



Date: April 15, 2024

# Terms and Conditions

## 1. DEFINITIONS.

“City” means The City of West University Place, a home rule municipality.

“Seller” means the person providing the goods or services under this purchase order.

“Order” means the purchase order issued by the City to the Seller.

2. ACCEPTANCE. This Order becomes a binding contract upon the terms and conditions set forth herein when accepted by the Seller’s acknowledgement or performance. Revisions to this Order shall be in writing and signed by an authorized representative of City, and no condition stated by Seller in accepting or acknowledging this Order shall be binding upon City if inconsistent with or in addition to the terms and conditions herein contained unless expressly accepted by City in writing.

3. PRICE. The price for each item covered by this Order shall be the lower of the price shown for such items on the face of this Order or the Seller’s price in effect on the date of delivery for like quantities of items of like grade and quality to customers in the same class as City. In the event the price column of the Order is marked “To Advise” or any similar instruction calling for price information, Seller shall advise City prior to commencement of production of any items so marked or the furnishing of any service called for by the Order.



## *Finance Department*

---

4. PAYMENT. Invoices will be paid in accordance with Texas Government Code Chapter 2251 (Texas Prompt Payment Act). Standard payment is within 30 days after receipt and acceptance of goods or completion and acceptance of services, or receipt of invoice, whichever is later. Alternatively, City may pay in less than 30 days in return for an early payment discount from vendor. Discount periods will be computed from the date of delivery of goods ordered or the date of receipt of correct invoices, whichever is later.

5. PACKING, SHIPPING AND INSURANCE. No charges will be allowed for packing or cartage unless specified in this Order. Seller shall pack or otherwise prepare all articles for shipment so as to secure the lowest transportation rates consistent with timely delivery, meet carriers' requirements, and safeguard against damage from weather and transportation. Seller shall mark the number of this Order on all containers and enclose a packing slip with each shipment. On the date shipment is made Seller shall mail to City invoices in triplicate, shipping documents and a copy of the packing slip.

6. DELIVERY. Time is of the essence in the performance of this Order. Seller agrees that it shall, at its expense, exert every reasonable effort, including the application of overtime, necessary to meet the agreed delivery dates. Seller agrees to notify City immediately if it appears that the delivery schedule set forth herein may not be met. Such notification shall include the reasons for anticipated delays, steps being taken to remedy any such problems and a proposed revised delivery date. Prices are to be based upon the supplies or services being offered F.O.B.

7. OVERSHIPMENTS. Unless otherwise specified, an increase in the quantities called for by this Order will be accepted, and payment adjusted accordingly, when caused by conditions or loading, shipping, packing or allowance in manufacturing processes, provided



## *Finance Department*

---

the excess does not exceed 5% of the specified quantity, or \$50.00 in amount, whichever is less. Over shipments in excess thereof may be returned at Sellers expense.

8. WARRANTY. Seller warrants that the goods described herein shall be free from defects in workmanship and materials and shall strictly conform to applicable specifications, drawings, and approved samples, if any, including performance specifications for one year from the date of acceptance by the City. These warranties shall be in addition to any other warranties, express, implied and statutory. All warranties shall survive inspection, acceptance and final payment by City, and shall run to City and subsequent purchasers of the goods or end products of which they are a party. SELLER AGREES TO INDEMNIFY CITY AND SUCH PURCHASERS FROM ALL LIABILITY, LOSS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, RESULTING FROM ANY BREACH OF ANY OR ALL SUCH WARRANTIES. Notice of breach shall be deemed sufficient if given within 90 days after discovery thereof by City.

9. INSPECTION. Seller shall permit City's inspectors to have access to Seller's plant at reasonable hours for the purpose of inspecting any items covered by this Order or work in process for production of said items. Unless otherwise specified, all items will be subject to final inspection and acceptance at City's site. City may, at its option, either hold rejected items for Seller's instructions and at Seller's risk, or return them at Seller's expense, and Seller shall promptly reimburse City for any and all damages sustained by City as a result of Seller's nonperformance. No replacement of rejected items shall be made unless otherwise specified on City's returned material orders. All rejects will be charged back at full billing price plus the cost of inbound freight and hauling.

10. CHANGES. City shall have the right at any time to make changes in the drawings, specifications, quantities, delivery schedules, methods of shipment or packaging at any time



## *Finance Department*

---

in the Order where the supplies to be furnished are to be specifically manufactured for City in accordance therewith. No changes shall be effective unless authorized in writing by City. If such change results in delay or an increase or decrease in expense to Seller, Seller shall notify City immediately and negotiate adjustment provided that Seller shall continue to perform the work or services or supply the items contracted for under this Order as so changed.

11. ASSIGNMENT. This Order shall not be assignable by Seller, voluntarily or involuntarily, nor shall a subcontract be made with any other party for the furnishing of any of the completed or substantially completed articles, spare parts or work covered by this Order without City's prior written consent.

12. TERMINATION. a) Without cause – City may terminate all or any part of this Order at any time without cause and any terminations claim must be submitted to City within 60 days after the effective date of termination. The City will pay all reasonable costs incurred up to the date of termination, provided the City will not reimburse Seller for anticipatory profits. The provisions of this subparagraph shall not limit or affect the right of City to terminate this Order for cause. b) For cause – if Seller fails to make any delivery in accordance with the agreed delivery date or schedule, or otherwise fails to observe or comply with any of the other instructions, terms, conditions or warranties applicable to this Order, or fails to make progress so as to endanger performance of this Order, or in the event of any proceeding by or against Seller in bankruptcy or insolvency or appointment of a receiver or a trustee or an assignment for the benefit of creditors, City may, in addition to any right or remedy provided by this Order or by law, terminate all or any part of this order by written notice to Seller without any liability by City to Seller on account thereof.

13. DRAWINGS, SPECIFICATIONS AND TECHNICAL INFORMATION. Drawings,



## *Finance Department*

---

specifications and other technical information shall remain City's property and shall be held in confidence by Seller. Such information shall not be reproduced, given, or disclosed to others by Seller without City's prior written consent, and shall be returned to City upon completion of this Order or upon demand. Any information which Seller may disclose to City with respect to the design, manufacture, sale, or use of the items covered by this Order shall be deemed to have been disclosed as part of the consideration of this Order, and Seller shall not assert any claim against City by reason of use thereof. The purchase price of this Order, in part, consideration for any design and work performed by Seller in connection with this Order and incorporated in the articles to be delivered hereunder, and Seller therefore shall not supply such articles to others without City's written permission.

14. CITY'S PROPERTY. All property used by Seller but owned, furnished, charged to, or paid for by City including but not limited to materials, tools, dies, jigs, patterns, fixtures, equipment, and any replacement thereof shall be the property of City, subject to removal and inspection by City at any time without cost or expense to City. All such property shall be identified and marked as City's property, used only for this Order and adequately insured for City's protection. Seller shall assume all liability for and maintain and repair such property and return same to City in good condition, reasonable wear and tear expected for the utilization of the property in accordance with the provisions of the Order.

15. PATENT PROTECTION. Seller shall indemnify and hold City, its agents and customers harmless from any loss, damage or liability for infringement of United States patent rights with respect to such items and their process of manufacture, and shall at its own expense defend any action in which infringement is alleged with respect to the manufacture, sale or use of such items delivered hereunder, provided Seller's indemnity as to use shall not apply to any infringement arising out of use in combination with other items where infringement would not have occurred in the normal use for which the article was designed.



## *Finance Department*

---

16. TAXES. City is exempt from state sales and federal excise taxes. Tax exemption certificate provided upon request. Federal, state, or local taxes of any nature from which Seller cannot obtain an exemption and are billed to City shall be stated separately in Seller's invoices.

17. LIENS. All items to be delivered hereunder and all property to be returned to City shall be free and clear of any and all defects in title, liens and encumbrances whatsoever.

18. COMPLIANCE WITH LAW. A. General Requirements. Seller warrants compliance with all applicable federal, state and local laws, regulations, and orders now in effect or which may become effective during the period of this contract including the following: a) OSHA – The Federal Occupational Safety and Health Act of 1970, the Federal Coal Mine Health and Safety Act of 1969 and the Federal Metal and Non-Metallic Mine Safety Act and regulations under said acts as apply to the possession of such items by the City, its agents and employees; and b) Toxic Substances Control Act – Seller shall advise City of any hazardous or toxic substance which is present in or may be encountered by City, its agents or employees in using or possessing material furnished under this Order. B. Other State Requirements. The Contractor hereby certifies that it and its parent company, wholly-owned or majority-owned subsidiaries, and other affiliates comply with and agree to abide by the requirements of Texas Government Code Chapter 2252 (foreign terrorist organizations prohibited), Chapter 2264 (undocumented workers), Chapter 2270 (boycott-Israel), and Chapter 2274 (boycotts-energy company; discrimination – firearms entity or trade association).

19. ADVERTISING. Seller shall not advertise or publish the fact the Seller has furnished or contracted to furnish City with the articles herein mentioned or disclose any of the details



## *Finance Department*

---

connected with this order to any third party except as herein specified and except as may be required to perform this Order.

20. WAIVER OF TERMS AND CONDITIONS. The failure of City in any one or more instances to insist upon performance of any of the terms and conditions of this Order, or to exercise any right to privilege in this Order shall not be construed as a waiver of any such terms, conditions, rights or privileges, and the same shall continue and remain in full force and effect.

21. NON-APPROPRIATION OF FUNDS: It is understood that the City funds are contingent upon the availability of lawful appropriations by the City Council. Subject to the applicable provisions of the City Charter, the City represents: that it has adequate funds to meet its obligations under this order for the full price set forth herein; and that it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder during such order period. However, if the City Council fails at any time to continue funding for any purchase order awarded, the City's obligations under such order(s) are terminated as of the date that the funding expires without further obligation to the City.

22. LAW GOVERNING. This Order shall be governed by and construed under the laws of the State of Texas, and venue shall lie in Houston, Texas.