

City of Concord – Terms and Conditions (T&C)

(This T&C page and any referenced document can be found on the Purchasing website at http://www.cityofconcord.org/pdf/business/purchasing/po_terms.pdf or upon request.)

(This document and all referenced documents are incorporated by reference as though fully restated herein.)

1. **Invoice each Purchase Order separately.** Items on this Purchase Order must not be billed with those on other Purchase Orders.
 2. **All Shipments are F.O.B. Delivered** unless otherwise specified. When freight is authorized to be prepaid and added to invoice, a copy of the receipted freight bill must accompany invoice. (FOB destination shall mean that the Vendor pays all shipping costs, and title shall transfer to the City only upon receipt and acceptance by an authorized representative of the City of Concord.)
 3. **Substitutions, Changes, and Prices** other than specified must be authorized in writing by the Purchasing Agent.
 4. **Acceptance of this Purchase Order** implies the acceptance of all items and conditions contained herein, and all specifications, drawings, and additional items and conditions referred to herein and/or attached hereto. **Read them carefully.** No substitutions or changes will be effective without written approval of City.
 5. **Contract.** The contract may be in a form of a purchase order, a separate agreement, or both. Final contract terms and conditions may be negotiated with the selected Contractor, and will include but are not limited to all of the terms and conditions herein and any referenced attachments. Such contract, when accepted by the Contractor either in writing or shipment of all or any portion of the material or the commencement of performance of any portion of the work covered hereunder, will constitute the entire contract between Contractor and City concerning its subject matter; and neither any contrary or additional conditions specified by Contractor nor any subsequent amendment or supplement shall have any effect without City's written approval.
 6. **Warranty and Quality Inspection.** Contractor 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 Contractor of any obligation hereunder. If, in City's opinion, any article material, work fails to conform to specifications or is otherwise defective, Contractor shall promptly replace same at Contractor'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.
 7. **Title.** Contractor warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Contractor has a good and marketable title to same, and Contractor agrees to hold City free and harmless of any patent, copyright or trademark resulting from or arising in connection with the manufacture, sale, or other normal disposition of any article or material furnished hereunder.
 8. **Infringement.** Contractor shall indemnify and defend City against all claims, suits, liability and expense on account of alleged infringement of any patent, copyright or trademark resulting from or arising in connection with the manufacture, sale normal use or other normal disposition of any article or material furnished hereunder.
 9. **Invoice Discount.** Contractor shall state its payment and discount terms on invoices. Discount period shall begin from date City received invoices or merchandise whichever arrives 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.
 10. **Compensation.** Contractor agrees to receive and accept the prices shown as full compensation for furnishing all materials and for all work contemplated and embraced in this order; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of all elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of work until its acceptance by City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithful completing the work, and the whole thereof, in the manner according to the requirements of the City's inspection.
 11. **Indemnification.** Contractor agrees to defend, indemnify and hold harmless the City, its officers, officials, employees, agents and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and other litigation expenses) arising out of the Contractor's performance under the terms of this Agreement. This indemnification obligation on Contractor's part shall not apply to demands, actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on the part of City.
 12. **Laws to be Observed.** All activities regarding this order shall be governed by the laws of the State of California. Any action to enforce this agreement shall be brought within the Superior Court of California, Contra Costa County. Contractor shall keep fully informed of and shall comply with all existing and future State and National laws and all municipal ordinances and regulations of the City of Concord which in any manner affect those engaged, or employed in the work, or the materials, used in the work, or which in any way affect the conduct of the work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.
 13. **Contractor Licensing Laws.** Attention is directed to the provisions of the California Business and Professions Code concerning the licensing of Contractors. All bidders and Contractors shall be licensed in accordance with the laws of the State of California and any bidder or Contractor not so licensed is subject to the penalties imposed by such laws.
 14. **Permits or Licenses.** Contractor 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.
 15. **Labor Compliance Requirements (Prevailing Wage, SB854 Etc).** Contractor/Vendor must comply with all labor compliance requirements including but not limited to prevailing wage requirements, SB 854, Labor Code sections 1771.1(a) & 1725.5, Public Works Contractor Registration Program, Electronic Certified Payroll Records to Labor Commissioner, and other requirements described on the direct links provided in the document '[Labor Compliance Requirements \(Prevailing Waages, SB 854 Etc.](#)', posted on the City Purchasing's website.
 16. **Excuses for Non-Performance.** Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented (and in the City of Concord's case when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of acts of God, fire explosion, war riots, strikes, labor disputes, or governmental laws, orders or regulations.
 17. **Default.** If Contractor or Subcontractor shall breach any provision hereof or shall become insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings or make an assignment to the benefit of creditors, City of Concord shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor whereupon City of Concord shall be relieved or all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (at not exceeding the contract rate), and Contractor shall be liable to City of Concord for all costs incurred by City of Concord in completing or procuring the completion of performance in excess of the contract price herein specified. The City of Concord's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance of course of dealing. Time is of the essence hereof.
 18. **Taxes.** Unless otherwise provided herein or required by law, Contractor 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 remunerations paid to persons employed in connection with the performance of this contract, and Contractor shall indemnify and hold harmless the City of Concord from any liability and expense by reason of Contractor's failure to pay such taxes or contributions.
 19. **Independent Contractor.** Both parties understand and acknowledge that Contractor, its agents, employers and subcontractors are and shall at all times remain as to the City wholly independent contractors. Neither the City nor any of its officers or employees shall have any control over the manner by which the Contractor performs this Agreement and shall only dictate the results of the performance. Contractor shall not represent that Contractor or its agents, employees or subcontractors are agents or employees of the City, and Contractor shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, and shall have no authority, express or implied, to bind the City to any obligation whatsoever, unless otherwise provided in this Agreement.

As an independent contractor, Contractor shall not be eligible for any benefits, which the City may provide to its employees and all persons, if any, hired by Contractor shall be employees or subcontractors of Contractor and shall not be construed as employees or agents of the City in any respect. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Contractor shall not receive a premium or enhanced pay for work performed on a recognized holiday. Contractor shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Contractor.
20. **Safety.** All equipment and materials shall comply with all Federal, State, and local safety rules and regulations including OSHA.
 21. **Assignment.** City is entering into this agreement in consideration of the rendition of the services required herein by Contractor. Contractor shall not assign any of the duties, responsibilities, or obligations of this agreement to any other firm, company, entity, or individual, except with the express written consent of City. Nothing set in this paragraph shall preclude Contractor from assigning any of the money due and owing to it from City.
 22. **Insurance.** Contractor shall, at its own expense, procure and maintain in full force at all times the City's Insurance Requirements during the term of the PO and/or any applicable contract/agreement. (Please refer to the '[Insurance Requirements](#)' document posted on the City's Purchasing website.)
 23. **Reservation of Rights.** The City reserves the right to reject any or all quotes/bids, to waive any informalities, or to terminate the solicitation process at any time, if deemed by the City to be in the best interest of the City.
 24. **Equal Opportunity.** Please refer to the '[Equal Opportunity Clause of Executive Order 11246](#)' document posted on the City's Purchasing website at <http://www.cityofconcord.org/pdf/business/purchasing/ee.pdf>.
 25. **Debarment/Suspension Policy.** Contractors/vendors and subcontractors must not be debarred, suspended or otherwise excluded by the United States Government in compliance with the requirements of 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35, Executive Order 12549, and Public Contract Code (PCC) Section 6109. (The City will verify bidder, its principal and their named subcontractors are not on the Federal debarred, suspended or otherwise excluded list of vendors located at www.sam.gov.) Contract and/or Purchase Order will be terminated upon verification that vendor is on the excluded list of vendors. Please also refer to the '[Debarment and Suspension Certification](#)' document, posted on the City's Purchasing website.