



PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE: The terms and conditions of this order cannot be changed by the Seller. If the order is not acceptable, return this purchase order to the City's Office of Procurement. Failure of the seller to whom a purchase order is awarded to deliver according to the purchase order or to comply with any of the terms and conditions therein may disqualify the seller from receiving future orders.

ANTI-DISCRIMINATION: Sellers doing business with the CITY are prohibited from discriminating against any employee, applicant, or client because of race, color, religion, disability, sex, age, national origin, ancestry or marital status with regard to but not limited to employment practices, rates of pay or other compensation methods, and training selection.

ASSIGNMENTS: Neither the Purchase Order or payment due will be assigned.

COMPLIANCE WITH FOREIGN ENTITY LAWS: The Company hereby attests to comply with contracting with entities of foreign countries of concern identified in F.S. 287.138.

DEFAULT: In the event of default by the Seller, City may procure the articles or services covered by this order from other sources and hold the seller responsible for any excess costs occasioned thereby.

DELIVERIES: Deliveries are to be made during the hours 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays, unless otherwise stipulated. Seller shall notify the City of deliveries that require special handling and/or assistance for off-loading. Failure to notify the City concerning this type of delivery will result in the billing to Seller of any add-on re-delivery, storage, or handling charges.

EXCUSABLE DELAYS: Delays in deliveries can only be granted, in writing, by the City.

EXCLUSIVITY: This order is considered a non-exclusive Agreement between the parties.

F.O.B.: All materials will be delivered F.O.B. Destination unless otherwise agreed. Where a specific purchase is negotiated F.O.B. Shipping Point, the vendor will prepay shipping charges and include them on the invoice.

GOVERNING LAW/VENUE/WAIVER OF JURY TRIAL: The rights of the parties hereto shall be construed in accordance with the laws of the State of Florida. The parties hereby waive the right to a trial by jury in any legal action, proceeding or counterclaim. Venue shall be in Brevard County, Florida.

HOLD HARMLESS/INDEMNIFICATION: For other and additional good and valuable consideration, the receipt

and sufficiency of which is hereby acknowledged, the Seller, including but not limited to the Seller's officers, officials, employees, representatives, agents, Sellers officers, etc., subvendor/contractors and their officers, etc. (hereinafter Seller) hereby agrees to indemnify, hold harmless and defend the City of Palm Bay, including but not limited to its officers, agents, subvendor/contractors, officers, officials, representatives, volunteers, employees and all those others acting on the City's behalf (hereinafter City) against any and all liability, loss, cost, damages, expenses, claims or actions of whatever type or nature, including but not limited to attorney and expert fees and suit cost, for trials and appeals, that the City may pay, sustain, or incur arising wholly or in part due to any negligent or deliberate act, error or omission of Seller in the execution, performance or non-performance or failure to adequately perform Seller's obligation pursuant to this Agreement.

Nothing contained in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28 Florida Statutes, or to extend the City's liability beyond the limits established in said Section 768.28. No claim or award against the City shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest.

IDENTIFICATION: If work is being performed on-site, the Vendor/contractor's employees will be required to obtain, at no charge, from the City's Human Resources Department, a security identification badge prior to the performance of this order. This law is established by the City Council through the City Ordinance Number 2007-48, Public Protection Act, as amended by City Ordinance Number 207-96, with an effective date of November 15, 2007.

INSPECTION: All items delivered on this order are subject to inspection upon receipt by a representative of the City. All rejected commodities shall remain the property of the Seller and will be returned at the Seller's expense.

INSURANCE REQUIREMENTS: Seller/Vendor shall adhere to the applicable Insurance Requirements as identified by the City for this order. This shall be included in the required certificate of insurance and hereby incorporated into this order.

INVOICING: Invoices shall be sent in duplicate to the City of Palm Bay, Accounts Payable Division, 120 Malabar Road, SE, Palm Bay, FL 32907. It is understood and agreed that orders will be shipped at the established contract prices. Invoices in variance with this will be subject to contract cancellation.

LEGAL RESPONSIBILITY: By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or

performed in compliance with applicable federal, state, and local laws, ordinances, rules and regulations. Lack of knowledge by the Seller shall not be a cause for relief from responsibility.

LIMITATION OF LIABILITY: The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action arising out of this Agreement. For other and additional good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller expresses its willingness to enter into this Agreement with the knowledge that the Seller's recovery from the City to any action or claim arising from the Agreement is limited to a maximum amount of the contract value less the amount of all funds actually paid by the City to Seller pursuant to this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes, or to extend the City's liability beyond the limits established in said Section; and no claim or award against the City shall include attorney fees, investigative costs, expert fees, suit costs or pre-judgment interest. This section shall not prevent the City from taking corrective action against the Seller.

MISCELLANEOUS: By accepting this order, Seller agrees to comply with all applicable Florida Statutes, including F.S. 448.095, requiring utilization of the E-Verify System, and F.S. 287.135, prohibiting government agencies from doing business with companies that boycott Israel. Non-compliance will result in immediate cancellation of this Purchase Order.

MODIFICATIONS: No modifications of this order shall be binding upon City unless approved by an authorized representative of City's Procurement Office.

OCCUPATIONAL SAFETY AND HEALTH: Items furnished shall meet all requirements for OSHA, as well as federal, state and local requirements of appropriate safety standard organizations. Seller compliance required under Chapter 442, Florida Statutes, that any toxic substance delivered as a part of this order must be accompanied by a Material Safety Data Sheet (MSDS).

PACKAGING: Packages must be plainly marked with the shipper's name and Purchase Order Number. Charges are not allowed for boxing or crating unless previously agreed upon in writing. Order Number must appear on all invoices, shipping notices, freight bills, and correspondence concerning this order.

PAYMENT CHANGES: Payments will be made only to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company and agreed to by the City.

PERMITS, LICENSES, AND CERTIFICATES: The Vendor/contractor shall procure all necessary permits, licenses, and certificates required for the proper execution and completion of the Work under this order. This includes

obtaining any approvals of plans or specifications as mandated by federal, state, and local laws, ordinances, rules, and regulations.

PUBLICITY: No endorsement by the City of the product and/or service will be used by Seller in any way, manner or form in product literature or advertising.

PUBLIC RECORDS: The city is a public agency subject to Chapter 119, Florida Statutes. The Vendor/contractor shall comply with Florida's Public Records law (chapter 119.071 FL Statute).

QUANTITIES: Quantities specified in the order cannot be changed without City approval. Goods shipped in excess of quantity designated may be returned at Seller's expense.

REPRESENTATIVES: All parties to this order agree that the representatives named herein are, in fact, bona fide and possess full and complete authority to bind both City and Seller.

RESPONSIBILITY: Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly authorized City order.

TAXES: The City is tax-exempt, therefore all applicable Federal, State, and Local Taxes, unless otherwise instructed by the City shall be excluded in this order.

TERMINATION: City reserves the right to terminate this order in whole or in part for default (a) if Seller fails to perform in accordance with any of the requirements of this order or (b) if Seller becomes insolvent or suspends any of its operations or if any petition is filed of proceeding commenced by or against Seller under any State or Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to City except for completed items delivered and accepted by the City. Seller will be liable for excess cost of re-procurement.

TERMS: By accepting this order, the Seller agrees that payment terms shall be in accord with the Local Government Prompt Payment Act, Florida Statute 218.70, *et seq.*

TIME DELIVERY: The City reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the quote for this order.

WARRANTY: Seller must warrant that the supplies and/or services furnished under this purchase order shall be covered by the most favorable commercial warranty to which the City is entitled under the law and Seller will not limit any rights afforded to the City by any other provisions of this order.

NOTE: ANY AND ALL SPECIAL CONDITIONS, AS AUTHORIZED BY THE CITY AND ATTACHED HERETO, THAT VARY FROM THE GENERAL CONDITIONS SHALL HAVE PRECEDENCE.



INSURANCE REQUIREMENTS

A. General

Before starting and until acceptance of the work by the City, the vendor/contractor shall, as a minimum mandatory condition precedent to this work, procure and maintain insurance of the types and to the limits specified below.

The vendor/contractor shall require each of their sub-vendor/subcontractors to procure and maintain, until completion of that sub-vendor/subcontractor's work, insurance of types and to the limits specified below. It shall be the responsibility of the vendor/contractor to ensure that all their sub-vendor/subcontractors comply with all of the insurance requirements contained herein relating to such sub-vendor/subcontractors. The City reserves the right to request proof of sub-vendor/subcontractor's insurance from the vendor/contractor.

B. Coverage

Except as otherwise stated, the amounts and types of insurance shall conform to the following minimum requirements:

1. **Workers' Compensation:** The Successful Proposer shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. Exemption certificates to this requirement are not acceptable. **Should the Named Vendor/Contractor utilize a Professional Employer Organization, said Vendor/Contractor acknowledges and agrees that all employees sent to the City of Palm Bay MUST be included on that PEO roster.** Said policy must include Employers' Liability insurance with limits of no less than:

Each Accident	\$ 100,000.00
Disease – Policy Limit	\$ 500,000.00
Disease – Each Employee	\$ 100,000.00

If any operations are to be undertaken on or about navigable waters of the United States of America, coverage must be included for the Federal Longshore and Harbor Workers Compensation Act, Jones Act and under any type of admiralty claim, unseaworthiness claim and/or any claim in admiralty.

2. **Commercial General Liability** – Coverage must be on an Occurrence basis and afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include:
 - a) Minimum combined single limits of \$1,000,000.00 per occurrence / \$2,000,000 general aggregate for Bodily Injury Liability and Property Damage Liability.
 - b) Premises and Operations.
 - c) Personal & Advertising Injury
 - d) Products and Completed Operations.
3. **Business Auto Policy** - Coverage must be afforded on a form no more restrictive than the latest edition of the Business Auto Policy filed by the Insurance Services Office and must include:
 - a) Minimum Limits \$1,000,000.00 per occurrence combined single limit for bodily Injury Liability and Property Damage Liability.
 - b) Owned Vehicles.
 - c) Hired and Non-Owned Vehicles.
4. **Certificate of Insurance** – Certificate of all insurance required from the Vendor/contractor shall be filed with the City and shall be subject to its approval for adequacy and protection. Certificates from the insurance carrier, stating the types of coverage provided, limits of liability and expiration dates, shall be filed with the City before operations are commenced. The City of Palm Bay shall be identified as a named additional insured for general and automobile liability coverages required above. **Certificate of Insurance shall indicate "Waiver of Subrogation" applies to General Liability and Automobile Liability.** The required certificates of insurance shall not only name the types of policies provided but shall also refer specifically to this contract and section and the above paragraphs in accordance with which such insurance is being furnished, and shall state that such insurance is as required as a condition precedent by such paragraphs of this contract. If the initial insurance expires prior to the completion of the work, renewal certificates shall be furnished thirty (30) days prior to the date of expiration.