

**CITY OF SOUTHLAKE PURCHASE ORDER
GENERAL TERMS AND CONDITIONS**

1. **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly marked and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order number. Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packing unless otherwise agreed to in writing. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipment not accompanied by packing lists.
2. **FUNDING:** Vendor recognizes that the continuation of any purchase order during and or after the close of any given fiscal year of the City of Southlake, which fiscal year ends on September 30 of each year, shall be subject to Council budget approval of the City of Southlake providing for or covering such purchase order item as an expenditure therein. The City does not represent that said budget item will actually be adopted, or remain as adopted, as this determination is within the sole discretion of the City Council. Should funding not be approved by the City Council for any given budget year during the purchase order term, the purchase order will terminate and become null and void.
3. **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.
4. **TITLE AND RISK OF LOSS:** For goods to be provided by Vendor's hereunder, if any, the title and risk of loss of the goods shall not pass to City until City actually receives, takes possession, and accepts the goods and the installation of such goods, has tested the system, and determined that it is in good and acceptable working order.
5. **F.O.B. DELIVERY:** All products offered shall be FOB final destination, with all delivery charges to be prepaid by the vendor. The City does not accept C.O.D. or collect shipments. The agreed upon price shall include all charges, including delivery, installation and set-up fees. All packing, crating, or other debris resulting from the delivery or set-up of the commodity purchased shall be removed and properly disposed by the successful vendor at no additional cost to the City.
6. **NO PLACEMENT OF DEFECTIVE PRODUCT:** Every delivery of goods must fully comply with all provisions of this purchase order as to time of delivery, quality and the like. If a delivery is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming product, provided, where the time for performance has not yet expired, the Seller may reasonably notify Buyer of his intention to correct and may then make a correct delivery within the agreed upon time but not afterward.
7. **PLACE OF DELIVERY:** The place of delivery shall be set forth in the 'Ship To' block of the purchase order, purchase change order, or other such document.
8. **INVOICES AND PAYMENTS:**
 - a. Payment Terms are Net 30 and based upon the Texas Prompt Payment Act. Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. E-mail a copy to accountspayable@ci.southlake.tx.us or mail to - City of Southlake, ATTN: Accounts Payable, 1400 Main Street, Suite 420, Southlake, Texas 76092. Payment shall not be due until the above instruments are submitted to Accounts Payable after delivery. Suppliers should keep the Accounts Payable Office advised of any charges in their remittance addresses.
 - b. Do not include Federal Excise, State or City Sales Tax. City shall furnish tax exemption certificate, if required.
9. **GRATUITIES:** Vendor certifies that no gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the Vendor, or its agent or representative, to any City officer, employee or elected representative, with respect to this procurement or any contract with the City, and that if any such gratuity or bribe is found to have been made this shall be grounds for voiding of the purchase order.
10. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
11. **WARRANTY OF PRICE:**
 - a. The price to be paid by the Buyer shall be that agreed to in writing by the City which Seller warrants to be no higher than Seller's current prices on orders for products of the kind and specification covered by the purchase order 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, Buyer may cancel this purchase order without liability to the seller for breach or Seller's actual expense.
 - b. Pricing from Interlocal and Cooperative purchasing agreements may be considered.
12. **WARRANTY OF PRODUCTS AND SERVICES:** All products furnished under this contract shall be warranted to be merchantable and good quality and fit for the purposes intended as described in purchase order, to the satisfaction of City and in accordance with the specifications, terms and conditions outlined herein, and all services performed shall be warranted to be of a good and workmanlike quality, in addition to, and not in lieu of, any other express written warranties provided.
13. **WARRANTY OF PRODUCT SAFETY:** Seller warrants that the products sold to Buyer 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 products do not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time correction made by Buyer will be at Seller's expense.
14. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this agreement 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. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer 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 Buyer to this effect in writing within two weeks after receipt of this purchase order. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer 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 agreement shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.
15. **RIGHT OF INSPECTION:** Goods purchased are subject to inspection by Buyer. Buyer reserves the right to reject or refuse acceptance of goods which are not in accordance with Buyer's instructions, specifications, drawings and date, or Seller's warranties (expressed or implied). Goods not accepted will be returned to Seller at Seller's risk and expense. Payment for any goods shall not be deemed an acceptance thereof and shall be refunded to the Buyer in the event Seller cannot fulfill an acceptable order.
16. **CANCELLATION:** Buyer 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 remedies, which Buyer may have in law or equity.

17. **TERMINATION:** The performance of work under this order may be terminated in whole or in part by the buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of 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 Buyer set forth in Clause 16, herein.
18. **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 the agreement then such party shall give notice and full particulars of 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 is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer periods and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The terms Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States or State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints 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. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
19. **ASSIGNMENT-DELEGATION:** The rights and duties awarded the Vendor assigned on this purchase order shall not be assigned to another without the written consent of the Purchasing Agent. Such consent shall not relieve the assigner of liability in the event of default by the assignee.
20. **WAIVER:** No claim or right arising out of a breach of this order 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.
21. **MODIFICATIONS:** This order can be modified or rescinded only in writing signed by both parties or their duly authorized Managers.
22. **COMPLIANCE WITH APPLICABLE LAW:** Vendor agrees that the order will be subject to, and Vendor will strictly comply with, all applicable federal, state, and local laws, ordinances, rules, and regulations.
23. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with prior requests for information from an authorized representative of federal, state or local government.
24. **VENUE:** Both parties agree that venue for any litigation arising from the contract shall lie in Tarrant County, Texas.
25. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee shall have a financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any knowing and willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof (shall) forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation conducting business with the governing body of the City shall render the order involved void by the *City Manager or the governing body (City Council)*.
26. **INDEMNITY INSURANCE:** See request for proposal, request for bids, request for quotes, or request for qualifications, if applicable, for minimum requirements, required for all on-site work on City property.
27. **ACCEPTANCE:** These General Terms and Conditions ("Terms and Conditions") govern all orders issued by the City to the Vendor identified on the order. Fulfillment of any part of an order, or any other conduct by Vendor which recognizes the existence of an agreement pertaining to the subject matter of such order, shall constitute acceptance by Vendor of such order and all of the Terms and Conditions. The Terms and Conditions constitute the complete and exclusive statement of the terms and conditions between Vendor and the City. No revisions to this order or to the Terms and Conditions shall be valid unless made in writing and signed by an authorized representative of the City. The City accepts liability only for purchases of goods and services made through the Purchasing Department and evidenced by a purchase order.
28. **RIGHT TO AUDIT:** The City of Southlake shall have the right to examine and audit the books and records of Seller-Contractor at any reasonable time. Such books and records will be maintained in accordance with generally accepted accounting principles and will be adequate to enable determination of compliance with the provisions of this order.
29. **DISPUTE RESOLUTION:** Pursuant to subchapter I, Chapter 271, TEXAS LOCAL GOVERNMENT CODE, Contractor agrees, that prior to instituting any lawsuit or other proceeding arising from any dispute or claim of breach under this order (a "Claim"), the parties will first attempt to resolve the Claim by following the steps within this code.
30. **COMPLIANCE WITH GOVERNMENT CODE TITLE 10 SUBTITLE F CHAPTER 2252:** Pursuant to subtitle F, Chapter 2252, TEXAS GOVERNMENT CODE, vendors shall not do business with Iran, Sudan or a foreign terrorist organization while providing products or services to the City of Southlake.
31. **COMPLIANCE WITH GOVERNMENT CODE TITLE 10 SUBTITLE F CHAPTER 2270:** Pursuant to subtitle F, Chapter 2270, TEXAS GOVERNMENT CODE, vendor shall not boycott Israel at any time while providing products or services to the City of Southlake.