

Purchase Order General Terms and Conditions

1. **Acceptance of Order:** Acceptance is limited to the terms stated herein, and any additional different terms proposed by Seller are rejected unless expressly assented to in writing by City or as otherwise set out herein. Delivery of materials or other goods and performance of services in conformity herewith prior to the acceptance and use of such goods and acceptance of such services by the City shall constitute acceptance of the terms stated herein for this order only. References herein to this order shall, unless the context otherwise requires, include any resulting contract.
2. **Modification:** No modification of this order shall be effective without City's consent. No course of prior dealings, no usage of the trade, and the course of performance shall be used to modify, supplement, or explain any terms used in this order.
3. **Termination:** The city reserves the right to terminate this order at any time with respect to undelivered goods or unperformed services by written or electronic notice or oral notice confirmed in writing.
4. **Delivery:** Time is of the essence in this order and if delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, City reserves the right, in addition to its other rights and remedies, to cancel this order, to reject such goods or services in whole or in part upon reasonable notice to Seller and/or to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. will not be accepted.
5. **Price:** The city shall not be billed at prices higher than stated herein unless authorized in writing by City. Seller represents that the prices charged for the goods or services covered by this order are the lowest prices charged by Seller and that such prices comply with all applicable laws and government regulations in effect at time of quotations, sale, delivery, and performance. Seller agrees to notify City of any price reduction made in goods or services covered by this order after the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this order.
6. **Contingencies:** Unless otherwise specified in the Contract, failure of either party to perform hereunder, in whole or in part, occasioned by acts of God or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, quarantine restrictions, strike, unusually severe weather conditions, government priority, requisition or allocation, or any circumstances of like or different character beyond the reasonable control of the party so failing to perform, or by interruption or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within affected party's power to concede, or compliance with any order to request of any governmental officer, department, agency or committee, shall not subject said party to any liability to the other party. At City's option, the period specified for delivery of goods or performance served hereunder shall be extended by the period of delay occasioned by any such circumstance, and deliveries or services omitted (or portions thereof) shall be made or performed during such extension, or the total ordered hereunder shall be reduced by that portion of the goods or services which Seller is unable to deliver. The provisions of this paragraph shall be effective notwithstanding that such circumstance shall have been operative at the date of this order.
7. **Warranties:** In addition to all warranties established by law, Seller hereby warrants and agrees that: All goods and services covered by this order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by City, and shall be merchantable, fit for the purpose intended, of best quality and workmanship and free from all defects. City shall have the right of inspections and approval, and may, in addition to its other rights and remedies, reject and return goods or require performance of services at Seller's expense if defective or not in compliance with City's specifications. Defects shall not be deemed waived by City's failure to notify Seller upon receipt of goods or completion of services or by payment of invoice. No disclosure, description or other communication of any sort shall be made by Seller to any third person of the fact of City's purchase of goods or services hereunder, or of the details and characteristics thereof, without City's prior written consent. Anything furnished to Seller by City pursuant to this order, including without limitation samples, drawings, patterns and materials shall remain the property of City, shall be held at Seller's risk and shall be returned upon completion of the work, and no disclosure or reproduction thereof in any form shall be made without City's prior consent in writing. All goods delivered pursuant to this order and manner of delivery thereof shall conform to standards established for such goods and delivery in accordance with any applicable federal, state, provincial, or local laws or regulations. The use or sale of any goods delivered hereunder, or any part thereof, except goods produced to City's drawings or specifications, does not infringe and adverse valid existing patent. The foregoing warranties shall survive acceptance of goods and performance of services hereunder, including construction projects.
8. **Loss in Transit and Environmental Responsibility:** Title and risk of loss in transit shall not pass to City until delivery to City at the destination identified in the purchase order in accordance with all applicable federal, state, provincial or local laws or regulations, including but not limited to U.S. Department of Transportation and U.S. Environmental Protection Agency regulations for hazardous substances, is completed. City shall not be liable for any discharge, spill or other incident, including but not limited to expenses for any clean-up costs, involving any materials transported hereunder until completion of such delivery.
9. **Marking:** Seller shall mark each package, shipment, packing and delivery ticket, bill of lading and other correspondence clearly with City's name and address, contents, and this purchase order number. The user's count will be accepted by the Seller as final and conclusive on all shipments not accompanied by a packing ticket.
10. **Assignment:** Assignment of this order or of any interest herein or of any money due or to become due hereunder without prior written consent of City shall be voided.

11. Governing Law: This order shall be governed by the laws of the State of New Mexico including the New Mexico Uniform Commercial Code. Unless otherwise indicated by the context, whenever a term used in this order is defined in the New Mexico Commercial Code, the definition contained therein is controlling as to the meaning of the term. Actions to enforce terms and conditions herein shall be brought only in the Eleventh Judicial District Court located in Alamogordo, New Mexico.

12. Employees, Insurance, Indemnification: (a) In performing any service hereunder, Seller is, and undertakes performance thereof, as independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation exclusive liability for the payment of all Federal, State, and local Unemployment and Disability Insurance and all Social Security and/or other taxes and contributions payable in respect of such persons, from and against which liability Seller agrees to indemnify, exonerate and hold harmless City. (b) Seller shall provide to City, prior to the commencement of any services hereunder, certificates of insurance as evidence that Seller has purchased the following insurance: Seller's Commercial General Liability Insurance with minimum limits coverage shall be the greater of liability established by the New Mexico Tort Claims Act or combined single limit coverage of \$1,000,000.00; and Seller's automobile liability insurance (if applicable), with minimum limits of coverage the greater of liability established by the New Mexico Tort Claims Act or combined single limit coverage of \$1,000,000.00. Seller's Workers Compensation coverage limits shall be those established by applicable statutes. Employee liability coverage shall be the greater of the limits of liability established by the New Mexico Tort Claims Act or \$1,000,000. Seller's protective liability insurance limits shall be the same as specified for Seller's Commercial General Liability Insurance. At City's option higher limits may be specified. All such persons shall be subject to all applicable rules of such premises, including those for safety and fire protection. The certificates of insurance shall specifically provide that the coverage afforded under the policies shall not be canceled nor materially changed until prior written notice has been given to the City. The Seller shall supply a copy of the appropriate certificates of insurance to the City for each year in which the Agreement is in effect. (c) If City or Seller visits other premises, it shall do so at own risk. (d) Seller warrants that Seller shall comply with all existing financial capability, responsibility, security or like laws, regulations and/or requirement of local, state, provincial and federal governments with respect to oil pollution or any other pollution damage whatsoever. Seller agrees to protect, defend, indemnify, exonerate and hold City harmless from and against any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with, incidents involving bodily injury, death, property or any violation or alleged violation of any federal, state provincial or local law or regulation. (e) Seller's insurance policies, regardless of any like insurance coverage that the City may have, shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Contractor's insurance policies regardless of any like insurance coverage that the City may have. (f) Seller will (or will cause the respective insurance carrier to) provide the City with a minimum thirty (30) days written notice in the event of cancellation, termination, non-renewal, or any other material change. g) Nothing in this Purchase Order shall limit Seller's liability to the limits of the insurance coverages required hereunder. Seller shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance policies required herein or by law.

13. General Liability and Indemnification: Seller shall indemnify and hold harmless the City, including its officers, officials, employees, or agents, against liability, claims, damages, losses or expenses, including attorney fees, only to the extent that the liability, damages, losses or costs are caused by, or arise out of, the acts or omissions of Seller or its officers, employees, or agents. This indemnity provision shall survive any termination or expiration of this Purchase Order.

14. Care, Custody, and Control of Services, Property, Materials, and Equipment: (a) To the extent that Seller provides goods and/or services, Seller shall have the full responsibility for and the risk of loss for such goods and/or services, including the City's furnished property, equipment, and materials under Seller's care, custody, and control. (b) Seller shall provide all facilities for protection required by public authority or local authority, as applicable.

15. Payment Terms and Discounts Payments shall be paid to Seller within 30 days contingent upon the following: (a) Application of payment discounts, if considered to be in the best interest of the City. (b) From date of receipt by the City of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the City; (c) On the condition that the Seller has delivered the goods and/or accomplished the services to the satisfaction of the City. Any taxes (specifically including the New Mexico Gross Receipts tax), licenses, or other governmental fees and charges, are the responsibility of the Seller.

16. Inspection: Final inspection and acceptance will be made at the destination. Goods rejected at the destination for nonconformance with specifications shall be removed, at the Seller's risk and expense, promptly after notice of rejection.

17. Compliance with Law and City's Rules: (a) Alamogordo is exempt from payment of gross receipts tax on materials but is subject to such tax on services; including construction projects defined in Section 7-9-3.4 NMSA 1978. (b) The taxable status on any sale of materials or services must be determined by the Seller's legal counsel or tax consultant. Invoices rendered for additional taxes after bid award will not be honored. (c) Reference is hereby made to Section 13-1-191 NMSA 1978 that any bribes, gratuities or kickbacks of any type are expressly forbidden, and such acts may be subject to civil penalty. (d) If this order shall require the presence on City's premises, encompassing without limitation those relative to environmental quality including safety and fire prevention. Seller shall at all times provide all equipment that is used in the performance of this purchase order, except for that equipment specified in this order as being furnished by City, including all equipment to ensure the safety of all employees, subcontractors or others under Seller's control.

18. Inspection of Public Records Act Compliance: It is understood by the Seller and the City that the City is a political subdivision of the State of New Mexico and, as such, is subject to the provisions of the New Mexico Inspection of Public Records Act, Section 14-2-1 through 14-2-12 NMSA 1978

20. Conflict of Interest: Offerors/Bidders/Contractors/Sellers warrant that it presently has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of service under this contract. Offerors/Bidders/Contractors/Sellers must notify the City's Chief Procurement Officer if any employee(s) of the requesting department or the Central Purchasing Department have a financial interest in the Offeror. If yes, the Offeror must specify the employee(s) name in their proposal.