



## **CITY OF STOCKTON TERMS OF PURCHASE (PURCHASE ORDER)**

### **1) DEFINITIONS**

The term "Order" means the Purchase Order to which these Standard Terms and Conditions are attached or associated. "City" means City of Stockton, California, a municipal corporation. "Supplier" or "Vendor" means the person or business entity that is identified on the face of this Order to provide the Product hereunder. "Notice" means a specifically and appropriately addressed communication that is written and delivered by confirmed e-mail, facsimile, registered U.S. mail, or other verifiable method. "Product" means all items, materials, equipment, software, labor or other services that are the subject of the Order.

### **2) PRECEDENCE OF TERMS**

If a written contract or agreement (the "Agreement") has been executed by City and Supplier with reference to the Product ordered hereunder, this Order shall be governed by the terms of such Agreement. If no Agreement exists, however, Supplier's acknowledgement of, or performance against, this Order shall constitute acceptance of all the terms and conditions stated herein. These terms and conditions will be the complete and exclusive statement of the parties relative to this Order.

### **3) NON-BINDING COUNTEROFFER**

In the event of Supplier does not accept the terms of this Order, and submits a counteroffer to City in writing, Supplier acknowledges and agrees that a binding contract does not exist between the parties on the counter-offered terms proffered by Supplier unless and until City accepts such counteroffer in writing. Any performance by Supplier prior to receipt of City's written acceptance of the terms of a counteroffer shall be under the terms of this Order.

### **4) RIGHT OF INSPECTION**

All Product furnished by Supplier must be as specified in the Order and will be subject to inspection and approval of City after delivery. City reserves the right to reject and return, at the risk and expense of Supplier, the portion of any Product which may be defective or fail to comply with specifications in the Order without invalidating the remainder of the Order. If rejected, Product will be held for disposition at the expense and risk of Supplier. Payment for Product on this Order prior to inspection shall not constitute acceptance of the Product.

### **5) TERMINATION**

City may terminate this Order at any time with or without cause by providing Notice to Supplier of intent to terminate. Upon receipt of notice of termination, Supplier, unless otherwise directed by City, will terminate promptly all production of non-standard Product to be created under the Order, and shall transfer title and deliver to City all finished non-standard Product. Upon termination under this section, City's obligation to Supplier will be the Order price for all Product completed at the time City notifies Supplier of its intent to terminate the Order, unless City agrees otherwise in writing, and provided that the Product conforms to the requirements of the Order. Supplier grants City the right to audit Supplier's records, before or subsequent to payment, to verify amounts requested in any invoice for non-standard Product. City will have no obligation to Supplier under this section if the termination results from a breach or default by Supplier.

### **6) WARRANTY**

Supplier warrants that (i) any Product created or performed by Supplier for City under this Order will conform to specifications, drawings or samples furnished by City to Supplier for a minimum period of one year from initial operation of the Product or eighteen months from delivery of the Work whichever is earlier (the "Warranty Period"), and (ii) any standard Product sold by Supplier to other customers besides City will meet or exceed any the standards for such types of product in industry as per the specification, any express stated or advertised by Supplier or the actual manufacturer of such Product. Supplier's warranty shall survive delivery of Product and shall not be deemed waived by City's failure to discover defects, acceptance of the Product, or payment therefore. The foregoing warranty shall not apply to any Product that is specified or otherwise demanded by City and is not manufactured or selected by Supplier, as to which (i) Supplier hereby assigns to City, to the extent assignable, any warranties made to Supplier and (ii) Supplier shall have no

other liability to City under warranty, tort or any other legal theory. If City gives Supplier prompt written notice of breach of this warranty within the Warranty Period, Supplier shall, at its sole option and as City's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. Unless otherwise agreed to in writing by Supplier, (i) City shall be responsible for any labor required to gain access to the Product so that Supplier can assess the available remedies and (ii) City shall be responsible for all costs of installation of repaired or replaced Product. If Supplier determines that any claimed breach is not, in fact, covered by this warranty, City shall pay Supplier its then customary charges for any repair or replacement made by Supplier. Supplier's warranty is conditioned on City's (a) operating and maintaining the Product in accordance with Supplier's instructions, (b) not making any unauthorized repairs or alterations. Supplier's warranty does not cover (i) damage caused by chemical action or abrasive material, misuse or improper installation (unless installed by Supplier) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION 6 ARE THE SUPPLIER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. EXCEPT FOR THE WARRANTIES STATED HEREIN, SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

#### **7) OWNERSHIP**

Supplier shall have title to and bear the risk of any loss or damage to the Product until the Product is delivered and accepted by City in conformity with this Order. Upon delivery and acceptance, Product delivered by Supplier shall become the exclusive property of City. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, or otherwise use the Product. All artwork, patterns, dies, models, samples, materials, drawings, specifications, technical material, advertising material and any other personal property furnished by City to Supplier, or specifically paid for by City for use in performance of an Order, shall be and remain the property of City and said property shall be used only for Product benefiting City. Supplier shall return to City or shall dispose of this property only according to City's instruction.

#### **8) PROPRIETARY INFORMATION**

All documents, materials, information and data provided by City to Supplier pursuant to this Order ("Proprietary Information") shall be considered proprietary and remain the property of the City. Supplier is licensed to use Proprietary Information only for the purpose of fulfilling its obligations under this Order and may not release this information to any party without the prior written consent of the City. Supplier shall not use City's name, symbol, trademark or service mark without prior written consent of City.

#### **9) INFRINGEMENT INDEMNITY**

Supplier shall defend, indemnify and hold harmless City with respect to any suit, claim or proceeding brought against, or affecting, City alleging that City's use of any Product covered under this Order constitutes an infringement of any patent, trademark, trade name, trade secret, copyright or other proprietary right. Supplier will investigate or otherwise handle every claim, and at City's request, assist City in City's investigation, defense or handling any such claim. The amount of Insurance required shall not limit the Suppliers liability. Supplier will pay all expenses including reasonable attorney fees, expert fees and damages or settlement amounts awarded therein. City shall promptly provide notice to Supplier of any suit, claim or proceeding and shall cooperate with Supplier in the defense or settlement of such claim. In the event an injunction is obtained against City's use of any Product as a result of any such claim, Supplier shall, at its option and expense, either: (i) procure for City the right to continue using the Product which is the subject of the claim; or (ii) replace or modify the Product so that it substantially meets or exceeds the original Product specifications, but is no longer subject to the claimed infringement.

#### **10) CHANGES**

City shall have the right to make changes in the scope or schedule of the Product to be performed pursuant to the Order by delivering to the Supplier an amendment to the Order indicating the changes. If City does not receive Supplier's written objection within seven days of Supplier's receipt of the amendment, the amendment will become effective on the earlier of the date indicated in the amendment or the eighth day following Supplier's receipt. If the amendment affects the cost or time required for the performance on this Order, an equitable adjustment in price or delivery, or both, shall be incorporated into the amendment, as agreed by the parties.

**11) ASSIGNMENT**

Supplier shall not delegate any duties nor assign any rights or interests under this Order without prior written consent of City. Any such permitted assignment shall not prohibit City from enforcing any of its rights against the assignee.

**12) APPLICABLE LAWS**

Supplier's performance under this Order shall be governed by the laws of the State of California, with exclusive jurisdiction in San Joaquin County, without regard to its conflicts of law provisions. Supplier warrants and certifies that Product covered by this Order will be produced in compliance with, and will comply with, all applicable State, Federal and Local laws, ordinances, rules, standards and regulations. Under guidelines specified in 29 CFR 1910.1200 (f) and (g) City requests that Supplier label applicable Product accordingly and provide associated Material Safety Data Sheets ("MSDS") to City.

**13) BUSINESS LICENSE**

If services are performed by Supplier within the City's geographical boundaries as part of Product, Supplier shall acquire and maintain a City of Stockton business license during the period the Product covered by the Order is being completed, and shall remit to the City all business license taxes owed for business conducted in the City. For more information, please contact the City's Business License Division at (209) 937-8313.

**14) ENTIRE AGREEMENT**

This Order contains the entire agreement between the City and Supplier for the matters set forth herein and may only be amended by written notice from an authorized representative of the City's Procurement Services Division. If any provision of the Order is held to be unenforceable, the parties agree that all other provisions of the Order shall remain in full force and effect. The failure of the City to enforce, at any time or for any period of time, any provision of this Order shall not constitute a waiver of such provision or of the right to enforce such provision.

**15) INDEMNIFICATION**

Supplier shall defend indemnify and hold harmless City from any liability, damage cost or expense, including reasonable attorney fees and expert fees, resulting from any claim by City, its officers or employees, or any third party alleging personal injury or property damage attributable to the intentional or negligent act or omission of Supplier, its employees or subcontractors, while engaged in the provision of Product under this Order.

**16) INSURANCE**

If requested by a representative of City's Procurement Services or Risk Management Services divisions, Supplier shall provide proof of insurance coverage, including but not limited to certificates of insurance and endorsements naming "City of Stockton" as an additional insured from insurance providers authorized to transact business in the Supplier's location and during the period the Product covered by the Order is being completed.

**17) AVAILABILITY OF FUNDING**

The City may terminate this Order effective on the final day of any given City fiscal year upon the City's determination to not appropriate sufficient funds in its budgetary process for the ensuing fiscal year. In such event, City shall give Supplier not less than 30 days advance written notice.

**18) TERMS OF PAYMENT**

City payment terms are set forth on the face of the Order.

**19) BILLING INFORMATION**

The Order Number must be reflected on each of Supplier's invoices. Unless you have been set up by City for summary billings each month, each Order shall be invoiced by Supplier separately.

**20) TAXES**

Federal Excise and other taxes on which exemption is allowed by government agencies, must not be included or added to the price of any item on this order unless otherwise authorized on the face of this Order. Necessary exemption certificates will be supplied upon request if more than what is contained on the face of the purchase order is needed. Any taxes later found to have been included and paid by City shall be refunded by Supplier in the amount of the tax so paid.

**21) SHIPPING TERMS**

City shipment terms are F.O.B. Destination, Freight Prepaid and Added unless otherwise specified in the Order. Supplier shall observe shipping instructions and, unless otherwise stated in the instructions, shall ship Product in the safest and most economical manner necessary to meet the delivery date specified in the Order. Supplier shall provide an itemized packing list showing the Order number with the shipment. Supplier shall include the Order number on all packages, boxes, invoices and shipping documents. Supplier shall label all individual boxes with stock number and quantity and items with different stock numbers shall be boxed separately. City reserves the right to refuse, at Supplier's expense, any shipments not containing the Order number or stock numbers as required under this section.

**22) DELIVERIES**

TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ANY ORDER. If Product is not provided or performed within the times specified in an Order, City may cancel this Order, and hold Supplier liable for damages incurred due to the untimely delivery including, but not limited to, the additional costs resultant from City procuring substitute product elsewhere.

**23) PRICE AND QUANTITIES**

Prices and quantities set forth in this Order may not be altered by Supplier without the prior written authorization of City, with the exception that quantities of custom paper or printed products, chemicals, or fuel may deviate from those on the Order by the lesser of (i) standard industry practices, or (ii) 3%.

**24) FORCE MAJEURE**

Neither party shall be liable to the other for default or delay in delivering or accepting Product covered by this Order if such default or delay shall have been caused directly or indirectly by accident, fire, flood, riot, war, Act of God, embargo, acts of terrorism, government order or regulation, military action or inaction, or complete or partial shutdown of plant by any of the foregoing causes or by like or dissimilar cause beyond the reasonable control of the affected party.

**25) LIMITATION OF LIABILITY.**

SUPPLIER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SUPPLIER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. HOWEVER, THE PRECEEDING SENTENCE IS NOT APPLICABLE TO CLAIMS THAT ARRISE BECAUSE OF SUPPLIER'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND THIRD PARTY INDEMNIFICATION OBLIGATIONS FOR BODILY INJURY, DEATH, SICKNESS AND TANGIBLE PROPERTY DAMAGE. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

**IMPORTANT INSTRUCTIONS**

- 1) Purchase Order Number must be shown on all invoices, shipping notices, packages and correspondence.
- 2) Do not substitute alternative products or services for Product subject to this Order without consent from the City's assigned procurement representative.
- 3) Sales tax shall be shown on invoice as a separate item and shall not be included in the Product Price.
- 4) The City is exempt from Excise Tax. An exemption certificate shall be provided by City upon request.
- 5) If required, Supplier must provide a Material Safety Data Sheets (MSDS) along with materials provided as part of Product.
- 6) Supplier must provide an itemized delivery tag or packing slip with each shipment of Product.
- 7) Unless instructed otherwise by City, Supplier must provide a separate invoice with each Order.
- 8) If Supplier is unable to provide Product immediately following the receipt of this Order, please contact City's representative as listed in the "Confirm By" field at the top of the Order and provide the date for delivery.