

## **CITY OF NEWBERRY PURCHASE ORDER TERMS AND CONDITIONS**

**ASSIGNMENTS.** Seller shall not assign this Purchase Order, its obligations, or rights hereunder to any party, company, partnership, incorporation, or person without the Prior written consent of the City.

**CHANGES.** No modifications of this order shall be binding upon the City unless approved in writing by an authorized representative of the City's Procurement Department, or authorized in writing by the Director of Finance.

**SHIPPING TERMS.** Unless otherwise specified, all shipments shall be F.O.B. Destination, Freight Prepaid. Orders must be delivered to the "ship to" address as stated on the purchase order. The City will not be responsible for any lost shipments caused by improper shipment.

**PAYMENT TERMS.** By accepting this order, the Seller agrees that payment terms shall be as set forth in accordance with Florida's Prompt Payment Act, F.S. 218.70-218.80

**QUANTITIES.** Quantities specified in the order cannot be changed without prior written approval of the City. Goods shipped in excess of the quantity designated may be returned at the Seller's expense. If no packing list accompanies the shipment, the City's count will be accepted.

**TAXES.** The City is exempt from Federal and State taxes, both excise, sales and use taxes, and any other like taxes. The City's Florida sales tax exemption # is: 85-8012621655C-9.

**CONTRACT RESULTING FROM A BID.** If this purchase order is a result of a competitive bid award, all conditions, provisions, and specifications of the solicitation shall become a part of and are incorporated in this order.

**VENUE AND APPLICABLE LAW.** The Purchase Order shall be governed by the laws of the State of Florida and all applicable federal laws and regulations. All obligations of the parties are performable in Alachua County, Florida. The appropriate state court located in Alachua County, Florida shall have exclusive and concurrent jurisdiction of any disputes that arise hereunder.

**FORCE MAJEURE.** Seller will not be held responsible for delays in delivery due to Acts of God, fire, extreme weather, strikes, accidents, war, and common carrier transportation delays provided the Seller notifies the City's Contracting Officer immediately in writing of the pending delay. In the event of documented delays, the date of delivery will be extended for a period equal to the time lost due to force majeure.

**DEFAULT.** In the event of default by the Seller, the City may procure the articles or services covered by this purchase order from other sources. The following shall constitute a default: 1) Failure to make complete deliveries within the promised time. 2) Unauthorized substitution, or delivery of goods deemed by the City to be inferior. 3) Inability of the Seller to fulfill the terms and conditions of this Order.

**TERMINATION.** A) This Purchase Order may be canceled by the City's Contracting Officer in whole or in part at any time the interest of the City requires such termination. B) If the City determines the performance of the Seller is not satisfactory, the City shall have the right to immediately terminate the Purchase Order. C) If the City requires termination of the Purchase Order for reasons other than unsatisfactory performance, the City shall notify the Seller of such termination, and the Seller will be paid only for that work satisfactorily performed for which costs can be substantiated. All work in progress shall become the property of the City, and shall be turned over promptly by the Seller.

**INDEMNIFICATION AND INSURANCE.** The parties recognize that Seller is an independent contractor. Seller agrees to assume liability for and indemnify, hold harmless, and defend the City of Newberry, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of Seller, its officers, employees, agents, and representatives. Seller's liability hereunder shall include all attorney's fees and costs incurred by the City of Newberry in the enforcement of this indemnification provision. This includes claims made by the employees of Seller against the City of Newberry and Seller hereby waives its entitlement, if any, to immunity under section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination, cancellation or expiration of this Purchase Order and shall not be limited by the amount of any insurance required to be obtained or maintained under this Purchase Order. Nothing contained herein shall be construed as a waiver of any limitation of liability the City of Newberry may be entitled to under the doctrine of sovereign immunity or section 768.28, Florida Statutes.

**PUBLIC RECORDS.** The Seller shall comply with public records laws, as set forth in Chapter 119, Florida Statutes; and shall: 1. Keep and maintain public records required by the City to perform the service. 2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. 3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Seller does not transfer the records to the City. 4. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Seller or keep and maintain public records required by the City to perform the service. If the Seller transfers all public records to the City upon completion of the contract, the Seller shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Seller keeps and maintains public records upon completion of the contract, the Seller shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. 5. **REQUEST FOR RECORDS; NONCOMPLIANCE.**— (a) A request to inspect or copy public records relating to a City's

contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Seller of the request, and the Seller must provide the records to the City or allow the records to be inspected or copied within a reasonable time. (b) If a Seller does not comply with the City's request for records, the City shall enforce the contract provisions in accordance with the contract. (b) A Seller who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10. (b) **IF THE SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-472-2446, OR, JRICE@NEWBERRYFL.GOV OR 25440 WEST NEWBERRY ROAD, NEWBERRY, FLORIDA 32669**