

**ORLANDO UTILITIES COMMISSION
GENERAL CONDITIONS FOR MATERIAL**

GC-1. **INDEPENDENT SUPPLIER.** The relation of the Supplier to the Owner shall be that of an independent Supplier.

GC-2. **LAWS AND REGULATIONS.** The Supplier shall observe and comply with all ordinances, laws, codes and regulations, and shall protect and indemnify the Owner and the Owner's officers and agents against any claim or liability arising from or based on any violation of the same.

GC-3. **TAXES AND PERMITS.** The Supplier shall pay all sales, use, and other taxes that are lawfully assessed against the Owner or Supplier in connection with the work included in this contract and shall obtain and pay for all licenses and inspections required for the work.

GC-4. **PATENTS.** Royalties and fees for patents covering materials, articles, apparatus, devices or equipment (as distinguished from processes) used in the work, shall be included in the contract amount. The Supplier will satisfy all demands that may be made any time for such royalties or fees and he shall be liable for any damages or claims for patent infringement. The Supplier shall, at his own expense, defend all suits or proceedings that may be instituted against the Owner for infringement or alleged infringement of any patents involved in the work and, in case of an award of damages, the Supplier shall be solely responsible to pay such award. Final payment to the Supplier by the Owner will not be made while any suit or claim remains unsettled. The Supplier, however, will not be held liable for the defense of any suit or other proceedings, not for the payment of any damages or other costs for the infringement of any patented process required by the contract documents; except if the Supplier has information that the process so required is an infringement of a patent, the Supplier shall be liable for any damages or claims in connection therewith unless he promptly notifies the Owner of such infringement.

GC-5. **CLAIMS FOR LABOR AND MATERIALS.** The Supplier shall indemnify and save harmless the Owner from all claims for labor and materials furnished under this contract. When requested by the Owner, the Supplier shall submit satisfactory evidence that all persons, firms, or corporations who have done work or furnished materials under this contract, for which the Owner may become liable under the laws of the state, have been fully paid or satisfactorily secured. In case such evidence is not furnished or is not satisfactory, an amount will be retained from money due the Supplier which in addition to any other sums that may be retained will be sufficient, in the opinion of the Owner, to meet all claims of the persons, firms, and corporations as aforesaid. Such sum shall be retained until the liabilities as aforesaid are fully discharged or satisfactorily secured.

GC-6. **PAYMENT.** The work will be paid for by the Owner as per the requirements of the Purchase Order.

GC-7. **RELEASE OF LIABILITY.** The acceptance by the Supplier of the last payment shall be a release to the Owner and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, or relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

GC-8. **GOVERNING LAWS.** This contract shall be governed exclusively under the laws of the State of Florida with venue in any court of competent jurisdiction located in Orange County, Florida. The Parties agree that in no event shall the Uniform Law on the Formation of Contracts for the Sale of Goods, based upon the United Nations Convention on Contracts for the International Sale of Goods (CISG) be applicable to this agreement.

GC-9. **TERMINATION.** The Owner shall have the right to cancel or suspend, by written notice, in whole or in part, this Purchase Order. Except in the case of termination for default, allowance will be made for normal and reasonable expenses incurred by the Supplier prior to receipt of notice of cancellation, but the Owner will not be liable for any changes or expenses incurred by the supplier in advance of the normal or reasonable lead time necessary to meet scheduled delivery dates nor for any expenses, charges or liability incurred subsequent to the giving of notice of cancellation. For the purpose of this provision, the Supplier shall conclusively be deemed to have breached the contract in the event the Supplier becomes insolvent or commits an act of bankruptcy.

GC-10. **INSPECTION, ACCEPTANCE OR REJECTION, AND EXPEDITING.** All goods and services shall be subject to the Owner's inspection at any time. The Owner may accept or reject any or all goods and services within a reasonable time after receipt by the Owner. The making or failure to make any inspection of, or payment for or acceptance of the goods and services shall in no way impair the Owner's right to reject or revoke its acceptance of nonconforming goods and services, or to avail itself of any other remedies to which the Owner may be entitled, notwithstanding the Owner's knowledge of the nonconformity, its substantiality or ease of discovery.

GC-11. **WARRANTY.** The Supplier warrants that all the goods and services furnished hereunder shall be produced and furnished in compliance with all applicable federal, state and local laws, orders and regulations. The Owner shall have the benefit of all warranties implied by law, and all express warranties made by the Supplier. Unless otherwise specified herein, the Supplier shall obtain all permits necessary for performance under this Purchase Order.

GC-12. **INFRINGEMENT.** The Supplier shall, at its own expense, hold harmless and defend the Owner against any claim, suit or proceeding brought against the

Owner which is based on a claim, whether rightful or otherwise. That the goods and/or services, or any part thereof, furnished under this Purchase Order, constitutes(s) an infringement of any patent, copyright or trade secret, and the Supplier shall pay all damages, costs, and expenses arising from such claims.

GC-13. PRICE AND PAYMENTS. Unless otherwise specified, the price for goods and services includes all charges for packaging, boxing and crating.

Shipments shall be F.O.B. Destination and shall be routed in accordance with any attached purchasing instructions. In making payments hereunder, the Owner shall be entitled to conclusively presume that payment information furnished by the Supplier, such as name, account number(s) and name of payee is accurate. In no event shall the Owner make a second payment where the first payment is made in accordance with such Supplier furnished information. All payments shall be in U.S. currency.

GC-14. ENTIRE AGREEMENT. This Purchase Order, including these General Conditions, any Specifications, and any additional terms and conditions incorporated into and attached hereto or referenced herein, constitute the sole and entire agreement between the parties. Unless expressly accepted by the Owner in writing, no other terms and conditions in conflict with, or in addition to, those stated herein, shall be binding on the Owner.

GC-15. ACCEPTANCE OF PURCHASE ORDER. The Supplier shall manifest acceptance of this Purchase Order by executing the OUC Purchase Order Acknowledgement form and returning it to the Owner by fax within fifteen (15) days of the Order Date noted on the front of the Purchase Order. Shipment of goods within fifteen (15) days of the Order Date shall constitute acceptance of this Purchase Order and satisfy this requirement..

GC.16 SEVERABILITY. Should any of the provisions of these General Conditions or the Purchase Order, or parts thereof, be held invalid, such provisions, or parts thereof, shall be considered severable and such invalidity shall not affect the remainder of the Conditions or the Purchase Order.

GC 17.0 DISPUTE PROCESS: The procedures specified herein shall be the sole and exclusive procedures for the resolution of general and billing disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified herein.

17.1 General:

17.1.1 The procedures specified herein shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement. The parties will participate in good faith in the procedures specified in this Section.

- 17.1.2 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The parties will take such action, if any, required to effectuate such tolling.
- 17.1.3 In the event of any dispute under this Agreement which cannot be readily resolved, it shall be referred to the appropriate executives of the respective parties to this agreement (hereinafter "Party" or "Parties") for negotiation and resolution as described below.
- 17.1.4 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either party may initiate litigation upon ten (10) days' written notice to the other party; provided, however, that if one party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting party may initiate litigation before expiration of the above period.

17.2 Disputes:

- 17.2.1 Disputes, as defined herein and under the Agreement, include disagreements, claims, counterclaims, matters in question, and differences of opinion between OUC and Supplier, regarding the Work and modifications or changes to the Work. Disputes may involve interpretation of Contract Documents, acceptability of the Work, costs and/or time for performance.
- 17.2.2 Disputes may also involve other subjects mutually agreed by OUC and Supplier to be of concern to the Board.

17.3 Payment Disputes:

- 17.3.1 If a dispute arises between the Supplier and OUC, the dispute shall be submitted to an appropriate panel assembled by the Manager of Purchasing no later than forty-five (45) days after receipt of the disputed payment. OUC shall render a final decision on the disputed payment within sixty (60) days after receipt of the invoice.
- 17.3.2 If the dispute is decided in favor of OUC, interest shall begin to accrue fifteen (15) days after the decision is announced.
- 17.3.3 If the dispute is decided in favor of Supplier, interest shall accrue as of the original date the payment became due.
- 17.3.4 The panel's final decision can be taken as a contract

dispute through the process outlined below.

17.4 Step Negotiations:

17.4.1 Either Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one step above the project personnel who have not previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved by these persons within thirty (30) days of the disputing party's notice, or if the parties fail to meet within ten (10) days, the dispute shall be referred to senior executives of both parties who have authority to settle the dispute and who shall likewise meet to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate mediation as provided hereinafter.

17.4.2 All negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

17.5 Mediation:

17.5.1 If the dispute has not been resolved by negotiation as provided herein, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a mediation proceeding by a request in writing to the other Party. Thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted in accordance with the then current Center for Public Resources ("CPR") Model Procedure for Mediation of Business Dispute or other mutually agreed upon procedures, with the following exceptions:

17.5.1.1 If the Parties have not agreed within thirty (30) days of the request for mediation on the selection of a mediator willing to serve, the CPR, upon the request of either Party, shall appoint a member of the CPR Panel of Neutrals as the mediator; and

17.5.1.2 Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a) a written settlement is reached, or b) the mediator concludes and informs the Parties in writing that further efforts would not be useful, or c) the Parties agree in writing that an impasse has been reached. Neither Party may withdraw before the conclusion of the proceeding.

17.5.2 The Parties regard the aforesaid obligation to mediate as an essential provision of this Agreement and one that is legally binding on them. In case of a violation of such obligation by either Party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

17.6 Litigation:

17.6.1 If the dispute has not been resolved by negotiation or mediation as provided herein within sixty (60) days of the initiation of such mediation procedure, either Party may initiate litigation upon ten (10) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Section, and the other has failed to participate, the requesting Party may initiate litigation before expiration of the above period.

17.6.1.1 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this Section are pending. The Parties will take such action, if any, required to effectuate such tolling.

17.6.1.2 Claims, counterclaim, disputes, and other matters in question between OUC and Supplier that are not resolved will be decided in the Ninth Judicial Circuit, in and for Orange County, Florida, which shall have exclusive jurisdiction and venue over all matters in question between OUC and Supplier.