

CITY OF WESTERVILLE: GENERAL PURCHASE ORDER TERMS AND CONDITIONS

The following General Terms and Conditions shall apply to all short form contracts (Purchase Orders) issued by the City of Westerville, hereinafter called "City" and accepted by vendors, consultants and other service providers hereinafter called "Contractor" unless specifically provided otherwise on the front of the City's Purchase Order or a separate contract signed by the City's authorized agent.

TAX EXEMPTION:

The City is exempt from Federal and Ohio State sales tax, ID #31-640113. A tax exemption certificate will be made available at the Contractor's request.

ACCEPTANCE OF CONTRACT:

The City's Purchase Order is an offer to purchase the goods and/or services described on the front of the Purchase Order. The City's placement of the order is expressly conditioned upon Contractor's acceptance of all the terms and conditions of purchase contained herein. The Contractor's delivery of the goods and/or services shall be deemed acceptance of the City's terms and conditions.

SCOPE OF WORK:

Contractor shall perform the work described on the front of the Purchase Order (or reasonably inferable there from), as well as any requests for bids, proposals, quotations, specifications, or other related documents, to the complete satisfaction of the City.

AMENDMENTS:

No agreement or understanding to modify a City Purchase Order shall be binding upon the City unless in writing and signed by the City's authorized agent.

UNIFORM COMMERCIAL CODE:

The Ohio Uniform Commercial Code (Ohio Revised Code, Title 13) shall prevail as the basis for contractual obligations between the Contractor and the City for any terms and conditions not specifically stated herein.

DELIVERY:

Unless otherwise stated, all prices are F.O.B. destination. Time is of the essence for the City's contract. If completed deliveries are not made at the time agreed, the City reserves the right to cancel or purchase elsewhere and hold Contractor accountable. If delivery dates cannot be met, the Contractor agrees to advise the City, in writing of the earliest possible shipping date for performance by the City.

RISK OF LOSS:

Regardless of F.O.B. point, Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered by the City which may for any reason occur prior to acceptance by the City. No such loss, injury or destruction shall release Contractor from any obligations hereunder.

INSPECTION:

Goods and material must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of delivery, the goods shall be returned at no cost to the City. The City reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

TERMINATION:

The City reserves the right to terminate the contract in whole or in part for default (termination due to the Contractor's failure to perform satisfactorily) or convenience (termination due to the best interests of the City). After 10 days from delivery of a written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to terminate the contract. In such case, the Contractor shall be paid for work executed, goods delivered and accepted, and any expense sustained plus reasonable profit, unless such termination was due to the act or conduct of the Contractor.

INDEMNIFICATION BY CONTRACTOR:

To the extent authorized by law, Contractor shall indemnify and hold harmless the City, its officers, elected officials, agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the Contractor's performance, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the Contractor, subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

INDEMNIFICATION BY THE CITY:

The City will not indemnify any Contractor. As a political subdivision of the State of Ohio, the City is prohibited from indemnifying Contractors.

INSURANCE:

If the Contractor is required to go on City property to perform work or services, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by the City. Liability and Property Damage Insurance shall be provided for not less than the following amounts, or greater where required by law. If the Contractor maintains higher limits than the minimums shown below, the City shall be entitled to coverage for the higher limits maintained by the Contractor.

One Million Dollars (\$1,000,000) for bodily injuries, including wrongful death, to any one person, subject to the same limit for each person, in an amount not less than Two Million Dollars (\$2,000,000) for bodily injury damages for any one accident; and (2) in an amount not less than One Million Dollars (\$1,000,000) for property damages on account of one accident and in an amount not less than Two Million Dollars (\$2,000,000) for damages for all accidents.

PATENTS AND COPYRIGHTS:

If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Contractor agrees to indemnify and save harmless the City from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

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 agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

REMEDIES:

The City shall have all rights and remedies afforded under the Universal Commercial Code and Ohio law in contract and in tort, including but not limited to rejection of goods, refund, incidental, consequential and compensatory damages and reasonable attorney's fees.

ASSIGNMENT:

Neither the Contractor nor the City shall, sell, transfer, assign or otherwise dispose of the contract or any portion thereof, or of their right, title or interest therein, or the obligation thereunder, without written consent of the other party.

RELATIONSHIP OF THE PARTIES:

The relationship between the parties shall be that of independent contractors. Nothing contained herein shall be interpreted or construed as establishing an agency or employer/employee relationship between the parties or between either party and the employees or representatives of the other party. Contractor is responsible for payment of all Social Security taxes and Bureau of Workers Compensation contributions for itself and any of its employees.

PUBLIC RECORDS:

In entering into a contract with the City (or responding to a City solicitation), all Contractors are hereby notified that all bids, proposals, quotations, RFI responses, agreements, invoices, correspondence and any other documents submitted to the City become public property and are subject to public disclosure in accordance with Ohio Public Records Law. All public records will be made available upon request, at the earliest time permitted by law.

MATERIAL SAFETY DATA SHEETS:

Proper Material Safety Data Sheets, in compliance with OSHA's Hazard Communication Standard, must be provided by the Contractor to the City at the time of purchase.

LEGAL RESPONSIBILITY:

The Contractor certifies that in performing the City's contract they will comply with all applicable provisions of the federal, state and local laws, ordinances, rules and regulations. Lack of knowledge by the Contractor shall in no way be a cause for relief from responsibility.

LAWS GOVERNING:

This contract shall be governed by and construed according to the laws of the State of Ohio. Venue for any action related to the City's contract shall be in Franklin County, Ohio.

PREVAILING WAGE:

It shall be the responsibility of the Contractor to comply, when applicable, with the requirements of the Ohio Revised Code Chapter 4115 and the Ohio Administrative Rules and Regulations 4101:9-4 and shall pay each laborer, worker and mechanic employed by the Contractor not less than the prevailing rate of wages as determined by the Ohio Department of Commerce.

INCOME TAX:

Contractors performing work within the City will be required to withhold all City income taxes due or payable under the provisions of the Income Tax Ordinance, for wages, salaries, and commissions paid to employees and further agree that any subcontractors shall be required to agree to withhold any such City income taxes due under said chapter for services performed.

PAYMENT TERMS:

The City's payment terms are net 30. The payment date will be calculated based on the invoice date for goods and/or services that have been received and accepted by the City. The City must also have possession of complete and full title prior to issuing payment for vehicles.

PAYMENT:

Invoices should be addressed to the Finance Department, City of Westerville, 21 South State Street, Westerville, OH 43081 as indicated on the front of the Purchase Order. Alternatively, invoices are also accepted electronically via e-mail submission to finance@westerville.org. All invoices (hard copy and electronic) must include purchase order number, Contractor's name and phone number, and clearly list quantities, item descriptions and units of measure.

WARRANTY:

The Contractor warrants to the City that all goods and services furnished will conform in all respects to the terms of the City's order, including any drawings, specifications or standards incorporated into the City's order. Contractor further warrants that all goods and services are free from defects in materials, workmanship, and defects in design. In addition, the Contractor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they are intended.

COMPLIANCE:

A. Contractor shall observe and comply with all applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over the City's contract.

B. Contractor shall comply, when applicable, with the U. S. Department of Labor, Safety and Health Regulations identified as Chapter XVII of Title 29, Code of Federal Regulations (CFR) Parts 1910 and 1926 and subsequent amendments.

C. Contractor agrees that in the hiring of employees for the performance of work under this contract or any subcontract, no Contractor, subcontractor, or any person acting on their behalf shall, by reason of race, color, religion, sex, national origin, age, familial status, military status, disability, pregnancy, sexual orientation, gender identity, or gender expression, or any prohibition provided by federal or state law, discriminate against any citizen of the State in the employment of labor or workers who are qualified and available to perform the work to which the employment relates, nor shall the Contractor, Subcontractor, or any person acting on their behalf, in any manner, discriminate against or intimidate any employee hired for the performance of work under the City's contract on account of race, color, religion, sex, national origin, age, familial status, military status, disability, pregnancy, sexual orientation, gender identity, or gender expression, or any prohibition provided by federal or state law.

ENTIRE AGREEMENT:

This Contract constitutes the entire agreement between the parties. It may not be modified or terminated orally. No other terms and conditions shall be effective or binding unless specifically provided otherwise on the front of the City's Purchase Order or a separate contract signed by the City's authorized agent.