

## CITY OF NAPA PURCHASE ORDER TERMS AND CONDITIONS

1. **A. GENERAL PURCHASE ORDERS:** The materials, equipment, supplies or services covered by this order shall be furnished by Supplier/Contractor/Seller(Supplier) subject to all the terms and conditions set forth in this order including the following, which Supplier, in accepting this order, agrees to be bound by and to comply with all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent it specifies the materials, supplies, or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.
- B. CONTRACT PURCHASE ORDERS:** The materials, equipment, supplies or services covered by this order shall be furnished by Supplier/Contractor/Seller(Supplier) subject to all the terms and conditions set forth in the contract or agreement instrument negotiated with the City. The terms of the contract or agreement instrument supersede all remaining conditions listed. Contract purchase orders are solely an instrument for issuing payments on contracts and agreements.
2. **DELIVERY:** Supplier shall deliver the items and/or services stated herein free from any and all claims, debts, or demands whatsoever. Deliveries shall be made as set forth in this order and any additional Specification incorporated. Delivery is defined as complete delivery in good order, at place designated in the Specifications/Purchase Order.
3. **PACKING:** No charges for transportation, containers, drayage, packing, etc. will be allowed unless so specified in the order.
4. **FREIGHT CHARGES:** All shipments are F.O.B. - Destination, Supplier pays charges, unless specified otherwise in the body of this order. If an order is agreed upon as F.O.B. - Origin, freight is to be prepaid and added to the invoice. In that case a copy of the paid express or freight bill must be attached to the invoice.
5. **INSPECTION AND ACCEPTANCE:** Inspection and acceptance shall be at destination, unless otherwise provided. The services, materials and supplies furnished shall be exactly as specified in this order free from all defects in Supplier's performance, design, workmanship and materials. If, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, the City may reject them, require Supplier to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Supplier is unable or refuses to correct such items within a time deemed reasonable by the City, the City may terminate the order in whole or in part. Supplier shall bear all risks as to rejected services and, in addition to any costs for which Supplier may become liable to the City under other provisions of this order, shall reimburse the City for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of this order for unaccepted services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.
6. **CHANGE ORDERS:** The City may at any time make written changes within the general scope of the order. If any such changes cause an increase or decrease in the cost of, or in the time required for the performance of the order, an equitable adjustment shall be made in the order price, delivery schedule, or both. Any claim by Supplier for adjustment in this cause must be approved by the City's authorized representative(s) in writing (formal change order, amendment, or revision) before Supplier proceeds with such change.
7. **INVOICES:** Invoices shall contain the following information: Supplier's Federal Tax I.D. number, purchase order number, invoice number and date, item number, description of supplies/services, quantities and units of measure, unit prices and extended totals.
8. **EXCISE TAX:** If federal excise tax is applicable to the transaction, it must be clearly stated so and excluded from the price of the article. The City of Napa, as a government agency, is exempt from the payment of said tax and will issue an exemption certificate.
9. **SALES AND US TAXES:** Sales tax must be shown on the invoice as a separate item.
10. **PAYMENTS:** Payment terms are Net 30 unless otherwise agreed to by both parties. All Cash Discounts shall be taken and computed from the date of delivery or completion and acceptance of the material, or from the date of receipt of invoice, whichever is latest. Each payment obligation of the City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by the Supplier, the product or service directly or indirectly involved in the performance of that function may be terminated by the City at the end of the period for which funds are available.
11. **INDEMNITY:** Supplier agrees to protect, release, defend, indemnify and hold harmless, City, its officers, elected and appointed officials, employees, agents and volunteers from and against any and all liability, actions, claims, damages, costs or expenses including attorney's fees and costs and expenses of suit, which may be asserted by any person; including Supplier, from any cause whatsoever, directly or indirectly, arising out of or in connection with the activities of Supplier, its agents, employees and subcontractors, provided for herein whether or not there is concurrent passive negligence on the part of the City. City shall be reimbursed for all costs and attorneys' fees incurred by the City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of the indemnification to be provided by Supplier. This indemnification shall survive termination of this agreement.
12. **PATENT RIGHTS:** Any equipment or service to be furnished hereunder shall not, either in construction, manufacture, use, sale or other particular, infringe any letters patent, copyright or registered trademark heretofore granted, and the Supplier shall defend and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the City based upon an infringement or alleged infringement of such letters patent, copyright or registered trademark and shall indemnify, defend and save harmless the City from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit.
13. **DEFAULT BY SUPPLIER:** In case of default by Supplier, the City reserves the right to procure the goods or services from other sources and to hold the Supplier responsible for any excess costs occasioned to the City thereby. Supplier must notify the City immediately upon knowing that non-performance or delay will apply to this order whether as a result of Force Majeure or not. Supplier shall not be held accountable for additional costs incurred due to default as a result of Force Majeure. When delay is ascertained Supplier is to submit in writing a Recovery Plan for this order. If the Recovery Plan is not acceptable to the City or not received within 10 calendar days of the necessary notification of delay or Force Majeure default, then the City may cancel this order in its entirety at no cost to the City, owing only for goods and services completed to that point.
14. **WARRANTY:** The Supplier agrees that the supplies/services furnished under this order shall be covered by the most favorable commercial warranties the Supplier gives to any customer for such supplies/services, and that the rights and remedies provided herein are in addition to, and do not limit any rights afforded to the City by, any other clause of an order awarded hereunder.
15. **TERMINATION:** The City may, by giving ten (10) calendar days written notice to the Supplier, terminate this order prior to the designated completion date FOR DUE CAUSE. Due cause for termination shall be, but not limited to, the best interests of the City, failure of the product to meet specifications, and/or for reasons of unsatisfactory service. The City may, upon giving thirty (30) calendar days written notice to Supplier, terminate the order with or without cause.
16. **COMPLIANCE WITH LAWS:** It is understood that all materials and/or services provided by Supplier shall conform to the applicable requirements of City Ordinances, and all applicable State and Federal Laws. Supplier will comply with all applicable laws, rules & regulations including, but not limited to, the requirements of Labor Code Section 3800 regarding Workers' Compensation insurance. Supplier will procure & maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with products, materials and services supplied to the City.
17. **GOVERNING LAW:** All questions of validity, interpretation or performance of any of the terms or of any rights or obligations of the parties to this agreement shall be governed by California law; and any action brought by either party to enforce any of the terms of the agreement shall be filed with the Superior Court of the County of Napa, California.
18. **ATTORNEYS' FEES AND COSTS:** In any action by a party to enforce its rights hereunder, the nonprevailing party shall pay the prevailing party's legal costs and expenses (including reasonable attorneys' fees).
19. **INTEGRATION CLAUSE:** This purchase order is limited to the terms and conditions contained on the face and back thereof. Any additional or different terms in the Supplier's form are hereby deemed to be material alteration and notice of objection to them and rejection of them is hereby given.