

City of Corona, CA: Purchase Order Terms and Conditions

- 1. GENERAL:** If the goods and/or services ordered herein are as a result of a *Request for Quotation, Request for Proposal, Notice Inviting Bids or a City Agreement* then the Terms and Conditions set forth in this document are considered to be in addition to the requirements and specifications stated in the *RFQ, RFP, NIB or Agreement* and are, by this reference, incorporated herein. To the extent that one set of Terms and Conditions may contradict the other, the requirements of the *RFQ, RFP, or NIB* shall supercede the Terms and Conditions shown below. It is understood that all materials and/or services provided by Supplier/Consultant/Contractor (each, a "Supplier") shall conform to the applicable requirements of City Ordinances, and all applicable State and Federal Laws.
- 2. DELIVERY:** Supplier shall deliver the items and/or services stated herein free from any and all claims, debts, or demands whatsoever. Deliveries shall be made as set forth in this order and any additional Specifications incorporated. Delivery is defined as complete delivery in good order, at place designated in the Specifications/Purchase Order.
- 3. MISCELLANEOUS CHARGES:** No charges for transportation, containers, packing, etc. will be allowed unless so specified in this order.
- 4. FREIGHT CHARGES:** All shipments are F.O.B. – Destination, Supplier pays charges, unless specified otherwise in body of this order. If an order is agreed upon as F.O.B. – Origin, freight is to be prepaid and added to the invoice. The City reserves the right to request a copy of the paid express or freight bill.
- 5. INDEMNIFICATION.** Supplier shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all Claims (as defined below) **in any manner arising out of or incident to directly caused by Supplier** (i) any acts, omissions or willful misconduct of Supplier, its officials, officers, employees, agents, consultants and contractors; (ii) the performance of the Work or this Contract; and/or (iii) any action for product liability arising from a defect in the design, materials and workmanship of any product provided pursuant to this purchase order. Supplier shall defend, at Supplier's own cost, expense and risk, any and all Claims of any kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Supplier shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Supplier shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. For the purpose of this provision, "Claims" means claims, actions or causes of action, regulatory, legislative or judicial proceedings, at law or equity, and all associated liabilities, demands, assessments, levies, losses, fines, penalties, damages, costs and expenses, whether in connection with property or persons, including wrongful death, in each case as awarded by a court or arbitrator, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) all consequential damages and damages that arise as a result of strict liability. Supplier shall not be required to defend, hold harmless or indemnify any party beyond the extent of Supplier's fault, or the fault of those for which it is responsible, such as employees or Suppliers. **IN NO EVENT SHALL EITHER SUBCONTRACTOR OR CONTRACTOR BE LIABLE TO THE OTHER UNDER THE AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, LIQUIDATED, OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- 6. PATENT RIGHTS:** Any equipment or service to be furnished hereunder shall not, either in construction, manufacture, use, sale or other particular, infringe any letters patent, copyright or registered trademark heretofore granted, and the Supplier shall defend and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the City based upon an infringement or alleged infringement of such letters patent, copyright or registered trademark and shall indemnify and save harmless the City from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit. In the event that a party prevails in any such action, Supplier shall obtain a license, at Supplier's sole cost, for City to continue using the infringing goods or services or provide substitute goods which are acceptable to City in its sole discretion.
- 7. ARTWORK, DESIGNS ETC.:** If the goods are to be produced by vendor in accordance with designs, drawings or blueprints furnished by City, vendor shall return same to City upon completion or cancellation of this Purchase Order. Such designs and the like shall not be used by vendor in the production of materials for any third party without City's written consent. Such designs and the like involve valuable property rights of City and shall be held confidential by vendor.
- 8. NONDISCRIMINATION CLAUSE:** Except as provided in Section 12940 *et seq.* of the Government Code, Supplier shall not discriminate against any person because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, marital status, mental condition, or gender, nor refuse to hire or employ a person or to refuse to select the person for a training program leading to employment or to bar or discharge the person from employment, or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions or privileges of employment. Supplier shall insert in all subcontracts for any work covered by this purchase order this nondiscrimination provision.
- 9. EXCISE TAX:** If federal excise tax is applicable to the transaction, it must be clearly stated so and excluded from the price or the article. The City of Corona, as a government agency, is exempt from the payment of said tax and will issue an exemption certificate.
- 10. SALES AND USE TAXES:** Sales tax must be shown on the invoice as a separate item.
- 11. DEFAULT BY SUPPLIER:** In case of default by Supplier, the City reserves the right to procure the goods or services from other sources and to hold the Supplier responsible for any excess costs occasioned to the City thereby. Supplier shall not be held accountable for additional costs incurred due to default as a result of *Force Majeure*. Supplier must notify the City immediately upon knowing that non-performance or delay will apply to this order as a result of *Force Majeure*. At that time Supplier is to submit in writing a Recovery Plan for this order. If the Recovery Plan is not acceptable to the City or not received within 10 days of the necessary notification of *Force Majeure* default, then the City may cancel this order in its entirety at no cost to the City, owing only for goods and services completed to that point.
- 12. INSPECTION AND ACCEPTANCE:** Inspection and acceptance shall be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss shall be on the Supplier unless loss results from the negligence of the City of Corona. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods. When the purchase order specifies equipment or material by manufacturer, model, or trade name, no substitution will be made without City's written approval. Notwithstanding the requirement for any inspection and test contained in specifications applicable to this contract, except where specialized inspection or tests are specified solely for the City, the Supplier shall perform or have performed the inspection and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications, and contract requirements incorporated herein, including if applicable the technical specifications for the manufacturers' part numbers specified herein.
- 13. PAYMENTS:** Payment terms are as on front of purchase order unless otherwise agreed to by both parties. All Cash Discounts shall be taken and computed from the date of delivery or completion and acceptance of the material, or from the date of receipt of invoice, whichever is latest. Each payment obligation of the City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by the Supplier, the product or service directly or indirectly involved in the performance of that function may be terminated by the City at the end of the period for which funds are available. Supplier's payment terms are net thirty (30) days for undisputed invoices (No early payment discount) regardless of whether City has received payment from an upstream party. Supplier shall be entitled to invoice once per month.
- 14. INVOICES:** Invoices shall contain the following information: Supplier's Federal Tax I.D. number, contract or order number, item number, description of supplies/services, quantities and units of measure, unit prices and extended totals. Bill of Lading number and weight of shipment will be shown for shipments on Government Bills of Lading.
- 15. WARRANTY:** The Supplier agrees that the supplies/services furnished under this contract shall be covered by the most favorable commercial warranties the Supplier gives to any customer for such supplies/services, and that the rights and remedies provided herein are in addition to, and do not limit any rights afforded to the City by, and other clause of a contract awarded hereunder. Supplier warrants its services and products for one year from the first use of such services or products. Supplier shall pass through all manufacturer's warranties.
- 16. ASSIGNMENT OF CLAIMS:** Claims for monies due or to become due under this contract shall be assigned only pursuant to prior written consent of the City Purchasing Officer or designated representative.
- 17. CONTRACT TERMINATION:** This Contract may be terminated by City at any time, with or without cause, by giving Supplier three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Supplier, City shall pay Supplier for all Work performed up to that time as provided herein. In the event of breach of the Contract by Supplier, City may terminate the Contract immediately without notice, may reduce payment to the Contractor in the amount necessary to offset City's resulting damages, may procure substitute goods or services at Supplier's expense, and/or may pursue any other available recourse against Supplier. Supplier may not terminate this Contract except for cause. Upon termination of this Contract by City for any reason, City may require Supplier to provide all finished or unfinished goods, documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.
- 18. GOVERNING LAW:** This purchase order shall be deemed a contract and shall be governed by and construed in accordance with the laws of the State of California. Supplier agrees that the State and Federal courts which sit in the State of California shall have exclusive jurisdiction over all controversies and disputes arising hereunder, and submits to the jurisdiction thereof.
- 19. ATTORNEY'S FEES AND COSTS:** In any action by a party to enforce its rights hereunder, the nonprevailing party shall pay the prevailing party's legal costs and expenses (including reasonable attorney's fees).
- 20. CHANGE ORDERS:** The City reserves the right at any time to make written changes within the general scope of the contract. If any such changes cause an increase or decrease in the cost of, or in the time required for the performance of the contract, an equitable adjustment shall be made in the contract price, delivery schedule, or both. Any Claim by Supplier for adjustment in this cause must be approved by the City's authorized representative(s) in writing (formal change order, amendment, or revision) before Supplier proceeds with such change.