

This Purchase Order and any contracts attached hereto constitutes the entire agreement between the vendor and the City of Temecula, hereinafter referred to as the "City" covering the goods and services described herein. Failure to decline terms and conditions in writing constitutes agreement to the terms of the Purchase Order as stated. Time is of the essence.

## TERMS AND CONDITIONS

1. **PRICE and TAXES:** All prices shall be as stated in this Purchase Order and are firm and not subject to escalation. This purchase is subject to all California sales tax. Municipalities are exempt from Federal Excise and Transportation taxes. Prices shall exclude these taxes. Vendor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Purchase Order. No charges for transportation containers, packing etc., will be allowed the vendor unless so specified in this Purchase Order. Transportation charges must be prepaid by vendor on all purchases where the F.O.B. point is other than Temecula, California. All shipments shall be F.O.B. Temecula unless otherwise specified on this Purchase Order. These charges shall be shown as a separate item on the invoice.

2. **PAYMENT:** Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from date of receipt of invoice or acceptance of goods or services, whichever occurs last. If the City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods or services by the City, whichever occurs last. The City may set off any amount owed by Seller to the City against any amount owed by the City to Seller under this Purchase Order. The City shall endeavor to pay each invoice within Seller's payment terms and will not accept late charges. Invoices must cite the purchase order number to prevent delay in payment. All invoices MUST be mailed to: City of Temecula, Attn: Accounts Payable, 41000 Main Street, Temecula, CA 92590.

3. **DELIVERY and PERFORMANCE:** Time is of the essence in the performance of this Purchase Order. If delivery of goods and/or performance of services cannot be made at the specified time, Vendor shall promptly notify the City of the earliest possible date for delivery or performance. Notwithstanding such notice, if Vendor for any reason fails to deliver goods or perform service within the time specified or to the City's satisfaction the City may terminate this Purchase Order or any part thereof without liability except for goods or services previously provided and accepted. The City's receipt or acceptance of all or part of a non-conforming delivery or service shall not constitute a waiver of any claim, right or remedy the City has under this Purchase Order or applicable law.

4. **SHIPMENT AND INSPECTION:** The terms and routing of shipment shall be as provided on the face hereof, or as otherwise directed by the City. The City may revise shipping instructions as to any goods not as yet shipped. The City shall have the right to inspect any or all of the goods at Vendor's place of business or upon receipt by the City. By reason of its failure to inspect the goods, the City shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications provided or to have waived any of the City's rights or remedies arising by virtue of such defects or non-conformance. Vendor shall be responsible for payment of shipping the return of any defective goods. Shipping documents and invoices MUST cite this Purchase Order number.

5. **WARRANTIES:** In addition to any other expressed or implied warranties and unless otherwise agreed in writing, Vendor warrants that all products delivered hereunder will be new, suitable for use as described, of the grade and quality specified, free from all defects in design, material and workmanship; in conformity with all samples, drawings, descriptions and specifications furnished; in compliance with all applicable federal, state and local laws and regulations and free of any liens and encumbrances. These warranties shall not be deemed to exclude Vendor's standard warranties or other rights or warranties which the City may have or obtain.

6. **TITLE and RISK OF LOSS:** The FOB point shall be that specified on the face of the Purchase Order and all transportation and delivery charges shall be prepaid by the Seller in full and included in the unit price. However, if the goods are of an inflammable, toxic or otherwise dangerous nature, Vendor shall hold the City harmless from and against any and all claims asserted against the City on account of any personal injuries and/or property damages caused by the goods, or by transportation thereof, prior to the completion of unloading at the City's receiving destination.

7. **TERMINATION:** This Purchase Order may be terminated by mutual consent of both parties or by the City at its discretion. The City may cancel an order for goods or services at any time with written notice to Vendor, stating the extent and effective date of termination. Upon receipt of this written notice, Vendor shall stop performance under this Purchase Order as directed by the City. If the Purchase Order is terminated, Vendor shall be paid in accordance with the terms of the Purchase Order for goods and services delivered and accepted.

8. **REMEDIES:** In the event of Vendor's breach of this contract, City may take any or all of the following actions, without prejudice to any other rights or remedies available to the City by law: (a) require vendor to repair or replace such goods, and upon Vendor's failure or refusal to do so, repair or replace the same at Vendor's expense; (b) reject any shipment or delivery containing defective or nonconforming goods and return for credit or replacement at vendor's option; said return to be made at vendor's cost and risk; (c) cancel any outstanding deliveries and treat such breach by Vendor as vendor's repudiation of this contract. In the event of the City's breach hereunder, Vendor's exclusive remedy shall be vendor's recovery of the goods or the purchase price payable for goods shipped prior to such breach.

9. **LABOR:** If this Purchase Order covers the performance of labor by Vendor on the City's premises, Vendor shall indemnify and save and hold the City

harmless from and against any and all claims and liabilities for injury or death to any person or damage to property arising out of vendor's performance under this Purchase Order. Vendor shall obtain and pay for public liability for injury or death to any person or damage to property arising out of vendor's performance under this Purchase Order. Vendor shall obtain and pay for public liability insurance and property damage insurance in an amount not less than one million dollars, and naming the City as additional insured, insuring against said injuries, deaths and damages, and shall furnish the City with insurers' certificates evidencing such insurance, which certificates shall provide that the coverage evidenced thereby shall not be canceled except upon 30 days prior written notice to the City.

10. **COMPLIANCE WITH LAW:** Vendor warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Purchase Order, including, without limitation, the Fair Labor Standards Act of 1938, as amended, the Williams-Steiger Occupational Safety and Health Act of 1970, the Equal Employment Opportunity Clause prescribed by Executive Order 11246 dated September 24, 1965 as amended, and any rules, regulations or orders issued or promulgated under such Act and Order. Vendor shall obtain and maintain throughout the life of the Purchase Order/contract all permits or licenses required in connection with the services to be provided or the manufacture, sale, shipment and installation of the products ordered under this Purchase Order. Vendor shall indemnify and save and hold the City from and against any and all claims, damages, demands, costs and losses which the City may suffer in the event that Vendor fails to comply with said Act, Order, rules, regulations or orders. Any clause required by any law, ordinance, rule or regulation to be included in a contract of the type evidenced by this document shall be deemed to be incorporated herein.

11. **ASSIGNMENT:** Vendor shall not delegate or subcontract any duties and services or assign any rights or claims under this Purchase Order without the City's prior written consent.

12. **CHANGE ORDERS:** The City shall have the right to revoke, amend or modify this Purchase Order or any contract attached thereto at any time. Vendor's receipt of City's written change order without response received by the City within ten days or Vendor's shipment or other performance reflecting the change, whichever occurs first, shall be Vendor's acceptance of the change without any price or other adjustment.

13. **ARTWORK, DESIGNS, PATENTS, COPYRIGHTS and TRADEMARKS:**

(a) If the goods are to be produced by Vendor in accordance with designs, drawings or blueprints furnished by City, Vendor shall return same to the City upon completion or cancellation of this Purchase Order. Such designs and the like shall not be used by Vendor in the production of materials for any third party without the City's written consent. Such designs and the like involve valuable property rights of the City and shall be held confidential by Vendor.

(b) Unless otherwise agreed herein, Vendor at its cost shall supply all materials, equipment, tools and facilities required to perform this Purchase Order. Any materials, equipment, tools, artwork, designs or other properties furnished by the City or specifically paid for by the City shall be the City's property. Any such property shall be used only in filling orders from the City and may on demand be removed by the City without charge. Vendor shall use such property at its own risk, and shall be responsible for all loss of or damage to the same while in Vendor's custody. Vendor shall at its cost store and maintain all such property in good condition and repair. City makes no warranties of any nature with respect to any property it may furnish to Vendor hereunder.

(c) Vendor shall state copyright charges for the development of any logo or seal for City use. The City shall own all copyrights to any artwork or design used for the development of any City logo or seal.

(d) By accepting this Purchase Order, Vendor hereby agrees that the sale, use or incorporation into manufactured products of all machines, software, hardware, materials and other devices furnished under this Purchase Order or any contracts attached hereto which are not of the City's design, composition or manufacture shall be free and clear of infringement of any valid patent, copyright, or trademark. Vendor shall hold the City harmless from any and all costs and expenses, including attorney fees, liability, and loss of any kind growing out of claims, suits, or actions alleging such infringement, and Vendor agrees to defend such claims, suits or actions.

14. **GOVERNING LAW.** This Purchase Order and the contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

15. **MISCELLANEOUS.**

(a) The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

(b) Stenographic and clerical errors, whether in mathematical computations or otherwise, made by the City on this Purchase Order or any other forms delivered to vendor shall be subject to correction.

(c) If Vendor objects to any term or condition set forth herein, this objection must be in writing and received by the City Purchasing Division with a copy of this Purchase Order prior to the delivery of any goods or services.