



Finance
Purchasing Division
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THE TERMS AND CONDITIONS THAT GOVERN THIS PURCHASE ORDER ARE LISTED BELOW. THIS PURCHASE ORDER IS A COUNTEROFFER AND NOT AN ACCEPTANCE. SELLERS AND CONTRACTORS ARE ADVISED TO VERIFY ALL INFORMATION CONTAINED HEREIN AND TO NOTIFY THE PURCHASING DIVISION OF DISCREPANCIES. APPLICABLE TAXES MUST BE STATED SEPARATELY ON THE INVOICE. PURCHASE ORDER NUMBER AND COMPLETE SHIP TO ADDRESS MUST APPEAR ON ALL SHIPPING LABELS AND INVOICES. COD SHIPMENTS ARE NOT ACCEPTABLE.

PURCHASE ORDER
TERMS AND CONDITIONS FOR
GOODS, SERVICES, MAINTENANCE, AND REPAIR

The Seller/Contractor agrees that the following terms and conditions will be applicable.

Signed PO Required: Purchaser will not be responsible for any goods delivered or services rendered without a purchase order.

Invoices: Seller/Contractor will send separate invoice for each purchase order number.

Extra charges: No boxing, packing or cartage charges will be allowed by purchaser unless specifically authorized on the face of this order.

Risk of Loss: The risk of loss and damage to the goods which are subject of this order shall remain with the seller until the goods are delivered to the destination set out in the order and accepted by the purchaser or its nominee.

Termination: In the event of Seller/Contractor's failure to deliver or perform as and when specified, purchaser reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and Seller/Contractor agrees that purchaser may return part or all of any shipments so made and may charge seller with any loss or expense sustained as a result of such failure to deliver or to perform.

No advertising: Seller/Contractor agrees not to release any advertising copy mentioning purchaser or quoting the opinion of any purchaser employees.

Non-discrimination: Unless this contract is exempt therefrom under the rules and regulations of the President's Committee on Equal Employment Opportunity, the contract provisions of Section 301 of the Executive Order No. 10925, dated March 6, 1961, and subsequent charges thereto are to the extent they may be applicable, made a part of this contract by the reference.

Non-waiver of rights: Purchaser may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom practice or course of dealing to the contrary.

Entire agreement: The terms and conditions of sale or performance as stated in this order govern in event of conflict with any terms of Seller/Contractor proposal and are not subject to change by reason of any written or verbal statements by Seller/Contractor or by any terms stated in Seller/Contractor's acknowledgment unless same be accepted in writing by the CITY OF WILMINGTON.

Applicable law: The laws of the State of North Carolina shall govern this contract.

Payment: Payment is due Net 30 days from receipt of an approved invoice.

Taxes: NC Sales Tax-The City's purchase order does not show NC sales tax; however, the City is not tax exempt and does pay NC sales tax. NC sales tax must be listed separately on the invoice. **Federal Excise Tax-**The City does not pay Federal Excise Tax.

Insurance: Seller/Contractor shall maintain at its own expense:

(a) Commercial General Liability (CGL) Insurance - in an amount not less than **\$1,000,000 per occurrence** and **\$2,000,000 general aggregate** for bodily injury or property damage arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract); the. There shall be no modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, underground property damage or damage to the named insured's work when those exposures exist. The City of Wilmington, its officers, officials and employees shall be **named as additional insured** by ISO endorsement CG 20 10 or CG 20 33 and CG 20 37.

(b) Commercial Automobile Insurance applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than **\$1,000,000 per occurrence** as applicable.

(c) Workers Compensation Insurance/Employer's Liability Insurance as required by the general statutes of the State of North Carolina and not less than **\$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit**. The U.S. Longshore and Harborworker's Compensation Act endorsement shall be attached to the policy when the services will be on or in close proximity to navigable waterways. **Insurer agrees to waive all rights of subrogation** against the City of Wilmington, its officers, officials, agents and employees for losses arising from work performed by the contractor for the City of Wilmington.

Certificates of Insurance shall be furnished prior to the commencement of Services:

(a) The Seller/Contractor's liability policies shall be primary as respects the City of Wilmington, its officers, officials, agents and employees. Any other insurance or self-insurance maintained by the City of Wilmington, its officers, officials, agents and employees shall be excess of and not contribute with the contractor's insurance.

(b) Insurance is to be placed with insurers licensed to do business in the State of North Carolina with an A.M. Best's rating of no less than A VII.

(c) Seller/Contractor shall include all subcontractors as insureds under its policies or maintain certificates of insurance for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein. Contractor shall be responsible for assuring that all subcontractors are properly insured.

(d) Each insurance policy shall be endorsed to state that coverage shall not be canceled by either party except after 30 days prior written notice has been given to the City of Wilmington, PO Box 1810, Wilmington, NC 28402-1810.

(e) Failure of the City of Wilmington to demand a certificate of insurance or other evidence of full compliance with these insurance requirements or failure of the City of Wilmington to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

(f) By requiring insurance herein, the City of Wilmington does not represent that coverage and limits will necessarily be adequate to protect the Contractor and such coverage and limits shall not be deemed as a limitation of Seller/Contractor's liability under the indemnities granted to the City of Wilmington in this purchase order.

Other Laws. Seller/Contractor will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision or other land use controls. Seller/Contractor will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. Seller/Contractor specifically acknowledges and agrees that Seller/Contractor, and any subcontractors it uses, has complied with and shall continue to comply with the provisions of the federal E-Verify program in compliance with Article 2 of Chapter 64 of the North Carolina General Statutes. Seller/Contractor shall maintain adequate safeguards with respect to sensitive customer information in conformance with and pursuant to 16 C.F.R. §681-1 and in accordance with N.C. Gen. Stat. §132-1.10 and §75-65.

Release and Indemnity. To the fullest extent permitted by law, Seller/Contractor shall release, indemnify, keep and save harmless the CITY, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the CITY or third persons, and to all property proximately caused by, directly or indirectly, the performance or nonperformance by Seller/Contractor (or by any person acting for Seller/Contractor or for whom Seller/Contractor is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of Seller/Contractor, its agents, officials and employees or otherwise. The provisions of this Section shall include any claims for equitable relief or for damages (compensatory or punitive) against the CITY, its agents, officials, and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the CITY, its agents, officials and employees, in connection with investigating any claim or defending any action and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the CITY, its agents, officials or employees.

Maintenance and Repair Purchase Orders: Seller/Contractor shall maintain a record of all maintenance or repairs performed under this purchase order for a period of three (3) years. Upon termination of the contractual relationship, Seller/Contractor shall deliver to the CITY all records related to the maintenance or repair of the equipment and/or property.

Warranty: Seller/Contractor warrants that for a period of the longer of: (1) one (1) year after acceptance of the Goods or Services by the CITY; (2) such longer period of time as the item or service is normally warranted by Seller/Contractor; or (3) as agreed to between the parties in writing:

(a) all Goods or services will be free from any defects in workmanship, material and design.

(b) all Goods or services will conform to applicable specifications, drawings, designs, samples and other requirements specified by the CITY, federal, state, and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health.

(c) all Goods or services will be fit for their intended purpose and operate as intended.

(d) all Goods or services will be merchantable.

(e) all Goods will be free and clear of all liens, security interests or other encumbrances; and

(f) the Goods will not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or services by the CITY. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of the CITY's discovery of the noncompliance of the Goods or services with the foregoing warranties. If the CITY gives Seller/Contractor notice of noncompliance with this Section, Seller/Contractor shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods or service and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller/Contractor or the delivery of repaired or replacement Goods to the CITY. If Seller/Contractor fails to promptly replace or repair the defect, nonconforming good or service and CITY causes the defective or nonconforming good or service to be remedied, Seller/Contractor agrees to reimburse the CITY for the cost of the replacement good or repair.