

Purchase Order Terms and Conditions (Rev 02/09)

All special conditions on the face of the purchase order are hereby made a part of the general terms and conditions.

1. COMMERCIAL DETAILS.

Invoice Address. To ensure prompt Payment mail invoices in duplicate to:
City and County of Broomfield
One DesCombes Drive
Broomfield, Colorado 80020
Attention: Accounts Payable

Tax exemptions. By statute the City and County of Broomfield is exempt from state and local taxes. Our Exemption Number is 98-02553-0000, under provisions of Title 39, Article 26, Section 114, C.R.S.

Goods Rejected. GOODS REJECTED due to failure to meet specifications, either when shipped or due to defects of damage in transit, may be returned to you for credit and are not to be replaced except upon receipt of written instructions from the City and County of Broomfield, Colorado.

Inspection. GOODS are subject to the City and County of Broomfield inspection on arrival. When the works 'no substitute' are used in the article description, only the article described will be acceptable.

Final Acceptance. Receipt of the merchandise, services or equipment in response to this order can result in authorized payment on the part of the City and County of Broomfield. However, it is to be understood that FINAL ACCEPTANCE is dependent upon completion of all applicable required inspection procedures.

The City and County of Broomfield is not liable for payment of any good or service shipped or released to the City and County, without the appropriate purchasing authorization.

Freight Terms. Shipments must be F O B. City and County of Broomfield, One DesCombes Drive, Broomfield, Colorado 80020, unless otherwise specified on this order. If permission is given to prepay freight and charge separately, the original freight bill must accompany invoice. Additional charges for packing will not be accepted.

Shipment Distance. Where manufacturers have distributing points in various parts of the country, shipment is expected from the nearest distribution point to destination, and excess freight will be deducted from Invoice when shipments are made from greater distance.

Permits. Seller shall procure at sellers sole cost all necessary permits, certificates and licenses required by all applicable laws, regulations, ordinances and rules of the state, municipality, territory or political subdivision where the work is performed, or required by any other duly constituted public authority having jurisdiction over the work of vendor. Seller further agrees to hold the City and County of Broomfield harmless from and against all liability and loss incurred by them by reason of an asserted or established violation of any such laws, regulations, ordinances, rules and requirements.

Authorization. All parties to this agreement agree that the representatives are, in fact, bona fide and possess full and complete authority to bind said parties.

Any correspondence regarding this purchase order shall be addressed to the Purchasing Division, referencing the purchase order number.

LIMITATION OF TERMS. This Purchase Order expressly limits acceptance to the terms and conditions stated herein set forth and any supplementary or additional terms and conditions annexed hereto or incorporated herein by reference. Any additional or different terms and conditions proposed by seller are objected to and hereby rejected.

2. DELIVERY.

PLEASE ADVISE THE PURCHASING DIVISION or Ordering Department immediately if you cannot make complete shipment to arrive on your promised delivery date as noted. Time is of the essence. Delivery and performance must be effected within the time stated on the purchase order and the documents attached hereto. No acts of the Purchasers including, without limitation, acceptance of partial late deliveries, shall operate as a waiver of this provision. In the event of any delay, the Purchaser shall have, in addition to other legal and equitable remedies, the option of placing this order elsewhere and holding the Seller liable for damages. However, the Seller shall not be liable for damages as a result of delays due to causes not reasonably foreseeable which are beyond its reasonable control and without its fault or negligence, such acts of God, acts of civil or military authorities, governmental priorities, fire, strikes, flood, epidemics, wars or riots provided that notice of the conditions causing such delay is given to the Purchaser within five (5) days of the time when the Seller first received knowledge thereof. In the event of any such delay, the date of delivery shall be extended for the period equal to the time actually lost by reason of the delay.

3. WARRANTY

The Seller warrants that all goods, articles, materials and work covered by this order will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, and performed with the highest degree of care and competence in accordance with accepted standards for work of a similar nature. The Seller agrees to hold the purchaser harmless from any loss, damage or expense which the Purchaser may suffer or incur on account of the Sellers breach of warranty. The Seller shall replace, repair or make good, without cost to the purchaser, any defects or faults arising within one (1) year or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty provided by the Seller after the date of acceptance of the goods furnished hereunder (acceptance not to be unreasonably delayed), resulting from imperfect or defective work done or materials furnished by the Seller. Acceptance or use of goods by the Purchaser shall not constitute a waiver of any claim under this warranty. Except as otherwise provided in this purchase order, the Sellers liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use. NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY.

4. CHANGES IN LEGAL TERMS.

The Purchaser may make changes to legal terms by written change order.

5. CHANGES IN COMMERCIAL TERMS.

The Purchaser may make any changes to the terms, other than legal terms, including additions to or deletions from the quantities originally ordered in the specifications or drawings, by verbal or written change order. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made.

6. TERMINATIONS.

The Purchaser may at any time by written change order, terminate this agreement as to any or all portions of the goods then not shipped, subject to any equitable adjustment between the parties as to any work or materials then in progress provided that the Purchaser shall not be liable for any claims for anticipated profits on the uncompleted portion of the goods and/or work, for incidental or consequential damages, and that no such adjustment be made in favor of the Seller with respect to any goods which are the Sellers standard stock. No such termination shall relieve the Purchaser or the Seller of any of their obligations as to any goods delivered hereunder.

7. CLAIMS FOR ADJUSTMENT.

Any claim for adjustment must be asserted within thirty (30) days from the date the change or termination is ordered.

8. COMPLIANCE WITH LAW.

The Seller warrants that all goods sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the goods are subject. The Seller shall execute and deliver such documents as may be required to effect or evidence compliance. All laws and regulations required to be incorporated in agreements of this character are hereby incorporated herein by this reference. The Seller agrees to indemnify and hold the Purchaser harmless from all costs and damages suffered by the Purchaser as a result of the Sellers failure to comply with such law.

9. ASSIGNMENT.

Neither party shall assign, transfer, or convey this order, or any monies due or to become due hereunder without the prior written consent of the other party.

10. TITLE.

The Seller warrants full, clear and unrestricted title to the Purchaser for all equipment, materials, and items furnished in performance of this agreement, free and clear of any and all liens, restrictions, reservations, security interest encumbrances and claims of others.

11. NONWAIVER.

Failure of the Purchaser to insist upon strict performance of the terms and conditions hereof, failure or delay to exercise any rights or remedies provided herein or by law, failure to promptly notify the Seller in the event of a breach, the acceptance of or payment for goods hereunder or approval of the design, shall not release the Seller of any of the warranties or obligations of this purchase order and shall not be deemed a waiver of any right of the purchaser to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless of when shipped, received or accepted, as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this purchase order by the Purchaser operate as a waiver of any of the terms hereof.

12. ASSIGNMENT.

This Agreement shall not be assigned by the other Party without the prior written consent of the City and County.

13. PURCHASERS PERFORMANCE OF SELLERS OBLIGATIONS.

If the Purchaser directs the Seller to correct nonconforming or defective goods by a date to be agreed upon by the Purchaser and the Seller, and the Seller thereafter indicates its inability or unwillingness to comply, the Purchaser may cause the work to be

performed by the most expeditious means available to it, and the Seller shall pay all costs associated with such work.

The Seller shall release the Purchaser and its contractors of any ber from all liability and claims of any nature resulting from the performance of such work.

This release shall apply even in the event of fault or negligence of the party released and shall extend to the directors, officers and employees of such party.

The Seller's contractual obligations, including warranty, shall not be deemed to be reduced, in any way, because such work is performed or caused to be performed by the Purchaser.

14. PATENTS.

Whenever the Seller is required to use any design, device, material or process covered by letter, patent, trademark or copyright, the Seller shall indemnify and save harmless the Purchaser from any and all claims for infringement by reason of the use of such patented design, device, material or process in connection with the contract, and shall indemnify the Purchaser for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution or after the completion of the work. In case said equipment, or any part thereof or the intended use of the goods, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, the Seller shall, at its own expense and at its option, either procure for the Purchaser the right to continue using said equipment or parts, replace the same with substantially equal but non-infringing equipment, or modify it so it becomes non-infringing.

15. INSOLVENCY.

If the Seller shall become insolvent or bankrupt, make an assignment for the benefit of creditors, appoint a receiver or trustee for any of the Sellers property or business, this order may forthwith be canceled by the Purchaser without liability.

16. GOVERNING LAW.

The definitions of terms used or the interpretation of the agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the State of Colorado, USA.

The following Additional Conditions apply only in cases where the Seller is to perform work hereunder, including the services of Sellers Representative(s), on the premises of others.

17. SELLERS RESPONSIBILITY.

The Seller shall carry on said work at Seller's own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to the work and/or materials before Seller's final completion and acceptance, complete the work at Seller's own expense and to the satisfaction of the Purchaser. When materials and equipment are furnished by others for installation or erection by the Seller, the Seller shall receive, unload, store and handle same at the site and become responsible therefor as though such materials and/or equipment were being furnished by the Seller under the order.

18. INSURANCE.

Unless other wise specified, the Seller shall, at his own expense, provide for the payment of workers compensation, including occupational disease benefits, to its owners and employees employed on or in connection with the work covered by this purchase order, and/or to their dependents in accordance with the laws of the state in which the work is to be done. The Seller shall also carry comprehensive general liability including, but not limited to, contractual and automobile public liability insurance with bodily injury and death limits of at least \$300,000 for any one person, \$500,000 for any one accident and property damage limit per accident of \$400,000. The Seller shall likewise require his contractors, if any, to provide for such compensation and insurance. Before any of the Sellers or his contractors employees shall do any work upon the premises of others, the Seller shall furnish the Purchaser with a certificate that such compensation and insurance have been provided. Such certificates shall specify the date when such compensation and insurance have been provided. Such certificates shall specify the date when such compensation and insurance expires. The Seller agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted.

19. PROTECTION AGAINST ACCIDENTS AND DAMAGES.

The Seller hereby assumes the entire responsibility and liability for any and all damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from the execution of the work provided for in this purchase order or in connection herewith. The Seller will indemnify and hold harmless the Purchaser and any or all of the Purchasers officers, agents and employees from and against any and all claims, losses, damages, charges or expenses, whether direct or indirect, and whether to persons or property to which the Purchaser may be put or subject by reason of any act, action, neglect, omission or default on the part of the Seller, any of his contractors, or any of the Sellers or contractors officers, agents or employees. In case any suit or other proceedings shall be brought against the Purchaser, or its officers, agents or employees at any time on account or by reason of any act, action, neglect, omission or default of the Seller of any of his contractors or any of its or their officers, agents or employees as aforesaid, the Seller hereby agrees to assume the defense thereof and to defend the same at the Sellers own expense, to pay any and all costs, charges, attorneys fees and other expenses, any and all judgments that may be incurred by or obtained against the Purchaser or any of its or their officers, agents or employees in such suits or other proceedings, and in case judgment or other lien be placed upon or obtained against the property of the Purchaser, or said parties in or as a result of such suits or other proceedings, the Seller will at once cause the same to be dissolved and discharged by giving bond or otherwise. The Seller and his contractors shall take all safety precautions, furnish and install all guards necessary for the prevention of accidents, comply with all laws and regulations with regard to safety including, but without limitation, the Occupational Safety and Health Act of 1970 and all rules and regulations issued pursuant thereto.

20. ILLEGAL ALIEN.

If Contractor/Consultant has any employees or subcontractors, Contractor/Consultant shall comply with §8-17-5-101 C.R.S., et seq., regarding Illegal Aliens - Public Contracts for Services, and this Contract. By execution of this Contract, Contractor/Consultant certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and that Contractor/Consultant will participate in either the E-Verify Program or the Colorado Department of Labor ("the Department") program in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Contract.

A. Contractor/Consultant shall not:

- Knowingly employ or contract with an illegal alien to perform work under this Contract, or
- Enter into a contract with a subcontractor that fails to certify to Contractor/Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

B. Contractor/Consultant has confirmed the employment eligibility of all employees who are newly hired for employment to perform Work under this Contract through participation in either the E-Verify Program or the Department program.

C. Contractor/Consultant shall not use the E-Verify Program or the Department program to undertake pre-employment screening of job applicants while this Contract is in effect.

D. If Contractor/Consultant obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor/Consultant shall:

- Notify the subcontractor and the City within three days that Contractor/Consultant has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the preceding sub-subparagraph of this subparagraph, the subcontractor does not stop employing or contracting with the illegal alien; except that Contractor/Consultant shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

E. Contractor/Consultant shall comply with any reasonable request by the Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in §8-17-5-102(5), C.R.S.

F. If Contractor/Consultant violates this provision of this Contract, the City may terminate the Contract for a breach of contract. If the Contract is so terminated, Contractor/Consultant shall be liable for actual and consequential damages to the City as required by law.

G. The City will notify the Office of the Secretary of State if Contractor/Consultant violates this provision of this Contract and the City terminates the Contract for such breach.

21. CONFLICTS WITHIN THE CONTRACT DOCUMENTS: In the event that conflicts exist within the above stated purchase order terms and conditions and the attached and/or referenced contract documents the latter shall supersede.

22. SOLE SOURCE: To the extent this contract may be construed to be a "sole source contract" within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provisions have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this contract.