



## TERMS & CONDITIONS

Butler County Regional Transit Authority (BCRTA) will be referred to as “Buyer” and the person or company selling to the Buyer will be referred to as “Seller”.

**1. Acceptance of Purchase Order.** This order becomes a contract (1) when signed acknowledgement is received by Buyer, or (2) when shipment according to schedule or all or any portion of the goods covered by this order shall be made, or (3) when written approval is given Seller by Buyer of the price and delivery schedule of the goods as stated by Seller if Seller’s written acknowledgment of the order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which Buyer’s approval applies. Except as provided in the preceding sentence, it is a condition of this order that any provisions printed or otherwise contained in any acknowledgment of this order, inconsistent with or in addition to the terms and conditions stated in this order, and any alteration in this purchase order, shall have no force or effect, and that the Seller by acknowledgment thereby agrees that any such provisions in the acknowledgment or any such alterations in this order shall not constitute any part of the contract formed hereby. The contract shall contain the entire agreement of the parties and failure of any party to enforce any of the rights hereunder shall not constitute a waiver of such rights or of any other rights under the contract.

**2. Packing and Transportation.** Seller shall suitably pack, mark and ship all materials in accordance with the requirements of common carriers so as to secure lowest transportation cost, and no additional charges shall be made to Buyer therefore unless otherwise stated herein. No charges shall be made for packing, boxing, drayage or storage, unless authorized by Buyer in writing. Seller shall properly mark each package with Buyer’s order number, address and, where multiple packages comprise a single shipment, shall consecutively number each package. Purchase order number and package numbers shall be shown on packing slips, bill of lading and invoices.

**3. Delivery.** Deliveries shall be made in quantities and at times specified in this order or in supplementary schedules furnished by the Buyer, and Buyer reserves the right to change delivery schedules and temporarily to suspend scheduled shipments. If materials are shipped or received after the previously agreed upon date, Buyer may return such materials to Seller at Seller’s risk and expense. Seller shall not be liable for delays or defaults in deliveries due to causes beyond its control and without its fault or negligence. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give written notice setting forth the cause of the anticipated delay.

**4. Invoices and Payment.** Unless otherwise provided in this order, no invoices shall be issued or payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on full amount of invoice. If the amount of delivered materials is less than the quantity ordered by the Buyer, or if Buyer rejects any portion of the delivered materials, Buyer must adjust the payments to Seller accordingly.

**5. Inspection.** All materials shall be received, and work shall be performed, subject to Buyer’s inspection and rejection. Rejected materials will be returned to Seller at Seller’s expense for all transportation and costs of labor of reloading, packaging, trucking, etc. and such materials shall not be replaced except upon receipt of a new order. Payment for materials or work shall not constitute an acceptance thereof.

**6. Warranties.** In addition to standard warranty and/or service guarantee, Seller warrants that all goods supplied hereunder shall: a. Be free and clear of all liens and encumbrances, good and merchantable title thereto being in the seller; b. Be free from any defects in design, material or workmanship and of good and merchantable quality; c. Conform to Buyer's specifications or the sample approved by Buyer, as the case may be, or be fit for the known purposes for which purchased hereunder; and. Comply and have been produced, processed, delivered and sold in conformity with all applicable federal, state or other laws, administrative regulations and orders. The forgoing warranties shall survive inspection, delivery and payment. If any such goods shall be found to be unsatisfactory for any reason, Buyer may, at its option, retain such goods at an adjusted price or return them to Seller for repair, replacement or refund as Buyer shall direct. Buyer shall be reimbursed by Seller for all its expenses in connection with the handling and transporting of any such unsatisfactory goods, and Seller shall assume all risk of loss or damage in transit to goods returned by Buyer pursuant hereto.

**7. Warranty as to Patents.** Seller warrants that the goods covered by this order and sale or use of them will not infringe any United States or foreign letters patent, and the Seller agrees to defend, protect, or save harmless the Purchaser, its successors, assigns, customers and other users of its products, against all suits at law or in equity, and from all damages and expenses resulting from claims and demands for actual or alleged infringements of any patent by reason of the sale or use of the articles covered hereby.

**8. Changes.** Buyer may at any time by written notice make changes within the general scope of this order to drawings, and specifications, shipping instructions, quantities and delivery schedules. Should any such change increase the cost of, or the time required for, performance of this order; an equitable adjustment in the price and/or the delivery schedule will be negotiated. Any claims for adjustment by Seller must be made within thirty days from the date the change is ordered or with such additional period of time as may be agreed upon.

**9. Compliance with Federal, State and Local Laws.** In performing its duties under this order, Seller will comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules and regulations thereunder, including but not limited to laws and regulations designed to protect human health or the environment.

**10. Federal Transit Administration Clauses.** Certain FTA Third-Party Contract Clauses apply to all purchases exceeding \$3,000, depending on procurement type and amount.

**11. Use of Designs, Other Proprietary Items.** Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, engineering data or other technical proprietary information furnished by Buyer and use such items only in the production of items under this order or other orders from Buyer and not otherwise, unless Buyer's written consent is first obtained. Upon completion or termination of this order, Seller shall return all such items to Buyer or make other disposition thereof as may be directed or approved by Buyer.

**12. Notice of Labor Dispute or any Cause of Delay.** Whenever Seller has knowledge that any actual or potential labor dispute or any other condition which is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to the Buyer.

**13. Assignment.** Seller shall not assign any rights or claims under this order nor any monies due or to become due without the prior written consent of the Buyer and any assignment made without such consent shall be void as to Buyer.

**14. Applicable Law.** The rights and duties of the parties hereto shall be determined by the laws of the State of Ohio, and to that end this agreement shall be construed and considered as a contract made and to be performed in the State of Ohio.

**15. Bankruptcy.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by or against the Seller, the inability of the Seller, to meet its debts as they become due, or in the event of the appointment, with or without the Seller's consent, of an assignee for the benefit of the creditors or the receiver, then the Buyer shall be entitled, at its sole option, to cancel any unfilled part of this purchase order without any liability whatsoever. Seller shall have the obligation to inform Buyer in writing of such bankruptcy or insolvency.

16. **Indemnification.** Seller will indemnify, save harmless, and defend the Buyer from all liability for loss, damage, or injury to person or property in any manner arising out of or incident to the performance of this purchase order.

17. **Supplementary Information.** Any specifications, drawings, notes, instructions, engineering notices, or technical data referred to in this order shall be deemed to be incorporated herein by reference as is fully set forth. If there are any discrepancies or questions, the Seller shall refer to the Buyer for decision, instructions or for interpretation. Supplier is required to provide Material Safety Data Sheet (MSDS) for the purchased product, if applicable.

19. **Conflicting Terms.** If terms of this order do not appear on or do not agree with the Seller's invoice as rendered, Seller agrees that Buyer may change invoice to confirm this order and make payment accordingly.

20. **Protest Procedures.** Protests may be made by prospective contractors, vendors or proposers whose direct economic interest would be affected by award of a contract or by failure to award a contract. BCRTA will consider all protests requested in a timely manner regarding the award of a contract, whether submitted before or after an award. All protests are to be submitted in writing to: Butler County RTA 3045 Moser Court Hamilton, Ohio 45011. Protest submissions should be concise, logically arranged, and clearly state the grounds for protest. A protest must include at least the following information: 1. Name, address, and telephone number of protestor, 2. Identification of contract solicitation number, 3. A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and 4. A statement as to what relief is requested. Protests must be submitted to BCRTA in accordance with these procedures and time requirements, must be complete and contain all issues that the protestor believes relevant.

**Protests Before Bid Opening.** Protests alleging restrictive specifications or improprieties which are apparent prior to bid opening or receipt of proposals must be submitted in writing at the a may be received and award made in the normal manner unless BCRTA determines that remedial action is required. Oral protests not followed up by a written protest will be disregarded. BCRTA may request additional information from the appealing address above and must be received at least seven (7) days prior to bid opening or closing date for receipt of bids or proposals. If the written protest is not received by the time specified, bids or proposals party and information or response from other bidders, which shall be submitted to BCRTA not less than ten (10) days after the date of BCRTA's request. So far as practicable, appeals will be decided based on the written appeal, information and written response submitted by the appealing party and other bidders. In failure of any party to timely respond to a request for information, it may be deemed by BCRTA that such party does not desire to participate in the proceeding, does not contest the matter, or does not desire to submit a response, and in such a case, the protest will proceed and will not be delayed due to the lack of a response. Upon receipt and review of written submissions and any independent evaluation that BCRTA deems appropriate, BCRTA shall either: 1. Render a final decision, or 2. At the sole election of BCRTA, conduct an informal hearing at which the interested parties will be afforded opportunity to present their respective positions and facts, documents, justification, and technical information in support thereof. Parties may, but are not required to, be represented by counsel at the informal hearing, which will not be subject to formal rules of evidence or procedures. Following the informal hearing, if one is held, the BCRTA will render a decision, which shall be final, and notify all interested parties thereof in writing but no later than ten (10) days from the date of informal hearing.

**Protests After Bid/Proposal Opening/Prior to Award.** Protests against the making of an award by the BCRTA must be submitted in writing to BCRTA and received within seven (7) days of the award by the BCRTA. Notice of the protest and the basis therefore will be given to all bidders or proposers. In addition, when a protest against the making of an award by the BCRTA is received and it is determined to withhold the award pending disposition of the protest, the bidders or proposers whose bids or proposals might become eligible for award shall be requested, before expiration of the time for acceptance, to extend or to withdraw the bid. Where a written protest against the making of an award is received in the time period specified, award will not be made prior to seven (7) days after resolution of the protest unless BCRTA determines that: 1. The items to be purchased are urgently required. 2. Delivery or performance will be unduly delayed by failure to make award promptly. 3. Failure to make award will otherwise cause undue harm to BCRTA or the federal government.

**Protests After Award.** In instances where the award has been made, the Contractor shall be furnished with the notice of protest and the basis therefore. If the contractor has not executed the contract as of the date the protest is received by BCRTA, the execution of the contract will not be made prior to seven (7) days after resolution of the protest unless BCRTA determines that: 1. The items to be purchased are urgently required, 2. Delivery or performance will be unduly delayed by failure to make award promptly, or 3. Failure to make award will otherwise cause undue harm to BCRTA or the federal government. Decision. Any decision pertaining to a protest following the guidelines contained in this section is final. Protests to Federal Transit Administration (FTA). Under certain limited circumstances, an interested party may protest to the FTA the award of a contract pursuant to an FTA grant. FTA's review of any such protest will be limited to: 1. Alleged failure by BCRTA to have written protest procedures or alleged failure to follow such procedures, or 2. Alleged violations of specific federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that federal regulation. Protestors shall file a protest with FTA not later than five (5) working days after BCRTA renders a final decision under the BCRTA protest procedure. In instances where the protestor alleges that BCRTA failed to make a final determination on the protest, the protestor shall file a complaint with FTA no later than five (5) Federal working days after the protestor knew or should have known of BCRTA's failure to render a final determination in the protest.

**Submission of Protest to FTA.** Protests submitted to FTA should be submitted to the FTA Region 5 Office in Chicago, Illinois with a concurrent copy to BCRTA. The protest filed with FTA shall: 1. Include the name and address of the protestor 2. Identify the BCRTA project number and the number of the contract solicitation 3. Contains a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow BCRTA's protest procedures, or the alleged failure to have procedures, and be fully supported to the extent possible 4. Include a copy of the local protest filed with BCRTA and a copy of the BCRTA decision, if any.