

# ATTACHMENT A

## General Terms and Conditions

### TERMS AND CONDITIONS FOR GOODS

1. DEFINITIONS: The following terms shall have the meaning stated herein: "Purchase Order" shall mean the GBAD Purchase Order for the Goods or Services to be procured, any attachment related to the Purchase Order and the GBAD Procurement Purchase Order Terms and Conditions; "GBAD" shall mean the Greater Boise Auditorium District, a duly formed and existing public entity pursuant to the laws and Constitution of the State of Idaho; "Goods" shall have the meaning described in the U.C.C; "Seller" shall mean the supplier identified in the Purchase Order, including its agents, sales personnel, shipping and receiving personnel, and other employees acting on its behalf; "U.C.C." shall mean Idaho Code, Title 28, Chapter 2, as it may amended from time to time.
2. CONFORMING GOODS: The Goods shall conform in all respects with GBAD's solicitation documents. In the event of nonconformity, and without limitation upon any other remedy, GBAD shall have no financial obligation in regard to the non-conforming Goods. Seller shall pay all costs for removal of non-conforming Goods from GBAD premises.
3. WARRANTIES:
  - a. Warranty. Goods to be procured hereunder are warranted to be of merchantable quality, free of defects of material, design, or workmanship, and suitable for ordinary use as is more fully described in the U.C.C.
  - b. Warranty of title. Seller warrants that it has title to the Goods to be procured, and that the title to the Goods is free of all liens and encumbrances.
  - c. Save harmless. Seller agrees to protect, save harmless, and indemnify GBAD from all damages, claims, demands and/or judgments for actual or alleged breach of warranty, negligence, insufficiency or illegality of design, manufacture, fabrication, assembly, processing, labeling, or infringement of patent or copyright, arising out of the purchase, resale, or other use of the Goods to be procured hereunder. Seller shall defend GBAD from all suits, whether at law or in equity, alleging damages, claims, demands and/or judgments for actual or alleged breach of warranty, negligence, insufficiency or illegality of design, manufacture, fabrication, assembly, processing, labeling, or infringement of patent or copyright, arising from the purchase, resale, or other use of the Goods to be procured hereunder. Defense shall be provided by counsel chosen by GBAD, and Seller shall bear all costs, fees, and expenses of such defense, including, but not limited to, attorney's fees and expenses, court costs, and expert witness fees and expenses.

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4. **SELLER RESPONSIBILITY:** Seller assumes full and sole responsibility for all tasks related to the purchase and delivery of all Goods included in the Purchase Order, whether or not Seller is the actual manufacturer or producer of such Goods. Further, Seller will be the sole point of contact regarding the Purchase Order, including payment of charges resulting from the use or purchase of Goods selected.
5. **COMMODITY STATUS:** It is understood and agreed that any Goods offered or shipped shall be new and in first class condition, and that all containers for the Goods shall be new and suitable for storage or shipment, unless otherwise indicated by GBAD in the specifications. Demonstrators or previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. The warranty shall include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.
6. **SHIPPING, DELIVERY, AND INSTALLATION:** All orders will be shipped directly to the ordering departments at the location specified, on a F.O.B. Destination Freight Prepaid and Allowed basis with all transportation, unloading, uncrating, drayage, and all other associated delivery and handling charges incidental to and associated with completion of the Purchase Order paid by Seller. If installation is required, pricing shall include all charges associated with a complete installation at the location specified.
7. **RISK OF LOSS:** Risk of loss and responsibility and liability for loss or damage will remain with Seller until final inspection and acceptance by GBAD. Responsibility will pass to GBAD, except as to the latent defects, fraud and Seller's warranty obligations, upon completion of inspection and acceptance. Such loss, injury or destruction occurring at the risk of Seller shall not release Seller from any obligation under the Purchase Order.
8. **GOVERNMENT REGULATIONS:** Seller guarantees that all Goods meet or exceed the requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection agency, or other regulatory agencies.
9. **SAFETY INFORMATION:** All Goods regulated by the William-Steiger Occupational Safety and Health Act of 1970, proposed and/or used in the performance of the Purchase Order, must conform to the standards required by that Act. Seller must furnish all Safety Data Sheets (SDS) for any regulated Goods at the time of delivery.

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## TERMS AND CONDITIONS FOR SERVICES

1. DEFINITIONS: The following terms shall have the meaning stated herein: "Purchase Order" shall mean the GBAD Purchase Order for the Goods or Services to be procured, any attachment related to the Purchase Order and the GBAD Procurement Purchase Order Terms and Conditions; "GBAD" shall mean Greater Boise Auditorium District, a duly formed and existing public entity pursuant to the laws and Constitution of the State of Idaho;

"Seller" shall mean the supplier or service provider identified in the Purchase Order, including its agents, sales personnel, and other employees acting on its behalf; "Services" shall mean those services to be provided to GBAD by Seller, as identified in the Purchase Order.

2. REPRESENTATIONS AND WARRANTIES: By accepting the Purchase Order and payment thereunder, Seller makes the following express representations and warranties to GBAD:

a. Seller Qualifications: Seller is professionally qualified and licensed, as necessary, by all entities having jurisdiction to provide the Services and Seller shall maintain all necessary licenses, permits, or other authorizations necessary to perform the Services for all time periods contemplated by the Purchase Order.

b. Compliance with Applicable Law: Seller will provide the Services in accordance with all applicable federal, state, and local statutes, regulations, and requirements.

c. Conflict of Interest: Seller has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance of the Services. In the event any potential conflict of interest arises during the term of the Purchase Order for any prospective business association, interest or other circumstance which may influence or appear to influence Seller's judgment, impartiality or quality of the Services, Seller shall promptly notify GBAD in writing of such potential conflict. Failure of Seller to provide such written notice shall constitute cause for terminating the Purchase Order.

3. OWNERSHIP OF GBAD RECORDS: All data, documents, information, and reports provided by GBAD to Seller, or its subcontractors, in connection with Seller's provision of the Services remain the property of GBAD.

4. CONFIDENTIALITY AND NON-DISCLOSURE: As part of performing the Services, Seller may have access to and review records, documents, and information that are

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confidential in nature and not otherwise subject to public disclosure. Seller shall not disclose to third parties any records, documents, or other information provided by GBAD or to which Seller gains access while performing the Services, without first receiving authorization from GBAD. In the event Seller receives a request for such information, or Seller believes it necessary to disclose such information to adequately provide the Services, Seller shall promptly notify GBAD and request the required authorization.

5. **INSURANCE:** Seller shall have and maintain insurance as may be required by GBAD.

6. **INDEMNIFICATION:** In addition to any other indemnification obligations contained herein, Seller shall defend, indemnify, and hold GBAD, its officers, agents, and employees harmless for all claims, losses, actions, damages, judgments, costs, expenses, and/or injuries to persons or property arising out of or in connection with any activities, acts, or omissions of Seller, its officers, agents, employees, or subcontractors in providing Services under the Purchase Order. Defense shall be provided by counsel chosen by GBAD, and Seller shall bear all costs, fees, and expenses of such defense, including, but not limited to, attorney's fees and expenses, court costs, and expert witness fees and expenses.

### **MISCELLANEOUS/GENERAL PROVISIONS APPLICABLE TO BOTH GOODS AND SERVICES**

1. **TERMINATION FOR CAUSE:** GBAD may terminate the Purchase Order when Seller has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within thirty (30) calendar days. If the Purchase Order is terminated for default or non-compliance, Seller will be responsible for any costs incurred by GBAD to replace the Goods or Services, including but not limited to procurement of replacement Goods or Services. GBAD, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

2. **TERMINATION FOR CONVENIENCE:** GBAD may terminate the Purchase Order without cause upon thirty (30) days' written notice to Seller. In the event of such a termination without cause, GBAD shall pay Seller for all accepted Goods received and/or Services satisfactorily rendered prior to the date of termination.

3. **INDEPENDENT CONTRACTOR:** Nothing in the Purchase Order shall be construed to create an employment, agency, joint venture, or partnership relationship between the parties. The relationship between GBAD and Seller is and shall remain that of independent parties to a contractual relationship as set forth in the

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Purchase Order. No party is authorized or permitted to act as an agent or employee of the other party.

4. NO THIRD-PARTY BENEFICIARY: It is the intention of the parties that no individual or entity be construed or considered to be an intended or implied third-party beneficiary under the Purchase Order.

5. MODIFICATIONS/ALTERATIONS:

a. Writing required: Any proposed modifications or alterations to the terms of the Purchase Order shall be ineffective and void unless agreed to in a writing duly executed by the parties.

b. Non-conforming amendments rejected: Any proposed modifications or alterations of the Purchase Order not complying with the above conditions shall be null and void, including but not limited to any software "click-through" dialogue boxes, "shrink-wrap" terms, or any other standard-form terms or conditions which might be contained, presented, or found within any software program(s) or within any packaging, whether in electronic or hardcopy format, even if "accepted," received, or otherwise acknowledged by any GBAD user/administrator.

c. Rejection of limitations or exclusions of default warranties or remedies: GBAD rejects all terms in any writing from Seller that limit or disclaim any warranty provided by the U.C.C or contained herein. Additionally, GBAD rejects all terms in any writing from Seller that limit or exclude remedies available to a buyer under the U.C.C. or under the terms contained herein.

6. DIFFERENCE IN TERMS AND CONDITIONS: In the event Seller's proposal or quote is referenced as part of the Purchase Order, these GBAD Procurement Purchase Order Terms and Conditions shall control in the case of a conflict.

7. TAXES: GBAD is generally exempt from payment of Idaho state sales and use taxes. If Seller is required to pay any taxes incurred as a result of doing business with GBAD, it shall be the sole responsibility of Seller to pay the taxes.

8. USE OF GBAD NAME: Seller agrees that it will not, prior to, in the course of, or after performance under the Purchase Order use GBAD's name in any advertising or promotional media as a customer or client of Seller without the prior written consent of GBAD.

9. PAYMENT TERMS: GBAD will normally pay properly submitted vendor invoices within thirty (30) days of receipt providing Services have been satisfactorily performed or Goods have been delivered, installed (if required), and accepted as specified.

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10. **FORCE MAJEURE:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases Seller shall notify GBAD promptly in writing of any cause for delay and GBAD concurs that the delay was beyond the control and without the fault or negligence of Seller.

11. **ASSIGNMENT:** Seller shall not assign the Purchase Order, any order, or any interest therein without prior written approval of GBAD. Assignment of the Purchase Order without approval shall, at the option of GBAD, cause immediate termination of the Purchase Order so assigned. All rights of action, for any breach of such Purchase Order assignment are reserved to GBAD.

12. **GOVERNING LAW; VENUE:** The Purchase Order shall be construed in accordance with, and governed by, the laws of the State of Idaho. Any action to enforce the provisions of the Purchase Order shall be brought in Fourth District Court in Ada County, Idaho.

13. **ATTORNEY FEES:** In the event a controversy, claim or action arises between GBAD and Seller regarding enforcement of the Purchase Order and its terms and conditions, or breach thereof, the prevailing party shall be entitled to recover from the other party all reasonable costs and expenses incurred, including reasonable attorney's fees, in pursuing such claim or action.

14. **ENTIRE AGREEMENT:** The Purchase Order, with any incorporated references or exhibits, shall constitute the entire agreement between the parties with respect to the subject matter thereof and shall supersede all previous bids, proposals, or quotations, both oral and written, discussions, representations, commitments, course of dealing, and all other communications between the parties.

15. **SEVERABILITY:** In the event any provision or section of the Purchase Order is found unconscionable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

16. **DEBARMENT:** By accepting the Purchase Order and payment thereunder, Seller warrants and certifies that it is eligible to provide the subject Goods or Services because it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal or State agency.

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17. That Seller is not, and will not for the duration of the Purchase Order become, an abortion provider or an affiliate of an abortion provider as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code §§ 18-8701 et seq.

18. CERTIFICATION REGARDING ANTI-BOYCOTT OF ISRAEL: Pursuant to Section 67-2346, Idaho Code, if (i) Seller is a "company" (as defined in such Section), (ii) the Purchase Order has a total potential value of one hundred thousand dollars (\$100,000) or more, and (iii) Seller has ten (10) employees or more, that Seller, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of the Purchase Order engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Section defined in Section 67-2346, Idaho Code, shall have the meanings set forth therein.

19. CERTIFICATION REGARDING PROHIBITION ON CONTRACTING WITH COMPANIES OWNED OR OPERATED BY THE CHINESE GOVERNMENT: Pursuant to Section 67-2359, Idaho Code, if Seller is a "company" (as defined in such Section), that Seller, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently owned or operated by the Government of China and will not for the duration of the Purchase Order be owned or operated by the Government of China. The terms in this Section defined in Section 67-2359, Idaho Code, shall have the meanings set forth therein.

20. CERTIFICATION REGARDING ANTI-BOYCOTT OF CERTAIN SECTORS: Pursuant to Section 67-2347A, Idaho Code, if (i) Seller is a "company" (as defined in such Section), (ii) the Purchase Order has a value of one hundred thousand dollars (\$100,000) or more, and (iii) Seller has ten (10) or more full-time employees, that Seller, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, is not currently engaged in, and will not for the duration of the Purchase Order engage in, a boycott of any individual or company because the individual or company: (A) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (B) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in Section 18-3302(2)(d), Idaho Code. The terms in this Section defined in Section 67-2347A, Idaho Code, shall have the meanings set forth therein.

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21. LIMITATION OF LIABILITY: The parties acknowledge and agree that District is a governmental entity, and that the Purchase Order shall in no way or manner be construed so as to create a liability of District beyond the then-existing District fiscal year. No covenant or agreement contained in the Purchase Order shall be deemed to be a covenant or agreement of District, or otherwise obligate District, to make a future appropriation of funds.