

City of Clearwater, Florida – Purchase Order Terms and Conditions

1. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this purchase order (PO) will be effective without written consent of the City of Clearwater, Florida (City).
2. **HANDLING:** No charges will be allowed for handling which includes, but is not limited to, packing, wrapping, bags, containers, or reels, unless otherwise stated herein.
3. **DELIVERY:** For any exception to the delivery date as specified on this order, Vendor shall give prior notification and obtain written approval thereto from the City. With respect to delivery under this order, time is of the essence, and the order is subject to termination for failure to deliver as specified. The acceptance by the City of late performance with or without objection or reservation shall not waive this right to claim damage for such breach nor constitute a waiver of the requirement for the timely performance of any obligation remaining to be performed by Vendor.
4. **MSDS AND SAFETY:** Material Safety Data Sheets shall be included with shipments of any material requiring this documentation, per OSHA regulations, and comply with the Consumer Products Safety Act, and all other applicable state and Federal laws or agency regulations.
5. **PAYMENT AND TERMS:** The terms of payment shall be as stated. PO numbers must be noted on all invoices. Payment will not be processed until items invoiced are received and accepted. All payments shall be made in accordance with the Local Government Prompt Payment Act, Florida Statutes § 218.70. The City offers a credit card payment process (ePayables) and encourages vendors to participate in this program.
6. **CASH DISCOUNT:** In the event that the City is entitled to a cash discount, the period of computations will commence on the date of receipt of a correctly completed invoice.
7. **ASSIGNMENTS.** The provisions of monies due under this PO shall only be assignable with prior written consent of the City.
8. **INSURANCE.** The Vendor shall maintain insurance acceptable to the City, in full force and effect throughout the term of this purchase order. The Vendor must provide a Certificate of Insurance with endorsement, naming the City as Additional Insured, in accordance with the insurance requirements, evidencing such coverage prior to the commencement of work under this agreement, and then annually upon the anniversary date(s) of the insurance policy's renewal date(s), when applicable. Vendor shall provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage. Vendor's insurance shall be primary and non-contributory coverage for Vendor's negligence. The stipulated limits of coverage provided by the City, if any, shall not be construed as a limitation of any potential liability to the Vendor, and failure by the City to request evidence of this insurance shall not be construed as a waiver of Vendor's obligations to provide the insurance coverage specified.
9. **APPLICABLE LAWS:** Vendor shall comply with all applicable federal, state, and local laws and regulations. The sole venue of any legal action arising from execution of this PO, shall be the Pinellas County Superior Court of the State of Florida and the interpretation of the terms of the PO shall be governed by the laws of the State of Florida.
10. **LICENSES:** As applicable, vendor shall have a valid and current Business Tax Receipt (BTR) to do business in the City. Said BTR shall be obtained prior to the award of any purchase order. BTR information available at http://www.myclearwater.com/gov/depts/planning_dev/btr/index.asp
11. **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. When shipping address indicates a room number and/or inside delivery, it is the Vendor's responsibility to make delivery to that location at no additional charge. Where specific authorization is granted to ship goods to FOB shipping point, Vendor agrees to prepay all shipping charges and route as instructed. No COD shipments will be accepted.
12. **REJECTION:** All goods or materials purchased herein are subject to approval by the City. Any rejection of goods or materials resulting because of nonconformity to the terms and specifications of this order, whether held by the City or returned, will be at the Vendor's risk and expense.
13. **IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, correspondence, and other written documents affecting this order shall reference the applicable purchase order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the contents therein.
14. **INFRINGEMENTS:** Vendor agrees to protect and save harmless, the City against all claims, suits, or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchases, installation, or use of goods and materials ordered and to assume all expenses and damages arising from such claims, suits, or proceedings.
15. **WARRANTIES:** Vendor represents and warrants that the goods are new, current, fully warranted by the manufacturer, and fit for the intended purpose. Delivered goods will comply with specifications and be free from defects in labor, material, and manufacture. All UCC implied and expressed warranties are incorporated in this purchase order. Vendor shall transfer all warranties to the City.
16. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
17. **RISK OF LOSS:** Regardless of FOB Point, vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury, or destruction shall not release Vendor from any obligation hereunder.
18. **HOLD HARMLESS:** Vendor shall indemnify, defend, and hold harmless the City and its agencies, their divisions, officers, employees, and agents, from all claims, suits, or actions of any nature arising out of or related to the activities of vendor, its officers, subcontractors, agents, or employees under this purchase order. Notwithstanding anything contained herein to the contrary, this indemnification provision shall not be construed as a waiver of any immunity to which City is entitled or the extent of any limitation of liability pursuant to § 768.28, Florida Statutes. Furthermore, this provision is not intended to nor shall be interpreted as limiting or in any way affecting any defense City may have under § 768.28, Florida Statutes or as consent to be sued by third parties.
19. **FORCE MAJEURE:** Vendor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided Vendor notifies the Purchasing Manager immediately in writing of such pending or actual

delay. Normally, in the event of any such delays the date of delivery will be extended for a period equal to the time lost due to the reason for delay.

20. **TERMINATION:** (i) The parties may terminate this PO by mutual agreement. (ii) The City may terminate this PO at any time with written notice to Vendor; upon receipt of the notice, Vendor shall stop performance and the City shall pay Vendor for goods and/or services delivered and accepted. (iii) The City may terminate this PO at any time if City fails to receive funding, appropriations, or other expenditure authority. (iv) If Vendor breaches any PO provision or is declared insolvent, the City may terminate this PO for cause with written notice to Vendor, and Vendor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.
21. **PUBLIC DISCLOSURE:** PO and all contents and attachments shall be deemed a public record as defined in Florida Statutes §119.
22. **ANTI-TRUST:** Vendor and the City recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by the City, therefore, Vendor hereby assigns to the City any and all claims for such overcharges.
23. **DEFAULT:** The Vendor covenants and agrees that in the event suit is instituted by the City for any default on the part of the Vendor and the Vendor is adjudged by a court of competent jurisdiction to be in default, he shall pay to the City all costs and expenses incurred by the City in connection therewith, and reasonable attorneys' fees.
24. **SEVERABILITY:** If a court of competent jurisdiction declares any provision of the PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.
25. **ACCEPTANCE:** This order expressly limits acceptance to the terms and conditions stated herein. All additional or different terms proposed by Vendor are objected to and hereby rejected, unless otherwise accepted in writing by the City.
26. **ORDER OF PRECEDENCE:** When this PO is issued subsequent to the results of a request for quote, bid, or proposal, additional terms and conditions, if any, contained in the solicitation or resulting contract shall control.
27. **NONDISCRIMINATION:** During the performance of this PO, the Vendor agrees as follows: (i) The Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, age, marital status, disability, sex, sexual orientation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause. (ii) The Vendor will furnish all information and reports required by the City and will provide on request evidence to substantiate compliance with non-discrimination clauses of this PO. (iii) In the event of the Vendor's noncompliance with the clauses of this PO or with any of such rules, regulations, or orders, this PO may be canceled, terminated, or suspended in whole or in part, and the Vendor may be declared ineligible for any future City PO.
28. **CODE OF ETHICS:** Florida Statutes §112.313 provides ethical standards for City personnel; and unethical conduct by others including bidders and vendors is grounds for debarment. City employees may neither solicit, accept, or agree to accept any gratuity for themselves, their families or others that results in their personal gain which may affect their impartiality in making decisions on the job. Further, City Procurement staff are also held accountable to the National Institute of Government Procurement (NIGP) Code of Ethics.
29. **COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.** Vendor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324 et. seq., and regulations thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the agreement, at the discretion of the City.
30. **TAX EXEMPTION:** The City's Florida State Sales Tax Exemption Number is 85-8012740095C-1 and Federal Tax ID Number is 59-6000-289.