



City of Arcadia

Terms and Conditions

1. **DEFINITIONS AND EXPLANATIONS:** "Buyer" means City of Arcadia. "Seller" means the party with whom buyer is contracting and any reference to "vendor," "subcontractor," "contractor," or "supplier" shall also mean seller. The word "Purchase Order" (ORDER) means the name of the instrument of contracting, including all documents, exhibits, and attachments referenced thereon and once accepted by seller as herein provided shall constitute the entire agreement between buyer and seller for the sale and purchase of those goods, supplies, materials, articles, items, parts, components, or assemblies (products) described herein.

2. **COMPLETE AGREEMENT.** This order is complete and exclusive statement of the terms of the AGREEMENT between seller and buyer.

3. **MODIFICATION.** No modification or this order (including any additional or different terms in sellers acceptance) shall be binding buyer unless agreed to in writing signed by buyers Purchasing Officer (Agent).

4. **SHIPPING INSTRUCTIONS.** Unless otherwise specified, all goods are to be shipped prepaid, F.O.B. destination where specific authorization is granted shipping foods F.O.B. shipping point, supplier agrees to prepay all shipping charges route cheapest common carrier, and to bill buyer as separate item on the invoice for said charges. Each invoice for shipping charges shall contain the original or copy of the bill indicating that the payment for shipping has been made. It is also agreed that the buyer reserves the right to refuse any C.O.D. shipments.

5. **DELIVERY.**

a. Deliveries (as specified in the order) shall be in accordance with the quantities and schedule specified in the order. If at any time it appears seller may not meet such schedule, seller shall immediately by verbal means (to be confirmed in writing) notify buyer of the reasons for and estimated duration of the delay to the maximum extent possible, including the expenditure of premium time and shipping via air or other means of fast transportation.

Any additional cost caused by these requirements shall be borne by seller or its subcontractors within the means of the "DEFAULT" clause herein. The foregoing requirements are in addition to all of buyers other rights and remedies as may be provided by law.

b. Title to the materials specified on this order passes to the buyer on the date of delivery or on the date of acceptance of this order by the supplier whichever is later.

6. **INVOICE AND PAYMENTS.** A separate invoice shall be issued for each shipment. Unless otherwise specified in the order, no invoice shall be issued prior to shipment of the goods and no payment will be made prior to receipt of good and correct invoice. Payment due dates, including discount periods, will be computed from date of receipt of goods or date of receipt of correct invoice (whichever is later) to date buyers check is mailed. Unless freight and other charges are itemized, any discount taken will be taken on the full amount of the invoice. Any payment shall not constitute acceptance of the product.

7. **WARRANTIES.** Seller warrants that all goods delivered under this order will conform to the requirements of this order (including all applicable descriptions, specifications, performance criteria, and drawings), will be free from defects in material and workmanship and will to the extent manufactured pursuant to detailed designs furnished by buyer, be free from defects in design and fit for the intended purposes. Sellers warranties (and any more favorable warranties, service policies, or similar undertakings of seller), shall be deemed to alter or affect the obligations of seller or the rights of the buyer and its customers under the foregoing warranties.

8. **INSPECTION.** All goods except goods inspected by the City at source for direct shipment to the City, are subject to final inspection and acceptance by the buyer at the destination notwithstanding any payment or prior inspection at source. Final inspection will be made within a reasonable time after receipt of goods.

9. **REJECTION.** Buyer shall notify if any goods delivered hereunder are rejected, and at buyers election and sellers risk and expenses such goods shall be held by buyer or returned to seller. No replacement or correction of nonconforming goods shall be made by the seller unless agreed to in writing by buyer.

10. **PATENT TRADEMARK AND COPYRIGHT INDEMNITY.** Suppliers agrees to indemnify buyer and hold it harmless from and against all claims, liability, loss, damage or expense including attorney fees arising from or by reason of any actual or claimed trademark, patent, or copyright infringement, or litigation based thereon with respect to the goods or any part thereof covered by this order and such obligation shall survive acceptance of the goods and payment therefor by the buyer.

11. **ASSIGNMENT.** No assignment of any rights including rights to moneys due or to become due hereunder, or delegation of the duties under this order shall be binding upon buyer until its written consent thereto has been obtained.

12. **SUBCONTRACTING.** No goods to be delivered under this order shall be procured by the seller from a third party in completed or substantially completed form without buyers written consent.

13. **TERMINATION/CANCELLATION.** If seller becomes insolvent or makes an assignment for the benefit of its creditors, or if a petition in bankruptcy is filed by or with respect to seller, buyer may by notice in writing, terminate this order without liability to seller except for items already accepted by buyer. Buyer may terminate this order at any time by notice in writing to seller, in such event buyer shall pay such termination charges as may be agreed upon and if agreement cannot be reached, buyer will be liable for such sum as may lawfully be owing to seller on account of such termination, but in no event shall be liable for any loss profits on the order or portion thereof so terminated.

14. **COMPLIANCE WITH LAWS.**

a. **FEDERAL, STATE AND LOCAL LAWS.** Seller warrants that in the performance of this order it will comply with all applicable Federal, State of California, and Local Laws.

b. **EQUAL OPPORTUNITY.** The "equal opportunity" clause of FAR 12-804

(a) is incorporated herein by reference except "Contractor" means seller.

15. **NON-WAIVER.** Any failure at any time of buyer to enforce any provision of this order shall not constitute a waiver of such provision or prejudice the right of buyer to enforce such provision at any subsequent time.

16. **PARTIAL INVALIDITY.** If any provision of this order is or becomes void or enforceable by force or operation of law, the other provisions shall remain valid and enforceable.

17. **CLEARANCE OF MATERIELS INTENDED FOR PUBLIC RELEASE.** No news release, including photographs and films, advertisement, public announcements denial or confirmation of same, or any part of the subject matter of this order or any phase of any program hereunder shall be made without prior approval of the City of Arcadia Purchasing Officer.

18. **MSDS - MATERIAL SAFETY DATA SHEETS.** As part of the City of Arcadia's effort to comply with the State of California and Federal OSHA hazardous communication standard, the supplier is required to provide the latest revisions of MSDS and container labels for such products purchased from your company. SEND ATTENTION PURCHASING OFFICER.

19. **INSURANCE.**

1. **WORKERS COMPENSATION.** For labor and material proposals submitted on this form vendor shall before commencement of the work herein specified, take out and during the life of this agreement, maintain in full force and effect in the form and amount covering its full liability under the "Workers Compensation Insurance and Safety Act" of the State of California and any act or acts mandatory thereof or supplementary thereto for compensation to any employee who may be injured during the course of said work, and to any dependents of any employee who may be killed during the course of said work. Vendors shall require any subcontractor to take out and maintain similar policies of compensation insurance. Proof of said policy must be furnished to the Purchasing Officer prior to commencement of said work.

2. **LIABILITY.** (Optional dependent on written directive of Purchasing Officer) Contractor agrees to maintain at his expense a Comprehensive General Liability Insurance Policy, naming the City of Arcadia as additional insured. If so required by the Purchasing Officer, with limits of liability required shall not be less than \$1,000,000.00 in Comprehensive General Liability Insurance per occurrence, combined single limit for bodily injury, personal injury, and property damage. Seller shall also maintain if applicable, Automobile Insurance in the amount of not less than \$500,000.00 per occurrence covering public liability and property damage. All such insurance will be in force during the life of the contract. Insurance carrier shall be approved by the City of Arcadia City Attorney and must be licensed to write insurance in the State of California. Policy shall not be revoked by insurer until THIRTY (30) days notice of intended revocation thereof shall have first given to the Purchasing Officer by each insurer. Contractor shall furnish the Purchasing Officer and the City Attorney with a certificate of insurance, prior to issuance of the Purchase Order, indicating full compliance with the provisions set forth in 1 and 2 above.

20. **HOLD HARMLESS.** Contractor agrees to indemnify, save and hold harmless the City of Arcadia from any and all claims for damage or other liability, including costs, expenses, causes for action or judgments resulting out of or in any way connected with performance of work pursuant to this purchase agreement.

21. **RENTALS.** Conditions listed in 19 and 20 above shall apply to all tools, equipment and machinery rented by the City of Arcadia and shall include a thirty (30) day insurance cancellation clause.

22. **BUSINESS LICENSE.** All contractors providing labor and service for the City of Arcadia are requested to have a City of Arcadia Business License prior to start of work. All subcontractors shall be similarly licensed. Penalties will be charged to all contractors and subcontractors not in compliance.