

City of Sarasota Standard Terms and Conditions
As of 1-15-2015

1. The term "**Vendor**" shall mean the party furnishing the goods, materials, equipment and/or services so specified herein. The term "**Buyer**" shall mean the City of Sarasota, Florida.
2. All orders shall be filled at prices quoted to the **Buyer** either by phone or by a written request. No increase from the quoted price will be authorized unless approved in writing by the **Buyer**.
3. All invoices shall be addressed as indicated on the front of this Purchase Order and must include the **Vendor's** name and phone number, and clearly list quantities, item descriptions, and units of measure. **Vendor** shall indicate on all invoices the Purchase Order number, discount and terms of payment. Substitution of any portion of this order will not be allowed unless **Buyer** is notified and gives approval in writing of the substitution.
4. **Vendor** will promptly acknowledge this order, and indicate the shipping date (definite or approximate), if applicable. All shipping will be FOB Destination. Until acceptance, risk of loss or damage shall remain with the **Vendor**. **Buyer** will not pay freight or express charges, except by previous agreement, the **Vendor** is to prepay shipping charges and add to the invoice. The **Vendor** shall be responsible for filing, processing, and collecting all damage claims with the carrier. Delivery must actually be made within the time stated by the **Vendor**. **Buyer** reserves the right to route all shipments. Delays in shipment shall be immediately reported by **Vendor** to **Buyer**. **Buyer** reserves the right to cancel this order and purchase elsewhere if delivery is not timely as stated. Deliveries will be made Monday through Friday, excluding holidays unless otherwise stated. In case of default by **Vendor**, **Buyer** may procure the articles or services covered by this order from other sources and hold the **Vendor** responsible for any excess expense. All items so listed will be securely packed to deter against damage and comply with carrier's requirements as to applicable tariffs. Shipments described on bill of lading shall take the lowest legal freight rate. Shipments will be released to carrier at full value insured for total value. To assist the **Vendor** with damage claims, the **Buyer** shall: (i) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (ii) report damage to the carrier and the **Vendor**; and (iii) provide the **Vendor** with a copy of the carrier's Bill of Lading and damage inspection report. If specifications are not met, material may be returned at the **Vendor's** expense and risk. **Vendors** will be notified of over-shipments and/or incorrect shipments. If return authorizations are not received within thirty (30) days such items shall be considered as donations to the **Buyer**.
5. Inspection and acceptance of commodities shall be as follows:
 - (a) For **Vendor**-installed products, the date of acceptance is the date the **Buyer** accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the **Buyer** shall certify in writing to the **Vendor** when the product is accepted (if training or other post-installation services are included in the purchase, the acceptance shall be conditional).
 - (b) For **Buyer**-installed products, the date of acceptance shall be the delivery date.
6. Inspection and acceptance of services shall be as follows:

Each phase of the services, including quality of work, rendered under this agreement is subject to the **Buyer's** inspection during both the **Vendor's** operations and after completion of the tasks. When the **Vendor** is satisfied with the completion of the contracted work, and prior to acceptance of any phase of work, **Vendor** shall submit a written request for an inspection to the **Buyer**. After inspection, the **Buyer** will issue a list of deficiencies, if any. Upon completion of the list, and correction of all deficiencies by the **Vendor**, the **Vendor** shall notify the **Buyer** that the work has been completed satisfactorily. Final inspection shall be performed prior to contract expiration date.
7. If work is performed on **Buyer's** property, work shall not be considered complete until all rubbish and unused material due to, or connected with, the work is removed and the premises are left in a safe and tidy condition.
8. If insurance is required, the **Vendor** shall maintain insurance acceptable to **Buyer** in full force and in effect throughout the term of this purchase and, upon request, the **Vendor** shall provide to **Buyer** a certificate of insurance with **Buyer** named as additional insured.

9. **Vendor** shall comply with all Federal, State, and local laws and regulations applicable to the articles, materials or services constituting this order and shall upon request of **Buyer** furnish such proof of compliance. The **Vendor** shall have in its possession any applicable permits or licenses that may be required by Federal, State, or local law to furnish products or services under the scope of this purchase.
10. **Vendor** shall not assign or subcontract any portion of this order without prior written approval of **Buyer**. If such approval is granted, it shall not relieve the **Vendor** from liability hereunder. If this order cannot be filled by the person or firm to whom it is issued, it shall be returned to the **Buyer**.
11. Unless otherwise stated in this order, in addition to any warranty implied by law or fact, and any other express warranties, the **Vendor** expressly warrants all items to be free from defects in title, design, workmanship and materials, to conform strictly to applicable specifications, drawings, approved samples, if any; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other services warranties of the **Vendor**, shall run to **Buyer**. All warranties shall survive inspection, test acceptance of and payment by **Buyer**.
12. Acceptance of this order serves as certification that the **Vendor** or its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public {federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; {c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
13. The **Vendor** or contractor hereby guarantees the **Buyer** that all material, supplies, services and equipment as listed on the order meet the requirements, specifications and standards as provided for under the Occupational Safety and Health Act of 1970, as from time to time amended and in force on the date hereof.
14. If applicable, the **Vendor** shall provide to **Buyer** all material safety data sheets (MSDS) upon delivery of materials.
15. Any dispute regarding this order shall be governed by Florida law.
16. The **Vendor**, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under the Agreement the legal status of an independent contractor, and in no manner shall they be deemed employees of the **Buyer** or deemed to be entitled to any benefits associated with such employment. During the term of the Agreement, **Vendor** shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide **Buyer** with certification of such insurance upon request. The **Vendor** remains responsible for all applicable federal, state, and local taxes and all FICA contributions.
17. If a court deems any provision of the order void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.
18. **Buyer** is exempt from any sales, excise, or Federal Transportation taxes and the provisions of the federal Robinson-Patman act.
19. The **Vendor** shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify and hold harmless the **Buyer**, its employees, agents and assigns from claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate levels), arising from or relating to personal injury or death, and damage to real property or tangible personal property alleged to be caused in whole or in part by the **Vendor**, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them; provided, however, that the **Vendor** shall not

indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the **Buyer**.

20. To the extent applicable, the **Vendor** shall fully indemnify and hold harmless the **Buyer**, and its agents, employees, and assigns from any claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of **Vendor's** products by the **Buyer** or any of its agents, employees, and assigns, or to the operation or use of **Vendor's** products by the **Buyer** or any of its agents, employees, and assigns in a manner not contemplated by the Contract or a Purchase Order.
21. The **Buyer** has sovereign immunity. Any clause in an agreement which request that the **Buyer**, as the customer, indemnify the **Vendor** is unacceptable. However, any consideration of indemnification must be approved by the City Attorney's Office.
22. If this order is a multi-term order, automatic renewals are prohibited. Subsequent years are subject to funding approved by the governing body. Automatic rules may be considered but must be approved by the Purchasing Division.
23. Payment terms are 30 days (construction project) or 45 days (non-construction) net from the date of an accepted invoice provided good and services have been received in satisfactory condition. Interest payments on unpaid balance will be done in accordance with Florida Statute 218.70, Prompt Payment Statute.
24. While the **Buyer** will attempt to resolve all problems, the **Buyer** will not accept third party arbitration or mediation. In addition the **Buyer** reserves the right to request a jury trial.
25. The order and all supporting documentation is subject to Chapter 119 Florida Statutes unless otherwise exempt.
26. Any order requiring travel or per diem will be subject to the travel rules as shown in the **Buyer's** Administrative Regulation.
27. In the event of a claim, the **Buyer** shall promptly notify the **Vendor** in writing by prepaid certified mail (return receipt requested), or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, at the following address:
City of Sarasota
1565 1st Street
Room 205
Sarasota, FL 34236
28. The **Buyer** shall provide all available information and assistance that the **Vendor** may reasonably require regarding any claim. The **Buyer** may, in addition to other remedies available to it at law or equity, and upon written notice to the **Vendor**, retain such monies from amounts due the **Vendor** as may be deemed by the **Buyer** to be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it. The **Buyer** may set off any liability or other obligation of the **Vendor** or its affiliates to the **Buyer** against any payments due the **Vendor** under any contract with the **Buyer**.
29. This agreement for indemnification shall continue in force for five (5) years from the date of full completion of all obligations of the **Vendor** under the Contract and/or Purchase Order. In the event that there is a conflict between this agreement and any other applicable indemnification agreement between the **Buyer** and the **Vendor**, the agreement which provides the most protection for the **Buyer** shall take precedence. The provisions of this Contract are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable by a court of competent jurisdiction, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.
30. Any other conditions not contained above will be annotated within the context of a Purchase Order or written contract.
31. This order, including the terms and conditions shown above contains the complete and final agreement between the **Buyer** and **Vendor** and no other agreement in any way modifying any of said terms and conditions will be binding upon the **Buyer** unless made in writing and signed by the **Buyer**. The

Vendor may not unilaterally modify the terms of the order by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the **Vendor's** order or fiscal forms or other documents forwarded by the **Vendor** for payment. **Buyer's** acceptance of product or processing of documentation on forms furnished by the **Vendor** for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.