

## Osceola County Standard Purchase Order Terms and Conditions

**1. DEFINITIONS:** The term "Buyer" means Osceola County and the term "Seller" means the person, firm or corporation from whom the goods or services have been ordered.

**2. ELECTRONIC/FACSIMILE TRANSMISSION:** If this Purchase Order is fully executed and is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Supplier.

**3. AGREEMENT:** This purchase order, when properly signed and bearing a purchase order number, including these terms and conditions; the applicable specifications; the referenced solicitation document and/or executed agreement (as applicable), constitute the sole and entire Agreement between the parties hereto. Seller's acceptance of this purchase order is limited to the terms and conditions hereof, and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Buyer unless accepted in writing by Buyer. No course of prior dealings between the parties and no usage of the trade shall be a relevant supplement or explain any of the terms or conditions hereof.

**4. MODIFICATIONS:** This Agreement can be modified or rescinded only in writing when issued by an authorized Buyer representative. Buyer reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and this Agreement shall be modified in writing accordingly.

**5. ASSIGNMENT:** No right or interest in this Agreement shall be assigned by Seller without the written permission of Buyer and no delegation of any obligation owed by either Buyer or Seller shall be made without the written permission of either party.

**6. TIME IS OF THE ESSENCE:** Failure to deliver goods/services of the quality and quantity and within the time(s) specified by this order shall, at option of Buyer, relieve Buyer of any obligation to accept and pay for such goods/services as well as any undelivered shipments if any; and upon failure to deliver as specified, Buyer may buy like goods/services elsewhere and charge Seller with any increased cost or other loss incurred thereon pursuant to Chapter 672 of the Florida Statutes, unless deferred shipment is agreed to by Buyer in writing. Any failure by Buyer to exercise its option with respect to any shipment of goods/services shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision is not in lieu of, and Buyer does not waive, any remedies provided by law.

**7. FAILURE TO PERFORM:** Failure of the Seller to perform as specified in this purchase order may be cause for termination of this Agreement. Sellers or Contractors who default are subject to suspension and/or debarment from the approved Sellers list. Failure to perform may also result in the recoupment of damages or the difference in cost for the purchasing the goods/services by County from the next lowest most responsive and responsible bidder.

**8. TERMINATION:** Buyer reserves the right to terminate all or part of the goods/services or services to be delivered or performed pursuant to this Agreement. In such event, Buyer shall be liable only for materials or components procured, or work done or supplies partially fabricated within the authorization of this Agreement. In no event shall Buyer be liable for incidental or consequential damages by reasons of such termination.

**9. CONTINGENCIES:** Performance of any obligation under this Agreement may be suspended by either party without liability, to the extent that an act of God, war, riot, fire, explosions, accidents, floods, sabotage, inability to obtain fuel or power, governmental laws, regulations, or orders, or any other cause beyond the reasonable control of such party, or labor trouble, strike, lockout, or injunction (whether or not such labor event is within the reasonable control of such party) delays, prevents, restricts, or limits the performance of this Agreement. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. At Buyer's option, the Agreement may be terminated or modified. If the Buyer fails to modify the Agreement within thirty (30) days of receipt of notification from the Seller, the Agreement lapses with respect to any deliveries affected.

**10. PRICE PROTECTION:** Seller warrants that the price(s) set forth herein is/are equal to the lowest net price, and the terms and conditions of sale as favorable or better, as the price(s), terms, and conditions afforded by Seller to any other customer for goods/services of comparable grade or quality during the term hereof.

**11. DISCOUNT:** Discount will be computed from the date of satisfactory delivery, acceptance, or from receipt of correct invoice, whichever is the latter.

**12. TAXES:** Buyer is a non-profit governmental operation and not subject to federal excise or state sales tax.

**13. FISCAL YEAR FUNDING APPROPRIATION:** (a) Specified period: Unless otherwise provided by law, a purchase order for supplies or services may be entered into for any period of time deemed to be in the best interest of Buyer, provided the term of the purchase order and conditions of renewal or extension, if any, are included in the solicitations and funds are available for the initial fiscal period of the purchase order. Payment and performance obligations for succeeding fiscal periods shall be subject to annual appropriations by the Board of County Commissioners (governing body). (b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the purchase order shall be canceled and Seller shall be entitled to reimbursement for the reasonable value of any work performed to the date of cancellation.

**14. PROMPT PAYMENT:** Buyer abides by Florida Statute Chapter 218 with respect to all matters relating to the payment of Sellers. In accordance with said statute, Buyer's terms are Net 30 days from receipt of a proper invoice. In addition, Buyer's exposure relative to outstanding balances is limited to a maximum of 1% per month and 12% per annum maximum for any amount unpaid or in dispute.

**15. QUANTITY:** The quantities of goods/services as indicated on the face hereof, must not be exceeded without prior written authorization from Buyer. Excess quantities may be returned to Seller at Seller's expense.

**16. PACKAGING AND CARTAGE:** No charge will be allowed for packing, boxing, or cartage, unless agreed upon at the time of purchase, but damage to any goods not packed to insure proper protection to same will be charged to Seller. Buyer's order number, part number, and quantity shipped will be marked, tagged, or provided on each package and bill of lading. Buyer's count will be accepted as final and conclusive on any shipment not accompanied by itemized packing slip. Delay in or non-receipt of packing list, statements, or invoices in the number of copies specified or errors or omissions of any of these will be just cause for withholding payment without loss of cash discount privilege. Material Safety Data Sheet must be included with shipment of any material requiring this documentation per OSHA regulations.

**17. FREIGHT:** Unless the Purchase Order expressly states otherwise, all goods shall be shipped FOB Destination: the "Ship to" location designated in the Form. Risk of loss shall not pass to Buyer until goods called for in this Purchase Order actually have been received and accepted by the Buyer at the destination specified herein. Supplier assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if Buyer has agreed to pay freight, express or other transportation charges.

**18. INSPECTION:** Buyer shall have a reasonable time after delivery within which to inspect the goods. Goods rejected will, at Seller's expense, be returned to Seller or otherwise disposed of as Seller shall reasonably request. The cost of inspection of goods rightfully rejected shall be charged to Seller. If reasonable inspection disclosed that part of the goods received are defective or nonconforming, Buyer shall have the right to cancel any unshipped portion of the order. Payments for the goods on this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller. The making or failure to make any inspection of, or payment for or acceptance of, the goods, shall in no way impair Buyer's right to reject non-conforming goods, recover damages, or exercise any other remedy to which Buyer may be entitled; not withstanding; Buyer's knowledge of the non-conformity, its substantiality, or the ease of its discovery.

**19. WARRANTY:** Seller warrants to Buyer (a) that the goods/services shall be of the quality specified or of the best grade of their respective kinds if no quality is specified, shall conform to the specifications, drawings, samples, and other descriptions contained herein or as stated in the solicitation document and to representation made by Seller or its representatives; (b) that at the time the goods/services are accepted by Buyer, the goods/services shall have been produced, sold, delivered, and furnished in strict compliance with any and all applicable federal and state laws, regulations, acts, rules; local ordinances; labor agreements, and (c) that the goods/services furnished hereunder are free of any claims or liens of whatever nature whether rightful or otherwise, of any person, corporation, partnership, or association.

**20. INDEMNIFICATION:** Seller agrees to protect, indemnify, save, and hold harmless Buyer, and its officers and employees, from and against all losses, costs, and expenses, and from and against all claims, demands, suits, and actions for damages, losses, costs, and expenses, and from and against all liability awards, judgments, and decrees of whatsoever nature for any and all damages to property of Buyer or others and for any and all injury to any person arising out of or resulting from the negligence of Seller, breach of this order in the manufacturer of goods, from any defect in materials or workmanship, from the failure of the goods to perform to its full capacity as specified in the order, specifications, or other data or from the breach of any expressed or implied warranty.

**21. PATENT/COPYRIGHT INDEMNIFICATION:** Seller shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device which is the subject of patent rights and copyrights. Seller agrees at its own expense, to hold harmless and to defend Buyer and its agents against any claims, suits, or proceedings brought against Buyer for patent infringement occasioned by the manufacture, sale, or use of material supplied under this order and to indemnify Buyer against any damages occasioned by such claims whether justified or unjustified.

**22. WAIVER:** No waiver by either Seller or Buyer with respect to any breach or default of or with respect to any provisions or conditions of this Agreement shall be deemed to constitute a continuing waiver of any other breach or default of or with respect to the same or any other provision or condition of this Agreement. No claim or right arising out of a breach of this Agreement 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 party.

**23. MISCELLANEOUS:** The validity, interpretation, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any legal action shall lie in Osceola County, Florida.

**24. EQUAL OPPORTUNITY EMPLOYER:** Buyer is an Equal Employment Opportunity (EEO) employer and as such encourages Seller to voluntarily comply with EEO regulations with regards to gender, age, race, veteran status, country of origin, and creed. In addition, Seller or anyone under its employ shall comply with all applicable rules, regulations, and promulgations thereby pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. Seller shall maintain a work environment free of discrimination or unwelcome action of a personal nature. Any sub-contracts entered into shall make deference to this clause with the same degree of application being encouraged. When applicable, Seller shall comply with all new state and federal EEO regulations.

**25. RIGHT TO AUDIT RECORDS:** Buyer shall be entitled to audit the fiscal books and records of Seller to the extent that such books and records relate to the performance of the purchase order or any supplement to the purchase order. Such books and records shall be maintained by Seller for a period of three (3) years from the date of final payment under the purchase order, unless a longer or shorter period is otherwise authorized in writing by Buyer.