

NORTHERN ILLINOIS TRANSIT AUTHORITY
PURCHASE ORDER
TERMS AND CONDITIONS

1. **Applicable Law.** The Agreement will be governed by the laws of the State of Illinois.
2. **Delivery.** It is understood and agreed that time is of the essence with regard to Contractor's performance pursuant to this Agreement. Goods provided under this Agreement shall be delivered F.O.B. Destination to the Northern Illinois Transit Authority (NITA) at the address provided herein or NITA's specified point of delivery. All deliveries will be made inside NITA's offices, unless otherwise specified.
3. **Entire Agreement.** This Agreement contains the entire Agreement between the parties. It may not be modified or terminated orally, and no modification, termination, or waiver shall be binding upon NITA unless it has been committed to writing and signed by a duly authorized representative of NITA. NITA may, at its sole discretion, direct the Contractor to provide material or perform services under this Agreement to respond to a matter of public exigency. The Contractor will be compensated for those goods or services at fair and reasonable prices consistent with the competitive market for those goods. All titles to sections or paragraphs used in this Agreement are for identification purposes only and shall not be interpreted as a substantive part of the Agreement. As used in this Agreement the terms "goods" means either the goods or services to be provided pursuant to the Agreement. Wherever appropriate in this Agreement, masculine shall include feminine, and singular shall include plural.
4. **Indemnification.** The Contractor shall indemnify, defend, keep and hold harmless NITA, its agents, officials, and employees against all injuries, losses, claims, suits, costs, and expenses which may accrue against NITA as a consequence of granting the Agreement.
5. **Assignments.** Contractor agrees that this order, in whole or part, or any of the monies due from this order may not be assigned without the prior written consent of NITA. Any assignment of the Agreement or proceeds from this Agreement must receive the written approval of NITA, which shall not be unreasonably withheld.
6. **Modification.** NITA may, by written notice, make changes in the specifications of this Agreement if such changes are within the general scope of the Agreement. If such changes cause an increase or decrease in the Contractor's costs or in the time required for the performance of the Agreement, the Contractor shall promptly notify NITA and shall provide its written request for adjustment within thirty (30) days. NITA will determine and grant an equitable adjustment to the Contractor and will modify the Agreement accordingly. Under no circumstances will the Contractor withhold performance during the consideration of a request for adjustment.
7. **Force Majeure.** Neither party shall lose any rights hereunder or be liable to the other party for damages or losses, except for payment obligations, on account of failure of performance by the defaulting party if the failure is the result of an Act of God (e.g. fire, flood, inclement weather, epidemic or earthquake); war or act of terrorism, including chemical or biological warfare; labor dispute, lockout, strike, embargo; government acts, orders, or restrictions; failure of suppliers or third persons; or any other reason where failure to perform is beyond the reasonable control, and is not caused by the negligence, intentional conduct or misconduct of the defaulting party, and the defaulting party has exercised all reasonable efforts to avoid or remedy such force majeure. The defaulting party must provide written notice of the circumstances bringing about of the force majeure event to the remaining party within two (2) business days of the occurrence of the event

8. Waiver. NITA's failure to promptly enforce any of the conditions of this Agreement or any rights granted to it in this Agreement does not constitute a waiver of those conditions or rights. The rights of RTA under this Agreement are not exclusive and are in addition to any other right provided by law or under this Agreement.

9. Termination. This Agreement can be terminated upon seven (7) calendar days written notice by NITA, if sufficient funds have not been appropriated to cover the estimated requirements.

NITA may terminate this Agreement upon seven (7) days notice for its own convenience when, in NITA's opinion, its best interest is served.

NITA may terminate this Agreement for cause when the Contractor fails to perform the scope of services as described within the Agreement. In the event that NITA terminates for cause the Contractor can be held responsible for any additional costs incurred by NITA in obtaining a replacement for the goods of services that the Agreement failed to provide. In terminating for cause, NITA will provide no less than five (5) days notice to the Contractor to cure any breach. Failure to cure the breach during the five (5) day period will entitle NITA to terminate the Agreement for cause. Such termination will take effect upon delivery of a written notice of termination to the contractor.

10. Price Warranty. Contractor warrants that the unit price(s) charged herein does not exceed those unit prices charged by the Contractor to any comparable customers in substantially similar transactions. Further, the Contractor agrees to extend more advantageous pricing to NITA should it become available to comparable customers during the term of this Agreement.

11. Payment. Payments will be made in accordance with the terms of this Agreement, or the Contractor's invoice, whichever are more favorable to NITA. The payment date therefore shall be calculated from the receipt of invoice or receipt and final acceptance of the goods, whichever is later.

12. Regulatory Compliance. Contractor represents and warrants that any goods or services furnished hereunder (including all labels, packages and containers for said goods) will comply with the applicable standards, rules and regulations of all Federal, state and local laws and ordinances, including the Occupational Safety and Health Act of 1970 with respect to design, construction, manufacture or intended use of the goods or services.

13. Packing. All goods, wrappers, and containers must bear markings and labels required by applicable federal, state and local laws and ordinances, regarding the safety of persons and property. Contractor warrants that delivered price include all charges for packing, crating, and transportation to f.o.b. destination.

14. Equal Employment Opportunity. In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because race, religion, color, sex, or national origin. The Contractor shall take actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin.

The "Illinois Human Rights Act" 775 ILCS 5/1-101, et. seq. required by the Illinois Human Rights Commission is herewith incorporated into the Agreement by reference.

In addition, the Contractor agrees to comply with all provisions of the "Illinois Human Rights Act," as now or hereafter amended and with all rules, regulations and guidelines in discrimination in employment as now or hereafter promulgated by the Illinois Human Rights Commission.

15. Warranties. The Contractor warrants that all products provided under this Agreement will be free from defects in material and workmanship. The Contractor further agrees to honor all express or implied warranties regarding merchantability and fitness for the intended use of the product. Any product which fails will be repaired or replaced at the Contractor's expense so that NITA suffers no loss of use of the goods. The Contractor will bear responsibility for damages to NITA that are a consequence of the Contractor's failure to honor product warranties. Products will be warranted for a period of one (1) year unless the manufacturer's standard warranty provides a greater term of coverage.

16. Patent, Trademark and Copyright Indemnity. The Contractor agrees to indemnify NITA and hold it harmless from and against all claims, liability, loss, damage or expense, including attorney's fees, arising from or by reason of any suit, claim or demand relating to trademark, patent or copyright infringement or litigation based hereon with respect to the goods or any part covered by this order and such obligations shall survive acceptance of the goods and payment thereof by NITA. The Contractor agrees that it will, when so requested, provided that it is given reasonable notice of the pendency of any such suit, claim, or demand, assume the defense of NITA against any such aforementioned suit, claim, or demand.

17. Data. The Contractor shall not release any data, design or other information disclosed to the Contractor by NITA in the implementation of this Agreement without the express written consent of NITA. Upon completion of the Agreement, all such data, designs, or other information and any copies thereof shall be returned to NITA. Where NITA's data, designs, or other information is distributed by the Contractor to subcontractors employed by the Contractor in the performance of the Agreement, the Contractor shall include appropriate language in the sub-agreement to prevent disclosure of the data, design or other information by the subcontractor.

18. Conflict of Interest. Members of the Board, officers and employees of NITA, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any agreement or any direct pecuniary interest in any agreement which will be wholly or partially performed by the payment of funds or the transfer of property of NITA. Any firm, partnership, association or corporation from which any member of the Board, officer or employee of NITA is entitled to receive more than seven and one-half percent (7 1/2%) of the total distributable income, is prohibited from having or acquiring any agreement or direct pecuniary interest in any agreement which will be performed in whole or in part by payment of funds or the transfer of property of NITA. Any firm, partnership, association or corporation from which members of the Board officers, employees of NITA, their spouses, their children, their parents, their brothers and sisters and their nieces/nephews are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any agreement or direct pecuniary interest in any agreement which will be performed in whole or in part by the payment of funds or the transfer of property of NITA.

19. Agreements Violating Regulations. Any agreement executed in violation of any of the above terms and conditions is subject to immediate termination by NITA.

20. Drug Free Workplace Certification. The Contractor certifies and agrees that it will provide a drug free workplace as required by Illinois Public Act 86-1459, the Drug Free Workplace Act, 30 ILCS 580/1, et seq., and will comply with all provisions herein.