

PURCHASE ORDER TERMS AND CONDITIONS

1.0 GENERAL

- A. As used herein, "Metro" is the buyer and "Seller" is the vendor designated on the face of this Purchase Order; "Item" means all articles, materials, supplies, equipment, work, and services furnished hereunder, and "Furnished" means an Item furnished, delivered or performed by Seller.
- B. This Purchase Order, together with documents incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written, and when properly signed by Metro and bearing an Order number, is the only authorization for charges to Metro's account.
- C. Seller shall not exceed the total Order amount.
- D. Metro shall not be liable for any charges in excess of the total Order amount unless Metro has executed a prior change or amendment.
- E. The following document is incorporated by reference: Regulatory Requirements Pro Form 39 found at http://www.metro.net/ebb/contract_templates/2-008_039_Regulatory_Requirements.pdf and those listed on the face of the Order, and are a part of this Order the same as if fully set forth herein.

2.0 PACKING AND SHIPPING

Each container, and accompanying packing lists, must show this Order number. No charge shall be made for packing, delivery, or similar costs unless authorized by this Order. All Items shall be suitably prepared for shipment to secure the lowest transportation and insurance rates, and to meet carrier requirements. Seller shall follow all routing and shipping instructions shown on the face of this Order and will be liable for all excess charges resulting from any deviation.

3.0 INSPECTION

Notwithstanding any prior payment or inspection, all Items are subject to final inspection and acceptance at destination, and Metro may reject and return, at Seller's expense, all Items not conforming to applicable drawings, specifications, and samples. Seller shall be responsible for all Items until Metro's acceptance, and shall bear all risks as to rejected Items.

4.0 PAYMENTS

Metro will pay Seller for the Items at the Order prices upon submission of proper invoices or vouchers. Seller shall provide a separate invoice for each shipment unless otherwise specified in the Order. No invoice shall be issued prior to shipment of the Items. Payment due date, including discount period, will be computed from date of receipt of Items or date of correct invoice (whichever is later). Discounts will be taken on the full amount of the invoice, unless freight or other charges are itemized.

5.0 INTEREST

Notwithstanding any provisions to the contrary stated on packing lists, invoices, or other documents, Metro will not pay any interest charges for late payment of invoices.

6.0 CHANGES

Metro may, at any time, by written notice, and without notice to the sureties or assignees, make changes within the general scope of this Order in: (a) part numbers, drawings, designs, or specifications; (b) method of shipping or packing; (c) place of delivery; (d) delivery schedule; or (e) quantities. If any such change increases or decreases the cost, or the time required for performance of this Order, proper adjustments shall be made in the total Order amount, prices or delivery schedule, and Seller shall Furnish the Item as changed. No claim by Seller for an adjustment will be valid unless received by Metro within 30 days after date of such change, or such longer period authorized by Metro in writing.

7.0 WARRANTY

Seller warrants that all Items Furnished hereunder will be free from defects in design, material, and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions, and will comply with all applicable laws and regulations. These warranties shall be in addition to any warranties available under law and any standard Seller or subcontractor warranty.

8.0 TERMINATION FOR CONVENIENCE OR DEFAULT

Metro may terminate this Order, in whole or in part, at any time by written notice for Metro's convenience or Seller's default. The notice shall state the extent and effective date of the termination. Upon receipt, Seller shall, to the extent directed by Metro, stop work under this Order. If this Order is terminated for convenience, Seller shall be paid in accordance with the terms of the Order for Items Furnished and accepted. The institution of any proceedings by or against Seller in bankruptcy or insolvency or for the appointments of a receiver or trustee or an assignment for the benefit of creditors will be an event of default and Metro may terminate this Order without further cost or liability.

9.0 TAX

Except as otherwise expressly provided herein, the Order amount includes all applicable federal, state, and local sale/use tax (including fees and charges).

10.0 DELIVERY

Seller shall deliver the Items within the time specified in this Order. Seller shall immediately give Metro notice of an actual or potential event, including a labor dispute delaying or threatening to delay the timely performance of this Order. Time extensions for unforeseeable delays beyond the Seller's reasonable control are subject to the approval of Metro. Metro reserves the right to terminate this Order for default if not completed within the time and in accordance with the terms specified.

11.0 ADVERTISING AND/OR PUBLICITY AUTHORIZATION

Seller shall not, without prior written consent of Metro, publish, assert, or imply that Metro endorses the Seller's product or service.

12.0 RECORDS AND AUDIT

Metro or its duly authorized representative shall, until the expiration of three years after final payment of this Purchase Order, have access to and the right to examine any books, documents, papers, and records of Seller involving transactions related to this Purchase Order. Seller shall include a like provision in all subcontracts issued hereunder.

13.0 INDEPENDENT CONTRACTOR

In the Furnishing of the Items hereunder, Seller's relationship to Metro shall be that of an independent Contractor and not an employee, agent, or other representative of Metro.

14.0 14. INDEMNIFICATION

Seller shall indemnify, defend and hold Metro, and its agents, officers and employees, free and harmless from and against any and all claims, damages, costs, fines, penalties, liabilities, or obligations of whatsoever kind, including damage or destruction of property and injury or death of persons, resulting from or connected with Seller's performance hereunder, or any default by Seller or breach of its obligations hereunder, or Seller's violation of or failure to comply with any applicable law, or regulation.

15.0 GOVERNING LAW AND JURISDICTION

This Contract has been negotiated between Metro and the Contractor and shall be subject to the laws of the State of California. By entering into this Contract, the Contractor consents and submits to the jurisdiction of the Courts of the State of California, County of Los Angeles, over any action at law, suit in equity, and/or other proceeding that may arise out of this Contract.

16.0 BUY BACK

At the request of the Metro the vendor awarded a contract shall buy back up to fifty percent of the Metro's inventory on hand (commercially available shelf stock) that was purchased from the vendor under the contract. The vendor shall buy back the inventory at the original purchase price paid by the Metro under the contract less a restocking charge not to exceed 15 percent within one year from date of delivery.

17.0 OVERSHIPMENTS

All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in this Purchase Order. Unauthorized overshipments and early shipments may be returned at Metro's option at Seller's expense. Seller shall be liable for all storage/handling charges incurred as a result of overshipments and early shipments.

