

CITY OF TEMPE
PURCHASE ORDER TERMS AND CONDITIONS

The following are the City of Tempe's standard Purchase Order Terms and Conditions, which shall apply to all Purchase Orders, unless the City of Tempe ("City") enters into a separate written agreement that expressly modifies terms. Fulfillment of any part of a Purchase Order, or any other conduct by Contractor which recognizes the existence of an agreement with the City of Tempe pertaining to the subject matter of such Order, or the Contractor's acceptance of these terms as evidenced by a signed Bidder Registration Form shall constitute acceptance by Contractor of all of the terms and conditions contained herein, and warrant compliance with the following.

TERMS AND CONDITIONS

1. Deliveries and Packing. Contractor shall ship and deliver goods and render services hereunder on the date or dates specified on the face thereof, unless prior written approval of any change in such date or dates is given by City. No charge will be paid by City for packing, boxing, or cartage, unless previously approved by City. Loss of or damage to any goods shall be borne by Contractor. Each package of goods shipped must contain an invoice stating shipper's name, contents of package, and the Purchase Order number on the face thereof.
2. Title and Risk of Loss. The title and risk of loss of materials and/or goods shall not pass to City until City actually receives the materials and/or goods at the point of delivery. Contractor shall bear the risk of loss, destruction or damage until all materials and/or goods are accepted by the City.
3. Invoices. A separate invoice shall be issued for each shipment. No invoice shall be issued prior to shipment of goods and no payment will be made prior to receipt of goods or completion of services and correct invoice. Payment due dates, including discount periods, will be computed from date of receipt of goods or completion of services or date of receipt of correct invoice, whichever is later. Unless freight and other charges are itemized, any discount provided will be taken on full amount of invoice. The City's obligation is payable solely from funds appropriated for the purpose of acquiring the goods or services referred to in this Purchase Order. Payment shall be subject to the provisions of Title 35 of Arizona Revised Statutes. City's obligation is payable solely from funds appropriated for the purpose of acquiring the materials, goods and/or services stated herein. All invoices issued in reference to this Agreement shall identify and reference the Purchase Order number.
4. Emergency Purchases. City expressly reserves the right to obtain from other sources any items not immediately available in the necessary quantity from local stock by Contractor.

5. Availability of Funds for the Next Fiscal Year. The City's obligation for performance of this Agreement is contingent upon the availability of funds from which payment for Purchase Order purposes can be made. No legal liability on the part of the City for any payment may arise for performance under this Agreement beyond the current fiscal year until funds are made available for performance of this contract.
6. Non-exclusive Award. This Agreement shall be awarded with the understanding and agreement that it is non-exclusive and entered into for the sole convenience of the City. The City reserves the right to obtain like goods or services from another source.
7. Cost Justification. City may require bidder to submit an itemized detailed explanation of its bid or proposal, in the event only one bid is received. Bidder shall provide sufficient detail in order for City to determine whether the bid is reasonable.
8. Inspection. All materials, goods and/or services are subject to final inspection and acceptance by City. Materials, goods and/or services failing to meet the requirements of this Agreement shall be at Contractor's risk and may be returned to Contractor, at Contractor's sole expense.
9. No Replacement of Defective Tender. Every tender of materials, goods and/or services shall fully comply with the provisions herein. If a tender is made that does not fully conform, it shall constitute a breach of this Agreement and Contractor shall not have the right to substitute a conforming tender.
10. Gratuities. This Agreement may be terminated by City if it is determined that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor to any agent or representative of the City, with a view toward securing an order or favorable treatment concerning the awarding or amending, or the making of determinations with respect to this Agreement. In the event the Agreement is terminated under this provision, City is entitled to withhold from and/or recover from Contractor, the amount of gratuity.
11. Warranty. Contractor expressly warrants that all materials and/or goods delivered under the Contract shall be merchantable and free from defects in material and workmanship, and of the quality, size and dimensions specified herein. Contractor additionally expressly warrants that all workmanship shall be finest and first-class, and all services will be performed in a good and workmanlike manner. Contractor's warranties shall survive inspection, acceptance and/or payment by the City and shall run to City, its successors and assigns. Contractor agrees to make good by replacement and/or repair, at its sole expense, any defects in materials or workmanship which may appear during the period ending on a date twelve (12) months after acceptance by the City, unless otherwise specified herein. Should Contractor fail to perform said replacement and/or repair to City's

satisfaction within a reasonable period of time, City may correct or replace said defective or nonconforming materials and recover the costs thereof from Contractor. This warranty shall not operate to reduce the statute of limitations period for breach of contract actions or otherwise, or reduce or eliminate any legal or equitable remedy.

12. Responsibility for Correction. Contractor is and shall be solely responsible for making any and all corrections, replacements, modifications or other correction required for specification or legal compliance. In addition, Contractor hereby warrants to give City first priority for such corrections. In the event Contractor fails to provide correction within a reasonable time as determined by the City, City may cancel the order and obtain a full refund of any monies paid, terminate the Agreement and recover any and all lawful damages. Replacement parts or any utilized for repair or other correction shall be completed by Contractor using parts or equipment that are equal to or exceed that of the original equipment manufacturer(s) in material and warranty.
13. Lawful Goods and Services. Contractor warrants that all materials, goods and/or services provided pursuant to the Agreement complies with all laws applicable in the following jurisdictions: (a) in which goods are manufactured; (b) where goods are transported and/or delivered; and (c) where any services are provided.
14. No Assignment. No right, interest or duty pursuant to this Agreement may be assigned by Contractor without the prior written permission of City.
15. Legal Compliance. Contractor agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work, products, goods, facilities and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Contractor acknowledges that a breach of this warranty is a material breach of this Agreement and Contractor is subject to penalties for violation(s) of this provision, including termination of this Agreement. City retains the right to inspect the documents of any and all Contractors, subcontractors and sub-subcontractors performing work and/or services relating to the Agreement to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Contractor. Contractor hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

16. Equal Opportunity. City is an equal opportunity, affirmative action employer. Contractor hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Contract, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Contractor covenants and agrees that it will comply in all respects with the applicable provisions of the Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, and any other applicable state and federal statutes governing equal opportunity.
17. Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes or omissions in the work, services, or professional services of the Contractor, its agents, employees, or any other person for whose acts, errors, mistakes or omissions in the work, services, or professional services the Contractor may be legally liable in the performance of or any breach of this Contract, including failure to comply with applicable laws. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.
18. Limitation of Liability. In no event will the City be liable to Contractor or any third party, in contract, tort or otherwise, for any loss of profits, interruption of business, or any special, incidental, indirect, exemplary, punitive or consequential damages, arising from or relating to this Agreement, or relating to the products, services, materials and/or goods Contractor supplies.
19. Job Site Requirements. Contractor agrees and covenants to adequately protect the work site, adjacent property and the public in all phases of the work and/or services provided herein. Contractor shall be solely responsible for all damages or injuries due to action or neglect pursuant to this section. Contractor shall maintain access to all phases of the project pending inspection by the City or its agent.
20. Liens. All goods or services delivered and labor performed under this Agreement shall be free of all liens, and if City requests, a formal release of liens shall be delivered to City.
21. Conflict of Interest. Contractor agrees to promptly disclose any and all financial and/or economic interest that may constitute a conflict of interest. Should Contractor gain any financial or economic interest in the subject project during the term of this Agreement, such interest constitutes grounds for termination of the Agreement by the City in its sole discretion. This Agreement is subject to cancellation pursuant to A.R.S. §38-311.

22. Applicable Law. This Agreement shall be governed by, and the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this resultant Agreement or in statutes or ordinances pertaining specifically to the City. This Agreement shall be governed by State of Arizona law and suits pertaining to this Agreement may only be brought in courts located in Maricopa County, Arizona.
23. Implied Contract Terms. Each and every provision of law and any clause required by law to be in the Agreement shall be read and enforced as though it is included herein. Upon application of Contractor or City, this Agreement may be amended to include such provision.
24. Severability. Any term or provision of this Agreement which now or hereafter is declared contrary to any law, regulation, ordinance or requirement of any governmental authority, whether now in force or enacted in the future, or which is otherwise invalid, shall be deemed stricken from this Agreement, and shall not impair or invalidate the remaining portion of the applicable provision or the remainder of the Agreement.
25. Non-Waiver of Remedies. The City as a public entity supported by public taxpayer funds, may not waive any lawful or legitimate right to recover monies lawfully due. Contractor acknowledges and agrees that it shall not demand any limitation on the part of City to limit or waive any right the City may have in law or in equity, to recover damages in any applicable jurisdiction. By exercising any remedy or performing any obligation under this Agreement, City shall not be deemed to have waived the performance of any obligation by Contractor. No waiver by City of any default by Contractor shall be construed as a waiver of any other breach or default. Acceptance by City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries. No covenant, term or condition of this Contract shall be considered to be waived by City unless by a written instrument signed by the City.
26. Dispute Resolution. If a dispute arises under this Agreement, the parties agree to exhaust all applicable administrative remedies pursuant to Arizona law. In the event of any legal action or proceeding arising out of this Contract, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in such legal action or proceeding, and such fees and costs shall be included in any judgment rendered as determined by the Court. In addition, if any person should institute a claim or action against the Contractor in which City is made a party defendant, Contractor shall indemnify, defend and hold City harmless for, from and against all liability by reason thereof, including reasonable attorney's fees and all costs incurred by City in such action.

27. Relationship of Parties. Contractor is an independent Contractor. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties, or cause City to be responsible in any way for the debts or obligations of Contractor.
28. Licenses. Contractor shall maintain, in current status, all federal, state and local licenses and permits required for the operation of the business conducted, as well as the materials, goods and/or services contemplated herein.
29. Infringement of Patent or Copyright. Contractor agrees to save, keep, hold harmless and fully indemnify the City from any and all damages, costs and expenses arising at any time out of or relating to infringement of the patent right, copyright, intellectual property right or trademark of any person or persons in consequences of use by the City, or by any of its officers, agents, employees, from and against Contractor-supplied materials and goods. This covenant is irrevocable and shall survive the term of this Agreement.
30. Ownership of Documents. All work products (electronically or manually generated) including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Agreement are and shall remain the property of the City and are to be delivered to the City before the final payment is made to the Contractor. The City shall retain ownership of all work products, however, if approved in writing by the City, the Contractor may retain the original drawings and supply the City with reproducible mylar copies.
31. Ownership of Intellectual Property. Contractor acknowledges and warrants that all intellectual property and any rights thereto, including but not limited to trademark, copyright, patent, invention, trademark and/or service mark created or conceived pursuant to the terms and provisions of this Agreement (IP) shall be considered work for hire and the City is and shall be the creator and sole owner. City shall have prior approval to any and all disclosures of IP and Contractor agrees to execute any and all documents necessary to assure ownership of the IP, including assignment of any rights and ownership of IP. Contractor agrees to take such further action as required and as City may reasonably request to effectuate and secure City's ownership rights pursuant to this section.
32. Default Provisions.
 - 32.1. City reserves the right to immediately terminate the whole or any part of this Agreement due to Contractor's failure to carry out any obligation, term, or condition of the Agreement. The occurrence of any or more of the following events shall constitute a default and constitute a breach of this Agreement:

- 32.1.1. Contractor fails to provide materials and/or goods that fail to conform to any specifications of the Agreement;
 - 32.1.2. Contractor fails to adequately perform the services set forth in the Agreement;
 - 32.1.3. Contractor fails to complete services required, furnish materials and/or goods within the time specified or fails to make progress required by the Agreement; or
 - 32.1.4. Contractor gives the City reason to believe that Contractor will not or cannot perform to the requirements of the Agreement.
- 32.2. In the event of default, City shall be entitled to remedy said default using any and all rights and remedies at law or in equity, in its discretion, including but not limited to, bringing a suit or proceeding to enforce the provisions of this Agreement, collection against surety or performance bond, or otherwise.
33. Termination. This Agreement may be terminated for default, as well as at City's discretion by providing written notice of termination to Contractor, and pursuant to A.R.S. § 38-511.
34. Insurance. Prior to commencing services under this Agreement, Contractor shall procure and maintain for the duration of the Agreement liability insurance against claims for injuries (including death) to persons and damages to property, workers' compensation insurance, and other applicable insurance coverages in amounts determined by the City.
35. Contractor's Records. Contractor agrees to retain all books, accounts, reports, files and other records relating to this Agreement pursuant to A.R.S. § 35-214. Contractor shall make said records available at all reasonable times for inspection and audit by the City during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.
36. Confidential Information and Public Record: All bids pursuant to this Purchase Order shall be available for public inspection, except to the extent that the withholding of information is required or permitted by law.
- 36.1.1. If a person believes that a bid contains information that should be withheld as confidential, a statement advising the procurement officer of this fact shall accompany the submission and the information shall be so identified wherever it appears.

- 36.1.2. The information identified by the person as confidential shall not be disclosed until the City Procurement Office makes a written determination pursuant to A.R.S. § 39-121, *et seq.*
- 36.1.3. If the City determines to disclose the information, the bidder shall be informed in writing of such determination. Notwithstanding the foregoing, following an award of a contract, all bid response information shall be available for public inspection.
37. Unauthorized Firearms and Explosives. No person conducting business on City property is permitted to carry a firearm or explosive of any type. Contractor shall comply with this requirement at all times. Failure to comply with this requirement shall result in termination of the Agreement. This requirement also applies to persons who maintain a concealed weapon's permit. In addition to termination, violators and Contractor shall be subject to legal and criminal penalties.
38. Taxes. Contractor is solely responsible for payment of any and all applicable federal, state or local taxes, including privilege and sales taxes, pursuant to its services provided under the Agreement.
39. Time of the Essence: Time is and shall be of the essence in this Agreement, and for each and every provision of this Agreement.
40. Specially Designated Nationals and Blocked Persons List. Contractor represents and warrants to City that neither Contractor nor any affiliate or representative of Contractor (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed.Reg. 49079 ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.
41. Entire Agreement: This Agreement shall constitute the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements whether written or oral, and cannot be modified or amended unless by a written instrument signed by the parties.
42. Amendments: This Agreement shall be amended or modified only by a written instrument duly executed by both parties.