

**SUNLINE TRANSIT AGENCY**  
**PURCHASE ORDER GENERAL TERMS AND CONDITIONS**  
**Rev. November 17, 2017**

1. PURCHASE ORDER (P.O.). SunLine shall not be responsible for goods or services provided to officials or employees without a duly authorized P.O.
2. INVOICES. Invoices shall be submitted under the same name as that which is shown on the face of the P.O. The P.O. number must appear on all invoices, shipping notices, delivery and packing slips, packages and correspondence. Each P.O. shall be invoiced separately. Submit invoices monthly or as prescribed by SunLine's Finance Department. Vendor shall send invoices as specified on the P.O. If the price quoted by Vendor includes an additional charge for delivery from point to origin, Vendor shall show such delivery charge on the invoice as a separate item and such charge shall not be subject to California State Sales/Use Tax. No additional charge for transportation, containers, packing, etc. will be allowed unless so specified in the P.O.
3. PACKING SLIPS. Packing slips must accompany each shipment unit (included with each package in shipment), showing SunLine's P.O. number, description, and part number for each item.
4. ACCEPTANCE. Goods are subject to SunLine's inspection and approval within a reasonable time after delivery. If specifications are not met, material may be returned at Vendor's expense.
5. DELIVERY. Unless otherwise indicated on the face of the P.O., delivery shall be FOB destination unless otherwise specified by SunLine. COD shipments will not be accepted. Unless otherwise provided in the P.O., Vendor shall have title to and bear the risk of any loss or damage to the goods ordered until they are delivered in conformity with the P.O. at the specified F.O.B. point. Upon such delivery, title shall pass from Vendor to SunLine and Vendor's responsibility for losses or damage shall cease, except for loss or damage occurring prior to or upon delivery, or loss or damage resulting from Vendor's negligence or intentional acts. Passing of title upon such delivery shall not constitute acceptance of the goods and services by SunLine.
6. PARTIAL DELIVERIES. Shipments must be identified as partial or complete, along with the number of shipping units.
7. MODIFICATIONS. Vendor shall not make any alterations or change to the P.O. in any fashion without prior written authorization from SunLine.
8. WARRANTY. Vendor warrants that the good(s) provided and/or work performed under the P.O. comply with all specifications, are free of liens and encumbrances, and that workmanship and materials are free from defects. Work shall comply with nationally recognized codes and established industry standards. Equipment shall carry the manufacturers' most favorable commercial warranties. The warranty period shall begin after acceptance of item(s) and/or work. Vendor agrees to remedy by replacing or repairing any goods(s) that are damaged or defective during normal usage within the warranty period, at no additional cost to SunLine. Such repair or replacement shall occur within a reasonable time frame and to the satisfaction of SunLine. Vendor agrees that by acceptance of this warranty and acceptance of the goods provided by Vendor, SunLine does not waive any warranty, either expressed or implied in Sections 2312-2317, inclusive, of the Commercial Code of the State of California or of the United States.
9. FEDERAL, STATE AND LOCAL LAWS. All goods or services furnished pursuant to the P.O. shall comply with all applicable federal, state and local laws and regulations.

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10. FTA TERMS AND CONDITIONS.

a. Incorporation of FTA Terms - The following provisions include, in part, certain Standard Terms and Conditions required by the Federal Transit Administration (FTA), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this P.O.. The Vendor shall not perform any act, fail to perform any act, or refuse to comply with any SunLine requests which would cause SunLine to be in violation of the FTA terms and conditions.

b. Access to Records. The following access to records requirements apply to this P.O.:

i. Vendor agrees to provide SunLine, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Vendor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Vendor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Vendor access to Vendor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

ii. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

iii. The Vendor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Vendor agrees to maintain same until SunLine, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

c. Civil Rights.

i. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Vendor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Vendor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the P.O.:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Vendor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

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Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Vendor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Vendor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Vendor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Vendor agrees to comply with any implementing requirements FTA may issue.

iii. The Vendor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

d. Disadvantaged Business Enterprises.

i. This P.O. is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The SunLine's overall goal for DBE participation is 8%.

ii. The Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this P.O. The Vendor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this FTA-assisted contract. Failure by the Vendor to carry out these requirements is a material breach of this P.O., which may result in the termination of this P.O. or such other remedy as SunLine deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

iii. Vendor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance of this P.O.

iv. The Vendor must promptly notify SunLine whenever a DBE subcontractor performing work related to this P.O. is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Vendor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SunLine.

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e. Energy Conservation - The Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

f. Federal Changes – Vendor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SunLine and FTA, as they may be amended or promulgated from time to time during the term of this contract. Vendor's failure to so comply shall constitute a material breach of the P.O.

g. No Obligation By The Federal Government

i. The SunLine and Vendor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the P.O., absent the express written consent by the Federal Government, the Federal Government is not a party to this P.O. and shall not be subject to any obligations or liabilities to the SunLine, Vendor, or any other party (whether or not a party to the P.O.) pertaining to any matter resulting from the P.O.

ii. The Vendor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

h. Program Fraud and False or Fraudulent Statements or Related Acts.

i. The Vendor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and FTA regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the P.O., the Vendor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the P.O. or the FTA assisted project for which any services are being performed. In addition to other penalties that may be applicable, the Vendor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Vendor to the extent the Federal Government deems appropriate.

ii. The Vendor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Vendor, to the extent the Federal Government deems appropriate.

iii. The Vendor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. **GOVERNING LAW.** The P.O. shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

12. **PATENT PROTECTION.** To the extent the goods are not manufactured pursuant to design originated by SunLine, Vendor agrees it will indemnify and hold SunLine and its officers, agents, and

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employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. SunLine agrees to notify Vendor promptly of any suit or claim against SunLine for any alleged infringement of patent.

17. **INDEMNIFICATION.** The Vendor shall indemnify, keep and save harmless SunLine, its agents, officials and employees from any and all claims, actions, losses, damages, and/or liability arising out of the P.O. from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by SunLine on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Vendor's indemnification obligation applies to SunLine's "active" as well as "passive" negligence but does not apply to SunLine's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

18. **INSURANCE.** If Vendor is providing services to SunLine, Vendor shall maintain workers' 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. SunLine reserves the right to require submittal of a certificate of insurance naming the SunLine, its directors, officers, employees and agents as additional insureds. In addition, Vendor shall maintain professional liability insurance if applicable.

19. **FORCE MAJEURE.** Vendor will not be held liable for failure of delay in fulfillment if hindered or prevented by act of God, fire, strike, loss or shortage of transportation facilities, lock-out, commandeering of materials, products, plants or facilities by government that are not reasonably foreseeable.

20. **ACKNOWLEDGMENT.** By delivery of the goods or services purchased herein, the Vendor agrees to all the terms and conditions herein.

21. **TERMINATION.** SunLine may terminate the P.O. in whole or in part for SunLine's convenience or because of the failure of the supplier to fulfill the contract obligation. SunLine" CEO/General Manager shall terminate by specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the supplier shall: (a) immediately discontinue all services affected and (b) deliver to SunLine's CEO/General Manager all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated in performing this contract, whether completed or in process. If the termination is for the convenience of SunLine, SunLine shall make an equitable adjustment in the P.O., but shall not allow anticipated profit on unperformed services.

22. **OSHA COMPLIANCE.** The goods covered by this P.O. must conform to safety orders of OSHA, CALOSHA, and /or NIOSH, and applicable Material Safety Data Sheets (MSDS). Vendor is required to provide a completed MSDS for all hazardous substances as required by Labor Code Sections 6390; General Industrial Safety Order, Section 5194; and Title 8, California Admins. Code. MSDS sheets need to be sent to SunLine's Safety and Regulatory Compliance Specialist for each specified item and a copy sent to SunLine's Procurement Department.

23. **WAIVER.** The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

24. **QUESTIONS.** Questions regarding the Terms and Conditions herein are to be directed to: Eric Taylor, Financial Services & Support Manager at 760-343-3456 or etaylor@sunline.org