

## **IMPORTANT TERMS AND CONDITIONS**

**Acceptance of this Purchase Order means also acceptance by the Vendor of the terms and conditions listed below.**

1. By accepting this purchase order ("Order") the Vendor agrees to supply and deliver the Goods to the City of Walnut Creek ("City") and to perform the Services, as applicable, on the terms set out in this Order.
2. Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services performed on or before ninety (90) days from the date of this Order ("Delivery Date") in strict accordance with the specifications as established herein.
3. Vendor must immediately notify City if Vendor is likely to be unable to meet the Delivery Date. At any time prior to the Delivery Date, City may, upon notice to Vendor, cancel or change this Order, or any portion thereof, for any reason, including, without limitation, for the convenience of City or due to failure of Vendor to comply with this Order, unless otherwise noted.
4. All shipments of Goods and performance of Services shall be subject to City's right of inspection. City shall have thirty (30) days (the "Inspection Period") following the delivery of the Goods to the City or performance of the Services to undertake such inspection, and upon such inspection City shall either accept the Goods or Services or reject them. City shall have the right to reject any Goods that are delivered in excess of the quantity ordered or are damaged or defective. In addition, City shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any term of this Order. Transfer of title to City of Goods shall not constitute City's acceptance of those Goods. If City does not provide Vendor with any notice of rejection within the Inspection Period, then City will be deemed to have provided acceptance of such Goods or Services.
5. City's inspection, testing, or acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Vendor's warranty obligations hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, acceptance and use of the Goods or Services.
6. Prices for the Goods and/or Services will be set out in this Order. Price increases or charges not expressly set out in this Order shall not be effective unless agreed to in advance in writing by City.
7. Each shipment must be plainly marked to show the Order Number and Department for which the goods are intended.
8. Merchandise must not be shipped C.O.D.
9. City authorized shipping charges are to be prepaid and added to the invoices for shipments sold F.O.B. point of origin.
10. Sales tax or use tax must be shown as a separate item.
11. The City is exempt from any Federal manufacturer's excise tax under Section 3442 of the Internal Revenue Code and Regulation 46 of the Bureau of Internal revenue. Do not include any such excise tax in the invoice.
12. By accepting this order, the Vendor represents that it will comply with all Federal, State, and other governmental taxes and regulations imposed upon the Seller with respect to the merchandise furnished hereunder.
13. Vendor warrants that all Goods and/or Services delivered are new and of good merchantable quality, free from material defects of workmanship and fit for the purpose for which sold or provided. Vendor has good title to all Goods delivered and all Goods delivered are free from liens and other encumbrances. Vendor's delivery and installation of the Goods and/or Services will be in strict conformity with all applicable local, state, and federal laws. For purposes of this warranty, any Goods or components not meeting the foregoing quality shall be deemed defective. The foregoing warranty provisions shall also be applicable to equipment or materials provided by a third party entity to Vendor via this Order.
14. To the fullest extent permitted by law, Vendor shall indemnify, defend (with counsel acceptable to the City), and hold harmless the City and its elected and appointed officers, officials, employees, agents, contractors and consultants (collectively, the "City Indemnitees") from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorneys' fees and costs of litigation) (collectively, "Liability") of every nature arising out of or in connection with the delivery and installation of the Goods and/or Services described on this Order or Vendor's failure to comply with this Order, except such Liability caused by the gross negligence or willful misconduct of the City Indemnitees.
15. The Vendor may not assign any of Vendor's obligations under this Order without the City's prior written approval. This Order is governed by California law. The jurisdiction for any litigation arising from this Order shall be in the State of California, and shall be venued in the County of Contra Costa.