

## Purchase Order (PO) Terms and Conditions

Providing any goods or service constitutes acceptance of this entire PO without exception.

This PO authorizes delivery of the listed items or services. If a solicitation number is referenced, the terms and conditions of said solicitation become part of this PO. Deviation from prices stated herein is not permitted without a signed corrected PO or Change Order.

**Delivery.** Shipping is defined as **Freight on Board (FOB) Destination, Freight Allowed**. Title and risk of loss shall pass when items have been received, inspected, and accepted by the City of Orange City ("City"). All associated shipping, insurance, and other related costs shall be borne by Provider.

**Discontinued.** Provider shall give City thirty (30) days advance notice of a discontinued item(s) so that City can purchase additional quantities of discontinued item(s). City must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or Contract can be terminated by the City for convenience, non appropriation of funds, or non performance.

**Disputes.** If such dispute arises under this PO or Contract and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within twenty-five (25) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within thirty (30) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

**Governing Law/Jurisdiction/Venue.** This PO or Contract shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or Contract shall be in the County of Volusia, Florida, and any trial shall be non-jury. Each party agrees to bear its own costs and attorneys' fees relating to any dispute arising under this PO or Contract. Provider shall comply with all applicable laws and regulations.

**Insurance.** For goods and services delivered or performed by Provider on City premises, Provider certifies it maintains comprehensive general liability, worker's compensation (**or state-issued exemption**) and auto insurance in the amounts acceptable to the City thereto pertaining to this PO or contract, and from an A.M. Best "A—" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The City reserves the right to require that "Orange City" be named as additional insured for projects when deemed necessary. For services performed off City premises and goods delivered by third-party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

**Intellectual Property.** Provider agrees to protect, defend, indemnify, and save the City, its agents, officials, including elected officials, and employees of the City harmless from and against any and all claims, demands, actions, and causes of action which may arise asserting that a copyright, trademark, trade secret, or patent ("Intellectual Property"), as provided under this PO or Contract, infringes or misappropriates any third party's intellectual property. If Provider must pay a third party any license, royalty, or other such usage fee in order to deliver the item(s) under this PO or Contract, such third party and usage fee must be specified in the Provider's offer to sell to the City.

**Indemnification.** The Provider shall, at Provider's expense, indemnify, defend, and hold harmless the City, its officers, agents, and employees from or on account of any and all claims, actions, lawsuits, losses, expenses, injuries, damages, judgments, or liabilities of any kind whatsoever resulting from, arising out of, allegedly arising out of, or in connection with the Provider's performance or nonperformance of services pursuant to this PO or Contract, whether said services are performed by the Provider, its agents, sub-agents, subcontractors, suppliers, appointees, or employees, or on behalf of the Provider, unless said claims, actions, lawsuits, losses, expenses, injuries, damages, judgments, or liabilities result from, arise out of, or are in connection with the actions of the City, its officers, agents, or employees, for the sole benefit of the City and unrelated to the Provider's performance or nonperformance of its services under this PO or Contract.

**Modification & Assignment.** City may unilaterally change, at no additional cost, the quantity and receiving point within the City for items not yet shipped. All other items must be mutually agreed upon in writing. City is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or Contract quantity, or items shipped at a higher price than stated on the PO or Contract. Neither this PO or Contract nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the City.

**Notices.** All notices given by one party to the other party under this PO shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the City, it shall be addressed to the Finance Department, 205 E. Graves Avenue, Orange City, Florida, 32763.

**No Waiver.** Except as expressly set forth herein, no failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as or be deemed a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

**Order of Precedence.** In the event of conflict between this PO or a City Contract, the originating City contract and amendments thereto shall be controlling. This control shall pertain to all specifications and scopes of work included in the originating City contract and any amendments thereto.

**Payment.** Except for construction services, which shall be paid pursuant to the Florida Prompt Payment Act, City shall pay Provider within 45 (forty five) days after receipt of an accurate and undisputed invoice, unless the City accepts a prompt payment discount from Provider and the goods or services are not defective. Invoice, packing slip, delivery receipt, order acknowledgement, and correspondence shall clearly indicate the PO number. Pursuant to Chapter 218, F.S., the City will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within 45 (forty-five) days after receipt of the entire order of the commodity or service AND a properly completed invoice, whichever is later. Any additional or different terms and conditions on Provider's documents shall be considered null and void. The City may deduct amounts it is due from Provider's payment or not pay disputed invoices until such dispute is resolved. Nothing in this PO shall create any obligation on the part of the City to pay directly to any subcontractor or supplier of Provider any monies due to such subcontractor or supplier or claims of such subcontractor or supplier for amounts owed by Provider to subcontractor or supplier for goods or services provided under this PO.

**Sovereign Immunity.** The City expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with §768.28, Florida Statutes. Notwithstanding anything set forth in any section of the Agreement and/or this PO to the contrary, nothing in the Agreement and/or this PO shall be deemed as a waiver of immunity of limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort, equity, or contract shall not exceed the dollar amount set by the legislature for tort.

**Taxes.** City is tax exempt from Manufacturers' Federal Excise Tax (Exemption #49-6000-885) and Florida sales tax (Exemption # 85-8012739649C-6). Certificates are available upon request.

**UCC.** In addition to any rights or remedies contained in this P.O., each party shall have rights, duties, and remedies available through the Uniform Commercial Code (UCC).

**Vendor Terms and Conditions.** If vendor terms and conditions conflict with the City's Terms and Conditions, the City's Terms and Conditions shall prevail.

**Warranty.** Provider warrants that all work or services performed under this PO shall be performed in a good and competent workmanlike manner to the satisfaction of the City, and materials shall be of good quality (unless otherwise stated on PO), and free from defects and pursuant to specifications and requirements of the contract related to this PO. Provider warrants merchantability of all goods or services and that they are fit for the ordinary purposes they are intended to serve.