

PURCHASE ORDER AGREEMENT
IMPORTANT

**EACH PURCHASE ORDER ISSUED BY THE CITY SHALL BE SUBJECT TO THE
TERMS AND CONDITIONS IN THIS PURCHASE ORDER AGREEMENT**

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

I. PARTIES.

A. CITY OF CONCORD, a municipal corporation duly existing under the laws of the State of New Hampshire and having a usual place of business at 41 Green Street, Concord, New Hampshire 03301 (“City”).

B. (“Vendor”).

C. The City and the Vendor are collectively referred to as the “Parties.”

II. PURPOSE.

The purpose of the Purchase Order Agreement (“Purchase Order”) is to provide the standard terms and conditions which are made incorporated in whole in each purchase order of the City.

III. 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 conforming to specifications even if payment has been made. Cost of rejection and return of goods shall be borne by the vendor.

IV. DEFAULT. If the Vendor fails to deliver in accordance with the terms of the Vendor’s offer, the City 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.

V. 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 Purchasing Manager.
- (5) Send two copies of your invoice to the "Bill To" address indicated on 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 will not be made unless a correct and current purchase order is referenced on each invoice.

VI. NON-APPROPRIATIONS. The City's obligations to pay any amount due under a purchase order are contingent upon availability and continuation of funds for the purpose. The City may terminate the contract at any time, due to the non-appropriation of funds, and all future payment obligations of the City cease on the date of termination.

VII. TAXES. The City is exempt from the payment of taxes. The City will issue a tax exemption certificate upon request.

VIII. PATENTS AND COPYRIGHTS. Vendor guarantees that the good/products herein described do not infringe upon any patents or copyrights. The vendor 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.

IX. NON-COLLUSION.

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

X. DISPUTES.

Any disputes between the Parties may be resolved using mediation or arbitration. The results of such mediation or arbitration shall be nonbinding unless otherwise agreed to in writing by both Parties. With respect to nonbinding mediation or arbitration, either party shall have the ability to set aside the results of such activities and to proceed with resolving any dispute via court.

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Purchase Order or any related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

XI. DELIVERY. Unless otherwise stated, all prices are F.O.B. destination. No charge for packing, containers 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 Manager. All deliveries are to be made to the City as set forth on the purchase order and in accordance with accepted commercial practices. Deliveries which do not conform to the specifications or are not in good condition upon receipt shall be replaced promptly. Deliveries shall be inside the building and accepted weekdays between the hours of 8:30 am and 3:30 pm unless otherwise stated. Delivery arrangements must be made with the requesting department prior to delivery.

XII. SAFETY DATA SHEET. The vendor shall provide, at the time of delivery, a Safety Data Sheet (SDS) 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. Failure to submit a SDS and/or labels on each container shall constitute a violation of these terms and conditions and shall render the vendor liable for any damages.

XIII. INSURANCE. 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 (to include the delivery of goods, supplies, equipment and software) by the vendor's employees at property owned or leased by the City or involves software that includes remote access to City data, Vendor shall furnish to the City a certificate that the Vendor has in force general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this license, in an amount not less than \$1,000,000 per incident or occurrence. Upon issuance of a Certificate of Occupancy, the Vendor shall maintain, during the Term of this License Agreement and for so long as Vendor continues Vendor's use within the Licensed Area, the following insurance:

A. Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

B. Workers Compensation

NH Statutory including Employers Liability
Each Accident/Disease-Policy Limit/Disease-Each Employee
\$100,000/\$500,000/\$100,000

C. Commercial Umbrella

May be substituted for higher limits required above

TBD

D. General Requirements. The following conditions shall apply to the insurance policies required herein:

(1) Vendor shall submit certificates of insurance for all coverage required hereunder on the effective date and on each anniversary thereof, or at the City's reasonable request, together with such other relevant insurance documentation as the City may reasonably request. All the insurance required under this License Agreement shall name the City as additionally insured with respect to commercial general, automobile and umbrella liability, and all insurance policies and certificates shall include a provision requiring thirty (30) business days' written notice to the City by certified mail of any cancellation, material change, or reduction in coverage.

(2) All insurance of Vendor shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.

(3) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

(4) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.

(5) Vendor's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this License Agreement.

(6) Vendor's obligation to hold harmless and indemnify the City shall not be limited by the requirement for, or existence of, insurance coverage.

(7) The City shall have the right to require Vendor to increase such limits when, during the term of this Purchase Order, minimum limits of liability insurance commonly and customarily carried on properties comparable to the goods or services by responsible owners or Vendors are more or less generally increased, it being the intention of this sentence to require Vendor to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Vendor.

(See attached sample of Insurance Requirements for all vendors)

XIV. LABOR CONDITIONS. City is a public entity in the state of New Hampshire; therefore, City and Vendor are subject to the provisions of the Government Code and the Labor Code of the state of New Hampshire. All provisions of law applicable to public contracts and/or this Agreement are incorporated herein by this reference, are made a part of this Agreement to the same extent as if they were fully stated in this purchase order, and shall be complied with by Vendor.

XV. LABOR REQUIREMENT. 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. Vendor shall abide by all federal and New Hampshire laws and regulations regarding wages, including, without limitation, the Fair Labor Standards Act and the New Hampshire Labor Code, which, in part, mandate that 8 hours' labor constitutes a legal day's work, and require Vendor to pay the general prevailing wage rates. The New Hampshire statutory provisions for penalties for failure to pay prevailing wages will be enforced and the statutory provisions for penalties for failure to comply with New Hampshire's wage and hour laws will be enforced. In addition, Vendor is required to comply with the statutory requirements relating to employment of apprentices. Vendor also must secure the payment of workers' compensation to its employees as provided by New Hampshire law. Vendor acknowledges its obligation to secure payment of Workers' Compensation before beginning work. Additionally, Vendor is required to comply

with all statutory requirements relating to certified payroll records, including the maintenance of the records, their certification, and their availability for inspection.

XVI. INDEMNIFICATION. If the Purchase Order involves the performance of work (to include the delivery of goods, supplies, equipment and software that includes remote access to City data) by the Vendor's employees at property owned or leased by the City, the Vendor shall complete and sign the attached Indemnification Agreement.

XVII. OWNERSHIP OF REPORTS. All data, materials, plans, reports and documentation prepared pursuant to this Purchase Order between the City and the vendor shall belong exclusively to the City.

XVIII. ASSIGNMENT OR SUB-CONTRACTING. This Purchase Order shall not be assigned in full or in part, or sub-contracted without the prior written approval of the Purchasing Manager.

XIX. 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.

XX. NOTIFICATION.

Any notice or other communication required by this Purchase Order will be deemed to have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to the other party at the address set forth in the identification of the Parties in this Purchase Order.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. 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.

XXV. NON-DISCRIMINATION. This Purchase Order obligates the Vendor and the Vendor's subcontractors not to discriminate in employment practices on the grounds of age, sex, gender identity, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual 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.

XXVI. WAIVER. No waiver of a provision of this purchase order shall constitute a waiver of any other provision, whether or not similar. No waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

XXVII. WARRANTY. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Vendor warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Vendor to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements.

All parts and labor related to contracts must be guaranteed and include a warranty. If any work is unable to be guaranteed, the contractor must inform the City, in writing, prior to the delivery of an item or any work being performed. Non-guaranteed work must be offered at a discount rate from the Bid prices. Inspection, testing and final determination of non-warranty work shall be performed at no cost to the City.

The warranties for the goods and services associated with this Purchase Order are attached hereto and incorporated herein.

XXVIII. ENTIRE AGREEMENT. This Purchase Order embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

**City of Concord, New Hampshire
Insurance Requirements for All Vendors**

Additional Coverage is Required if Checked ***Minimum Limits Required***

Commercial General Liability

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000
<input type="checkbox"/> Occurrence	
<input type="checkbox"/> Claims Made	

Additional Coverage to Include

<input type="checkbox"/> Owners & Contractors' Protective – Limit	As applicable
<input type="checkbox"/> Underground/Explosion and Collapse	

Commercial Automobile Liability

Combined Single Limit	\$1,000,000
-----------------------	-------------

- Any Auto, Symbol 1
- Include Employees as Insured

Additional Coverage to include:

<input type="checkbox"/> Garage Liability	As applicable
<input type="checkbox"/> Garage Keepers Legal Liability	As applicable

Workers Compensation

NH Statutory including Employers Liability - Each Accident/Disease-Policy Limit/Disease-Each Employee	\$100,000/\$500,000/\$100,000
--	-------------------------------

Commercial Umbrella

May be substituted for higher limits required above	As applicable
<input type="checkbox"/> Follow Form Umbrella on ALL requested Coverage	

Other

<input type="checkbox"/> 1. Professional/Errors & Omissions	As applicable
<input type="checkbox"/> 2. Builders Risk – Renovation Form All Risk completed value form including Collapse Sublimit for Soft Cost Coverage	As applicable
<input type="checkbox"/> 3. Installation Floater (Equipment)	As applicable
<input type="checkbox"/> 4. Riggers Liability	As applicable
<input type="checkbox"/> 5. Environmental – Pollution Liability	As applicable
<input type="checkbox"/> 6. Aviation Liability	As applicable
<input type="checkbox"/> 7. Watercraft – Protection & Indemnity	As applicable

(X) **The City of Concord must be named as Additional Insured**

CITY OF CONCORD, NEW HAMPSHIRE INDEMNIFICATION

AGREEMENT

Vendor shall defend, indemnify, and hold harmless the City and its officials, agents, and employees (collectively, the “Indemnified Parties”) from and against all demands, claims, suits and actions seeking damages, penalties, attorney’s fees, costs, expenses, equitable relief, statutory relief or any other relief on account of bodily injury, death, personal injury, property damage, economic injury and any other injury or loss, (collectively, “Liabilities”) arising from or relating to this contract, unless the Indemnified Parties were solely negligent.

In addition, Vendor shall defend, indemnify and hold harmless the City 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 City, 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 indemnification obligations set forth herein shall survive the term of the contract. Vendor must choose defense counsel acceptable to the City and obtain the City’s consent to any proposed settlement.

COMPANY _____

TAXPAYER IDENTIFICATION NUMBER _____

AUTHORIZED SIGNATURE _____

DATE _____

ADDRESS _____

TELEPHONE _____

E-MAIL ADDRESS _____