

## City of Lincoln Terms and Conditions

1. **Separate Invoices Required.** Invoice each Purchase Order separately. Items on this Purchase Order must not be billed with those on other Purchase Orders.
2. **Substitutions.** Substitutions, changes and prices other than specified must be authorized in writing by the Purchasing Agent. No substitutions or changes will be effective without City's written approval.
3. **Contract.** This Purchase Order, its terms and conditions, and any attachments, when accepted by Contractor either in writing or by shipment of all or any portion of the material or the commencement of performance of any portion of the services covered hereunder, constitutes the entire agreement between Contractor and City concerning its subject matter.
4. **Warranty and Quality Inspection.** Contractor warrants that all articles, materials and work furnished shall be of good quality and free from defects, shall conform to drawings and/or specifications, shall be merchantable and fit for the purpose for which purchased, and shall be at all times subject to City's inspection; but neither City's inspection nor failure to inspect shall relieve Contractor of any obligation hereunder. If, in City's sole discretion and opinion, any article, material or work fails in this regard, Contractor shall promptly replace same at Contractor's sole expense. No acceptance or payment by City shall constitute a waiver of the forgoing, and nothing herein shall exclude or limit any warranties provided by law.
5. **Title.** Contractor warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever. Contractor agrees to defend and hold City free and harmless of any patent, copyright or trademark infringement resulting from or arising in connection with the manufacture, sale, or other normal disposition of any article or material furnished hereunder.
6. **Compensation.** Contractor agrees to receive and accept the prices shown as full compensation for furnishing all materials and for all work contemplated and embraced in this order.
7. **Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, agents, employees, and volunteers from and against any claims, demands, actions, losses, liabilities, or suits for damages or injury (including all attorney's fees and other litigation expenses) arising from Contractor's performance or failure to perform under this agreement, and from any activity, work, or thing done, permitted or suffered by Contractor in conjunction with the performance of this contract, and shall further indemnify, defend and hold harmless City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of Contractor hereunder, and against and from all costs, attorney's fees, expenses and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification, except to the extent caused by City's sole negligence or willful misconduct.
8. **Governing Law.** This agreement is governed by the laws of the State of California. Any action to enforce this agreement shall be brought within the Superior Court of California, Placer County. Contractor shall comply with all applicable local, State and Federal laws and regulations, including but not limited to Contractor Licensing Laws, to the extent applicable, OSHA, and wage and hour laws, and ensure its Subcontractor(s), if any, are similarly bound.
9. **Permits or Licenses.** Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the prosecution of the work.
10. **Force Majeure.** Either party shall be absolved from its obligations under this contract when and to the extent that performance is delayed or prevented (and in the City of Lincoln's case when and to the extent that its need for the articles, materials or work to be supplied hereunder is reduced or eliminated) by reason of acts of God, fire, explosion, war, riots, strikes, labor disputes, pandemic or governmental laws, orders or regulations.
11. **Default.** If Contractor or its Subcontractor breaches any provision hereof or becomes insolvent, enter voluntary or involuntary bankruptcy or receivership proceedings or make an assignment to the benefit of creditors, City shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of law) to terminate this contract by written notice to Contractor. City shall then be relieved of all further obligation hereunder except the obligation to pay the reasonable value of Contractor's prior performance (not exceeding the contract rate), and Contractor shall be liable to City for all costs incurred by City in completing or procuring the completion of performance in excess of the contract price herein specified. The City's right to require strict performance of any obligation hereunder shall not be affected by any previous waiver, forbearance or course of dealing. Time is of the essence.
12. **Taxes.** Unless otherwise provided herein or required by law, Contractor assumes exclusive liability for, and shall pay before delinquency, all sales, use, excise and other taxes, charges or contributions of any kind now or hereafter imposed on or with respect to, or measured by the articles sold or material or work furnished hereunder on the wages, salaries or other remunerations paid to persons employed in connection with the performance of this contract.
13. **Independent Contractor.** Contractor is an independent contractor retained by City to perform the work described herein. All personnel employed by Contractor, including Subcontractors and personnel of said Subcontractors, are not and shall not be deemed employees of City.
14. **Attorney's Fees.** In the event either party brings a lawsuit to enforce any provision of this contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.
15. **Assignment.** Contractor shall not assign any of its duties, responsibilities, or obligations of this agreement to any other firm, company, entity, or individual, except with the express written consent of City.
16. **Insurance.** Contractor shall, at its own expense, procure and maintain in full force at all times the City's Insurance Requirements during the term of the Contract. (A copy of the detailed insurance requirement instructions may be provided upon request by the Purchasing Manager.)
17. **Reservation of Rights.** City reserves the right to reject any or all quotes/bids, to waive any informalities, or to terminate the solicitation process at any time, if deemed to be in the best interest of the City.
18. **Paragraph Headings.** Paragraph headings are for the convenience of the parties only and shall not be considered in construing or interpreting this Contract.

**NAME/COMPANY/ADDRESS**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Dated