

CITY OF SCOTTSDALE



Direct all invoices to:
City of Scottsdale
Attn: Accounts Payable
7447 E. Indian School Rd., Ste 220
Scottsdale, AZ 85251
Phone (480) 312-2432

PURCHASING OFFICE
9191 E. SAN SALVADOR DR.
SCOTTSDALE, AZ 85258
Phone (480) 312-5700
Fax (480) 312-5701

City of Scottsdale Purchase Order Standard Terms & Conditions

- 1. Acceptance-Agreement** Seller's commencement of work on the goods/services subject to this purchase order or shipment/performance of those goods/services, whichever occurs first, is considered an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face of this purchase order and the City's website. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is objected to and rejected, but any proposals do not operate as a rejection of this offer unless the variances are in the terms of the description, quantity, price or delivery schedule of the goods/services, but are considered a material alteration, and this offer will be considered accepted by Seller without additional or different terms. If this purchase order is considered an acceptance of a previous offer by Seller, the acceptance is limited to the express terms contained on the face of this purchase order and the City's website. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order are considered material and are objected to and rejected, but this purchase order does not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods/services.
- 2. Termination for Convenience** City reserves the right to terminate this order or any part of this order at its sole convenience. In the event of termination, Seller must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work. Seller will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed before the notice of termination, plus actual direct costs resulting from termination. Seller will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller must not unreasonably anticipate the requirements of this order.
- 3. Cancellation for Cause** City may also cancel this order or any part of this order for cause in the event of any default by the seller, or if the seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide City, upon request, with adequate assurances of future performance are all causes allowing City to cancel this order for cause. In the event of cancellation for cause, City is not liable to Seller for any amount, and Seller is liable to City for any and all damages sustained by reason of the default which gave rise to the cancellation. If it should be determined that City has improperly cancelled this contract for a default, the cancellation is considered a termination for convenience.
- 4. Proprietary Information-Confidentiality-Advertising** Seller must consider all information furnished by City to be confidential and not disclose any information to any other person, or use the information itself for any purpose other than performing this contract, unless Seller obtains written permission from City to do so. This paragraph applies to drawings, specifications, or other documents prepared by Seller for City in connection with this order. Seller must not advertise or publish the fact that City has contracted to purchase goods from Seller, nor is any information relating to the order to be disclosed without City's written permission. No commercial, financial or technical information disclosed in any manner or at any time by Seller to City is to be considered secret or confidential, unless otherwise agreed in writing, and Seller has no rights against City with respect to this information except any rights as may exist under patent laws. Seller recognizes that City's employees have no authority to accept any information in confidence.

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5. **Warranty** Seller expressly warrants that all goods or services furnished under this agreement must conform to all specifications and appropriate standards, must be new, and free from defects in material or workmanship. Seller warrants that all goods or services will conform to any statements made on the containers or labels or advertisements for the goods or services, and that any goods must be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished must be merchantable, and safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which City intends to use the goods or services, Seller warrants that the goods or services are fit for that particular purpose. Seller warrants that goods or services furnished conform in all respects to the samples. Inspection, test, acceptance or use of the goods or services furnished do not affect the Seller's obligation under this warranty, and the warranties survive inspection, test, acceptance and use. Seller's warranty runs to City, its successors, and assigns. Seller agrees to replace or correct defects of any goods or services not conforming to the this warranty promptly, without expense to City, when notified of any nonconformity by City, provided City elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, City, after reasonable notice to Seller, may make any corrections or replace any goods and services and charge Seller for the cost incurred by City in doing so. Seller recognizes that City's requirements may require immediate repairs or reworking of defective goods, without notice to the Seller. In this event, Seller must reimburse City for the costs, delays, or other damages which City has incurred.
6. **Price Warranty** Seller warrants that the prices for the goods or services sold City are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities. In the event Seller reduces its price for the goods or services during the term of this order, Seller agrees to reduce the prices correspondingly. Seller warrants that prices shown on this purchase order are complete, and no additional charges of any type will be added without City's express written consent. Any additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.
7. **Force Majeure** City may delay delivery or acceptance occasioned by causes beyond its control. Seller must hold the goods at the direction of the City and deliver them when the cause affecting the delay has been removed. City is responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at City's request. Seller is also excused if delivery is delayed by the occurrence of unforeseen and unforeseeable events, provided Seller notifies City of those events as soon as they occur, and gives City its best estimate of revised delivery dates. If any delay exceeds 30 days from the original delivery date, City may cancel this order without any liability. If Seller's production is only partially restricted or delayed, it must use its best efforts to accommodate the requirements of City, including giving this order preference and priority over those of other customers which were placed after this order.
8. **Patents** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against City or its agents, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished, and Seller further agrees to indemnify City and its agents against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any suit or proceeding, including any settlement or decree of judgment. City may be represented by and actively participate through its own counsel in any suit or proceeding if it so desires, and the costs of representation must be paid by Seller.

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9. **Indemnification** Seller must defend, indemnify and hold harmless City against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification is in addition to the warranty obligations of Seller.
10. **Insurance** In the event that Seller's obligations require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on City's property, or property of City's customers, the Seller agrees that all work will be done as an independent contractor and that the persons doing the work are not considered employees of the City. Seller must maintain all necessary insurance coverages, including public liability and Workers' Compensation insurance. Seller must defend, indemnify and hold harmless City from any and all claims or liabilities arising out of the work covered by this paragraph.
11. **Changes** City has the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment will be made and this agreement will be modified in writing accordingly. Seller agrees to accept any changes subject to this paragraph.
12. **Inspection/Testing** Payment for the goods delivered does not constitute acceptance of the goods. City has the right to inspect the goods and to reject any or all of the goods which are in City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Seller at its expense and in addition to City's other rights. City may charge Seller all expenses of unpacking, examining, repacking and reshipping those goods. In the event City receives goods whose defects or nonconformity is not apparent on examination, City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order will relieve in any way the Seller from the obligation of testing, inspection and quality control.
13. **Entire Agreement** This purchase order and any documents referred to on the face of this purchase order, constitute the entire agreement between the parties.
14. **Assignments and Subcontracting** No part of this order may be assigned or subcontracted without first obtaining the written approval of City.
15. **Risk of Loss** Seller bears all risk of loss on items covered by this order until final acceptance at City's location.
16. **Shipment** If in order to comply with City's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs that result must be paid for by Seller unless the necessity for this rerouting or expedited handling has been caused by City. Seller bears all risk of loss of all merchandise covered by this order until the merchandise has been delivered to the designated destination.
17. **Waiver** City's failure to insist on performance of any of the terms or conditions of this purchase order or to exercise any right or privilege, or City's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type.

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18. **Delivery** Time is of the essence of this contract. If delivery of items or rendering of services is not completed by the time promised, City reserves the right without liability, in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered. City may purchase substitute items or services elsewhere and charge Seller with any loss incurred. Delivery terms are F.O.B. destination.
19. **Limitation on City's Liability-Statute of Limitations** In no event is City liable for anticipated profits or for incidental or consequential damages. City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach of this agreement will in no case exceed the unit price allocable to the goods or services which gives rise to the claim. City is not liable for penalties of any description. Any action resulting from any breach on the part of City as to the goods or services delivered must be commenced within 1 year after the cause of action has accrued.
20. **Legal Arizona Worker's Act** Only Sellers providing services to the City are subject to the provisions of this Act. Under the provisions of A.R.S. §41-4401, the Seller warrants to City that the Seller and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Seller and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Seller or any of its subcontractors will be considered a material breach of this Contract and may subject the Seller or Subcontractor to penalties up to and including termination of this Contract or any subcontract. The Seller will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Seller's failure to assure compliance by all its' subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City. City retains the legal right to inspect the papers of any employee of the Seller or any subcontractor who works on this Contract to ensure that the Seller or any subcontractor is complying with the warranty given above.

City may conduct random verification of the employment records of the Seller and any of its subcontractors to ensure compliance with this warranty. The Seller agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

21. **Contracts with Sudan and Iran** In accordance with A.R.S. §35-391.06 and 35-393.06, the contractor certifies that it does not have scrutinized business operations in Sudan or Iran, as defined in A.R.S. §35-391(15) and 35-393(12).
22. **Independent Contractor** The services you provide under this Purchase order, Scope of Work contract to the City are that of an Independent Contractor, not an employee. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

Withholding of income tax is not deducted from contractual payments. As a result of this, you may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject you to a penalty.

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23. **Arizona Law** This Order / Contract shall be governed and interpreted according to the laws of the State of Arizona.
24. **Attorney's Fees** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Order / Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
25. **Conflict of Interest** The City may cancel any order, contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the order/contract on behalf of the City's departments or agencies is, at any time while the order/contract or any extension of the order/contract is in effect, an employee of any other party to the order/contract in any capacity or a Supplier/Contractor to any other party to the order/contract with respect to the subject matter of the order/contract. The cancellation shall be effective when written notice from the City is received by all other parties to the order/contract, unless the notice specifies a later time (A.R.S. §38-511).

END OF DOCUMENT
