

CITY OF LIVONIA PURCHASE ORDER TERMS AND CONDITIONS

- 1) **DEFINITIONS.** Throughout this document the term “Contractor” refers to the entity furnishing goods, services, and goods and services and shall be synonymous with the term “Supplier” or “Seller.” The term “City” refers to the City of Livonia, a public body corporate located in the State of Michigan. The term “Purchase Order” and “Contract” shall be synonymous.
- 2) **ACCEPTANCE OF PURCHASE ORDER TERMS AND CONDITIONS.** Agreement by Contractor to furnish the goods and services ordered by the City, or Contractor’s commencement of such performance, as described in the Quote attached hereto, constitutes acceptance by the Contractor of this Purchase Order subject to these terms and conditions, including the Quote and Price Sheet attached hereto. No other terms and conditions shall be binding on the City unless the City’s specific written approval of those terms and conditions shall have been given to Contractor.
- 3) **ORDER NUMBER.** Invoices, Bills of Lading, Shipping Documents and all correspondence relating to this order must show the Purchase Order Number applicable to this transaction.
- 4) **COMPENSATION.** The City agrees to pay the Contractor at the rates in the Quote attached hereto. The Compensation for this Contract shall not exceed the dollar amount listed on this purchase order.
- 5) **ASSIGNMENT/TRANSFER.** Assignment or transfer of this Contract without the written consent of the City may be construed by the City as a breach of contract sufficient to terminate this Contract at the discretion of the City.
- 6) **INSPECTION.** All goods and services shall be subject to inspection and approval by the City at all reasonable times including inspection during manufacture. Inspection and approval by the City at Contractor’s plant does not preclude rejection for defects upon discovery by subsequent inspection. Any goods and services rejected by the City shall be promptly repaired or replaced at Contractor's expense. Any and all costs incurred by the City in connection with the return of goods rejected by the City as defective shall be at Contractors risk and expense.
- 7) **RISK OF LOSS.** Contractor will provide guaranteed, certified delivery. Regardless of FOB point, Contractor agrees to bear all risks of loss, injury or destruction of goods ordered herein which occur prior to delivery and acceptance; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.
- 8) **WARRANTY.** Contractor warrants that it has good and merchantable title to any goods sold hereunder and that said goods shall conform to the descriptions and applicable specifications and samples, such goods shall be of good merchantable quality and fit for the known purposes for which sold, and are free and clear of all liens and encumbrances. Contractor and the City agree that this order does not exclude, or in any way limit, other warranties provided for in this agreement or by law.
- 9) **EXCISE AND SALES TAX.** The prices herein must not include any Federal excise taxes or sales taxes imposed by any State or Municipal Government. Such taxes, if included, must be deducted by the Contractor when submitting invoice for payment.
- 10) **INVOICES.** Invoices for goods must be submitted on sale of complete shipment. Invoices for Services must be submitted within 30 days after completion of Services, Payment will be delayed if the invoice fails to reference PO number, ordering department, unit prices, quantities, or a full description of the order that matches the PO.
- 11) **COMPLIANCE WITH LAWS.** Contractor represents and warrants that the performance of this Purchase Order and the furnishing of goods or services required shall be in accordance with the applicable standards, provisions and stipulations of all pertinent Federal, State, County or City laws, rules, regulations, resolutions and ordinances including but not limited to the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, and the Occupational Safety and Health Acts.

- 12) AMENDMENTS.** No amendment, modification or supplement of this Contract shall be binding unless it is in writing and signed by authorized representatives of the parties.
- 13) TERMINATION.** When in the City's best interest, the City may unilaterally cancel this Purchase Order at any time, whether or not Contractor is in default of any of its obligations hereunder. Under any such cancellation, Contractor agrees to waive any claim for damages, including loss of anticipated profit on account hereof. However, the City agrees that Contractor shall be paid for items and/or services already accepted by the City, but in no event shall the City be liable for any loss of profits on the order or portion thereof so terminated. Either party may terminate this agreement at any time for the failure of the other to comply with any of its material terms and conditions.
- 14) WAIVER OF BREACH.** No waiver by either party of any breach of any of the covenants or conditions herein contained performed by the other party shall be construed as a waiver of any succeeding breach of this same or of any other covenant or condition.
- 15) COMPLETE AGREEMENT:** The parties agree that conditions of purchase stated herein set forth their entire agreement and there are no promises or understandings other than those stated and that any prior negotiations between the City and Contractor or terms and conditions set forth in the Contractor's quote or sales acknowledgment shall not constitute a part of the Contract between City and Contractor concerning this purchase, except that the terms of this agreement do not supersede any underlying contract. The term "agreement" as used in this clause shall include any future amendments, modifications, or supplements made in accordance herewith.
- 16) LIABILITY AND INDEMNITY.** Contractor agrees to protect, defend, reimburse, indemnify and hold the City, its elected officials, officers, affiliates, employees, volunteers and agents harmless at all times from and against any and all claims, liabilities, expenses, losses, demands, damages, fines and causes of action every kind and character made, incurred, sustained or initiated by any party hereto, any third or other party acquiring any interest hereunder, any agent or employee of any party hereto, any third party or other party or any governmental agency, arising out of, incident to, or in connection with this Purchase Order, or in the performance, nonperformance or purported performance of the work or services or breach of the items hereof, except when City is grossly negligent.
- 17) INSURANCE.** Contractor shall procure and maintain, for the duration of the agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with products, materials, and/or services provided to the City. The cost of such insurance shall be borne by the Contractor.

Minimum Limits of Insurance Coverage shall be at least as broad as insurance services office commercial general liability coverage (occurrence Form CG 00 01) and include products coverage.

Contractor shall maintain at least the following minimum coverage:

Commercial General Liability (CGL). Insurance Services Office Form CG 00 01 covering CGL on an occurrence basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.

If the Contractor maintains higher limits than the minimum insurance shown above, the City requires and shall be entitled to coverage for the higher insurance limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Additional Insured Status The City, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability

coverage can be provided in the form of an endorsement of the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG20 10 and CG 20 37 forms if later revisions used).

Primary Coverage For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy shall state that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation. Contractor grants the City a waiver of any right to subrogation which any insurer of the Contractor may acquire against the City by virtue of the payment of any loss under such insurance, Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Section. Failure to obtain the required documents prior to commencement of the provision of goods and/or services shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by this Section, at any time.

- 18) JURISDICTION AND LAW.** This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the laws of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract.
- 19) INTELLECTUAL PROPERTY.** Contractor warrants that the sale, use, or incorporation into manufactured products of all goods, machines, parts, components, services, devices, material, and rights furnished or licensed under this Contract (collectively, the "Parts") which are not of the City's design, composition, or manufacture shall be clear of infringement of any valid patent, copyright, trademark, or proprietary rights. Contractor shall defend, indemnify, and save the City harmless from any and all expenses, liability, and loss of any kind (including all costs and expenses including attorneys fees) related to or arising out of claims, suits, or actions alleging such infringement.
- 20) NON-EXCLUSIVE AGREEMENT.** This Contract is a non-exclusive contract and the City reserves the right to purchase the same or like materials and/or services from other sources as the City deems necessary.
- 21) INSOLVENCY.** If Contractor becomes insolvent, files a petition in bankruptcy, or makes an assignment for the benefit of creditors, or if a receiver or trustee is appointed of or for any of Seller's property or business, this Contract may be cancelled at the City's sole option without liability to Seller.
- 22) CONFIDENTIALITY.** If the City discloses confidential information to the Contractor's employees pertaining to the City's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the City. The Contractor agrees to take appropriate action with respect to its employees to insure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied.
- 23) MATERIAL SAFETY.** For all applicable items, Material Safety Data Sheets must be shipped with each product.