

CITY OF MERCED PURCHASE ORDER TERMS AND CONDITIONS

1. Agreement: This Purchase Order, consisting of these standard terms and conditions, and any attachments hereto, evidence acceptance by the City of Merced ("City") of the offer from the provider of goods and or services ("Supplier") which are the subject of this Purchase Order and constitutes a binding agreement upon the terms and conditions set forth herein without further action or agreement of Supplier. Any terms or conditions (including price and delivery dates) proposed by seller which are inconsistent with or in addition to these terms shall be void and of no effect unless and to the extent expressly accepted by purchaser in writing.

2. Performance, Delivery and Acceptance: Supplier shall supply the goods and or perform the services, with the schedule and term, as specified herein. Time is of the essence. All goods shall be delivered "free on board (F.O.B.) destination" to the location specified herein, full freight pre-paid except for special or expedited orders, which shall be agreed upon prior to shipment. Deliveries of goods shall be made without extra charge for boxing, crating, carting or storage unless otherwise specified, and goods shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and to prevent potential damage from weather or transportation. City's Purchase Order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment. City's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by City shall be shipped in separate boxes or containers for each destination at no extra charge. Title to and risk of loss on all goods pass to City only upon City's acceptance of such goods.

3. Compensation schedule: City shall make payment within thirty (30) calendar days upon acceptance of satisfactory completion of performance and or delivery of goods and receipt of related invoice(s). Supplier is responsible for all costs and expenses incident to the performance of this Purchase Order, including without limitation costs, taxes, and all other costs of doing business. City processes invoices for payment once each week. Supplier understands and agrees that the net payment period and cash discount period will extend to the date the invoices are paid.

4. Taxes: Supplier shall separately state on all invoices any sales, use or similar taxes imposed by federal or state government applicable to furnishing of the goods. Where a tax exemption is available, such tax shall be subtracted from the total compensation and identified.

5. Warranty: Supplier represents and maintains that it has the expertise in the professional calling necessary to perform the services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Supplier's representations regarding its skills and knowledge. Supplier shall perform such services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California. Supplier warrants that all goods and services shall be delivered or performed free of all liens, claims, security interest or encumbrances, will conform to applicable specifications, drawings, descriptions and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured pursuant to detailed design furnished by City, Supplier assumes design responsibility, and warrants that all goods shall be delivered or performed free of design defect and suitable for the purposes intended by City, and that neither purchase, use or resale, nor delivery or performance thereof shall violate any patent, copyright or similar rights. Supplier's warranties shall run to City and shall not be deemed to be exclusive. Supplier agrees to promptly replace or correct any incomplete, inaccurate or defective goods or services at no further cost to City when defects are due to the negligence, errors or omissions of Supplier.

6. Changes: City reserves the right by written notice to change the extent of the work covered by this Purchase Order, the time or place of delivery, the method of shipment or packaging, or to suspend work. Notice of change must be signed by the Director of Finance ("Director") or his/her designee. Upon receipt of notice, Supplier shall promptly make the changes in accordance with the terms of the notice. If the change will cause an increase or decrease in the cost of or time for performance, Supplier must deliver to City a statement showing the effect of any such changes within ten (10) calendar days of receipt of the City's notice of change. An equitable adjustment shall be negotiated promptly, and the Purchase Order modified in writing accordingly. Failure to submit the statement timely shall constitute Supplier's consent to perform the change without increase in compensation or time for performance. Changes may only be made in writing.

7. City Liability: If an article sold or delivered to purchaser is protected by a patent or copyright, seller agrees to indemnify, defend, save, and hold harmless purchaser from and against any and all suits, claims, judgments, and costs instituted or recovered against it on account of the use or sale of such article by the purchaser in violation of rights under such patent or copyright.

8. Termination for Default or Convenience: City may, by written notice, terminate this Purchase Order in whole or in part for default: (i) if Supplier fails to timely deliver the goods, or perform the services, or if no time is specified, within a reasonable time; (ii) if the goods delivered or services performed are incorrect or unsatisfactory; (iii) if Supplier fails to perform any of the other provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order; or (iv) if the Supplier becomes insolvent. If this Purchase Order is terminated for default, City, in addition to all the rights afforded by law, shall have the right to charge Supplier the amount by which the costs of fabricating or procuring the goods or services cancelled from another source exceed the compensation specified herein, and City may offset any such charge against any amounts which had or may become payable to Supplier under this Purchase Order. City may, after thirty (30) days written notice to Supplier, terminate this Purchase Order without cause or penalty.

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<p>9. Insurance: When applicable, seller must provide satisfactory proof of general liability coverage at least as broad as ISO Form CG 0001 and automobile insurance both in the amount of not less than \$1,000,000 per occurrence/accident. The City of Merced must be named as an additional insured and receive a 30-day notice of cancellation. Additionally, seller shall maintain workers' compensation coverage as required by state law and the policy shall be endorsed to waive the insurer's subrogation rights against purchaser. Applicability of insurance requirement is the sole determination of the City.</p>
<p>10. Indemnity: To the fullest extent permitted by law, Supplier agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, against any claim, loss or liability (collectively "claims"), including without limitation claims for injuries or death to persons or damage to or destruction of property, including economic loss, caused by or resulting from the acts or omissions of supplier, its officers, agents, employees or subcontractors, in the performance of this purchase order, or the breach by supplier of any of its obligations under this Purchase Order. Supplier's obligation to protect, defend, indemnify, and hold harmless, shall specifically extend to any and all employment related claims of any type brought by employees, contractors, subcontractors or other agents of supplier. Supplier warrants that it is meeting its obligations under the Affordable Care Act ("ACT") and/or any other similar federal or state law, and willfully indemnifies and holds harmless City for any penalties, fines, adverse rulings, or tax payments associated with supplier's responsibilities under the act.</p>
<p>11. Licensing: Supplier warrants that it has complied with any and all state and local licensing requirements and agrees to provide proof of a current City of Merced Business License Tax certificate if supplier's company is located in or provides services in the City of Merced.</p>
<p>12. Nondiscrimination: Supplier and all of Supplier's subcontractors shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.</p>
<p>13. Assignability: Supplier shall not assign any of the work to be performed under this Purchase Order nor shall Supplier subcontract for complete or substantially completed goods or major components thereof without the Director's prior written consent.</p>
<p>14. Waiver: Supplier agrees that City's waiver of any breach or violation of any provision of this Purchase Order, or acceptance of any performance, or tender of any payment, shall not be deemed a waiver of any other provision or any subsequent breach of the same or any other provision. City's inspection and warranty rights are not waived by payment or any other action by City.</p>
<p>15. Independent Contractor: It is understood and agreed that Supplier and all person(s) employed or contracted by Supplier shall act as, and be, an independent contractor and not an employee, agent, joint venture, or partner of City. Supplier has full rights to manage its employees and contractors under this Agreement. Supplier shall retain the right to provide goods or perform services for others during the term of this Purchase Order.</p>
<p>16. Confidential Information: All data, documents, discussions or other information developed or received by or for Supplier in performance of this Purchase Order are confidential and not to be disclosed except as authorized by City, or as required by law.</p>
<p>17. Supplier's Records: Supplier shall maintain all records evidencing or relating to performance and amounts charged to or paid by City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Supplier pursuant to this Purchase Order. Any such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by City. Copies of such documents shall be provided to City for inspection at City Hall if requested and if practical to do so, otherwise records will be inspected at Supplier's business location.</p>
<p>18. Conflict of Interest: Supplier certifies that no City officer, employee or authorized representative has any financial interest in the business of Supplier and that no person associated with Supplier has any interest, direct or indirect, which could conflict with the faithful performance of this Purchase Order. Supplier is familiar with the provisions of California Government Code section 8 7100, <i>et seq.</i>, and certifies that it does not know of any facts which would violate these laws. Supplier will promptly advise City if a conflict arises.</p>
<p>19. Severability: In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.</p>
<p>20. Governing Laws and Venue: Supplier shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. The Laws of California shall govern this Purchase Order, and the venue of any action brought hereunder must be laid in or transferred to the County of Merced, State of California.</p>