



CITY OF TURLOCK PURCHASE ORDER TERMS CONDITIONS

1. **Contract:** 1. Unless the City of Turlock and Vendor have both signed a separate written agreement, this purchase order and any referenced attachments constitute the City's offer to Seller/Vendor and shall become a binding contract on Seller's acceptance through acknowledgement or commencement of performance.
2. **All Shipments are F.O.B. Delivered:** Vendor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Purchase Order.
3. **Taxes:** Unless otherwise provided herein or required by law, Vendor, except out-of-state*, assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the articles sold or material or work furnished hereunder on the wages, salaries or other remuneration's paid to persons employed in connection with the performance of this Purchase Order; and Vendor shall indemnify and hold harmless the City of Turlock from any liability and expense by reason of Vendor's failure to pay such taxes or contributions. *NOTE: Out-of-state vendors without a California Sales and Use Tax Permit should not include sales tax on their invoice. City will pay the use tax directly to the California State Board of Equalization.
4. **Acceptance and Payment:** Acceptance shall be made when the City determines the goods or services conform to the Order, or when City notifies Seller that it will accept the goods or services despite nonconformity. Unless otherwise stated in the Order, payment terms are Net 30 days Payment will be scheduled upon complete delivery and acceptance of all goods or services and receipt of an original and one copy of an invoice acceptable to the City. Invoices for goods or services provided in June or for any goods or services not previously invoiced shall be submitted to City no later than June 30th to facilitate City fiscal year end closing. In connection with any cash discount specified in the Order, for the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City check.
5. **Change Orders:** The City shall have the right to revoke, amend or modify this Purchase Order at any time. Vendor's receipt of City's written change order without response received by the City within ten days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall be Vendor's acceptance of the change without any price or other adjustments. **Substitutions, Changes and Prices** other than specified must be authorized in writing by the City.
6. **Additional or Inconsistent Terms:** Any term or condition set forth in any acknowledgment form provided to City by Vendor which is in any way different from, inconsistent with, or in addition to the terms and conditions of the Purchase Order will not become a part of the Purchase Order nor be binding on City. If Vendor objects to any term or condition set forth therein, this objection must be in writing and received by City's Purchasing Agent identified on the Purchase Order prior to Vendor's delivery of product(s) or services. Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.
7. **Assignment or Subcontracting:** No performance of this Purchase Order or any portion thereof may be assigned or sub-contracted by the Vendor without the express written consent of the City, which may be withheld for any reason. Any attempt by the Vendor to assign or sub-contract any performance of this Purchase Order without the express written consent of the City shall be invalid and shall constitute a breach of this Purchase Order.
8. **Title:** Vendor warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Vendor has a good and marketable title to same, and Vendor agrees to defend and hold City free and harmless against any and all claimants to said article, material or work. Title to the materials and supplies purchased hereunder shall pass to the City at the F.O.B. point designated on the face hereof, subject to the right of the City to reject upon inspection.
9. **Warranty and Quality Inspection:** Vendor warrants that all articles, materials and work furnished shall be good quality and free from defects, shall conform to drawings and/or specifications and shall be merchantable quality and fit for the purpose for which purchased, and shall be at all times subject to City's inspection; but neither City's inspection nor failure to inspect shall relieve Vendor of any obligation hereunder. If, in City's opinion, any article, material or work fails to conform to specifications or is otherwise defective, Vendor shall promptly replace same at Vendor's expense. No acceptance or payment by City shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any warranties implied by law.
10. **Right to Cancel:** City shall have the right to cancel at any time for Vendor's breach of any provisions of this order, including failure to meet their stated delivery schedule. City may cancel all or any portion of this order if Vendor, in City's judgment, is failing to make sufficient progress as to endanger performance of this order in accordance with its terms.
11. **Time for Performance and/or Delivery:** Time is of the essence in the performance and/or delivery of services and/or items procured by this Purchase Order. If service and/or delivery cannot be provided by the specified time, Vendor shall promptly notify City of the earliest possible date for performance and/or delivery. Notwithstanding such notice, if Vendor, for any reason whatsoever, fails to fulfill the obligations of this Purchase Order within the time specified, City may terminate the Purchase Order or any part thereof without liability except for work previously performed and/or items already delivered and accepted.
12. **Indemnification:** To the fullest extent permitted by law, the Vendor shall indemnify, defend, and hold harmless City and its elective and appointive boards, officers, agents, employees, and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of or in connection with the performance of the Work, both on and off the job site, provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use therefrom, and (2) is caused in whole or in part by any act, error, or omission of the Vendor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts, errors, or omissions any of them may be liable, regardless of whether or not it is caused in part by any act, error, or omission (active, passive, or comparative negligence included) of any party indemnified hereunder; provided however, that nothing herein shall relieve any party indemnified hereunder from liability to the extent that such liability arises from such party's sole established negligence, willful misconduct, or active negligence. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person indemnified in this section on indemnity. Vendor's obligation to indemnify City shall not be restricted to insurance proceeds.
13. **Compliance with Law:** Vendor warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Purchase Order. Vendor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work. All equipment and materials shall comply with all Federal, State and local safety rules and regulations including OSHA.
14. **Default:** If the Vendor willfully violates any of the conditions or covenants of the Purchase Order, including refusal or failure to prosecute the Work or any separable part thereof with diligence and in accordance with the schedule specified by the Purchase Order, or if the Vendor should be adjudged a bankrupt, or if Vendor should make a general assignment for the benefit of Vendor's creditors, or if a receiver should be appointed on account of Vendor's insolvency, or the Vendor or any of Vendor's subcontractors should violate any of the provisions of this Purchase Order, the City may serve written notice upon the Vendor of the City's intention to terminate this Purchase Order. This notice of intent to terminate shall contain the reasons for such intention to terminate this Purchase Order, and a statement to the effect that the Vendor's right to perform this Purchase Order shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the City have been made for correction of said violations.
15. **Insurance:** Vendor shall maintain Worker's Compensation insurance as required by statute and Commercial General Liability insurance adequate to protect Vendor and Vendor's obligations hereunder to protect the City from claims due to personal injury, including death, and damage to property, which may arise from operation under this Purchase Order. The Vendor may be required to file with the City certificates of such insurance. Failure to furnish such evidence, if required, may be considered a material default of the vendor.
16. **Licenses and Permit:** The Vendor and all of his employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with furnishing of materials, articles, or services herein listed. All operation & materials shall be in accordance with the law.
17. **Assignment of Claims:** Claims for monies due or to become due under this contract shall be assigned only pursuant to prior written consent of the City Purchasing Agent or designated representative.
18. **Governing Law:** This Purchase Order shall be deemed to be made in the County of Stanislaus, State of California and shall in all respects be construed and governed by the laws of the State of California.