

# TERMS AND CONDITIONS

## 1. PURCHASE ORDER AS A CONTRACT

This Agreement, if issued as the result of a request for quotation offer, bid invitation or other form of offer, is an acceptance of the Seller's offer and constitutes the contract between the City and Seller. This Agreement, if issued as the result of a sealed bid with public opening or of a formal request for proposal, is a formal contract which incorporates the bid specifications. In this case the terms, conditions, and provisions of the bid specifications take precedence over conflicting terms add conditions shown on this document.

## 2. TITLE AND RISK OF LOSS

The Seller assumes all risks in connection with the goods ordered herein until delivery is made to the City as specified, and the City has noted its acceptance.

The goods being acquired under this Agreement are subject to inspection and testing by the City at the place of destination. If any goods are found at any time to be defective or nonconforming, the City, in addition to all other rights, shall have the right to reject and return them in whole or in part at the Seller's expense and to receive full credit for them, or to require their replacement without additional cost to the City.

## 3. ACCEPTANCE

Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by the Purchasing Manager, and no such additional or different terms and conditions in any printed form of Seller shall become part of this contract despite the City's acceptance of goods or services unless such acceptance specifically recognizes and assents to their inclusion.

Any objection by the Seller to the terms and conditions hereof shall be ineffective unless the Purchasing Manager is advised in writing thereof within ten (10) days of the date of this Agreement.

## 4. SHIPPING INSTRUCTIONS

A. All goods are to be shipped freight prepaid, F.O.B. Destination unless otherwise stated. Where the City has so authorized in writing on the face of this Agreement, goods may be shipped F.O.B. shipping point, but Seller shall prepay all shipping charges, route the goods by the cheapest common carrier, or the carrier specified and list said charges as a separate item on the Seller's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. The City will not accept C.O.D. shipments. Seller shall not insure the goods for the City's account during shipment except upon the City's express written request.

B. Applicable shipping charges have either been included in the totals or are itemized separately on the face of the agreement.

## 5. SPECIAL CHARGES

Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags, containers, and related matters unless the City has assumed an express, written obligation for same on the face of this Agreement.

## 6. IDENTIFICATION

All invoices, packages, shipping notices, instruction manuals, and other written documents affecting this Agreement shall contain an appropriate, identifying reference to this Agreement. Packing lists shall be enclosed in or attached firmly to the shipping package. In the case of multiple container shipments, the Packing slip shall be placed in the lead package.

## 7. DELIVERY

A. Delivery shall be made within the time(s) specified on the face of this Agreement.

B. Seller will not be held liable for failure to make timely delivery because of strikes, conscription of property, governmental regulations, act of God, or any other causes beyond Seller control, provided an extension of time for delivery is obtained from the Purchasing Manager as soon as practicable after Seller is aware that delivery is or may be late.

## 8. BREACH AND CANCELLATION OF AGREEMENT

A. In the event the Seller fails or refuses to deliver or provide the supplies, materials, equipment, or services within the time(s) specified herein, or fails or refuses to comply with any requirement of the terms and conditions of this Agreement, the City may serve notice in writing upon Seller of its intention to purchase said supplies, materials, or equipment, or obtain said services from another source. Such notice shall contain the reasons for the City's intention to purchase from another source, and unless within ten (10) days after the serving of such notice, Seller shall make complete delivery and/or comply with all other terms and conditions of this Agreement, the City may make said purchase from another source.

B. If said purchase is made at a price higher than the bid price, the Seller shall be liable to the City for an amount not to exceed the difference between the actual purchase price and the price bid by Seller. Payment shall be made to the City upon demand, and if any payments are owing to the Seller by the City, such payments will be withheld and set off in an amount not to exceed the claim of the City against the Seller.

C. In the event any term or condition of this Agreement is violated as indicated in Paragraph (A) above, and Seller fails or refuses to comply after notice is given by the City, the City shall have the additional right, without further notice, to cancel this Agreement. If said cancellation is made, Seller will be declared to be an irresponsible vendor, in which case no Contract shall be awarded to him/her by the City for a

period of at least one (1) year from date of cancellation of the Agreement. Only after Seller submits evidence satisfactory to the Purchasing Manager to substantiate Seller's ability to deliver materials, provide services, and otherwise comply with City specifications and bid provisions will said Seller be deemed eligible,

## 9. NOTICE

A written notice shall be deemed served upon sealing said notice in a postage paid envelope addressed to the other party to this Agreement and depositing the same with the United States Post Office. For purposes of this Agreement, all notices shall be addressed as follows: Purchasing Manager, city of San Rafael, 1400 Fifth Avenue, San Rafael, CA 94901. For purposes of this Agreement, all notices to Seller shall be addressed as indicated on the face of this Agreement

## 10. ROYALTIES AND PATENTS

The Seller shall be responsible for and shall pay all royalties and patent fees. The Seller shall defend all suits and claims for infringement of any patent rights and shall defend, indemnify and hold City harmless from loss on account thereof.

## 11. TAXES

A. Applicable sales and use taxes are either included in the totals of each item or are shown as separate items on the face of this Agreement.

B. The City is exempt from payments of Federal Excise taxes. Exemption certificates will be furnished upon request.

## 12. LIENS, CLAIMS AND ENCUMBRANCES

Seller warrants and represents that all goods will, when delivered hereunder, be free and clear of all liens, claims, or encumbrances of any kind.

## 13. ASSIGNMENT

Seller shall not assign this contract, or the right to payment due hereunder, without City's prior written consent.

## 14. INDEMNIFICATION

Seller agrees to release, indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, demands, liability, lawsuits or other actions for damage or injury to persons or property arising out of the Seller's operations under this Agreement, or the performance of this Agreement by Seller or its officers, employees, partners, directors or agents.

## 15. CONFORMITY WITH LAW AND SAFETY

A. Seller shall observe and comply with all applicable laws, ordinances, codes, and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the performance of this Agreement including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable federal, state, municipal, and local safety regulations. Performance by Seller must be in accordance with these ordinances, codes, and regulations. Seller shall release, defend, indemnify and hold City harmless from any and all liability, fines, penalties, and consequences resulting from any non-compliance or violations of such laws, ordinances, codes, or regulations.

B. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Seller shall immediately notify the City Risk Management Office by telephone. If any accident occurs in connection with the performance of this Agreement, Seller shall promptly submit to City a written report, in such form as may be required by City. This report must include the following information: (1) the name and address of the injured or deceased person(s); (2) the name and address of Seller's subcontractor, if any; (3) the name and address of Seller's liability insurance carrier, and (4) a detailed description of the accident, including whether any of City's equipment, tools, or material were involved.

## 16. NON-DISCRIMINATION

Seller hereby agrees not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, pregnancy, marital status, disability, or sexual orientation.

## 17. ATTORNEY FEES

If any action at law or inequity is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs of suit, in addition to any other relief to which it may be entitled. Said fees may be fixed by the court in the same action, or in a separate action brought for that purpose.

## 18. GOVERNING LAW

This Agreement shall be governed by the laws of The State of California.

## 19. AMENDMENTS

The terms and conditions of this Agreement shall not be altered or otherwise modified except by a duly executed written amendment to this agreement.

## 20. ENTIRE AGREEMENT

A. The terms and conditions of this Agreement, including City's bid specifications and vendor's invoice, and any other documents expressly incorporated by reference herein represent the entire Agreement between the parties hereto with respect to the subject matter hereof, and this Agreement shall supersede any and all other prior agreements regarding the subject matter between City and Seller, either oral or written. No other agreement, statement, or promise relating to the subject matter of this Agreement shall be valid or binding except upon a duly executed written amendment to this Agreement.

B. Should any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of documents expressly incorporated herein, including vendor's invoice, the terms and conditions of this Agreement and City's bid specifications shall control.