



City of Casselberry | Finance Department | Procurement Division

95 Triplet Lake Drive, Casselberry, Florida 32707

Phone: 407-262-7700, extension 1137 or 1142 | Fax: 407-262-7746

**FORM
PUR-F-241**

PURCHASE ORDER TERMS AND CONDITIONS

1. **AGREEMENT.** Except as provided in Paragraph 26 below, this Purchase Order, including these terms, conditions, the referenced bid package, and the specifications hereto, constitute the sole and entire agreement between the parties hereto (hereinafter "Agreement" or "Purchase Order"). The Seller's acceptance of this Agreement is limited to the terms and conditions hereof and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance, notwithstanding the Seller's proposal or terms additional to or different from those set forth in this Agreement. The Seller's quotation is incorporated in and made a part of this Agreement only to the extent of specifying the nature and description of the goods and services ordered and then only to the extent that such items are consistent with the other terms of this Agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any of the terms or conditions hereof. The Buyer is the City of Casselberry, Florida, (hereinafter referred to as the "City" or "Buyer").
2. **PAYMENT TERMS.** Payment terms are net thirty (30) days upon delivery and acceptance; unless stated otherwise in the Purchase Order or its associated Agreement. The City pays in accordance with the Prompt Payment Act – Section 218.70, Florida Statutes.
3. **PRICE PROTECTION.** The Seller warrants that the price(s) set forth herein are equal to the lowest net price, and the terms and conditions of sale as favorable as the price(s), terms and conditions afforded by the Seller to any other customer for goods or services of compatible grade or quality during the terms hereof. Should the City be able to purchase goods or services of the same or comparable quality from another source at a lower delivered cost then in effect hereunder, and the City gives the Seller written notice hereto, the City may purchase such goods or services from such other sources at such lower delivered cost unless within fifteen (15) days of receipt by the Seller of said notice, the Seller meets such lower delivered cost for such quantity of goods or services. Any quantity of goods or services so purchased from another source by the City shall be deducted from the total quantity offered on this Agreement, but the Agreement shall otherwise remain unaffected.
4. **TAXES.** The City of Casselberry is a municipality corporation existing under the laws of the State of Florida. As such, the City does not pay State of Florida Sales Tax (Exemption Certification No. 85-8012530043C-7). The City's Exemption Certification Number does not apply to goods and services purchased separately by the Seller in connection with its fulfillment of its contractual obligations with the City.
5. **FISCAL YEAR FUNDING APPROPRIATION.** (a) Specified Period. Unless otherwise provided by law, a Purchase Order for supplies or services may be entered into for any period of time deemed to be in the best interest of the City, provided the term of the Purchase Order and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the initial fiscal period of the purchase order. Payment and performance obligations for succeeding fiscal periods shall be subject to the annual appropriation by the City. (b) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period, the Purchase Order shall be cancelled and the Seller shall be entitled to reimbursement for the reasonable value of any work performed and accepted by the City up to the date of cancellation.
6. **INSURANCE.** If this Purchase Order requires the Seller to perform services on the City's premises or at any place where the City conducts operations, or requires the Seller to perform professional consulting services, the Seller shall have at a minimum the insurance limits listed hereunder. However, the City reserves the unilateral and sole right to modify said limits when the type of product or services to be provided merit modification of the insurance limits herein; unless insurance limits have been established via other related agreements as referenced in Paragraph 26. General Liability \$1 Million; Products Liability \$1 Million (only if a product is being provided); Professional Liability \$1 Million (only if professional services is being provided); Vehicle Insurance \$1 Million Combined Property & Bodily Injury; and Worker's Compensation \$1Million. In circumstances where insurance is required by the City, the Seller shall provide proof of insurance or insurance certificates with the City of Casselberry listed as an additional named insured prior to performing under this Purchase Order. Noncompliance with this Paragraph shall place the Seller in default and subject this Purchase Order to immediate cancellation.
7. **TIME IS OF THE ESSENCE.** Failure to perform services or deliver goods of the quality and quantity and within the time limit(s) specified by this Purchase Order shall, at the option of the City, relieve it of any obligation to accept and pay for such goods or services, including any undelivered shipments of goods. Upon failure to deliver as specified, the City may buy like goods or services elsewhere and charge the Seller with any increased cost or other loss incurred thereon, pursuant to applicable law, unless defective shipment of goods, or performance of defective services, as applicable, is agreed to by the City in writing. Any failure by the City to exercise its option with respect to any shipment of goods or performance of services shall not be deemed to constitute a waiver with respect to subsequent shipments of goods or performance of services. This provision is not in lieu of, and the City does not waive any remedies provided by law.
8. **QUANTITY.** The quantities of goods or duration of services as indicated on the Purchase Order; must not be exceeded without prior written authorization from the City. Excess quantities may be returned to the Seller at the Seller's expense.
9. **DELIVERY.** All materials must be shipped F.O.B. Destination. The City will not pay freight or expense charges, unless agreed upon at the time of purchase. In the event of the City agreeing to F.O.B. Shipping Point, the Seller must PREPAY SHIPPING CHARGES AND ADD TO INVOICE. Delivery must be effected within the time stated on Purchase Order. The City reserves the right to cancel this order and purchase elsewhere if the Seller fails to meet the delivery date specified on Purchase Order. Deliveries shall be made between 7:30AM and 4:30PM on regular working days unless otherwise stated. Transport deliveries must be unloaded and ready for inspection prior to 4:30PM. In case of default by the Seller, the City may procure the articles or services covered by this order from other sources and hold the Seller responsible for any additional cost occasioned thereby.
10. **HAZARD.** The Seller shall notify the City of any inherent hazard and applicable precautions and protective measures and provide any additional relevant information, including but not limited to Material Data Safety Sheets (MSDS), for the goods or services being purchased herein. Appropriate labels and MSDS's shall be provided for all shipments.
11. **PACKAGING AND CARTING.** No charge will be allowed for packing, boxing or cartage unless agreed upon at the time of purchase, but damage to any goods not packed to insure proper protection to same will be charged to the Seller. The City's Purchase Order number and quantity shipped will be marked or tagged on each package. The City's count will be accepted as final and conclusive on any shipment not accompanied by itemized packing slip. Delay in or non-receipt of packing lists, statements or invoices in the number of copies specified or errors or omissions of any of these will be just cause for withholding payment.
12. **INSPECTION.** The City shall have a reasonable time after delivery or performance within which to inspect the goods or services. Goods rejected will, at the Seller's expense, be returned to the Seller or otherwise disposed of as the Seller shall reasonably request. The cost of inspection of goods or services rightfully rejected shall be charged to the Seller. If reasonable inspection disclosed that part of the goods received or services performed are defective or nonconforming, the City shall have the right to cancel any unshipped portion of the order or unperformed portion of the services. Payment for the goods or services on this Purchase Order prior to inspection shall not constitute acceptance thereof, and is without prejudice to any and all claims that the City may have against the Seller. The making or failure to make any inspection of, or payment for acceptance of, the goods or services, shall in no way impair City's right to reject nonconforming goods or services, recover damages or exercise any other remedy to which City may be entitled; notwithstanding City's knowledge of the nonconformity, its substantiality or the ease of its discovery.
13. **CITY OPTIONS.** The City reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and the Agreement shall be modified in writing accordingly. The City further reserves the right to terminate all or part of the work to be performed pursuant to this Agreement. In such event, the City shall be liable only for materials or work done within the authorization of this Agreement. In no event shall the City be liable for incidental or consequential damages by reason of such termination.
14. **FAILURE TO EXECUTE PURCHASE ORDER.** Failure of the Seller to accept the Purchase Order as specified may be cause for cancellation of the award. In the event that the order is cancelled, the award may then be made to the second lowest responsive and responsible bidder, and such bidder shall fulfill every stipulation embraced herein as if he were the original party to whom the bid award was made, or all bids may be rejected and made void by the City. Failure of the Seller to deliver according to the Purchase Order or to comply with any of the terms and conditions therein may disqualify the Seller from receiving future orders.



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15. **WARRANTY.** With respect to services, the Seller warrants unto the City that the Seller has the competence and abilities to complete the services set forth herein. The Seller will perform the services with due and reasonable diligence consistent with sound professional practices. With respect to goods, the Seller warrants to the City (a) that the goods shall be of the quality specified or of the test grade of their respective kinds if no quality is specified; shall conform to the specifications, drawings, samples and other descriptions contained herein, and to representations made by the Seller or its representatives; be fit for the City's particular purpose; and (b) that at the time the goods are accepted by the City, the goods shall have been produced, sold, delivered, and furnished in compliance with all applicable Federal and State laws, including but not limited to the Consumer Product Safety Act, the Federal Occupational Safety and Health Act, the Fair Employment Practices Act and the Equal Pay Act, and all applicable municipal ordinances, regulations, rules, labor agreements, and working conditions to which the goods are subject, (c) that the goods furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise of any person, corporation, partnership or association. The Seller agrees to provide a full warranty to the City for all materials and services which it provides hereunder for one (1) full year following the date of delivery or completion of services. In the event that the Seller is called to perform warranty work, the Seller will be responsible for all costs incurred in repairing the areas under warranty. If it is determined that new problem areas have appeared which were not areas repaired by the Seller under the Scope of Services set forth herein, the City will be responsible for the costs incurred in repairing the new areas. The manufacturer's warranty on materials received and installed shall extend for the full warranty period.
16. **INDEPENDENT CONTRACTOR.** The Seller shall perform the obligations of this Purchase Order as an independent contractor and under no circumstances shall it be considered as agent or employee of the City.
17. **APPLICABLE LICENSING.** The Seller, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully providing the goods/services set forth herein.
18. **COMPLIANCE WITH LAWS, GUIDELINES, REGULATIONS.** The Seller, at its sole expense shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards, and officers, which are in effect at the time of award or are adopted at any time following the award.
19. **WAIVER.** The failure of the City to enforce any provision of this Agreement or exercise any right or privilege granted to the City hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in full force.
20. **MODIFICATIONS.** Except as provided in Paragraph 26, this Agreement can be modified or rescinded only in writing and if signed by both parties; by their duly authorized agents.
21. **SOVEREIGN IMMUNITY.** Nothing contained in this Purchase Order shall be construed as a waiver of the City's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's potential liability under state or federal law. The provisions of §768.28, Florida Statutes, and any other limitations or restrictions in the City's liability shall be deemed incorporated herein by this reference.
22. **COURT ACTIONS/CHOICE OF LAW.** All legal actions hereunder shall be conducted only in the circuit court in Seminole County or federal court in the Middle District of Florida; except that any final judgment may be enforced in other jurisdictions in any manner provided by law. The parties unequivocally waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court. The laws of the State of Florida shall govern this Agreement and the Agreement will be interpreted according to the laws of Florida.
23. **CITY AS A MUNICIPAL CORPORATION.** Nothing contained herein shall be interpreted to require the City as a municipal corporation to (a) take any action or refrain from taking any action that would be adverse to it as status as a municipal corporation, or (b) to take or refrain from taking any action not specifically required by this Purchase Order.
24. **INDEMNIFICATION.** The Seller agrees to protect, indemnify, save and hold harmless the City, its elected and appointed officials, officers, attorneys, and employees, from and against all losses, costs and expenses and from and against all claims, demands, suits and actions for damages, losses, costs, attorney's fees, expenses and from and against all liability awards, judgements, and decrees of whatsoever nature for any and all damages to property of the City or others of whatsoever nature and for any and all injury to any person (including death) arising out of or resulting from negligence of the Seller, whether by act or omission of the Seller, its agents, servants, employees, or others, or because of or due to the mere existence of this Agreement between the parties, breach of this Purchase Order in the performance of services or the manufacture of goods, from any defect in materials or workmanship, from the failure of the goods to perform to its full capacity as specified in the Purchase Order, specifications of other data, or from the breach of any express or implied warranty.
25. **PATENT INDEMNIFICATION.** The Seller represents and warrants that it has the right to use any and all intellectual property, either by licensure or ownership; that is supplied, indirectly or directly, under this Purchase Order. Further, the Seller agrees that the City is relying on this representation and warranty to issue this Purchase Order. The Seller agrees to hold harmless and to defend the City against any claims of patent or copyright infringement occasioned by the manufacturer, sale or use of material supplied under this Purchase Order and to indemnify the City, and its elected and appointed officials, officers, attorneys, and employees, against any damages occasioned by such claims whether justified or unjustified. The Seller shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device which is the subject of patent rights or copyrights. The Seller shall, at its own expense, hold harmless and defend the City against any claim, suit or proceeding brought against the City which is based upon claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Purchase Order, constitute an infringement of any patent or copyright of the United States. The Seller shall pay all damages and costs awarded against the City.
26. **OTHER RELATED AGREEMENTS.** In conjunction with, or prior to issuing this Purchase Order, the City may require the Seller to execute a fully written "Master Agreement" that is approved by the City Commission, City Manager or Procurement Administrator. The "Master Agreement" shall take precedence over the terms and conditions set forth in this Purchase Order to the extent there are any conflicting terms and conditions. Otherwise, the Agreement and this Purchase Order shall be deemed supplemental to each other.
27. **PUBLIC RECORDS, AUDITING, RECORDS AND INSPECTIONS.** Written documents prepared by either the Seller or the City in furtherance of this Agreement shall constitute a public record. All books, records, and accounts related to the performance of this order shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes, as amended. The Seller shall keep books, records, and accounts of all activities, related to this order, in compliance with generally accepted accounting procedures. If required, books, records, and accounts related to the performance of this order shall be open to inspection during regular business hours by an authorized representative of the City and shall be retained by the Seller, for a period of three (3) years after termination or completion of the services or until the full City audit is complete, whichever comes first. The City shall retain the right to audit the books during the three (3) year retention period. The City also has the right to conduct an audit within sixty (60) days from the effective date of this order to determine whether the Seller has the ability to fulfill its contractual obligations to the satisfaction of the City. The City has the right to terminate this order based upon the findings in this audit without regard to any notice requirement for termination.
28. **FORCE MAJEURE.** Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by force majeure. Force majeure shall include, but not be limited to, hostilities, terrorism, revolution, civil insurrection, strike, epidemic, fire, flood, windstorm, earthquake, explosion, any law, proclamation, regulation, or ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and without the fault or negligence of the party seeking relief under this Section.
29. **PUBLIC ENTITY CRIMES.** As required by § 287.133, Florida Statutes, the Seller warrants that it is not on the convicted contractor list for a public entity crime committed within the past (36) months. The Seller further warrants that it will neither utilize the services of, nor contract with, any supplier, sub-contractor, or consultant in connection with this Agreement for a period of (36) months from the date of being placed on the convicted contractor list.
30. **CONFLICT OF INTEREST.** The Seller warrants he/she has not employed or retained any company or person, other than a bona fide employee working solely for the Seller, to solicit or secure this Agreement. For breach or violation of this Paragraph, the CITY shall have the right to terminate this Agreement immediately, without liability.