

TERMS AND CONDITIONS OF PURCHASE

(contract provisions)

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1. **SHIPMENT:** Partial shipments must be accompanied by identifying documents, but such shipments shall not be construed as making the obligations of Contractor severable. No charge will be allowed for packing, shipment, or handling unless stated in the Bid Documents. The Contractor shall pay for damaged goods resulting from improper packing or masking. Itemized packing lists must accompany each shipment. The City's count will be accepted as final and conclusive on shipments not accompanied by the Contractor's itemized packing list. If applicable, shipments shall be palletized to the maximum extent of palletization. Costs for palletizing are included in the purchase price. All goods received in excess of the Bid requirements will be subject to return for credit at the Contractor's expense.
2. **ACCEPTANCE:** Acceptance of these terms and conditions by the Contractor and the City will result in the issuance of a Purchase Order. In this document, the agreement will be referred to as this Purchase Order.

3. **COMPLETE AGREEMENT:** These terms and conditions of purchase and all other documents presented in this bid packet shall become a binding agreement of Contractor and City upon Contractor signing and returning an acceptance copy of this Purchase Order, or upon Contractor otherwise acknowledging acceptance of this Purchase Order or commencing performance of this Purchase Order, whichever occurs first. This Purchase Order together with the bid documents, as accepted by the City, bid specifications, drawings and documents referred to herein, and the other documents referred to therein, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writings pertaining to this Purchase Order or the subject matter thereof are superseded hereby. Any reference to Contractor's quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in such document. Any invoice, acknowledgment, or other communication issued by Contractor in connection with this Contract not expressly identified otherwise shall be construed to be for record and accounting purposes only. Any terms and conditions stated in such communications shall not be applicable to this Purchase Order and shall not be considered to be Contractor's exceptions to the provisions of this Purchase Order. Trade custom and/or trade usage is superseded by this Purchase Order and shall not be applicable in the Interpretation of this Purchase Order.

Anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for in the specifications, shall be of like effect as if called for and shown in both. In the event of any ambiguities, express conflicts or discrepancies in the specifications, drawings, or other documents which are a part of this Purchase Order, Contractor shall immediately submit the matter to City for its determination and shall comply with the determination of City in such matter.

All headings and numbering in this Purchase Order are for convenience of reference only and shall in no way be used in the interpretation of any of the provisions in this Purchase Order.

4. **TITLE:** Contractor warrants full and unrestricted title to City for all goods and services furnished by Contractor under this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. If City makes progress payments to Contractor under this Purchase Order, title to the goods ordered hereunder shall pass to City at the time that Contractor identifies the goods to this Purchase Order. Contractor shall clearly identify the goods as the property of City by visible marking or tagging, and City shall have the right, at City's option, to inspect and verify that said goods have been identified as City's property. Care, custody, and control of such goods remain with the Contractor until such time as City takes physical possession or otherwise agrees in writing by change order to this Purchase Order. All shop drawings, patterns, tools, or other items made preparatory to the production of any goods are City's property and upon demand shall be delivered to City.
5. **RESERVATION OF RIGHTS:** The making or failure to make any inspection of, or payment for, the goods or services covered by this Purchase Order shall in no way impair City's right to reject non-conforming or defective goods or services, nor be deemed to constitute acceptance by City of the goods or services, or affect in any way Contractor's obligations under this Purchase Order notwithstanding City's opportunity to inspect the goods or services, City's knowledge of the nonconformity or defect, its substantiality or the ease of its discovery, nor City's failure to earlier reject the goods or services.
6. **WAIVER:** City's failure to insist on performance of any term condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach shall not thereafter, waive any such term, condition, instruction, right, or privilege.
7. **PATENTS:** Contractor shall, at its sole expense, indemnify, hold harmless and defend City and Owner from and against any suit or proceeding brought against City and/or Owner based on a claim that the manufacture, use, or sale of any goods or services or any part thereof, supplied under this Purchase Order constitutes an infringement of any patent, copyright, trademark, or proprietary information right of others, and Contractor shall pay all damages and costs awarded therein against City and/or Owner. Contractor shall be notified promptly in writing of the suit or proceeding and shall be given adequate authority, information, and assistance (at Contractor's expense) for the defense of same, subject to the right of City and Owner to participate at their expense and to be fully advised by Contractor in advance of all actions taken. In case said goods or any part thereof is in such suit

held to constitute infringement or the sale or use of said goods or parts is enjoined, regardless of whether such determination constitutes a final judgment, Contractor shall, at its expense, either procure for City and Owner the right to sell and use said goods or part, or replace same with substantially equal but non-infringing goods, or if approved by City, remove said goods and refund the purchase price and the transportation and installation costs thereof. The preceding paragraph shall not apply to any goods, or any part thereof, manufactured to designs furnished and required by City, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Contractor hereunder with other goods infringe a patent, if such process or other goods was not supplied by Contractor and Contractor's supplying of the goods hereunder does not constitute contributory patent infringement.

8. **WARRANTY:** Contractor warrants to City and Owner that all goods and services covered by this Purchase Order will conform with the specifications, drawings, and other descriptions supplied or adopted by City and will be new, quality, fit, and sufficient for the purposes for which they are intended as evidenced in this Purchase Order and in the drawings and specifications referred to herein, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily the operating conditions specified herein. These warranties shall extend to City, Owner, their successors, assigns, customers, and the user of their customers' products. Contractor, at its expense, (including without limitation costs of removal, packing, transportation, and reinstallation) shall promptly either repair or replace any goods and services furnished to City, which within 12 months after operational startup or within 18 months after shipment, whichever occurs first, shall fail to conform to the requirements of this Purchase Order. Contractor will at any time be chargeable for repairs made by City to correct such a failure to meet this warranty when Contractor has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing. The above warranties are in addition to all other warranties, express or implied, at law or equity.
9. **INSPECTION AND INSPECTING:** Contractor shall be responsible for the performance of all activities affecting quality and schedule including those of its sub-suppliers. City reserves the right to review Contractor's Quality Assurance and Quality Control Procedures. The goods provided by Contractor under this Purchase Order are subject to inspection, expediting, and witnessing of Contractor testing by City's representative and/or the Owner, who shall be granted access to all parts of the Contractor's plant(s) or Contractor's sub-suppliers plant(s) engaged in the manufacturing or processors of this Purchase Order. The representatives' inspection and witnessing of testing or lack of response shall in no way release the Contractor from any obligations related to this Purchase Order. Contractor shall further ensure that these terms and conditions become a part of its purchase orders to sub-suppliers for all goods or services which are used in the products purchased under this Purchase Order.

Contractor and or Contactor's sub-supplier will notify City at least five (5) calendar days in advance of the date inspection or test can be made. If for any reason the date should be set back, Contractor shall telephone or wire City immediately.

If the city invokes this condition, by noting on the purchase order form that is its intent, the contractor shall not ship the goods on this purchase order without either city's final inspection or a written waiver of inspection from city. Violation of this requirement shall constitute a rejection of the goods with subsequent costs for return or other action as warranted against the account of the contractor. Complete and accurate information is required to maintain the overall schedule. If requested, Contractor shall, at a minimum, furnish every fourteen (14) days, the status of engineering, material procurement, production, and shipping information.

10. **INDEMNITY: 10.1)** For and in consideration of the covenants of City under this Purchase Order, including the agreement of City to pay to Contractor the amounts which may become due and payable in accordance with the terms of this Purchase Order, Contractor hereby agrees to assume the risk of and to release, defend, indemnify and save harmless City, Owner, the related entities of City and Owner, and employees and agents and assigns of each (hereinafter "Indemnities") from and against all lost, damage, liability, cost and expense (including without limitation, reasonable attorneys' fees) arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with the performance of this Purchase Order or the goods furnished hereunder, regardless of whether or not such loss, damage, liability, cost or expense is caused in part

by an Indemnitee. Neither this Article nor any other provision of this Purchase Order shall be construed in any circumstances to constitute an indemnification against any loss, damage, liability, cost, or expense caused solely by the negligence of such Indemnitee. The indemnity obligations in this Purchase Order shall be deemed to be modified as required to exclude indemnification which is expressly prohibited by applicable statute or law. All obligations of this Purchase Order shall otherwise be enforced to the extent permitted by law.

10.2) Contractor acknowledges specific payment of ten dollars (\$10) incorporated into the purchase price as legal consideration of Contractor's indemnity under this Article 10.2 and all other indemnities as may be provided in this Purchase Order.

- 11. DELAYS:** Time of delivery is of the essence for this purchase order. Contractor shall promptly notify City of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to City. Where the delay is caused by an act of God, acts of civil or military authority, epidemics, war, riot, strikes, or other similar causes beyond Contractor's control and which Contractor could not have reasonably foreseen or provided against, City shall have the right to either (i) terminate by written notice to Contractor all or part of this Purchase Order in accordance with its terms or (ii) extend the date of delivery or performance for a period equal the duration of the delay, but Contractor shall not be entitled to any extra compensation for such delay. Contractor shall not be excused from performance hereunder where alternate sources of supply of materials, goods, or services are available.
- 12. ASSIGNMENT:** Neither this Purchase Order nor any portion hereof shall be assigned or delegated without City's prior written consent nor any such assignment or delegation shall be void. City reserves the right to assign this Purchase Order to the Owner or Owner's successors or assigns or to City's affiliates.
- 13. CHANGES:** City shall have the right by written direction to make changes in the specifications and drawings for goods or services covered by this Purchase Order. If Contractor believes that such change affects the price or delivery date for such goods or services, Contractor shall so notify City in writing (with adequate supporting documentation) within five (5) calendar days after receipt of said written direction. Contractor shall suspend performance of the change unless thereafter released in writing by City to perform said change and City and Contractor shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Contractor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) calendar days after Contractor receives direction to make such changes. Contractor shall not suspend performance of the unaffected portion of this Purchase Order while City and Contractor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by City. If released in writing by City, Contractor shall comply with and perform such change in accordance with the terms of this Purchase Order during the time Contractor and City require to mutually agree upon an equitable adjustment. No substitutions shall be made in this Purchase Order without the prior written authority of City. No agreement or understanding modifying the conditions or terms of this Purchase Order shall be binding upon City nor will extra compensation be paid by City unless the agreement or understanding is made in writing.
- 14. CANCELLATION FOR DEFAULT:** In the event, Contractor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Contractor's insolvency, or in the event Contractor is in default of any provision or requirement of this Purchase Order, City may, by written notice to Contractor, without prejudice to any other rights or remedies which City may have, cancel further performance by Contractor under this Purchase Order. In the event of such cancellation, City may complete the performance of this Purchase Order by such means as City selects, and Contractor shall be responsible for any additional costs incurred by City in so doing. Contractor shall deliver or assign to City any work in progress as City may request. Any amounts due Contractor for goods and services completed by Contractor in full compliance with the terms of this Purchase Order prior to such cancellation shall be subject to setoff of City's additional costs of completing the Purchase Order and other damages incurred by City as a result of Contractor's default. Waiver by City of any default of Contractor shall not be considered to be a waiver by City of any provision of this Purchase Order or of any subsequent default by Contractor.

15. TERMINATION FOR CONVENIENCE: City shall have the right to terminate for its convenience further performance of all or any separable part of this Purchase Order at any time by written notice to Contractor. On the date of such termination stated in the notice, Contractor shall discontinue all work pertaining to this Purchase Order, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Contractor's and in its suppliers', plants pending City's instructions and shall dispose of same in accordance with City's instructions. Termination payment to Contractor or refund to City, if any, shall be promptly and mutually agreed to by City and Contractor, based on that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for reasonable overhead and profit on such work, plus reasonable and necessary expenses resulting from the termination, as substantiated by documentation satisfactory to and verified by City, disposition of work and material on hand, and amounts previously paid by City. Contractor shall not be entitled to any lots of prospective profits, contribution to overhead, or incidental, consequential, or other damages because of such termination. Contractor shall deliver or assign all goods with all applicable warranties or dispose of goods as directed by City prior to final payment.

16. LAWS AND REGULATIONS: Contractor warrants that all goods and services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances, and regulations, and, further, Contractor shall provide all permits, certificates, and licenses which may be required for the performance of this Purchase Order. This Purchase Order shall be subject to the law and jurisdiction of the State of Arkansas unless expressly designated otherwise in this Purchase Order.

Contractor further warrants that all goods furnished by Contractor in performance of this Purchase Order will comply fully with the Occupational Safety and Health Act of 1970(54 U.S. Stat. 1590), as amended, and State plan approved under such Act, and the regulations thereunder, to the extent applicable to such equipment, and in addition to any other rights or remedies which City may have, Contractor, shall indemnify, defend and hold harmless City and its Owner from and against any and all claims, loss, or liability arising from failure of such goods to comply therewith. The provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 35USC 2012 (Vietnam Era Veterans Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-1&2, 41 CFR 60-250, and 41 CFR 60-741, respectively, are hereby incorporated by reference. By agreeing to this Order, Contractor certifies that it maintains no segregated employee facilities as provided in 41 CFR ' 60-1.8 and that it is not debarred from being awarded federal or federally assisted contracts. Contractor shall be responsible for any liability which may accrue to City or Owner from any violation thereof.

17. MECHANICS' LIENS: Contractor agrees to indemnify, hold harmless and defend City and Owner from and against all laborers', material men's and/or mechanics' liens arising from the performance of Contractor's obligations under this Purchase Order and shall keep the premises of City and Owner free from all such claims, liens, and encumbrances. Contractor for itself and all of its Contractors and suppliers of any tier waives all rights of lien against the property and premises of City and Owner for labor performed or for goods furnished for the work.

18. SUSPENSION OF PERFORMANCE: City may at any time, and from time to time, by written notice to Contractor, suspend further performance of all or any portion of this Purchase Order by Contractor. Such suspensions shall not exceed more than one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Contractor shall promptly suspend further performance of this Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment Contractor has on hand for the performance of this Purchase Order. Contractor shall use its best efforts to utilize its material labor and equipment in such a manner as to mitigate costs associated with suspension. City may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Contractor specifying the effective date and scope of withdrawal, and Contractor shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If Contractor believes that any such suspension or withdrawal of suspension justifies modification of this Purchase Order price or time for

performance, Contractor shall comply with the provisions set forth in Article 12, entitled CHANGES. In no event shall Contractor be entitled to any loss of prospective profits, contributions to overhead, or any incidental, consequential, or other damages because of such suspensions or withdrawals of suspension.

19. **INDEPENDENT CONTRACTOR:** Contractor shall act as an Independent Contractor and not as an agent or employee of City or Owner and shall not contract any portion of the work without the written consent of City.
20. **GRATUITIES:** City may, by written notice to the Contractor, terminate the right of the Contractor to proceed or continue under this Purchase Order if it is found that gratuities, (in the form of entertainment, gifts, or otherwise), were offered or given by the Contractor, or any agent or representative of the Contractor to any officer or employee of the Owner or City with a view toward securing this Purchase Order or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Purchase Order.

In the event this Purchase Order is terminated as provided in this provision, City shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Purchase Order by the Contractor. The rights and remedies of City provided in this or any other article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

21. **CONFIDENTIAL INFORMATION:** The Documents and all other Information designated as confidential or proprietary and contents thereof are referred to as "Information." Contractor agrees to retain the Information in confidence and not to disclose it to any third party or use such Information for any other purpose, except as authorized by City for the performance of this Purchase Order. Contractor shall not publicize the existence or scope of this Purchase Order without City's written consent. Contractor shall require these same agreements on the part of any sub-supplier to whom the Information is disclosed. Contractor shall return all Information and copies therefore to City upon written request.
22. **HAZARDOUS MATERIALS:** Contractor shall notify City in writing upon receipt of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances; or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulations. Contractor shall furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal in a form sufficiently clear for use by City's nontechnical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."
23. **VALIDITY OF PROVISIONS:** In the event, any Provision, or any part or portion of any Provision of this Purchase Order shall be held to be invalid, void, or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Provision or any other Provision hereof.
24. **ARBITRATION:** In the event that City is required to arbitrate a dispute with a third party, which dispute arises out of this Purchase Order or is in any way connected with Contractor, Contractor agrees to join in such arbitration proceeding as City may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.
25. **RIGHT TO OFFSET:** City, without waiver or limitation of any rights or remedies of City or Owner, shall be entitled from time to time to deduct from any amounts due or owing by City to Contractor in connection with this Purchase Order (or any other Purchase Order or Contract with City), any and all amounts owed by Contractor to City or Owner.
26. **SECURITY:** If City makes any advance or progress payment to Contractor under this Purchase Order, upon City's request, Contractor agrees to execute a Security Agreement and Financing Statement (both in forms satisfactory to City) granting a security interest to City effective in all states of fabrication or manufacture, in the proceeds, raw materials, and goods which are purchased, manufactured, or otherwise obtained pursuant to this Purchase

Order. When this order covers the supplying of services or services and materials on construction premises, it is subject to the following additional terms and conditions. Articles 26 and 27, inclusive.

27. **INSURANCE:** The insurance requirements the bidder must meet, if any, on this project are identified in the “Terms and Conditions of Bidding” and “Statement of Compliance” form. The bidder’s required coverages are indicated by a check mark in the left column on the compliance form. Bidders are to indicate their compliance by checking in the right column the coverages for which a certificate is provided and attach the certificates.
28. **SAFETY AND HEALTH REGULATIONS:** While on the premises of City or Owner, Contractor and its employees shall comply with all applicable safety and health laws, regulations, and ordinances and with the safety, health, and plant regulations of City and Owner, and shall ensure that all of its employees and agents have a safe place of work on said premises. Contractor shall keep said premises and the vicinity thereof clean of debris and rubbish caused by its work and, upon completion of its work, shall leave the premises clean and ready for use. Upon request of City or Owner, and at no cost or expense to City or Owner, Contractor shall promptly remove from said premises any person under the control of Contractor who violates any of the aforesaid safety, health, or plant laws, regulations, ordinances, or rules or who may cause or threaten to cause a breach of the peace, or who is otherwise objectionable to City or Owner.
29. **ESCALATION CLAUSE:** This clause shall only be applicable to contracts with an option for annual extensions, for such goods and services as the City shall, in writing, so designate as subject to escalation. Prices are to remain firm for an initial period of 90 days after bid award. Thereafter, in the event of price increase of material, equipment, or labor occurring during the performance of the contract, through no fault of the Contractor, the contract sum may be equitably adjusted by both written notice and justifiable proof of cause for adjustment. The City shall provide the Contractor, in writing, an acceptance of the escalation before any price adjustment may be implemented. In no case shall the Contractor’s fixed profit margin, as established by the original contract amount, increase due to escalations during the term of the contract, nor shall the total value of the contract exceed budgetary constraints.
30. **FEDERALLY REQUIRED CERTIFICATIONS AND CLAUSES:** Bids for goods and services purchased with federal funding may require the inclusion of additional required clauses and certifications. When required, said certifications and clauses shall be considered a part of this contract.