

## Purchase Order Terms & Conditions

1. General
  - 1.1. The following terms and conditions, together with such terms as are set forth in the Contract, with such plans, specifications or other documents as are incorporated by reference, as amended in any subsequent authorized writing from Buyer, will constitute the entire contract (the "Purchase Order") between the Town of Ocean City ("Buyer") and Supplier. If bid documents, performance specifications, technical product descriptions or other similar descriptive materials submitted by Supplier in connection with the Purchase Order, or Supplier's proposal, have been incorporated by reference, these will not be deemed to supersede any contrary requirements of Buyer, but to the extent that such materials are not inconsistent with Buyer's requirements, they will constitute a part of the basis of this agreement. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this offer and notice of objection to any different or additional terms in any response to this offer is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offeror's assent to any different or additional terms contained or referenced in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. This Purchase Order will be deemed to have been accepted by the Supplier upon receipt by the Buyer of any writing, including a writing transmitted by fax or other means of electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any work on site, or (iii) performance of any services hereunder.
2. Electronic/Facsimile Transmission
  - 2.1. If this Purchase Order is transmitted by fax or by other means of electronic transmission, such transmission will have the legal significance of a duly executed original delivered to the Supplier.
3. Payment
  - 3.1. If no other terms are specified, the net amount will be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming with the terms of this Purchase Order and (ii) invoicing. Buyer is exempt from sales and use tax in the State of Maryland. Supplier assigns to Buyer all rights to refunds of sales and use taxes paid in connection with this Purchase Order and agree to co-operate with Buyer in the processing of any refund claims. Unless expressly provided in the Purchase Order Buyer will not be liable for any shipping, handling, fuel surcharges or similar fees. **Invoices are to be sent electronically, with the Purchase Order number on them to, [AFFINANCE@OCEANCITYMD.GOV](mailto:AFFINANCE@OCEANCITYMD.GOV).**
4. Time
  - 4.1. If delivery or completion dates cannot be met, Supplier will inform Buyer immediately. Such notice will not, however, constitute a change to the delivery or completion terms of this Purchase Order unless Buyer modifies this Purchase Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the Buyer, at Buyer's option and without prior notice to Supplier, may either approve a revised date or may cancel this Purchase Order and may obtain such goods or work elsewhere and in either event the Supplier will be liable to the Buyer for any resulting loss incurred by the Buyer. Supplier's sole remedy for a delay caused by Buyer will be an extension in the time for Supplier's performance equal to the duration of Buyer's delay. Supplier will not be liable for damages resulting from Supplier's failure to deliver or complete, or for delays in delivery or completion, caused solely by strikes not caused by or within the control of Supplier, lock-outs not caused by or within the control of Supplier, fires, war or acts of God. **TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS PURCHASE ORDER.**
5. Improper Performance and Disputes
  - 5.1. In addition to other remedies provided by law, Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the work in accordance with the terms and conditions of this Purchase Order. Acceptance of any part of the Purchase Order will not bind the Buyer to accept any future shipments or work, nor deprive it of the right to return goods already accepted. At Buyer's option, if Buyer so elects in its sole discretion with regard to any particular dispute, any dispute arising in connection with this Purchase Order will be resolved by arbitration in Ocean City, MD in accordance with the rules of the American Arbitration Association; and all disputes will otherwise be resolved in and only in the Worcester County, MD as the exclusive judicial forum.
6. Warranty
  - 6.1. Supplier expressly warrants all (i) goods delivered under this Purchase Order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this Purchase Order to be in conformity with all plans, specifications and other data incorporated as part of this Purchase Order. These express warranties will not be waived by reason of acceptance or payment by the Buyer. This Purchase Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of Maryland (the "UCC") providing any protection to Buyer for goods, including but not limited to all warranty protection (express or implied) and all of Buyer's remedies under the UCC. All goods and work will also be subject to any stricter warranties specified in the Purchase Order or in other materials incorporated by reference.
7. Risk of Loss
  - 7.1. Unless the Purchase Order expressly states otherwise, all goods will be shipped FOB: the "Destination" location designated in the Form. Risk of loss will 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.
8. Indemnity and Hold Harmless
  - 8.1. Supplier will indemnify, defend and hold Buyer harmless from and against any and all cost (including reasonable attorneys' fees), expense, liability or damage on account of, related to, or resulting from any and all demands, claims or causes of actions asserted against Buyer by any person or persons for injury or damages to persons, including death or property resulting from, arising out of, or related to the negligent, intentional or wrongful acts or omissions, or breaches of this Purchase Order by Supplier or its respective agents, employees or subcontractors in connection with the use of the Goods or the performance of subject matter under this Purchase Order.
9. Assignment/Subcontracting
  - 9.1. Neither party will have any right to assign this Purchase Order or any benefits arising from this Purchase Order without prior written consent of the other and, unless otherwise agreed upon in writing, the rights of any assignee will be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Supplier will not, except in the case of raw materials, castings, forgings or rough welded structures, or standard commercial goods, or except as otherwise agreed in writing by the Buyer, delegate or subcontract the work on any item of material or service to be delivered or performed under this Purchase Order.
10. Insurance
  - 10.1. Insurance: Vendor will at all times, at its own cost and expense, carry and maintain the insurance coverage listed in this paragraph, in the specified minimum amounts. Vendor will provide a certificate of insurance that certifies that the policies below are in full force and effect. Vendor agrees that such policies will not be cancelled or materially altered without TOC's prior written consent. Vendor will name the TOC as an additional insured on the insurance accord.
  - 10.2. Vendor will maintain excess catastrophe coverage at a minimum of two million dollars (\$2,000,000).

- 10.3. Vendor will maintain worker's compensation insurance and employer's liability insurance in compliance with the state and/or federal authority having jurisdiction over each of the Vendor's employees, with minimum coverage of at least one million dollars (\$1,000,000) for employer's liability, and statutory coverage for workman's compensation. Coverage may be self-insured.
- 10.4. Maintain comprehensive public liability, bodily injury and property damage insurance against any claim(s) which might occur in carrying out the Contract. Minimum coverage will be at least one million dollars (\$1,000,000) liability for bodily injury and property damage including product liability and completed operations.
- 10.5. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contract. Minimum coverage will be at least one million dollars (\$1,000,000) per occurrence combined single limit for liability and property damage.
11. Examination of Records
  - 11.1. The Supplier agrees that Buyer, and any Federal agency providing funding for this Purchase Order and the Comptroller General of the United States or any of their duly authorized representatives, will have access to and the right to examine any pertinent books, documents, papers and records of the Supplier involving transactions related to this Purchase Order to the extent necessary to verify the nature and extent of costs incurred under this Purchase Order until the expiration of four (4) years after final payment under this Purchase Order. Nothing in this Purchase Order will be deemed to preclude an audit by the U.S. General Accounting Office of any transaction under this Purchase Order. The preceding two sentences will not apply if this Purchase Order does not involve a sum in excess of One Thousand Dollars (\$1,000), or if this is an agreement for public utility services at rates established for uniform applicability to the general public, or if this is as agreement for general inventory goods not specifically identifiable with work under the Buyer's contract with the government.
12. Compliance with Laws and Regulations
  - 12.1. The Supplier agrees to comply with all applicable federal, state, and local laws and regulations.
13. Termination Without Cause
  - 13.1. Buyer, in its sole discretion and without cause, may terminate this Purchase Order, in whole or in part, at any time without incurring liability to Supplier for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for work completed on site or goods delivered. Payment due will be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered. Supplier's warranties, and Supplier's liability for defective or non-conforming work or goods, as well as sections 5, 6, 8, 10, 11 and 17 of these Terms and Conditions, will survive termination and remain in full force and effect.
14. Additional Provisions for Work Performed on Site
  - 14.1. The Supplier will maintain on the Site at all times a sufficient work force to carry out its obligations in an efficient and timely manner. The Supplier will employ only competent, skilled, reliable and honest workmen who will work in harmony with other workmen on the Site. All persons furnished by Supplier will be deemed Supplier's employees or agents, and Supplier will comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor. At the Buyer's instruction, the Supplier will promptly remove from the Site any employee who, in the Buyer's opinion, represents a threat to the safety or progress of the Project or persons on the Site, or who has engaged in any improper conduct, specifically including (without limitation) conduct which the Buyer perceives as constituting harassment of other persons.
  - 14.2. Supplier will secure all materials and the site where Work is performed, and will leave all areas broom clean (unless a more stringent cleanliness standard is set forth in documents that are incorporated in this Purchase Order by reference) and in a safe condition at the end of each work day and upon completion of the Work. In case of dispute, Buyer may remove waste at Supplier's expense.
  - 14.3. Supplier will ensure that federal, state and county of residence criminal background checks are conducted on all persons performing Work at the Site, and will exclude from the Site any dishonest, dangerous or otherwise unqualified persons.
  - 14.4. In the event of an emergency threatening health, life or property, the Supplier will take such action as may be necessary to save lives and protect persons from injury and, this being done, to protect and preserve property. The Supplier will notify the Buyer of any such emergency as promptly as is practicable under the circumstances.
15. Confidentiality and Privacy Requirements
  - 15.1. The Parties agree during and for a period of three (3) years after the term of this Contract to safeguard the confidentiality of any information obtained in the performance of this Contract regarding the products, designs or developments, specifications, and pricing of the other Party. It is agreed that each Party remains the owner of its information and documents, and that such information and documents can be used by the other party only for the purpose of performing under the terms of this Contract. The disclosure of any such information or documents to any third party requires prior written approval of the owner of such information and requires the prior written Contract of such third party to safeguard the confidentiality. Any publicity by Vendor regarding the order (picture, descriptions, notice of award, or samples thereof) is prohibited except with TOC's written approval. Notwithstanding anything stated herein to the contrary, the parties understand and agree that the Town of Ocean City must comply with the Maryland Public Information Act upon request of a third party.
16. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION
  - 16.1. All Vendors are subject to, and must comply with, the provisions of all applicable state and federal anti-discrimination laws. The Town encourages equal employment opportunity to businesses owned and controlled by minorities and women.
  - 16.2. The Successful Vendor will not discriminate against any employee or applicant for employment or any member of the public because of race, color, creed, religion, national origin, sex, sexual preference, disability, marital status, age; or otherwise commit an unfair employment practice. Vendor further agrees that this nondiscriminatory agreement will be incorporated by the Vendor in all contracts entered into with suppliers of commodities and services, contractors and Sub-contractors, and all labor organizations furnishing skilled, unskilled, and craft union skilled labor, or who may perform any such labor or services in connection with the Contract.