

## Town of Orange Park Purchase Order Terms & Conditions

The following terms, conditions and instructions apply to all Town of Orange Park (Town) purchase orders. The fulfillment of a purchase order means that the vendor understands and agrees with the Town's "Purchase Order Terms and Conditions" herein. Any variance is to be discussed and shall be expressly agreed in writing by Town and Vendor prior to fulfillment of a purchase order.

### TERMS AND CONDITIONS, OBLIGATIONS, RIGHTS AND REMEDIES

**ACCEPTANCE:** This purchase order is the Town's offer to purchase the goods and/or services described on the purchase order from the vendor. The Town issues purchase orders as permission for the vendor to ship goods or perform services as indicated on the purchase order and, if applicable, according to the terms and conditions of an Invitation to Bid, Request for Proposals, or Request for Qualifications. The terms and conditions of the Invitation to Bid, Request for Proposals, or Request for Qualifications are incorporated herein and made a part hereof by reference. Vendor's written acceptance or commencement of work or shipment or delivery of an item or service call shall constitute acceptance by the vendor of the purchase order, these terms and conditions and applicable law. Vendor shall not supply the goods or services if in disagreement with these terms. Vendor's provision of goods and services pursuant to this Purchase Order is evidence of its agreement with these terms and conditions and shall conform to same.

**ALTERATIONS OR AMENDMENTS:** Alterations, amendments, changes, modifications or additions to the Purchase Order shall not be binding without the prior written approval of the Town.

**APPROPRIATION:** In the event funds are not appropriated by the Town for the goods or services in any fiscal year or insufficient funds exist to purchase the goods or services, then the purchase order shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.

**ASSIGNMENTS:** Vendor shall not assign the agreement its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of the Town.

**BOOKS AND RECORDS:** Vendor shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under the purchase order and make such materials available at its offices at all reasonable times during the contract period and for three years from the date of the final payment under the agreement for inspection by the Town or by any other governmental entity or agency participating in the funding of the agreement, or any authorized agents thereof. Copies of said records to be furnished if requested.

**CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION:** Vendor agrees that all information, data, findings, recommendations, bids, et cetera by whatever name described and in whatever form secured, developed, written or produced by the vendor in furtherance of this contract shall be the property of the Town. The vendor shall take such action as is necessary under law to preserve such property rights of the Town while such property is within the control and/or custody of the vendor. By this contract, the vendors specifically waives and/or releases to the Town any cognizable property right of the vendor to copyright, license, patent or otherwise use such information, data, findings, recommendations, responses, et cetera.

The vendor understands and agrees that data, materials, and information disclosed to vendor may contain confidential and protected data. Therefore, the vendor promises and assures that data, material, and information gathered, based upon or disclosed to the vendor for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the Town.

**DEFAULT:** If vendor fails to perform or comply with any provision of the purchase order or the terms or conditions of any documents referenced and made a part hereof, the Town may terminate the contract, in whole or in part, and may consider such failure or noncompliance a breach of contract. The Town expressly retains all its rights and remedies provided by law in case of such breach, and no action by the Town shall constitute a waiver of any such rights or remedies. In the event of termination for default, the Town reserves the right to purchase its requirements elsewhere, with or without competitive bidding, and vendor agrees to pay any difference in costs above those conditions in the order.

**DELIVERY:** Delivery of all goods shall be FOB to final destination, paid by the shipper, unless otherwise set forth on the purchase order. If complete deliveries are not made at the time agreed, the Town reserves the right to cancel the purchase order and/or hold the vendor accountable. If the delivery dates cannot be met, the vendor agrees to notify the

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Purchasing Division, in writing, of the earliest suggested delivery date. The Town will then decide whether the proposed delivery date is acceptable.

**FORCE MAJEURE:** If either party is prevented from performing its obligations hereunder as a result of government regulations, fires, strikes, or other causes beyond the control of such party, the obligation to so perform shall be suspended for a reasonable time during which such condition continues to exist. If an actual or potential labor dispute delays or threatens to delay vendor's timely performance, vendor shall immediately notify the Town in writing.

**GOVERNING LAW:** This purchase order, and all matters relating to this purchase order (whether in contract, statute, tort, or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Clay County, Florida.

**INCORPORATION:** All specifications, drawings, technical information, invitation to bid, bid, award and similar items referred to, attached, or which are the basis for the purchase order are deemed incorporated by reference as if set out fully herein.

**INDEMNIFICATION:** The Contractor shall indemnify and hold harmless the Town and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the Contractor's failure to satisfy its obligations under this Agreement, or error, omission or negligent act by Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town or its officers, employees, agents and instrumentalities as herein provided.

**INDEPENDENT VENDOR:** Vendor acknowledges that it and its employees serve as independent vendors and that the Town shall not be responsible for any payment, insurance or incurred liability.

**INSPECTION AND ACCEPTANCE:** Final inspection of any goods or services delivered or performed hereunder shall be made at final destination, the receiving department. The Town reserves the right to reject any or all items not in conformance with applicable specifications, and vendor assumes the costs associated with such nonconformance. Acceptance of goods does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances. The Town reserves the right to inspect the goods at a reasonable time subsequent to delivery.

**LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS:** Vendor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the Town orders, statutes, ordinances, rules and regulations which may pertain to the services required under this purchase order.

Notwithstanding any other provision of this purchase order, Vendor shall not be required, pursuant to this purchase order, to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Vendor, constitute a violation of any law or regulation to which Vendor is subject, including but not limited to laws and regulations requiring that Vendor conduct its operations in a safe and sound manner.

**NONDISCRIMINATION:** During the performance of this purchase order, Vendor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

**NON-WAIVER OF RIGHTS:** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms thereof.

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**OFFICIALS NOT TO BENEFIT:** Employees or officials of the Town shall not be permitted to any share or part of the purchase order or any benefit that may arise therefrom. Vendor agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, elected official, agent, or representative of the Town, with the intent of securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of any contract.

**ORDER OF PRECEDENCE:** In the event of inconsistent or conflicting provision of the purchase order and referenced documents, the following descending order of precedence shall prevail: (1) Item Description, (2) Invitation to Bid, (3) Bid, (4) Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.

**PACKING LISTS:** An itemized packing list, bearing the purchase order number shall be included with every shipment.

**PATENTS AND COPYRIGHTS:** If an article sold and delivered to the Town hereunder shall be protected by any applicable patent or copyright, the vendor agrees to indemnify and save harmless the Town, from and against any all suits, claims, judgments and costs instituted or recovered against it by any person whomever on account of the use or sale of such articles by the Town in violation or right under such patent or copyright.

**PAYMENTS:** Payments shall be made by the Town upon satisfactory delivery and acceptance of all items or service, and submission of a proper invoice(s) bearing the purchase description, delivery date, and/or contract number. Each purchase order shall be covered by separate invoice(s). Invoices shall be addressed to the Town of Orange Park Accounts Payable 2042 Park Avenue, Orange Park, FL 32073.

**REMEDIES:** The Town shall have all rights and remedies afforded under the U.C.C. and Florida law in contract and in tort, including but not limited to rejection of goods, rescission, right of act-off, refund, incidental, consequential and compensatory damages and reasonable attorney fees.

**RIGHT TO INSPECT:** The Town reserves the right to make periodic inspection of the manner and means the service is performed or the goods are supplied.

**SEVERABILITY:** If any provision of the purchase order is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.

**SUB-CONTRACTING:** Vendor shall not sub-contract the purchase order to any other vendor without the expressed written consent of The Town.

**TAXES:** All prices included in the purchase order are exclusive of any Federal, State or local taxes. The Town is exempt from sales tax and federal excise taxes.  
State of Florida Sales Tax Exemption certificate number 85-8012621657C-3

**TERMINATION:** The Town may terminate this purchase order at any time by giving written notice to Vendor of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall, at the option of the Town, become its property. If the purchase order is terminated by the Town as provided herein, the Vendor shall be paid an amount based on actual time and expenses incurred by Vendor prior to the termination date, however, no payment shall be allowed for anticipated profit on unperformed services.

Notwithstanding any other provision of this purchase order, this purchase order may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining the Town or other public entity obligations under this purchase order. The Town shall have no further obligation to Vendor, other than to pay for services rendered prior to termination.

**VARIATION IN QUANTITY:** Variation in the quantity of any item called for by the purchase order shall not be allowed, unless such variation is caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, set forth herein.

**WARRANTY:** Vendor warrants to the Town that all items delivered and all services rendered shall conform to the specifications, drawings, bid and/or other descriptions furnished and/or incorporated by reference, and will be fit for the particular purpose purchased, of merchandisable quality, good workmanship, and free from defects. Vendor extends to the Town all warranties allowed under the U.C.C. Vendor shall provide copies of warranties to the Town with invoice. Return of merchandise not meeting warranties shall be at vendor's expense.