

PURCHASE ORDER TERMS AND CONDITIONS

- (1) The delivery of the goods and/or services within the time specified is of the essence of this Purchase Order. Buyer shall have the right to cancel any or all item(s) without obligation if delivery is not made on or before the time (s) specified. In the event Seller fails to make timely shipment, Buyer shall have the right to purchase elsewhere and unless the delay was caused by unforeseeable circumstances beyond Seller's control, Seller shall reimburse Buyer for any additional charges incurred.
- (2) All purchases are F.O.B. destination, freight prepaid by Seller unless otherwise stated on the Purchase Order. Collect shipments will not be accepted. Calculations for invoice payment will be calculated from the date Buyer receives the invoice. All packages MUST BEAR THE BUYER'S PURCHASE ORDER number on the shipping label.
- (3) The risk of loss, injury or destruction, regardless of the cause shall be borne by the Seller until delivery of goods to the specified destination, and inspection and acceptance of the goods by Buyer. Rejected goods will be returned to Seller at Seller's risk and expense. Title of goods shall pass to Buyer upon acceptance.
- (4) Seller warrants that the goods, services and/or workmanship furnished and/or delivered pursuant to this Purchase Order shall:
 - a. Conform in all respect to the description and specifications contained in this Purchase Order;
 - b. Be merchantable and fit for the ordinary purposes for which such goods are used or intended to be used;
 - c. Be new and not secondhand, or good quality and free from defects whether latent or patent in material or workmanship; all material and workmanship is warranted for a minimum of one (1) year from date of acceptance by Buyer unless otherwise stipulated herein;
 - d. Be free from any security interests, liens or encumbrances; Seller warrants that it has good and marketable title to the goods delivered hereunder;
 - e. Comply with the requirements of all applicable federal, state and municipal laws and regulations;
 - f. Not infringe upon or violate any copyrights or patent rights.

No warranty, either express or implied, may be modified, excluded or disclaimed in any way by Seller. All warranties shall remain in full force, notwithstanding acceptance and payment to Buyer.

- (5) Seller shall indemnify, defend and hold harmless Buyer for all damages, losses and liabilities arising out of (1) the operations of Seller pursuant to this Purchase Order including but not limited to those caused by or arising out of a defective condition in the goods, whether patent or latent, provided that such defect existed at the time of shipment by Seller; (2) infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to the Buyer, and/or (3) any negligent act, error or omission by the Seller, or its employees, agents, subcontractors or assignees in connection with services performed under this Purchase Order. Seller agrees to pay all damages, costs and attorney's fees incurred in the defense of any such claim.
- (6) Buyer, acting through its City Manager or designee, reserves the right to terminate this order in whole or in part for default if (a) Seller fails to perform in accordance with any of the requirements of this order or (b) Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any State or Federal Law relating to bankruptcy, reorganization, receivership or assignment for the benefit of creditors. Any such termination shall be without liability to the Buyer except for completed items delivered or accepted by the Buyer. In the event of default by the Seller, Buyer may procure the articles or services covered by this order from other sources and hold the Seller responsible for any excess costs occasioned thereby, in addition to all other available remedies at law or equity.
- (7) Buyer is exempt from Federal and State Taxes.
- (8) Seller shall comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the Fair Labor Standards Act and Equal Opportunity Provisions of Executive Orders. Seller must comply with the requirements 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 (M.S.D.S.)
- (9) Failure by Seller to a) deliver or install the goods and/or services in accordance with the Buyer's delivery/installation deadlines, or b) deliver or install the exact quantities of the goods and/or services to the Buyer in accordance with the Buyer's delivery/installation deadlines, shall cause the Seller to pay to the Buyer liquidated damages in the amount of 5% (five percent) of the total purchase price. Seller and Buyer agree that the amounts described as liquidated damages are not penalties but represent a fair and reasonable estimate of the costs that the Buyer will incur by reason of Seller's failure to perform, and are fair and reasonable compensation to the Buyer for its losses. Failure by Buyer to impose liquidated damages will not constitute a waiver of the right to enforce this section nor will it constitute a waiver of any other right of Buyer under the Purchase Order Terms and Conditions, including but not limited to Seller's obligation to Buyer to pay any overdue amounts or perform any services required under the Purchase Order Terms and Conditions.
- (10) This Purchase Order shall be governed and construed according to the laws of the State of Florida. All parties to this Purchase Order shall submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this order or the performance of work hereunder. Venue of any action to enforce this order or the performance of work hereunder shall be in Miami Dade County, Florida. If Buyer or Seller shall be required to enforce the terms of this order by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.
- (11) This Purchase Order contains the entire understanding of the parties relating to the subject matter hereof, superseding all prior communications. This Purchase Order may not be changed except by written amendment signed by authorized agents of both Buyer and Seller. Seller is expressly prohibited from delegating its duties and obligations or transferring or assigning its rights hereunder without the prior written approval of Buyer.
- (12) Any delivery of goods or services referenced in this Purchase Order and for the Seller's attached quote constitutes acceptance by the Seller of the foregoing terms conditions.
- (13) In the event services or delivery of goods are scheduled to end because of the expiration of this PO, the vendor shall continue the service or delivery of goods upon request from the city. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing PO. The successful vendor shall be compensated for the service or delivery of goods at the rate(s) in effect from the original quoted price.