is the Owner's employee identified in the Purchase Order. The Owner may change the Owner's Representative and the scope of her, his or its duties by written notice to the Vendor.

#### **Section 2.04 - Notice and Service Thereof**

- A. Any notice to the Vendor from the Owner relative to any part of the Contract shall be in writing and service considered complete when said notice is sent or delivered in person to the Vendor or its authorized representative, at the street address, postal address or email address given by the Vendor in the Bid or Quote. The Vendor may change any of these addresses by written notice to the Owner's Procurement Unit, 515 Broadway, Albany, New York 12207 - 2964; such change shall not be effective until Vendor receives from the Owner's Procurement Unit a written acknowledgement that the change has been received.
- B. Any notice from the Vendor to the Owner required by any part of the Contract shall be in writing and shall be sent or delivered to the Owner's Representative at the street address, postal address or email address for the Owner's Representative given in the Notice and Information for Bidders. The Owner may change the Owner's Representative or any of these addresses by written notice to the Vendor. If any part of the Contract shall require the Vendor to provide notice to any other employee or unit of the Owner, the notice to such employee or unit is in addition to, and does not replace, the notice to the Owner's Representative. Notice to the Owner may be delivered by certified mail, overnight delivery by a nationally recognized courier or, if an email address is provided, email. The Owner's Representative will endeavor to provide a written acknowledgment of receipt of the notice but any failure to provide such written acknowledgment shall not be a breach of the Contract, shall not in any way alter the Vendor's obligation to provide timely notice and shall not in any way alter any of the other obligations of the Vendor under the Contract.

- C. For all notices from the Vendor to the Owner required by any part of the Contract, the Vendor shall have the burden of proving the Owner's receipt of the notice.

**Section 2.05 - Nomenclature**

Materials, equipment, or other Work not defined or specified in the Purchase Order Documents but described in words that have a generally accepted technical or trade meaning shall be interpreted as having said meaning in connection with the Purchase Order Documents.

**Section 2.06 - Invalid Provisions**

If any term or provision of the Purchase Order Documents or the application thereof to any natural person, partnership, limited liability company, corporation or other legal entity or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of the Purchase Order Documents, or the application of such terms or provisions to natural persons, partnerships, limited liability companies, corporations or other legal entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Purchase Order Documents shall be valid and be enforced to the fullest extent permitted by law. It is the intent of the Owner and the Vendor that all provisions of the Purchase Order Documents shall be construed to be valid under applicable law and shall be enforced to the maximum extent possible.

**Section 2.07 – Interpretation of Purchase Order Documents**

- A. Should any provision in the Purchase Order Documents be in conflict or inconsistent with these Purchasing General Conditions or supplements thereto, these Purchasing General Conditions or supplements thereto shall govern.
- B. Should a conflict occur in or between or among any parts of the Purchase Order Documents that are entitled to equal preference, the better quality or greater quantity of material or more onerous provision in the Owner's judgment shall govern, regardless of cost, unless the Owner directs otherwise in writing. In each conflict, the Owner, in its sole and exclusive discretion, shall determine whether the quality, quantity or onerous provision method will be used to resolve the conflict.
- C. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa.

**ARTICLE 3 -- SAMPLES**

**Section 3.01 - Samples Requirements**

- A. Owner reserves the right to request a representative sample of a Commodity at any time. The sample shall be furnished within a reasonable period of time as specified by the Owner.
- B. If the sample, in the judgment of the Owner, is not in accordance with the requirements of the Specifications and Notice and Information for Bidders, the Owner may in its sole discretion permit a period of time for a reworking of the sample or reject the Bid or Quote.
- C. When samples are required, failure to submit them in accordance with instructions may be sufficient cause for rejecting a Bid or Quote.



- D. When an accepted sample exceeds the minimum Specifications, all Commodities delivered will be of same quality and identity as the sample.
- E. Samples must be submitted free of charge and be identified with the firm's name, address and the Bid or Quote number.
- F. All samples are subject to tests in the manner and place designated by the Owner. Samples consumed or made useless by testing will not be returned to the Bidder.
- G. Where testing has not impaired the sample, the unsuccessful Bidders shall, at no charge to Owner, remove said sample within fourteen (14) days from date of notification. Failure to remove samples within the designated period shall constitute abandonment of the sample and its disposition shall be at the discretion of Owner.
- H. Owner may hold samples during the entire term of the Purchase Order for comparison with deliveries.
- I. The Notice and Information for Bidders may indicate that the Commodity to be purchased must be equal to a sample on display in a designated place. Failure on the part of the Bidder to examine such sample shall NOT entitle such Bidder to any relief from the conditions imposed in the Notice and Information for Bidders, Specifications and other Purchase Order Documents.

#### **ARTICLE 4 -- DELIVERY**

##### **Section 4.01 - Delivery Requirements**

- A. Delivery must be made as ordered and in accordance with the Purchase Order Documents. The Vendor shall deliver the Commodities to the Site on the delivery date set forth on the Purchase Order. In the event that the Purchase Order does not contain a delivery date, the Vendor is obligated to promptly contact the Owner to obtain a delivery date. The decision of Owner as to reasonable compliance with delivery terms shall be final.
- B. Time is of the essence with respect to all deliveries. Vendor acknowledges that late deliveries will negatively affect the Project schedule and that Vendor may be liable for any such disruptions to the Project schedule caused by the Vendor's late delivery, including consequential damages. Vendor agrees that late delivery by the Vendor constitutes a breach of contract.
- C. Delivery dates are approximate. Unless otherwise directed by the Purchase Order, Vendors are required prior to initiation of production to verify delivery schedules with Owner. Should a schedule change be necessary at that time the Vendor will be given a new schedule not to exceed six (6) months beyond the original delivery date, as shown on the Purchase Order and Owner shall incur no additional charges.
- D. Owner will not schedule any deliveries for Saturdays, Sundays or legal holidays, unless mutually agreed to by the Vendor and Owner.
- E. In conjunction with the Site Logistics Information, if any, the Vendor is responsible for the means and methods of furnishing and unloading the Commodities. Commodities shall be securely and properly packed for shipment, storage and stocking in new shipping containers and according to accepted commercial practice, without extra charge for packing cases, baling or sacks. The container

shall remain the property of Owner unless otherwise specified in the Purchase Order Documents.

- F. Point of Destination: All deliveries shall be unloaded at the Site pursuant to the Purchase Order Documents.
- G. Commodities purchased at a price f.o.b. shipping point plus transportation charge are understood to be purchased on an f.o.b. point of destination basis. Title shall not pass until Commodities have been delivered to the Site and received by the Owner or Owner's Representative.
- H. Deliveries shall be accompanied by packing lists that conform to itemized listings provided on the Purchase Order.
- I. When Commodities are rejected, they must be removed by the Vendor from the premises within five days of notification. Rejected items left longer than five days will be regarded as abandoned and Owner shall have the right to dispose of them as its own property.
- J. Upon failure of the Vendor to deliver Commodities or services within the time specified or failure to make prompt replacement of rejected Commodities when so requested, Owner may arrange for those Commodities or services to be provided by other sources. On all such procurements the Vendor agrees to reimburse Owner promptly for costs in excess of the Purchase Order cost. Should the cost be less than the Purchase Order price, the Vendor shall have no claim to the difference. Owner may deduct such purchases from Purchase Order quantity.
- K. Cooperation: Vendor will cooperate and coordinate with other Vendors and trades present at the Site or on the Project in delivering the Commodities to the Site.

## **ARTICLE 5 -- VENDOR**

### **Section 5.01 - Representations of Vendor**

The Vendor represents and warrants:

- A. That it is financially solvent and is experienced in and competent to perform the Work, and has the staff, workers, equipment, subcontractors, and suppliers to complete the Work within the time specified for the Purchase Order amount.
- B. That it is familiar with all federal, state, and local laws, codes, ordinances, orders, rules, and regulations which may affect the Work, the Vendor, or the Project.
- C. That it has carefully examined the Purchase Order Documents and the Site Logistics Information, if any, and is satisfied as to the nature and dimensions of all rights of way likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the general and local conditions, and all other materials or items which may affect the Work. If said dimensions or conditions are found to conflict with the Site Logistics Information or other Purchase Order Documents, the Vendor immediately shall refer said conflict to Owner's Representative. The Vendor shall comply with any revised Purchase Order Documents.
- D. That it is satisfied that the Work can be performed and completed as required in the Purchase Order Documents, and warrants that it has not been influenced by any oral statement or promise of the Owner.
- E. That to the best of Vendor's knowledge, there are no pending or threatened suits, proceedings, judgments, rulings, or orders by or before any court or any governmental agency or arbitrator that could

reasonably be expected to affect materially and adversely:

1. the financial condition or operations of the Vendor;
  2. the ability of the Vendor to perform its obligations hereunder; or
  3. the legality, validity, or enforceability of this agreement.
- F. That Vendor is a duly organized and validly existing entity of the type described in the recital clauses of the agreement and is in good standing under the laws of the jurisdiction of its formation; it has the legal right, power, and authority and is qualified to conduct its business and to execute and deliver this agreement and perform its obligations under this agreement; and all regulatory authorizations have been obtained and will be maintained, as necessary, for it to perform legally its obligations under this agreement.
- G. That executing and performing this agreement are within Vendor's powers; that executing and performing this agreement has been duly authorized by all necessary action on the Vendor's part; and that such actions do not and will not violate any provision of law or any rule, regulation, order, writ, judgment, decree, or other determination presently in effect applicable to Vendor or its governing documents.
- H. That Vendor is in good standing with any union with craft labor on the Site.
- I. That Vendor has had the opportunity to consult with or has consulted with legal counsel of its choice before entering into the Contract.

#### **Section 5.02 - Errors or Discrepancies**

The Vendor shall examine the Purchase Order Documents thoroughly before commencing the Work and report any errors or discrepancies to the Owner, in writing, within ten (10) calendar days of discovery. The Owner shall not be responsible for costs, damages or delays due to the Vendor's failure to comply with the requirements of this Purchasing General Conditions Section 5.02.

#### **Section 5.03 - Acceptance or Rejection of Purchase Order**

A Purchase Order will be deemed accepted by Vendor unless rejected by Vendor in writing, specifying the reasons for rejection, within ten (10) calendar days after receipt of such Purchase Order. Each Purchase Order shall be deemed to be an offer by Owner to purchase the Commodities pursuant to the terms of the Purchase Order Documents and, when accepted by Vendor as provided above, shall give rise to an agreement under the terms set forth herein to the exclusion of any additional or contrary terms set forth in the Purchase Order, unless such additional or contrary terms are mutually agreed to in writing by the parties.

#### **Section 5.04 - Comparable Products ("Or Equal" Clause)**

The Vendor may only avail itself of comparable products ("or equal") where such comparable product was properly indicated in the Notice and Information for Bidders or Bid Breakdown and Schedule and the Detailed Specifications and accepted by Owner, or where Owner approves the use of a comparable product ("or equal") in writing by the Owner's Representative. A determination that a commodity or product is a comparable product ("or equal") will be determined by Owner in its sole and absolute discretion and any such determination will be final.

### **Section 5.05 - Coordination**

To the extent required by Owner, Vendor shall communicate and coordinate with Owner in connection with the production and furnishing of Commodities.

### **Section 5.06 - Meetings**

The Vendor shall attend meetings when directed to attend by the Owner. The Owner, in its sole and exclusive discretion, shall determine the time, date, location, and purpose of the meeting. The purpose of a meeting includes, but is not limited to, progress of the Work, Change Orders, Site Logistics, coordination, inspections, testing, safety reviews, or anything which the Owner determines is useful for administration or performance of the Work or the Project.

### **Section 5.07 - Vendor's and Subcontractors' Insurance**

Prior to award of the Contract, the Vendor shall procure, at its sole cost and expense, and shall maintain in force at all times required by this Contract all of the insurance required under this Contract. Each Subcontractor shall procure, at its sole cost and expense prior to such Subcontractor commencing performance of any of the Work, and each Subcontractor shall maintain in force at all times required by this Contract all of the insurance required under this Contract. The insurance that the Vendor and each Subcontractor shall procure and maintain under this Contract includes, but is not limited to, the following:

1. Workers' Compensation (including occupational disease) and Employer's Liability insurance. Full New York State Workers' Compensation and Employer's Liability coverage shall be provided and evidenced by one of the following certificates (Acord certificates are not acceptable):
  - a. C-105.2 (September '15, or most current version) - Certificate of NYS Workers' Compensation Insurance Coverage. The insurance carrier shall provide a completed form as evidence of in-force coverage.
  - b. U-26.3 – (or any replacement) NYS Insurance Fund Certificate of Workers' Compensation Coverage. The NYS Insurance Fund shall provide a completed form as evidence of in-force coverage.
  - c. GSI-105.2(2/02 or most current version) - Certificate of Participation in Workers' Compensation Group Board-approved self-insurance. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Group Self Insurance Administrator shall provide a completed form.
  - d. SI-12 (5/09 or most current version) Affidavit Certifying That Compensation Has Been Secured. The NYS Workers' Compensation Board's Self Insurance Office or the Contractor's Self Insurance Administrator shall provide a completed form.
2. Disability Benefits insurance. Full New York State Disability Benefits coverage for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law shall be provided and evidenced by one of the following certificates:
  - a. DB-120.1 (September 15, or most current version) - Certificate Of Insurance Coverage Under the NYS Disability Benefits Law.
  - b. DB-155 (9/16) – Compliance with Disability Benefits Law. The NYS Workers' Compensation Board's Self Insurance Office shall provide a completed form.
  - c. CE 200 Certificate of Attestation of Exemption. (Note: this form will only be accepted as evidence of an exemption from providing Disability Benefits insurance as required by law. The Dormitory Authority of the State of New York will not accept this as an exemption from providing Worker's Compensation Insurance.) The Certificate may be obtained from the NYS Workers Compensation

Board's website at <http://www.wcb.state.ny.us>. The CE 200 cannot be used for multiple projects; therefore, a new form shall have to be completed prior to award of any subsequent contract.

3. With respect to each delivery, Owner shall require each Vendor to maintain or cause to be maintained until final acceptance of the Vendor's Work, insurance with insurance companies of such type, against such risks and in such amounts as are customarily carried by Vendors located in the New York State, engaged in similar work, which insurance shall include property damage, fire and extended coverage, builder's risk, public liability and property damage liability insurance in amounts estimated to indemnify the reasonably anticipated damage, loss or liability, subject to reasonable deductible provisions.
4. Upon request, the Vendor shall promptly produce evidence satisfactory to the Owner that the Vendor and/or Subcontractor(s) possess the required insurances. The terms of this Section 5.07 are material terms of the Contract.

## **ARTICLE 6 – SUBCONTRACTS**

### **Section 6.01 - Subcontracting**

- A. Unless Owner directs otherwise, the Vendor may utilize the services of Subcontractors which it properly identified in its Bid Breakdown and Schedule. Utilizing a Subcontractor, without proper identification in the Bid Breakdown and Schedule or prior written approval by the Owner, may be cause for Contract termination.
- B. If any Subcontractor transports the Commodities to the Site or is otherwise physically present at the Site or the Project, the Vendor shall be responsible for requiring each Subcontractor, to extent of the Work to be performed by such Subcontractor, to be bound to the Vendor by all the terms, conditions, and requirements of the Purchase Order Documents, and to assume towards the Vendor all the obligations and responsibilities which the Vendor, by the Purchase Order Documents, assumes toward the Owner. The Vendor shall cause each Subcontractor to receive and review the provisions of the Purchase Order Documents applicable to the Subcontractor. Upon request of the Owner, the Vendor shall provide written proof satisfactory to the Owner that each Subcontractor has received and reviewed the provisions of the Purchase Order Documents applicable to such Subcontractor.
- C. If any Subcontractor transports the Commodities to the Site or is otherwise physically present at the Site or the Project, Vendor shall ensure that each Subcontractor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client, are, to the fullest extent permitted by law, at least the same as the Vendor's duties to procure insurance for, and to defend, indemnify and hold harmless the Owner and Client.
- D. In selecting a Subcontractor, the Vendor shall consider whether the proposed Subcontractor appears on any list of entities debarred or suspended from doing business with a government entity, including the current list of companies or individuals that have been declared ineligible to receive Federal contracts published by the System for Award Management. The Vendor shall not Subcontract with any entity on the List of Employers Ineligible To Bid On Or Be Awarded Any Public Contract, published by the NYS Department of Labor Bureau of Public Work. The Vendor shall not Subcontract with any entity on the debarment list published by the NYS Workers' Compensation Board pursuant to Section 141-b of the NYS Workers' Compensation Law. The Vendor shall not Subcontract with any entity on the list of Non-Responsible Entities maintained by the NYS Office of General Services pursuant to Executive Order No. 192. In selecting a Subcontractor, the Vendor shall also consider whether the proposed Subcontractor has legal authority to do business in New York State and possesses the integrity, experience, qualifications, and organizational and financial capacity to perform the Work.

## **ARTICLE 7 – MATERIALS AND LABOR**

### **Section 7.01 - Hazardous Materials Requirements**

- A. The Vendor and each Subcontractor shall comply with all applicable Hazardous Material Laws. The Vendor shall provide the Owner the Safety Data Sheets for any Hazardous Materials or hazardous substances brought on the Site by the Vendor or a Subcontractor at least fifteen (15) calendar days prior to the delivery of such materials to the Site. Vendor shall identify to Owner at least fifteen (15) calendar days in advance the quantities of all “Chemicals of Interest” listed under the Chemical Facility Anti-Terrorism Standards of the Homeland Security Appropriations Act of 2007 that will be brought onto the Site.
- B. Vendor shall provide the necessary information and training to its employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site and shall cause each of its Subcontractors to provide the necessary information and training to the Subcontractors employees on each Hazardous Material and hazardous substance to which they may be exposed on the Site. Upon request of the Owner, Vendor shall provide the Owner with proof, satisfactory to the Owner, that Vendor’s employees and all Subcontractors’ employees have received the necessary information and training.
- C. Any Hazardous Materials and hazardous substances brought to or stored on or at the Site shall require specific, prior written authorization from Owner and, as a condition to such authorization, Vendor shall provide Owner with the Material Safety Data Sheet covering any Hazardous Material or hazardous substance furnished under or otherwise associated with the Work (including the construction equipment). Vendor shall maintain on the Site, at all times, complete records, and inventories, including Safety Data Sheets, of Hazardous Materials and hazardous substances described in this Purchasing General Conditions Section 5.01 that are being used by it or its Subcontractors, or any persons for whose actions on the Site Vendor is responsible.

### **Section 7.02 - Quality, Quantity and Labeling**

- A. The Vendor shall Furnish Commodities of the quality and quantity specified in the Purchase Order Documents. Any excess materials purchased per the Purchase Order are the property of the Owner.
- B. When materials are specified to conform to any standard, the materials delivered to the Site shall bear manufacturer's labels stating that the materials meet said standards.
- C. The above requirements shall not restrict or affect the Owner's right to test materials as provided in the Purchase Order Documents.

### **Section 7.03 - Tax Exemption**

- A. The Owner is exempt from payment of federal, state, and local taxes; sales and compensating use taxes of the State of New York and of cities and counties on all materials and supplies incorporated into the completed Work. These taxes are not to be included in bids. This exception does not apply to tools, machinery, equipment or other property leased by or to the Vendor or a Subcontractors, or to supplies and materials which, even though they are consumed, are not incorporated in to the completed Work, and the Vendor and Subcontractors shall be responsible for and pay any and all applicable taxes, including sales and compensating use taxes, on said leased tools, machinery, equipment or other property and upon all said unincorporated supplies and materials.

- B. The Vendor and Subcontractors shall obtain any and all necessary certificates or other documentation from the appropriate governmental agency or agencies, and use said certificates or other documentation as required by law, rule, or regulation.

## **ARTICLE 8 -- CHANGES IN THE WORK**

### **Section 8.01 - Changes**

- A. Without invalidating the Purchase Order, the Owner, in writing, may order changes in the Work by altering, adding to, or deducting from the Work of the Purchase Order.
  - 1. No change in the Work is effective unless the Owner executes and delivers a Change Order to the Vendor. No payment for a change in the Work is due the Vendor unless and until a Change Order is executed and delivered by the Owner to the Vendor and the Vendor has performed the change in the Work. No alteration to the standard language of the Owner's Change Order form shall be accepted. If the Vendor requests an adjustment to the delivery date for a change in the Work and the Owner agrees, an increase or decrease to the delivery date, in calendar days, shall be included in the Purchase Order.
  - 2. Vendor's failure to proceed immediately and diligently with any Change Order executed and delivered by the Owner to the Vendor, unless the Owner in writing directs otherwise, shall be a material breach of the Contract.
  - 3. No Change Order is executed by the Owner unless and until the Change Order is, reviewed and accepted by the Owner, and properly executed by an authorized representative of the Owner with appropriate approval authority in accordance with the Owner's internal procedures.
- B. Increase or Decrease in Commodity Quantity: The Owner may increase or decrease the quantity of Commodities set forth in a Purchase Order by Change Order. The amount to be paid to a Vendor for proper performance of a Purchase Order may be increased or decreased only by a Change Order and the amount of the adjustment is determined by the unit pricing set forth in the Bid or Quote or, where the Owner and Vendor agree, by mutual agreement of the Owner and Vendor.
- C. Reimbursement: If a decrease in Purchase Order quantity causes the Vendor to incur costs in connection with the decrease, including restocking or administrative costs, the Owner shall reimburse the Vendor for such costs upon presentation by Vendor to Owner of reasonable proof that such costs were actually incurred. The Owner has sole and exclusive discretion in determining if the Vendor has presented reasonable proof that such costs were actually incurred by the Vendor.

## **ARTICLE 9 -- PAYMENT**

### **Section 9.01 - Provision for Payment**

- A. Subject to the provisions of these Purchasing General Conditions including but not to Article 12, Owner shall make payment to the Vendor within thirty (30) days of delivery and receipt of the Vendor's invoice. All invoices submitted by the Vendor shall only be in the form and manner approved by the Owner and shall reference the Purchase Order Number and match the line items in the Purchase Order.
- B. Any partial payment made shall not be construed as a waiver of the right of the Owner to require the fulfillment of all the terms of the Purchase Order Documents. No payment, either partial or full, by the Owner to the Vendor shall waive or excuse any failure by the Vendor to comply fully with the Purchase Order Documents. No payment will be made for Work not performed.

- C. Where necessary, the Owner will provide an agreement for materials stored off-site and specific forms that the Vendor shall complete, execute, and submit with any invoice for such material. Required information includes, but is not limited to: a general description of the material; a detailed list of the materials; a pre-approved storage area; segregation and identification of the material; insurance covering full value against all risks of loss or damage, with non-cancellation provision; immediate replacement agreement in event of loss or damage; agreement to pay the expense of all inspections of the material; ownership provisions; delivery guarantee; project completion statement; bill of sale, releases of liens, and inventory. The Owner, in its sole and exclusive discretion, may require the Vendor to certify in the agreement for materials stored off-site that the materials comply with one or more requirements of the Purchase Order Documents or to provide documentary proof acceptable to the Owner that the materials comply with one or more requirements of the Purchase Order Documents.
- D. Timeliness of payment and any interest to be paid to the Contractor for late payment is governed by Section 2880 of the NYS Public Authorities Law. Timely payment by the Contractor to the Subcontractor is governed by Section 139-f of the NYS State Finance Law which requires payment by the Contractor to the Subcontractor within seven (7) calendar days of receipt of payment from the Owner.

#### **Section 9.02 - Withholding of Payments**

- A. In any case where a question of nonperformance of the Work arises or any failure in any respect to conform to the Purchase Order Documents, payment may be withheld in whole or in part at the discretion of Owner.
- B. Any claim of any nature against a Vendor may be deducted by Owner from any money due the Vendor. If no deduction is made, the Vendor shall pay Owner the amount of such claim on demand. Submission of an invoice and payment thereof by Owner shall not preclude Owner from receiving upon demand a price adjustment in any case where the Commodities delivered are later found to deviate from the Detailed Specifications, Notice and Information for Bidders, or other Purchase Order Documents. Any deliveries made which do not meet the requirements of the Specifications, Notice and Information for Bidders, or other Purchase Order Documents may be rejected.

#### **Section 9.03 - False Representations/Information**

- A. False Representations, information, or data submitted by Vendor to Owner may result in one or more of the following actions:
  - 1. Termination of the Contract for cause;
  - 2. Disapproval of future bids or proposals or contracts or subcontracts;
  - 3. Withholding or reimbursement of payment; and
  - 4. Civil and/or criminal prosecution.
- B. The provisions of this Purchasing General Conditions Section 9.03 are solely for the benefit of the Owner, and any action or non-action hereunder by the Owner shall not give rise to any liability on the part of the Owner.



## **ARTICLE 10 – NO DAMAGES FOR DELAY**

### **Section 10.01 - No Damages for Delay**

No claims for increased costs, charges, expenses, or damages of any kind shall be made by the Vendor against the Owner for any delays or hindrances from any cause whatsoever provided that the Owner, in the Owner's sole and exclusive discretion, may compensate the Vendor for any said delays or hindrances. No payment for increased cost, charge, expense, or damage of any kind shall act as a waiver of the Owner's rights

## **ARTICLE 11 – TERMINATION OR SUSPENSION**

### **Section 11.01 - Termination for Cause**

- A. In the event that any provision of the Purchase Order Documents is violated by the Vendor or by any Subcontractor, the Owner may serve written notice upon the Vendor of the Owner's intention to declare a Vendor Default and terminate the Contract. Such notice shall contain the reasons for the intention to declare a Vendor Default and terminate the Contract. The Vendor has three (3) business days to respond and show why the Owner should not declare a Vendor Default and why the Vendor's Contract should not be terminated for cause. If the violation shall not cease or arrangements satisfactory to the Owner are not made, the Owner, in writing, may declare a Vendor Default and the Contract shall terminate upon the date specified by the Owner in the declaration of Vendor Default. The Owner shall send the Vendor written notice of and a copy of the declaration of Vendor Default and termination of the Contract.
- B. In the event the termination for cause is determined to be improper, the termination shall be deemed a termination pursuant to Purchasing General Conditions Section 11.02 – Termination for Convenience of Owner.

### **Section 11.02 - Termination for Convenience of Owner**

- A. The Owner, at any time, may terminate the Contract in whole or in part. Any such termination shall be effected by delivering to the Vendor a written notice of termination specifying the extent to which performance of Work under the Contract is terminated and the date upon which the termination becomes effective. Upon receipt of the notice of termination, the Vendor shall act promptly to minimize the expenses resulting from the termination.
- B. The Owner shall pay the Vendor for Work of the Purchase performed by the Vendor and accepted by the Owner up to the effective date of the termination. In no event shall the Vendor be entitled to compensation in excess of the total consideration of the Purchase Order. In no event shall Vendor be entitled to overhead or profit on the Work not performed.
- C. If a termination for convenience, in whole or in part, causes the Vendor to incur costs in connection with the termination for convenience, including restocking or administrative costs, the Owner shall reimburse the Vendor for such costs upon presentation by Vendor to Owner of reasonable proof that such costs were actually incurred. The Owner has sole and exclusive discretion in determining if the Vendor has presented reasonable proof that such costs were actually incurred by the Vendor.

### **Section 11.03 - Suspension of Work**

- A. Should the Owner determine that conditions exist such that it becomes necessary to suspend performance of all or any part of the Work, the Owner, at its sole discretion, shall issue to the Vendor a Suspend Work Order. Upon receipt of the order, the Vendor shall immediately comply with its terms. The order shall contain the reason or reasons for suspension which may include, but is not limited to, latent field conditions, substantial program revisions, acquisition of rights of way or real property, financial crisis, labor disputes, civil unrest, expired or improper insurance, court order, public health emergency or acts of God.
- B. The Vendor specifically agrees that such suspension of the Work shall not increase the cost of the Work. However, to the extent that the suspension of the Work is through no fault of the Vendor, the Owner may consider requests for compensation.
- C. Notwithstanding the above, to the extent that the Vendor is required to incur additional storage costs in connection with a Suspend Work Order for storage of Commodities after thirty (30) days from the original delivery date set forth on the Purchase Order , the Owner shall pay Vendor for such reasonable costs. The Owner, in its sole discretion, may demand reasonable proof of such costs as a condition to payment. The Owner has sole and exclusive discretion in determining if the Vendor has presented reasonable proof that such costs were actually incurred by the Vendor.
- D. The Owner may terminate the Suspend Work Order by a written direction to the Vendor through the issuance of a Resume Work Order or may invoke any other provision of Purchasing General Conditions Article 11 – Termination or Suspension.

## **ARTICLE 12 – INSPECTION AND GUARANTEE**

### **Section 12.01 - Inspection of the Work**

Owner shall have thirty (30) days from delivery of the Commodities to the Site to complete its inspection of the Commodities. The Owner shall be the final judge of the quality and acceptability of the Commodities and the Owner may in its discretion accept or reject all or any part of the Commodities where such Commodities are non-conforming. Any Commodities not accepted shall be made good, replaced, or corrected immediately by the Vendor at the Owner’s direction. Rejected Commodities shall be removed immediately from the Site. Acceptance of Commodities shall not relieve the Vendor from the Vendor's obligation to replace all Commodities that are not in full compliance with the Purchase Order, nor does acceptance of Commodities prevent the Owner from later exercising its rights under Section 12.04 of these Purchasing General Conditions.

### **Section 12.02 - Replacement of Defective or Damaged Work**

If, in the opinion of the Owner, it is undesirable to replace any defective or damaged Commodities, the Purchase Order amount shall be reduced by an amount, which in the judgment of the Owner, shall be deemed equitable.

### **Section 12.03 - Final Completion**

No previous inspection shall relieve the Vendor of the obligation to perform the Work in accordance with the Purchase Order Documents. No payment, either partial or full, by the Owner to the Vendor shall excuse any failure by the Vendor to comply fully with the Purchase Order Documents. The Vendor shall remedy all defects and deficiencies at the Vendor’s expense, paying the cost of any damage to other Work, the work of Other Vendors and the property of the Owner or Client.

## **Section 12.04 - Guarantee**

The Vendor shall, in all respects, guarantee the Work to the Owner. The Vendor shall forthwith repair, replace or remedy in a manner approved by the Owner, at the Vendor's expense, any Commodities, or other part of the Work found by the Owner to be defective or otherwise faulty and not in compliance with the Purchase Order Documents, which defect or fault appears during the minimum period of one (1) year, or such longer period as may be prescribed by the Purchase Order, from the date of either (1) the proper delivery of all Commodities in connection with the Purchase Order to the Site or (2) the delivery of the final invoice in connection with the Purchase Order from the Vendor to the Owner, whichever is later. The Vendor is also liable for any damage to the Work, any damage to the work of Other Vendors and Vendors, and any damage to the property of the Owner or Site resulting from said defect or fault.

## **ARTICLE 13 -- PROTECTION OF PERSONS AND PROPERTY**

### **Section 13.01 - Site Safety and Protection**

- A. Compliance with Laws. Each Vendor and Subcontractor shall comply fully with all applicable provisions of the laws of the State of New York, the United States of America and with all applicable rules and regulations adopted or promulgated by agencies or municipalities, as well as with all Client safety requirements. The Vendor's and Subcontractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor and to the standards imposed under the Federal Occupational Safety and Health Act of 1970, as amended, and to all City of New York safety requirements for Projects within the City of New York.
- B. Safety Programs. The Vendor shall be responsible for the initiation, maintenance and supervision of safety precautions and programs in connection with the Work, and shall at all times, take every precaution against injuries to persons or damage to property and for the safety of persons on or about the Site engaged in the performance of the Work. The Vendor shall replace or make good any such loss or injury unless said loss or injury is caused directly by the Owner.
- C. Subcontractors. The Vendor is responsible for ensuring that each Subcontractor executes the Subcontractor's obligations in this Purchasing General Conditions Section 13.01.

### **Section 13.02 - Protection of Lives and Health**

- A. The Vendor and each Subcontractor shall be responsible for the safe performance of the Work and their Means and Methods and for any injury or loss that shall occur from a failure to meet such responsibility, including but not limited to any injury or loss caused by a failure to properly review and incorporate the Site Logistics Information, if any, into the Means and Methods.
- B. The Vendor shall, within twenty-four (24) hours, notify the Owner, and each Subcontractor shall, within twenty-four (24) hours, notify the Vendor of any incident, accident, illness, or injury that occurred on the Site or during the performance of the Work. The Vendor shall follow-up and provide the Owner with a copy of Form C-2, Employers Report of Injury/Illness within twenty-four (24) hours of any incident, accident, illness, or injury, a copy of the recorded OSHA Log and any and all reports and statements pertaining to such incident, accident, illness, or injury.
- C. The Vendor shall provide the Owner, within twenty-four (24) hours, a list of witnesses of any incident, accident, illness, or injury, which list includes the full name, home address, occupation and telephone number of each person. The Vendor shall provide, within twenty-four (24) hours of learning of the actual or potential existence of any other witnesses, the Owner with updated information which includes the

full name, home address, occupation, and telephone number of each additional witness.

- D. The Vendor and each Subcontractor shall provide, in accordance with the terms of the relevant insurance policies and, as soon as practicable, within five (5) calendar days, written notice to each of its liability insurers of any such incident, accident, illness, injury, or death on the Site or at the Project on behalf of itself, the Owner, the Client, and the Construction Manager. This provision does not remove the obligation of each insured to provide notice to its liability insurers. The Vendor and each Subcontractor shall provide to the Owner, the Client and the Construction Manager, a copy of such notice at the time such notice is given to each insurer as well as confirmation of receipt of such notice by each insurer.
- E. Failure of the Vendor to comply with provisions of this Purchasing General Conditions Section 13.02 shall be deemed a material breach of Contract and the Owner may impose a payment penalty on the Vendor for any act of non-compliance. The payment penalty shall not exceed one twentieth (1/20) of the Purchase Order price or a maximum of One Thousand Dollars (\$1,000) for each time the Vendor fails to perform or to provide the information, reports, forms, etc. required in this Purchasing General Conditions Section 13.02. This payment penalty is not exclusive; the Owner may avail itself of any other contractual remedy available.

### **Section 13.03 - Ownership of Commodities and Risks Assumed by the Vendor**

Title of ownership to the Commodities does not pass to the Owner until the Owner or Owner's Representative has received the Commodities at the Site. To the fullest extent permitted by law, Vendor assumes all risks of every nature whatsoever until Vendor has delivered the Commodities to the Site and the Owner or Owner's Representative has received such Commodities. This obligation includes, but is not limited to, the following risks:

- 1. To the fullest extent permitted by law, the risk of loss or damage, including direct or indirect damage or loss, of whatever nature to the Work or to the Site or any plant, equipment, tools, materials or property of the Owner, the Client, the Vendor or any Subcontractor, materialman or worker performing services or furnishing materials or equipment, regardless of the presence or absence of any culpable conduct on the part of the Vendor.
- 2. To the fullest extent permitted by law, the risk of claims, just or unjust, by third persons against the Vendor, the Owner, the Client, or the Construction Manager on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Vendor or any Subcontractor, whether actually caused by or resulting from the performance of the Work, or out of or in connection with the Vendor's or any Subcontractor operations or presence at or in the vicinity of the Site, regardless of the presence or absence of any culpable conduct on the part of the Vendor. The Vendor shall bear the risk for all deaths, injuries, damages or losses sustained or alleged to have been sustained prior to Commodities being delivered to Site and being placed into possession of Owner excepting only the percentage of negligence attributed to the Owner, Client or Construction Manager or the Owner's, Client's or Construction Manager's members, officers, representatives or employees that caused the deaths, losses, damages or injuries, regardless of the presence or absence of any culpable conduct on the part of the Vendor.
- 3. To the fullest extent permitted by law, the Vendor assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever, including death resulting therefrom, to all persons, whether employees of the Vendor or otherwise, and to all property, arising out of or alleged to arise out of or as a result of or in connection with the performance of the Work by the Vendor or any Subcontractor, whether actually caused by or resulting from the performance of the

Work, or out of or in connection with the Vendor's or any Subcontractor operations or presence at or in the vicinity of the Site, regardless of the presence or absence of any culpable conduct on the part of the Vendor. If any person or entity shall make said claim for any damage or injury, including death resulting therefrom, or any alleged breach of any statutory duty or obligation on the part of the Owner, the Client, Construction Manager, or any of the servants and employees of the Owner, Client or Construction Manager, the Vendor shall indemnify and hold harmless the Owner, Client, the Construction Manager, and any of such servants and employees, for any and all loss, damage or injury that the Owner, Client, Construction Manager, or any such servants and employees, may sustain as the result of any claim, provided however, the Vendor shall not be obligated to indemnify and hold harmless the Owner, Client Construction Manager, and any such servants and employees for their own negligence, if any. In the event that any negligence is attributed to the Owner, Client, Construction Manager or any such servants or employees, then that particular entity or person shall be indemnified and held harmless for all of its liability minus the percentage of negligence attributed to that particular entity or person.

4. Notwithstanding any contrary provision of the Contract, and to the fullest extent permitted by law, the Vendor shall, within ten (10) calendar days of notice from the Owner, Client or Construction Manager, assume the obligation to defend and represent the Owner, the Client, the Construction Manager, and any of the servants and employees of the Owner, Client or Construction Manager, with counsel selected by the Owner, in all claims by third parties arising out of or alleged to arise out of or as a result of or in any way associated with the duties, obligations or requirements of the Vendor or any Subcontractor pursuant to the Contract, or the presence of the Vendor or any Subcontractor on the Site. This obligation to defend applies immediately and is separate and independent of and distinct from the enforceability of any obligation of Vendor or any Subcontractor to indemnify or hold harmless the Owner, the Client, the Construction Manager and the servants or employees of the Owner, Client, and Construction Manager. The Vendor's obligation to defend includes, but is not limited to, payment of any legal fees associated with defending the Owner, the Client, the Construction Manager and any such servants and employees, all costs of investigation, expert evaluation, and any other costs. If the Vendor fails to so defend and represent the Owner, the Client, the Construction Manager, or any such servants and employees with counsel selected by the Owner, the Owner may proceed to defend and represent itself, the Client, the Construction Manager and any such servant and employee with counsel selected by Owner. Vendor shall make payment of the selected counsel's fees and expenses and all other defense costs incurred by Owner immediately upon receipt of Owner's demand.
- B. The Vendor's obligations under this Article shall not be deemed waived, limited or discharged by the enumeration or procurement of any insurance for liability for damages. The Vendor shall notify its insurance carrier within twenty-four (24) hours after receiving a written notice of loss or damage or claim from the Owner, the Client, or the Construction Manager. The Vendor shall make a claim to its insurer specifically under the provisions of the contractual liability coverage and any other coverage afforded the Owner, the Client or Construction Manager including those of being a named insured or an additional insured where applicable.
- C. Neither final payment nor any interim payment shall release the Vendor from the Vendor's obligations under this Article. The enumeration elsewhere in the Purchase Order Documents of particular risks assumed by the Vendor or of particular claims for which the Vendor is responsible shall not be deemed to limit the effect of the provisions of this Article or to imply that the Vendor assumes or is responsible for only risks or claims of the type enumerated; and neither the enumeration in this Article nor the enumeration elsewhere in the Contract of particular risks assumed by the Vendor or particular claims for which the Vendor is responsible shall be deemed to limit the risks which the Vendor would assume or the claims for which the Vendor would be responsible in the absence of said enumerations.

- D. Notwithstanding any provision of the Contract to the contrary, and to the fullest extent permitted by law, if the Vendor does not fulfill one or more of Vendor's obligations under these Purchasing General Conditions to defend, indemnify, hold harmless, and procure insurance for the Owner, Client and Construction Manager, and the Owner, Client or Construction Manager commences a court action to enforce one or more of the Vendor's obligations to defend, indemnify, hold harmless and procure insurance for the Owner, Client and Construction Manager, the Vendor, in addition to its other obligations, shall pay the costs of the Owner, Client and Construction Manager to bring and prosecute the court action, including but not limited to attorney and consultant fees, expenses and court fees.
- E. The Vendor agrees that any unsatisfied claim of the Owner and/or Client arising from obligations in this Article and or Article 14 shall be set off or deducted from payments due the Vendor.

#### **Section 13.04 - Professional Conduct**

- A. The Vendor acknowledges and agrees that professionally appropriate conduct is a material obligation of this Contract. All employees, officers and representative of Vendor shall conduct themselves professionally in all communications in connection with the Project, including but not limited to communications with Subcontractors and other vendors.
- B. Use of abusive, threatening, vulgar or other offensive language, whether written or oral, is a breach of the obligation set forth in paragraph (1) of this section 13.04.
- C. Vendor will receive a warning in writing from Owner upon breach of the obligation set forth paragraph (A) of this section 13.03. Vendor agrees that any subsequent breach of paragraph (A) of this section 13.03 committed after receipt of the written warning is grounds for the Owner to terminate this Contract for cause, or for the Owner to avail itself of any other remedy at law.
- D. The Vendor shall include the provisions set forth in paragraphs (A) and (B) of this section 13.03 in every subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.

### **ARTICLE 14 -- GENERAL PROVISIONS of the CONTRACT**

#### **Section 14.01 - General Law Provisions**

- A. This Contract and its enforcement, and any controversy arising out of or relating to the making or performance of this Contract, shall be governed by and construed in accordance with the law of the State of New York, without regard to the New York principles of conflicts-of law and except where the United States supremacy clause requires otherwise.
- B. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted therein and the Contract shall read and shall be enforced as though so included therein.
- C. The Vendor shall comply fully with all applicable laws, rules, and regulations, and as applicable, Building Code of New York State or Building Code of the City of New York.
- D. The Vendor agrees that the agreement shall be deemed executory to the extent of moneys available from either: (1) the proceeds of bonds issued by the Dormitory Authority for the agreement, (2) moneys made available by the Client to the Owner for the agreement, (3) other moneys made available to the Owner from whatever source specifically for the agreement and no liability shall be incurred by the

Owner beyond moneys available therefore.

- E. The relationship created by the agreement between the Owner and the Vendor is one of an independent contractor and it is no way to be construed as creating an agency relationship between the Owner and the Vendor nor is it to be construed as, in any way or under any circumstances, creating or appointing the Vendor as an agent of the Owner for any purpose whatsoever.
- F. Except as provided herein, this agreement and each and every provision hereof and thereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing in the Contract shall create or shall give to third parties any claim or right of action against the Owner, the State of New York, the Client, or any institution at which the Work is being carried out beyond such as may legally exist irrespective of the agreement; however, it is understood that the Client is an intended third-party beneficiary of the Contract for the purposes of recovering any damages caused by the Vendor.
- G. The Vendor shall not assign the agreement in whole or in part without prior written consent of the Owner. Any attempt to assign the agreement in whole or in part without prior written consent of the Owner is null and void. As a condition to consent to the assignment, the Owner shall require each proposed assignee to establish, to the satisfaction of the Owner in its sole and exclusive discretion, that the assignee is responsible and, if applicable, has the experience to perform the Work. If the Owner consents to an assignment and if the Vendor assigns all or part of any moneys due or to become due under the agreement, the instrument of assignment shall contain a clause substantially to the effect that the Vendor and assignee agree that the assignee's right in and to any moneys due or to become due to the Vendor shall be subject to all prior claims for services rendered or materials supplied in connection with the performance of the Work. The Owner reserves the right to assign this agreement in whole or in part without the consent of the Vendor. Unless otherwise agreed by the Parties hereto in a separate writing, no permitted assignment described in this Section shall relieve the assigning Party from any of its obligations under this agreement. However, the assignee may be required by the assigning Party to agree to indemnify and hold harmless the assigning Party from some or all of its obligations under this agreement.
- H. This agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assignees.
- I. The Owner is exempt from the terms of fair-trade agreements for sales to the agreement.
- J. Inasmuch as the Vendor can be compensated adequately by money damages for any breach of the agreement which might be committed by the Owner, the Vendor agrees that no default, act or omission of the Owner shall constitute a material breach of the Contract entitling the Vendor to cancel or rescind the Contract or to suspend or abandon performance of the agreement; and the Vendor hereby waives any and all rights and remedies to which the Vendor might otherwise be or become entitled to because of any wrongful act or omission of the Owner saving only the Vendor's right to money damages.
- K. No action or proceeding shall lie or shall be maintained by the Vendor, nor anyone claiming under or through the Vendor, against the Owner upon any claim arising out of or based upon the agreement, relating to the giving of notices or information.
- L. No action or proceeding shall lie in favor of or shall be maintained by the Vendor against the Owner unless such action shall be commenced within one year after the earliest following event:
  - 1. Receipt, by the Owner, of the Vendor's final invoice for Commodities delivered to the Site.
  - 2. The date of termination if the Owner terminates the agreement.

- M. The Owner and Vendor agree to submit to the exclusive jurisdiction of the Commercial Division, New York Supreme Court, which shall hear any dispute, claim or controversy arising in connection with or relating to this agreement, including, but not limited to the validity, breach, enforcement, or termination thereof.
- N. No action or proceeding shall be brought against the Owner in any location other than Albany County unless the Owner specifically consents, in writing, to a change of venue.
- O. If the Vendor obtains a judgment against the Owner in any action or proceeding, the Vendor agrees to accept no more than three percent (3%) interest, per annum, on the amount of the judgment.
- P. Neither Vendor nor its Subcontractors shall place or maintain, or permit to be placed or maintained, any sign, bill, or poster on or about the Site without the prior consent of Owner's Representative.
- Q. Owner and Vendor agree that Client is an intended third-party beneficiary to the Purchase Order Documents, and that it is Owner's and Vendor's intent to permit enforcement of such Purchase Order by Client to the fullest extent permitted by law.
- R. Each Party has reviewed and discussed this agreement with counsel and agrees that this agreement shall not be construed by applying any rule of construction providing for interpretation against the drafting Party.

**Section 14.02 - Diesel Emissions Reduction**

- A. The Vendor shall certify that heavy duty vehicles, as defined in the NYS Environmental Conservation Law (ECL) Section 19-0323 and Title 6 of the New York Codes Rules and Regulations, Part 248 (6 NYCRR 248), will comply with the rules, regulations and provisions pursuant to ECL Section 19-0323, and 6 NYCRR 248, which requires the use of Best Available Retrofit Technology and Ultra Low Sulfur Diesel to the extent required by law unless specifically waived by the NYS Department of Environmental Conservation (DEC). Qualification for a waiver will be the responsibility of the Vendor.
- B. Annually, as required by DEC, but no later than March 1st, the Vendor shall complete and submit directly to the Owner, via electronic mail, the Regulated Entity Vehicle Inventory Form and Regulated Entity and the Vendors Annual Report Form, found on the DEC website <http://www.dec.state.ny.gov> for vehicles used on the Project for the preceding calendar year.

**Section 14.03 - State and Federal Labor Law Provisions**

- A. To the extent that the NYS Labor Law applies to any part or all the Work, the Vendor shall comply with all applicable provisions of NYS Labor Law as a material condition to this agreement.

**Section 14.04 - Nondiscrimination**

- A. To the extent required by Article 15 of the NYS Executive Law (also known as the Human Rights Law) and all other NYS and United States statutory and constitutional non-discrimination provisions, the Vendor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence status.
- B. If the Vendor is directed to do so by the Owner, the Vendor shall request each employment agency, labor union or authorized representative of workers with which the Vendor has a collective bargaining



agreement or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Vendor's obligations under Articles 15 and 15A of the NYS Executive Law.

- C. The Vendor shall state, in all solicitations or advertisements for employees, that in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
- D. The Vendor shall include the provisions of paragraphs A, B, and C of this Purchasing General Conditions Section 14.04 in every Subcontract and purchase order in such a manner that such provisions will be binding upon each Subcontractor and vendor as to the operations for the Contract to be performed within the State of New York.
- E. Pursuant to NYS Labor Law, Section 220-e, the Vendor specifically agrees:
  - 1. That in the hiring of employees for the performance of Work under the Contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, but limited to operations performed within the territorial limits of the State of New York, no Vendor, Subcontractor, nor any person acting on behalf of such Vendor or Subcontractor, shall by reason of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates.
  - 2. That no Vendor, Subcontractor, nor any person on behalf of such Vendor or Subcontractor shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under the agreement on account of race, creed, color, national origin, sex (including gender identity or expression), sexual orientation, military status, age, disability, predisposing genetic characteristics or marital status.
  - 3. That there may be deducted from the amount payable to the Vendor, by the Owner under the agreement, a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the terms of the agreement.
  - 4. That the agreement may be canceled or terminated by the Owner and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this Section 14.04 E of the agreement.

#### **Section 14.05 - Domestic Steel**

The Dormitory Authority is required to comply with all provisions of Title 4 of Article 9 of the NYS Public Authorities Law, including NYS Public Authorities Law Section 2603-a, and in accordance therewith, if the amount of the agreement exceeds \$100,000, the Owner requires that all structural steel, reinforcing steel or other major steel items to be incorporated in to the Work of the agreement be produced or made in whole or substantial part in the United States, its territories, or possessions. The Owner, in its discretion, may grant waivers of this requirement in accordance with NYS Public Authorities Law Section 2603-a. Vendor must request a waiver in writing and obtain a written waiver of this requirement from Owner before using in

performance of the agreement any steel not produced or made in whole or substantial part in the United States, its territories, or possessions.

#### **Section 14.06 - Failure to Comply with Article 14**

The Owner will not be responsible for any claim arising from compliance with this Purchasing General Conditions Article 14.

### **ARTICLE 15—RECORDS/AUDITS/INVESTIGATIONS/ETHICS**

#### **Section 15.01 - Preparation of Records/Owner's Right to Inspect Records and to Audit**

The Vendor shall, concurrently with performance of the Contract, prepare substantiating records regarding performance of the Contract, including records of Subcontractors and material suppliers. Purchasing General Conditions Section 15.03 describes the records and other data to be maintained by Vendor, Subcontractors, and material suppliers. The Vendor shall maintain and keep, for a period of at least six (6) years after the date of payment of the final invoice from Vendor to Owner, all records and other data relating to the Work, including records of Subcontractors and material suppliers. Upon seven (7) calendar days' written notice, the Vendor shall make its records (including records of Subcontractors and material suppliers) available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Vendor's records, including but not limited to all documents, electronic records and recordings, (including records of Subcontractors and material suppliers) at the Owner's reasonable expense, within adequate workspace at the Vendor's facilities. The Owner shall also have the right to have Owner or its authorized representative audit all records and other data of the Vendor, Subcontractors and material suppliers relating to the Work.

#### **Section 15.02 - False Statements/Information/Disclosure**

Failure to comply with Purchasing General Conditions Section 15.01, providing False Representations, false statements or inaccurate information submitted in accordance with Purchase Order Documents, including but not limited to, an invoice, a claim or a Change Order, a filing or system entry related to MWBE participation requirements or False Representations, false statements, or inaccurate information submitted to the Owner, or a determination that the Vendor participated in the kick-back of wages may result in one or more of the following actions:

- A. Termination of the Contract for cause pursuant to Purchasing General Conditions Article 11.
- B. Rejection of future bids or disapproval of a contract or subcontract.
- C. Withholding or reimbursement of payments.
- D. Criminal prosecution.
- E. Civil prosecution under Article XIII of the NYS State Finance Law – the New York False Claims Act.
- F. Rejection of a Claim or Change Order.
- G. Deduction of the Owner's cost of an audit from the Purchase Order amount.

#### **Section 15.03 - Owner's Right to Conduct Investigations**

- A. The Vendor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by the Owner.
- B. The Vendor shall grant the Owner the right to examine all books, records, files, accounts, computer records, documents, and correspondence, including electronically-stored information, in the possession or control of the Vendor, its subsidiaries and affiliated companies and any other company directly or indirectly controlled by the Vendor, relating to the Contract. These shall include, but not be limited to: Subcontracts; bid files; payroll and personnel records; cancelled checks; correspondence; memoranda; daily reports of Work completed that day; schedules; reports; audits; vendor qualification records; original estimate files; Change Order/Contract Amendment estimate files; detailed worksheets; Subcontractor, consultant and supplier proposals for both successful and unsuccessful bids; back-charge logs; any records detailing cash, trade, or volume discounts earned; insurance proceeds, rebates or dividends received; payroll and personnel records; tax returns; and the supporting documentation for the aforesaid books and records.
- C. At the Owner's request, said materials shall be provided in a computer readable format, where available. At the request of the Owner, the Vendor shall execute such documents, if any, as are necessary to give the Owner access to Contract-related books, documents, or records, which are, in whole or part, under control of the Vendor but not currently in the Vendor's physical possession. The Vendor shall not enter into any agreement with a Subcontractor, consultant, or supplier, in connection with the Contract, that does not contain a right to audit clause in favor of the Owner. The Vendor shall assist the Owner in obtaining access to past and present Subcontractor, consultant, and supplier amendment/change order files (including detailed documentation covering negotiated settlements), accounts, computer records, documents, correspondence, and any other books and records in the possession of Subcontractors, consultants and suppliers pertaining to the Contract, and, if appropriate, enforce the right-to-audit provisions of such agreements.
- D. The Vendor shall assist the Owner in obtaining access to, interviews with, and information from all former and current persons employed and/or retained by the Vendor, for purposes of the Contract.
- E. The Vendor shall require each Subcontractor to include in all agreements that the Subcontractor may hereinafter enter into with any and all Subcontractor, consultants, and suppliers, in connection with the agreement, a right-to-audit clause in favor of the Owner conferring rights and powers of the type outlined in this Purchasing General Conditions Section 15.03. The Vendor shall not enter into any Subcontract with a Subcontractor in connection with the Contract that does not contain such a provision. The Vendor shall not make any payments to a Subcontractor, consultant, or supplier from whom the Vendor has failed to obtain and supply to the Owner complete, accurate, and truthful information in compliance with a request from the Owner to the Vendor.
- F. Any violation of the provisions of this Purchasing General Conditions Article 15 shall justify termination of this agreement and may result in the Owner's rejection of the Vendor's bids or proposals for future contracts and the deduction of the Owner's cost of an audit from the agreement amount.

#### **Section 15.04 - Disclosure of Criminal Investigation**

- A. The Vendor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Vendor, or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), are subpoenaed or questioned in connection with any business-related criminal investigation, whether or not the owner, partner, director, officer or employee is, or is believed to be, the subject or target of such investigation, or is notified or otherwise learns that any owner, partner, director, officer or employee of the Vendor or its affiliated companies is under investigation for an alleged business-related violation of criminal law, or in the event that any premises or records of the Vendor are searched pursuant to a search warrant seeking evidence of a crime or

crimes, unless otherwise precluded by law enforcement authorities.

- B. The Vendor shall immediately notify the Owner in the event that any owner, partner, director, officer or employee of the Vendor or its affiliated companies as identified in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2), the firm itself, or one of its affiliated companies is indicted or charged in an accusatory instrument for any business-related violation of local, state or federal criminal law, unless otherwise precluded by law enforcement authorities.
- C. In the event that any owner, partner, director, officer, or employee of the Vendor is indicted or charged in an accusatory instrument for any business-related violation of local, state, or federal criminal law relating to this Contract or any other Dormitory Authority contract, the Owner may require the Vendor to remove said owner, partner, director, officer, or employee from any direct involvement in the affairs of the Vendor as it relates to this agreement and all other Dormitory Authority contracts until the criminal matter is resolved. In the event that any owner, partner, director, officer, or employee of the Vendor is convicted of a business-related violation of local, state, or federal criminal law, the Owner may require the Vendor to permanently remove said individual from any direct involvement in the affairs of this Contract and all other Dormitory Authority contracts.
- D. In the event that the Vendor or any owner, partner, director, officer, or employee of the Vendor is convicted or enters into an agreement as a remedy to the alleged commission of a criminal act of a business-related violation of local, state, or federal criminal law or regulatory violation, the Owner may schedule a hearing with the Vendor to determine the Vendor's responsibility to continue work under this Contract and other Dormitory Authority contracts. Following this hearing, the Owner may, at its sole discretion, take one or more of the following actions:
  - 1. Terminate this Contract.
  - 2. Require the Vendor, at its own expense, to hire an independent private-sector inspector general to monitor its activities, institute procedures and conduct internal inquiries, in a manner prescribed by the Owner.
  - 3. Increase retainage to an amount not to exceed ten percent (10%).
  - 4. Take any other remedial action deemed appropriate.

#### **Section 15.05 - Anti-Riot Provisions**

- A. The Vendor agrees that no part of the agreement funds shall be used to make payments, give assistance, or supply services, in any form, to any individual convicted in any federal, state, or local court of competent jurisdiction for inciting, promoting, or carrying on a riot, or engaging in any group activity resulting in material damage to property or injury to persons found to be in violation of federal, state or local laws designed to protect persons or property.
- B. The Vendor and each Subcontractor shall notify their employees of all rules and regulations adopted pursuant to Article 129-A of the NYS Education Law. The Vendor shall post notices containing the text of the aforementioned rules and regulations at the Site.

#### **Section 15.06 - Ethical Conduct**

- A. Officers and employees of the Owner are bound by Sections 73, 73-a and 74 of the NYS Public Officers Law. In addition, no officer, employee, architect, attorney, engineer, inspector, or consultant of or for the Owner authorized on behalf of the Owner to exercise any legislative, executive, administrative,

supervisory, or other similar functions in connection with the Contract or the Work, shall become personally interested, directly or indirectly, in the Contract, material supply contract, subcontract, insurance contract, or any other contract pertaining to the Work.

- B. Section 73(5) of the NYS Public Officers Law expressly prohibits the Vendor, or its agents, from directly or indirectly offering or giving any gift having more than nominal value to an employee of the Owner under circumstances in which it could be reasonably inferred the gift was intended to influence the employee in the performance of their official duties or was intended as a reward for the employee's official action.
  - 1. In addition to the prohibition of Section 73(5) of the NYS Public Officers Law, the Dormitory Authority has a "zero tolerance" policy with respect to the solicitation, acceptance, or receipt of gifts from disqualified sources. Therefore, the Vendor and its agents shall refrain from offering or giving anything of value to an employee of the Owner. Employees of the Owner may not solicit any gift, gratuity, stipend, or thing of value from the Vendor or its agents. Violations of these gift provisions may be grounds for immediate Contract termination and/or referral for civil action or criminal prosecution.
- C. To promote a working relationship with the Owner based on ethical business practices, the Vendor is expected to:
  - 1. Furnish all goods, materials and services to the Owner as contractually required and specified.
  - 2. Submit complete and accurate reports to the Owner and its representatives as required.
  - 3. Not seek, solicit, demand or accept any information, verbal or written, from the Owner or its representatives that provides an unfair advantage over a competitor.
  - 4. Not engage in any activity or course of conduct that restricts open and fair competition on Owner-related projects and transactions.
  - 5. Not engage in any course of conduct with Owner employees or its representatives that constitutes a conflict of interest, in fact or in appearance.
  - 6. Not offer or give any unlawful gifts or gratuities, or engage in bribery or other criminal activity.
- D. The Owner encourages the Vendor to advance and support ethical business conduct and practices among its directors, officers, and employees, preferably through the adoption of corporate ethics awareness training programs and written codes of conduct.
- E. Although the Vendor may employ relatives of Owner employees, the Owner shall be made aware of such circumstances as soon as possible, preferably in writing, to ensure a conflict of interest situation does not arise. The Owner reserves the right to request that the Vendor modify the work assignment of a relative of an Owner employee where a conflict of interest, or the appearance thereof, is deemed to exist.
- F. The Vendor may hire former employees of the Owner. However, as a general rule, former employees of the Owner may neither appear nor practice before the Owner, nor receive compensation for services rendered on a matter before the Owner, for a period of two years following their separation from service with the Owner. In addition, former employees of the Owner are subject to a "lifetime bar" from appearing before the Owner or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the

Owner.

- G. The Vendor agrees to notify the Owner's Office of Internal Affairs at 518-257-3193 of any activity by an employee of the Owner that is inconsistent with the contents of this Purchasing General Conditions Section 15.06.
- H. Any violation of this Purchasing General Conditions Section 15.06 shall justify termination of this Contract and may result in Owner's rejection of the Vendor's bids or proposals for future agreements.

**Section 15.07 - Continuing Integrity**

- A. The Vendor shall, at all times during the Contract term, remain responsive and responsible. The Vendor shall also monitor all Subcontractors for responsiveness and responsibility at all times during the Contract term. The Vendor agrees, if requested by the President of Owner or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Vendor shall immediately notify Owner of any material or adverse information pertaining to the Vendor or any Subcontractor, regardless of tier.
- B. The President of Owner or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls in to question the responsibility of Vendor. In the event of such suspension, Vendor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, Vendor shall comply with the terms of the suspension order. Contract activity may resume at such time as the President of Owner or his or her designee issues a written notice authorizing a resumption of performance under the Contract.
- C. Notwithstanding any other provision of this Contract, upon written notice to Vendor, and a reasonable opportunity to be heard with the appropriate Owner officials or staff, the Contract may be terminated by the President of Owner or his or her designee at Vendor's expense where Vendor is determined by the President of Owner or his or her designee to be non-responsible. In such event, the President of Owner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for the breach.

**Section 15.08 - Iran Divestment**

- A. By entering into this Contract, Vendor certifies, under the penalties of perjury, that Vendor is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law. Vendor further certifies that Vendor will not utilize on this Contract any subcontractor that is identified on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the NYS State Finance Law.
- B. During this Contract, should Owner receive information that a person (as defined in NYS State Finance Law §165-a) is in violation of the above-referenced certifications, Owner will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then Owner shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Vendor in default.

**ARTICLE 16 -- 2005 PROCUREMENT LOBBYING LAW**

### **Section 16.01 - Procurement Lobbying Law**

Bidders shall affirm their understanding of and agree to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), certify their compliance with NYS State Finance Law § 139-k (5), disclose prior non-responsibility determinations under NYS State Finance Law § 139-j, and shall certify that the information they provide with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate. Vendor hereby reaffirms its understanding of an agreement to comply with NYS State Finance Law § 139-j (3) and § 139-j (6) (b), re-certifies its compliance with NYS State Finance Law § 139-k (5) and recertifies that the information it provided with respect to NYS State Finance Law § 139-j and § 139-k is complete, true, and accurate.

### **Section 16.02 - Vendor's Certifications**

For any contract \$15,000 or more each Vendor shall submit, with its bid, on the form provided herewith, the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k. The information contained in the *2005 Procurement Lobbying Law – Certification*, pursuant to NYS State Finance Law § 139-j and § 139-k will serve as an informational resource to aid the Owner in making an award determination.

### **Section 16.03 - Termination Provisions**

The Owner reserves the right to terminate this Contract in the event it is found that the certification filed by the Vendor in accordance with NYS State Finance Law § 139-j and § 139-k, as such may be amended or modified, was intentionally false or intentionally incomplete. Upon such finding, the Owner may exercise its right pursuant to Purchasing General Conditions Section 11.01 – Termination for Cause.

## **ARTICLE 17 -- EXECUTIVE ORDER No. 125**

### **Section 17.01 - Determination of Vendor Responsibility**

In order to assist the Owner in determining the responsibility and reliability of the lowest bidder for the Contract and to effectuate the directives of Executive Order No. 125, dated May 22, 1989, (9 NYCRR §4.125) the Council of Contracting Agencies has adopted procedures to collect and exchange relevant information among contracting agencies.

### **Section 17.02 - NYS Vendor Responsibility Questionnaire**

- A. For any Contract valued at \$10,000 or more, the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Vendor or for any Subcontractor shall be submitted as requested by the Owner. Owner may request an updated NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) for the Vendor or for any Subcontractor as often as the Owner, in its sole and exclusive discretion, deems necessary to carry out the Owner's duties and responsibilities under this Contract.
- B. The information contained in the NYS Vendor Responsibility Questionnaire For Profit Construction (CCA-2) will serve as an informational resource to aid the Owner in making an award determination and in making other determinations for this Contract.

## **ARTICLE 18 -- OPPORTUNITY PROGRAMS**

### **Section 18.01 - General Provisions**

- A. The Dormitory Authority is required to implement the provisions of NYS Executive Law Article 15-A and Parts 140 through 145 of Title 5 of the NYCRR for all State contracts (as defined in such statute and regulations) with a value in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing.
- B. The Vendor agrees, in addition to any other nondiscrimination provision of the agreement and at no additional cost to the Owner, to fully comply and cooperate with the Owner in the implementation of NYS Executive Law ARTICLE 15-A, PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS, and the regulations promulgated thereunder. These requirements include: equal employment opportunities for minority group members and women (EEO), and contracting opportunities for NYS certified minority and women-owned business enterprises (MWBES). The Vendor's demonstration of good faith efforts pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of the nondiscrimination provisions required by NYS Executive Law Article 15 (the Human Rights Law) and other applicable federal, state and local laws.
- C. Failure to comply with the requirements in this Purchasing General Conditions Article 18 may result in a finding of non-responsiveness, non-responsibility, breach of contract or any combination of the foregoing leading to the assessment of liquidated damages pursuant to Purchasing General Conditions Section 18.06 and other remedies available to the Owner pursuant to the Contract and applicable law.

**Section 18.02 - Equal Employment Opportunity (EEO)**

- A. The provisions of NYS Executive Law Article 15-A, and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.
- B. Upon Owner's request, the Vendor shall:
  - 1. Undertake or continue, and ensure each Subcontractor shall undertake or continue, existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
  - 2. Submit an EEO policy statement to the Owner.
  - 3. Adopt a model EEO policy statement and require each Subcontractor to adopt a model EEO policy statement if the Vendor or Subcontractor does not have an existing EEO policy statement, and if the Owner requires the Vendor or Subcontractor to adopt a model EEO policy statement.
  - 4. Have a Vendor's EEO policy statement that shall include the following language:
    - a. The Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.



- b. The Vendor shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
  - c. The Vendor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Vendor's obligations herein.
- C. The Vendor shall include the provisions of paragraphs a. through c. of this Purchasing General Conditions Section 18.02 (B) (4) and Subdivision (D) of this Purchasing General Conditions Section 18.02, which provides for relevant provisions of the Human Rights Law, in every Subcontract in such a manner that the requirements of these provisions will be binding upon each Subcontractor as to Work in connection with the Contract.
- D. The Vendor shall comply with the provisions of the NYS Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Vendor and each Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the NYS Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Section 18.03 - Opportunities for Minority and Women-Owned Business Enterprises (MWBE)**

- A. The Owner may have established goals for the participation in this Contract of NYS certified minority-owned business enterprises (“MBE”) and NYS certified women-owned business enterprises (“WBE” and collectively with MBEs, “MWBE”). The goals (collectively, MWBE Contract Goals) are set forth in the Notice and Information for Bidders Section 8.0 – Opportunity Programs Requirements.
- B. Where the Owner has set forth MWBE Contract Goals, the Vendor represents and warrants that, as a condition for award of the Contract, the Vendor will create, and comply with, a plan to achieve the MWBE Contract Goals established in the Purchase Order Documents. In addition, or alternatively, Vendor may have submitted a request for a waiver. Where the Owner has set forth MWBE Contract Goals, prior to award of the Contract the Vendor shall submit its plan to meet MWBE Contract Goals to the Owner for review and approval or rejection.
- C. Vendor agrees to adhere to plan to meet MWBE Contract Goals in the performance of the Contract. Vendor shall not change the plan without the prior written approval of the Owner. Vendor further agrees that failure to adhere to the plan to meet MWBE Contract Goals shall constitute a material breach of the Contract and upon such breach, the Owner shall be entitled to any remedy provided in the agreement or by law, including but not limited to a finding that the Vendor is non-responsible.
- D. The Vendor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1 may be applied towards the achievement of the applicable MWBE Contract Goal. The portion of a subcontract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the subcontract. The portion of a subcontract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall

be the monetary value for fees, or the markup percentage, charged by the MWBE. The Owner will audit the Vendor's efforts to achieve the MWBE Contract Goals through the NYSCS.

#### **Section 18.04 - Good Faith Efforts**

- A. The Vendor shall document good faith efforts pursuant to 5 NYCRR § 142.5 to provide meaningful participation by MWBEs as Subcontractor (which includes material suppliers, other vendors, and others; see definition of Subcontractor in Purchasing General Conditions Article 1 - Definitions) in the performance of the agreement, to comply with the requirements of the agreement and to enable the Owner to determine compliance with the provisions of this Purchasing General Conditions Article 18. Guidelines for documentation of good faith efforts are available on the Dormitory Authority's website.
- B. If the Vendor fails to adequately document good faith efforts, it may result in a finding of non-compliance.

#### **Section 18.05 - Waivers**

- A. If the Vendor, after making good faith efforts satisfactory to the Owner, is unable to achieve the MWBE Contract Goals, the Vendor may submit a request for a waiver in writing to the Owner. The request for a waiver must be supported by evidence of the good faith efforts by the Vendor to achieve the maximum feasible MWBE participation towards the applicable MWBE Contract Goals. If the documentation included with the waiver request is complete, the Owner shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- B. If the Owner, upon review of the Utilization Plan and any other relevant information, determines that the Vendor is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regard to such non-compliance, the Owner may issue a notice of deficiency to the Vendor. The Vendor shall respond to the notice to deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

#### **Section 18.06 - Damages - MWBE Participation**

- A. If the Owner determines that the Vendor is not in compliance with the requirements of this Purchasing General Conditions Article 18 and the Vendor refuses to comply with the requirements of this Purchasing General Conditions Article 18, or if the Vendor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals, then: (1) the Vendor shall be obligated to pay the Owner liquidated damages; or (2) the Vendor shall be obligated to pay the Owner other appropriate damages; or (3) the Owner shall receive one or more other appropriate remedies, unless the Owner elects to pursue its remedies under NYS Executive Law Section 316. If the Owner declines to pursue its remedies under NYS Executive Law Section 316, the Owner may elect to pursue one or more of liquidated damages, other appropriate damages, and one or more other appropriate remedies.
- B. If the Owner decides to assess liquidated damages, the Vendor shall be obligated to pay to the Owner liquidated damages in an amount equal to the difference between all sums identified for payment to MWBEs if the Vendor had achieved the MWBE Contract Goals and all sums actually paid to MWBEs for performance of Work under the Contract. If such liquidated damages have not been withheld by the Owner, the Vendor shall pay such liquidated damages to the Owner within sixty (60) days after they are assessed. provided, however, that if the Vendor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR §142.2, liquidated damages shall be payable only in the event of a determination adverse to the Vendor following the complaint process. The liquidated damages are intended to compensate the Owner only for the Owner's damage if the Owner determines that the Vendor is not in compliance with the requirements

of Purchasing General Conditions Sections 18.03, 18.04 and 18.05 and the Vendor refuses to comply with the requirements of Purchasing General Conditions Sections 18.03, 18.04 and 18.05, or if the Vendor is found to have willfully and intentionally failed to comply with the MWBE Contract Goals. In addition, the Vendor shall be liable to the Owner to the fullest extent permitted by law for:

1. whatever other appropriate damages the Owner may incur; or
2. any other appropriate remedy to which the Owner may be entitled as a result of the Vendor's refusal to comply with the requirements of this Purchasing General Conditions Article 18 outside the requirements of Purchasing General Conditions Sections 18.03, 18.04, 18.05 and the MWBE Contract Goals.

Other appropriate damages include, but are not limited to, the expenses for personnel, supplies and overhead incurred by the Owner to administer and enforce the requirements of this Purchasing General Conditions Article 18 other than the requirements of Purchasing General Conditions Sections 18.03, 18.04, 18.05 and the MWBE Contract Goals.

### **Section 18.07 - Reporting to Owner**

Vendor shall complete the reports and submit as indicated during the life of the Contract:

- A. Upon Owner request, the Vendor shall submit its Utilization Plan in such form as shall be required by the Owner. Vendor shall document its compliance with the Utilization Plan as requested by Owner.
- B. Reports and plans, together with appropriate corroborating documentation as requested by Owner, not submitted upon request of Owner shall be cause for the Owner to withhold payment to the Vendor.
- C. The listed reports and plans are a requirement of the Contract and copies are included in the Purchase Order Documents and/or template forms are also available on the Dormitory Authority's website. The Vendor shall submit to the Owner all executed agreements and purchase orders for ALL approved MWBE/SDVOB subcontractors/suppliers no later than 30 days after award of the Contract.

## **ARTICLE 19- SERVICE-DISABLED VETERAN OWNED BUSINESSES**

### **Section 19.01 - General Provisions**

Article 17-B of the NYS Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran – Owned Businesses (SDVOB), thereby further integrating such businesses into New York State's economy. The Dormitory Authority recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Dormitory Authority contracts.

### **Section 19.02 - Contract with Goals**

- A. If the Notice and Information for Bidders established an overall goal for SDVOB participation in this Contract and Vendor submitted a Utilization Plan covering SDVOB Contract Goals that was accepted by the Dormitory Authority, Vendor shall follow the accepted Utilization Plan. Vendor, by award of the Contract, certified that Vendor shall follow the submitted and accepted Utilization Plan for the performance of SDVOBs on the Contract.
- B. Vendor shall not change the accepted Utilization Plan without the prior written consent of the Dormitory Authority. Any modifications or changes to the accepted Utilization Plan after award of the

Contract to the Vendor shall be reported to the Dormitory Authority on a revised Utilization Plan. As part of a revised Utilization Plan, the Vendor may request a partial or total waiver of the goal for SDVOB participation but such request must be made prior to submission of the final invoice on the Contract. Vendor shall make and shall document good faith efforts to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract. The revised Utilization Plan is not effective unless and until it is accepted by the Dormitory Authority. If the revised Utilization Plan is not accepted by the Dormitory Authority, the Dormitory Authority shall issue a notice of deficiency and the Vendor shall proceed as set forth in paragraph D of this Purchasing General Conditions Section 19.02.

- C. Upon Owner's request, Vendor shall report to the Dormitory Authority SDVOB Vendor Compliance during the Contract documenting progress towards implementing the accepted Utilization Plan and achieving the SDVOB goals for the Contract. This information shall be submitted to the Dormitory Authority in the manner and at the times directed by the Dormitory Authority.
- D. If the Dormitory Authority, upon review of the Utilization Plan and the Monthly SDVOB Vendor Compliance reports determines that the Vendor is failing or refusing to comply with the Contract SDVOB goals and no waiver has been issued with respect to such non-compliance, the Dormitory Authority may issue a notice of deficiency to the Vendor. The Vendor shall respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of the Contract SDVOB goals.
- E. Vendor shall make and shall document its good faith efforts to utilize SDVOBs in the performance of the Contract. Evidence of required good faith efforts includes but is not limited to:
  - 1. Copies of solicitations to SDVOBs and any responses thereto;
  - 2. Explanation of the specific reason(s) each SDVOB responding to a Vendor's solicitation was not selected;
  - 3. Dates of any pre-bid, pre-award or other meetings attended by Vendor, if any, scheduled by the Dormitory Authority with certified SDVOBs which the Dormitory Authority determined were capable of fulfilling the SDVOB goals in the Contract;
  - 4. Information describing the specific steps undertaken to reasonably structure the scope of subcontracts and material orders for the purpose of subcontracting with, or obtaining materials from, SDVOBs;
  - 5. Other information relevant to the waiver request.
- F. Vendor's failure to use SDVOBs in accordance with the accepted Utilization Plan or any accepted revised SDVOB Utilization Plan shall be a material breach of the Contract and upon such breach, the Dormitory Authority shall be entitled to any remedy provided in the Contract, by law or regulation or at law or in equity, including but not limited to a finding the Vendor is non-responsible. If the Dormitory Authority finds the Vendor willfully and intentionally fails to comply with the Contract SDVOB goals, the Vendor shall pay damages to the Dormitory Authority as set forth in 9 NYCRR § 252.2(s).

### **Section 19.03 - Contract with No Goals**

If the Notice and Information for Bidders does not establish an overall goal for SDVOB participation in  
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this Contract, Vendors are still strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract in recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State. The Vendor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs in performance of the Contract as Subcontractors.