

PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions.

County – Board of Supervisors of Roanoke County, Virginia (Includes any Agency for which Roanoke County is a fiscal agent, and sometimes also referred to as “Buyer”).

Items – All materials, goods, components, end products, data (including electronic data), work, and/or services described in and/or called for by the Purchase Order.

Purchase Order, Order or Service Contract – The Purchase Order, Service Contract or other document (which can include an electronic document) issued by the County to obtain the items identified in such document.

Vendor – The person or entity to which the Purchase Order is directed and who will provide the items identified therein (sometimes also referred to as Seller).

2. Invoicing.

All invoices shall be sent to the Buyer's Contact and Address listed on the Purchase Order **OR** Contact Administrator and Address determined during contract negotiation.

3. Termination for Default and Convenience.

- A.** If Vendor refuses or fails to perform any of the terms of this Purchase Order, including but not limited to, failure to render the services, perform the work or provide materials described herein, the County may, by written notice to Vendor, terminate this Purchase Order, in whole or in part. In addition to any right to terminate, the County may enforce any remedy available at law or in equity in connection with such default, and Vendor shall be liable for all damages to the County resulting from Vendor's default. The County further reserves the right to obtain immediately such items from other vendors in the event of Vendor's default. Furthermore, the County may reject any items that do not comply with the requirements of this Purchase Order and any such items may be returned to Vendor at Vendor's sole cost and risk of loss.
- B.** The County may also terminate this Purchase Order for convenience by giving written notice to Vendor at least 15 days prior to the effective date of cancellation. Any such termination shall be without liability of any type to the County except for payment for items delivered or completed services rendered to and accepted by the County.
- C.** The County may exercise the County's right of setoff as to any amounts the County may owe the Vendor. County may require Vendor to transfer title and deliver to the County any or all items produced or procured by Vendor for performance of the work terminated.

4. Changes By Vendor.

No changes, deletions or additions may be made by the Vendor to this Purchase Order, including the terms and conditions, without the express written approval of the County.

5. Changes By County.

At any time the County may by written notice to Vendor make changes to the scope of this Purchase Order in any one or more of the following: (1) drawings, designs or specifications; (2) method of shipping/packaging; (3) place of inspection, delivery or acceptance; and/or (4) quantity. Vendor shall proceed immediately to perform this Purchase Order as changed. If any such change causes a material increase or decrease in the cost of the items, or the time required for performance of any part of the work required by this Purchase Order, the County and Vendor will agree upon an equitable adjustment in the price and/or delivery schedule. To qualify for adjustment consideration, Vendor must send written notice to the County of Vendor's intent to file a claim under this clause within 14 calendar days from the date of receipt by Vendor of such written notice of change. Vendor shall proceed with the changed Purchase Order pending resolution of the claim for adjustment. The County may act on any such claim at any time prior to final payment under this Purchase Order. Nothing in this clause shall excuse Vendor from proceeding with this Purchase Order as changed.

6. Payment.

The price(s) to be paid the Vendor shall be the current price(s) as stated in this Purchase Order. Unless otherwise stated in this Purchase Order, the price(s) shall include all applicable taxes and other charges such as packaging, shipping, duties, customs, tariffs and government imposed surcharges. All personal property taxes assessable upon the items prior to the receipt and acceptance by the County of such items shall be borne by Vendor. The County will not be responsible for or pay for any items that may be ordered or received without an authorized Purchase Order number. Except for subscription services, the County shall not pay for any goods or services until they have been delivered or rendered.

7. Appropriations

It is understood and agreed that this contract shall be subject to annual appropriations by the County of Roanoke, Board of Supervisors. Should the Board fail to appropriate funds for this contract, the contract shall be terminated when existing funds are exhausted. The supplier shall not be entitled to seek redress from the County of Roanoke, Virginia should the Board of Supervisors fail to make annual appropriations for this contract.

8. Sales Tax Exemption.

The County is exempt from payment of State and/or Federal Sales and Use Tax on all tangible personal property purchased or leased for the County's use or consumption. Upon notification, the County will furnish a certificate of exemption.

9. Free on Board (F.O.B.), Risk of Loss, and Title.

All prices are to be quoted F.O.B. Destination. The risk of loss from any casualty, regardless of cause, shall be on the Vendor until the items have been delivered to the

place specified in the Purchase Order and accepted by the County. The risk of loss shall also be on the Vendor during the return of any items to the Vendor. Title to the items shall pass to the County upon receipt and acceptance of such items by the County at the designated destination

10. Inspection.

The County shall have a reasonable time after receipt of items and before payment to inspect all items for conformity with this Purchase Order. If all or some of the items delivered to the County do not fully conform to the provisions herein, the County shall have the right to reject and return such nonconforming items.

11. Insurance.

Vendor, and any of its subcontractors, shall, at its sole expense, obtain and maintain during the term of this Purchase Order the insurance policies and/or bonds, if any, that may be required by this Purchase Order.

12. Warranty.

Vendor hereby warrants that all items and work covered by this Purchase Order shall conform to the specifications, drawings, samples, or other description furnished by the County and shall be merchantable, of good material and workmanship, and free from any defects. Vendor also warrants good title to and freedom from any encumbrances for all items and warrants against any infringement. Acceptance by Vendor may not exclude any warranty. If this Purchase Order is for services, Vendor warrants that the services shall be completed in a professional, good and workmanlike manner, with the degree of skill and care that is required by like vendors in Virginia. Further, Vendor warrants that such services shall be completed in accordance with the applicable requirements of this Purchase Order and shall be correct and appropriate for the purposes contemplated in this Purchase Order. Such warranties are in addition to any of the Vendor's other guarantees or obligations under this Purchase Order, or those that may arise by statute or regulation. Vendor agrees that Vendor shall repair or replace, at Vendor's sole expense, and to the satisfaction of the County, any items, work, material, equipment, or part of the item that is found by the County to be defective or not in accordance with the terms of this Purchase Order.

13. Independent Contractor.

The relationship between Vendor and the County is a contractual relationship. Vendor shall, at all times, maintain its status as an independent contractor. County and Vendor acknowledge that neither is an agent, partner or employee of the other for any purpose. Vendor shall be responsible for causing all required insurance, workers' compensation and unemployment insurance to be provided for itself and all its employees and subcontractors. Vendor will be responsible for all actions and omissions of any of its subcontractors, and certifies that all subcontractors are properly licensed.

14. Nondiscrimination.

Vendor shall comply with the nondiscrimination provisions of Section 2.2-4311 of the Code of Virginia, which are incorporated herein by reference.

15. Drug-Free Workplace.

Vendor shall comply with the drug-free workplace provisions of Section 2.2-4312 of the Code of Virginia, which are incorporated herein by reference.

16. Faith-Based Organizations.

Pursuant to the Code of Virginia, Section 2.2-4343.1, be advised that the County does not discriminate against faith-based organizations.

17. Assignment.

Vendor may not assign or transfer this Purchase Order in whole or in part except with the prior written consent of the County, which consent shall not be unreasonably withheld.

18. Successors and Assigns.

The terms, conditions, provisions, and undertakings of this Purchase Order shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

19. Indemnification.

Vendor agrees to indemnify and hold harmless the County and its officers, governing body, employees, and agents against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, arising out of or caused by Vendor's or its employees, agents, or subcontractors' actions, activities, or omissions, arising in any way out of or resulting from any of the work, services, or items to be provided under this Purchase Order. In the event that suit is brought against the County, its officers, governing body, and/or its employees (either independently or jointly with the Vendor), arising out of this Purchase Order and/or the goods and/or services that are the subject of this Purchase Order, the Vendor shall defend the County, its officers and employees, in any such suit at no cost to them. In the event that final judgment is obtained against the County, its officers and/or its employees, either independently or jointly with the supplier, then the Vendor shall pay such judgment, including costs and attorneys' fees, if any, and hold the County, its officers and employees, harmless therefrom.

20. Governing Law and Forum Selection.

By virtue of entering into this Purchase Order, Vendor submits itself to a court of competent jurisdiction in Roanoke County, Virginia, and further agrees that this Purchase Order is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.

21. Acceptance – Entire Agreement - Modification.

Acceptance of this Purchase Order shall be limited to the terms and conditions herein or as modified pursuant to the procedure set forth herein. To the extent that any terms and conditions in the Vendor's acknowledgment, bid, or other forms conflict with those contained in this Purchase Order, those contained in the Purchase Order shall prevail. This Purchase Order shall be deemed accepted and agreed to upon the commencement of performance by the Vendor. County rejects any additional and/or inconsistent terms and conditions offered by Vendor at any time, irrespective of County's acceptance of or payment for Vendor's items. The provisions of this Purchase Order, including these terms and conditions, constitute the entire agreement between the parties and no change to or modification of this Purchase Order shall be binding upon County unless signed by an authorized representative of County's purchasing office. Vendor's shipment or provision of the items and/or performance of services as called for in this Purchase Order shall constitute acceptance by Vendor of this Purchase Order with its terms and conditions.