

## STANDARD TERMS AND CONDITIONS

**DEFINITIONS:** “Contract” means the entire written agreement between the parties, including but not limited to any Invitation to Bid or Request for Proposal and its specifications, terms and conditions, solicitation instructions; solicitation addenda and contract amendments, if any; the purchase order or price agreement document.

“MBSW” means Mirabella at South Waterfront, or any of its affiliates, making the purchase and is synonymous with “Buyer” as used in ORS Chapter 72. The term “Contractor” means a person or organization with which MBSW has contracted for the purchase of goods, materials and/or services. The terms Contractor and Seller as used in the Uniform Commercial Code (ORS Chapter 72) are synonymous. ORS means the Oregon Revised Statutes.

**TERMS AND CONDITIONS:** These Terms and Conditions (“Terms and Conditions”) shall govern all transactions between MBSW and Contractor, subject to any terms and conditions appearing on the face of a separate purchase order (“Contract”) issued by an authorized representative of MBSW. By accepting MBSW’s Contract as provided herein, Contractor agrees to be bound by the Terms and Conditions outlined below.

**AMENDMENTS:** The terms, conditions, delivery, price, quality, quantities or specifications of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval from MBSW. No exception to delivery dates shall be allowed unless prior written approval is first obtained from MBSW.

**INDEPENDENT CONTRACTOR STATUS:** This Contract is not intended and nothing contained herein shall be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between MBSW and Contractor, but rather an agreement between independent parties, these being MBSW and the Contractor.

**OWNERSHIP OF WORK PROJECT:** All work projects or any form of property originated or prepared by Contractor, which result from this Contract are the exclusive property of MBSW.

**HANDLING:** No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, containers or reels, etc. unless specifically stated hereon.

**DELIVERY:** Time of delivery is of the essence and MBSW reserves the right to cancel any undelivered portion of an order for failure by the Contractor to deliver on time. Contractor assumes responsibility for delay notwithstanding the cause. All deliveries shall be FOB destination with all transportation and handling charges paid by the Contractor unless specified otherwise in the solicitation documents. Responsibility and liability for loss, damage, injury or destruction of goods and materials shall remain with Contractor until final inspection and acceptance by MBSW, at which time responsibility shall pass to MBSW except as to latent defects, fraud and Contractor’s warranty obligations. MBSW will refuse to accept any COD shipment.

**INSPECTIONS:** All goods and materials furnished under this Contract shall be subject to inspection and test by MBSW at times and places as determined by MBSW. If MBSW finds goods furnished to be incomplete or not in compliance with solicitation specifications, MBSW may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by MBSW, MBSW may reject the goods and materials and cancel this Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit MBSW’s rights as a buyer, including, without limitation, the rights and remedies related to rejection under ORS 72.6010 and revocation of acceptance under ORS 72.6080.

**LIMITATION OF LIABILITY:** MBSW SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM ITS PERFORMANCE OR ANY FAILURE TO PERFORM HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OR ANTICIPATED PROFITS OR BENEFITS, EVEN IF MBSW HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any action resulting from any breach on the part of MBSW must be commenced within one year after the cause of action has accrued. MBSW’s liability on any claim of any kind for loss or damage arising out of, in connection with, or resulting from this Contract shall in no case exceed the price of the particular materials, goods or services giving rise to the claim.

**WARRANTIES:** Unless otherwise stated, all goods and materials shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free of defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are incorporated in this Contract. All warranties shall run to MBSW. Contractor warrants that all goods and materials contained herein are free and clear of all liens, claims or encumbrances of any kind whatsoever.

**INDEMNIFICATION:** Contractor agrees to indemnify and hold harmless MBSW, its directors, officers, employees and agents, from and against any and all claims or liability (other than liability solely due to the negligence of MBSW), including reasonable attorneys’ fees, arising out of or resulting in any way from any defect in the goods, materials and/or services provided hereunder or from any act or omission of Contractor, its agents, employees or subcontractors, including but not limited to (i) the negligence or willful misconduct of the Contractor, its agents, employees or subcontractors, (ii) any claim for bodily injury or death, damage to property or any claim by an employee or subcontractor of Contractor for wages and benefits, which occurs in connection with the performance by Contractor, and (iii) the sale or license to or by, or use by, MBSW of the goods and materials and/or services, including but not limited to any claim alleging the violation or infringement of any third party’s patent, copyright, trademark, trade secret or any other proprietary rights. Contractor’s obligation to indemnify MBSW shall survive the expiration or termination of this Contract by either party for any reason. Contractor may, at its option, conduct the defense of any third party action and MBSW will cooperate with Contractor’s defense. If the use or sale of any goods, materials and/or services is enjoined as a result of any action or

proceeding, in addition to such other rights or remedies that MBSW may have hereunder or by law, Contractor, at no expense to MBSW, shall obtain for MBSW and its customers the right to use and sell said item, or shall substitute an equivalent item, acceptable to MBSW, and extend this indemnity with respect to such item. In the event that Contractor is unable to secure such rights of use or to secure an equivalent item as a substitute for MBSW or its customers, Contractor will indemnify MBSW and its customers for any and all losses or damages sustained by reason of such injunction.

**PAYMENT REQUIRED:** For all goods, materials and services provided under this Contract, Contractor shall: (i) pay promptly as due all persons supplying labor or material (ii) pay all contributions or amounts due the industrial accidental insurance provider from the Contractor or any subcontractors; (iii) not permit any lien or claim to be filed or prosecuted against MBSW or any of its affiliates and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**MBSW PAYMENT OF CONTRACTOR CLAIMS:** If Contractor fails, neglects or refuses to pay promptly, as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods, materials or services if applicable, provided under this Contract, MBSW may elect to pay such claim and charge the amount of the payment against funds due or to become due to the Contractor under this Contract. The payment of a claim by MBSW pursuant to this paragraph shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

**CASH DISCOUNTS:** If MBSW is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval for payment is authorized.

**PAYMENT:** Payment is normally made within 30 days following the date of the entire order is delivered and accepted or the date the invoice is received, whichever is later. Interest on any overdue payment may only be charged for non-payment after 45 days and is limited to two-thirds on one percent per month (8% APR) on the outstanding balance. All invoices, packing lists, packages, shipping notices and any other written document affecting this Contract shall contain the applicable purchase request number. Packing lists(s) shall be enclosed with each and every shipment pursuant to this Contract indicating the content herein.

**TERMINATION:**

**a. Default.** MBSW may terminate this Contract in whole or in part, if (i) Contractor fails to deliver the goods and materials or perform the services within the time specified in this Contract herein, or any extensions thereto; or (ii) Contractor fails to perform any of its other obligations under this Contract or fails to make progress so as to endanger performance of this Contract in accordance with its terms; or (iii) Contractor's financial condition shall become such as, in the sole judgment of MBSW, to endanger performance of this Contract, provided that, with respect to (ii) and (iii) Contractor shall fail to remedy such condition within 7 days of notice from MBSW.

**b. Acts of Insolvency.** MBSW may terminate this contract by written notice to the Contractor, if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or has sold a substantial part of its assets or wound up or liquidated, voluntarily or otherwise.

**c. Cover.** In the event of MBSW's termination, in whole or in part, MBSW may procure, upon such terms and conditions as MBSW deems appropriate, goods, materials and/or services similar to those so terminated, and Contractor shall be liable for excess costs incurred by MBSW. Notwithstanding the foregoing, Contractor shall continue performance of its obligations under this Contract to the extent not canceled by MBSW.

**d. Termination for Convenience.** MBSW reserves the right, at anytime, to terminate this Contract, or any part thereof, for its sole convenience. In the event of such termination, Contractor shall immediately stop all work thereunder and shall immediately cause any supplier or subcontractor to stop work. Contractor shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of work performed prior to the notice of termination plus the actual direct costs resulting from termination. Contractor shall not be paid for any work done after receipt of the notice of termination nor any costs incurred by Contractor, its suppliers or subcontractors, which Contractor could reasonably have avoided. If it should be determined that MBSW improperly terminated this Contract under paragraphs (a)-(c) of this Termination Section, such termination shall be deemed to be for MBSW's convenience.

**FORCE MAJEURE:** Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond the party's reasonable control. MBSW may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of this Contract.

**BREACH OF CONTRACT:** Should Contractor breach any of the provisions of this Contract, MBSW reserves the right, in addition to other remedies, to cancel this Contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by MBSW as the result of Contractor's breach of contract, including but not limited to incidental and consequential damages, as provide in ORS 72.7110 and 72.7170.

**WAIVER:** Failure of MBSW to enforce any provision of this Contract shall not constitute a waiver or relinquishment by MBSW of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

**ASSIGNMENT/SUBCONTRACT/SUCCESSORS IN INTEREST:** Contractor shall not assign, sell, transfer, subcontract, or sublet rights or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of MBSW. No such written approval shall relieve Contractor of any obligations of this Contract and any transferee or original parties to this Contract as if not such assignment had occurred. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to this Contract and their respective authorized successors and assigns.

**COMPLIANCE WITH ALL GOVERNMENT REGULATIONS:** Contractor shall comply with all federal, state and local laws, codes, regulations, and ordinances applicable to the goods to be purchased under this Contract. Failure to comply with such

requirements shall constitute a breach of contract and shall be grounds for Contract cancellation. Damages or costs resulting from noncompliance shall be the sole responsibility of Contractor.

**NONDISCRIMINATION:** Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitations statutes, rules and regulations.

**NON-SOLICITATION; NO HIRING:** During the term of this Contract and for 6 months thereafter, Contractor will not directly or indirectly solicit for employment, or hire or contract with, any employee, Contractor or subcontractor ("Staff") of MBSW who becomes known to Contractor in connection with performance hereunder. In the event Contractor, or any affiliate of Contractor hires or contracts with any Staff person of MBSW contrary of this Section, Contractor agrees to pay to MBSW, as liquidated damages and not as a penalty, an amount equal to all compensation, including salary, wages, bonuses, commissions and employee benefits, which said Staff person received from MBSW during the last 6 month period preceding such hiring or contracting. If said Staff person worked for MBSW for a period of fewer than 6 months, the payment will be 6 times the average monthly compensation for the period worked.

**SEVERABILITY:** If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular terms or provisions held to be invalid.

**ATTORNEY FEES:** In the event a lawsuit of any kind is instituted on behalf of MBSW to obtain performance of any kind under this Contract, Contractor shall pay such additional sums as the court may adjudge as reasonable attorney fees plus all costs and disbursements at trial and on any appeal.

**SAFETY AND HEALTH REQUIREMENTS:** Goods, materials and services provided under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements including those of the State Workers' Compensation Department.

**MATERIAL SAFETY DATA SHEET:** In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, Contractor shall provide MBSW with a Material Safety Data Sheet for any goods and materials provided under this Contract which may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use. In addition, Contractor must label, tag or mark such goods and materials.

**ACCESS TO RECORDS:** The Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principals and shall maintain any other records relating to this Contract in such a manner as to clearly document Contractor's performance hereunder. MBSW and its duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writing of Contractor which relate to this Contract to perform examination and audits and make excerpts and transcripts.

**GOVERNING LAW; JURISDICTION; VENUE:** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding between MBSW (and/or any other affiliate or department of MBSW), and the Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively with the Circuit Court of Jackson County, Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon. Contractor consents to the in personam jurisdiction of said courts.

**WORKERS' COMPENSATION:** Contractor, its subcontractors, if any and all employers providing work, labor or goods and materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. Contractor shall require proof of such workers' compensation coverage by receiving and keeping on file a certificate of insurance from each subcontractor or anyone else directly employed by either Contractor or subcontractor.

**TAXES:** Unless otherwise agreed in writing, or prohibited by law, Contractor shall pay and has included in the price any federal, state or local tax, transportation tax or other tax required to be imposed on the goods, materials, and/or services.

**FEDERAL TAX IDENTIFICATION NUMBER:** All Contractors must furnish upon request a federal tax identification number to MBSW. Failure to provide this information could result in invoice payments being withheld.

**WORKERS ON MBSW'S PREMISES:**

**a. Compliance with Regulations.** If any purchase of goods, materials and/or services involves work by Contractor on MBSW's premises, Contractor shall comply with all safety and security regulations of MBSW and shall take all precautions required to prevent injury to persons or property during such installation or work.

**b. Insurance requirements for Contracts under \$80,000.00.** MBSW and Contractor shall obtain and maintain commercial general liability insurance coverage on an occurrence or claims-made basis with limits of \$1,000,000 per occurrence/claim and \$3,000,000 aggregate with an excess of \$5,000,000 (including Independent Contractors, Products and Completed Operations). Contractor shall obtain and maintain professional liability insurance coverage, as is customary for Contractor's industry, on an occurrence or claims-made basis with limits of \$1,000,000 per claim and \$3,000,000 aggregate. If either party maintains "claims-made" insurance policies, and if such insurance coverage is terminated, the party terminating the insurance policy shall purchase a three (3) year runoff or tail policy. Contractor shall maintain automobile liability insurance covering all vehicles owned by Contractor with minimum limits of at least \$1,000,000 per claim. Contractor shall require its employees and agents to obtain and keep current automobile liability insurance with the minimum amounts required by law for his/her own vehicle while on MBSW's property. Contractor shall maintain Workers' Compensation insurance with the minimum amounts required by

state law, covering Contractor's employees and agents against any claim or claims for damages arising in connection with the performance of any service performed under this Contract.

**c. Insurance requirements for Contracts above \$80,000.** MBSW and Contractor shall obtain and maintain commercial general liability insurance coverage on an occurrence or claims-made basis with limits of \$1,000,000 per occurrence/claim and \$3,000,000 aggregate with an excess of \$10,000,000 (including Independent Contractors, Products and Completed Operations). Contractor shall name MBSW as an additional insured to its general liability insurance policy. Contractor shall obtain and maintain professional liability insurance coverage, as is customary for Contractor's industry, on an occurrence or claims-made basis with limits of \$1,000,000 per claim and \$3,000,000 aggregate. If either party maintains "claims-made" insurance policies, and if such insurance coverage is terminated, the party terminating the insurance policy shall purchase a three (3) year runoff or tail policy. Contractor shall maintain automobile liability insurance covering all vehicles owned by Contractor with minimum limits of at least \$1,000,000 per claim. Contractor shall require its employees and agents to obtain and keep current automobile liability insurance with the minimum amounts required by law for his/her own vehicle while on MBSW's property. Contractor shall maintain Workers' Compensation insurance with the minimum amounts required by state law, covering Contractor's employees and agents against any claim or claims for damages arising in connection with the performance of any service performed under this Contract.

**INSTRUCTIONS:** During the terms of the Contract, the Contractor will and will be responsible for ensuring that its employees, servants and agents will, whenever on MBSW's premises, obey all reasonable instructions and directions issued by MBSW.

**ORDER OF PRECEDENCE:** In the event of a conflict between the terms contained herein and any Contract issued by Contractor, the terms and conditions of this Contract shall control the transaction.

**HIPAA/BUSINESS ASSOCIATE REQUIREMENTS:** If Contractor's performance under this Contract involves or requires the disclosure to or use by Contractor of MBSW's "Individually Identifiable Health Information" (as that term is defined by the Health Insurance Portability and Accountability Act and regulations promulgated pursuant thereto ("HIPAA")), then the following provisions apply:

To the extent the Contractor is a "business associate" under HIPAA, Contractor agrees to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 1320d through d-8 ("HIPAA"), and the requirements of any regulations promulgated thereunder including, without limitation, the federal privacy regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Contractor agrees not to use or further disclose any protected health information as defined in 45 CFR 164.504, or individually identifiable health information as defined in 42 U.S.C. Section 1320d (collectively the "Protected Health Information") concerning a patient other than as permitted by MBSW and the requirements of HIPAA or regulations promulgated under HIPAA including, without limitation, the Federal Privacy Regulations and the Federal Security Regulations. Contractor will implement appropriate safeguards to prevent the use or disclosure of a patient's Protected Health Information. Contractor will promptly report to Hospital any use or disclosure of a patient's Protected Health Information not permitted by MBSW or in violation of HIPAA, the Federal Privacy Regulations, or the Federal Security Regulations of which Contractor becomes aware. In the event Contractor, with MBSW's approval, contracts with any agents to whom Contractor provides a patient's Protected Health Information, Contractor shall include provisions in such agreements whereby the Contractor and agent agree to the same restrictions and conditions that apply to Contractor with respect to such patient's Protected Health Information. Contractor will make its internal practices, books, and records relating to the use and disclosure of a patient's Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations and the Federal Security Regulations. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege shall be deemed waived by the Contractor or MBSW by virtue of this subparagraph.