



## **PURCHASE ORDER TERMS AND CONDITIONS**

The following terms and conditions only apply to transactions that do not have a written agreement, duly executed by both parties. If there is a separate, duly executed agreement, then the terms of that agreement shall be the terms that govern the transaction and relationship of the parties. In the absence of such a written agreement, duly executed by both parties, then this Purchase Order, together with the terms and conditions (including any addendums, attachments, exhibits, specifications, appendices, or special conditions), whether attached or incorporated by reference (collectively the "Purchase Order" or "PO") shall represent the entire agreement between the City of Littleton (the "City") and the Vendor. City shall not be liable or responsible for goods delivered or services performed prior to the issuance of this PO.

1. **INSURANCE.** Vendor agrees to secure, at or before the issuance of this PO, the following insurance covering all operations, goods or services provided pursuant to this PO. Vendor shall keep the required insurance coverage in force at all times during the term of the PO, including any extension thereof, and during any warranty period. Vendor shall provide evidence of insurance upon City's request. City's acceptance of a certificate of insurance that does not comply with all insurance requirements set forth in this PO shall not act as a waiver of Vendor's breach of this PO or of any of City's rights or remedies under this PO.

- a. Commercial General Liability insurance with minimum combined single limit for each occurrence of one million dollars (\$1,000,000.00) and of two million dollars (\$2,000,000.00) aggregate. The policy shall name City of Littleton as additional insured.
- b. Comprehensive Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of one million dollars (\$1,000,000.00), if Vendor uses owned, hired and/or non-owned vehicles in performance of this PO. The policy shall name City of Littleton as additional insured.

2. **CONDITION OF GOODS AND SERVICES.**

- a. It is understood and agreed that any product offered, shipped, and sold as a result of this PO shall be new (current production model at the time of PO issuance). No re-manufactured, refurbished, or 'gray market' items will be accepted unless otherwise specified in writing from City.
- b. All parts not specifically mentioned, which are necessary for the unit to be complete and ready for operation, or which are normally furnished as standard equipment, shall be furnished by Vendor.
- c. All items must be covered by the manufacturer's warranty and shall be warranted against defects in material and workmanship for the manufacturer's stated warranty. The warranty shall begin on the date the item is accepted by City.
- d. Manuals containing the any illustrated parts list, operating, and service instructions for the product shall be delivered with the goods.
- e. Services shall be performed in a timely, efficient, professional, and workmanlike manner. Vendor shall have the necessary skill, background, and training reasonably commensurate with their level of performance or responsibility; and services shall be performed in a manner consistent with the standard of care in the industry.

3. **SPECIFICATIONS, BRAND NAME OR EQUAL, AND SAMPLES.**

- a. Specifications are provided to identify the product/service required and to establish an acceptable quality level. Goods of equal quality and usability will typically be considered unless otherwise stated. City will be the sole judge in determining "equals" in regard to quality and performance.
- b. A brand name or equal specification means that the brand name is for the purpose of describing the standard of quality, performance, and characteristics desired. Unless otherwise specified, information to address equivalent substitutes in brand name or

equal descriptions must include published information such as brochures, descriptions, or other information made available in the general course of Vendor's business which demonstrates equivalent functionality in terms of significant performance characteristics (or other specified form, fit or function); similar duration and scope of warranty protections; comparable experience with the same, similar, or predecessor product line; and an adequate period of customer support experience to demonstrate a comparable acceptable level and availability of customer support. The determination of whether a proposed substitute is acceptable shall be at City's sole discretion.

- c. When requested by City, samples of items shall be furnished at no cost to City, and each individual sample must be labeled with Vendor's name and item number. If not destroyed, samples may be returned upon Vendor's written request and at Vendor's expense.
- d. Failure to furnish brochures, specifications, and/or samples as requested by City shall be sufficient cause to cancel this PO.

#### **4. DELIVERY AND ACCEPTANCE OF GOODS/SERVICES.**

- a. All pricing is F.O.B. Destination unless otherwise specified by City. Delivery is to be made as soon as possible during the days and times provided by City. Shipments must be marked with Vendor's name, the PO number, and contain a delivery or packing slip.
- b. Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.
- c. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law.
- d. Unless otherwise specified in this PO, delivery for goods shall occur when Vendor delivers the product(s) in full compliance with the specifications to City's F.O.B Destination, unless delivery is accepted, in whole or in part, by City in writing. Providing goods that do not meet all specifications does not constitute delivery.
- e. City may inspect all goods/services prior to acceptance. Any items delivered that do not meet the specifications outlined herein shall not be accepted. Payment does not constitute acceptance. Vendor shall be responsible for the cost of any inspection or testing that reveal goods/services are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications, nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, at its discretion and in addition to any other rights it may have at law or in equity: i) make a warranty claim; ii) repair and/or replace the goods or substitute other services at Vendor's expense; or iii) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit; iv) cancel the PO or any part thereof without prejudice; and/or v) authorize purchase of the goods or services elsewhere and charge increased costs to Vendor. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this PO.
- f. Vendor's promised delivery date of goods and/or any installation or services set forth in the PO shall be a condition of City's acceptance of the goods and/or services.

#### **5. PRICING AND PAYMENT.**

- a. Vendor shall obtain all permits and licenses, pay all charges, taxes and fees, and give all notices necessary and incidental to the fulfillment of this PO, and Vendor affirms all costs thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges, or penalties of any nature. The price of all goods/services shall reflect all applicable tax exemptions for the City.

- b. All unit prices quoted shall be firm and fixed and considered as a delivered price. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items.
  - c. Vendor shall submit a detailed invoice to City at the prices stipulated in the PO for goods delivered or services rendered and accepted, less any deductions provided. If City is satisfied with Vendor's goods/services, City shall pay the invoice within forty-five (45) days.
  - d. City shall not pay Vendor for goods/services rendered in excess of the total amount set forth in the PO. City shall not pay late fees or late payment interest. Except as specifically agreed upon in the PO, Vendor shall be solely responsible for all costs, expenses, and other charges it may incur in connection with delivery or performance under this PO.
  - e. Financial obligations of City are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this PO is funded in whole or in part with federal or state funds, this PO is subject to and contingent upon the continuing availability of federal or state funds for the purposes hereof. City represents that it has set aside sufficient funds to make payment for goods/services delivered in accordance with the terms of this PO. If funds are not appropriated, budgeted or made available, this PO shall immediately terminate without further obligation on the part of City.
6. **WARRANTIES.** All provisions and remedies of the Colorado Uniform Commercial Code, Colorado Revised Statute Title 4 ("UCC") relating to implied or express warranties for goods are incorporated herein, in addition to any warranties contained in this PO. The UCC shall prevail as the basis for contractual obligations to the extent any terms and conditions are not specifically stated in this PO.
7. **CHANGES.** This PO shall not be modified, superseded or otherwise altered, unless via a written change order issued by City and accepted by Vendor.
8. **RECORD RETENTION.** Upon request, Vendor shall make available to City all true and complete records related to this PO. Vendor agrees to retain records related to this PO for at least three (3) years.
9. **TERMINATION.** City may terminate this PO, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.
10. **SURVIVAL OF TERMS.** All terms and conditions of this PO which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period.
11. **ASSIGNMENT.** Vendor's rights and obligations under this PO shall not be transferred or assigned without the prior written consent of City and execution of a new PO. Any attempt at assignment or transfer without such consent and new PO shall be void. Any new PO approved by City shall be subject to the same terms and conditions as those set forth in this PO.
12. **INDEMNIFICATION.** Vendor shall indemnify, save, and hold harmless City, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall



include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information. This section is not applicable to a governmental agency or entity.

13. **GOVERNING LAW.** This PO shall be governed by the laws of the State of Colorado. Venue for any action arising under this PO or for the enforcement of this PO shall be in the appropriate court for Arapahoe County, Colorado.
14. **ACCESSIBILITY STANDARDS.** Vendor shall comply with the accessibility standards for an individual with a disability adopted by the Colorado Office of Information Technology, in accordance with C.R.S. Section 24-85-103 and its implementing regulations. Notwithstanding the foregoing, this requirement shall not be applicable to contracts or agreements for professional services, as defined by C.R.S. Section 24-30-1402, or to any portion or part of the contract or agreement that is providing professional services. Further, Vendor shall indemnify, hold harmless, and assume liability on behalf of the City and City's officers, employees, and agents, for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the City in relation to Vendor's noncompliance with the accessibility standards for an individual with a disability adopted by the Colorado Office of Information Technology, in accordance with C.R.S. Section 24-85-103, and its implementing regulations.
15. **ORDER OF PRECEDENCE.** In the event of conflict or inconsistency within this PO, such conflict shall be resolved by giving preference to the documents in the following order: i) Purchase Order; ii) these Terms and Conditions; and iii) any addendums, attachments, exhibits, specifications, appendices, or special conditions, whether attached or incorporated by reference. Any terms or conditions included on Vendor's quote, forms, or invoices shall not be included in this PO and shall not be binding on City.