

City Of Gaithersburg

Purchase Order Terms and Conditions

The City of Gaithersburg shall not be responsible for any goods or services purchased, delivered, or performed which do not conform to the Terms and Conditions declared herein unless otherwise agreed upon in writing by the City or specified on the face of the Purchase Order.

1. Definitions: "City" means the City of Gaithersburg. "Vendor" means the person, firm or corporation supplying the goods or services, and includes all sales or other agents, subcontractors, employees and distributors thereof.

2. Acceptance: Vendor's written acceptance, commencement of work, or shipment or delivery of an item or service shall constitute acceptance by Vendor of the purchase order and these Terms and Conditions.

3. Alterations or Amendments: Alterations, amendments, changes, modifications or additions to the purchase order shall not be binding without the prior written approval of the City.

4. Assignments and Subcontracting: Vendor shall not assign or subcontract any part of the purchase order to any party, company, partnership, corporation or person without first obtaining the written approval of the City.

5. Governing Law: This Purchase Order and Terms and Conditions shall be construed under the laws and regulations of the Federal government, State of Maryland and the City. Vendor shall at its cost pay any necessary fees and charges and obtain any necessary licenses and permits. The exclusive venue for any litigation involving this Purchase Order shall be in the Circuit Court for Montgomery County, Maryland, the District Court of Maryland for Montgomery County or the United States District Court of Maryland.

6. Compliance with Terms and Conditions: The City shall insist upon strict compliance with these Terms and Conditions, notwithstanding any previous custom, practice, or course dealing to the contrary, but the City's failure to demand compliance or enforce any term shall not constitute or be deemed a waiver of any term or any right.

7. Conflict: In the event that any of these Terms and Conditions conflict with any terms and conditions of a signed contract, the contract terms and conditions govern and control.

8. Force Majeure: If either party is prevented from performing its obligations under the purchase order as a result of causes beyond the control of such party, the obligation to perform shall be suspended for a reasonable time during which such condition continues to exist; the party obtaining relief will make every reasonable effort to promptly resume performance as soon as possible

g. Freight: Delivery of all goods shall be FOB destination, paid by the shipper, unless otherwise specified and agreed to by the City.

10. Indemnification: Vendor shall indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all direct or indirect damages, costs, claims, actions, suits, judgments or liens ("Claim") resulting from any negligent act, commission, omission or violation of any law of Vendor, its subcontractors, suppliers, agents or employees, except that if the City reasonably determines that any indemnified Claim might adversely affect the City, the City may take control of the defense at the City's expense. Vendor may not consent to the entry of any judgment or enter into any settlement of any Claim without the City's prior written consent, which may not be unreasonably withheld.

11. Insurance: This clause is applicable only when, and then only to the extent, work under the purchase order is to be performed by Vendor on property under ownership, possession, or control of the City. Vendor shall carry and maintain a general comprehensive liability policy insuring against personal injury, bodily injury, and property damage in an amount no less than \$1,000,000 naming the City as an

additional insured. In addition, Vendor shall carry and maintain worker's compensation insurance in an amount no less than \$500,000.

12. Invoicing: Vendor shall invoice the City only after delivery of goods or completion of services. Invoices shall be submitted to the Department of Finance & Administration,

Accounts Payable Division, located at 31 South Summit Avenue, Gaithersburg: Maryland 20877. Invoices shall be free of excise and sales tax and shall include the purchase order number, Vendor's business name, address, telephone and fax numbers, and if applicable email address.

13. No Waiver: A waiver by the Vendor or City of any breach of the Purchase Order or Terms and Conditions, or either party's decision not to invoke or enforce any right thereto, shall not be deemed a waiver of any right or subsequent breach, and all provisions of the Purchase Order and Terms and Conditions shall remain in force.

14. Nondiscrimination: Vendor will not discriminate against any employee or applicant for employment based on race, color, creed, religion, ancestry, sex, sexual orientation, national origin, affection preference, gender preference, disability, age, marital status or status with regard to public assistance or as a disabled veteran or veteran of the Vietnam era.

15. Payment Terms: Payment terms shall be net 30 days; however, this does not preclude Vendor from providing a prompt payment discount for payment of proper invoices in less than thirty (30) days.

16. Risk of Loss: Vendor bears all risk of loss on items covered by the purchase order until final acceptance at the City's receiving location.

17. Safety: Vendor shall while performing services enforce suitable rules and provide all guards, fences and protective devices required for safe completion of the services and for the safety and health of the general public, worker*nd any adjacent property.

18. Survival: The representations, warranties and indemnities contained herein will survive the termination of the Purchase Order.

19. Taxes: The City is exempt from sales tax for tangible personal property and services. Unless otherwise exempt, Vendor shall not be exempt from paying sales tax to suppliers for materials required to fulfill its obligations to the City, nor shall Vendor be authorized to use the City's Tax Exemption Number in securing such materials.

20. Termination:

a) Termination for Convenience: The City may, without cause, terminate the purchase order in whole or in part at any time for its convenience. In such instance, an adjustment shall be made to Vendor, for the reasonable costs of the work performed through the date of termination. Termination costs do not include lost profits, consequential damages, delay damages, unabsorbed or under absorbed overhead of Vendor or its subcontractors or suppliers. Failure of Vendor to include a termination for convenience clause in its subcontracts and material purchase orders shall not expose the City to liability for lost profits in conjunction with a termination for convenience settlement or equitable adjustment. Vendor expressly waives any damages, delay damages or indirect costs which may arise from the City's election to terminate the purchase order in whole or in part for its convenience.

b) Termination for Cause: The City may terminate the purchase order or any part hereof for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of the purchase order, Late deliveries, deliveries of products which are defective or which do not conform to the purchase order, and failure to provide the City upon request of reasonable

assurances of future performance shall all be causes allowing the City to terminate the purchase order for cause. In the event of termination for cause, the City shall not be liable to Vendor for any amount, and Vendor shall be liable to the City for any and all damages sustained by reason of default which gave rise to the termination.

c) Termination for Non-Appropriation of Funds: The City reserves the right to terminate the purchase order in whole or in part due to a non-appropriation of funds. In such event the purchase order shall terminate upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, without further obligations owed to or by either party.

21. Warranty: The Vendor shall specify the terms of the warranty to the City on the invoice and shall honor any manufacturer's warranty.