

PORT OF SEATTLE PURCHASING GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE:** THIS ORDER IS THE PORT OF SEATTLE'S (PORT) OFFER TO VENDOR. ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS STATED HEREIN. ALL ADDITIONAL OR DIFFERENT TERMS PROPOSED BY VENDOR ARE OBJECTED TO AND ARE HEREBY REJECTED, UNLESS OTHERWISE AGREED TO IN WRITING BY THE PORT PURCHASING REPRESENTATIVE. THE TERMS STATED IN THIS PURCHASE ORDER SHALL BECOME A BINDING CONTRACT ON THE TERMS SET FORTH HEREIN WHEN IT IS ACCEPTED BY VENDOR'S RETURN TO THE PORT OF A SIGNED ACKNOWLEDGMENT OR COMMENCEMENT BY VENDOR OF WORK ON, OR SHIPMENT OF, ANY OF THE GOODS OR SERVICES ORDERED HEREBY.
2. **QUALITY STANDARDS:** Special brands, when named, are intended to describe the standard of quality, performance, or use desired. Unless clearly stated otherwise. Vendor's proposed "equal" may be considered by the Port, provided that Vendor specifies the brand, model, and provides the necessary descriptive literature sufficient to enable the Port to evaluate the proposed equal. If the Port elects to purchase a brand represented by Vendor to be an equal, the Port's acceptance of the item will be conditioned on the Port's inspection and testing after receipt. If, in the sole judgment of the Port, the item is determined not to be an equal, the item shall be returned at Vendor's expense and the substitution will be disallowed and/or the contract canceled without any liability whatsoever to the Port.
3. **CHANGES:** No alteration by Vendor of the terms, conditions, delivery, price, quality, quantities, or specifications of either the goods or service for this order will be effective without the prior written consent of the Port. Unauthorized substitutions will be made entirely at Vendor's risk and at the Port's option, may be returned without prior authorization at Vendor's expense.

The Port may, at any time, by written notice to Vendor, make changes in any of the following: specifications, designs, drawings, samples, or other descriptions to which the goods or service must conform; methods of shipment or packing; or time or place of delivery. Within fifteen (15) days after the Port gives such notice, Vendor shall notify the Port in writing of any increase or decrease in the cost of, or the time required for performance of, any part of this order caused by any such change. An equitable adjustment, if any, in the price or delivery schedule, or both, shall be agreed upon in a written amendment to this order signed by the Port. Nothing in this paragraph, including any disagreement with the Port as to the equitable adjustment, shall excuse Vendor from proceeding without delay to perform this order as changed.
4. **PRICES:** Vendor warrants that prices of the goods or services charged to the Port do not exceed those charged by Vendor to any other customer purchasing the same goods or services in like or similar quantities.
5. **AUDIT AND ACCESS TO RECORDS:** The Vendor shall maintain books, ledgers, records, documents or other evidence relating to the costs and/or performance of the Agreement ("records") on a generally recognized accounting basis and to such extent and in such detail as will properly reflect and fully support all fees, costs and charges.

With regard to the records, Vendor shall do and require its employees, agents and subcontractors to do the following:

 - a. Make such records open to inspection or audit by representatives of the Port during the term of this Agreement and for a period of not less than three years after the expiration of this Agreement.
 - b. Retain such records for a period of not less than three years after the expiration of this Agreement; provided, however, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated, such records shall be retained until the later of (a) resolution or completion of litigation, claim or audit; or (b) six years after the date of termination of this Agreement.
 - c. Provide adequate facilities reasonably acceptable to representatives of the Port conducting the audit so that such representatives can perform the audit during normal business hours.

Make a good faith effort to cooperate with representatives of the Port conducting the audit. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the Port's representatives. If the Vendor cannot make at least some of the relevant records available for inspection within seven (7) days of the Port's written request, cooperation will necessarily entail providing the Port with a reasonable explanation for the delay in production of records.
6. **HANDLING:** No charges will be paid by the Port for handling, which includes, but is not limited to packing, wrapping, bags, containers, reels, etc., unless otherwise specified herein.
7. **DELIVERY:** TIME IS OF THE ESSENCE AND THIS ORDER IS SUBJECT TO CANCELLATION BY THE PORT FOR VENDOR'S FAILURE TO DELIVER ON TIME. For any exception to the delivery date specified in this order, Vendor shall give prior written notification and obtain written approval therefore from the Port. The acceptance by the Port of later performance with or without objection or reservation shall neither waive the Port's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor.
8. **SHIPPING INSTRUCTIONS:** Unless otherwise specified in this order, all goods are to be shipped prepaid, FOB Destination. When shipping addresses specify room number, Vendor shall make such delivery thereto without additional charge. If the Port grants specific authorization to ship goods FOB Shipping Point, Vendor agrees to prepay all shipping charges, route the goods by cheapest common carrier, and bill the Port as a separate item on the invoice for said charges, less federal transportation tax. It is also agreed that the Port reserves the right, at its sole option, to refuse COD shipments.
9. **IDENTIFICATION:** The purchase order number shall appear on all invoices, packing lists, packages, shipping notices, instruction manuals and other written documents relating to this order. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein.
10. **RISK OF LOSS:** Regardless of the FOB Point specified above, Vendor agrees to bear all risk of loss, injury or destruction of goods and services ordered herein which occur prior to full system acceptance by the Port, and such loss, injury, or destruction shall not release Vendor from any obligation hereunder.
11. **FORCE MAJEURE:** Vendor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages PROVIDED VENDOR NOTIFIES THE PURCHASING AGENT, IMMEDIATELY IN WRITING OF SUCH PENDING OR ACTUAL DELAY. Normally, in the event of any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.
12. **REJECTION:** All goods and any services purchased in this order are subject to approval by the Port. Rejection of goods or services, resulting because of nonconformity to the terms, conditions, and specifications of this order, whether held by the Port or returned, will be a Vendor's risk and expense.
13. **PAYMENT:** A separate invoice is required for each order. Vendor shall invoice only for goods that have been delivered or services that have been performed. Unless otherwise agreed to, payment shall be net 30 days following acceptance of the goods or services, which is later. All payments to Vendor shall be remitted by mail.
14. **TAXES:** Unless otherwise indicated in this order, the Port agrees to pay all applicable State of Washington sales or use tax. The Port is exempt from Federal excise taxes and an exemption certificate will be furnished upon request. The price for goods and services hereunder shall include all other applicable federal, state and local taxes, except those for which an exemption may be claimed by the Port.
15. **CASH DISCOUNT:** If the Port is entitled to a cash discount, the period for computation of such discount will commence on the date of acceptance of the goods or services, or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage to the goods, or non-performance of services, the cash discount period shall commence on the date final approval for payment is authorized by the Port. If a discount is made part of the contract, but the invoice does not reflect the existence of a cash discount, the Port is entitled to a cash discount with the period commencing on the date it is determined by the Port that a cash discount applies.
16. **INSTALLATION:** If this order requires Vendor to install the goods, such installation services shall be performed in a good and workmanlike manner, and the premises shall be left in a clean condition. Vendor agrees to either repair or compensate the Port, at the Port's option, for any damage done to Port property in connection with the installation.
17. **WARRANTIES:** Vendor warrants that all goods and services furnished under this order are new unless otherwise indicated in this order, conform strictly to the specifications herein, are merchantable, of good workmanship, free from defect, are fit for the intended purpose for which such goods and services are ordinarily employed and if a particular purpose is stated in a Supplemental Condition, the goods are then warranted as fit for that particular purpose. Vendor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacture, production, sale, shipment, installation or use of any of the goods. Vendor's warranties (any more favorable warranties, service policies, or similar undertakings of Vendor) shall survive delivery, inspection, and acceptance of the goods or services.

- 18. LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all goods delivered, or services performed herein are free and clear of all liens, claims, or encumbrances of any kind.
- 19. INDEMNIFICATION AND HOLD HARMLESS:**
- A. Vendor shall defend, indemnify, and hold harmless the Port, its Commissioners, officers, employees, and agents (hereafter, collectively, the "Port") from all liability, claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of or related to the fulfillment of this order (including, without limitation, product liability claims by persons who may subsequently purchase the goods or services from the Port, claims for patent, trademark, copyright, trade or franchising infringement, and from all claims arising from Vendors failure to comply with paragraphs 24, 25, 26 and 27 of this order); Provided, however, if and to the extent that this order is construed to be relative to the construction, alternation, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the Port, and (2) Vendor, its agents, or its employees, it is expressly agreed that Vendor's obligations of indemnity under this paragraph shall be effective only to the extent of Vendor's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This paragraph shall not be construed so as to require Vendor to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.
- B. In any and all claims against the Port, by any employee of Vendor, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of subparagraph "A" above shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for Vendor, or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington)., it being clearly agreed and understood by the parties hereto that Vendor expressly waives any immunity Vendor might have had under such laws. By executing the order Vendor acknowledges that the foregoing waiver has been mutually negotiated by the parties.
- C. Vendor shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's right under this paragraph, whether or not suit was instituted.
- 20. TERMINATION/CANCELLATION:**
- A. **TERMINATION FOR CONVENIENCE.** The Port may terminate this order, in whole or in part, for the Port's convenience at any time and for any reason by giving a written termination notice to Vendor and the Port's payment to Vendor of termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Vendor prior to the date of termination, for orderly phase out of performance as requested by the Port in order to minimize the costs of the termination; and (2) a reasonable profit for such work performed; HOWEVER THE PORT SHALL NOT BE LIABLE TO VENDOR FOR ANY ANTICIPATED PROFITS ON THE TERMINATED PORTION OF THE ORDER, OR CLAIMS OF UNABSORBED OVERHEAD OR OTHER FIXED COSTS. IN NO EVENT SHALL THE PORT BECOME LIABLE TO PAY ANY SUM IN EXCESS OF THE PRICE OF THIS ORDER FOR THE TERMINATED GOODS OR SERVICES.
- B. **CANCELLATION FOR BREACH.** Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of Vendor or its Vendors, services, or subcontractors, the Port shall be entitled, by written or oral notice the Vendor, to cancel the whole or any part of this order for breach of any of the terms of this order, and to have all other rights against Vendor by reason of Vendor's breach as provided by law.
- A breach shall mean any one or more of the following events (i) Vendor fails to make delivery of any of the goods or perform the service by the date required or by such later date as may be agreed to in a written amendment to the order signed by the Port; (ii) Vendor breaches any warranty, or fails to perform or comply with any term or agreement, in the order; (iii) Vendor makes any general assignment for the benefit of creditors; (iv) in the Port's sole opinion, Vendor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (v) Vendor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief from debtors; or (vi) any receiver, trustee or similar official is appointed for Vendor or any of Vendor property.
- If it be found that Vendor was not in breach, the rights and obligations of the parties shall be the same as if a Notice of Termination had been issued pursuant to subparagraph 19.A.
- 21. REMEDIES:** Any decisions by the Port to pursue any remedy provided for in paragraph 19.A and 19.B herein shall not be construed to bar the Port from the pursuit of any other remedy provided by law or equity in the case of similar, different or subsequent breaches of this order.
- 22. WAIVER:** Failure at any time of the Port to enforce any provision of this order shall not constitute a waiver of such provision or prejudice the right of the Port to enforce such provision at any subsequent time. No term or condition of this order shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.
- 23. PARTIAL INVALIDITY:** If any provision of this order is or becomes void or unenforceable by force or operation of law, all other provisions hereof shall remain valid and enforceable.
- 24. COMPLIANCE WITH ALL LAWS:** Vendor shall comply with all applicable federal, state and local laws, statutes, rules, regulations ordinances, and orders.
- 25. NON-DISCRIMINATION POLICY:** It is the basic policy of the Port of Seattle to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. The equal opportunity principles in employment and subcontracting described in this policy shall apply to the Port's employees, customers, consultants, contractors, subcontractors, and suppliers to the extent possible as required by law. Submission of a properly executed contract constitutes a contractual commitment to the terms of this policy.
- 26. HAZARDOUS MATERIALS:** If this order covers goods which include hazardous chemicals, Vendor shall, at the time of product delivery, provide the Port with copies of Material Safety Data Sheets ("MSDS") for such chemicals. These sheets shall be in the form then required by applicable law or regulation (see WAC 296-62-05413). This requirement shall be in addition to whatever other requirements are imposed by law or regulation.
- 27. PUBLIC DISCLOSURE:** As a public agency, the Port is subject to public disclosure laws. Vendor agrees that pursuant to the Washington State Public Disclosure Act, Chapter 42.56 of the Revised Code of Washington, the Port may be required to disclose information provided by Vendor. The Port shall promptly notify Vendor of any requests for public disclosure of documents and information pursuant to the law. Vendor shall be responsible for and bear the costs of taking legal action to prevent disclosure of such documents and information. In no event shall the Port be liable to Vendor for disclosure of Vendor's documents and information it deems disclosable under the law.
- 28. GOVERNING LAW/VENUE:** The laws of the State of Washington shall govern disputes concerning this order and the venue of any action relating hereto shall be in the Superior Court for the County of King, State of Washington.
- 29. ANTITRUST ASSIGNMENT CLAUSE:** Vendor and the Port recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Port. Vendor therefore hereby assigns to the Port any and all claims for such overcharges as to goods purchased in connection with this order, except as to overcharges which result from antitrust violations commencing after the price is established under this order and which are not passed on to the Port under an escalation clause.
- 30. SUBCONTRACTING/ASSIGNMENT:** Vendor shall not subcontract or assign its obligations under this order without the prior written consent of the Port.
- 31. PORT'S AGENT:** The Port's agent, who shall be Vendors sole contact with the Port for all matters pertaining to this order shall be the Port's Purchasing Agent.
- 32. WASHINGTON STATE INTERLOCAL COOPERATIVE ACT:** Pursuant to the Washington State Interlocal Cooperative Act RCW 39.34.080, other governmental agencies contracting with the Port may purchase goods and services on this solicitation or contract in accordance with terms and prices indicated therein
- 33. ENTIRE AGREEMENT:** This order constitutes the entire understanding between the Port and Vendor with respect to the purchase and sale of the goods and any services and supersedes all previous negotiations, commitments and writings with respect thereto.