

TERMS AND CONDITIONS OF PURCHASE

THE CITY OF SANTA BARBARA REJECTS ANY DISCLAIMER BY VENDOR OF ANY WARRANTY STANDARD IMPLIED OR EXPRESS. UNLESS SPECIFICALLY AGREED TO ON THE FACE OF THIS PURCHASE ORDER.

The materials, supplies or services covered by this order shall be furnished subject to the following terms and CONDITIONS which shall not be modified or rescinded except by written agreement to the parties and which Seller agrees to be bound by and to comply with in all particulars and no other terms and conditions shall be binding upon the parties.

ARTICLE I. INSPECTION- The materials, supplies or services furnished shall be exactly as specified to this order, free from all defects in Sellers design workmanship and materials, and except as otherwise provided to this order, shall be subject to inspection and test by the City of Santa Barbara at all times and places. If any materials, supplies or services are found to be defective or not as specified, the City of Santa Barbara may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies or services at a reduction in price which is equitable under the circumstances. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any costs for which Seller may become liable to the City of Santa Barbara under other provisions of this order, shall reimburse the City of Santa Barbara for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Neither final acceptance nor payment shall relieve seller of responsibility for faulty materials, supplies or services.

ARTICLE II. CHANGES- The City of Santa Barbara may make changes within the general scope of this order in quantities, drawings, specifications, time for performance, place of delivery, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an equitable adjustment in the price of delivery or both shall be made. No change by Seller shall be recognized without written approval of the City of Santa Barbara. Any claim of Seller for an adjustment under this Article II must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless the City of Santa Barbara waives this condition. Nothing in this Article II shall excuse Seller from proceeding with performance of this order as changed hereunder.

ARTICLE III. TERMINATION

A. The City of Santa Barbara may, by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. The City of Santa Barbara shall pay Seller as full compensation for performance until such termination (1) the unit or pro rata order price for the delivered and accepted portion and (2) a reasonable amount not otherwise recoverable from other sources by Seller as approved by the City of Santa Barbara, with respect to the undelivered or unaccepted portion of this order provided compensation hereunder shall in no event exceed the total order price.

B. The City of Santa Barbara may by written notice terminate this order for Seller's default in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event the City of Santa Barbara may purchase or otherwise secure materials, supplies or services and, except as otherwise provided herein, Seller shall be liable to the City of Santa Barbara for any excess costs occasioned the City of Santa Barbara thereby.

If, after notice of termination for default the City of Santa Barbara determines the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of the City of Santa Barbara, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier or due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of City, unless the City shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

C. If City determines that Seller has been delayed in the work in the opinion of City due to causes beyond the control and without the fault or negligence of Seller, the City of Santa Barbara may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller, and if such delay is due to failure of the City of Santa Barbara not caused or contributed to by Seller, to perform services or deliver properly in accordance with the terms of the order, the time and price of the order shall be subject to change under Article II.

Sole remedy of Seller in event of delay by failure of the City to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits. The rights and remedies of the City provided in this Article III shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

ARTICLE IV. TITLE- Title to the materials and supplies purchased hereunder shall pass directly from Seller to the City of Santa Barbara at the f.o.b. point shown, subject to the right of the City to reject upon inspection.

ARTICLE V. PAYMENT, EXTRA CHARGES, DRAFTS- Seller shall be paid, upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. The City of Santa Barbara will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by transportation receipt, or facsimile, if transportation is payable and charged as a separate item.

ARTICLE VI. DECLARED VALUATION OF SHIPMENTS- Except as otherwise provided on the face of this order, all shipments by Seller under this order for the City of Santa Barbara's account shall be made at title maximum declared value applicable to the lowest transportation rate or classifications and the bill of lading shall so note.

ARTICLE VII. TAXES- The price or prices specified include all applicable taxes and will not be changed as the result of failure by Seller to have included any applicable tax or as the result of any change in Seller's tax liabilities.

ARTICLE VIII. SELLER'S LIABILITY- Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any personal injury or alleged personal injury (including death), and / or damage or destruction or alleged damage or destruction to property sustained or alleged to have been sustained in connection with or to have arisen out of the performance of the work by Seller, its agents, employees, subcontractors, and consultants, save and except liability as may result

from or be in connection with or to have arisen out of the negligent performance of the work by or willful misconduct of the City of Santa Barbara. Seller shall indemnify and hold harmless the City of Santa Barbara, its officer, agents and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any alleged personal injury or damage and shall pay any damage costs and expenses including attorney's fees in connection with or resulting from such suit or action.

ARTICLE IX. PATENT INDEMNITY- Seller agrees to indemnify the City of Santa Barbara, its officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability arising pursuant to Section 183 U.S Code, Title 35 (1q52). prior to issuance of Letters Patent) occurring in the performance of this order or arising by reason of the use or disposal by or for the account of the City of Santa Barbara of items manufactured or supplied under this order.

ARTICLE X. ASSIGNMENT- This order is assignable by the City of Santa Barbara. This order, except as to the payment due hereunder is not assignable by Seller without written approval of the City of Santa Barbara.

ARTICLE XI. Seller agrees to comply with the requirements relative to non-discriminatory provisions in Title 9 of the Santa Barbara Municipal Code. Said provisions are hereby incorporated by reference.

ARTICLE XII. PUBLIC WORKS PROJECTS- Pursuant to provisions of Section 1770, et. esq. of the Labor Code of the State of California, the seller shall pay its employees the general prevailing rate of wages as determined by the Director of the Department of Industrial Relations for all public works projects. In addition, the seller shall be responsible for compliance with the requirements of Section 1777.5 of the California Labor Code relating to apprentices on Public Works contract.

THIS PURCHASE ORDER IS EXEMPT FROM ANY APPLICABLE EXCISE TAX.