

CITY OF BRIDGEPORT

**GENERAL
TERMS AND CONDITIONS**

General Provisions

Objections to Specifications. The Seller may not protest the validity or appropriateness of the specifications unless such protest is in writing delivered to the Purchasing Agent prior to the closing date and time for the submission of bids.

City Exempt From Certain Taxes. The City is exempt from certain Connecticut sales taxes under Title 12, Chapter 219 of the Connecticut General Statutes, as amended from time to time.

Time of the Essence. The times and dates contained in this purchase order are OF THE ESSENCE and a material condition of the sale of goods or services to the City.

Setoff of Property Taxes Owed to City. Pursuant to Section 12-146b of the Connecticut General Statutes, as amended, the City has the right to set-off or withhold any payment due under this purchase order to any business enterprise if any taxes levied by the City against any real or personal property of the Seller are delinquent, provided that no such amount set off or withheld shall exceed the amount of the delinquent tax, plus penalties, lien fees, interest, and collection costs outstanding at the time of set-off or withholding of payment. Acceptance of this purchase order shall constitute the Seller's authorization to the City to execute such set-off or to withhold such payment.

Availability of Funds a Condition to Award. All awards are contingent upon certification by the City's Office of Policy and Management or Deputy Director of Finance/Comptroller that funds are available in appropriate accounts for the purchase covered by this purchase order.

Conflicts of Interest. No sale of goods or services shall be made in violation of the City's ethics ordinance, purchasing ordinance, or vendor disqualification ordinance. Such violations may result in a declaration of the sale as an illegal contract or otherwise as a contract not in the best interests of the City, in which case the City shall have the right to terminate this purchase order and pursue its legal remedies.

Award; Formation of Contract

Notice of Intent to Award; Satisfaction of Conditions. Upon the selection of the apparent lowest responsive and responsible bidder, which may include a life cycle costing or "best value" analysis as described in the City's purchasing ordinance, the Purchasing Agent shall issue a notice of award, subject to the Seller's meeting all required terms and conditions, such as the submission of bonds, evidence of insurance, and the like.

Acceptance of Purchase Order. By the Seller's acceptance of a purchase order, it agrees to all the terms and conditions hereof. In cases where the terms of the Seller's proposal differ from the terms of the purchase order, the terms of the Seller's proposal shall take precedence over the purchase order only to the extent that it gives the City a greater quantity, a lower price, better quality, faster delivery, greater benefit, and the like.

Incorporation of Ordinances By Reference. The City's Code of Ordinances, as they may be amended from time to time, are incorporated herein by reference.

Entire Agreement. The agreement with the Seller includes the terms of the purchase order, the invitation to bid, the Seller's proposal (to the extent that it conforms to the invitation to bid), bid addenda, specifications and other documents and things intended by the City to be part of the bid and award, or other terms mutually agreed by the parties.

Compliance of Goods or Services with Requirements

Compliance with Specifications. The Seller is required to be thoroughly familiar with the requirements of all specifications and the actual physical conditions of delivery sites or job sites. The submission of a proposal shall constitute evidence that the Seller has examined, allowed for or taken into consideration the actual delivery sites, job site conditions, and other requirements. The City reserves the right to reject, without penalty, any goods or services that do not conform to bid specifications.

Reference to Brand or Trade Names, Catalog Numbers, or Model Numbers. Unless the specifications state that substitutions or variations from the City's requirements may be made in response to a bid, any and every reference to commercial types, brand names, trade names, catalogue descriptions and the like are intended to be descriptive only and not restrictive, the intent being to indicate the kind and quality of the articles that will be acceptable. Where possible and feasible, the Seller shall submit illustrations, descriptive materials and/or samples sufficient for the City to determine the kind and quality of the articles offered.

Risk of Loss. All risk of loss for damage, loss or destruction of goods prior to the City's actual receipt, inspection and acceptance thereof, shall be upon the Seller.

Delivery. Prices quoted shall be NET-DELIVERED TO DESTINATION, inside delivery, unloaded and assembled unless otherwise indicated in the purchase order. The City may reject bids that quote contrary to such delivery terms.

Timely Delivery. All goods and services must be timely delivered, timely delivery being OF THE ESSENCE as to such purchase. Seller must give notice promptly if there are actual or anticipated delays in the shipment of goods, in which case the City reserves the right to cancel the purchase order, in whole or in part, if Seller cannot assure delivery within a reasonable period of time acceptable to the City. Acceptance of any part of the goods ordered shall not bind the City to accept future shipments nor deprive the City of its right to return goods already accepted at the Seller's cost.

Quantities. The quantity of goods delivered must be that specified on the purchase order, with variations limited to those established by custom or usage. The Purchasing Agent must approve in writing any proposed changes in quantity. The City reserves the right to return excess quantities to the Seller at the Seller's expense.

City's Right to Make Award on Item by Item or Other Firm Basis. The City reserves the right to make awards on an item-by-item basis, total cost, or lump-sum basis. Where an award is made on an item-by-item basis, the unit price shall prevail.

Defects. Seller represents that the goods covered by the purchase order are suitable for the City's intended purposes, if disclosed, and that any defect in such goods may occasion special damage to the City. The City reserves the right to inspect all goods prior to acceptance. If the goods are rejected, they will be returned at the Seller's expense.

Conforming Goods. The City's acceptance of all or any part of the goods shall not be deemed a waiver of the City's right either to cancel the order or to return all or any portion of the goods for failure to conform to order because of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including special damages, suffered by the City.

Prices. Prices quoted must be firm and held for a period of 60 days after submission of a bid. Prices shall include all applicable duties.

Payment. The City shall endeavor to make payment for goods and services within 30 days after review for correctness and legality and approval of the fiscal officer in charge based upon complete and properly documented invoices. No claim for interest shall be honored unless the City fails to make payment within 60 days after receipt of a complete and properly documented invoice. The City is not liable in any event for interest greater than 6% per annum, which shall only accrue on the 61st day after failure to make a required payment.

Infringement of Proprietary Rights. The Seller warrants that its sale of goods or services is free from patent, trademark or copyright infringement, or violation of other proprietary rights of another whose use has not been licensed to the Seller. Seller agrees to hold harmless, indemnify and defend the City from and against any and all loss, claim, damage or expense, including reasonable attorneys' fees alleging that the Seller has violated such rights.

Warranty. Seller expressly warrants that the goods covered by this purchase order are of merchantable quality, satisfactory and safe for consumer use. Seller agrees to hold harmless, indemnify and defend the City from and against any and all loss, claim, damage or expense, including reasonable attorneys' fees arising out of allegations that the Seller has violated such warranty. Such indemnification shall be in addition to any other remedies provided by law including consequential damages permitted under applicable provisions of the Uniform Commercial Code.

Insurance. By accepting this purchase order, the Seller represents that it has all insurance coverages required by the City to provide the goods or services under this purchase order and has provided the Purchasing Agent an original certificate of insurance in the form required.

Labor Disputes. Seller shall immediately give written notice to the City whenever any actual or potential labor dispute delays or threatens to delay the timely performance of the terms of this purchaser order.

Compliance with All Applicable Laws, Including OSHA. In furnishing goods and/or services, the Seller warrants compliance with all applicable federal, state and local laws and regulations, which laws are incorporated by reference, unless this transaction is exempt and Seller submits documentation required to demonstrate entitlement to such exemption.

Non-Discrimination in Employment; Section 3.12 City Ordinances. Seller shall not discriminate in employment under City ordinance or any other applicable federal or state ordinance, executive order or other directive.

Changes. The City may at any time by written notice make changes within the general scope of the goods or services that are the subject of this purchase order, including but not limited to, specifications, method of shipment or packing, quantities, delivery schedules, place of delivery and instructions with respect to rendering services. If any such change increases or decreases the cost of, or the time required to perform,

an equitable adjustment in the price and/or delivery schedule will be made as set forth in a written modification of this purchase order. Any claim for adjustment by the Seller under this clause must be made in writing within 30 days from the date of receipt of the written notification of the change or the right to an adjustment will be deemed to be waived.

Assignment Prohibited. The Seller may not assign its obligations to another party without the express prior written consent of the City, which may be withheld in its commercial business judgment, reasonably exercised.

Termination; Events of Default

Event of Default. The City may, by written notice, terminate this purchase order in whole or in part if: (a) Seller fails to perform in accordance with the terms and conditions of this purchase order, (b) fails to make progress in a manner that endangers performance of the purchase order in accordance with its terms, or (c) Seller becomes insolvent or becomes the subject of proceedings under any law relating to bankruptcy or the relief of debt that is not dissolved within 60 days of its filing, or admits in writing its inability to pay its debts as they become due.

Excusable Delay. Seller shall not be liable for damages or for default due to causes beyond the Seller's exclusive control and without Seller's fault or negligence, provided that Seller exercises good faith and due diligence to promptly notify the City of the conditions which will result in delay and provided further that, if the Seller's delay is caused by the default of a subcontractor or material supplier, or such default arises out of causes beyond the exclusive control of the Seller, and without the negligence or fault of either of them, the Seller submits a schedule for reducing the effect of such delay as quickly as possible that is acceptable to the City.

Dispute Resolution Procedure. All disputes shall be resolved in the State of Connecticut in accordance with Connecticut, or applicable federal law. The parties shall attempt to resolve all disputes informally. If they cannot be so resolved, they shall be resolved by arbitration before a single arbitrator in Bridgeport before the ADR Center, Inc. under its commercial arbitration rules, and expedited procedures, if applicable, then in effect. The award shall be final and binding and may be enforced in a court of competent jurisdiction. All parties shall bear the cost of their respective legal counsel and shall share equally the costs and expenses assessed by the arbitrator. The arbitrator shall have the authority to award costs and legal expenses to the prevailing party.