

Purchase Order Terms and Conditions

The following terms and conditions are non-negotiable for any Purchase Order (“PO”) originating from the Memphis-Shelby County Airport Authority (“Authority”). The submission of a quote or proposal or fulfillment of the PO is a formal acceptance by the Vendor of the Authority’s Purchase Order Terms and Conditions.

1. **GENERAL:** The terms and conditions of this PO shall not be changed by Vendor. If the Authority’s PO, in response to Vendor’s offer, is not acceptable, return it to the Authority’s Procurement Department. Failure to deliver or to comply with any of the terms and conditions of this PO may disqualify the Vendor from future opportunities with Authority.
2. **QUALITY:** All goods or services furnished pursuant to this PO must be as specified, and subject to the approval and inspection of the Authority within a reasonable time after delivery at destination. Variations in goods or services from those specified in this PO must not be made without the prior written approval of the Authority. Goods rejected will be returned at the Vendor’s risk and expense.
3. **QUANTITY/PRICE:** The quantity of goods ordered or the price specified must not be exceeded without the prior written approval of the Authority.
4. **PACKAGING:** Damage to any goods received will result in rejection of the shipment. The goods will not be returned unless Vendor assumes return shipment expenses. Packages must be plainly marked with Vendor’s name and Authority’s PO number.
5. **DELIVERY:** Unless otherwise specified in the Authority’s solicitation, all goods must be shipped F.O.B. Destination, Freight Prepaid and Added or Freight Prepaid and Allowed. Deliveries must be effected within the time stated on the PO. Deliveries shall be made between 7:30 a.m. and 3:00 p.m. Monday through Friday, excluding holidays, unless otherwise agreed upon in writing by the Authority.
6. **PAYMENT:** To ensure timely receipt of payment, clearly reference the PO number on the invoice. Only one PO may be referenced on an invoice, although there may be multiple invoices referencing the same PO number if there are multiple shipments or multiple milestone payments on a PO.
7. **PROPER INVOICE:** For an invoice to be a proper invoice, the requirements shall be as set forth in the PO governing the purchase. No invoice submitted by Vendor, however, shall be considered a proper invoice, unless the invoice is an original invoice, is delivered to the Authority in accordance with the PO, and sets forth the following additional information:
 - The Authority’s PO number;
 - The name of the business organization that is cited in the Authority’s PO;
 - An identifying number to facilitate identification of the invoice;
 - A description of the goods or services or property provided to the Authority;
 - The quantity of the goods, services, or property provided to the Authority referencing the same unit of measure as the Authority’s PO;
 - The unit price of the goods, services, or property provided to the Authority matching the unit price on the Authority’s PO;
 - The extended total price of the goods, services, or property provided to the Authority based on the PO unit(s) of measure;

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- Applicable discounts; and
 - No sales taxes shall be charged. The Authority and its airports are exempt by statute from sales and local taxes. Sales taxes charged will be deducted from invoice.
8. **LEGAL COMPLIANCE:** The PO is subject to all state laws applicable to, and procedures promulgated by, the Authority. It is hereby agreed that the provisions of all resolutions of the Authority relating to Vendors are hereby made a part of the PO.
 9. **CANCELLATION:** Should Vendor fail to fulfill in a timely and proper manner its obligations under the PO, or if it should violate any of the terms of the PO, the Authority shall have the right to immediately cancel the PO. The Authority may cancel the PO at any time, with or without cause, upon thirty (30) days written notice to Vendor. Should funding for the PO be discontinued, the Authority shall have the right to cancel the PO.
 10. **REMEDY:** No waiver of any provision of the PO shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
 11. **ATTORNEY FEES:** In the event either party deems it necessary to take legal action to enforce any provisions of the PO, and the Authority prevails, Vendor hereby agrees to pay all expenses of such action, including the Authority's attorney fees, expert fees and costs at all stages of the legal action.
 12. **ENTIRE CONTRACT:** The PO sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
 13. **GOVERNING LAW:** The validity, construction, and effect of the PO, and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Venue in any action arising under this PO shall be in the state or federal courts in Shelby County, Tennessee.
 14. **SEVERABILITY:** Should any provision of the PO be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of the PO.
 15. **ANTI-TRUST:** Vendor, in determining the prices and/or amounts of the PO, shall not collude with any other person, firm, corporation, or association in arriving at said prices and/or amounts or in any way violate the terms, conditions, and/or spirit of the provisions of 15 U.S.C. 1 through 7 (Sherman Anti-Trust Act).
 16. **INSURANCE:** If services are to be provided on Authority property, under the PO, Vendor is required to provide insurance certificate(s) evidencing coverage for Commercial General Liability of \$1,000,000 per occurrence, \$2,000,000 general aggregate; Automobile insurance of \$1,000,000 combined single limit; statutory Workers' Compensation and Employers Liability insurance of not less than \$500,000 per injury/ disease/aggregate; and Umbrella Liability insurance of not less than \$2,000,000 per occurrence. Vendor and its insurers will waive all rights of subrogation against Authority. All required coverages will be primary and non-contributory to any coverage arranged by the Authority, will contain no insured vs. insured exclusion or provision, and will include a separation of insureds provision. Vendor

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will name Memphis-Shelby County Airport Authority and its commissioners, officers, employees, and agents as additional insured on the Commercial General Liability and Automobile coverages.

17. **GRATUITIES:** The Authority may, by written notice to the Vendor, cancel the PO without liability to Vendor if it is determined by the Authority that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor, or any agent or representative of the Vendor, to any official or employee of the Authority with a view toward securing a PO or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such PO. In the event the PO is cancelled by the Authority pursuant to this provision, the Authority shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Vendor in providing such gratuities.
18. **CONFLICT OF INTEREST:** No part of the total PO amount shall be paid directly or indirectly to any official or employee of the Authority as wages, compensation, or gifts in exchange for acting as official, agent, employee, subcontractor, or consultant to the Vendor in connection with any work contemplated or performed relative to the PO.
19. **SAFETY DATA SHEET (SDS):** If required on product(s) ordered by the Authority, Vendor shall submit the SDS when product(s) are delivered to the Authority.
20. **INDEMNIFICATION:** Vendor agrees to indemnify and hold harmless the Authority and its commissioners, officers, employees, and agents from and against any and all lawsuits, damages and expenses, including court costs, expert fees, and attorney's fees, by reason of any claim and/or liability imposed, claimed, and/or threatened against the Authority and its commissioners, officers, employees, and agents arising out of or in consequence of the PO, to the extent that such bodily injuries, death, and/or property damages are attributable to the acts or omissions of the Vendor and/or Vendor's officers, agents, and/or employees.
21. **IRAN DIVESTMENT ACT:** By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list [of persons engaging in investment activities in Iran] created pursuant to T.C.A. § 12-12-106.
22. **VENDOR ASSURANCES:** By submitting a quote or bid to the Authority, the Vendor asserts that he/she has read, understands and agrees to these terms and conditions and has full authority to submit the written and verbal responses on behalf of the entity for whom they are acting and that the information submitted to the Authority in the response is true, accurate and complete to the fullest extent possible and to the best of his/her knowledge and abilities. The Vendor further certifies:
 1. **No Hidden Parties.** Response is genuine and that no other person, firm, or corporation than the one herein named has any interest herein or in the PO proposed to be taken; that it is made without any connection with any person, firm, or corporation making a response for the same work; and that it is in all respects fair as to each item proposed and to the response as a whole.
 2. **No Collusion in Any Form.** Vendor has not sought by collusion or fraud to obtain any advantage over any other Vendor or over the Authority.

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3. No Inducement to Submit False Bids. Vendor has not directly or indirectly induced or solicited any other Vendor to submit a false or sham bid.
 4. No Inducement to Refrain from Response. Vendor has not induced or solicited any other person, firm, or corporation to refrain from submitting a bid.
 5. No Financial Interest. No Authority employee or member of the Board of Commissioners, Memphis City Council, or Shelby County Commission is directly or indirectly interested herein, or in the furnishing of the service or doing the work to which it relates; or in any portion thereof. Vendor asserts that no Authority employee or member of the Board of Commissioners, Memphis City Council, or Shelby County Commission shall receive or has received any financial benefit arising out of this PO, if awarded, either directly or indirectly. Further, any fees paid to any person or entity by Vendor for assistance in obtaining the PO with the Authority must be fully disclosed to the Authority in writing.
23. **NONDISCRIMINATION IN EMPLOYMENT:** Vendor affirms that by its employment policies, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, color, national origin, age or sex; and it is not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities.
24. **GENERAL CIVIL RIGHTS PROVISIONS (FAA APPENDIX A5.3.1, 6/19/2018):** Vendor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Vendor and subtier vendors from the solicitation period through the completion of the PO. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.
25. **COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS (FAA APPENDIX A6.4.1, 6/19/2018):** During the performance of this PO, the Vendor, for itself, its assignees, and successors in interest, agrees as follows:
1. **Compliance with Regulations:** The Vendor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this PO.
 2. **Nondiscrimination:** The Vendor, with regard to the work performed by it during the PO, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subvendors, including procurements of materials and leases of equipment. The Vendor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the PO covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Vendor for work to be performed under a PO, including procurements of materials, or leases of equipment, each potential subvendor or supplier will be notified by the Vendor of the Vendor's obligations under this PO and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

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4. **Information and Reports:** The Vendor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a Vendor is in the exclusive possession of another who fails or refuses to furnish the information, the Vendor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
 5. **Sanctions for Noncompliance:** In the event of a Vendor's noncompliance with the nondiscrimination provisions of this PO, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Vendor under the PO until the Vendor complies; and/or
 - b. Cancelling, terminating, or suspending a PO, in whole or in part.
 6. **Incorporation of Provisions:** The Vendor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Vendor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Vendor becomes involved in, or is threatened with litigation by a subvendor, or supplier because of such direction, the Vendor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the Vendor may request the United States to enter into the litigation to protect the interests of the United States.
26. **TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES (FAA APPENDIX A6.4.5, 6/19/2018):** During the performance of this PO, the Vendor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Vendor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs

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or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

27. FEDERAL FAIR LABOR STANDARDS ACT: All purchase orders, contracts, and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Vendor has full responsibility to monitor compliance to the referenced statute or regulation. The Vendor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

28. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: All purchase orders, contracts, and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Vendor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Vendor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Vendor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.