

**TERMS AND CONDITIONS**

1. Acceptance. This purchase order is an offer by the County of Genesee (the "County") for the purchase of the goods (the "Goods") specified from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms") and the terms and conditions on the face of this purchase order (the "Order"). This Order will be deemed accepted by the Seller when: (a) Seller accepts the Order in writing; (b) Seller makes any performance under the Order; or (c) Seller fails to respond to the Order within 10 days of the date of the Order. This Order constitutes the entire agreement of the parties with respect to the Order and supersedes all other agreements and communications with respect to the Order. The County hereby rejects any and all of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Order.

2. Delivery. Seller shall deliver the Goods at the delivery point noted on the face of the order (the "Deliver Location") on the date(s) specified on the face of this Order (the "Delivery Date"). Timely delivery is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, County may terminate the Order immediately and Seller shall indemnify County against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

3. Shipping Terms. Shipping terms are F.O.B. Deliver Location. Seller shall not substitute material or ship more or less than the quantity ordered. Seller shall be solely responsible for and pay all costs of delivering the Goods to the Deliver Location, including, without limitation, all shipping and freight costs and all taxes on import or export of the Goods. Unless otherwise specified on the face of the Order, risk of loss of the Goods remains with Seller and title will not pass to County until the Goods are delivered to and accepted by County at the Deliver Location.

4. Inspection. County reserves the right to inspect the Goods on or after the Delivery Date. County, in its sole discretion, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. Seller shall promptly replace all defective or nonconforming Goods. If Seller fails to timely deliver replacement Goods, County may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause. Any inspection or other action by County under this Section shall not affect Seller's obligations under the Order, and County shall have the right to further inspection after Seller takes remedial action.

5. Price and Payment. The price of the Goods is the price stated on the face of this Order (the "Price"). Seller shall invoice County for the Order within 30 days of delivery. Unless otherwise stated on the face of the Order, County shall pay all properly invoiced amounts due to Seller within 60 days after acceptance of such invoice by the County, except for any amounts disputed by County. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, County reserves the right to set off any amount owing to it by Seller against any amount payable by County to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

6. Termination. County may terminate this Order, in whole or in part, for any reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, County may terminate this Order with immediate effect, either before or after acceptance of Goods, if Seller has breached any of the Terms herein. If the Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the County may terminate this Order. If County terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by County prior to the termination.

7. Warranties. Seller warrants to County that for a period of one year from the Delivery Date, all Goods provided pursuant to this Order will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity.

8. Indemnification. Seller shall defend, indemnify, and hold harmless County and its commissions, boards, officers elected officials, employees, and agents (collectively, "Indemnitees") against any and all claims, losses, injuries, or liability, including reasonable attorney and professional fees, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations under the Terms of this Order or if possession or use of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without County's or Indemnitee's prior written consent.

9. Compliance with Law. Seller warrants to the County that it and its employees, agents, contractors and subcontractors (the "Personnel") shall comply with all applicable laws, regulations and ordinances during the performance of this Order. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result County is fined, Seller agrees to pay the fine and costs incident thereto or reimburse County for payment. To the extent that Seller's Personnel are required to enter onto County's site or property, Seller shall ensure that Personnel comply with County's health, safety and environmental policies and standards.

10. Taxes. Unless specified otherwise on the face of the Order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. Seller acknowledges that the County is a Michigan Municipal Corporation, and is therefore exempt from Federal Excise Tax and Michigan Sales and Use Tax.

11. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, County may terminate this Order immediately by giving written notice to Seller.

12. Relationship of the Parties. The Seller is an independent contractor of County. Neither party shall have authority to bind the other party in any manner whatsoever.

13. Governing Law and Venue. All matters arising out of or relating to this Order shall be governed by the internal laws of Michigan, excluding its conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and state courts in Genesee County, Michigan.

14. Severability. If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.

15. Miscellaneous. Seller shall not assign, transfer, or subcontract any of its rights or obligations under the Order without County's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by the Genesee County Controller. No waiver by the County of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the Genesee County Controller. No failure to exercise, or delay in exercising, any right or remedy arising from the Order by County shall be deemed a waiver thereof.