

## PURCHASE ORDER (PO) TERMS AND CONDITIONS

City Hall  
300 Monroe Avenue NW  
Grand Rapids, MI 49503

If this PO is issued under a formal executed written contract, the terms and conditions of the contract shall govern. Please direct all questions or concerns to City of Grand Rapids Procurement Services Division at (616) 456-3173. (Created: May 4, 2021)

1. **DEFINITIONS:** "BUYER" means City of Grand Rapids ("CITY"), "SELLER" means "(VENDOR)" that sells goods and/or services to BUYER. These words may be used interchangeably throughout this agreement.
2. **Acknowledgement:** This PO as executed by the City constitutes the entire agreement between the City and Vendor. If this PO is a result of Seller's response to a solicitation or contract referenced on the face of the PO, then the terms and conditions of any such referenced solicitation or contract shall take precedence in any direct conflict between these terms and those of the referenced solicitation or contract, but only to the extent of the direct conflict. Terms and conditions contained in any other acknowledgement, invoice, correspondence, quotations, specifications, discussions, document, or communication for Seller shall be of no force and effect and are expressly rejected, notwithstanding the City's subsequent acceptance, payment, or performance.
3. **GENERAL CONDITIONS:** In addition to any terms set forth of the face of the PO, the following conditions shall apply: A. Vendor's acceptance of this PO is its acceptance of the Terms contained herein. If this PO or any of the Terms are not acceptable to Vendor, then Vendor shall contact the City's Purchasing Agent immediately. Vendor's failure to deliver or perform pursuant to an awarded PO or to comply with any of the Terms contained herein may disqualify it from receiving future awards. B. No modifications to this PO shall be binding upon the City unless approved in writing by the City's Authorized Agent. C. Any assignment of this PO, performance of work hereunder, in whole or in part, or monies due hereunder, shall be void and of no effect unless consented to in writing by the City's Purchasing Agent. D. This PO number must appear on all invoices, packing slips, shipping notices, freight bills, and correspondence concerning this order.
4. **Delivery/Risk of Loss/Packaging:** Prices stated are Free on Board ("FOB") Destination, freight prepaid and allowed, to shipping location specified on PO unless another FOB method is agreed upon in writing. Materials/supplies shall be properly packaged and marked with the PO number. The City will not pay freight or express charges, except by previous written agreement. If a specific purchase is negotiated on the basis of F.O.B. Shipping Point, Vendor is to prepay shipping charges and add the overage to the invoice. Regardless of the F.O.B. designation, Vendor agrees to bear all risk of loss, injury, or destruction of goods or materials herein which may for any reason occur prior to delivery to the City. No such loss, injury, or destruction shall release Vendor from obligations hereunder. Time is of the essence with respect to this PO. The City reserves the right to cancel this PO and purchase goods or services elsewhere if Vendor fails to meet the delivery date specified on the PO. In the case of default by Vendor, the City may procure the goods or services covered by this PO from other sources and hold Vendor responsible for any additional cost occasioned thereby. Acceptance by the City of late delivery will not constitute a waiver of a later claim for damages. All containers, reels, or pallets shipped with supplies by SELLER are to remain the property of BUYER unless otherwise agreed in writing.
5. **DELAYS/CANCELLATIONS:** If delivery/completion dates cannot be met, SELLER shall inform BUYER immediately. However, such notice shall not constitute a change to the delivery/completion terms of the PO unless BUYER modifies the PO in writing. If any item is not received or if any element of the work is not completed by the date specified, BUYER, at BUYER's option and without prior notice to SELLER, may either approve a revised date or may cancel the PO and obtain such goods or work elsewhere. SELLER also shall be liable to BUYER for compensatory damages arising from such failure to timely perform.
6. **DELIVERIES:** Deliveries shall be made to the address listed on the face of the po between the hours of 8:00 AM and 3:30 PM, Monday thru Friday, except City holidays, unless otherwise stated on this PO. Packages of items must be clearly marked with Vendor's name and the City's PO number. Charges are not allowed for boxing and crating unless previously agreed upon in writing. Vendor warrants that any materials ordered under this PO that are classified by the U.S. Department of Transportation as hazardous materials for the purposes of transportation will be marked, labeled, and shipped in accordance with applicable laws.
7. **INSPECTION AND ACCEPTANCE:** All goods or services furnished pursuant to this PO shall be as specified and are subject to the City's inspection and acceptance within a reasonable time after delivery to or performance of behalf of the City. The City's signature for receipt of goods does not constitute acceptance. Variations or substitutions in goods or services from those specified in this PO shall not be made without written authority from the City's Purchasing Agent. Nonconforming goods will be rejected and returned at the Vendor's sole risk and expense. SELLER shall bear risk of loss until delivery and final acceptance of all items or completion of all work. No inspection or test made prior to final acceptance shall relieve SELLER from responsibility for defects or other failure to meet the requirements of this order. Rejected materials will be returned to SELLER at SELLER's risk and expense. "Final acceptance" for services shall be when all work has been completed, and accepted by BUYER, and BUYER has authorized final payment to SELLER. If agreed upon terms and/or specifications are not met, in the City's sole determination, Vendor shall arrange for the return of the goods at Vendor's sole expense and risk within thirty (30) calendar days of notification by the City. The non-conforming goods and/or services shall at all times remain the property of the Vendor. If the goods are not collected by the Vendor or its agent after thirty (30) days, the goods and/or services will be deemed a donation to the City unless prior arrangements are made. If, within a reasonable time, use of the goods reveals defects not apparent upon receipt or initial inspection and acceptance, the City shall be entitled to revoke its acceptance and reject such goods and hold them at Vendor's risk and expense for storage and other charges. Neither the acknowledgement of the receipt of the goods nor payment shall constitute a waiver of this provision.
8. **Payment terms shall be Net thirty (30 days from the receipt of an undisputed invoice) unless otherwise stated. Payment will be made in accordance with the City's current policies and procedures following receipt and acceptance of the goods or services in the proper quantity and quality.**
9. **VARIATION IN QUANTITY:** No variation in the quantity of any item purchased will be accepted unless such variation is otherwise permitted by the terms of the PO or by amendment to the PO.
10. **CHANGES:** No substitutions, quantity changes, price increases, etc shall be made without a written change order to the PO.
11. **WARRANTY:** SELLER warrants that delivered supplies or equipment, or work performed, shall be free from all defects in material and workmanship and shall comply with manufacturer's specifications. All manufacturers' warranties shall be deemed assigned to BUYER.
12. **Submission of a Proper Invoice:** Invoices may be submitted via (1) E-mail (electronic PDF image): to the email address provided on the face of the po or ordering document or (2) Mail: Accounts Payable, to the address on the face of the po. Any invoice or payment request which is received by the CITY ACCOUNTS PAYABLE SECTION (see PO cover page) must conform to the following requirements:
  - A. Complies with all terms of the PO
  - B. Is an original invoice
  - C. Is not under disputeAnd must contain the following information:
  - A. The name and address of SELLER as reflected on the PO
  - B. The invoice preparation date
  - C. The number of the invoice to facilitate identification
  - D. The authorizing CITY PO number, if PO is issued under a master contract, also include master contract number
  - E. PO line-item number, including description, quantity, unit of measure, unit price and extended price of the item
  - F. Terms of any prompt payment discount offered
  - G. Federal Identification Number (if applicable) and
  - H. Payment remittance address and phone number
13. **FEDERAL AND STATE TAXES:** The City is exempt from federal and state taxes for goods and services that further its municipal governmental purpose. Vendors shall not charge the City for any of these taxes, and the City shall be entitled to reduce the amount of its payment of any invoice in the amount of such taxes erroneously

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- charged. Vendor may obtain the City's tax-exempt number upon request. Vendor shall not use the City's tax-exempt status in acquiring materials related to servicing this PO.
14. **RIGHT TO CANCEL/TERMINATE:** The City may cancel this PO for its convenience upon written notice to Vendor. The City shall pay Vendor for all goods and services performed prior to the date of cancellation. The City reserves the right to terminate this PO in whole or in part for default if the Vendor fails to perform in accordance with any of the requirements of this PO or referenced solicitation or negotiated agreement. Any such termination will be without liability to City except for completed items delivered or services performed and accepted by the City. The City reserves the right to cancel this PO if Vendor becomes insolvent, proceedings in bankruptcy are filed by or against Vendor, or if a receiver or assignee for the benefit of creditors is appointed with or without Vendor's consent. Payments are subject to annual appropriation by the City Commission and/or Fiscal body. If the City makes a written determination that the funds are not appropriated or otherwise available to support the continued performance of this PO, then this PO shall be cancelled. Such a determination by the City shall be final and conclusive. This po is subject to cancellation if the City determines that there is a conflict of interest between a City employee and Vendor.
  15. **WARRANTY:** Vendor warrants to the City that all goods furnished hereunder shall be merchantable and of the quality, size, and dimensions ordered or specified. This warranty shall not be waived by reason of acceptance of the goods, payment by the City, or otherwise. Vendor further warrants that such goods are fit for and will perform in accordance with the purposes for which they were intended and that they are free of defects in materials, workmanship, and design. Services shall be performed in a good and workmanlike manner to the prevailing industry standards.
  16. **INDEMNITY:** Vendor hereby agrees to indemnify and hold harmless the City, its officials, agents, and employees from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits proceedings, actions and cost of actions, including attorney's fees, of any kind and nature, arising from or in any way connected with the provision of goods or the performance of services associated with this PO, whether by act or omission of Vendor, its subcontractors, agents, or employees.
  17. **INTELLECTUAL PROPERTY INDEMNITY:** Vendor warrants that the goods and/or services provided hereunder either alone or in combination with other materials do not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. Vendor shall pay all royalties and assume all costs arising from the use of any invention, design, process, material, equipment, product or device which is the subject of patent rights or copyrights. Vendor shall, at its own expense, indemnify, hold harmless, and defend the City against any claim, suit, or proceeding brought against the City which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, as furnished under this PO, constitute an infringement of any patent or copyright. Vendor shall pay all damages and costs awarded against the City
  18. **LIMITATIONS OF CITY'S LIABILITY:** The City shall not be liable to Vendor, its subcontractors, agents, or employees, for any lost profits or other incidental or consequential damages. The City's liability for any claim of loss, damage, or expense arising out of or in connection with this PO shall not exceed the price of the goods or services which give rise to the claim. The City shall not be liable for penalties or fines of any kind. Any action, suit, or proceeding arising due to any alleged breach of this PO by the City must be commenced within one (1) year of the accrual of the cause of action.
  19. **SEVERABILITY:** If any part of this PO is found to be illegal or unenforceable, that part shall be severed from the contract and the rest of this PO shall be enforceable as written.
  20. **NO WAIVER:** No failure or delay on the part of either party in exercising any right under these Terms will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.
  21. **AUDIT:** Vendor grants the City and its auditors' permission to audit Vendor's records pertaining to this PO.
  22. **SURVIVAL:** The respective representations, warranties, covenants, indemnities, and other statements of the parties set forth in Sections 9, 10, 11, 12, and 15 will survive the parties' discharge of their obligations under and any termination or cancellation of this contract.
  23. **DRUG-FREE WORKPLACE:** Vendor hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. Vendor will give written notice to the City within ten (10) days after receiving actual notice that Vendor or an employee of Vendor within the State of Michigan has been convicted of a criminal drug violation occurring in the workplace.
  24. **COMPLIANCE WITH THE LAW:** Vendor certifies that in performing this contract it is in full compliance with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
  25. **GOVERNING LAW:** This PO shall be governed by and construed according to the laws of the State of Michigan. Venue for any action related to this PO shall be in Kent County, Michigan.
  26. **Equal OPPORTUNITY:** SELLER agrees to comply with the CITY's Equal Opportunity Plan prior to delivery. Suppliers will not discriminate against any employee or applicant for employment because of race, color, gender, religion, national origin, age, disability, marital status, pregnancy, sexual orientation, gender identity and protected veteran status.
  27. **SELLER's price** will be the lowest prevailing market price and under no circumstances will the price be higher than specified herein without express authorization of the CITY.
  28. **OWNERSHIP**
    - A. All materials, drawings, or other items provided by BUYER to SELLER remain the property of BUYER and will be returned to BUYER upon demand.
    - B. Any and all artwork or typeset photo ready material that has been paid for in the initial set up charge or has been sent to SELLER for reproduction by BUYER will be returned to BUYER before final payment shall become due.
  29. **TAXES:** BUYER is generally exempt from sales, excise, or federal transportation taxes. Do not include taxes in pricing unless agreed upon with BUYER. A copy of BUYER's Tax Exemption Certificate is available upon request.
  30. **MATERIAL SAFETY DATA SHEETS (MSDS):** Prior to shipping any chemicals or substances to the City or bringing any chemicals or substances onto City property or a City work site, the Contractor shall provide City with copies of current Material Safety Data Sheets (MSDS).
  31. **ASSIGNMENT:** SELLER may not assign any portion of the PO without prior consent from CITY PROCUREMENT SERVICES.
  32. **INSURANCE COVERAGE:** Applicable to the purchase of supplies, equipment, and services under aggregate amount of \$100,000. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the CITY. The requirements below should not be interpreted to limit the liability of the SELLER. All deductibles and SIRs are the responsibility of the SELLER. SELLER, at own cost and expense, shall obtain and maintain in force during the term of this PO, the following minimum insurance coverage:
    - A. Commercial General/Umbrella Liability Insurance – with limits of liability not less than \$1,000,000 per occurrence and aggregate. The insurance shall include an endorsement naming the CITY as an additional insured, coverage afforded on a primary/non-contributory basis and provide the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (XCU) Exclusions, if applicable.
    - B. Business Automobile/Umbrella Liability Insurance- including Michigan No-Fault Coverages, with limits of liability not less than \$1,000,000 per occurrence combined single limit for property damage and bodily injury. Coverage shall include all Owned/Leased Autos; Non-owned Autos; Hired Autos.

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- C. Workers' Compensation and Employers' Liability Insurance – in accordance with all applicable statutes of the State of Michigan. Workers' Compensation coverage is required as a condition of performing work or services for the City whether or not the Contractor or Vendor is otherwise required by law to provide such coverage.
- D. If PO is for professional services, professional liability insurance, including errors and omissions, in an amount not less than \$1,000,000 per claim. If this policy is claims made form, then the contractor shall be required to keep the policy in force, or purchase "tail" coverage, for a minimum of 3 years after the termination of this contract.
- E. Cancellation Notice – CITY shall be granted thirty (30) days, ten (10) days for non-payment of premium, cancellation or non-renewal notice to be sent to the Certificate Holder: City of Grand Rapids, Attention: Procurement Services Division, 300 Monroe Avenue, N.W., Grand Rapids, Michigan, 49503.
- F. Proof of Insurance Coverage – The SELLER shall provide to the CITY Certificate(s) of Insurance as well as required endorsement(s).  
NOTE: Additional insurance coverage may be required for purchases in aggregate amount over \$100,000.