

TERMS AND CONDITIONS

The following Terms and Conditions are applicable to this order entered into by and between the City of Hollywood (referred to as Buyer) and Vendor (referred to as Seller).

MODIFICATIONS

This Purchase Order form, Quote and any other document pertaining to this transaction which has been acknowledged in writing by the Director is a complete and exclusive statement of this order. Accordingly, no modification or amendment shall be binding upon the Buyer unless signed by the Director. The City Attorney has approved these standard terms and conditions as to form and legality. Accordingly, no modification of these terms and conditions shall be binding upon Buyer unless they are endorsed and approved by the City Attorney. In the event of a conflict between these terms and conditions and any other document pertaining to the transaction covered by this order, these terms and conditions shall prevail.

ASSIGNMENT

Seller may assign this order or the performance of work hereunder, after written consent by the Buyer, which consent may not be reasonably denied. .

EXCUSABLE DELAYS

The Buyer may grant additional time for any delay or failure to perform hereunder if the delay will not adversely impact the best interests of the Buyer and is due to causes beyond the control of the Seller. Such grant must be in writing and made part of the order.

DEFAULT

In the event of default by the Seller, Buyer may procure the articles or services covered by this order from other sources and hold the Seller responsible for any excess costs occasioned thereby, in addition to all other available remedies at law or equity.

TERMINATION

Buyer, acting through its City Manager or his/her designee, reserves the right to terminate this order in whole or in part for default (a) if Seller fails to perform in accordance with any of the requirements of this order or (b) If Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any State or Federal Law relating to bankruptcy, reorganization, receivership or assignment for the benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by the Buyer. Seller, will be liable for excess costs of reprocurement.

F.O.B.

In those cases where F O.B. point is not Destination, Seller is required to prepay freight charges and list separately on invoice. Collect shipments will not be accepted.

TERMS

By accepting this order, the Seller agrees that payment terms shall be Net 30 unless otherwise stated.

INVOICING

Seller must render original invoice to the City of Hollywood, Department of Financial Services, P.O. Box 229045, Hollywood, Florida 33022-9045.

TAX

The City of Hollywood is exempt from Federal and State taxes for tangible personal property. Sellers doing business with the City, which are not otherwise exempt, shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the City, nor shall any Seller be authorized to use the City Tax Exemption Number in securing such materials.

RESPONSIBILITY

Responsibility will not be accepted for any goods delivered or services performed unless covered by a duly signed and authorized City of Hollywood order, issued by the Procurement Services Division.

ACCEPTANCE

Seller's acceptance of this order will be presumed unless Seller acknowledges exception, in writing, to Buyer within ten (10) calendar days after date of order.

DELIVERIES

Deliveries are to be made during the hours of 7:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays, unless otherwise stipulated. Seller shall notify the Buyer of deliveries that require special handling and/or assistance for off-loading. Failure to notify the Buyer concerning this type of delivery will result in the billing to Seller of any add-on redelivery, storage or handling charges.

INSPECTION

All Commodities delivered on this order are subject to inspection upon receipt by a representative of the Buyer. All rejected commodities shall remain the property of the Seller and will be returned at the Seller's expense.

QUANTITIES

Quantities specified in the order cannot be changed without Buyer approval. Goods shipped in excess of quantity designated may be

returned at the Seller's expense.

PAYMENT CHANGES

Payments will be made only to the company and address as set forth on order unless the Seller has requested a change thereto on official company letterhead, signed by an authorized officer of the company.

ANTI-DISCRIMINATION

Sellers doing business with the Buyer are prohibited from discriminating against any employee, applicant or client because of race, creed, color, national origin, sex or age with regard to but not limited to the following: employment practices, rates of pay or other compensations, methods and training selection.

UNIFORM COMMERCIAL CODE

Florida law, including without limitation the Uniform Commercial Code (Chapter 670 – 680, Florida Statutes), shall apply to and supplement the terms and conditions of this order. Venue shall lie in a court of competent jurisdiction in Broward County, Florida.

LEGAL RESPONSIBILITY

By accepting this order, Seller understands and agrees that the items covered herein, or services to be rendered, shall be manufactured, sold or performed in compliance with applicable Federal, State, County and Local laws, ordinances, rules and regulations. Lack of knowledge by the Seller shall in no way be a cause for relief from responsibility.

LIABILITY - COPYRIGHT/PATENT/TRADEMARK

Seller shall save and hold harmless Buyer, its officers, employees and agents from liability for infringement of any United States patent, trademark or copyright for or on account of the use of any product sold to Buyer or used in the performance of this order.

INDEMNIFICATION

Seller shall indemnify, hold harmless and defend Buyer, its officers, employees and agents from and against any and all claims, damages, liability, judgments or causes of action, including costs, expenses and reasonable attorney fees, incurred as a result of any error, omission or negligent act by the Seller, its officers, employees, agents, subcontractors or assignees arising out of this order.

OCCUPATIONAL SAFETY AND HEALTH

Seller must comply with requirements under Chapter 442, Florida Statutes, that any toxic substance delivered as a part of this order must be accompanied by a Materials Safety Data Sheet (M.S.D.S.).

REPRESENTATIVE

All parties to this order agree that the representatives named herein are, in fact, bonafide and possess full and complete authority to bind said parties.

PUBLICITY

No endorsement by the City of the product and/or service will be used by Seller in any way, manner or form in product literature or advertising.

INSURANCE

The Seller of services must have secured and maintained the required amount of \$1,000,000 in general liability and automobile liability limits of \$500,000 and must list the City as an additional insured of both the general and auto liability coverage. The Seller must have worker's compensation coverage as required by law. If the Seller is providing professional services (examples are not limited to consulting, accounting, planning and design), the Seller must have secured and maintained the required amount of \$1,000,000 in general liability and professional liability limits of \$1,000,000 per occurrence/\$2,000,000 aggregate and must list the City as an additional insured of the general liability coverage. The Seller providing professional services must have worker's compensation coverage as required by law. Any exception to the above stated limits or other requirements must be endorsed and approved by the City of Hollywood Risk Manager.

WARRANTY

For purposes of this order, Seller warrants: (a) the goods shall strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (b) the goods shall be new or factory re-manufactured components and of the highest quality; (c) Buyer shall receive title to the goods that is free and clear of any liens, encumbrances and any actual or claimed patent, copyright or trademark infringement; (d) the goods shall be adequately contained, packaged, marked and labeled; and (f) the goods shall be manufactured in compliance with all applicable federal, state and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification, including by way of illustration and not by way of limitation, the Occupational Health and Safety Act, the Fair Labor Standards Act, and any law or order pertaining to discrimination.

In the event that services are provided in connection with the supply of goods, Seller expressly warrants that the services will be performed: (a) with due professional care; (b) in a workmanlike, professional, timely and diligent manner; (c) in accordance with all applicable industry standards and industry best practices; (d) by qualified workers experienced in performing the work specified; (e) in strict conformance with applicable specifications and industry accepted performance criteria; and (f) in strict conformance with this order, including but limited to any statement(s) of work issued, or quote(s) received, by Buyer.

The warranty period shall be 12 months from the date of first use of the goods by Buyer or 12 months from the date of acceptance by Buyer, whichever occurs later, unless otherwise mutually agreed to by the Buyer and Seller.

Seller makes no express or implied warranties including without limitation, implied warranties of merchantability and fitness for particular purpose on equipment or devices obtained from a manufacturer. There are no warranties which extend beyond the terms and conditions stated herein. Furthermore, there are no warranties that extend beyond the description on the face hereof. Seller does not warrant, either expressly or impliedly, any equipment, parts, or devices. The Buyer's sole remedy is the warranty of the manufacturer. At the Buyer's request, Seller may furnish specific manufacturer's express limited warranty policies. Buyer accepts the goods sold "as is" and "with all faults" except as provided by the warranty of the manufacturer of the goods sold.

CONTRACTING WITH ENTITIES OF FOREIGN COUNTRIES

By acceptance of this Purchase Order, the Vendor is hereby certifying and attesting under penalty of perjury to not being a "foreign country of concern" as defined under Section 287.138, Florida Statutes, and compliance with all regulations within the statute.

ORDER OF PRECEDENCE

In the event that there are inconsistencies or contradictions between these Terms and Conditions, Quote, and Purchase Order, (collectively, the "Contract Documents"), unless otherwise it is explicitly stated in any document, the following order of precedence governs: (a) first, these Terms & Conditions, excluding its exhibits, schedules, attachments, and appendices; (b) second, the Quote; (c) third, the Purchase Order, and d) any other documents incorporated herein by reference. Notwithstanding the foregoing general provisions regarding precedence, pricing identified in the most recent Quote, with respect to any services provided, the Purchase Order shall take precedence over pricing.

BREAKER

The Buyer represents and warrants to Seller that the Buyer has changed or repaired the breaker or has contracted with a third party to do so, prior to Seller's engagement of its services under the Contract Documents. Seller is relying upon this material representation to enter into this agreement. The material covenant, and representation by Buyer of having replaced, repaired, or changed the damaged breaker is a condition precedent to the entry of the Contract Documents by the parties. Seller shall not be responsible for any damage, repairs, replacement, or down time, if the Buyer has not changed, repaired or replaced the breaker on the unit. Buyer acknowledges that should the breaker not have been repaired or replaced, Seller, may cease to perform the services stated in the Contract Documents, until said time that the Buyer replaces, or repairs the breaker, to the complete satisfaction of the Seller. Any resultant damage that is caused by the breaker shall be the sole responsibility of the Buyer, or its subcontractors.

TESTING.

Seller shall solely direct, conduct, any testing, and start-up of the unit. Buyer shall be present at the initial testing and start-up, but operational control shall be directed by the Seller.

LIMITATION ON SPECIAL DAMAGES.

In no event shall either Party be liable to the other for any special damages, speculative damages, indirect, special, incidental, and consequential, loss of profits or other damages or losses of any kind whatsoever in excess of \$1,000,000.00, no matter what the cause.

WAIVER OF JURY TRIAL

All Parties to this Agreement agree that the underlying transactions contemplated between them are complex and not appropriate for determination by a jury. Therefore, both Parties herein WAIVE THEIR RIGHT TO A JURY TRIAL and they both acknowledge that said waiver is a material inducement to the other into entering this Agreement.