



**Agreement.** Seller agrees that the only terms and conditions that are applicable to this contract are those issued by the City of Richmond (City) and no other terms and conditions shall be binding upon the parties. Any additional or different terms or conditions offered by the Seller are hereby rejected. If a court of competent jurisdiction holds any part of this contract invalid, the balance shall retain its full force and effect. This purchase order, and any additional documents incorporated herein by reference, set forth the entire agreement between Seller and City.

**Arbitration.** Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof. Any Arbitration award may make the cost of the arbitration a charge against either or both parties, and may determine and fix a reasonable attorney's fee to be paid the prevailing party.

**Artwork, Designs, etc.** (a) Upon completion or cancellation of this order, Seller shall return all designs, drawings, and blueprints (Artwork) that are furnished by the City for the production of the goods. Artwork shall not be used by the Seller in the production of materials for any third party without express written consent of the City. Artwork involves valuable property rights of City and shall be held confidential by Seller. (b) Unless otherwise agreed herein, at its own cost Seller shall supply all materials, equipment, tools and facilities to perform the work described herein. **Any materials, equipment, tools, artwork, designs, or other properties furnished by City or specifically paid for by City shall be City's property.** Any such property shall be used only in filling orders from City and may on demand be removed by City without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same while in Seller's custody. Seller shall at its cost store and maintain all such property in good condition and repair. City makes no warranties of any nature with respect to any property it may furnish to Seller hereunder.

**Assignment.** Seller shall not delegate or subcontract any duties or assign any rights or claims under the purchase order without City's prior written consent.

**Authorized Distributor.** Seller shall be an authorized distributor of the product he sells or he must be able to show substantial evidence that the product manufacturer will honor the manufacturer's warranty of the product when purchased by the City from the Seller. The City reserves the right to cancel this order if the manufacturer refuses to honor the product warranty.

**Backorders & Product Substitution.** The seller shall not backorder any item without first requesting authorization from the buyer nor make any product substitution without prior written authorization from the Purchasing Division.

**Changes in Contract.** It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the City, and that no oral understandings or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties, shall be binding. The City will not compensate Seller for goods not authorized by written Change Order. The City shall have the right to revoke, amend, or modify this order at any time by issuance of a written Change Order. Seller's failure to respond within ten (10) days to a written Change Order shall constitute Seller's acceptance of the change without price or other adjustment.

**Compliance with Laws – Goods and Services.** All goods and services shall comply with all current federal, state, and other laws relative thereto, including but not limited by those set forth by the California Occupational Safety and Health Act (Cal-OSHA). Seller further agrees to indemnify, defend and hold the City harmless for any failure to so conform. If, in connection with the specified goods, Seller is required to comply with the Occupational Safety and Health Act's hazardous communications standard, SELLER SHALL PROVIDE COPIES OF APPLICABLE MATERIAL SAFETY DATA SHEETS (MSDS) AT THE TIME OF DELIVERY OF THE GOODS.

**Default by Seller/Breach of Contract.** The City reserves the right to cancel at any time, any or all items not delivered as directed and within the time specified. In case of default by Seller, the City may procure the goods or services from any source available and may charge the difference between the price named in the contract or purchase order and the actual cost thereof to the Seller. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made.

**Delivery - Time is of the Essence.** Time is of the essence of this contract and failure to deliver the goods or services specified herein shall be a material breach of this contract. If Seller cannot deliver the goods within the specified time, Seller shall promptly notify City of the earliest possible date for delivery. Notwithstanding such notice, City may terminate this order or any part thereof without liability except for goods previously delivered and accepted. City's receipt or acceptance of all or part of a nonconforming delivery shall not constitute a waiver of any claim, right or remedy City has under this order or applicable law.

**F.O.B. Point and Title.** The F.O.B. point for this order shall be "F.O.B. Destination" unless otherwise shown on the face of this purchase order. Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by Seller, or his agent, shall pass to the City upon the City's inspection and acceptance of such items at the City's premises. Supplier warrants that all articles, materials, and work are free and clear of all liens and encumbrances whatsoever, and that Supplier has a good and marketable title to same, and Seller agrees to hold City free and harmless against any and all claimants to said article, material, or work. Transportation charges shall be prepaid by the Seller and added to the invoice. **THE ORIGINAL FREIGHT BILL MUST BE ATTACHED TO THE SHIPMENT.** No charges for transportation, containers, packing, handling, or inside delivery will be allowed unless specifically stated in the purchase order.

**Force Majeure.** Neither party to the Purchase order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the purchase order upon written notice after determining such delay or default will reasonably prevent successful performance of the order.

**Hold Harmless.** Seller shall indemnify, defend, and hold harmless the City, and its officers, officials, employees and agents, from and against any and all claims asserted, liability, loss damage, expense, costs, including without limitation costs and fees of litigation, of every nature arising out of, directly or indirectly, or in connection with this contract or the acts or omissions of Seller, Seller's subcontractors, employees, representatives, agents and invitees including, but not limited to, performance of the work hereunder or failure to comply with any of the obligations contained herein, except such loss or damage which was caused by the established active negligence of City or the established sole negligence or willful misconduct of City, its officers, officials, employees and agents. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such liability, loss, damage, expense or cost. The Seller agrees that the use of any and all public streets and improvements that are part of or subject to this contract shall be at all times, prior to final acceptance by the City, the sole and exclusive risk of Seller. The Seller further specifically agrees that he shall indemnify and hold City free of any liability for any accident, loss or damage to the work that is the subject of this contract prior to its completion and acceptance by the City.

**Inspection, Testing, & Approval.** Goods shall be received subject to City inspection, testing, approval, and acceptance at City premises notwithstanding any prior payment for such goods. Goods rejected by City as not conforming may be returned to Seller at Seller's risk and expense, and shall not be replaced by Seller without written authorization from City. Substitutions are not permitted except upon specific written authorization of City.

**Insurance.** When specified herein and/or when specified by bid or quote documents that are incorporated herein by reference, maintenance of required insurance coverage is a material element of this contract and failure to maintain or renew coverage or to provide evidence of renewal shall be a material breach of this contract.

**Invoice.** Seller shall bill the City in arrears after goods have been shipped and work has been performed. Invoice each purchase order separately, and the purchase order number must appear on all invoices and packing slips. Items on this purchase order must not be billed with those on other purchase orders. Goods shall be itemized as shown on this order, and tax must be shown as a separate line item. Out-of-state Sellers must indicate their State of California Use Tax Permit number when collecting tax. Mail one original invoice to: City of Richmond, Accounts Payable, P.O. Box 4046, Richmond, CA 94804.

**Law and Venue.** This contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in **Contra Costa County, California**, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**Material Safety Data Sheets.** Seller shall conform to California Labor Code Section 6360 and Title 8 C.C.R., Sections 339 and 5194 and submit Material Safety Data Sheets with orders of hazardous substances.

**Packaging, Packing Materials, And Manner Of Shipping.** Goods shall be packaged, marked, and otherwise prepared for shipment by Seller in suitable containers, in accordance with sound commercial practices. Due to environmental and solid waste considerations, the City of Richmond will not accept Polystyrene pellets as packing material. **DO NOT SHIP GOOD(S) USING POLYSTYRENE PELLETS.** Alternate vendors will be sought to replace companies violating this policy.

**City of Richmond**  
**Purchase Order Terms and Conditions**



**Packing Slip.** All shipments of goods shall be accompanied by a packing slip identifying the Seller and describing the goods and quantity shipped.

**Patent Indemnity.** Seller agrees to hold harmless and fully indemnify the City of Richmond, its officers, agents, servants, and employees from all damages or claims for damages, and costs or expenses in law or equity, including costs and expenses incurred, for the use of any invention or discovery and for the infringement of any Letters Patent, not including liability arising pursuant to Section 183 U.S. Code, Title 35 (1952), prior to issuance of Letters Patent, occurring in the performance of this order or arising by reason of the use or disposal by or for the account of the City of items manufactured or supplied under this order.

**Payment.** Payment terms for this order shall be net 45 days unless otherwise specified herein.

**Payment Terms.** Payment terms shall be net forty-five-(45) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by City, whichever occurs last. Delay caused by correction of errors and omissions shall extend the discount period and shall be just cause for withholding settlement without loss of cash discount by City. City may set off any amount owed by Seller to City against any amount owed by City to Seller under the Purchase order. City shall endeavor to pay each invoice within forty-five-(45) days, but shall not be responsible to Seller for additional charges, interest, or penalties due to failure to pay within that period.

**Permits, Licenses, and Other Requirements.** (A) Seller shall comply with all applicable existing and future governmental laws, municipal ordinances, codes, rules, regulations, programs, plans and orders in the performance of the Purchase order. (B) Seller shall be in full compliance with all permit or licensing requirements in connection with the manufacture, sale, shipment, and/or installation of the goods specified in the Purchase order.

**Prices.** All prices shall be as stated in the Purchase order and are firm and not subject to escalation.

**Quantities.** Seller shall deliver the exact quantities specified in the purchase order. City reserves the right to reject incomplete deliveries and to return at Seller's risk and expense excess quantities delivered.

**Rejection Of Disclaimers Of Warranties.** THE CITY OF RICHMOND REJECTS ANY DISCLAIMER BY SELLER OF ANY WARRANTY, STANDARD, IMPLIED OR EXPRESS UNLESS SPECIFICALLY AGREED TO ON THE FACE OF THIS PURCHASE ORDER, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**Severability.** If any provision of the Purchase order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase order did not contain the particular provision held to be invalid.

**Shipping and Handling Charges.** No shipping, transportation, or handling charges will be allowed unless specified on the face of this order (see "FOB Point and Title" above.)

**Taxes.** This order is subject to California Sales Tax. The City is exempt from Federal Excise Tax and will provide an exemption certificate upon request.

**Termination for Convenience.** The City reserves the right to terminate this contract WITHOUT CAUSE at any time, unless otherwise specified.

**Termination for Default.** In addition to any other remedies or rights it may have by law, the City may by written notice terminate this order immediately and without penalty for Seller's DEFAULT, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, the City may purchase or otherwise secure materials, supplies, or services and, except as otherwise provided therein, Seller shall be liable to the City for any excess costs occasioned by the City of Richmond thereby.

**(No) Waiver.** Failure of City to enforce any provision of the Purchase order shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of the Purchase order.

**Warranties.** In addition to any other express or implied warranties, Seller warrants that all goods delivered under this order will be (1) new, suitable for the use intended;

(2) of the grade and quality specified; (3) free from all defects in design, material and workmanship; (4) in conformance with all samples, drawings, descriptions and specifications furnished by City; and (5) in compliance with all applicable federal, state, and local laws, ordinances, resolutions, and regulations. Seller/Contractor shall disclose prior to sale and in writing to City if Seller/Contractor is unable to provide any of the above warranties. These warranties shall not be deemed to exclude Seller's standard warranties or other rights or warranties that City may have or obtain. At its expense and option, Seller shall replace or repair any goods not conforming to the foregoing warranties. If, after notice, Seller fails promptly to replace or repair any such goods, Seller shall promptly refund to City the full purchase price paid by City for such goods.

**ADDITIONAL TERMS & CONDITIONS SPECIFIC TO THE PURCHASE OF SERVICES**

**Business License.** Contractors with contracts in excess of \$10,000 are required to have a City of Richmond Business License through the term of the contract.

**Changes in Work.** Contractor shall perform no extra or additional work, alter, or deviate from the work specified in this order except by written order of the City. Contractor will not be paid for work to which City has not agreed in advance in writing.

**Independent Contractor.** Contractor shall be considered an independent contractor and not an agent or an employee of the City. The Contractor does not qualify for workers' compensation or other fringe benefits of any kind. The Contractor is responsible for paying all required state and federal taxes.

**Insurance.** Contractor shall maintain for the term of this contract at its own expense insurance issued by an admitted insurer authorized to operate in California, as follows: (A) Workers' Compensation and Employer's Liability Insurance as required by the State of California; and (B) General Liability Insurance as shall protect Contractor, City, its officials, officers, directors, employees, and agents from claims which may arise from work performed under the Purchase Order, whether such work is performed by Contractor, by City, its officials, officers, directors, employees, or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single limit coverage applying to bodily and personal injury liability and property damage not less than one million dollars (\$1,000,000.) The liability insurance shall include, but shall not be limited to:

- (1) Protection against claims arising from bodily and personal injury and damage to property, resulting from Contractor's or City's operations, and use of owned or non-owned automobiles.
- (2) Coverage on an "occurrence" basis.
- (3) Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of the City.
- (4) Notice of cancellation to City at least thirty-(30) days before the cancellation effective date.

(D) The following endorsements shall be attached to the liability insurance policy:

- (1) The policy shall cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries, and property damage shall be eliminated.
- (2) The City, its officers, agents, and employees shall be named as Additional Named Insured with respect to the work to be performed under the contract.
- (3) The coverage shall be primary insurance so that no other insurance affected by City will be called upon to contribute to a loss under this coverage.

**Non-Discrimination.** Contractor shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual based on race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

**Prevailing Wages.** Pursuant to provisions of Section 1770, et. Seq. of the Labor Code of the State of California, for all public works contracts, Contractor shall pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations. In addition, Seller shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentices on public works contracts. A copy of the prevailing wages to be paid by Contractor is on file with the City Clerk.

**Subcontractors.** Contractor shall perform the work with its own employees under its immediate supervision. Unless approved by City in advance in writing, Contractor shall not subcontract any portion of the work.