

## **GENERAL TERMS AND CONDITIONS**

These constitute the general terms and conditions applicable to each and every transaction in which **Centuri Construction Group** and each of its subsidiaries ("CENTURI") procures goods and/or services. The supplier is hereinafter referred to as "Provider." Each and every CENTURI-issued request-for-proposal or request-for-quotation or purchase order (oral or written, without regard to title or description of the instrument or means used) shall be deemed to automatically incorporate these terms and conditions. Regarding CENTURI's subcontractors or those service providers with whom CENTURI has entered into signed, written contracts, these terms are in addition to, and not in lieu of, CENTURI's standard forms of agreement.

CENTURI hereby rejects any additional or inconsistent terms and conditions as may be offered by Provider at any time, whether or not such terms or conditions materially alter CENTURI's order and/or Provider's acceptance, and without regard to whether CENTURI has accepted and/or paid for Provider's goods or services.

Provider's provision of goods and/or services to CENTURI shall constitute acceptance of these terms and conditions, notwithstanding anything contained in Provider's proposal, acknowledgement, exception, notice, invoice, or other such instrument or means (oral or written) that is or may be construed to the contrary.

### **1. PURCHASE ORDERS/DILIGENT EFFORTS.**

If and when CENTURI opts to source goods and/or services from Provider, it shall do so by individual order. Whenever any such order is issued in response to, or in connection with, a proposal or offer by Provider (irrespective of the title or description of the instrument or means used by Provider) that order shall be accepted by Provider, notification of which shall be through appropriate acknowledgement. These terms and conditions shall apply to each such order, and neither the order nor these terms and conditions may be changed or modified unless in writing and signed by a representative of CENTURI's Supply Chain Resources, or by such individual as may be authorized by that department. Provider shall undertake to use its commercially reasonable efforts to supply CENTURI per each order.

### **2. NO COMMITMENTS ON BUSINESS LEVELS.**

Notwithstanding anything contained herein that is or may be construed to the contrary, Provider acknowledges and agrees that CENTURI's arrangement with Provider is not exclusive; that CENTURI is not obligated to issue any order, or to otherwise award or contract any project or services while this Agreement is in effect; that CENTURI, in its sole and absolute discretion, expressly reserves the right to contract with one or more providers; that this Agreement is in no manner a requirements contract; and that CENTURI makes no manner of a commitment, inducement or representation to Provider as to any level of business to be achieved in its dealings with CENTURI, or that there will be any transactions whatsoever.

### **3. FORECASTS**

CENTURI may submit non-binding forecasts of its intent for goods and/or services, but shall be obligated only for those quantities stated on issued orders, subject to such order revisions, changes and cancellations as allowed hereunder.

### **4. ORDER CHANGE, CANCELTION**

CENTURI may at any time:

- (a) cancel or suspend performance of any order, in whole or in part;
- (b) make changes in the method of shipment or packing, or time or place of delivery of goods and/or services;
- (c) reschedule services; and/or

- (d) require additional or diminished services.

All of the foregoing shall be subject to Provider's standard lead-times, prompt notification of which shall be given CENTURI upon Provider's receipt of any change to the order. If, with regard to matters other than cancellation or suspension of an order, any such change causes an increase or decrease in the cost of, or the time required for, performance of the affected order, an equitable adjustment shall be made in the price or delivery dates or both, and the affected order shall be modified accordingly. Any claim for adjustment under this Article 4 may, at CENTURI's option, be deemed to be absolutely and unconditionally waived unless asserted in writing (including the amount of the claim) and delivered to CENTURI within ten (10) business days from the date of CENTURI's notice to Provider.

#### **5. CANCELLATION CHARGE**

With regard to any cancellation or suspension of an order, Provider shall immediately cease its performance on the affected order and, in the case of cancellation occurring within:

- (a) ten (10) days of the scheduled date for delivery of goods and/or services, if the order does not exceed \$10,000, and
- (b) thirty (30) days for all other orders,

CENTURI shall reimburse Provider its reasonable, direct costs for performance on the cancelled order, plus pay a reasonable amount for profit thereon.

#### **6. PRICING CATALOGS**

Except as CENTURI and Provider may agree otherwise in a writing signed by both, Provider's pricing and warranties to CENTURI at time of order shall be as listed within Provider's applicable catalog(s), current copies of which shall be sent to CENTURI upon any change and/or revision. In no event, however, shall Provider's warranty be any less than as stated in Article 7 below (regarding matters other than the period of coverage). With respect to CENTURI, no change in pricing or warranty:

- (a) shall take effect without at least thirty (30) days' prior written notice, or
- (b) apply to any order outstanding at the time of the effective date of change

unless any such change is in CENTURI's favor. Nor shall Provider's pricing or warranties be any less favorable to CENTURI than the lowest pricing or the greatest coverage in warranty, whichever applies (if not both), for comparable or substantially equivalent transactions offered by Provider, in either case, to any other customer doing business as a contractor on underground structures or utilities. If, at any time, Provider offers more favorable pricing and/or warranty coverage to any such customer, Provider shall immediately offer same to CENTURI.

#### **7. WARRANTY**

Provider warrants that its goods and/or services will meet all applicable specifications and other specific product and work requirements (including those of performance), if any be so prescribed or otherwise referred to by CENTURI, and will be of good quality and free from defects in material and workmanship. Regarding goods not of Provider's manufacture, Provider shall convey to CENTURI any and all manufacturer warranties, which warranties shall be in addition to those made hereunder. Upon CENTURI's submission of a warranty claim, Provider shall at its option either (a) repair or replace its product, part or work at CENTURI's facility, or (b) refund an equitable portion of the purchase price based on a pro rata scheme.

#### **8. F.O.B./PAYMENT**

Except as CENTURI and the Provider may agree otherwise in a writing signed by both, all shipments shall be F.O.B. CENTURI's facility and payments shall be net forty-five (45) days from CENTURI's acceptance of invoice.

## **9. CENTURI SUBCONTRACTORS**

Solely for determining volume-based prices and, if applicable, rebates to CENTURI, any and all purchases from Provider by any CENTURI subcontractor, if the purchase is directed by CENTURI and Provider is so notified, shall be treated as a "purchase" by CENTURI. Provider acknowledges and agrees, however, that each such transaction is strictly between the Provider and the subcontractor, and that in no manner shall CENTURI be obligated on any such transaction, and that in no manner are these terms and conditions intended to constitute (nor shall they be construed to be) a third-party beneficiary contract.

## **10. INSURANCE**

Except as CENTURI and Provider shall agree in a writing signed by both, Provider shall, at its own expense, carry and maintain the following insurance in amounts no less than indicated:

Worker's Compensation: Statutory Limits

Employer's Liability: \$500,000 single limit and in the aggregate

General Commercial: Bodily injury and property damage, including products liability, \$1 million per occurrence and in the aggregate

Professional Liability (if Provider's services include any professional services, including but not limited to design/build work): Coverage for claims arising from negligent performance of professional services, which shall be General Office Coverage written for no less than \$4,000,000 per claim and in the aggregate. Professional Liability insurance shall contain prior acts coverage sufficient to cover all professional services performed by Provider, and the policy or policies shall be continued in effect for no less than five (5) years following final payment to Provider.

Automobile Liability: Bodily injury and property damage, \$1 million combined single limit and aggregate

The General Commercial Liability insurance shall name CENTURI as additional insured using Form CG 2010 (0704) in combination with CG 2037 (0704) or the equivalent, and shall be primary with respect to any other insurance available to CENTURI, notwithstanding the provisions of any such other insurance. As a condition to Provider's initial transaction under these terms and conditions (and no less than annually thereafter, or upon CENTURI's written request) Provider's insurance broker or carrier shall furnish CENTURI a certificate on standard Accord Form 25-S evidencing the above-required required insurance.

## **11. CONFIDENTIALITY**

Provider shall treat as confidential and proprietary to CENTURI, and shall neither disclose to third parties nor use (except, with regard to use, as needed in its transactions with CENTURI), any and all information disclosed by CENTURI or as otherwise learned by Provider through its dealings with CENTURI that constitute or otherwise relate to: technical information and know-how on CENTURI products, equipment, processes, services, and systems; CENTURI business planning information, such as new services, customer strategy, expansion plans, relocation, downsizing, acquisition and mergers; financial information on costs, investments, profit, margins and forecasts; problems in any area of CENTURI's business; CENTURI production information, progress reports and other productivity information; marketing strategies, pricing, supplier/subcontractor information, bid information and CENTURI-developed bid programs; quality and improvement program results; and, employee information, such as but not limited to staffing, relocation, and compensation.

## **12. UNIFORM COMMERCIAL CODE**

These terms and conditions are in addition to, and not in lieu of, provisions of the Uniform Commercial Code ("Code"). That said, in no event shall the parties' obligations be modified, supplemented, explained or waived by parol evidence or course of dealing. To the extent there exists any conflict or inconsistency between

a term and condition hereof and a provision of the Code, these terms and conditions shall prevail. CENTURI and Provider expressly disclaim applicability of the U.N. Convention on the Sale of Goods.

**13. INDEPENDENT STATUS**

Provider shall be an independent contractor to CENTURI. Neither Provider nor CENTURI shall have any right or authority to bind the other to any obligation or responsibility to any third party, nor shall either represent or hold itself out as agent or representative of the other (unless and until so directed by CENTURI in writing).

**14. DISPUTE RESOLUTION**

CENTURI and Provider shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between them. Any such matter not settled by negotiation shall be decided in accordance with the Commercial Rules of the American Arbitration Association. The forum for any such arbitration shall be Maricopa County, State of Arizona. Judgment on the arbitration award may be entered in any court of competent jurisdiction. The parties' obligation to arbitrate shall not prevent either from seeking a temporary restraining order or such other injunctive relief in connection with an assertion of rights regarding intellectual property, which shall be deemed to include confidential, trade and/or proprietary information.

**15. MISCELLANEOUS**

Subject in all respects to these terms and conditions, any and all transactions by and between Provider and CENTURI shall be construed under and governed by the laws of the State of Arizona, excepting its principles on conflicts of law. Any waiver by CENTURI of any breach of any term or condition, or its failure to insist on strict performance, shall not be construed as waiving any subsequent breach or term or condition for subsequent performance. If any one or more of these provisions should be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Headings are included for convenience only, are not a part of these terms and conditions and shall not be taken as an interpretation of any provision hereof. References to the plural include the singular. The phrase "and/or" and the word "or" are both inclusive. The words "include," "includes," and "including" shall be deemed to be followed by the phrase, "without limitation." The words "hereof," "herein," "hereunder" and similar terms refer to these terms and conditions as a whole and not to any particular provision.