

PURCHASE ORDER TERMS AND CONDITIONS

IMPORTANT

EACH PURCHASE ORDER ISSUED BY THE CITY SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

ACCEPTANCE OF A PURCHASE ORDER BY A VENDOR SHALL INDICATE ACCEPTANCE OF THESE TERMS AND CONDITIONS.

ACCEPTANCE – REJECTION: The city reserves the right to cancel this purchase order in the event the vendor fails to effect delivery by the date specified. Further, the City reserves the right to reject any and all items not confirming to specifications even if payment has been made. Cost of rejection and return of goods shall be borne by the vendor.

DEFAULT: If the vendor fails to deliver in accordance with the terms of the vendors offer, the City of Concord may procure supplies similar to those ordered, in such amount or amounts as may be necessary to satisfy the City's requirements, but not to exceed the amount or amounts specified in this order. The Vendor shall be liable to the City for any excess costs.

PAYMENT: Unless other arrangements have been made,

- (1) PAYMENT shall be made net 30 days upon delivery and acceptance of all goods, equipment and services.
- (2) Orders specifying split deliveries or delivery as needed may be billed per delivery and payment shall be made net 30 days, on that amount only upon delivery and acceptance.
- (3) Discounts will be applicable on date of completion of order or billing, whichever is later. On orders specifying split deliveries, discounts will apply to each delivery or billing, whichever is later.
- (4) Deviations from these terms and conditions will not be allowed after Purchase Order has been accepted by the Vendor without written consent of the Purchase Agent.
- (5) Send two copies of your invoice to the "Bill To" address on the face of the Purchase Order. Submit separate invoices for each purchase order showing purchase order number, and your invoice number. State whether order is complete or partial. Payment may be delayed unless the billing instructions are followed exactly.

FUNDING OUT: The City of Concord's obligations to pay any amount due under a purchase order are contingent upon availability and continuation of funds. The City may terminate a purchase order, for non-appropriation of funds, and all payment obligations of the City cease on the date of termination.

TAXES: The City of Concord is exempt from all sales and Federal excise taxes. The City's tax exemption certificate will be provided to the vendor upon request. Please bill less these taxes.

PATENTS AND COPYRIGHTS: Seller guarantees that the good/products herein described do not infringe upon any patents or copyrights. The seller agrees to defend any suit that may arise with respect to any patent or copyright infringement and to indemnify and save the City harmless from any loss and expense which may be incurred by the assertion of any patents or copyright infringement.

CANCELLATION ON ACCOUNT OF INSOLVENCY: Either party shall have the right to cancel a purchase order in the event that the other party becomes bankrupt or insolvent or makes an assignment for benefit of creditors.

GOVERNING LAW: The issuance and acceptance of any City purchase order shall be interpreted and enforced in accordance with the laws of the State of New Hampshire. Any disputes shall be resolved within the venue of the State of New Hampshire and Merrimack County.

This order has been arrived at by the Seller independently, and has been submitted without collusion, with and without any agreement, understanding or a planned common course of action with any other vendor of materials, supplies, equipment or services described herein, and were not designed to limit independent selling or competition.

DISAGREEMENTS AND DISPUTES: All disagreements and disputes, if any, arising under this purchase order either by law, in equity or by arbitration shall be resolved pursuant to the laws and procedures of the State of New Hampshire and Merrimack County in which State and County this purchase order shall be deemed to have been executed. No action at law, or equity, or arbitration shall be commenced to resolve any disagreements or disputes under the terms of this purchase order, in any jurisdiction whatsoever other than the State of New Hampshire and Merrimack County.

DELIVERY: Unless otherwise stated all prices are F.O.B. destination. No charge for packing or drayage will be allowed. All deliveries shall be prepaid, no C.O.D. Do not increase quantities, substitute items or change prices unless authorized by the Purchasing Agent.

SAFETY DATA SHEET: Submit Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to RSA 277-A. All such substances shall be properly labeled at time of delivery.

LAWS AND REGULATIONS: The Vendor shall keep fully informed of all state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction authority over the same. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any such laws, specifications or contract for the work in relation to any such laws, ordinances, regulations, orders or decrees, the Vendor shall forthwith report the same to the responsible City department in writing. The Vendor shall at all times observe and comply with such laws and ordinances and shall cause all agents and employees to observe and comply with such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the City and its officers, agents and servants against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, order or decrees, whether by the Vendor or the Vendor's employees or subcontractors.

OSHA REGULATIONS: The Vendor shall follow and shall maintain all safety standards as prescribed by OSHA without exception. The City shall require strict adherence to all safety rules and regulations. The Federal Register Number for Contractor reference is Vol. 37, Part 262. The Federal Register Number for construction work for reference is Vol. 37, Part 243.

INDEMNIFICATION AND INSURANCE: If the purchase order involves: (1) the performance of work (to include the delivery of hazardous goods, supplies and equipment) by the vendor's employees

or subcontractors at property owned or leased by the City; or (2) use of software licensed to the City that will allow the vendor to have access to City data, the vendor shall (a) complete and sign the City's Indemnification Agreement (see Attachment A) and (b) procure and maintain insurance, in the amounts and coverage required, which is acceptable to the City and at the vendor's sole expense, with reputable and financially responsible insurance companies. This insurance shall provide coverage against any and all public liability, including injuries or death to persons and damage to property, arising out of or related to the goods or vendor's performance hereunder. The City shall be named as an additional insured, as determined by the City, in said policy or policies, and the vendor shall furnish to the City original certificate(s) of insurance evidencing the required coverage to be in force on the date of this purchase order and renewal certificates of insurance if coverage has an expiration or renewal date occurring during the term of this purchase order. In addition to the certificate(s) of insurance, the vendor shall also provide, as required by the City, an additional insured endorsement. If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the requirement for an endorsement may be fulfilled by submitting that document along with a signed declaration page referencing the blanket endorsement or policy form. The vendor shall ensure that all insurance coverage maintained or procured pursuant to this purchase order shall be endorsed, as required by the City, to waive subrogation against the City, however this waiver of subrogation requirement shall not apply to any policy that includes a condition that specifically prohibits such an endorsement or voids coverage should the vendor enter into such a purchase order on a pre-loss basis. All certificates shall provide that the City be given thirty (30) days written notice prior to any change, substitution, or cancellation before the stated expiration date.

The City's examination of, or failure to request or demand, any evidence of insurance hereunder, shall not constitute a waiver of any requirement and the existence of any insurance shall not limit the vendor's obligation under any provision hereof.

Except to the extent of comparable insurance acceptable to or expressly waived by the City, the vendor shall, or shall cause any carrier engaged by the vendor, to insure all shipments of goods for full value. If the purchase order involves the performance of work by the vendor's employees at property owned or leased by the City, the vendor shall furnish such additional insurance as the City may request in respect thereof, but in any event and without such request, workers' compensation insurance and unemployment compensation insurance as required by laws of the State of New Hampshire and public and automotive liability and property damage insurance. In no event shall such employees of the vendor be deemed to be the employees of, or under the direction or control of the City for any purpose whatsoever.

WORKER'S COMPENSATION: All vendors and subcontractors at every tier under the vendor will conform with the requirements of RSA 281 Title XXIII, Section 281-A:2 with close attention to sections VI(a), VI(c) and VII(a) as well as Section 281-A:4.

OWNERSHIP OF REPORTS: All data, materials, plans, reports and documentation prepared pursuant to any purchase order between the City of Concord and the vendor shall belong exclusively to the City.

ASSIGNMENT OR SUB-CONTRACTING: None of the work or services covered by this purchase order shall be assigned in full or in part, or sub-contracted without the prior approval of the Purchasing Manager.

FORCE MAJEURE: Neither the City or the vendor shall be liable for any inability to perform its' obligations under this purchase order due to war, riot, insurrection, civil commotion, fire, flood, earthquake, storm or other act of God.

NOTIFICATION: Notification of the parties shall be considered to have been constructively received when it is mailed via the United State Postal Service, emailed or delivered in hand to the City or the vendor.

SEVERABILITY: If any of these STANDARD TERMS AND CONDITIONS is held to be invalid or unenforceable, it will be construed to have the broadest interpretation which would make it valid and enforceable under such holding. Invalidity or the inability to enforce a term or condition will not affect any of the other STANDARD TERMS AND CONDITIONS.

PROVISION REQUIRED BY LAW DEEM INSERTED: Each and every provision and clause required by law to be inserted into this purchase order and any change to this purchase order shall be deemed to be inserted herein and this purchase order shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the purchase order shall forthwith be physically amended to make such insertion or correction.

ENERGY STAR® COMPLIANCE: Where applicable, the vendor shall provide products that earn the Energy Star® and meet the Energy Star® specifications for energy efficiency. The vendor is encouraged to visit www.energystar.gov for complete product specifications and updated lists of qualifying products.

DISADVANTAGED BUSINESS ENTERPRISES: The City hereby notifies all vendors that disadvantaged business enterprises will be afforded full opportunity to submit estimates, quotations, and proposals to the City and will not be discriminated against on the grounds of race, color, national origin, religion, sex, age or disability.

NON-DISCRIMINATION: This purchase order obligates the vendor and the vendor's subcontractors not to discriminate in employment practices on the grounds of race, color, national origin, religion, sex, age or disability with respect to the goods, equipment, services to be provided to the City. Statements as to non-discriminatory practices may be requested from the vendor.

ACCESS TO PUBLIC MEETINGS: All City of Concord public meetings are accessible for persons with disabilities. Any person who feels that he or she may be unable to participate in a City of Concord public meeting due to a disability should, to the extent possible, call (603) 225-8570 at least 48 hours prior to the meeting so that a reasonable accommodation can be arranged.

For meetings held in the City Council Chambers, any person who is unable to access the upper level of the Council Chambers to address the City Council or any other public body may use the podium and/or microphone located at the lower level of the Council Chambers. Other reasonable accommodations may be available upon request.

**CITY OF CONCORD, NEW HAMPSHIRE
INDEMNIFICATION AGREEMENT**

To the fullest extent permitted by law, Vendor shall protect, indemnify, save, defend and hold harmless the City of Concord, including its officials, agents, volunteers and employees (“Indemnified Parties”), from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, interest and expenses, including but not limited to reasonable attorney and paralegal fees, which Indemnified Parties may become obligated or suffer by reason of any accident, bodily injury, personal injury, death of person, economic injury, or loss of or damage to property, arising indirectly or directly under, out of, in connection with, or as a result of the Vendor’s contract with the City or the activities of Vendor or its agents, employees, contractors or subcontractors. In any case, the foregoing provisions concerning indemnification shall not be construed to indemnify the City for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its employees.

In addition, and regardless of respective fault, Vendor shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising out of a claim, charge or determination that Vendor’s officers, employees, contractors, subcontractors or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages or taxes brought in connection with laws governing workers compensation, unemployment compensation, social security, medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship.

The Vendor’s obligations to defend, indemnify and hold harmless the Indemnified Parties hereunder shall survive the term of the Vendor’s contracts.

COMPANY _____

TAXPAYER IDENTIFICATION NUMBER _____

AUTHORIZED SIGNATURE _____

DATE _____

ADDRESS _____

TELEPHONE _____

TOLL-FREE NUMBER _____

FAX NUMBER _____

E-MAIL ADDRESS _____