

CITY OF STUART PURCHASE ORDER TERMS AND CONDITIONS

By Accepting this Order Vendor Agrees to the Following Terms and Conditions

1. **ACCEPTANCE:** A Purchase Order is given for immediate acceptance by the Vendor as written and will make delivery as specified on the document. The City's offer to and the Vendor's Acknowledgement to the Buyer shall constitute Seller's acceptance of such order including all of the terms and conditions herein set out. In the absence of such acknowledgement, commencement of delivery of the Articles and/or services and acceptance of such deliveries by Buyer shall constitute a firm contract on the terms and conditions hereof. This order is subject to the following terms and conditions and no others unless there is a signed agreement between the parties providing otherwise.
2. **AGREEMENT:** All specifications, drawings, and data submitted to the Vendor with this order, or the solicitation for this order, including any City Agreement, are hereby incorporated herein and made a part thereof. No change in quantities, prices, specifications, terms, or shipping instructions will be allowed except on written authority of the City's Procurement & Contracting Services Division. Any additional or different terms and conditions proposed by Vendor are rejected unless specifically agreed to in writing by both parties.
3. **MODIFICATION:** No modification, amendment or alteration in the terms or conditions contained in this Contract shall be effective unless contained in a written documents executed with the same formality and of equal dignity herewith. This Contract constitutes the entire agreement between the parties, and no prior, or contemporaneous oral agreement shall be binding on either party. If either party fails to enforce a portion or all of this Contract, it shall not constitute a waiver of the same.
4. **INDEMNIFICATION & CERTIFICATIONS:** If any work or services to be supplied hereunder are performed by Vendor on City's premises or on the premises of others for whom City is performing services, Vendor will indemnify and save harmless City against any loss, damage or expense by reason of injuries to persons (including death) or damage to property arising out of the use of said premises by Vendor, its agents, representatives, contractors, subcontractors or employees. Upon request Vendor will furnish Certificate of Insurance showing coverage satisfactory to City for Workmen's Compensation, Public Liability and Property Damage naming the City as an additional insured, as proof of compliance therewith which said certificate shall constitute part of this Purchase Order. .
4. **BONDING:** The City reserves the right to require the Vendor to post a performance and payment bond in the amount of One Hundred percent (100%) of the Purchase Order total, upon award or at such time deemed necessary by the City.
5. **TERMINATION:** The City may, at any time, terminate this order in whole or in part upon a written notice, if deliveries are not made at the time and in the quantities specified or in the event of a breach or failure of any of the other terms or conditions hereof. Upon termination for convenience by the City will assume responsibility for specific contractual or scheduled financial commitments made prior to notice of termination. Any and all services, property, publications, or materials provided during or resulting from the Contract shall become the property of the City. If, however, termination is occasioned by the Vendor's breach of any condition thereof, including breach warranty, or by Vendor's delay, except due to circumstances beyond the Vendor's control and without Vendor's fault or negligence, Vendor shall not be entitled to any claim or costs or to any termination by City, whether for default or otherwise, shall be without prejudice to any claims for damages or other rights of Buyer against Seller. The City shall have the right to audit all elements of any termination claim and Vendor shall make available to the City on request all books, records, and papers relating thereto.
6. **SOVEREIGN IMMUNITY:** Nothing contained herein shall be construed or interpreted as a waiver of the sovereign immunity liability limits established under chapter 768.20 Florida Statutes as amended.
7. **ALLOCATION RISK:** This risk for any damage to or destruction of the goods shall be borne by the Vendor at all times until delivery to the control of the City, which shall be the point at which the City actually receives the goods for use and has accepted such.
8. **DELIVERY:** Time is of the essence of this contract. Vendor is hereby advised that the City may become liable to others if Vendor fails to deliver goods and services of the quality and quantity specified herein, at the times specified herein. In addition to its other remedies for Vendor's failure to make sufficient progress in the work to endanger timely delivery, City may require Vendor ship the goods by any means of transportation City specifies and any additional costs for such transportation services shall be paid by Vendor. In addition to its other remedies for Vendor's failure to deliver on time, City may refuse to accept and pay for any late delivery of any goods or services. Vendor shall bear the risk of loss or damage for all goods until actual receipt and acceptance thereof by City. Goods shall be delivered free of all liens of third parties. Vendor waives all rights in rem or liens in any property arising from its performance under this order. Unless otherwise specified on the face of this Purchase Order, all deliveries to City Hall or Public Safety Facility are for "inside delivery". Vendor shall notify City of deliveries that require special handling and/or assistance for off-loading. Failure to notify City concerning this type of delivery will result in billing to Vendor of any resulting redelivery, storage, or handling charges.
9. **UNAVOIDABLE DELAY:** If the Vendor is delayed in the delivery of goods purchased under the Purchase Order by a cause beyond its control which constitute acts of God, Vendor must immediately upon receiving knowledge of such delay, give written notice to the City and request an extension of time. City shall examine the request and determine if the Vendor is entitled to an extension.
10. **NOTICE OF DEFECTS:** It is expressly agreed that all claims for alleged damages or defective goods, shortage, or other cause shall be deemed waived unless made in writing and sent by City within twenty (20) calendar days after City learns of the alleged defect, damage, shortage, or other cause giving rise to the claim; provided, however, that any defects incapable of discovery shall not be deemed waived by the provisions herein, and, provided further, that this provision shall not be deemed a waiver of any warranties set forth herein or in any modification to this agreement.
11. **REPAIRS:** Defective items at option of City and upon notice to Vendor will be repaired by City or returned to Vendor for repair, in either case, at Vendor's risk and expense. Items which are rejected and returned are not to be replaced without the prior written permission of the City. In the event that return of the equipment to Vendor is not practical Vendor will at City's request, make repairs at City's location.
12. **TRANSPORTATION CHARGES:** Transportation expenses for all shipments shall be prepaid to destination by Vendor. If Purchase Order authorizes addition of freight to invoice, Vendor must attach a copy of the prepaid Freight Bill when rendering invoice. C.O.D. shipments will not be accepted.
13. **QUANTITY:** The specific quantity ordered must be delivered in full and not be changed without the City's consent in writing. Any unauthorized quantity received is subject to City's rejection and will be returned at Seller's expense. No allowances for trade practices will be accepted unless expressly agreed to by City in writing.
14. **PRICE:** Unless otherwise specified prices shall be F.O.B. delivery point; shall be invoiced as specified herein, and shall include all customs duties and applicable taxes. If price is not stated in this Order, Vendor agrees that goods or services shall be billed at price last quoted, or billed at prevailing market price, whichever is lower. Payment will be made only in accordance with this Order.
15. **PACKING:** Vendor will pay all charges for containers, crating, boxing, bundling or dunnage, unless stated herein. The Vendor agrees to assume and pay all extra expense accruing because of improper packing.
16. **ASSIGNMENT:** Vendor shall not delegate, sublet or subcontract any duties nor assign any rights or claims under this Purchase Order without the prior express written consent of the City. Failure to comply with provisions in this paragraph shall affect, at the option of the City, a cancellation of the City's obligation hereunder.
17. **INSPECTION:** The City shall have the right to inspect all goods before accepting delivery or making payment therefore. If rejected, the goods will be returned at Vendor's risk, and all handling and transportation expenses, both ways, will be borne by and assumed by Vendor; refusal acceptance of items which are not in accordance with the instructions, specifications, drawings, or data of Vendor's warranty (expressed or implied) or in conformance with this Agreement. When material has been rejected by City and returned for replacement it is essential that Vendor receive new shipping instructions from City before making the replacement. Inspection and approval for acceptance shall be made by the appropriate User Department. The expense of inspection shall be borne by the City except as to goods which are properly rejected as non-conforming.
18. **WARRANTY:** The Vendor warrants 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 that they will be free from latent and patent defects in materials, workmanship and title, and will be free from such defects in design. In addition, Vendor warrants that said goods and services are suitable for, and will perform in accordance with, the purpose for which they are purchased, fabricated, manufactured and designed or for such other purposes as are expressly specified in this order. All work and services provided shall be done in a workman like manner. The City may return any nonconforming or defective items to the Vendor or require correction or replacement of the item at the time the defect is discovered, all at the Vendor's risk and expense. Acceptance shall not relieve the Vendor of its responsibility.
19. **REGULATORY COMPLIANCE:** Vendor represents and warrants that the goods or services furnished hereunder (including all labels, packages, and containers for said goods) comply with all applicable laws, rules, requisitions, ordinances, codes, standards, rules and regulations in effect under the requirements of Federal, State and local laws, including the Occupational Safety and Health Act as amended, with respect to design, construction, manufacturer or use for their intended purpose of said goods or services. Vendor shall furnish "Material Safety Data Sheets" in compliance with the Florida Right To Know Law, Florida Statutes, Chapter 442.01, et., seq.
20. **ROYALTIES AND PATENTS:** Vendor shall pay all royalties and license fees. Vendor warrants that the use or sale of any of the goods supplied hereunder will not infringe any patents, United States or Foreign. Vendor agrees to defend, protect and save harmless City, its successors, assigns, customers and users of its products, against all suits at law or in equity, and from all damages, expenses, claims and demands for actual or alleged infringement of any patent by reason of the sale or use of the goods supplied hereunder or any part thereof shall defend all suits or claims for infringement of any.
21. **PAYMENT/INVOICING:** Invoice(s) will not be paid until all item(s) on the Purchase Order are received in full, unless prior approval for partial payment. City's policy of payment is Net 30 Days After Receipt of Invoice (ARI). Payment cannot be made until materials, goods or services have been received and accepted by the City in the quality and quantity ordered. Payment will be accomplished by submission of invoice, with Purchase Order Number referenced thereon and mailed to: City of Stuart, Attn: Accounts Payable, 121 S.W. Flagler Avenue, Stuart, FL 34994. Payment in advance of receipt of goods or services by the City of Stuart cannot be made. Penalties will not be paid. The Purchase Order Number shall appear on all invoices, boxes, packages, shipping documents and correspondence, and the list of contents shall be enclosed in each box or package.
22. **LAW GOVERNING:** Jurisdiction and venue for any lawsuit to enforce the terms and obligations of this Contract shall lie exclusively in the County Court or the Circuit Court in and for Martin County, Florida. The validity, interpretation, construction, and effect of this Contract shall be in accordance with and governed by the laws of the State of Florida.
23. **FEDERAL EXCISE TAXES:** The City of Stuart is exempt. Invoice must show gross price, amount of tax, net price. Exemption certificate will be signed upon request. City is exempt from federal excise tax, transportation tax and state sales tax. Do not include these taxes in your invoice. Our tax exemption number is 85-8012740159C-6.
24. **UNIFORM COMMERCIAL CODE:** The Uniform Commercial Code (Chapter 672, Florida Statutes) shall prevail as the basis for contractual obligations between the Vendor and City for any terms and conditions not specifically stated in this Purchase Order.