

CITY OF NAPERVILLE: GENERAL TERMS AND CONDITIONS

THE FOLLOWING GENERAL TERMS AND CONDITIONS SHALL APPLY TO ALL PURCHASES BY OR ON BEHALF OF THE CITY OF NAPERVILLE UNLESS SPECIFICALLY PROVIDED OTHERWISE ON THE FRONT SIDE OF THE PURCHASE ORDER.

TAX EXEMPTION: The City of Naperville is tax exempt, ID # **E9997-4398-07**.

ACCEPTANCE OF CONTRACT:

This order is the City's offer to purchase the goods and/or services described on the purchase order from the Vendor. The City's placement of this order is expressly conditioned upon Vendor's acceptance of all the terms and conditions of purchase contained on or attached to the purchase order. The Vendor's delivery of the goods and/or services shall be deemed acceptance of the City's terms and conditions.

AMENDMENTS:

No modifications to this Purchase Order or the applicable Terms and Conditions shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.

PATENTS AND COPYRIGHTS:

If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless the City, from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

NON-WAIVER OF RIGHTS:

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Contract shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

COMPLIANCE WITH LAWS:

The Vendor certifies that in performing this contract they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

LAWS GOVERNING:

This contract shall be governed by and construed according to the laws of the State of Illinois except that sections 2 through 8 of the Local Government Prompt Payment Act (50 ILCS 505/2-8) shall not be applicable. Venue for any action related to this Contract shall be in the Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois.

PAYMENT TERMS:

The City of Naperville's payment terms are net 30. The payment date will be calculated based on the invoice receipt date or delivery date, whichever is later. All payments shall be made with electronic payment transfer.

PAYMENT:

All invoices shall be addressed to the Bill To Address, as indicated on the first page of this Purchase Order and must include Purchase Order number, Vendor's name and phone number, and clearly list quantities, item descriptions and units of measure.

WARRANTY:

The Vendor warrants to the City that all goods and services furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications or standards incorporated herein, and/or defects in materials, workmanship, and free from such defects in design. In addition, Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

UNIFORM COMMERCIAL CODE:

All applicable portions of the Illinois Uniform Commercial Code shall govern contracts with the City of Naperville.

DELIVERY:

All prices must be F.O.B. destination, freight prepaid and allowed. Time is of the essence on this contract. If completed deliveries are not made at the time agreed, the City reserves the right to cancel or purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise the City, in writing of the earliest possible shipping date for acceptance by the City.

RISK OF LOSS:

Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which may for any reason occur prior to acceptance by City. No such loss, injury or destruction shall release Vendor from any obligations hereunder.

INSPECTION:

Goods and material must be properly packaged. Damaged goods and materials will not be accepted, or if the damage is not readily apparent at the time of delivery, the goods shall be returned at no cost to the City. The City reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

MATERIAL SAFETY DATA SHEETS:

Proper Material Safety Data Sheets, in compliance with OSHA's Hazard Communication Standard, must be provided by the Vendor to the City at the time of purchase.

PREVAILING WAGE:

It shall be the responsibility of the Vendor to comply, when applicable, with the Illinois Prevailing Wage Act 820 ILCS 130/01 *et seq.* It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the Illinois Department of Labor for any increase in rates during the project and adjust wage rates accordingly.

NON-DISCRIMINATION:

The Vendor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1 - 101 *et seq.* (2000), as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 5 Ill. Admin. Code § 750 Appendix A. The Vendor shall also comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.* (2000), as amended.

It shall also be an unlawful employment practice for the Vendor (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, or the terms, conditions, or privileges of their employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify their employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin. Vendor shall comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (2000), as amended.

NON-APPROPRIATIONS CLAUSE:

The terms of any Contract resulting from the solicitation and any Purchase Order issued for multiple years under the Contract are contingent upon sufficient appropriations being approved by the City Council. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other Contract document, the City may terminate its obligations under the Contract if sufficient appropriations are not approved by the City Council to pay amounts due for multiple year contracts. The City's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.