

## TERMS AND CONDITIONS OF PURCHASE ORDER/CONTRACT (FOR GOODS) - CITY OF VERNON

This is a government contract. The terms are not changed by any words added by Contractor, nor superseded because of any form used by Contractor in the course of business. Any change in terms must be agreed to by an authorized representative of the City, in writing. Acceptance by the City of goods, materials, or services is not an acceptance of Contractor's other terms.

1. Parties: (a) Purchaser: City of Vernon ("City"); (b) Contractor: As set forth on the attached Purchase Order/Contract.
2. Terms: (a) the term "goods" includes goods, material, chattels, equipment, machinery, manufactured articles, merchandise, fixtures, products, software, appliances, and any other items to be supplied pursuant to this Purchase Order/Contract; (b) the term "warranty" includes, warranties, guarantees, representations, and promises.
3. Contractor agrees to furnish the goods, materials, or services described in the Purchase Order/Contract to which this is attached and subject to all terms and conditions of the Purchase Order/Contract, this Attachment to the Purchase Order/Contract, and all other attachments hereto.
4. Contractor agrees to submit all invoices to the address indicated on the Purchase Order/Contract.
5. Contractor agrees to invoice at net prices without federal excise tax or federal fuel tax.
6. Contractor agrees to show on all invoices the name of the department to which goods or services were furnished, and whether the invoice covers complete or partial delivery or performance, the Purchase Order/Contract number, and any applicable cash discount.
7. Contractor agrees to prepay transportation charges and show them separately on all invoices.
8. Contractor agrees to show applicable sales or use tax as separate items on all invoices.
9. Clear title and risk of loss to all materials furnished under the Purchase Order/Contract shall pass to the City upon delivery and loading of conforming goods or materials at the F.O.B. point designated in the Purchase Order/Contract.
10. City shall have no responsibility for payment of over-shipments, goods not delivered due to shortages, theft, or otherwise non-conforming shipments.
11. Any item ordered on the face hereof that is listed in the Safety Orders of the California Division of Industrial Safety shall fully comply with the latest revised requirements of said Safety Orders.
12. The goods shall be tendered by delivery to City at the time and place specified in the Purchase Order/Contract. Contractor is responsible for maintaining and providing proof of delivery. If transportation of the goods is undertaken by an entity other than Contractor, Contractor shall be responsible for and handle all claims against such entity for shortages, damages, theft, and other such occurrences. All goods, materials, and equipment ordered shall, except as otherwise noted in this Purchase Order/Contract, be delivered in a new and unused condition. Unless otherwise specified, all products and goods are to be packed in accordance with the best commercial practice.
13. All automotive equipment delivered to the City shall meet all requirements of the latest revision of the California Vehicle Code and of the Federal Department of Transportation.
14. Contractor warrants to City that all items covered by this Purchase Order/Contract conform to any applicable samples, drawings, specifications, plans, or other descriptions provided by Contractor and expected by City (collectively, "Specifications"). Contractor is not authorized to substitute goods with different Specifications unless agreed to in writing by City. All goods shall be merchantable; fit for City's intended purpose; of good material, workmanship and design, and free from defect. Contractor also guarantees that the goods are of sufficient size or capacity to perform as specified. This Purchase Order/Contract incorporates by reference any and all warranties (express, implied, oral, or written) made by Contractor prior to or at the time this Purchase Order/Contract is accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc., provided that in the event of a conflict, the warranty providing the most protection to City shall prevail. All warranties shall survive inspection, acceptance, and payment.
15. Within a reasonable time after delivery of the goods, City shall have the right to inspect the goods to determine their conformity with the Specifications. Thirty (30) days from the date of delivery or installation is deemed to be the reasonable time for City to inspect the goods. If all or any part of the goods are deemed to be non-conforming, City may reject such non-conforming goods, whereupon such rejected goods promptly shall be removed by Contractor at Contractor's cost, and the Purchase Price with respect to

such rejected goods either shall be refunded by Contractor if already paid, or shall be reduced if still owing. In either case, if City so directs in writing, Contractor shall promptly replace such non-conforming goods with goods conforming to the Specifications. All direct and incidental costs of rejecting, removing, and replacing such non-conforming goods shall be borne by Contractor.

16. Notwithstanding anything to the contrary contained in the Purchase Order/Contract, in no event shall Contractor be entitled to any payment on account of lost profits or consequential damages in connection with any termination of the Purchase Order/Contract, or otherwise in connection with the Purchase Order/Contract.

17. Prior to the issuance of the Purchase Order/Contract, Contractor may be required to provide to City evidence of insurance. Failure to maintain the required amounts and types of coverage throughout the duration of services supplied shall constitute a material breach of this Purchase Order/Contract and shall entitle the City to terminate this Purchase Order/Contract.

**18. As respects acts, errors, or omissions in the performance under this Purchase Order/Contract, the Contractor agrees to indemnify and hold harmless the City, its officers, elected officials, agents, employees, representatives, and volunteers from and against all claims, demands, defense costs, liability, or consequential damages arising out of the Contractor's negligent acts, errors, or omissions in the performance under the terms of this Purchase Order/Contract or those of Contractor's subcontractors or anyone for whom Contractor is legally liable. As respects all acts or omissions which do not arise directly out of the performance of this Purchase Order/Contract, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, the Contractor agrees to indemnify, defend (at City's option), and hold harmless the City, its officers, elected officials, agents, employees, representatives, and volunteers from and against all claims, demands, defense costs liability, or consequential damages arising out of or in connection with the Contractor's (including Contractor's employees, representatives, subcontractors or anyone for whom the Contractor is legally liable) performance or failure to perform under this Agreement: excepting those which arise out of the sole negligence of City. Contractor shall indemnify and save harmless City from laborers, mechanics', and materialmen's liens upon materials, equipment, work in progress, or the premises on which the work is to be performed.**

19. Contractor shall not perform work on City owned property, and shall not commence work, or cause materials to be delivered to the job site, until so authorized in writing by the Head of the Department (or designee) for whom the work was ordered.

20. Contractor certifies and represents that, during the performance of this Purchase Order/Contract, the Contractor and each subcontractor shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex, age, medical condition, or marital status. Contractor further agrees that it will not maintain any segregated facilities.

21. Contractor shall obtain a City Business License under the terms and conditions of Vernon Municipal Code, Sections 5.20, et seq., where required.

22. Contractor hereby represents, warrants, and certifies that no officer or employee of the Contractor is a director, officer, or employee of the City of Vernon, or a member of any board, commission, or committee, except to the extent permitted by law.

23. The City, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Contractor's records to the extent the City deems necessary to insure it is receiving all money to which it is entitled under the Purchase Order/Contract and/or is paying the amounts to which Contractor is properly entitled to under the Purchase Order/Contract or for other purposes relating to the Purchase Order/Contract. The Contractor shall maintain and preserve all such records for a period of at least 3 years after the termination of the Purchase Order/Contract. The Contractor shall maintain all such records in the City of Vernon. If not, the Contractor shall, upon request, promptly deliver the records to the City of Vernon or reimburse the City for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Vernon, including, but not limited to, such additional (out of the City) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

24. It is understood that in the performance of any services herein provided, for Contractor shall be, and is, and independent contractor, and is not an agent or employee of City and shall furnish such services in its own manner and method, except as required by this Purchase Order/Contract. Further, Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that Contractor and any subcontractors, agents or employees are not entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or Workers' Compensation insurance benefits.

25. Contractor shall not assign or transfer this Purchase Order/Contract or any rights hereunder without the prior written consent of the City which may be withheld in the City's sole discretion. Any unauthorized assignment of transfer shall be null and void and shall constitute a material breach of Contractor of its obligations under this Purchase Order/Contract.
26. Time is strictly of the essence of this Purchase Order/Contract and each and every covenant, term and provision hereof.
27. The City's waiver of any term, condition, breach or default of this Purchase Order/Contract shall not be considered to be a waiver of any other term, condition, default of breach, not of a subsequent breach of the one waived.
28. The City reserves the right to cancel any portion of this Purchase Order/Contract at any time prior to the delivery of goods.
29. This Purchase Order/Contract does not and is not intended to confer any benefit on or create any right exercisable or enforceable by any third party.
30. This Purchase Order/Contract shall be deemed a contract and shall be governed by and construed in accordance with the laws of the State of California. Contractor agrees that the State and Federal courts which sit in the County of Los Angeles, shall have exclusive jurisdiction over all controversies and disputes arising hereunder, and submits to the jurisdiction thereof.
31. This Purchase Order/Contract, including any Exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation, and agreements (written or oral). In case of conflict between the terms of this Purchase Order/Contract and the terms of any other document which is a part of this transaction, the terms of this Purchase Order/Contract shall strictly prevail. Any and all additional terms and conditions must be approved by the City Attorney in writing.
32. If any provision of this Purchase Order/Contract shall be determined to be invalid or unenforceable, such provision shall be deemed to be severed and the remainder of the Purchase Order/Contract shall be given full force and effect.
33. In case of default by Contractor, the City reserves the right to procure the goods or services from other sources and to hold the Contractor responsible for any excess costs occasioned to the City thereby, Contractor shall not be held accountable for additional costs incurred due to delay or default as a result of Force Majeure. "Force Majeure" shall mean an event beyond the control of either party, which prevents either party from complying with any of its obligations under this Agreement, including but not limited to: (a) any act of God (e.g., fires, explosions, earthquakes, drought); (b) riot or strikes; or (c) acts or threats of terrorism. Contractor must notify the City immediately upon knowing that non-performance or delay will apply to this Purchase Order/Contract as a result of Force Majeure. At that time Contractor is to submit in writing a Recovery Plan for this Purchase Order/Contract. If the Recovery Plan is not acceptable to the City or not received within 10 days of the necessary notification of Force Majeure default, then the City may cancel this Purchase Order/Contract in its entirety at no cost to the City, owing only for goods and services completed to that point.