

**PURCHASE ORDER TERMS AND CONDITIONS – TRAVIS COUNTY PURCHASING OFFICE**  
**(Not applicable to Delivery Orders issued against existing contracts)**

- 1. ACCEPTANCE:** Seller's written acceptance, commencement of work, shipment or partial delivery of any item or service called for shall constitute acceptance by the Seller of this Purchase Order and its Terms and Conditions.
- 2. NONDISCRIMINATION AND STATUS:** Seller, by acceptance of this Purchase Order, agrees not to engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, or national origin. Seller certifies that he is a qualified, capable, and otherwise eligible business entity, that he is not in Receivership or contemplates same, and has not filed for bankruptcy. He further certifies that the Company, Corporation, or Partnership is not currently delinquent with respect to payment of County property taxes. Notwithstanding anything to the contrary herein, if Seller is delinquent in payment of property taxes at the time of invoicing, Seller hereby assigns any payments to be made for performance under this Order to the County Tax Assessor-Collector for the payment of delinquent taxes.
- 3. DESCRIPTION OF SUPPLIES:** Any catalog or manufacturer's reference used in describing any item is merely descriptive and not restrictive, unless otherwise noted, and is used to indicate type and quality of material. The term "Or Equal," if used, identifies commercially produced items which have the essential performance and salient characteristics of the brand name stated in the item description. Seller certifies that any substitute brand supplied hereunder matches the performance and salient characteristics of the item called for and agrees to replace it in the event it does not conform. All supplies or equipment shall be the latest improved new model meeting specifications in current production at the time of delivery and shall be delivered completely assembled, adjusted, serviced, and ready for use. Seller warrants that all applicable Patents and Copyrights which may exist on items sold hereunder have been adhered to and that County shall not be liable for any infringement of those rights.
- 4. WARRANTY:** Implied warranties notwithstanding, Seller warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions, furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Seller further agrees to provide copies of applicable warranties to the County Purchasing Agent. Return of merchandise under warranty shall be at Seller's expense.
- 5. FOB POINT INSPECTION AND ACCEPTANCE:** The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications, and Seller assumes the costs associated with such nonconformance. An itemized packing list bearing Purchase, Delivery, and/or Order Number shall be attached to the outside of every shipping container delivered against this instrument. Delivery of all goods or services shall be Free on Board to final destination as outlined herein unless otherwise required.
- 6. VARIATION IN QUANTITY:** No variation in the quantity of any item called for by this Purchase Order shall be allowed, unless such variation is caused by conditions of loading, shipping, packing or allowances in manufacturing processes, and then only to the extent, if any, set forth herein.
- 7. FORCE MAJEURE:** If performance by the County or the Seller is interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God or the result of war, riot, civil commotion, sovereign conduct, or the conduct of any person not a party, then it shall be excused from performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.
- 8. TAXES AND PAYMENTS:** Payments shall be made by County check upon satisfactory delivery and acceptance of all items or services, and submission of a proper Invoice. For purposes of payment discounts time will begin upon satisfactory delivery of goods or services or submission of a proper invoice, whichever is later. No partial payments shall be made unless specifically set forth herein. V.A.C.S. Art. 601F applicable to Contractors, Sub-contractors, and suppliers, requires that payments be made within Thirty (30) calendar days. If County fails to pay within Thirty (30) days, a 1% interest penalty must be added at the time payments are made. The law does not apply if the terms of a federal grant contract regulation, or statute prevents local governments from making timely payments with federal funds. Sellers may agree to payment terms for which the Prompt Payment Act does not apply at the time the contract is entered into. For purposes of complying with the Prompt Payment Act, time does not begin unless or until all billing instructions have been complied with or proper delivery of performance has been made satisfactorily, whichever is last. County has Twenty One (21) days in which to notify Seller of erroneous invoice or delivery performance, if no error is found the original date of delivery or performance or day after proper invoice was received, whichever is later, shall apply. Payments will be deemed to have been made on payment postmark date or date of electronic transmission, if any. All prices included in the Purchase Order shall be exclusive of any Federal, State or Local Taxes in accordance with V.T.C.A. Tax Code, 151.309.
- 9. COUNTY TAXES:** If the Contractor subsequently becomes delinquent in the payment of County taxes, that may be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
- 10. OFFICIALS NOT TO BENEFIT:** No employee or elected official of County shall be admitted to any share or part of this Purchase Order, or to any benefit that may arise therefrom. Seller agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing an Order, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Purchase Order. At the sole discretion of County this Purchase Order may be rescinded or terminated for violation of this provision, without liability to the County.
- 11. COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person(s) or selling agency has been employed or retained to solicit or secure this Order upon an understanding for a commission, percentage, or contingent fee, excepting bona fide employees and established commercial selling agencies maintained by the Seller for the purpose of securing business. For breach of this warranty, County shall have the right to terminate this Order without liability, or in its discretion to deduct from the Order price, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 12. NOVATION AND CHANGE OF NAME AGREEMENTS:** Seller is responsible for the performance of this Order. In the event a change of name or novation agreement (change of ownership) is required pursuant to action initiated by the Seller, the County Purchasing Agent shall be notified immediately. No change in the obligation of the Seller will be recognized until such change is approved by Commissioners Court. A fee of \$100.00 per Order, payable to County, will be charged the Seller for administrative costs in processing each change under this provision. Order will then be modified to reflect the change.

**13. ENTIRETY OF AGREEMENT AND MODIFICATION:** This instrument contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements, or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force, except a subsequent modification in writing signed by the Purchasing Agent. No official, representative, employee, or agent of the County has any authority to modify or amend this Order except pursuant to specific authority to do so granted by the Commissioners Court.

**14. MEDIATION:** When mediation is acceptable to both parties in resolving a dispute arising under this Order, the parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for the mediation as described in the TEX. CIV. PRAC. AND REM. CODE, 154.023. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation must remain confidential as described in TEX. CIV. PRAC. AND REM. CODE 154.073, unless both parties agree, in writing, to waive the confidentiality.

**15. ORDER CONSTRUCTION:** Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Order in accordance with V.T.C.A., Government Code, Sec. 312.002 and 312.003. For purposes of this solicitation and any resulting award, the following words or phrases shall have the meanings indicated: (i) COUNTY - Travis County, State of Texas, (ii) COMMISSIONERS COURT - County Commissioners Court, (iii) COUNTY PURCHASING AGENT - County Purchasing Agent duly appointed in Travis County, Texas acting as agent in the solicitation of bids, issuing award, and administering this contract, (iv) SELLER/CONTRACTOR - A person or firm receiving award of a Contract from County and (v) SUBCONTRACTOR - A person or firm doing business with a contractor.

**16. SEVERABILITY:** In case any one or more of the provisions contained in this Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**17. ORDER OF PRECEDENCE:** In the event of inconsistent or conflicting provisions of this Purchase Order and referenced documents, the following descending order of precedence shall prevail: (i) Specifications, (ii) Drawings, (iii) Special Terms and Conditions, (iv) General Terms and Conditions, and (v) Item Description.

*(Revised 7-08)*