

CITY OF FREDERICKSBURG

Standard Purchase Order Terms and Conditions

The following Standard Purchase Order Terms and Conditions (“Terms and Conditions”) only apply to transactions that do not have a written agreement, duly executed by both parties. If there is such an agreement, then those terms shall govern the transaction and relationship of the parties.

The City of Fredericksburg (“Purchaser” or “City”) and _____ (“Seller”), collectively referred to as the “Parties,” agree to comply with the following terms and conditions. These Terms and Conditions and the Purchase Order (the “Order”) shall constitute a contract (collectively, the “Contract”) between Purchaser and Seller upon the Seller’s issuance of an invoice and/or providing any of the goods/services described in the Order.

1. **DELIVERY AND ACCEPTANCE.** Time of delivery is of the essence of this Contract. The Purchaser reserves the right to inspect and/or refuse any goods/services and to cancel all or any part of the goods/services not conforming to applicable specifications, drawings, samples, or descriptions. Acceptance of any part of the order shall not bind the Purchaser to accept future shipments or services, nor deprive it of the right to refuse services or return goods already accepted. 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. The place of delivery shall be set forth on the Order. Any change thereto shall be accomplished by modification as provided herein. The terms of this Contract are “no arrival, no sale”.

2. **RISK OF LOSS.** The title and risk of loss of the goods/services shall not pass to Purchaser until Purchaser actually receives and takes possession of the goods/services at the point(s) of delivery. Delivery shall not be deemed to be complete until goods/services have been actually received and accepted by the Purchaser.

3. **LATE DELIVERIES.** Should delivery of any part of this order be delayed beyond the time specified in the proposal or quotation for the same, or beyond the time specified herein, or if no time is specified, then beyond a reasonable time, the Purchaser reserves the right to purchase such articles at the market price for immediate delivery, and any excess in the cost of same over the price shown herein is to be paid by the Seller under this order, or deducted from any moneys now due or hereafter accruing to him from the Purchaser.

4. **PRICES.** This order must not be filled at prices higher than those shown on the order without written authority of an authorized agent of the Purchaser. The price to be paid by 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 contract 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, 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.

5. QUANTITY. The quantity of material delivered must be that specified on the order with variations limited to those established by custom or usage. All changes in quantity must be approved in writing by an authorized agent of the Purchaser. The Purchaser reserves the right to return excess shipments at the Seller's expense.

6. DEFECTS. By accepting this order, the Seller acknowledges that the goods/services covered by this order are satisfactory for the purposes intended by the Purchaser if disclosed and that any defect in such goods/services may occasion special damage to the Purchaser. 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 Purchaser of its intention to cure and may then make a conforming tender within the contract time but not afterward.

7. CONFORMING GOODS. Acceptance of all or any part of the goods shall not be deemed to be a waiver of the Purchaser's right either to cancel or to return all or any portion of the goods because of failure to conform to order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages including special damages occasioned to the Purchaser. Such rights shall be in addition to any other remedies provided by law. 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.

8. SALES TAX EXEMPTION. Do not include federal excise, state, or city sales tax. Purchaser shall furnish tax exemption certificate, if required.

9. PATENT INFRINGEMENT. Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this Contract 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 Contract. If City does not receive notice and is subsequently held liable for the infringement or the like, Seller agrees to indemnify the Purchaser and hold it harmless from and against all liability, loss, damage, and expense, including reasonable counsel fees, resulting from any actual or claimed trademark, patent or copyright infringement, or any litigation based thereon, with respect to any part of the goods/services covered by this order and such obligation shall survive acceptance of the goods/services and payment therefore by the Purchaser. 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 its search as to infringements.

10. **WARRANTY.** Seller expressly warrants that the goods/services covered by this order are of merchantable quality and satisfactory and safe for consumer use. Acceptance of this order shall constitute an agreement upon Seller's part to indemnify and hold the Purchaser harmless from liability, loss, damage, and expense, including reasonable counsel fees, incurred or sustained by the Purchaser by reason of the failure of the goods/services to conform to such warranties. Such indemnity shall be in addition of any other remedies provided by law and as to consequential damages shall be limited as provided in Section 2-715(2) of the Uniform Commercial Code. Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this Contract voidable at the option of City.

11. **REGULATORY COMPLIANCE.** Seller represents that the goods covered by this order have been manufactured and sold in compliance with the requirements of the Robinson-Patman Act, the Fair Labor Standards Act, and other federal, state, and municipal laws, rules, and regulations is applicable.

12. **PACKING.** All goods, wrappers, and containers must bear markings and labels required by applicable federal, state, and municipal laws and regulations for the protection and safety of persons and property. Seller shall bear cost of packaging unless otherwise provided; if Purchaser agrees to bear such costs, Seller warrants that prices include all charges for packing, crating, and transportation. Seller will package goods in accordance with good commercial practice, and goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications.

13. **OSHA REQUIREMENTS.** Seller agrees to comply with the provisions of the Occupational Safety and Health Act of 1970 (OSHA) and the standards and regulations issued thereunder and warrants that all goods furnished under this order will conform to and comply with said standards and regulations. 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. Seller agrees to furnish Material Safety Data Sheet (form OSHA-20) as applicable for hazardous or potentially hazardous products.

14. **INSURANCE.** City requires sellers 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

Order shall not become effective until the Seller has accepted these terms and conditions and attached the waiver agreement.

15. **L.ABOR DISPUTES.** Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof to the Purchaser.

16. **GRATUITIES.** By accepting this order the recipient represents and warrants that no arrangement has been made with any person or agency to solicit or secure this Contract upon an agreement or understanding for a gratuity, commission, percentage, brokerage, or contingent fee, in any form, to any person excepting bona fide employees of the seller, or bona fide established commercial or sales agencies. For breach or violation of this warranty, 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.

17. **NON-APPROPRIATION CLAUSE.** Purchaser's obligation is payable only and solely from funds available for the purpose of the purchase. Failure of the Purchaser 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 Purchaser.

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. **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.

20. **TERMINATION.** The performance of work under this order may be terminated in whole or in part by 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 pertaining to termination for default as set forth below.

21. **TERMINATION FOR DEFAULT.** City 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 City in the event of breach or default. City 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.

22. **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 Contract, 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.

23. **ASSIGNMENT OR DELEGATION.** No right or interest in this Contract shall be assigned or delegated of any obligation made by Seller without the written permission of 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.

24. **WAIVER.** No claim or right arising out of a breach of this Contract can be discharged in whole or in part by a waiver of renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

25. **CONFLICT BETWEEN ORDER AND TERMS AND CONDITIONS.** In the event of a conflict between these Terms and Conditions and the Order between the Seller and City, the terms of the Order shall prevail.

26. **APPLICABLE LAW.** This Contract 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 Contract.

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 Gillespie County, Texas.

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

30. **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.

31. **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.

32. **ENTIRE AGREEMENT.** This Contract contains the entire agreement of the Parties. It may not be modified or terminated orally and no claimed modification, termination, or waiver shall be binding on the Purchaser unless in writing signed by an authorized representative of the Purchaser. No modification or waiver shall be deemed effected by Seller's acknowledgement or confirmation containing other or different terms. All titles to clauses contained in this order are for identification only and shall not be construed as being a substantive part of the 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 Contract. Acceptance or acquiescence in the course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract 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 Contract, the definition of the Code is to control.

33. **COMPLIANCE WITH OTHER LAW.** Seller acknowledges the following provisions to the extent applicable to this Contract:

- (a) **ADA COMPLIANCE.** All goods and services provided to City 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 City.
- (b) **CERTIFICATE OF INTERESTED PARTIES.** A Seller that will be awarded a contract that is greater than \$50,000 is required to electronically create a Certificate of Interested Parties Form 1295 through the Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm, and submit a signed copy of the form to City prior to the award of the contract. A contract, including a City-issued purchase order, will not be enforceable or legally binding until City receives and acknowledges receipt of the properly completed Form 1295 from the Seller.
- (c) **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS.** No officer or employee of City shall have a financial interest, direct or indirect, in any transaction with City, 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 consequences outlined in the Fredericksburg Municipal Code. Any violation of this section with the

knowledge expressed or implied, of the person or corporation contracting with City, shall render the involved contract voidable.

- (d) **NO BOYCOTT OF ISRAEL.** Pursuant to Texas Government Code, Chapter 2270, the Seller agrees that acceptance of these Terms and Conditions serves as written verification that the seller: (a) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (b) will not boycott Israel during the term of the contract.
- (e) **NO BOYCOTT OF ENERGY COMPANIES.** Pursuant to Texas Government Code, Chapter 2274, the Seller, should it meet the requirements of Chapter 2274, agrees that acceptance of these Terms and Conditions serves as written verification that the seller: (a) does not boycott energy companies, as defined by Texas Government Code Chapter 2274; and (b) will not boycott energy companies during the term of the contract.
- (f) **NO DISCRIMINATION AGAINST FIREARM AND AMMUNITION COMPANIES.** Pursuant to Texas Government Code, Chapter 2274, the Seller, should it meet the requirements of Chapter 2274, agrees that acceptance of these Terms and Conditions serves as written verification that the seller: (a) does not discriminate against firearm and ammunition companies, as defined by Texas Government Code Chapter 2274; and (b) will not discriminate against firearm and ammunition companies during the term of the contract.
- (g) **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION.** Pursuant to Texas Government Code, Chapter 2252, Subchapter F, Seller affirms that is it 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.