

GENERAL TERMS AND CONDITIONS
(Supply Contracts)
(Revised 4/17/08)

The following terms and conditions supersede the terms and conditions on the reverse side of ARRC's purchase order to the extent that they are inconsistent therewith and shall be deemed to have the same force and effect as though expressly stated in any such purchase order into which this document is incorporated.

1. Definitions.

"ARRC" shall mean the Alaska Railroad Corporation.

"Vendor" shall mean the person or entity entering into the contract to provide the supplies specified therein for ARRC.

"Contract" shall mean these General Terms and Conditions, the contract form to which they are annexed, and all other terms, conditions, schedules, appendices or other documents attached to the contract form or incorporated by reference therein.

"Supplies" shall mean the equipment, goods, materials or other items to be provided by Vendor to ARRC under the contract.

2. Inspection and Reports. ARRC may inspect all of the Vendor's facilities and activities under this contract in accordance with the provisions of ARRC Procurement Rule 1600.9. The Vendor shall make progress and other reports in the manner and at the times ARRC reasonably requires.

3. Claims. Any claim by Vendor for additional compensation or equitable adjustment arising under this contract which is not disposed of by mutual agreement must be made by Vendor in accordance with the time limits and procedures specified in sections 1800.12 et seq. of ARRC's Procurement Rules, which by this reference are hereby incorporated herein.

4. Nondiscrimination.

4.1 The Vendor may not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental handicap, sex, marital status, change in marital status, pregnancy or parenthood when the reasonable demands of the positions do not require distinction on the basis of age, physical handicap, sex, marital status, changes in marital status, pregnancy, or parenthood. To the extent required by law, the Vendor shall take affirmative action to insure that the applicants are considered for employment and that employees are treated during employment without unlawful regard to their race, color, religion, national origin, ancestry, physical or mental handicap, age, sex, marital status, changes in marital status, pregnancy or parenthood. This action must include, but need not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Vendor shall post in conspicuous places, available to employees and applicants for employment, notices setting out the provisions of this paragraph.

4.2 The Vendor shall cooperate fully with ARRC efforts which seek to deal with the problem of unlawful discrimination, and with all other ARRC efforts to guarantee fair employment practices under this contract, and promptly comply with all requests and directions from the State

Commission for Human Rights or any of its officers or agents relating to prevention of discriminatory employment practices.

4.3 Full cooperation in Paragraph 4.2 includes, but is not limited to, being a witness in any proceeding involving questions of unlawful discrimination if that is requested by any official or agency of the State of Alaska; permitting employees of the Vendor to be witnesses or complainants in any proceeding involving questions of unlawful discrimination, if that is requested by any official or agency of the State of Alaska; participating in meetings; submitting periodic reports on the equal employment aspects of present and future employment; assisting inspection of the Vendor's facilities; and promptly complying with all State directives considered essential by any office or agency of the State of Alaska to insure compliance with all federal and state laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

4.4 Failure to perform under this section constitutes a material breach of the contract.

5. Cancellation/Termination.

5.1 ARRC may, for its sole convenience, cancel this contract in whole or in part, at any time by giving written notice of its intention to do so. In the event of such cancellation, Vendor shall be entitled to receive payment in accordance with the payment provisions of this contract for supplies delivered to ARRC and, as to work in progress prior to receipt of notice, ARRC shall pay Vendor only for direct expenditures on work specifically identified to this contract. Vendor shall not be paid for any work done after receipt of a notice of cancellation or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided. However, in no event shall ARRC be liable for incidental, consequential, or punitive damages, overhead or other direct or indirect costs, or lost profits. Payments made under this contract shall not exceed the aggregate price specified in this contract.

5.2 In addition to ARRC's right to cancel this contract for its convenience, ARRC may, by written notice of default to Vendor, terminate the contract in whole or in part in the following circumstances:

(1) The Vendor refuses or fails to perform its obligations under the contract, or fails to make progress so as to significantly endanger timely completion or performance of the contract in accordance with its terms, and Vendor does not cure such default within a period of ten (10) days after receipt of written notice of default from ARRC or within such additional cure period as ARRC may authorize; or

(2) Reasonable grounds for insecurity arise with respect to Vendor's expected performance and Vendor fails to furnish adequate assurance of due performance (including assurance of performance in accordance with the time requirements of the contract) within ten (10) days after receipt of a written request by ARRC for adequate assurance; or

(3) Vendor becomes insolvent or makes an assignment for the benefit of creditors or commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings.

5.3 Upon receipt of a notice of cancellation or termination, Vendor shall immediately discontinue all work and it shall immediately cause any of its suppliers or subcontractors to cease such work unless the notice directs otherwise. In the event of termination for default, Vendor shall be liable for any damage to ARRC resulting from the Vendor's nonperformance. The rights and remedies of ARRC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

6. No Assignment or Delegation. The Vendor may not assign, subcontract or delegate this contract, or any part of it, or any right to any of the money to be paid under it, except with the prior written consent of ARRC. No such approval shall relieve Vendor from any of its obligations or liabilities under this contract.

7. Independent Contractor. The Vendor's relationship to ARRC in performing this contract is that of an independent contractor and nothing herein shall be construed as creating an employer/employee relationship, partnership, joint venture or other business group or concerted action.

8. Payment of Taxes. As a condition of performance of this contract, the Vendor shall pay all federal, state, and local taxes incurred by the Vendor and shall require their payment by any subcontractor or any other persons in the performance of this contract. Satisfactory performance of this paragraph is a condition precedent to payment by ARRC under this contract.

9. Governing Law. This contract, and all questions concerning the capacity of the parties, execution, validity (or invalidity) and performance of this contract, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Alaska.

10. Alaska Executive Branch Ethics Act Requirements. No officer or employee of the State of Alaska or of the ARRC and no director of the ARRC or legislator of the state shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Vendor shall exercise reasonable care and diligence to prevent any actions or conditions which could be a violation of Alaska Statute 39.52 et seq. Vendor shall not make or receive any payments, gifts, favors, entertainment, trips, secret commissions, or hidden gratuities for the purpose of securing preferential treatment or action from or to any party. This obligation will apply to the activities of Vendor's employees and agents in their relations with ARRC employees, their families, vendors, subcontractors, and third parties arising from this contract and in accomplishing work hereunder. Certain gratuities may be given or accepted if:

- (1) there is no violation of any law or generally accepted ethical standards;
- (2) the gratuity is given as a courtesy for a courtesy received and does not result in any preferential treatment or action;
- (3) the gratuity is of limited value (less than \$150) and could not be construed as a bribe, payoff or deal; and
- (4) public disclosure would not embarrass ARRC.

ARRC may cancel this contract without penalty or obligation in the event Vendor or its employees violate the provisions of this section.

11. Covenant Against Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Vendor, to solicit or secure this contract, and that it has not paid or agreed to pay any person, company, individual, or firm any commission, gift, percentage, fee, contingent upon or resulting from the award or making of this contract. For the breach or violation of this warranty, ARRC may terminate this contract without liability and, at its discretion, deduct from the contract price or otherwise recover the full amount of the commission, percentage, gift, or fee.

12. Warranty. Vendor warrants that the equipment, goods, materials or other supplies sold to ARRC under this contract: (a) shall be of good quality and free from all defects and deficiencies in workmanship, material and design; (b) shall be fit, suitable and operate successfully for their intended purpose; (c) shall be new; (d) shall be free from all liens, claims, demands, encumbrances and other defects in title; and (e) shall conform to the specifications, if any, stated in the contract. Vendor shall honor all guarantees and warranties offered by the manufacturer of the equipment, goods, materials or other supplies provided under this contract.

The rights and remedies provided for in this section are in addition to any other remedies provided by law.

13. Indemnification. The Vendor shall indemnify, save harmless and defend ARRC, its officers, agents and employees from all liability of any nature or kind, including costs and expenses, for all actions or claims resulting from injuries or damages sustained by any person or property arising directly or indirectly as a result of any error, omission, product defect, negligent or wrongful acts of the Vendor, its subcontractors or anyone directly or indirectly employed by them in the performance of this contract, provided that Vendor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability based upon the sole negligence of ARRC.

14. ARRC's Rights Not Waived by Payment. No payment made by ARRC shall be considered as acceptance of satisfactory performance of Vendor's obligations under this contract. Nor shall any payment be construed as acceptance of substandard or defective work or as relieving Vendor from its full responsibility under the contract.

15. Nonwaiver. A party's failure or delay to insist upon strict performance of any of the provisions of this contract, to exercise any rights or remedies provided by this contract or by law, or to notify the other party of any breach of or default under this contract shall not release or relieve the breaching or defaulting party from any of its obligations or warranties under this contract and shall not be deemed a waiver of any right to insist upon strict performance of this contract or any of the rights or remedies as to any subject matter contained herein; nor shall any purported oral modification or rescission of this contract operate as a waiver of any of the provisions of this contract. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded the nonbreaching or nondefaulting party by any other provisions of this contract, or by law.

16. Savings Clause. If any one or more of the provisions contained in thee contract shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this contract, but this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

17. Headings. The headings of sections and paragraphs of this contract are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

18. Forum Selection. The parties shall not commence or prosecute any suit, proceeding or claim to enforce the provisions of the contract, to recover damages for breach or default under the contract, or otherwise arising under or by reason of the contract, other than in the courts of the State of Alaska for the Third Judicial District at Anchorage. The parties hereby irrevocably consent to the jurisdiction of said courts.

19. Conflict of Interest. Vendor shall act to prevent any actions or conditions which could result in a conflict with ARRC's best interests. This obligation shall apply to the activities of Vendor's employees and agents in their relationships with ARRC's employees, their families, vendors, subcontractors and third parties accomplishing work under this contract.
20. Publicity. Vendor shall not release any information for publication or advertising purposes relative to this contract or to the material, equipment and other supplies furnished under this contract without the prior written consent of the ARRC.
21. Audit. ARRC has the right to audit at reasonable times the accounts and books of the Vendor in accordance with the provisions of ARRC Procurement Rule 1600.10.
22. Internal Controls and Record Keeping. Vendor shall keep full and accurate records and accounts of all of its activities in connection with this contract, including, without limitation, reasonable substantiation of all expenses incurred and all property acquired hereunder.
23. Force Majeure. Neither ARRC nor Vendor shall be responsible for failure to perform the terms of this contract when performance is prevented by force majeure, provided that: (1) notice and reasonably detailed particulars are given to the other party and (2) the cause of such failure or omission is remedied so far as possible with reasonable dispatch. The term "force majeure" shall mean acts of God, earthquakes, fire, flood, war, civil disturbances, governmentally imposed rules, regulations or other causes whatsoever, whether similar or dissimilar to the causes herein enumerated, which is not within the reasonable control of either party and which through the exercise of due diligence, a party is unable to foresee or overcome. In no event shall force majeure include normal or reasonably foreseeable or reasonably avoidable operational delays.
24. Set Off. If ARRC has any claim against the Vendor related or unrelated to this contract, it may set off the amount of such claim against any amount due or becoming due under this contract.
25. Observance of Rules. The Vendor's personnel performing work hereunder on ARRC's premises shall observe all fire prevention, security, and safety rules in force at the site of the work.
26. No Third-Party Beneficiary Rights. No provision of this contract shall in any way inure to the benefit of any third parties (including the public at large) so as to constitute any such person a third-party beneficiary of the contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
27. Entire Agreement. This contract represents the entire and integrated agreement between ARRC and the Vendor and supersedes all prior negotiations, representations, or agreements, either written or oral. This contract may be amended only by a written instrument signed by both ARRC and the Vendor.
28. Invalid Provision. The invalidity or unenforceability of any provision of this contract shall not affect the other provisions hereof, and this contract shall be construed in all respects as if such invalid or enforceable provisions were omitted.
29. Packing, Marking and Shipping All supplies shall be properly packaged to prevent damage or deterioration and to obtain the lowest transportation rates. ARRC will pay no charge for preparation, crating, dunnage or other materials unless separately stated in this contract. Each packing slip, bill of lading, invoice, container, tag and correspondence shall bear the applicable contract number and the location to which the supplies are to be shipped. A waterproof Master Packing Slip shall accompany each shipment and shall be included in one of the packages marked

"Packing Slip Inside" or in the case of a carload shipment, be conspicuously displayed on the inside of the freight car. The original Bill of Lading shall be mailed to the attention of ARRC Supply Management Department on date of shipment.

30. Improper Delivery. If for any reason the Contractor fails to make timely delivery, ARRC may, at its option, approve a revised delivery schedule, request shipment via air or expedited routing (at Contractor's expense) or terminate this contract without any liability. Contractor will not, however, be liable for damages resulting from delays in delivery due to causes beyond Contractor's reasonable control, provided Contractor promptly notifies ARRC in writing of any such delay or expected delay as soon as such delay or expected delay becomes or should have become apparent. The remedies provided in this paragraph shall be cumulative and in addition to any other or further remedies ARRC may have.

31. Shipping Release. The Contractor shall not ship any of the supplies covered by this contract, unless specific delivery dates or written instructions are furnished to Contractor by ARRC. ARRC shall have no responsibility for supplies for which delivery dates or other written instructions have not been provided. Shipments in excess of those authorized may be returned to Contractor and Contractor shall pay ARRC for all expenses incurred in connection with such shipments. ARRC may change or temporarily suspend shipping schedules specified in this contract or written instructions.

32. Inspection/Rejection. Notwithstanding prior shipment, all supplies are subject to inspection and acceptance by ARRC within a reasonable time after they arrive at destination. ARRC shall notify Contractor if any supplies are rejected for any reason or if there are shortages. At ARRC's election, rejected supplies may be held for Contractor's account or returned to Contractor at Contractor's risk and expense. No replacement or correction of defective or nonconforming supplies shall be made by Contractor without written authorization from ARRC. Contractor shall promptly ship any shortages after notification of the same by ARRC.

33. Compliance with Laws and Regulations. Contractor agrees that in the performance of this contract it will comply with the requirements of all applicable Federal, State and local statutes, regulations and orders and will indemnify and save ARRC harmless from any claim, loss or damage arising from Contractor's violation or alleged violation of them.

34. Reduction in Contractor's Cost Any reduction in Contractor's costs resulting from a reduction in freight rates, custom duties, import taxes, excise taxes and/or sales taxes from those in force on the date of the contract is to be paid to ARRC by Contractor in reduction of the price of the ordered supplies.

35. Payments. Payments for supplies furnished under this contract will be due thirty (30) days after the later of (1) receipt of the supplies established in the contract, (2) receipt of proper billing for such supplies, and (3) receipt of all documents required by this contract. ARRC shall not be liable for interest charges on late payments.