

# CITY OF CHATTANOOGA

Direct all invoices to:  
City of Chattanooga  
Attn: Accounts Payable  
101 E. 11<sup>th</sup> Street  
Chattanooga, TN 37402



PURCHASING OFFICE  
101 E. 11<sup>th</sup> Street, Suite G13  
Chattanooga, TN 37402  
Phone: 423-643-7230

## City of Chattanooga Purchase Order Standard Terms and Conditions

- ACCEPTANCE-AGREEMENT.** Contractor's commencement of work on the goods/non-professional services subject to the purchase order or shipment/performance of those goods/non-professional services, whichever occurs first, is considered an effective mode of Contractor's acceptance of this purchase order. Any acceptance of the purchase order is limited to acceptance of the express terms contained on the face of the purchase order and these terms and conditions. Any proposal for additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this offer in Contractor's acceptance is objected to and rejected, but any proposals do not operate as a rejection of this offer unless the variances are in the terms of the description, quantity, price or delivery schedule of the goods/non-professional services, but are considered a material alteration, and this offer will be considered accepted by Contractor without additional or different terms. Additional or different terms or any attempt by Contractor to vary in any degree any of the terms of this purchase order are considered material and are objected to and rejected, but the purchase order does not operate as a rejection of the Contractor's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods/non-professional services.
- GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Tennessee and the Codes of the City of Chattanooga ("City").
- COMPENSATION AND PAYMENT TERMS.** For the completion of the Work, City shall pay Contractor the contract sum set forth in the purchase order. Payments may be made in amounts which are consistent with percentage of goods/non-professional services completed and invoiced by the Contractor as set forth in the purchase order.  
  
The City's delivered payment terms are payment within thirty (30) days except where the law provides otherwise. Payment may be sooner where cash discounts are offered for early payment, however, cash discounts offered will not be considered in determining lowest bidder. In no event will payment be made prior to receipt of an original invoice containing invoice and purchase order numbers and receipt of purchased item(s). The City is not liable for delays in payment caused by failure of the Contractor to send invoice to the address referenced herein.
- INSPECTION/TESTING.** Payment for the goods delivered does not constitute acceptance of the goods. City has the right to inspect the goods and to reject any or all of the goods which are in City's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Contractor at its expense and in addition to City's other rights. City may charge Contractor all expenses of unpacking, examining, repacking and reshipping those goods. In the event City receives goods whose defects or nonconformity is not apparent on examination, City reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order will relieve in any way the Contractor from the obligation of testing, inspection and quality control.
- PRICE WARRANTY.** Contractor warrants that the prices for the goods or non-professional services sold City are not less favorable than those currently extended to any other customer for the same or similar goods or non-professional services in similar quantities. In the event Contractor reduces its price for the goods or

non-professional services during the term of this purchase order, Contractor agrees to reduce the prices charged to City correspondingly. Contractor warrants that prices shown on this purchase order are complete, and no additional charges of any type will be added without City's express written consent. Any additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

6. **STANDARD OF CARE.** Contractor shall exercise the same degree of care, skill, and diligence in the performance of services as is ordinarily possessed and exercised by a professional Contractor under similar circumstances in the same area of practice. Contractor makes no warranty or guarantee, either expressed or implied, as part of this agreement.
7. **INDEMNIFICATION.** Contractor must defend, indemnify and hold harmless the City against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased, or from any act or omission of Contractor, its agents, employees or subcontractors. Additionally, Contractor shall defend, indemnify and hold harmless City from and against any and all Third Party claims and liabilities (including, without limitation, reasonable attorneys' fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Services or Software, when used within the scope of this Agreement, infringes, violates or misappropriates a valid third party patent, copyright or other proprietary right, provided that Contractor is notified promptly in writing of the action and Contractor is given the option, at its expense, to control the action and all requested reasonable assistance to defend the same.
8. **INSURANCE.** Contractor shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Contractor against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:
  - a. **Commercial General Liability Insurance**, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
  - b. **Automobile Liability Insurance**, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
  - c. **Worker's Compensation Insurance and Employer's Liability Insurance**, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
  - d. **Professional Liability Insurance**, with a limit of \$1,000,000 for each claim and aggregate.

Contractor shall not commence work on the goods/non-professional services until a Certificate of Insurance has been submitted to the City showing proof that Contractor has obtained the necessary insurance coverage. If any of the above cited policies expire during the life of this Agreement, it is the Contractor's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - a) Commercial General Liability
  - b) Auto Liability
- ii. Contractor's insurance must be primary insurance as respects performance of subject contract.

- iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.
9. **LIMITATIONS OF RESPONSIBILITY.** In no event is City liable for anticipated profits or for incidental or consequential damages. City's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach of this Agreement will in no case exceed the unit price allocable to the goods or non-professional services which gives rise to the claim. City is not liable for penalties of any description. Any action resulting from any breach of this Agreement by City as to the goods or non-professional services delivered must be commenced within one (1) year after the cause of action has accrued.
10. **PROPRIETARY INFORMATION-CONFIDENTIALITY-ADVERTISING.** Contactor must consider all information furnished by City to be confidential and not disclose any information to any other person, or use the information itself for any purpose other than performing this Agreement, unless Contractor obtains written permission from City to do so. This paragraph applies to drawings, specifications, or other documents prepared by Contractor for City in connection with this Agreement. Contractor must not advertise or publish the fact that City has contracted to purchase goods from Contractor, nor is any information relating to the order to be disclosed without City's written permission. No commercial, financial or technical information disclosed in any manner or at any time by Contractor to City is to be considered secret or confidential, unless otherwise agreed in writing, and Contractor has no rights against City with respect to this information except any rights as may exist under patent laws. Contractor recognizes that City's employees have no authority to accept any information in confidence.
11. **RECORDS RETENTION AND AUDIT.** The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Engineer, Contractor, Licensee, Supplier, Vendor, Contractor, Grant Recipient, etc.)
- a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any of the Contractor's independent contractors, associates, and/or subcontractors, shall be made available for inspection and copying upon written request to the City. Additionally, said records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement, and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, good professional practice, and upon notice during the pendency of any claims or litigation arising from the Project.
  - b. The City, or its assigns, may audit all financial and related records (including digital) associated with the terms of the contract or agreement, including timesheets, reimbursable out of pocket expenses, materials, goods and equipment claimed by the Contractor. The City may further audit any of the Contractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement), or to identify conflicts of interest.
  - c. The Contractor shall at all times during the term of the contract or agreement, and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed

pursuant to this contract or agreement. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor, which are necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with general accepted accounting principles. The Contractor shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

- d. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors or suppliers of goods or non-professional services to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the City.
- e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City, unless the audit identifies significant findings that would benefit the City. The Contractor will reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.
- f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

12. **TERMINATION FOR CONVENIENCE.** City reserves the right to terminate this order or any part of this order at its sole convenience with thirty (30) days written notice. In the event of termination, Contractor must immediately stop all work and immediately cause any of its suppliers or subcontractors to cease any further work. Contractor will be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed before the notice of termination, plus actual direct costs resulting from termination. Contractor will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided. Contractor must not unreasonably anticipate the requirements of this order.

13. **TERMINATION FOR CAUSE.** City may also cancel this order, or any part of this order, with seven (7) days written notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide City, upon request, with adequate assurances of future performance are all causes allowing City to cancel this order for cause. In the event of cancellation for cause, City is not liable to Contractor for any amount, and Contractor is liable to City for any and all damages sustained by reason of the default which gave rise to the cancellation. If it should be determined that City has improperly cancelled this contract for a default, the cancellation is considered a termination for convenience.

14. **DISPUTE RESOLUTION.** Claims, disputes, or other matters in question between the parties to this Agreement arising out of or relating to this Agreement, or breach thereof, shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

- a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
- b. The parties agree to share equally in the expense of the mediation.
- c. Such mediation may include the Contractor or any other person or entity who may be affected by the subject matter of the dispute.

d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order, or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

15. **DELAY IN PERFORMANCE.** Neither City nor Contractor shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party. For purposes of this Agreement, such circumstances include abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Contractor under this Agreement. Should such circumstances occur, the nonconforming party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of the Agreement. If the Contractor is delayed in the performance of the services for more than three hundred sixty-five (365) calendar days, either by the City or circumstances beyond his control, an equitable adjustment to the contract amount can be made to compensate for additional costs incurred.

For delays in performance by Contractor caused by circumstances which are within its control, such delays shall be documented and presented to the Purchasing Department at the conclusion of Project and acknowledged by both City and Contractor. Completed form shall be retained by City for a period of seven years and reviewed prior to Contractor selection for future City projects. In the event Contractor is delayed in the performance of Services because of delays caused by City, Contractor shall have no claim against City for damages or contract adjustment other than an extension of time.

16. **HAZARDOUS MATERIALS.** Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The City and Contractor agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. City and Contractor also agree that the discovery of unanticipated hazardous materials may make it necessary for the Contractor to take immediate measures to protect health and safety. City agrees to compensate Contractor for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Contractor agrees to notify City when unanticipated hazardous materials or suspected hazardous materials are encountered. City agrees to make any disclosures required by law to the appropriate governing agencies, and agrees to hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by governing law. In the event the project site is not owned by City, the City agrees to inform the City of the discovery of unanticipated hazardous materials or suspected hazardous materials.

17. **COMMUNICATIONS.** Any notice to the City shall be made in writing to the address specified below:

City of Chattanooga  
Attn: Purchasing  
101 E. 11<sup>th</sup> Street, Suite G13  
Chattanooga, TN 37402  
(423) 643-7230

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and City.

18. **WAIVER.** A waiver by either City or Contractor of any breach of this Agreement shall be in writing. City's failure to insist on performance of any of the terms or conditions of this purchase order or to exercise any right or privilege, or City's waiver of any breach does not waive any other terms, conditions, or privileges, whether of the same or similar type
19. **SEVERABILITY.** The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.
20. **INTEGRATION.** This Agreement represents the entire and integrated agreement between City and Contractor. All prior and contemporaneous communications, representations, and agreements by Contractor, whether oral or written, relating to the subject matter of this Agreement, as set forth in the Purchase Order, are hereby incorporated into and shall become a part of this Agreement.
21. **SUCCESSORS AND ASSIGNS.** City and Contractor each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.
22. **ASSIGNMENT.** Neither City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Contractor from employing independent Contractors, associates, and subcontractors to assist in the performance of the Services; however, other agreements to the contrary notwithstanding, in the event Contractor employs independent Contractors, associates, and subcontractors to assist in performance of the Services, Contractor shall be solely responsible for the negligent performance of the independent Contractors, associates, and subcontractors so employed.
23. **THIRD PARTY RIGHTS.** Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and Contractor.
24. **RELATIONSHIP OF PARTIES.** Nothing contained herein shall be construed to hold or to make the City a partner, joint venturer, or associate of Contractor, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.
25. **NON-DISCLOSURE.** Contractor agrees not to disclose or to permit disclosure of any information designated by the City as confidential, except to the Contractor's employees and independent Contractors, associates, and subcontractors who require such information to perform the services specified in this agreement.
26. **NON-DISCRIMINATION.** Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor agrees not to discriminate against any participant in this Agreement on the basis of race, color, religion, sex, age or national origin. Contractor further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

27. **DRUG FREE WORKFORCE.** Contractor certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.
28. **FEDERAL OR STATE FUNDING.** In the event that the Project is funded in whole or in part by Federal or State grants, Contractor agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures.
29. **COMPLIANCE WITH LAWS.** The City has entered into this agreement with Contractor relying on its knowledge and expertise to provide the services contracted for. As part of that reliance, Contractor represents that he knows and understands the relevant and applicable federal and state laws that apply to the services provided through this contract, and agrees to comply with these relevant and applicable federal and state laws.

The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1988.