

## THE FOLLOWING TERM AND CONDITIONS SHALL BE PART IF THE AGREEMENT BETWEEN THE PARTIES TO PURCHASE ORDERS:

1. **DEFINITIONS:** the term "Vendor" as used in this order shall mean the party furnishing the goods, materials, equipment and /or services so specified herein. The Term: "purchaser" as used in this order shall mean the City of Cape Coral, Florida.
2. **TERMS AND ACCEPTABLE:** This purchase order becomes a contract (1) when signed acknowledgment is received by the Purchaser or (2) when shipment according to schedule of all or any portion of the goods covered by this purchase order shall be made or (3) when written approval is given to the Vendor by Purchaser of the price and delivery schedule of the goods as stated by the Vendor if Vendor's written acknowledgement of this order contains either (a) a different price or delivery schedule or a different type of item, or (b) no price nor delivery schedule for the item or items to which Purchaser's approval applies.
3. **FORMAL CONTRACT:** The City may require Vendor (seller) to execute a formal written contract in connection with this purchase. If there is a formal written contract, its provisions shall prevail to the extent of any conflict with these Conditions.
4. **INVOICES:** Vendor is to indicate on all invoices: purchase order number, discount, and terms of payment. Any portion of this order, which cannot be filled as specified, will not be substituted until the Purchaser has been notified, and approval in writing has been initiated.
5. **PAYMENT:** Payments may not be made to Vendor for partial shipments.
6. **SHIPPING CHARGES:** All prices will be F.O.B. delivery point. When a specific purchase has been negotiated F.O.B. shipping point, the Vendor will prepay shipping charges and add to the invoice. No charges will be honored for packaging unless so stated.
7. **RISK OF LOSS:** All goods and materials shall be subject to inspection, testing and approval by Purchaser before acceptance. The risk of loss of damage to all goods or materials shall remain with Vendor until arrival at the Purchaser's location(s). Goods or materials found to be damaged or defective or which fail to conform to the contract upon arrival at one of the Purchaser's location(s) may be rejected by the Purchaser and returned or held at Vendor's risk and expense. Purchaser may charge to Vendor all expenses of inspecting, unpacking, examining, repacking, storing, and reshipping any rejected goods. The Purchaser shall receive credit at the invoice price or at Purchaser's option, replacement for such goods or materials, but in no event will such goods or materials be replaced by Vendor without written replacement order from Purchaser.
8. **DELIVERY:** The Purchaser has the right to cancel entirely or reschedule delivery of any of the goods or materials described herein which are not delivered at Purchaser's location within the time specified.

9. **WARRANTY:** The Vendor expressly warrants that all work, goods, and materials covered by this purchase order are of the quantity, quality, material, workmanship, size, description, and dimensions specified in the applicable drawings, specifications, samples or description; and are merchantable and free from defects and that such express warranty shall not be deemed waived by reason of either the acceptance of the work, goods or materials, or the payment therefore, unless otherwise stated, and is based entirely on specifications furnished by the Purchaser. Nothing herein shall be deemed a waiver by Purchaser for any of Vendor's warranties, either express or implied.
10. **COMPLIANCE WITH THE LAW:** The Vendor will comply with all Federal, State, and local laws and regulations applicable to articles, materials or services constituting this order, and shall upon request of the Purchaser furnish such proof of compliance.
11. **INDEMNITY:** The Vendor agrees to indemnify and hold Purchaser harmless from any and all loss, cost, liability and expense (including attorney's fees) arising, growing out of, or in any way connected with, any other claim or litigation now or hereafter asserted with respect to any injury or damages resulting from or arising out of any alleged defect in the work, goods, or materials ordered herein or by reason of the design or construction thereof, and agrees to reimburse Purchaser for any and all expenses (including attorney's fees) in connection thereof.
12. **CONTROLLING LAW:** This contract shall be construed and enforced under the laws of the great State of Florida. The enumeration herein of certain rights does not exclude others which are given by law. No waiver by Purchaser of any conditions appearing herein shall be deemed to constitute a waiver of any other condition hereof or waiver of the same or any other conditions with regard to subsequent transaction, or subsequent parties of the same transaction.
13. **ASSIGNMENT:** Vendor shall not assign or subcontract any portion of this order without prior written approval of the Purchaser. If such approval is granted, it shall not relieve the Vendor from liability here under. If this order cannot be filled by person or firm to whom it is issued, it shall be returned to the Purchaser.
14. **ENTIRETY:** This order, including the terms and conditions shown herein contains the complete and final agreement between the Vendor and the City, and no other agreement in anyway modifying any said terms and conditions will be binding upon the City unless made in writing and signed by the Purchasing Agent or other authorized City representative.

**Additional condition applicable in cases where Vendor is to perform work on the premises of Purchaser:**

15. **INDEPENDENT CONTRACTOR:** The Vendor shall carry on said work at its own risk until the work is fully completed and accepted, and shall in case of any accident, destruction or injury to the work or materials before its final completion and acceptance, repair and replace forthwith the work or material so injured, damaged and destroyed at Vendor's own expense and to the satisfaction of Purchaser. When materials and equipment are furnished by others for installation or erection by Vendor, Vendor shall receive, unload, store and handle same at site and be responsible therefore as through such materials or equipment were being furnished by Vendor under the order.

16. **INSURANCES:** The Vendor, at his own expense, provide for the payment of workers' compensation insurance, including occupational fess, benefits to his employees employed on or in connection with work covered by this order or to their dependents in accordance with the laws of the great State of Florida. Vendor shall also carry comprehensive general liability including, but not limited to, contractual, automobile, and general liability insurance with bodily injury and death limits of at least \$1,000,000 for any one person and \$2,000.000 for any one accident,. Vendor's insurance protection shall expressly include its subcontractors, if any, and transportation of materials, equipment and employees by Vendor, its agents and employees of any other subcontractors, their agents and employees, to and from and at the site of the work. Subject to conditions stated herein above and with Purchaser's prior written approval, Vendor may, in compliance with aforesaid insurance requirements, submit to Purchaser appropriate riders to any of Vendor's insurance policies currently in force whereby Purchaser is included in protection afforded by such insurance. Such riders shall evidence that the "other insurance" clause if any, in the policy to which the rider refers, has been amended to permit insurance specifically in excess thereof. Before any of Vendor's or its subcontractor's employees shall do any work upon the Purchaser's premises, vendor shall furnish Purchaser with a certificate that such compensation and insurance have been provided. Such certificates shall specify the date when such compensation and insurance expires. Vendor agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted.
17. **PROTECTION AGAINST ACCIDENTS AND DAMAGES:** The Vendor hereby assumes entire responsibility and liability for any and all damage, loss or injury of any kind or nature whatever to persons or property caused by or resulting from the performance of the work provided for in this, orders or in connection therewith, and Vendor agrees that Vendor will indemnify and hold harmless Purchaser and any of Purchaser's officers, agents, and servants, from and against any claims, loss, damages, charge or expense (including attorney's fees) whether direct or indirect, and whether to persons or to property, to which Purchaser or any of said parties may be put or subjected by reason of any act, action, neglect, omission or default on the part of the Vendor any of its subcontractors, or any of Vendor's or his subcontractor's officers, agents, servants, or employees. In case any suit or other proceedings shall be brought against Purchaser at any time on account or by reason of any act, action, neglect, or omission or default by Vendor, or any of its subcontractors, Vendor, hereby agrees to assume the defense thereof and to defend the same at Vendor's own expense, and to pay any and all costs, charges, attorney's fees and other expenses, and any and all judgments that may be incurred or obtained against Purchaser and if any judgment or other lien be place upon or obtained against the property of Purchaser, as a result of such suits or proceedings. Vendor will at once cause the same to dissolved and discharged by giving bond or otherwise. Vendor and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents, and shall comply with all laws and regulations. Purchaser shall not be responsible nor be held liable for any damage to person or property consequent upon the use, misuse or failure of any horse, rigging, blocking, scaffolding or other equipment be furnished or lent to Vendor or to any of its subcontractors by Purchaser.
18. By accepting this Purchase Order, Vendor expressly agrees that the terms of this Purchase Order exclusively govern the relationship and agreement between Vendor and Purchaser. In the absence of a written agreement, Vendor's acceptance of this Purchase Order binds the Vendor to all the terms contained herein. This Purchase Order supersedes any other agreement or purported terms of any type, including, without limitation, the terms of any quote, order form, acknowledgement or other ordering document that may be referenced or issued by Vendor. There will be no force and effect given to any different or additional terms contained in any quote, order form, acknowledgement or similar form issued by a Vendor, even if signed by the parties and regardless of any statements to the contrary, unless such terms are included in an amendment in accordance with an agreement.