

## TERMS & CONDITIONS

Seller and buyer agree to comply with the following terms and conditions. These terms and conditions along with the purchase order shall constitute a contract between the seller and buyer upon the seller issuing an invoice and/or providing any of the goods and services described in the purchase order. In the event of a conflict between these terms and conditions and a separate written agreement between the seller and buyer, the terms of the separate written agreement shall prevail.

**1. SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) seller's name and address; (b) consignee's name, address and purchase order or purchase order release number and the supply agreement number if applicable; (c) container number and total number of containers, e.g. Box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2. SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

**3. TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to buyer until buyer actually receives and takes possession of the goods at the point or points of delivery.

**4. DELIVERY TERMS AND TRANSPORTATION CHARGES:** All products offered shall be FOB final destination, with all delivery charges to be prepaid by the vendor. The city does not accept C.O.D. or collect shipments. The agreed upon price shall include all charges, including delivery, installation and set-up fees. All packing, crating, or other debris resulting from the delivery or set-up of the commodity purchased shall be removed and properly disposed by the successful vendor at no additional cost to the city.

**5. NO REPLACEMENT OF DEFECTIVE PRODUCT:** Every delivery of goods must fully comply with all provisions of this purchase order as to time of delivery, quality and the like. If a delivery is made which does not fully conform, this shall constitute a breach and seller shall not have the right to substitute a conforming product, provided, where the time for performance has not yet expired, the seller may reasonably notify buyer of his intention to correct and may then make a correct delivery within the agreed upon time but not afterward.

**6. PLACE OF DELIVERY:** The place of delivery shall be set forth in the 'ship to' block of the purchase order, purchase change order, or other such document.

**7. INVOICES AND PAYMENTS:** (a) Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weight bill when applicable, should be attached to the invoice. E-mail a copy to [comfinanceap@mcallen.net](mailto:comfinanceap@mcallen.net) or mail to: City of McAllen Accounts Payable, PO Box 220 McAllen, Texas 78501. Payments shall be made thirty days after the goods are delivered to the buyer, or a correct invoice is received, whichever is later. Suppliers should keep the accounts payable office advised of any changes in remittance addresses. (b) buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to seller by buyer. (c) do not include federal excise, state or city sales tax. Buyer shall furnish tax exemption certificate, if required.

**8. GRATUITIES:** vendor certifies that no gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the vendor, or its agent or representative, to any City officer, employee or elected representative, with respect to this procurement or any contract with the city, and that if any such gratuity or bribe is found to have been made this shall be grounds for voiding of the purchase order

**9. SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the buyer and to the extent feasible shall be identified by the seller as such.

### 10. WARRANTY OF PRICE:

A. The price to be paid by the buyer shall be that agreed to in writing by the city which seller warrants to be no higher than seller's current prices on orders for products of the kind and specification covered by the purchase order for similar quantities under similar or like conditions and methods of purchase in the event seller breaches this warranty, the prices of the items shall be reduced to the seller's current prices on orders by others, or in the alternative, buyer may cancel this purchase order without liability to the seller for breach or seller's actual expense.

B. Pricing from interlocal and cooperative purchasing agreements may be considered.

**11. WARRANTY OF PRODUCTS AND SERVICES:** All products furnished under this contract shall be warranted to be merchantable and good quality and fit for the purposes intended as described in purchase order, to the satisfaction of city and in accordance with the specifications, terms and conditions outlined herein, and all services performed shall be warranted to be of a good and workmanlike quality, in addition to, and not in lieu of, any other express written warranties provided.

**12. WARRANTY OF PRODUCT SAFETY:** Seller warrants that the product sold to buyer shall conform to the standards promulgated by the U. S. Department of labor under the occupational safety and health act of 1970. In the event the product does not conform to OSHA standards, buyer may return the product for correction or replacement at the seller's expense. In the event seller fails to make the appropriate correction within a reasonable time, correction made by buyer will be at seller's expense.

**13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall buyer be liable to seller for indemnification in the event that seller is sued on the grounds of infringement or the like. If seller is of the opinion that an infringement or the like will result, he will notify buyer to this effect in writing within two weeks after the signing of this contract. If buyer does not receive notice and is subsequently held liable for the infringement of the like, seller will save buyer harmless. If seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that buyer will pay seller the reasonable cost of his search as to infringements.

**14. RIGHT OF INSPECTION:** Goods purchased are subject to inspection by buyer. Buyer reserves the right to reject or refuse acceptance of goods which are not in accordance with buyer's instructions, specifications, drawings and date, or seller's warranties (expressed or implied). Goods not accepted will be returned to seller at seller's risk and expense. Payment for any goods shall not be deemed an acceptance thereof and shall be refunded to the buyer in the event seller cannot fulfill an acceptable order.

**15. CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if seller breaches any of the terms hereof including warranties of seller or if the seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which buyer may have in law or equity.

**16. TERMINATION:** The performance of work under this order may be terminated in whole or in part by the buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the seller of a "notice of termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of buyer set forth in clause 15, herein.

**17. FORCE MAJEURE:** If by reason of force majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract then such party shall give notice and full particulars of force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term force majeure as employed herein, shall mean acts of god, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the state of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

**18. ASSIGNMENT DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by seller without the written permission of the buyer. Any attempted assignment or delegation by seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**19. WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved. 20. Modifications: this contract may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents. This shall include any change orders.

**21. INTERPRETATION PAROLE EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the uniform commercial code is used in this contract, the definition contained in the code is to control.

**22. APPLICABLE LAW:** This purchase order shall be interpreted and enforced according to the provisions of the state of Texas law, and seller shall abide by, and be in compliance with, all applicable laws, statutes, ordinances, and regulations

**23. ADVERTISING:** Seller shall not advertise or publish, without buyer's prior consent, the fact that buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

**24. RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

**25. VENUE:** Both parties agree that venue for any litigation arising from this contract shall lie in Hidalgo County, Texas.

**26. DISCLOSURE:** Pursuant to Chapter 176 of the Texas Local Government Code, the seller, a person, or agent of a person, who contracts or seeks to contract with the City of McAllen must complete a conflict of interest questionnaire if the seller, person or agent has an affiliation or business relationship that might cause a conflict of interest with the city. The conflict of interest questionnaire, which is available online at [ethics.state.tx.us](http://ethics.state.tx.us), must be filed with the city secretary of the City of McAllen no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of McAllen or submits to the city of McAllen an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of McAllen. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code seller should consult with legal counsel if you have questions regarding its compliance with the requirements of chapter 176. It is the responsibility of each seller, person or agent who is contracting or seeking to contract with the City of McAllen to comply with the filing requirements of Chapter 176.

**27. INDEPENDENT CONTRACTOR:** Seller shall be considered an independent contractor and not an agent, servant, employee, or representative of buyer in the performance of the work. No term or provision herein or act of the seller shall be construed as changing that status.

**28. TERMINATION FOR DEFAULT:** Buyer reserves the right to enforce the performance of any purchase order in any manner prescribed by law or deemed to be in the best interest of buyer in the event of breach or default. The buyer reserves the right to terminate any purchase order and/or agreement with the seller in the event the seller fails to: (a) meet delivery schedules, or (b) otherwise perform in accordance with these terms and conditions.

**29. DISPUTE RESOLUTION:** Pursuant to Subchapter I, Chapter 271, Texas Local Government Code, contractor agrees, that prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this order (a "claim"), the parties will first attempt to resolve the claim by following the steps within this code.

**30. INDEMNIFICATION:** Seller agrees to defend, indemnify and hold buyer, its elected officials, officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by seller's breach of any of these terms and conditions or by any negligent or strictly liable act or omission, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by seller, its officers, agents, employees or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of buyer, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of the seller and buyer, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the state of Texas, without waiving any governmental immunity available to buyer under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**31. SEVERABILITY:** In case any one or more of the provisions contained in these terms and conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and these terms and conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**32. RIGHT TO AUDIT:** The City of McAllen shall have the right to examine and audit the books and records of seller-contractor at any reasonable time. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of compliance with the provisions of this order.

**33. ADA COMPLIANCE:** All goods and services provided to the buyer must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Seller will be required to certify compliance, if required under the law or otherwise required by the buyer.

**35. TEXAS GOVERNMENT CODE CHAPTER 2252:** Pursuant to Texas Government Code Chapter 2252, Subchapter F, seller affirms, by entering into this agreement, that it is not identified on a list created by the Texas comptroller of public accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

**36. TEXAS GOVERNMENT CODE CHAPTER 2271:** Pursuant to Texas Government Code Chapter 2271, seller affirms that execution of this agreement serves as written verification that consultant: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the agreement. This section shall not apply if consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the city under this agreement are less than \$100,000.00.

**37. TEXAS GOVERNMENT CODE CHAPTER 2274:** Pursuant to subtitle F, Chapter 2274, Texas Government Code, vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in the Texas Government Code § 2274.001, and that vendor will not so discriminate during the term of any contract with the City of McAllen

**38. COMPLIANCE WITH GOVERNMENT CODE TITLE 8 SUBTITLE A CHAPTER 809:** Pursuant to subtitle A, Chapter 809, Texas Government Code, vendor does not boycott energy companies as those terms are defined in the Texas Government Code § 809.001 and will not boycott energy companies during the term of any contract with the City of McAllen.

**39. CFR 200 COMPLIANCE:** All projects funded by federal funds shall comply with CFR 200 requirements.

**40. INSURANCE REQUIREMENTS:** Contractors performing work on city property for the City of McAllen shall provide the city with a current certificate of insurance. Insurance requirements can be found at <https://mcallen.net/departments/purchasing/insurance-requirements>.