

City of Bend

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS: "Contract" means the entire written agreement between the parties, including but not limited to the Request for Quotes, Invitation to Bid or Request for Proposal and its specifications, terms and conditions; solicitation instructions; solicitation addenda and contract amendments, if any; the purchase order or price agreement document.

"Contractor" means a person or organization with which the State of Oregon has contracted for the purchase of goods the terms "Contractor" and "Seller" as used in the Uniform Commercial Code (ORS chapter 72) are synonymous; "ORS" means the Oregon Revised Statutes;

"City" means the City of Bend, Oregon and is synonymous with "Buyer" as used in ORS chapter 12. "City" also means an ORCPP member if the purchase is being made under the State's cooperative purchasing program authorized by ORS 279A and the Bend City Code.

2. WORKERS' COMPENSATION: The Contractor, its subcontractor, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Contractor also shall comply with ORS 279B.230 regarding payment for medical care.

3. STANDARD AND SPECIAL TERMS AND CONDITIONS: The terms and conditions printed on this page are standard to City contracts for the purchase of goods. There may also be special terms and conditions in an Invitation to Bid or Request for Proposal which also apply to this contract, and which are incorporated by this reference herein.

4. DELIVERY: All deliveries shall be F.O.B destination with all transportation and handling charges paid by Contractor, unless specified otherwise in the solicitation documents. Responsibility and liability for loss or damage shall remain with Contractor until final inspection and acceptance when responsibility shall pass to the City except as to latent defects, fraud and Contractor's warranty obligations.

5. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the City at times and place determined by the City. If the City finds goods furnished to be incomplete or not in compliance with solicitation specifications, the City may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, whichever is equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the City, the City may reject the goods and cancel the contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the City's rights as buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

6. WARRANTIES: Unless otherwise stated, all goods shall be new and current model and shall carry full manufacturer warranties. Contractor warrants all goods delivered to be free from defects in labor, material and manufacture and to be in compliance with solicitation specifications. All implied and expressed warranty provisions of the Uniform Commercial Code (ORS chapter 72) are incorporated in this contract. All warranties shall run to the City. Seller warrants that the material and/or equipment furnished do not infringe any patent registered trademark or copyright, and agrees

to save, hold harmless, and indemnify the City in the event of any claim of infringement.

7. CASH DISCOUNT: If the City is entitled to a cash discount, the period of computation shall commence on the date the entire order is delivered or the date the invoice is received, whichever is later.

8. PAYMENT: Payment for completion of City contracts is normally made within 30 days following the date the entire order is delivered or the date the invoice is received, whichever is later.

9. TERMINATION: This contract may be terminated by mutual consent of both parties or by the City at its discretion. The City may cancel an order for goods at any time with written notice to Contractor, stating the extent and effective date of termination. Upon receipt of this written notice, Contractor shall stop performance under this contract as directed by the City. If this contract is so terminated, Contractor shall be paid in accordance with the terms of the contract for goods delivered and accepted if Contractor's damages arising out of return of the goods cannot be mitigated by the resale as provided in the Uniform Commercial Code (ORS 72.7060).

10. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war, which is beyond the party's reasonable control. Parties shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the contract. The City may terminate this contract upon written notice after determining such delay or default will reasonably prevent successful performance of this contract.

11. BREACH OF CONTRACT: Should Contractor breach any of the provisions of this contract, the City reserves the right to cancel this contract upon written notice to Contractor. Contractor shall be liable for any and all damages suffered by the City as the result of Contractor's breach of contract including but not limited to incidental and consequential damages, as provided in ORS 72.7110 to 72.7170. In the event of repeated breach of public and/or private contracts, Contractor shall be subject to disqualification for City contracts.

12. HOLD HARMLESS: Contractor shall indemnify, defend and hold harmless the City and its divisions, officers, employees, agents and members, from all claims, suits or actions of any nature arising out of or related to the activities of Contractor, its officers, subcontractors, agents or employees under this contract.

13. ACCESS TO RECORDS: The Contractor shall maintain all fiscal records relating to this contract in accordance with generally accepted accounting principles and shall maintain any other records relating to this contract in such a manner as to clearly document Contractor's performance hereunder. The City and its duly authorized representatives shall have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this contract, to perform examination, and audits and make excerpts and transcripts.

14. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the City. Contract amendments shall be effective only if in compliance with Bend Code Sections 1.55.050 C and D.

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15. SEVERABILITY: If any provision of this contract is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provision affects a significant right or responsibility, in which case the adversely affected party may request renegotiation of the contract, and if negotiations fail, may terminate the contract.

16. WAIVER: Failure of the City to enforce any provision of this contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this contract.

17. ATTORNEY FEES & GOVERNING LAW: In the event an action, suit or proceeding, including appeals, is brought for failure to observe any of the terms of this contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any claim, action, suit or proceeding between City and Contractor arising from or relating to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to the *in personam* jurisdiction of said courts.

18. ASSIGNMENT/SUBCONTRACT/SUCCESSORS: Contractor shall not assign, sell, transfer, or subcontract rights or delegate responsibilities under this contract in whole or in part, without the prior written approval of the City, which may be withheld in the City's sole, subjective discretion. No such written approval shall relieve Contractor of any obligations of this contract, and any transferee or subcontractor shall be considered the agent of Contractor. Contractor shall remain liable to the City under the contract as if no such assignment, transfer, or subcontract had occurred. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties to the contract and their respective successors and assigns.

19. COMPLIANCE WITH APPLICABLE LAWS: Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the provision of goods under this contract, including, without limitation, the provisions of ORS 279C.505, 279C.515, and 279B.235, as set forth in the following articles, and the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 (Pub L No 101- 336), (iv) ORS 659A.142, and all amendments of and regulations and administrative rules established pursuant to those laws; and all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

20. PAYMENTS REQUIRED BY ORS 279C.505 AND 279B.220: For all goods and/or services provided under this contract, Contractor shall (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof; and (iv) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

21. CITY PAYMENT OF CONTRACTOR CLAIMS: If Contractor fails, neglects or refuses to pay promptly as due, any claim for labor or services furnished to the Contractor or any subcontractor by any person in connection with the goods, or services if applicable, provided under this contract, the City may pay such claim and charge the amount of the payment against funds due or to become due the Contractor under this contract. The payment of a claim by the City shall not relieve the Contractor or its surety, if any, from obligation with respect to any unpaid claims.

22. HOURS OF LABOR: Contractor shall comply with the Oregon Bureau of Labor and Industries rules and all applicable local ordinances and permit conditions as they pertain to hours of work. ORS 279B.235 requires an employer to give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. Contracts for services also require that persons employed under the contract shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

23. SAFETY AND HEALTH REQUIREMENTS: Goods and services provided under this contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division.

24. AWARD TO FOREIGN CONTRACTOR: If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this contract. The City shall withhold final payment under this contract until Contractor has met this requirement.

25. RECYCLABLE PRODUCTS: Contractor will use applicable, recyclable products if (a) the recycled product is available, (b) the recycled product meets applicable standards; (c) the recycled product can be substituted for a comparable non-recycled product; and (d) the recycled product's costs do not exceed the costs of non-recycled products by more than five percent.

26. MATERIAL SAFETY DATA SHEET: In accordance with the OR-OSHA Hazard Communication Rules in OAR chapter 437, division 155, Contractor shall provide the State with a Material Safety Data Sheet for any goods provided under this contract which may release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use (OAR 437- 155-005 (2); 437-155-025). In addition, Contractor must label, tag or mark such goods.

27. THIRD PARTY BENEFICIARIES: There are no third party beneficiaries to this contract and are the only parties entitled to enforce its terms.

28. LICENSE/CERTIFICATION: The Contractor shall have a business license from the City if required under City Code.

29. COMPLIANCE WITH TAX LAWS: Contractor certifies under penalty of perjury that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For the purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403,200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620. Failure of the contractor to comply with the tax laws of this state or a political subdivision of this state before the contractor executes the contract or during the term of the contract, shall be considered a default for which the City may terminate the contract and seek damages and other relief available under this contract or under applicable law.