

## PURCHASE ORDER TERMS AND CONDITIONS

**These terms and conditions are applicable to this purchase order entered into by and between the City of Independence, Missouri ("City") and seller ("seller").**

1. This contract constitutes the entire contract between the City and seller. The City shall not be bound by any other terms unless both parties have executed a separate written contract for purchases in which case the terms, conditions and specifications of the separate contract shall take precedence. In the event this purchase order is a result of the seller's response to an Invitation to Bid, the terms, conditions, specifications, and pricing of the solicitation shall take precedent. In the event this purchase order is a result of the seller's response to Request for Proposal, the terms, conditions, specifications, scope of work, pricing, and final negotiation shall take precedent. Acceptance of the purchase order constitutes acceptance of all conditions stated herein.
2. No modifications of this order shall be binding upon the City unless approved in writing by the City's authorized level of authority. Quantities specified in the order cannot be changed without the City's prior written approval. Commodities shipped in excess of quantity designated may be returned at seller's expense. If return authorizations are not received within thirty (30) calendar days such commodities shall be considered as donations to the City.
3. Any assignment of this order, performance of work hereunder, in whole or in part, or monies due or become due hereunder, shall be void unless consented to by the City in writing and the City shall have no obligations to any assignee of seller under any assignment not consented to in writing by the City.
4. The City reserves the right to terminate this contract in whole or in part for default if seller fails to perform in accordance with any of the requirements of this contract. Any such termination will be without liability to City except for completed items delivered and accepted by the City.
5. The City expressly states that it will not be bound by any content on the seller's website, even if the seller's documentation specifically references said content and/or attempts to incorporate it into any other communication, unless the City has prior knowledge of such content and the appropriate level of authority of the City has expressly agreed to be bound by such content by written signature.
6. This order shall be fulfilled at the prices proposed to the City either verbally or in writing. No increase from the proposed price will be authorized unless approved in writing by the City.
7. In the event of a discrepancy between a unit price and an extended line item price, the unit price shall govern.
8. Substitution of any portion of this order will not be allowed unless City is notified in advance and gives written approval of the substitution.
9. Prices and FOB terms are F.O.B. DESTINATION with transportation charges prepaid by seller unless alternate shipping terms are otherwise indicated and agreed to in writing by the City.
10. The City reserves the right to cancel this purchase order and purchase elsewhere if delivery is not timely as stated on the purchase order. Deliveries shall be made between the hours of 8 A.M. and 3 P.M. CST, Monday through Friday, excluding holidays, unless otherwise stated on the face of the purchase order or a separate contract. Deliveries shall be made to the address stated in this contract. In case of default by seller, the City may procure the commodities or services covered by this order from other sources and hold the seller responsible for any excess expense.
11. Title or Certificate of Origin for vehicles and equipment must be made and sent to City of Independence City Clerk, PO Box 1019, Independence, MO 64051.
12. By accepting this order, the seller agrees that payment terms shall be Net 30 days unless otherwise stated. Payment will be made in accordance with City's policies and procedures. Payments will only be made to the company and address as set forth in this contract.
13. The seller must render an original invoice to [accountspayable@indepmo.org](mailto:accountspayable@indepmo.org) or by U.S. mail to Accounts Payable, PO Box 1019, Independence, MO 64051.
14. The purchase order number must appear on all invoices, packing slips, shipping notices, freight bills and correspondence concerning this contract. Failure to include this information may delay of payment by the City. The City is not responsible for delays caused by missing required invoice information.
15. City is exempt from federal and state taxes for tangible personal property. The seller is not authorized to use the City's tax exemption number in acquiring such materials.
16. *Warranty of Merchantability* - Commodities provided by seller under this order/contract shall be merchantable. All commodities provided shall be of good quality within the description given by the City, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the City, shall conform to the agreed upon specifications and shall conform to the affirmations of fact made by the seller or on the container or label.
17. *Warranty of fitness for a particular purpose* - When seller has reason to know or knows any particular purpose for which the commodities are required, and the City is relying on the seller's skill or judgment to select or furnish suitable commodities there is a warranty that the commodities are fit for such purpose.
18. *Warranty of title* - Seller shall convey good title in those commodities provided to the City, and warrants the transfer is right and lawful. All commodities provided by seller shall be delivered free from any security interest, lien, or encumbrance of which the City, at the time of contracting, has no knowledge. Commodities provided by seller shall be delivered free of any rightful claim of any third person by infringement or the like.
19. *Acceptance of commodities and equipment* - All commodities and equipment delivered on this purchase order are subject to inspection upon receipt by a representative of the City. City's signature for receipt of commodities or equipment does not constitute acceptance of same. If agreed upon terms, conditions and/or specifications are not met, the seller shall arrange for the return of commodities or equipment at their expense and risk within thirty (30) calendar day of notification for the City. All rejected commodities shall remain the property of the seller. After thirty (30) days, the commodities will be deemed a donation to the City of Independence.
20. *Acceptance of services*. Each phase of the services rendered under this contract, including quality of work, is subject to the City's inspection during both the seller's operations and after completion of the tasks. When the seller is satisfied with the completion of the contracted work, and prior to acceptance of any phase of work, seller shall submit a written request for an inspection to the City. After inspection, the City will issue a list of deficiencies, if any. Upon completion of the list, and correction of all deficiencies by the seller, the seller shall notify the City that the work has been completed satisfactorily. Final inspection shall be performed prior to the completion date of the purchase order or contract.
21. This purchase order and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Missouri.
22. By accepting this order, seller understands and agrees that the commodities covered herein or the services to be rendered, shall be manufactured, sold or performed in compliance with applicable federal, state, county and local laws, statutes, ordinances, rules and regulations. Lack of knowledge by the seller shall in no way be a cause for relief from responsibility.
23. If the seller is required to perform work on City property, the seller shall assume full responsibility and expense to obtain all necessary insurance and City of Independence Business License as required by the City, and shall adhere to Missouri prevailing wage laws current at the time this purchase order is issued.
24. All parties to this contract agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind said parties.
25. The City or vendor may, without liability, delay or cancel delivery of commodities or performance of services of this contract on account of force majeure events or other circumstances beyond its control, including, but not limited to strikes, acts of God, political unrest, embargo, or casualty.
26. The seller shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify and hold harmless the City, its employees, agents and assigns from claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate levels), arising from or relating to personal injury or death, and damage to real property or tangible personal property alleged to be caused in whole or in part by the seller, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the seller shall not indemnify for that portion of any loss portion of any loss or damages proximately caused by the negligent act or omission of the City.
27. To the extent applicable, the seller shall fully indemnify and hold harmless the City, and its agents, employees, and assigns from any claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of seller's products by the City or any of its agents, employees, and assigns, or to the operation or use of seller's products by the City or any of its agents, employees, and assigns in a manner not contemplated by the contract or the purchase order.
28. In the event of a claim, the City shall promptly notify the seller in writing, which provides evidence of delivery at the delivery address. The City shall provide all available information and assistance that the seller may reasonably require regarding any claim. The City may, in addition to other remedies available to it at law or equity, and upon written notice to the seller, retain such monies from amounts due the seller as may be deemed by the City to be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. The City may set off any liability or other obligation of the seller or its affiliates to the City against any payments due the seller under any contract with the City.
29. In the event that there is a conflict between this contract and any other applicable indemnification contract between the City and the seller, the contract which provides the most protection for the City shall take precedence. The provisions of this contract are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable by a court of competent jurisdiction, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.
30. This order, including the terms and conditions shown above, and the accepted bid or proposal from a solicitation that is part of this purchase order, contains the complete and final contract between the City and seller and no other contract in any way modifying any of said terms and conditions will be binding upon the City unless made in writing and signed by the City. The seller may not unilaterally modify the terms of the order by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the seller's order or fiscal forms or other documents forwarded by the seller for payment. The City's acceptance of product or processing of documentation on forms furnished by the seller for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.