

Santa Cruz Metropolitan Transit District Purchase Order Terms and Conditions

In consideration of the issuance of the general purchase order ("Order") by the Santa Cruz Metropolitan Transit District (hereinafter "Santa Cruz METRO") and acceptance thereof by the Vendor, the parties agree to the following terms. If this Order is issued pursuant to a separate contract, the terms of that contract will control to the extent of any conflicts.

Vendor shall furnish to Santa Cruz METRO the labor, materials, equipment supplies or services described in the Order on the reverse side of this form at the time and place indicated.

1. **ACCEPTANCE:** Acceptance of this Order is an acceptance of all terms and conditions contained herein and all specifications, drawings, and additional terms and conditions referred to herein and/or attached hereto. **READ them carefully.** No changes or substitutions will be effective without written approval from Santa Cruz METRO. This Order and any referenced attachments will be a binding contract between Santa Cruz METRO and the Vendor upon acceptance by the Vendor either in writing or by shipment of all or any portion of the material, or the commencement of performance of any portion of the services provided for herein. Santa Cruz METRO will deem this Order to be accepted by Vendor if this Order is not returned within ten (10) business days of Vendor's receipt of the Order.
2. **WARRANTY AND QUALITY INSPECTION:** Vendor warrants that all articles, materials, and work furnished shall be of good quality and free from all patent and latent defects in design, materials and workmanship, shall conform to drawings and/or specifications and manufacturer's warranty, if any, shall be of merchantable quality and fit for the purposes intended by Santa Cruz METRO, and shall be at all times subject to Santa Cruz METRO's inspection; but neither Santa Cruz METRO's inspection nor failure to inspect shall relieve Vendor of any obligation hereunder. If in Santa Cruz METRO's opinion, any article, material, or work fails to conform to specifications or is otherwise defective, Vendor shall promptly replace same at Vendor's expense. No acceptance or payment by Santa Cruz METRO shall constitute a waiver of the forgoing and nothing herein shall exclude or limit any other warranties, either express or implied by law.
3. **PAYMENT:** Santa Cruz METRO shall pay the agreed-upon price, or prices, which shall be specified in the Order, upon delivery of the requested labor, materials, equipment, supplies or services and acceptance thereof by Santa Cruz METRO, or upon completion of the work to be performed as specified in the Order and acceptance thereof by Santa Cruz METRO. Payments that are due shall be paid within 30 days after receipt of an undisputed and properly submitted invoice. Invoices shall reflect Santa Cruz METRO's purchase order number. For services, Santa Cruz METRO shall be invoiced monthly. For goods, each order and shipment shall be invoiced separately.
4. **COMPLIANCE:** Vendor shall comply and has complied with all California, federal and local laws, regulations (including Federal Transit Administration non-construction contract clauses available upon request from Santa Cruz METRO) and orders applicable to the purchase, manufacture, processing and delivery of the labor, materials, equipment, supplies or services described in the Order on the reverse side of this form.
5. **ALTERNATIVE TERMS AND CONDITIONS:** No charge will be accepted for packing, boxing, or cartage, except as specified on the face of this Order. **Freight collect shipments will not be accepted.** Merchandise will not be accepted if payment is to be made at the time of delivery. The cost of inspection on deliveries which do not meet specifications will be charged against the account of the Vendor.
6. **PACKING MATERIALS: POLYSTYRENE PELLETS PROHIBITED.** Due to environmental and solid waste considerations, Santa Cruz METRO has directed that polystyrene pellets shall not be accepted as packing. **DO NOT** ship your products using this material. Alternate vendors will be sought to replace vendors violating this policy.
7. **TITLE AND RISK OF LOSS:** Vendor warrants that any article, material or work delivered or performed pursuant to this Order is free and clear of all liens and encumbrances whatsoever and that Vendor has good marketable title to the same. Vendor further agrees to hold Santa Cruz METRO and its officers and employees

free and harmless from any and all claims to said article, material or work. Title to the materials and supplies purchased hereunder shall pass to Santa Cruz METRO upon delivery at the location specified by Santa Cruz METRO. Passing of title upon such delivery will not constitute acceptance of the materials and supplies by Santa Cruz METRO.

8. **ASSIGNMENT AND SUBCONTRACTING:** Neither this Order nor any interest in or claim to this Order may be assigned or subcontracted by the Vendor, either voluntarily or by operation of law, without prior written approval of Santa Cruz METRO.
9. **DELIVERY/TIME FOR PERFORMANCE:** Vendor shall perform or deliver the labor, materials, equipment, supplies or services within the time and in the manner specified in the general purchase order. Failure to comply with stated terms and conditions shall be cause for, and may result in, cancellation. Timely performance and deliveries are essential to this Order. If Santa Cruz METRO agrees to accept deliveries after the specified delivery date, Santa Cruz METRO shall have the right to direct the Vendor to make shipment to the delivery point set forth in this Order by the most expeditious means, and the total cost of such expedited shipment and handling shall be borne by the Vendor. Acceptance of late deliveries shall not be deemed a waiver of Santa Cruz METRO's right to hold the Vendor liable for any loss or damage resulting therefrom. Santa Cruz METRO further reserves the right to refuse deliveries made in advance of the delivery date.
10. **TERMINATION:** Santa Cruz METRO may terminate this Order in whole or in part at any time prior to acceptance, and for any reason or no reason, upon written notice to the Vendor. If Vendor fails, after reasonable notice by Santa Cruz METRO, to cure a breach of these terms and conditions or a deficiency in performance or lack of progress, Santa Cruz METRO may cancel this Order upon written notice to Vendor. Santa Cruz METRO reserves all rights and remedies under law whether or not it cancels this Order, including, but not limited to, the payment by Vendor of any expenses incurred by Santa Cruz METRO in reprocurring from another source the same or similar goods or services that the Vendor failed to furnish satisfactorily. Santa Cruz METRO will not be liable for the Vendor's actual or projected lost profits, or incidental, consequential or punitive damages.
11. Upon receipt of notice of termination, Vendor shall immediately discontinue performance and shall comply with Santa Cruz METRO's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this general purchase order. In the event of a termination for Santa Cruz METRO's convenience, and provided that Vendor is not otherwise in default, Vendor shall be paid an amount in settlement to be mutually agreed upon by the parties which shall cover Vendor's reasonable costs of performance incurred prior to termination in connection with the items for which this Order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for such items. Vendor shall advise Santa Cruz METRO, in writing, of Vendor's claim, if any, for costs arising from a termination for convenience within ten (10) days after receipt of the notice of termination.
12. **INSPECTION AND ACCEPTANCE:** All items are subject to final inspection and acceptance after delivery to Santa Cruz METRO. If any items are defective in material or workmanship or otherwise not in conformity with requirements of this Order, Santa Cruz METRO shall have the right to require Vendor to correct or replace them. Vendor shall be required to pay transportation/shipping charges to remove rejected materials or products. Final acceptance shall be conclusive except with respect to latent defects, fraud or such gross mistakes as amount to fraud, or with respect to Santa Cruz METRO's rights under the "warranty" clause or as otherwise provided by law.
13. **RECORDS:** Vendor shall maintain all data and records relating to its performance of this Order for 4 years after Santa Cruz METRO makes final payment under this Order and shall permit Santa Cruz METRO to inspect, audit and copy these records.
14. **TAXES/CHARGES:** Santa Cruz METRO is exempt from federal taxes and federal transportation taxes. If prices quoted on this Order include an additional charge for delivery from point of origin, Vendor shall invoice such delivery charge separately and such charge shall not be subject to California State sales/use tax.
15. **VENDOR'S STATUS:** Vendor is an independent contractor. Neither Vendor nor any party contracting with Vendor or employed by Vendor shall be deemed an agent or employee of Santa Cruz METRO.

16. **INDEMNIFICATION:** To the fullest extent allowed by law, Vendor will indemnify, keep and save harmless Santa Cruz METRO, its directors, officers, employees and agents from and against any and all suits, claims, or actions arising out of any of the following: (1) any injury to or death of any person or any damage to property that may occur, or that may be alleged to have occurred, arising from Vendor's performance of this Order, caused by a negligent act or omission or willful misconduct of Vendor or its employees, subcontractors or agents and not caused by Santa Cruz METRO's sole negligence; (2) any allegation that materials or services provided by Vendor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual property or proprietary right of any third party. Vendor will defend any and all such actions, suits or claims, with counsel acceptable to Santa Cruz METRO in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against Santa Cruz METRO, or any of the other individuals enumerated above in any such action, Vendor will, at its expense, satisfy and discharge the same. This indemnification shall survive termination, cancellation or expiration of this Order.
17. **INSURANCE:** Vendor shall maintain worker's compensation insurance in accordance with state requirements. Vendor shall also maintain commercial general liability insurance, including automobile liability insurance, in the amount of at least \$1,000,000 per claim. Santa Cruz METRO reserves the right to require submittal of a certificate of insurance naming Santa Cruz METRO as additional insured. In addition, Vendor shall maintain professional liability insurance, if applicable.
18. **CHANGES:** Santa Cruz METRO may change this Order at any time prior to acceptance, and for any reason or no reason, upon written notice to Vendor. Santa Cruz METRO will deem a change of this Order to be accepted by Vendor if Vendor does not object in writing within ten (10) business days of receipt of the notice from Santa Cruz METRO. If any change causes a change in the price of this Order, or in the time required for its performance, Vendor will promptly submit its claim for adjustment in writing to Santa Cruz METRO. All changes must be in writing and signed by Santa Cruz METRO. Nothing in this clause excuses Vendor from proceeding immediately with this Order as changed.
19. **PUBLICITY:** Vendor, its employees, subcontractors, and agents may not refer to Santa Cruz METRO, or use any logos, images, or photographs of Santa Cruz METRO for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without Santa Cruz METRO's prior written consent. Such written consent will not be required for the inclusion of Santa Cruz METRO's name on a customer list.
20. **EQUAL EMPLOYMENT OPPORTUNITY:** In connection with the performance of this Order, Vendor may not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. Vendor will take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Vendor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
21. **NON-DISCRIMINATION ASSURANCE:** Vendor may not discriminate on the basis of race, color, national origin, or sex in the performance of this Order. Vendor must carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, Vendor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Vendor must obtain the same assurances from its joint venture partners, subcontractors, and subcontractors by including this assurance in all subcontracts entered into under this Order. Failure by Vendor to carry out these requirements is a material breach of this Order,

which may result in the termination of this Order or such other remedy as Santa Cruz METRO deems appropriate.

22. GOVERNING LAW: This Order, and its interpretation, and the performance of this Order, will be governed by the laws of the State of California.
23. WAIVER: Santa Cruz METRO's failure to require strict performance of any of the terms and conditions of this Order does not constitute a waiver of these terms and conditions.
24. ATTORNEYS' FEES: If any legal proceeding should be instituted by either of the parties to enforce the terms of this Order or to determine the rights of the parties under this Order, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.
25. BINDING ON SUCCESSORS: All of the terms, provisions and conditions of this Order will be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
26. NO THIRD PARTY BENEFICIARIES: This Order is not for the benefit of any person or entity other than the parties.
27. ENTIRE CONTRACT: This Order, including any attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event of a conflict between the terms and conditions of this Order and the attachments, the terms of this Order will prevail.