

## **INTEGRITY RIDER**

Notwithstanding anything to the contrary elsewhere in these bid specifications (including any accompanying bid form or bid quotation sheet), or in any language, term, clause, provision, addendum or annex provided by Seller in connection with this bid, Seller's bid, and any contract entered into pursuant thereto, shall be subject to the following terms and conditions (the "Integrity Rider"):

### 1 True, Accurate and Transparent Billing

**It is essential that all invoices (i) be clear and accurate, (ii) include only those charges that are expressly allowed by contract, (iii) disclose the basis for such charges, (iv) be supported by records maintained by Seller, and (v) be subject to verification by Buyer.** Accordingly, Seller expressly agrees as follows:

- 1.1 Seller shall not, in any manner whatsoever, charge Buyer any price for any item sold pursuant to any contract arising hereunder that in any way exceeds the price permitted under such contract.
- 1.2 Any and all invoices or other requests for payment submitted by Seller shall include or be accompanied by the following information, in each case presented in a manner sufficient to apprise the average reader of its existence and content: (a) the federally-imposed minimum milk price or prices applicable to such invoice or request for payment; and (b) a sample calculation demonstrating the method by which the price of 1% chocolate milk was calculated for such invoice or request for payment. (In the event that Seller does not sell chocolate milk to Buyer, the sample calculation shall be performed with respect to whole milk.)
- 1.3 Upon request by Buyer, Seller shall provide to Buyer, or any outside accountant named by Buyer, copies of billing invoices and other documents necessary to determine Seller's compliance with the terms of any contract arising hereunder. Further, Buyer, or an outside accountant named by Buyer, shall have the right, upon 10 days' notice, to inspect such invoices and other documents at Seller's premises, and Seller shall provide adequate office space, privacy and copying services to permit such inspection.

- 1.4 For a period of five years following the term of any contract arising hereunder, Seller shall maintain all invoices, books, records and other documents necessary to comply with the foregoing paragraph.
- 1.5 In the event that any audit conducted pursuant to the above provisions discloses overcharges in an amount greater than 2.5% of total billings in any given month, Seller (i) shall bear the costs of the audit, (ii) shall repay 300% of such overcharges, and (iii) shall be liable for such other penalties as a court might impose for violation of General Municipal Law § 103.
- 1.6 Any overcharge disclosed by any audit conducted pursuant to the above provisions shall immediately be refunded to Buyer, regardless of whether or not such overcharge is greater than 2.5% of total billings.

## 2 Fair and Ethical Business Practices

**It is the policy of Buyer to transact business only with vendors who maintain the highest ethical standards and practices.** Accordingly, Seller hereby certifies, represents and warrants as follows:

- 2.1 Seller shall adhere to fair and ethical business practices during the life of any contract arising hereunder.
- 2.2 During the term of any such contract, neither the Seller nor any director, partner, principal, officer, employee or agent thereof shall:
  - 2.2.1 Submit to a BOCES, school district or government office, or any employee or agent thereof, a written instrument that intentionally contains a false statement or false information;
  - 2.2.2 Intentionally falsify business records; or
  - 2.2.3 Give or offer to give money or any other benefit to a school district employee or other public servant with intent to influence that school district employee or public servant with respect to any of his or her acts, duties or decisions as a school district employee or public servant.

### 3 Penalties for Non-Compliance

**This Integrity Rider is of critical importance, and failure to adhere to any of its terms or conditions shall result in forfeiture of any past or future right to payment.** *Accordingly*, Seller expressly acknowledges and agrees as follows:

- 3.1 Any right to payment hereunder, whether past or future and whether paid or unpaid, shall be subject to the condition that Seller strictly comply, throughout the life of any contract arising hereunder, with each and every term and condition of this Integrity Rider and with any other certification required of Seller in connection with its bid. In the event of any failure of the foregoing condition, Seller shall have no right of recovery based on *quantum meruit*, restitution, unjust enrichment, or any similar legal or equitable principle.
- 3.2 In addition and without prejudice to the foregoing paragraph, Buyer shall be entitled to all remedies allowed by law for breach of any contract arising hereunder, including remedies for breach of contract, violation of General Municipal Law § 103, or any other applicable law or provision.
- 3.3 This Integrity Rider as well as any certification required of Seller in connection with its bid are for the benefit of Buyer and each and every term and condition thereof shall be a material part of any contract arising hereunder.
- 3.4 No act or failure to act by Buyer shall constitute a waiver of a right or duty afforded Buyer under any contract arising hereunder, nor shall such act or failure to act constitute approval of or acquiescence in a breach of such contract, except as may be specifically agreed in writing.

### 4 Seller's Waiver of Remedies

**It is essential that the supply of school milk not be interrupted or impaired as a result of any contractual dispute.** *Accordingly*, Seller expressly acknowledges and agrees as follows:

- 4.1 Seller acknowledges that it can be compensated adequately by money damages for any breach of contract which may be committed by Buyer. Seller agrees that no default, act or omission

of Buyer shall constitute a material breach of contract entitling Seller to cancel or rescind the same or to suspend or abandon performance thereof; and Seller hereby waives any and all rights and remedies to which Seller might otherwise be or become entitled to because of any wrongful act or omission of Buyer saving only Seller's right to money damages.

- 4.2 Notwithstanding anything to the contrary in these bid specifications or in any contract arising therefrom, in the event that Buyer elects to audit or inspect Seller's invoices or other documents as provided for in this Integrity Rider, Buyer may withhold any payment otherwise due pending the outcome of such audit or inspection, and Seller's obligation to perform shall remain in full force and effect.

## 5 Rules of Interpretation

**It is essential that the integrity of the competitive bidding process be maintained.** Accordingly, Seller's bid and any contract arising therefrom shall be subject to the following rules of interpretation:

- 5.1 In the event of any conflict between these bid specifications and any language, term, clause, provision, addendum or annex provided by Seller, the terms of these bid specifications shall govern.
- 5.2 Any language, term, clause, provision, addendum or annex provided by Seller that purports to or would have the effect of materially modifying the terms of these bid specifications, including any language, term, clause, provision, addendum or annex that would authorize Seller to "pass on" costs or expenses to Buyer, shall be null, void and wholly unenforceable.
- 5.3 Seller's bid and any contract arising therefrom shall be governed by the laws of the State of New York and shall be construed so as to comply in all respects with General Municipal Law § 103, including judicial decisions and other competent legal authorities applying or interpreting § 103.
- 5.4 This Integrity Rider shall apply notwithstanding anything to the contrary elsewhere in these bid specifications or in any contract arising hereunder.

