

STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE.** Acceptance of this Purchase Order, whether by written acknowledgement or by performance by Seller, shall be upon the terms and conditions hereof; no other terms or conditions shall be binding on Buyer unless written approval thereof specifically referring to such other terms and conditions shall have been given to Seller. Unless otherwise indicated in the Purchase Order, Seller agrees to the terms, conditions, attachments, and specifications contained in the Bidding Event (Request for Quotation) and Seller's response to the Bidding Event.

2. **INVOICES.** Separate invoices shall be supplied for each Purchase Order shipment. Each invoice shall be itemized and shall show terms, discounts, date of shipment, and Purchase Order Number. Failure to show said items may result in delay of payment with all rights reserved, including cash discounts. The Vendor name on this Purchase Order resulted from a quotation signed in the same name. Payment will not be made to a firm name other than that shown on the face hereof without written assignment.

3. **ORDER CHANGES:** The Buyer shall have the right from time to time by written notices to make changes in quantities and/or delivery dates of any article, material, or services covered by this Purchase Order prior to the time the item or items are actually placed into final production by the Seller. If such changes are made after the article, material, or services are placed into final production by the Seller and such changes cause a substantial increase or decrease in Seller's cost or in the time for performance of this order, equitable adjustment in the price and time for performance will be made and this order will be modified in writing accordingly, provided that any claim for adjustment must be asserted by the Seller within a reasonable time (in no case to exceed twenty days) after the change is ordered.

4. **SHIPPING.** Seller will indicate plainly the Purchase Order Number on all bills of lading, all goods shipped pursuant to said order, and on all invoices, freight bills, and packages. Each package must contain a memorandum showing Seller's name, contents of packages, and Purchase Order number.

Shipments of goods specified on this Purchase Order number should result in lowest possible freight rate unless otherwise specified by Buyer. Penalties or increased charges due to failure to observe this provision will be charged to Seller.

Shipping costs for goods on back order shall be paid only at the rate which would have been applicable had the complete order been shipped at one time. All excess costs shall be borne by Seller. Partial shipments must be identified as such on shipping memoranda and invoices.

When shipping, Seller will make no declaration of value to carrier, except where shipment is subject to released value ratings.

Any materials supplied to City Utilities which are covered by the OSHA Hazard Communication Standard must be accompanied by the applicable Material Safety Data Sheet (MSDS) at the time of delivery.

5. **DELIVERY.** Unless otherwise expressly provided, Seller shall deliver all articles to Buyer's premises, free of all freight, handling, transportation, drayage, boxing, and similar charges. All times in this contract are of the essence.

6. **TERMINATION.** Buyer may terminate all or part of this contract, with or without cause. If Buyer terminates without cause, then Buyer shall pay all reasonable termination charges incurred by Seller.

7. **DECLINE IN PRICES.** Buyer shall be protected in the event of declining prices on the undelivered portion of this Purchase Order. If prices decline for items ordered, Seller may elect to meet price reductions of other vendors, or its own lower prices to other purchasers, but if Seller should refuse to do so, Buyer shall have the right to cancel any or all of the balance due on this Purchase Order without cost to Buyer.

8. **FORCE MAJEURE.** Neither Seller nor Buyer shall be liable for nonperformance due to causes beyond reasonable control. Where only a part of Seller's capacity to perform is excused under this paragraph, Seller must allocate production and deliveries among the various customers then under contract for similar goods during the period. The allocation must be made in a fair and equitable manner. Where either Seller or Buyer claims an excuse for nonperformance under this paragraph, it must give notice in writing to the other party. Seller shall not be obligated to sell, nor Buyer obligated to purchase, at a later date, that portion of the goods that Seller is unable to deliver or Buyer is unable to receive or use due to any excused cause. No goods are to be tendered by Seller after the expiration of the terms specified in this Purchase Order without consent of Buyer.

9. **WARRANTY.** Seller warrants that all articles and services covered by this Purchase Order will conform to drawings, specifications, or samples and will be merchantable and of good material, design and workmanship, free from all defects, and suitable for the use intended. All articles will be subject to Buyer's inspection and rejection at the place of delivery. Defective articles may be returned to the Seller for full credit or replacement at the Seller's risk and expense, including transportation charges both ways, but no defective articles shall be replaced without formal replacement order signed by the Buyer.

10. **ASSIGNMENT.** Neither party shall assign or transfer this Purchase Order without the written consent of the other.

11. **INDEMNITY. SELLER WARRANTS THAT GOODS FURNISHED UNDER THIS PURCHASE ORDER DO NOT INFRINGE ANY PATENT, TRADEMARK, OR TRADE NAME, OR COPYRIGHT AND AGREES TO INDEMNIFY AND SAVE HARMLESS BUYER OR ITS VENDEES FROM ANY AND ALL CLAIMS, SUITS, LIABILITIES, DAMAGES, LOSSES, OR EXPENSES INCURRED BY BUYER OR ITS VENDEES BY REASON OF ANY ALLEGED INFRINGEMENT OF ANY SUCH RIGHTS.**

SELLER SHALL INDEMNIFY AND HOLD HARMLESS BUYER AND ITS AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE

WORK, CAUSED BY ANY NEGLIGENT ACT OR OMISSION OF SELLER, ANY SUBCONTRACTOR, AND ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. IN CASE OF CONCURRING FAULT, EACH PARTY SHALL BEAR HIS SHARE OF THE LOSS. IN ANY AND ALL CLAIMS AGAINST BUYER OR ANY OF ITS AGENTS OR EMPLOYEES BY ANY EMPLOYEE OF SELLER, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR SELLER OR ANY SUBCONTRACTOR UNDER WORKER'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

12. **BUYER'S PROPERTY.** Any property of Buyer in Seller's active or constructive possession or custody hereunder will be at Seller's risk, and Seller agrees to reimburse Buyer for any loss or damage to such property however caused.

13. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** By acceptance hereof, Seller warrants:

1. that all of the goods, merchandise, and materials delivered and services rendered hereunder will have been produced and provided in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended, and
2. that all goods, materials, and equipment delivered hereunder shall comply with the applicable federal standards prescribed by the Occupational Safety and Health Act of 1970, or as amended.
3. that Seller will comply with all applicable laws, rules, and regulations of federal, state, and local governments and agencies, thereof, including but not limited to Executive Orders 11246, 11701, and section 503 of Public Law 93-112, The Rehabilitation Act of 1973, the provisions of The Americans with Disabilities Act, Transient Employer Law (285.230 R.S. Mo. et seq.) and Excessive Unemployment Law (Section 290.550 et seq. R.S.Mo.) which are hereby incorporated by reference, unless this Purchase Order is exempt pursuant to said Executive Orders, or Acts, and the regulations issued thereunder.

14. **WORKERS' COMPENSATION, EMPLOYER'S LIABILITY, AND GENERAL LIABILITY.** When work is performed on Buyer's premises, Seller agrees to carry at Seller's own expense:

1. Workers' Compensation and Employer's Liability Insurance
2. General Liability (including Contractual Liability and Products Liability/Completed Operations) Insurance and Auto Liability Insurance each in amounts no less than \$500,000 per occurrence. Insurance certificates of such coverage shall be submitted to City Utilities' Risk Management upon request of Buyer.

15. **INSOLVENCY.** If Seller shall become insolvent, file a petition in bankruptcy, or shall make an assignment for the benefit of creditors, or if a receiver or trustee shall be appointed of or for any of Seller's property or business, the Purchase Order may be cancelled at Buyer's option without liability.

16. **TAXES.** Seller agrees to cooperate with Buyer in opposing the imposition of any tax on any article covered by this Purchase Order, the legality of which is questioned by Buyer, and in securing any abatement or any refund thereof sought by Buyer.

17. **FOREIGN SHIPMENTS.** Foreign shipments must be preceded by execution of formal Consular Invoice. At time of shipment, Ocean Bills of Lading, Consular Invoice, and Commercial Invoices, in triplicate, shall be forwarded directly to the Purchasing Agent issuing this Purchase Order.

18. **GOVERNING LAW AND VENUE.** This Purchase Order shall be governed by the law of the State of Missouri. The venue for all actions arising out of this Purchase Order shall be the state and federal courts of Greene County, Missouri

19. **BRANDING.** Seller warrants that all materials covered by this Purchase Order are not altered or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act; not an article which may not, under provisions of Section 404 or 505 of said act, be introduced into interstate commerce, and not adulterated or misbranded within the meaning of the pure food and drug laws or the ordinances of any state or city which are applicable to such shipment or delivery, and Seller hereby agrees to indemnify and save the Buyer harmless from and against all claims, charges, action, and proceedings brought against Buyer by any lawful government authority or by any person on account of any alleged adulteration or misbranding by Seller of any such material referred to above. Seller does not guarantee against any such material becoming adulterated or misbranded after delivery to Buyer by reason of causes beyond Seller's control.

20. **CONFLICTING TERMS.** In case of a conflict between these terms and conditions and those of a separate written contract signed by both Buyer and Seller, the written contract shall prevail.

21. **REVIEW OF RECORDS.** During the term of the purchase order/agreement and for three years thereafter, City Utilities shall have the right to review Seller's records, only for the purposes of verifying claims for payment and compliance with the terms and conditions of the purchase order/agreement. Seller agrees to maintain records which substantiate all charges and to retain records related to this purchase order/agreement for at least three years after final payment.

22. **OFFSETTING BILLS.** City Utilities reserves the right to apply offsetting payments for goods and/or services that are due against delinquent utility bills which are due City Utilities.

23. **NON-EXCLUSIVE AGREEMENT.** This purchase order is a non-exclusive contract and City Utilities reserves the right to purchase same or like materials and/or services from other sources as City Utilities deems necessary and appropriate.

24. **PROMPT PAYMENT.** Contractor agrees to pay each Subcontractor under each Purchase Order/Agreement for satisfactory performance of its contract in accordance with Section 34.057 R.S.Mo.

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25. SUFFICIENT FUNDS-FISCAL FUNDING. Agreement is contingent on the allocation of sufficient funds by the Board of Public Utilities and Springfield's City Council. If Springfield's City Council or the Board of Public Utilities fails to allocate sufficient funds for the performance of agreement, then this agreement shall be null, void and of no effect. Vendor agrees its sole remedy shall be limited to discontinuation of work.

26. EXCESSIVE UNEMPLOYMENT. During periods of excessive unemployment, Contractor must employ Missouri laborers or laborers from nonrestrictive states in accordance with the provisions of Section 290.550 through 290.580 R.S.Mo., unless exempt.

27. TRANSIENT EMPLOYER. Any nonresident or foreign companies who employ people in Missouri must provide:

1. A certificate from the Missouri Dir. Of Revenue showing compliance with the Transient Employer Law (285.230 R.S.Mo. et seq.); or
2. Proof of exemption from Section 285.230 R.S.Mo.

A Certificate of compliance or proof of exemption must be submitted to City Utilities in regards to the transient employer law upon successful award of bid and before performance of scope of work. Questions? Call (573) 751-0459 or visit the web site at www.dor.mo.gov/tax/business/register/ for additional information.

28. OSHA CONSTRUCTION SAFETY AND HEALTH TRAINING. Effective 8-29-2009. Contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for its onsite employees, which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program. All employees are required to complete the program within 60 days of beginning work on such construction projects. Any employee found on work site without documentation of the successful completion of the required training shall be afforded 20 days to produce such documentation before being subject to removal from the project. The contractor shall forfeit as a penalty to City Utilities the sum of two thousand five hundred dollars plus one hundred dollars for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. This provision is subject to and Contractor shall comply with all requirements of Section 292.675 R.S.Mo.

29. REQUIRED AFFIDAVIT FOR CONTRACTS OVER \$5,000.00 (US). Effective 1-1-2009. Company shall comply with the provisions of Section 285.525 through 285.550 R.S.Mo. Contract award is contingent on Company providing an acceptable notarized affidavit stating:

1. that Company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and
2. that Company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Copy of the affidavit can be found and downloaded at City Utilities' website: <http://www.cityutilities.net/purchasing/purchasing/htm>

Additionally, Company must provide documentation evidencing current enrollment in a federal work authorization program (e.g. electronic signature page from E-Verify program's Memo of Understanding [MOU]). Additional information on E-Verify Program is at: http://www.dhs.gov/xprevprot/programs/gc_1185221678150.shtm.

30. AUTHORIZED PERSONNEL. The contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and INA Section 274A.

31. SURVIVAL OF TERMS. Provisions which, by their nature, are intended to survive termination or expiration of the Contract Documents, including, without limitation, Sections 11, 14, and 18, shall survive termination or expiration of the Contract Documents.