

**City of Yakima/Yakima County
Purchase Order (PO) Terms and Conditions**

1. **CHANGES:** No alteration in any of the terms, conditions, delivery, price, quality, quantities, or specifications of this order will be effective without written consent of the City/County.
2. **ADD-ON:** By mutual agreement, the quantity of items purchased may be increased within 12 months of the date of award, provided the original purchase price, terms, conditions, and specifications remain the same.
3. **HANDLING:** No charges will be allowed for handling which includes, but is not limited to, packing wrapping, bags, containers, or reels, unless otherwise stated herein.
4. **DELIVERY:** For any exception to the delivery date as specified on this order, Vendor shall give prior notification and obtain written approval thereto from the City/County. With respect to delivery under this order, time is of the essence, and the order is subject to termination for failure to deliver as specified. The acceptance by the Purchaser of late performance with or without objection or reservation shall not waive this right to claim damage for such breach nor constitute a waiver of the requirement for the timely performance of any obligation remaining to be performed by Vendor.
5. **MSDS:** Material Safety Data Sheets to be included with shipments of any material requiring this documentation, per OSHA and WSHA regulations.
6. **PAYMENT TERMS:** Unless otherwise negotiated, the terms of payment shall be net 30 days from receipt of a proper invoice. PO numbers must be noted on all invoices.
7. **COMPLIANCE WITH APPLICABLE LAWS:** Vendor shall comply with all applicable federal, state, local laws and regulations. Purchases that are funded by the Federal Transit Authority shall be in accordance with the Third Party Contracting Guidance found in FTA Circular 4220.1F, which is available at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>
8. **LICENSES:** If applicable, successful vendor shall have a valid and current business license per Chapter 5.02 Section 5.02.010 of the Yakima Municipal Code covering this type of business and shall satisfy all applicable City Code provisions. Said license shall be obtained prior to the award of any PO/contract. Inquiries as to fees, etc., should be made to the Office of Code Administration, telephone (509) 575-6121.
9. **PAYMENTS AND ASSIGNMENTS:** Invoices will not be processed for payment until items invoiced are received. All payments to Vendor shall be remitted by mail, unless other arrangements have previously been made. Furthermore, the provisions of monies due under this contract shall only be assignable with prior written consent of the City/County.
10. **SHIPPING INSTRUCTIONS:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. Where shipping addresses indicate room numbers and/or inside delivery, it will be up to the Vendor to make delivery to that location at no additional charge. Where specific authorization is granted to ship goods to FOB shipping point, Vendor agrees to prepay all shipping charges and route as instructed. It is also agreed that the Purchaser reserves the right to refuse COD shipments.
11. **REJECTION:** All goods or materials purchased herein are subject to approval by the Purchaser. Any rejection of goods or materials resulting because of nonconformity to the terms and specifications of this order, whether held by the Purchaser or returned will be at Vendor's risk and expense.

- 12. IDENTIFICATION:** All invoices, packing lists, packages, shipping notices, and other written documents affecting this order shall contain the applicable PO number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the contents therein.
- 13. INFRINGEMENTS:** Vendor agrees to protect and save harmless, the Purchaser against all claims, suits, or proceedings for patent, trademark, copyright, or franchise infringement arising from the purchases, installation, or use of goods and materials ordered and to assume all expenses and damages arising from such claims, suits, or proceedings,
- 14. WARRANTIES:** Vendor represents and warrants that the goods are new, current, and fully warranted by the manufacturer. Delivered goods will comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are incorporated in this PO. Vendor shall transfer all warranties to the City/County.
- 15. CASH DISCOUNT:** In the event that the Purchaser is entitled to a cash discount, the period of computations will commence on the date of delivery or receipt of a correctly completed invoice, whichever is later. If an adjustment in payment is necessary due to damage, the cash discount period shall commence on the date final approval for payment is authorized. If a discount is made part of the contract but the invoice does not reflect the existence of a cash discount, Purchaser is entitled to a cash discount with the period commencing on the date it is determined by Purchaser that a cash discount applies.
- 16. TAXES:** Unless otherwise indicated, the Purchaser agrees to pay all State of Washington sales or use tax. No charge by Vendor shall be made for Federal excise taxes, and the Purchaser agrees to furnish Vendor, upon acceptance of articles supplies under this order, with an exemption certificate.
- 17. LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all the goods and materials ordered herein are free and clear of all liens, claims, or encumbrances of any kind.
- 18. RISK OF LOSS:** Regardless of FOB Point, Vendor agrees to bear all risks of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery. Such loss, injury, or destruction shall not release Vendor from any obligation hereunder.
- 19. HOLD HARMLESS:** Vendor shall indemnify, defend and hold harmless the City/County and its agencies, their divisions, officers, employees, and agents, from all claims, suits or actions of any nature arising out of or related to the activities of Vendor, its officers, subcontractors, agents or employees under this PO/contract.
- 20. FORCE MAJEURE:** Vendor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages, provided vendor notifies the Purchasing Manager immediately in writing of such pending or actual delay. Normally, in the event or any such delays (acts or God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.
- 21. TERMINATION:** (i) The parties may terminate this PO by mutual agreement. (ii)The City/County may terminate this PO at any time with written notice to Vendor. Upon receipt of the written notice, Vendor shall stop performance, and City/County shall pay Vendor for goods delivered and accepted. (iii)The City/County may terminate this PO at any time if Agency fails to receive funding, appropriations, or other expenditure authority. (iv) If Vendor breaches any PO provision or is declared insolvent, the City/County may terminate this PO for cause with written notice to Vendor, and Vendor shall be liable for all incidental and consequential damages resulting from its breach, including all damages as provided in the UCC.

22. PUBLIC DISCLOSURE: PO and all contents and attachments shall be deemed a public record as defined in RCW 42.56 "Public Records."

23. NONDISCRIMINATION: During the performance of this contract, the Vendor agrees as follows: The Vendor shall not discriminate against any person on the grounds of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, pregnancy, veteran's status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of the Washington State Law Against Discrimination (RCW chapter 49.60) or the Americans with Disabilities Act (42 USC 12101 et seq.).

In the event of the Vendor's noncompliance with the non-discrimination clause of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for any future City/County contracts.

24. ANTI-TRUST: Vendor and the Purchaser recognize that in actual economic practice, overcharges resulting from anti-trust violations are in fact borne by the Purchaser, therefore, Vendor hereby assigns to the Purchaser any and all claims for such overcharges.

25. DEFAULT: The Vendor covenants and agrees that in the event suit is instituted by the Purchaser for any default on the part of the Vendor and the Vendor is adjudged by a court of competent jurisdiction to be in default, he shall pay to the Purchaser all costs, expenses expended or incurred by the Purchaser in connection therewith, and reasonable attorneys' fees.

26. SEVERABILITY: If a court of competent jurisdiction declares any provision of the PO to be invalid, the other provisions and the rights and obligations of the parties remain in effect.

27. ACCEPTANCE: This order expressly limits acceptance to the terms and conditions stated herein. All additional or different terms proposed by Vendor are objected to and hereby rejected, unless otherwise provided in writing by the City/County.

28. INSURANCE: For all public work and improvement projects, including maintenance projects, and upon request by the ordering department, the following insurance requirements apply:

Indemnity/Contractor's Liability Insurance.

(A) The Service Provider agrees to indemnify and save harmless the City/County, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance or any service hereunder.

(B) The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

(C) **Contractors Liability Insurance:** The contractor shall obtain and maintain in full force and effect during the term of the contract, commercial general liability coverage with insurance carriers admitted to do business in the State of Washington. The insurance companies must carry a Best's Rating of A- VII or better. At all times during the life of this contract, Contractor agrees to maintain, on a primary and non-contributory basis and at its sole expense, the insurance coverages, limits, and endorsements noted below. All such insurance shall not be subject to any deductible or self-insured retention (SIR). There shall be no cancellation, material change, reduction in limits or intent not to renew the insurance coverage(s) without 30 days written notice from the contractor or its insurer(s) to City of Yakima/Yakima County. The requirements contained herein, as well as City of Yakima/Yakima County's

review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this contract. The policies will be written on an occurrence basis, subject to the following minimum limits of liability:

Commercial General Liability: Combined Single Limit: \$2,000,000 Per Occurrence
\$2,000,000 Annual Aggregate

Auto Liability: Combined Single Limit \$2,000,000 Per Occurrence

The City of Yakima/Yakima County, its agents, employees, authorized volunteers; elected and appointed officials are included as Primary/Non-Contributory additional insured.

If Contractor carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and City of Yakima/Yakima County shall be named as an additional insured for such higher limits.

The Contractors' insurance coverage shall be primary insurance with respect to those who are Additional Insureds under this agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City/County shall be in excess of the Contractor's insurance and shall not contribute to it.

The contractor will provide a Certificate of Insurance to the City/County as evidence of coverage. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the Purchasing Manager, prior to commencement of this work.

If at any time during the life of the contract or any extension, the contractor fails to maintain the required insurance in full force and effect, all work under the contract shall be discontinued immediately. Any failure to maintain the required insurance may be sufficient cause for the City/County to terminate the contract.

The contractor shall also maintain workers compensation through the State of Washington.

(D) Contractor's Waiver of Employer's Immunity under Title 51 RCW. Contractor intends that its indemnification, defense, and hold harmless obligations set forth above in section A. shall operate with full effect regardless of any provision to the contrary in Title 51 RCW, Washington's Industrial Insurance Act. Accordingly, to the extent necessary to fully satisfy the Contractor's indemnification, defense, and hold harmless obligations set forth above in section A, Contractor specifically waives any immunity granted under Title 51 RCW, and specifically assumes all potential liability for actions brought by employees of the Contractor against the City/County and its officers, employees, agents, and volunteers. The parties have mutually negotiated this waiver. Contractor shall similarly require that its subcontractors, and anyone directly or indirectly employed or hired by Contractor, and anyone for whose acts Contractor may be liable in connection with its performance of this Agreement to comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought their respective employees. The provisions of this section shall survive the expiration or termination of this Agreement.

(E) Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City/County, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.