

**PURCHASE ORDER
TERMS & CONDITIONS**

This purchase order is a contract between the City of Everett and the vendor identified on the face hereof and is subject to the terms and conditions below. These terms and conditions are an integral part of the purchase order and supersede all terms or conditions proposed by vendor.

1. **Acceptance.** Vendor, by providing goods or services, agrees to all terms and conditions specified herein, on the face hereof, on any attachments hereto, and on any invitation for bids, request for proposals, or other solicitation document that may have preceded this award.
2. **Inspection and Acceptance.** All goods and services furnished must be as specified and will be subject to inspection and approval after delivery. In addition, all goods and services must comply with relevant drawings, samples, or specifications and meet the highest professional standards. City of Everett shall have a reasonable time after delivery to inspect the goods delivered or services rendered and to reject or revoke acceptance of any non-conforming goods or services. Non-conforming and rejected goods shall be returned to vendor at vendor's expense. Any substitution, change, or acceptance of non-conforming goods must be approved by the City of Everett prior to shipment. Non-conforming services shall be performed again at the vendor sole cost and expense.
3. **Delivery.** Prices are considered "F.O.B. Delivered" with transportation charges prepaid on all orders unless otherwise indicated. Time being of the essence of this contract, the University reserves the right to cancel this contract or any portion of the same if delivery is not made when and as specified, and charge vendor for any loss sustained as a result of such cancellation including, but not limited to, shipping charges.
4. **Warranties.** Vendor warrants that all delivered articles to be free from material or manufacturing defects. Goods provided by vendor under this order/contract shall be merchantable. All goods provided shall be of good quality within the description given by the City of Everett, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the City of Everett, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label. When vendor has reason to know or knows any particular purpose for which the goods are required, and the City of Everett is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose. Vendor shall, in providing goods to the City of Everett, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the City of Everett, at the time of contracting, has no knowledge. Goods provided by vendor shall be delivered free of any rightful claim of any third person by of infringement or the like.
5. **Applicable Laws.** Vendor represents and warrants that all goods and services supplied hereunder comply with applicable federal, state, and local laws, regulations, executive orders, and standards.
6. **Payment.** All invoices must be submitted to the address referenced on the face of this purchase order and must indicate the City of Everett's purchase order number. No payment shall be made or due until a properly completed W-9 form has been received from the vendor. Payment will be due to vendor within 45 days of receipt of a complete invoice. Invoices shall list the items for which payment is sought in form, substance, and detail reasonable required by City of Everett. Unless otherwise stated on the face of this purchase order, unit prices are inclusive of all costs including but not limited to delivery, shipping, and handling.
7. **Default.** In the event of default by vendor, including failure to perform within the time required or if the City of Everett rightfully rejects the goods or services or revokes acceptance, the City of Everett may, without waiving any other remedy permitted by law, make covering purchases of goods or services and hold vendor liable for all additional costs incurred. Further, in such event, the City of Everett, at its option, may be relieved of any duty to accept such Items as are subsequently delivered pursuant to this contract.
8. **Cancellation.** The City of Everett may cancel this order without liability for damages or otherwise, in the event that vendor becomes insolvent, makes an assignment for the benefit of creditors, a petition is filed to declare vendor bankrupt, if delivery or performance is not made within the time specified or within a reasonable time if no time is specified, or if the quantity or quality of the good or services delivered hereunder is not as specified.
9. **Conflicting Terms.** City of Everett shall not be bound by any conflicting or additional terms or conditions contained in any bid or proposal submitted by Vendor, all such conflicting or additional provisions being void and unenforceable.
10. **Sourcing.** The City of Everett reserves the right to split awards amongst multiple offerors or purchase the required goods or services through alternative procurement sources as permitted by law.
11. **Non-Discrimination.** Vendor agrees to comply with all applicable federal, state and local laws, rules, and regulations prohibiting discrimination in employment. City

of Everett prohibits discrimination against any member of its community on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, parental status, marital status, age, disability, citizenship, or veteran status. The vendor shall remove from any City of Everett job site any of its employees or those of its subcontractors or agents who improperly conduct themselves in any manner.

12. **Indemnity.** Vendor shall indemnify, defend, and hold the City of Everett, and its trustees, members, employees, agents, and other representatives (the "Indemnified Parties") harmless from and against any and all claims, demands, losses, damages, injuries, liabilities, actions, causes of actions, costs and expenses (including reasonable attorneys' fees) for or on account of any injuries to persons (including death), damage to property, or any other financial loss to the extent caused by vendor, or the vendor's breach of the agreement, or any fraudulent, wrongful, negligent, or willful act, error, omission, breach of contract, or infringement of any patent or intellectual property right.
13. **Insurance.** Vendor agrees to carry the following insurance during the term of this Agreement: (i) Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits; (ii) Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with appropriate limits; (iii) Automobile Liability Insurance including owned, non-owned, and hired automobiles with appropriate limits; (iv) Excess liability coverage, umbrella form, with appropriate limits. Certificates of insurance shall be furnished to City of Everett upon request. Vendor's liability policies shall provide additional insured coverage to City of Everett. Limits will be determined by the City.
14. **Entire Agreement.** This purchase order and any solicitation documents prepared by City of Everett shall constitute the entire and integrated agreement between the parties. No verbal warranties, representations, or statements shall be considered a part of this contract or a basis upon which City of Everett or vendor relied in entering into the agreement.
15. **Project Records and Samples.** Vendor shall retain all records relating to the good supplied or services performed under the purchase order for the time period required by law or as directed by City of Everett during which period such records will be made available promptly to City of Everett for inspection and copying upon written notice to vendor.
16. **Material Safety Data Sheets.** Vendor shall submit MSDSs for each toxic or hazardous substance or mixture containing such substances (pursuant to MGL c. 111F, § 8-10 and 441 CMR 21.06) that is shipped under this purchase order.
17. **Assignment.** Vendor shall not delegate, assign, sublet, or transfer their respective duties or interests in this contract to any third party not listed in the bid or proposal without the prior written consent of the City of Everett.
18. **Taxes.** The City of Everett, as an independent authority of the Commonwealth of Massachusetts, is exempt from certain taxes. The City of Everett's taxpayer exemption number is 046-001-386. Vendor shall not be entitled to payment for any payment of taxes from which the City of Everett is exempt.
19. **Dispute Resolution.** All questions relating to payment or performance of this purchase order shall be submitted to non-binding mediation after the completion of vendor's obligations hereunder. Mediation shall be conducted in accordance with the mediation rules of the American Arbitration Association or any other rules mutually agreeable to the parties. The cost of the mediator's services shall be borne equally by both parties. Mediation shall be considered as a condition precedent to initiating litigation. In the event of a dispute between the parties, vendor shall continue performance of its services hereunder during the dispute resolution process.
20. **Termination.** Vendor may terminate the agreement in the event City of Everett fails to pay monies due on invoices submitted by vendor in accordance herewith for a period of 60 days after the due date of payment. In the event of such termination, vendor shall give City of Everett ten (10) days written notice specifying the reasons for the termination. City of Everett may terminate the agreement at any time, with or without cause, by giving vendor seven (7) days written notice. In the event of termination without cause, vendor shall be entitled to payment of all unpaid charges billed and payable in accordance with the provisions of this contract.
21. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.
22. **Waiver.** No waiver, consent, or modification of any of the provisions of this contract shall be binding unless in writing and signed by duly authorized representatives of both of the parties hereto, and no waiver by any party of any default of the other shall be deemed to be a waiver by such party of any other default.
23. **Debarment.** Vendor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 147; G.L. c. 29, s. 29F G.L. c.30, § 39R, G.L. c.149, § 27C, G.L. c.149, § 44C, G.L. c.149, § 148B and G.L. c. 152, s. 25C.