

## CITY OF WHEATON PURCHASE ORDER TERMS AND CONDITIONS

**1. DEFINITIONS.** As used in this Purchase Order, "City" refers to the City of Wheaton, Illinois, an Illinois Municipal Corporation; "Vendor" refers to the vendor, supplier or other party identified on the Purchase Order for Goods which incorporates these purchase order terms by reference; "Purchase Order" refers to the language herein and to all specifications or other documents attached hereto and incorporated herein by reference and agreed to by City in writing; and "Goods" refers to the Goods, products, items or services to be acquired by the City pursuant to this Purchase Order.

**2. AGREEMENT.** Vendor agrees to sell the Goods to the City, and the City agrees to purchase the Goods from Vendor, under the terms and conditions specified in this Purchase Order. This Purchase Order and any contracts attached hereto constitutes the entire agreement between the Vendor and the City covering the Goods and services described herein. Failure to decline terms and conditions in writing constitutes agreement to the terms of the Purchase Order as stated. The Vendor's quotation is incorporated in and made a part of this Purchase Order only to the extent of specifying the nature and description of the Goods and services ordered and then only to the extent that such items are consistent with the other terms of this Purchase Order. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions hereof. All applicable portions of the Uniform Commercial Code (UCC) shall govern this contract between the Vendor and City.

**3. PRICE and TAXES.** All prices shall be as stated in this Purchase Order and are firm and not subject to escalation. The City shall be protected against declining prices on the undelivered portion of this order. Should the City be able to purchase Goods or services of comparable quality from another source at a lower delivered cost than in effect hereunder, and City gives Vendor written notice thereto, City may purchase such Goods or services from such other source at the lower delivered cost unless within fifteen (15) days of Vendor's receipt of City's notice, Vendor meets the lower delivered cost for the City's specified services or quantity of Goods. Any quantity of Goods or services purchased from another source by City shall be deducted from the total quantity ordered on this Agreement, but the Agreement shall otherwise remain unaffected. The City is exempt from payment of State, Federal Excise, and Illinois Retailers Occupational Taxes. Prices shall exclude these taxes. Vendor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with the delivery of all products deemed necessary under this Purchase Order. No charges for transportation containers, packing etc., will be allowed the Vendor unless so specified in this Purchase Order. All shipments shall be F.O.B. Wheaton, Illinois, freight prepaid and allowed, unless otherwise specified on this Purchase Order. These charges shall be shown as a separate item on the invoice.

**4. PAYMENT.** The City complies with the Illinois Local Government Prompt Payment Act which states that any bill approved for payment shall be paid within thirty (30) days after the date of approval. Invoices must be submitted within six (6) months of order completion. Any invoices submitted more than six (6) months from order completion will not be paid. If the City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of Goods or services by the City, whichever occurs last. The City may set off any amount owed by Vendor to the City against any amount owed by the City to the Seller under this Purchase Order. Payment will be made to the company awarded this Purchase Order through the City's Purchasing Card Program, MasterCard, in which payment will occur at time of product delivery; or through a Vendor generated invoice mailed to the attention of the project or purchase coordinator, City of Wheaton; P.O. Box 727; Wheaton, IL 60187. Under no circumstances will a third party be reimbursed. All invoices must reflect the following information to prevent delay in payment: Vendor Name, Purchase Order Number, Description and Stock Number, Quantity Ordered, Quantity Shipped, Quantity on Back Order (if applicable), price as stated on the award document, and the City department receiving the Goods. Invoices will be approved for payment following acceptance of product, receipt of an invoice, receipt of Certificate of Insurance, Endorsements, and a Waiver of Subrogation, and any other required paperwork.

**5. DELIVERY and PERFORMANCE.** Time is of the essence in the performance of this Purchase Order. If delivery of Goods and/or performance of services cannot be made at the specified time, Vendor shall promptly notify the City of the earliest possible date for delivery or performance. Notwithstanding such notice, if Vendor for any reason fails to deliver Goods or perform service within the time specified or

to the City's satisfaction, the City is relieved of any obligation to accept and pay for such Goods as well as any undelivered shipments if there are any, and upon failure to deliver as specified the City may buy like Goods elsewhere and charge the Vendor with any increased cost or other loss incurred thereon, unless deferred shipment is agreed to by the City in writing. The City's receipt or acceptance of all or part of a non-conforming delivery or service shall not constitute a waiver of any claim, right, or remedy the City has under this Purchase Order or applicable law. Deliveries shall be made to the indicated ship to address between the hours of 8:30 a.m. and 3:00 p.m. Monday through Friday, excluding holidays, unless otherwise stipulated. COD shipments will not be accepted unless by specific prior arrangements. The supplier shall submit a Material Safety Data Sheet (MSDS) prior to or at the time of delivery for any/all toxic substances per Public Act 83-240, OSHA standards or any other applicable law.

**6. SHIPMENT and INSPECTION.** The terms and routing of shipment shall be as provided on the face of the Purchase Order, or as otherwise directed by the City. The City may revise shipping instructions as to any unshipped Goods. The City shall have the right to inspect any or all Goods at Vendor's place of business or upon receipt by the City. Where circumstances or conditions exist preventing effective inspection at the time of delivery, the City reserves the right to inspect the Goods within a reasonable time. Payment for Goods on this Purchase Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that the City may have against Vendor. In the event the delivered Goods are defective, or do not comply to the City's specifications, solicitations documents, or executed contract, such Goods will be rejected, and Vendor must issue a credit to the City or the City may deduct such amount from monies owed the Vendor. Rejected Goods must be removed by and at the expense of the Vendor promptly after notification of rejection. If Goods are rejected, the City reserves the right to cancel any unshipped portion of the order upon written notice to the Vendor. Rejection of Goods shall constitute authority for the City to purchase in the open market Goods of comparable grade to replace the Goods rejected. Such purchases shall be deducted from contract quantities and Vendor shall reimburse the City for any expense incurred in excess of contract prices. Should necessity demand it, the City reserves the right to use or consume the Goods delivered which are substandard in quality, subject to a price adjustment. The making or failure to make any inspection of, payment for, or acceptance of the Goods, shall in no way impair the City's right to reject nonconforming Goods, recover damages or exercise any other remedies to which the City may be entitled under this Purchase Order or applicable law.

**7. WARRANTIES.** In addition to any other expressed or implied warranties and unless otherwise agreed in writing, Vendor warrants that all Goods delivered hereunder: (i) will be new, suitable for use as described, of the grade and quality specified or of the best grade of their respective kinds if no quality is specified; (ii) shall be free from all defects in design, material and workmanship; (iii) shall conform with all samples, drawings, descriptions, and specifications furnished; and (iv) shall, at the time the Goods are accepted by City, have been produced, sold, delivered and furnished in strict compliance with all applicable federal, state and local laws and regulations to which the Goods are subject, including but not limited to the Consumer Product Safety Act, and the Federal Occupational Safety and Health Act; and (v) are free of any liens and encumbrances. The Vendor agrees that the Goods furnished shall be covered by the most favorable commercial warranties the Vendor gives to any customer for such Goods, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this Purchase Order or by law.

**8. TITLE and RISK OF LOSS.** The FOB point shall be that specified on the face of the Purchase Order. Material delivered shall remain the property of the Vendor until a physical inspection and actual usage of the material is made and found acceptable to the City and the material is determined to be in full compliance with the solicitation documents and executed contract. Any transfer of title or risk of loss hereunder shall not affect the City's right to reject any non-conforming or defective Goods or any other right or remedy available to the City in the event of any breach by Vendor. If the Goods are of an inflammable, toxic or otherwise dangerous nature, Vendor shall hold the City harmless from and against any and all claims asserted against the City on account of any personal injuries and/or property damages caused by the Goods, or by transportation thereof, prior to the completion of unloading at the City's receiving destination.

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**9. TERMINATION.** This Purchase Order may be terminated by mutual consent of both parties or by the City at its discretion. The City may cancel an order for Goods or services at any time with written notice to the Vendor, stating the extent and effective date of termination. Upon receipt of this written notice, Vendor shall stop performance under this Purchase Order as directed by the City. If the Purchase Order is terminated, Vendor shall be paid in accordance with the terms of the Purchase Order for Goods and services delivered and accepted. In no event shall the City be liable for incidental or consequential damages by reason of such termination.

**10. REMEDIES.** If Vendor breaches this Purchase Order, City may take any or all of the following actions, without prejudice to any other rights or remedies available to the City by law: (a) require Vendor to repair or replace such Goods, and upon Vendor's failure or refusal to do so, repair or replace the same at Vendor's expense; (b) reject any shipment or delivery containing defective or nonconforming Goods and return for credit or replacement at Vendor's option; such return is to be made at Vendor's cost and risk; (c) retain Goods which comply with the terms and conditions provided in this Purchase Order and return any other Goods at Vendor's expense; and/or (d) cancel any outstanding deliveries and treat such breach by Vendor as Vendor's repudiation of this contract. Nothing herein shall limit the City's right to damages. The City's failure to inspect, failure to reject and return the Goods, or failure to notify Vendor of complaint shall in no way affect the liabilities and obligations of Vendor. If City breaches this Purchase Order, Vendor's exclusive remedy shall be Vendor's recovery of the Goods or the purchase price payable for Goods shipped prior to such breach. The City shall have no liability for consequential or incidental damages.

**11. INDEMNIFICATION.** Vendor shall defend, hold harmless and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part, from and against any and all liabilities, losses, claims, demands, damages (including incidental and consequential damages), fines, penalties, judgment, settlement, costs or expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation including reasonable expert witness fees, and all causes of action of any kind or character, sustained by reason of, arising out of, or relating to (i) a breach of any of Vendor's warranties, representations, promises or covenants herein; (ii) any actual or alleged bodily injury, sickness, death, property damage or loss by whomsoever suffered, resulting or claimed to result, in whole or in part, from the manufacture, use, purchase, sale of transportation of the Goods, or (iii) any act, omission, neglect or default by Vendor, its officers, employees or agents, regardless of any active or passive negligence by the City. All indemnifications shall be continuing and shall survive acceptance of the Goods or termination of this Purchase Order. Nothing in this Purchase Order shall be construed as prohibiting the City, its officials, directors, officers, employees, agents or attorneys from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of or relating to this Purchase Order.

**12. INSURANCE.** Vendor represents that as of the date of the Purchase Order, Vendor maintains: comprehensive general liability insurance, which includes products liability coverage, in an amount not less than \$1,000,000 combined single limit; worker's compensation insurance as required by law; and automobile liability insurance for all vehicles to be used by Vendor in the performance of services or delivery of products under this Purchase Order. Upon request, Vendor shall provide proof of such insurance coverages naming the City as an additional insured and any required insurance endorsements, prior to work commencing.

**13. PATENTS.** Vendor shall pay all royalties and license fees and shall defend all suits and claims whatsoever for infringement of any patent, invention, trade secret or trademark rights on the Goods or on any appliance or equipment (not furnished by the City) used in furtherance of this Purchase Order and shall indemnify and hold the City, its directors, officers, employees, agents, and elected officials, harmless from and against any and all demands, claims, liabilities, damages, actions, causes of action, penalties, judgments, costs or expenses (including attorneys' fees) on account thereof. The City may, at its option, be represented by and actively participate through its own counsel in any suit or action against the foregoing persons and entities.

**14. ASSIGNMENT.** Vendor shall not delegate or subcontract any duties and services or assign any rights or claims under this Purchase Order without the City's prior written consent.

**15. CHANGE ORDERS.** The City reserves the right to revoke, amend or modify this Purchase Order or any contract attached thereto at any time. Any difference in price required by any such change shall be equitably adjusted and the Purchase Order shall be modified in writing accordingly. Vendor's receipt of City's written change order without response received by the City within ten (10) days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall be Vendor's acceptance of the change.

**16. COMPLIANCE WITH LAW.** Vendor warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938, as amended; the Occupational Safety and Health Act of 1971; the Equal Employment Opportunity Clause prescribed by Executive Order 11246 dated September 24, 1965 as amended; the USA Freedom Act and Patriot Act; and any rules, regulations or orders issued or promulgated under such Act and Order. Vendor shall obtain and maintain throughout the life of the Purchase Order all permits, or licenses required in connection with the Goods or services to be provided for the manufacture, sale, shipment and installation of the products ordered under this Purchase Order. Vendor shall indemnify, save and hold the City harmless from and against any and all claims, damages, demands, costs and losses which the City may suffer in the event that Vendor fails to comply with said Act, Order, rules, regulations or orders. Any clause required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein.

**17. NON-WAIVER OF RIGHTS.** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Purchase Order shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**18. GOVERNING LAWS/JURISDICTION.** This Purchase Order shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Purchase Order shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

**19. FORCE MAJEURE.** No party hereto shall be deemed to be in default or to have breached any provision of this Purchase Order as the result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

**20. HEADINGS.** The headings of the several paragraphs of this Purchase Order are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Purchase Order, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**21. RIGHTS CUMULATIVE.** Unless expressly provided to the contrary in this Purchase Order, each and every one of the rights, remedies, and benefits provided by this Purchase Order shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

**22. NON-DISCRIMINATING.** Vendor, its employees and subcontractors, agree not to commit unlawful discrimination and agree to comply with applicable provisions of: the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended and any rules and regulations promulgated in accordance therewith including but not limited to the Equal Employment Opportunity Clauses, 5 IL Admin. Code §750A and the Act's written Sexual Harassment policy requirement; the U.S. Civil Rights Act; the Americans with Disabilities Act; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.1 et seq.; and the rules applicable to each.

**23. UNAPPROPRIATED FUNDS.** The obligation of the City for payment to the Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

**END OF PURCHASE ORDER TERMS AND CONDITIONS**