

CITY OF CORINTH, TEXAS
STANDARD TERMS AND CONDITIONS FOR PURCHASE ORDERS

Seller and City (Buyer) agree to comply with the following terms and conditions. These Terms and Conditions along with the purchase order shall constitute a contract between the Seller and Buyer upon the Seller issuing an invoice and/or providing any of the goods and services described in the purchase order. In the event of a conflict between these Terms and Conditions and a separate written agreement between the Seller and Buyer, the terms of the separate written agreement shall prevail.

1. **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked with the seller's name and address, purchase order number, container number and total number of containers, and the packing slip. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Seller shall bear cost of packaging unless otherwise provided. City's count or weight shall be final and conclusive on shipments not accompanied by packing slips.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE & RISK OF LOSS:** The title and risk of loss of the goods shall not pass to City until City actually receives and takes possession of the goods at the point(s) of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Destination, City of Corinth, Texas with all delivery and packing costs to be prepaid by Seller, unless delivery terms are specified otherwise in bid. City agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided City shall have the right to designate what method of transportation shall be used to ship the goods.
5. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality, and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time of performance has not yet expired, the Seller may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be set forth on the purchase order. Any change thereto shall be affected by modification as provided for the Clause 23 "Modifications," hereof. The terms of this agreement are "no arrival, no sale".
7. **INVOICES AND PAYMENTS:** Seller shall submit separate invoices on each purchase order, hereinafter referred to as "the contract", after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. Mail invoices to: City of Corinth, Attn: Accounts Payable, 3300 Corinth Pkwy., Corinth, TX 76208, or email to accountspayable@cityofcorinth.com. Payment shall be made 30 days after the goods are delivered to the City, or a correct invoice is received, whichever is later. Payment terms are Net 30 per the Texas Prompt Payment Act. Suppliers should keep the Purchasing Department advised of any changes in their remittance address.
8. **NON-APPROPRIATION CLAUSE:** City's obligation is payable only and solely from funds available for the purpose of the purchase. Failure of the City to appropriate funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by City.
9. **SALES TAX EXEMPTION:** Do not include Federal Excise, State or City Sales Tax. City shall furnish tax exemption certificate, if required.
10. **GRATUITIES:** The City may, by written notice to Seller, cancel this contract without liability to seller if it is determined by City that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Corinth with the view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
11. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or test equipment fabricated or required by the Seller for the purpose of filling this order, such special tooling and any process sheets related thereto shall become the property of the City and to the extent feasible shall be identified by the Seller as such.
12. **WARRANTY PRICE:** The price to be paid by the City shall be that contained in the Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, City may cancel this contract without liability to the Seller for breach of Seller's actual expense. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
13. **WARRANTY SOLICITATIONS:** The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract under an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
14. **WARRANTY PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the City. Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid

invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between specifications, drawings, and descriptions, the specifications shall govern.

15. **SAFETY WARRANTY:** Seller warrants that the product sold to City shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, City may return the product for correction or replacement at seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by City will be at Seller's expense.
16. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. City makes no warranty that the production of goods according to the specification will give rise to such a claim; and in no event shall City be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify City to this effect in writing within two weeks after the signing of this agreement. If City does not receive notice and is subsequently held liable for the infringement or the like, Seller will save City harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that City will pay Seller reasonable cost of his search as to infringements.
17. **RIGHT OF INSPECTION:** City shall have the right to inspect the goods at delivery before accepting them.
18. **CANCELLATION:** City shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which City may have in law or equity.
19. **TERMINATION:** The performance of work under this order may be terminated in whole or in part by the City in accordance with this provision. Termination of work hereunder shall be affected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance or work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of City set forth in Clause 18, herein.
20. **FORCE MAJEURE:** If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then such party shall give notice and full particulars of such Force Majeure, in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. Force Majeure shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.
21. **ASSIGNMENT- DELEGATION:** No right or interest in this contract shall be assigned or delegated of any obligation made by Seller without the written permission of the City. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
22. **WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
23. **MODIFICATIONS:** This contract can be modified or rescinded only in writing signed by both of the parties or their duly authorized agents. This shall include any change orders.
24. **INTERPRETATION PAROL EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as the complete and exclusive statement of terms of their agreement. No course of prior dealings between the parties, and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in the course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition of the Code is to control.
25. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Whenever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
26. **ADVERTISING:** Seller shall not advertise or publish without City's prior consent, the fact that City has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
27. **RIGHT TO ASSURANCE:** Whenever one party to this contract, in good faith, has reason to question the other party's intent to perform, he may demand that the party give written assurance of his intent to perform. In the event that a demand is made, and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
28. **VENUE:** Both parties agree that venue or any litigation arising from this contract shall lie in Denton County, Texas.
29. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee of the City of Corinth shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of Corinth of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to removal from his/her office or position. Any violation of this section with the knowledge expressed or implied, of the person or corporation contracting with the City, shall render the involved contract voidable.
30. **INSURANCE:** The City of Corinth requires vendor(s) to carry the minimum insurance as required by the greater of the requirements contained in state laws or the insurance requirements contained in the contract documents. In the event the City Manager has approved a waiver of insurance,

the Contract or Purchase Order shall not become effective until the Vendor has accepted these terms and conditions and attached the waiver agreement.

31. **INDEMNIFICATION:** Seller agrees to defend, indemnify and hold buyer, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Seller's breach of any of these terms and conditions or by any negligent or strictly liable act or omission of Seller, its officers, agents, employees or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Buyer, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of the Seller and Buyer, responsibility and indemnity, if any, shall be apportioned in accordance with the law of the State of Texas, without waiving any governmental immunity available to Buyer under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

32. **PATENT RIGHTS:** Seller agrees to indemnify and hold harmless the City of Corinth from any claim involving patent right infringement on goods or services supplied to the City.

33. **DISCLOSURE:** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Corinth must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Corinth no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Corinth or submits to the City of Corinth an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Corinth. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code

Seller should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Corinth to comply with the filing requirements of Chapter 176.

34. **INDEPENDENT CONTRACTOR:** Seller shall be considered an independent contractor and not an agent, servant, employee, or representative of Buyer in the performance of the work. No term or provision herein or act of the Seller shall be construed as changing that status.

35. **TERMINATION FOR DEFAULT:** Buyer reserves the right to enforce the performance of any Purchase Order in any manner prescribed by law or deemed to be in the best interest of Buyer in the event of breach or default. The Buyer reserves the right to terminate any purchase order and/or agreement with the Seller in the event the Seller fails to: (a) meet delivery schedules, or (b) otherwise perform in accordance with these terms and conditions.

36. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code

Post-award protests must be submitted in written form to the City Manager within five (5) working days after award. The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest.

37. **SEVERABILITY:** In case any one or more of the provisions contained in these Terms and Conditions 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 thereof, and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

38. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a):** The Buyer supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Buyer comply with the requirements of IRCA and shall notify the Buyer within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Buyer may terminate a contract with the Seller if the Buyer determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Buyer of an IRCA violation.

39. **ADA COMPLIANCE:** All goods and services provided to the Buyer must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Seller will be required to certify compliance, if required under the law or otherwise required by the Buyer.

40. **PROTECTION OF RESIDENT WORKERS:** The Buyer actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Seller shall establish appropriate procedures and controls so no services under the contract will be performed by any worker who is not legally eligible to perform such services or employment. The Buyer reserves the right to audit Seller's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the contract. The audit will be at the Buyer's expense.

41. **NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the Seller agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract.

42. **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION:** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.