

# TRANSIT AUTHORITY OF RIVER CITY (TARC)

## PURCHASE ORDER TERMS AND CONDITIONS

### DEFINITIONS

- “BUYER” OR “TARC” means the Transit Authority of River City and/or its officially assigned representative.
- “CONSTRUCTION” means the direct engagement of time, effort and materials by the SELLER to make, build or construct an identifiable structure.
- “PURCHASE ORDER” means an offer from TARC to SELLER to buy products, supplies, services, or construction.
- “SELLER” The person, firm, corporation, or legal entity that provides supplies, services, or construction pursuant to a purchase order issued by TARC.
- “SERVICES” means the direct engagement of time and effort by the SELLER to perform identifiable tasks.
- “SUPPLIES” OR “PRODUCTS” means components, sub assemblies intermediate assemblies, assemblies or end products.

### OFFER/ACCEPTANCE

This purchase order constitutes an offer by TARC and upon acceptance of all terms and conditions herein by the SELLER becomes a binding contract.

### ACKNOWLEDGEMENT OF DELIVERY

SELLER must state in writing the delivery schedule for such product(s) and/or service(s) on the purchase order and return via fax (facsimile) transmission to the Purchasing Department of TARC if SELLER will not make delivery within the stated lead-time.

### ACTS BEYOND THE CONTROL OF PARTIES

Acts of nature (floods, tornadoes, etc.), fires, strikes, lockouts, epidemics, accidents, shortages, or transportation or any other causes beyond the reasonable control of the parties which prevent SELLER from delivering, or TARC receiving any goods and services covered by this purchase order shall operate to suspend deliveries during the period required to remove such cause or causes, subject, however to TARC's right to terminate for convenience.

### ASSIGNMENT

The purchase order or any interest hereunder shall not assign or transfer any interest therein without the prior written consent of TARC.

### DISCREPANCIES AND OMISSIONS

Should a SELLER find discrepancies in, or omissions from the specifications of the purchase order, or should he/she be in doubt as to their meanings, he/she shall, at once, notify TARC in writing. TARC shall send written instructions to the SELLER. TARC will not be responsible for any oral instructions.

### DISPUTES.

Any dispute arising under this purchase order, which is not disposed by agreement, shall be decided by TARC, which shall reduce its decision to writing and furnish a copy of same to SELLER. TARC's obligation to provide a written decision shall be limited to its providing a written statement setting forth its conclusion; TARC shall not be required to state its reasoning, although TARC may choose to do so. Pending any administrative decision or litigation concerning a dispute arising under this purchase order, SELLER shall proceed diligently with its performance under this contract unless otherwise directed by TARC.

### EQUAL OPPORTUNITY

The SELLER agrees that in the performance of this agreement with TARC, it will not discriminate against any worker because of race, creed, color, religion, national origin, disability, or sex and will comply with all applicable Federal, State, or local laws and regulations prohibiting such discrimination.

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- A. The aforesaid provision shall include, but not be limited to the following:  
Employment and upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff, or termination, rate of pay or other forms of compensation, selection for training including apprenticeship.
- B. The SELLER agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the above nondiscrimination clause.

### GOVERNING LAW

The rights, duties, obligations, and remedies, of the parties, hereto shall be governed by the laws of the Commonwealth of Kentucky. Venue for any action shall lie in the County of Jefferson, Kentucky. If any term or condition of the purchase order is found to be invalid or unenforceable, the remaining terms and conditions shall not be impaired.

### FTA REQUIRED CONTRACT CLAUSES

TARC receives federal funding from the FTA, and FTA regulations as well as other rules apply to TARC procurements and purchase orders funded in whole or in part with federal funds. For federally funded purchases, as set forth in the FTA Master Agreement, certain standard federally required clauses may apply, in addition to the terms and conditions set forth herein. The full text of all FTA required clauses will be provided to the Seller upon request. All FTA required clauses, regulations, and procurement guidelines are available online at [www.fta.dot.gov](http://www.fta.dot.gov). See FTA Circular 4220.1F (subject to updates).

### HOLD HARMLESS

SELLER shall indemnify and hold harmless TARC, its Board members, its officers, and employees from any and all liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by negligence, recklessness or intentional wrongful misconduct of the SELLER and persons employed or utilized by the SELLER in the performance of this contract.

### INDUSTRIAL LAWS AND BENEFITS

Seller's relationship to TARC in the performance of the purchase order is that of an Independent Contractor. Neither the SELLER nor any of the persons furnishing products or performing work or services which are required by the purchase order are employees of TARC within the meaning of or the application of any Federal or State Unemployment Insurance Law or Social Security Law or any workman's Compensation Industrial Accident Law or other Industrial or LABOR law. The SELLER shall, at its own expense, comply with such laws and assume all liabilities or obligations imposed by any one or more of such laws and regulations thereunder with respect to the purchase order. SELLER warrants and agrees that it has complied and will comply with the Fair Labor Standards Act, Social Security, Workman Compensation Laws and all other applicable Federal laws as well as Federal Transportation Administration (FTA) guidelines.

### INSPECTION

All products furnished are subject to inspection at the point of delivery by a representative of TARC. SELLER shall bear all risk of loss or damage to supplies rejected by TARC, except for loss, destruction or other damage to such rejected products resulting from the gross negligence of officers, agents, or employees of TARC acting within the scope of their employment.

### INTEREST OF TARC EMPLOYEES OR PUBLIC OFFICIALS

No member, officer, employee of TARC, or another local public body member or delegate to the Congress of the United States of America, during their tenure, shall have any interest, direct or indirect, in this purchase order or any benefit or proceeds arising therefrom.

### LIABILITY

TARC's maximum liability to SELLER shall not exceed the purchase price of the purchase order.

### MANUFACTURER SPECIFICATIONS

TARC requests SELLER to supply an original (if available) or copy of the manufacturer's product specifications including wiring schematics, diagrams, drawings, etc. when available and where feasible.

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### MSDS SHEETS - SAFETY ISSUE

The Seller shall supply Material Safety Data Sheets (MSDS) for any/all materials having a registered MSDS sheet to TARC and/or its designated representatives for file upon delivery unless already on file or if requested prior to delivery. The Seller shall inform TARC and/or its designated representatives immediately of any known safety issues of any product concerning transportation, handling, storage, usage, or other facilitation of product.

### NEW PARTS ONLY

All parts shall be new and in no case will used, (except for testing) reconditioned, or obsolete parts be accepted. Experimental and unproven parts or materials will not be accepted by TARC.

### NON-PERFORMANCE

In the event the SELLER fails to deliver part(s) as stated in the purchase order in a timely fashion, TARC reserves the right to purchase the part(s) from another source and deduct any and/or all additional costs incurred above and beyond those agreed upon in the purchase order from any charges that may be due or subsequently come due from the SELLER.

### PACKAGING

SELLER shall pack, mark, and ship all products in accordance with the requirements of the purchase order so as to be in compliance with transportation regulations and good commercial practices for protection and shipment and shall secure the most advantageous transportation service and rates consistent therewith. No separate or additional charges are payable by TARC for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in the purchase order

### PACKING LIST

All deliveries to TARC must be accompanied by an individual packing list for each purchase order upon which a delivery is being made. Deliveries drop shipped from a third party shall adhere to the same requirement. Under no circumstances should one packing slip reference more than one purchase order. Packing lists must contain the following information:

- A. purchase order number
- B. packing list number
- C. vendor part number
- D. manufacturer part number
- E. quantity ordered
- F. quantity shipped
- G. price if different from that which is referenced on the purchase order

### INVOICE AND PAYMENT TERMS

A separate invoice shall be issued to TARC for each shipment made by SELLER. Unless otherwise specified in the purchase order, an invoice shall not be issued prior to shipment of items, and payment will not be made prior to receipt of items and correct invoice. Unless stated otherwise on purchase order, TARC's payment terms are net 30 days.

### PRICE CHANGE

The SELLER shall be required to submit in writing any price increase(s) or decrease(s) prior to any delivery (ies) under the new price(s). TARC reserves the right to accept the new price(s) or cancel the purchase order(s).

### TAXES, DUTIES, IMPORT FEES

TARC is a tax-exempt institution and is free from all state and federal taxes. No taxes, duties, tariffs, import fees shall be included in the Seller's charges to TARC. However, the Seller may be liable for payment of sales and use taxes, duties, tariffs, import fees on materials which he purchases for fulfilling this contract.

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### TERMINATION FOR CONVENIENCE

The Director of TARC's Purchasing Department, may by written notice, terminate in whole or part this purchase order when in the best interests of TARC. TARC shall be liable only for payment for products, services, and construction delivered prior to the effective date of termination and accepted by TARC.

### TITLE AND RISK OF LOSS

Title to and all risk of loss or damage to products to be delivered hereunder shall remain on SELLER until such products are delivered to TARC at the destination specified on the purchase order. All items to be delivered hereunder and all property to be returned to TARC shall be free and clear of any and all liens and encumbrances whatsoever. Passing of title upon delivery shall not constitute acceptance of items by TARC.

### WAIVER

The failure of either TARC or SELLER to assert a right hereunder or to insist upon compliance with any term or condition shall not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party.

### WARRANTY (IES)

SELLER shall furnish his standard warranty (ies) both on workmanship and materials as applied to these product(s) and service(s) parts, along with the method of adjustment. SELLER shall assume responsibility and warranty for suitability and against defects in workmanship, materials, and design for parts, materials, and accessories used in these parts, whether the same are made by SELLER or purchased from an outside source.