

Ontario County Purchase Order Terms and Conditions

The following are the terms and conditions ("Terms") upon which Ontario County will purchase from the identified supplier ("Supplier") and Supplier will sell to Ontario County the goods or perform the services identified on the face of a properly-executed purchase order ("P.O."). In addition, if Ontario County has provided Supplier with any supplementary terms, conditions, or requirements in a request for proposal, bid specification, contract, or other writing concerning the subject matter of this P.O., those terms, conditions, or requirements shall also apply, and are incorporated herein by reference. Supplier's performance of service or provision of goods under P.O. constitutes Supplier's acceptance of the Terms without exception. No deletion, addition, or amendment of the terms and conditions of this P.O. whether contained in Supplier's acknowledgment, invoice, packing list, or delivery slip is binding without Ontario County's express written approval.

1. Purchase Orders

Ontario County will not be responsible for goods supplied or services performed by Supplier without a written P.O. Ontario County may terminate a P.O. or any portion thereof for its sole convenience, subject to an equitable adjustment between Supplier and County as to any services or goods then in progress (excluding standard stock). All claims for money due or to become due from Ontario County shall be subject to deduction or setoff by the county by reason of any counterclaim arising out of this or any other transaction with Supplier.

2. Shipping and Routing

Shipping Terms are F.O.B. Ontario County unless otherwise stated on the face of the P.O. the County reserves the right to specify a specific delivery location. Any shipments delivered to another location other than specified will be the responsibility of Supplier to have redelivered to the specific location or reimburse Ontario County for any charges in moving the goods to the specific location. All goods must be forwarded by the route taking lowest reasonable transportation rate or in accordance with any special shipping instructions. Otherwise the difference in freight rate and extra cost of transportation will be Supplier's.

2. Timely Delivery

If the P.O. sets a date or time for the delivery or performance of goods and services, time is of the essence, and Supplier's failure to deliver or perform in a timely manner will constitute a material breach of these Terms. Ontario County may, at its option, and without limiting its other rights, cancel all or any unfilled part of the P.O. if deliveries are not made within the time specified. Ontario County reserves the right to charge Supplier for any loss or expense incurred as the result of Supplier's

failure to make timely delivery.

3. Invoices

Send all invoices shall clearly indicate the P.O. number and shall be sent to the “Bill to” location of the P.O. form.

4. Packaging

Ontario County P.O. number must appear on the outside of each package and on all packing slips, invoices, and related papers. A packing slip must be included with each shipment.

5. Extra Charges

No additional charges of any kind including, but not limited to, charges for shipping, handling, packaging, fuel surcharges, or insurance will be allowed unless specifically stated on the P.O. Any added charges will be automatically deducted from invoices received and not paid.

6. Tax Exemption

As a governmental entity, Ontario County is exempt from payment of all sales tax, whether state or local, imposed under Articles 28 and 29 of the New York Tax Law. P.O.s must be accepted in lieu of tax exemption certificates with the supplier retaining a copy to prove that the sale was exempt. Do not include taxes from which the County is exempt when submitting invoices.

7. Inspection and Rejection

In addition to all remedies permitted by law, Ontario County reserves the right to reject and return to Supplier, for full refund and at Supplier’s sole expense, all shipments in excess of quantities ordered and all goods that do not conform to The County’s exact specifications or requirements. All goods and materials furnished under this P.O. shall be subject to inspection, test, and approval or rejection prior to or after delivery due to nonconformance. Payment by Ontario County shall not constitute an acceptance or approval of any nonconforming or defective goods or workmanship, nor shall it affect the right of the County to later reject the goods or services. Any goods returned by the County pursuant to this paragraph or any other paragraph of this P.O. shall be returned to Supplier at its own risk and expense.

8. Warranties

Supplier warrants and represents that all material, work, or goods supplied under this P.O. will conform to specifications, drawings, samples, or other descriptions furnished by Ontario County, and shall be fit and serviceable for the purpose intended, of good quality and workmanship, and free from defect. All material, work, or goods shall be subject to rejection if use reveals defects not apparent upon receipt and, if rejected, will be held at Supplier’s risk and expense for storage and other charges until Supplier authorizes disposal or return. Supplier also warrants and represents that it (and each person or entity, if any, acting for or on its behalf) is not debarred from participation in any program of the government of the United

States, has all licenses, certificates, and other professional credentials required by law to perform under the terms of this P.O. Furthermore, Supplier warrants and represents that it shall immediately notify Ontario County if it (and each person or entity, if any, acting for or on its behalf) become subject to such debarment during the performance of this P.O.

9. Independent Contractor

Supplier shall be an independent contractor with no authority to bind Ontario County and shall have no other relationship to the County. Supplier will determine the means and methods of performing its services and will supply all equipment, tools, materials, parts, supplies and labor required to perform under the terms of this P.O. The County shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to, equipment, tools, materials, supplies, and other personal property of Supplier or its agents or employees, which may be brought onto County premises.

10. Non Appropriations Clause

In accordance with New York State General Municipal Laws, the County will not be liable for any purchases or contracts for goods or services for which funding is not available. As a result, the firm agrees to hold the County harmless for any contracts let for which funding either does not currently exist or for which funding has been removed prior to the issuance of a purchase order by the County. Issuance of a purchase order by the County indicates that the County currently has and has set aside adequate funds to procure the goods and services indicated in the purchase order or contract. Receipt of a resolution by the Ontario County Board of Supervisors is not in and of itself a binding contract with the County. Should it become necessary for the County to cancel a project or purchase after an order to proceed or purchase order has been issued, the County will only be liable for and the firm agrees to only assess those financial damages that it can prove to have incurred as a result of the cancellation.

11. Insurance

It is Supplier's responsibility to maintain adequate insurance coverage.

12. Defense and Indemnification

The vendor agrees to the fullest extent of the law:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the vendor shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the vendor or third parties under the direction or control of the vendor; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the acts or omissions

referred to in Sub-paragraph "(a)" above and to bear all other costs and expenses related thereto. The duty to defend hereunder shall be triggered immediately upon notice to the vendor by the County of the County's receipt of a Notice of Claim, service of process or other demand or claim.

13. Advertising

Supplier shall not, use the name, logos, or symbols of Ontario County for purpose of advertising, promotion, or trade without prior written approval.

14. Hazardous Chemicals

If the goods or materials shipped to Ontario County pursuant to this P.O. contain a "hazardous chemical," as that term is defined in 29 CFR §1910.1200(c), Supplier must provide to the County with a Material Safety Data Sheet and any other information required by the Federal Hazard Communication Standard (29 CFR §1910.1200), and any other federal or state environmental law, rule or regulation, prior to or at the time of shipment to: Ontario County Safety, Human Resource Department, 3019 County Complex Dr., Canandaigua, NY 14424. In addition, Supplier shall properly mark the hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200). Any shipment or transfer by the supplier of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT")), shall be conducted consistent with the requirements of DOT regulations.

15. Non-discrimination

Ontario County neither affiliates with nor grants recognition to any individual, contractor, firm or organization having policies that discriminate based on an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Supplier additionally agrees that it will comply with all Federal, State and Local regulations in this regard.

16. Compliance With Laws

Supplier warrants that all goods or services furnished hereunder will comply with all applicable federal and state laws (and the rules, regulations, guidelines, orders, and standards there under) including, where applicable, but not limited to, the Fair Labor Standards Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Occupational Safety and Health Act of 1970, and the Toxic Substances Control Act, and any amendments thereto. Supplier shall also give to Ontario County all notices and reports and label all goods and services supplied under this P.O., as required by applicable laws, rules, regulations, guidelines, orders, or standards.

17. Termination

Ontario County may terminate this P.O. in whole or in part at any time for cause if Supplier fails to comply with any of the Terms, including without limitation, by making late delivery or performance, or by delivering defective or non-conforming goods or services. If this P.O. is terminated for cause, the County shall not be liable to Supplier for any amount, and Supplier shall be liable to the County for any and all damages sustained by reason of the default which gave rise to the termination. Ontario County may terminate this P.O. in whole or in part at any time for its sole convenience without cause. If this P.O. is terminated for convenience, the County shall make an equitable adjustment between Supplier and the County as to any services or goods then in progress (excluding standard stock). All claims for money due or to become due from the County for a termination for convenience shall be subject to deduction or set off by the County by reason of any counterclaim arising out of this or any other transaction with Supplier.

18. Patents, Copyrights, Trademarks and Warranties

SUPPLIER EXPRESSLY WARRANTS THAT ALL MERCHANDISE IS IN ACCORDANCE WITH THE SPECIFICATIONS; IS FIT FOR THE PURPOSE FOR WHICH SIMILAR MATERIALS AND ARTICLES ARE ORDINARILY EMPLOYED, FIT FOR THE PARTICULAR PURPOSE FOR WHICH THE MERCHANDISE HAS BEEN PURCHASED, FREE FROM DEFECTS IN MATERIALS AND/OR WORKMANSHIP, AND MERCHANTABLE, and was not manufactured and is not being priced or sold in violation of any federal, state or local law, including without limitation those relating to health and safety. Supplier further warrants that the goods and services do not infringe or violate any patents, copyrights, trademarks or the like, and does not unlawfully disclose or make use of any trade secrets and covenants and agrees to hold harmless, defend and indemnify the County, and its Board, agents, servants, employees, successors, assigns and users, against any and all claims, demands or suits and related damages, liabilities, costs and expenses (including attorney's fees) arising out of any such infringement or violation or unlawful use or disclosure of trade secrets without limitation. Such warranties shall survive and shall not be deemed waived by delivery or acceptance of, or payment for the goods and services.

19. Force Majeure

This P.O. is subject to cancellation or change on written notice to the Supplier in the event of causes beyond the County's reasonable control, including without limitation acts of God or war, fires, earthquakes, floods, strikes, labor troubles, riots, curtailment or operations due to governmental orders or rulings, and the like.

20. Required Government Clauses

All Federal Grant and/or subcontract purchases are subject to the terms and conditions defined in Public Law 87-653 (Truth in Negotiations) and the Copeland "Anti-Kickback" Act. In addition the following clauses are incorporated herein by reference according to the amount of this order, and references to Government (or United States) and Contract shall be interpreted as necessary to apply to the U.S. Government or the Buyer and Seller, respectively.

FAR Number Title of Clause

Regardless of Amount

52.203.11 Certification & Disclosure Re: Payments to Influence Certain Federal Transactions

52.222.4 Contract Work Hours and Safety Standards Act

52.225.13 Restrictions on Certain Foreign Purchases

52.227.10 Filing of Patent Applications-Classified Subject Matter

52.227.11/12/13 Patent Rights

52.247.63 Preference for U.S. Flag Air Carriers

52.247.64 Preference for Privately Owned U.S. Flag Commercial Vessels

252.227.7034 DFAR Patents- Subcontracts DOD only

252.227.7039 DFAR Patents Reporting Subject Inventions DOD only

52.222.21 Prohibition of Non-Segregated Facilities

52.222.26 Equal Opportunity

52.222.35 Affirmative Action for Disabled Veterans of the Vietnam Era

52.222.36 Affirmative Action for Workers with Disabilities

52.222.37 Employment Reports on Disabled Veterans of the Vietnam Era

Orders over \$100,000 all of the above clauses plus

52.203.6 Restrictions on Subcontractor Sales to the Government

52.203.7 Anti-Kickback Procedures

52.203.12 Limitation on Payments to Influence Certain Federal Transactions

52.215.2 Audit and Records- Negotiation, Alternative II

52.219.8 Utilization of Small Business Concerns

52.227.1 Authorization and Consent Alternative I

52.227.2 Notice and Assistance Regarding Patent and Copyright

Infringement 42 U.S.C. 7401, et. seq Clean Air Act

33 U.S.C. 1251, et. seq Federal Water Pollution Control Act

Orders over \$500,000 all of the above clauses plus

52.219.9 Small Business Subcontracting Plan

Orders over \$550,000 all of the above clauses plus

52.215.12/13 Subcontractor Cost or Pricing Data- Modifications

21. Access to Records

Supplier shall preserve and permit Ontario County or any of the County's duly-authorized representatives (including, if applicable, the representatives of a U.S. Government funding sponsor) to examine and audit all directly pertinent books, documents, papers and records of Supplier involving transactions related to this P.O. for the purpose of making audits, examinations, excerpts, and transcripts for a period of six (6) years after final payment hereunder. Supplier shall refund to the County any overpayments disclosed by any audit.

22. No Assignment

In accordance with NYS General Municipal Law 109, Supplier shall not assign this P.O. or any interest relating to this P.O. without Ontario County's written consent and any assignment made, with or without the knowledge of the County, shall be rendered null and void.

23. Sale or bankruptcy of Supplier's Business

If, during the life of this P.O any proceedings by or against Supplier, voluntary or involuntary, in bankruptcy or insolvency, or under the provisions of the Federal Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of the property of Supplier, is commenced or threatened to be commenced, Ontario County shall have the right to cancel this P.O. without notice.

24. Ontario County's Property/Copyright Ownership

All equipment or material (including without limitation informational material) furnished by the County and all goods and services created by Supplier specifically for the County under the terms of this P.O. which is charged by the Supplier to Ontario County shall, unless otherwise agreed to in writing, be the property of Ontario County, shall be returned to the County at its written request, and shall not be used by Supplier in any of its business except its business with Ontario County under this or other P.O.s. Copyright ownership rights to any works developed specifically for the County under this P.O. is hereby transferred and assigned to Ontario County. Any use of the Ontario County name, logo or artwork must be authorized in writing by the County.

25. Waiver

The failure of Ontario County to enforce any of the provisions of this P.O. shall not be construed to be a waiver of such provisions or limit the right of the County thereafter to enforce each and every provision.

26. Governing Law

All matters concerning the validity and interpretation of the terms of this transaction shall be governed by the laws of the State of New York, without regard to its conflict of laws principles. Jurisdiction of any litigation shall be in New York, with venue in a court of competent jurisdiction in Ontario County or the US Federal Courts located in the Western District of New York.

