



# Purchase Order Terms and Conditions

**1) ACCEPTANCE - ENTIRE AGREEMENT** - Acceptance of this Purchase Order will be unqualified, unconditional and subject to and expressly limited by the Terms and Conditions hereon. Montgomery County and its affiliated agencies ("County/Agency") and the seller ("Vendor") shall not be bound by additional provisions or provisions at variance herewith that may appear in the Vendor's quotation, acknowledgement in force or any other communication from the Vendor to the County/Agency unless such provision is expressly agreed to and confirmed in writing by the County/Agency. Vendor shall be deemed to have agreed to be bound by such terms by accepting the Purchase Order, delivering the goods, and/or performing the services.

**2) UNIFORM COMMERCIAL CODE** - The State of Ohio commercial code (Ohio Revised Code, Title 13) shall prevail as the basis for contractual obligations between the Vendor and the County/Agency for any terms and conditions not specifically stated herein.

**3) ASSIGNMENT/SUBCONTRACTING** - The Vendor shall provide the services required by this Agreement. No assignment or subcontracting shall be allowed without prior written consent of the County/Agency. In the event of a corporate acquisition and/or merger, the Vendor shall provide written notice to the County/Agency, within (30) business days of Vendor's notice of such action or upon the occurrence of said action, whichever occurs first. In that event, the County/Agency may terminate this Agreement in those instances in which a corporate acquisition and/or merger represents a conflict of interest or is contrary to any local, state or federal laws.

**4) TAX EXEMPTION** - County/Agency is exempt from federal and State of Ohio sales tax. A tax exemption certificate shall be presented upon request.

**5) INVOICES AND PAYMENTS** - County/Agency shall pay Vendor upon completion and County/Agency's acceptance of the services as specified and is in receipt of an invoice meeting the criteria below:

**A. Invoicing** - Invoice(s) must be submitted to the billing address indicated on the face of the standard purchase order. Each invoice shall include, at a minimum, the purchase order number, the Vendor's name, contact information, clearly defined quantities, item/service descriptions, units of measure and pricing. Invoices may be received electronically, but only upon prior notification and permission by a County/Agency representative issuing the purchase order.

**B. Payment Terms** - Payment terms shall be as is indicated on the PO. Payment due date shall be calculated based on the invoice date for goods and/or services that have been received and accepted by the County/Agency.

**C. Changes** - The vendor is responsible for immediately notifying the Purchasing Department of any company name change, address change or any other change which would cause invoicing to be different at the time of the original purchase order or solicitation.

**6) COMPLIANCE WITH APPLICABLE LAWS** - Vendor certifies that all of the products and services to be furnished hereunder will be manufactured or supplied by Vendor in accordance with all applicable provisions of State, Local and Federal laws, as of this date. The laws of the State of Ohio apply to any and all purchases made. Vendors shall comply with all local, state, and federal directives, orders and laws including, but not limited to, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), Ohio Ethics, Findings for Recovery and OSHA. Lack of knowledge by the Vendor shall in no way be cause for relief from this responsibility.

**7) INQUIRIES** - Any inquiries relative to the purchase order should be directed to the Purchasing Department. Collect calls will not be accepted.

**8) FISCAL NON-FUNDING** - In the event that sufficient budgeted funds are not available for a new fiscal period, County/Agency shall notify the Vendor of such occurrence and the Agreement shall terminate on the last day of the current fiscal period without penalty or expense.

**9) DISCOUNTS** - Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for County/Agency to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date or receipt of goods, or the date of approved invoice, whichever is later.

**10) DELIVERY/CLAIMS** - Prices are F.O.B. destination unless otherwise specified and agreed to by County/Agency. Actual delivery address shall be identified at time of order. If completed deliveries are not made at the time agreed, the County/Agency reserves the right to cancel or purchase elsewhere. If agreed upon delivery dates cannot be met, Vendor agrees to advise the County/Agency in writing of the earliest possible shipping date for acceptance by the County/Agency.

**11) PURCHASE ORDER NUMBER** - Purchase order number must appear on all packing slips, invoices and all correspondence relating to the order. County/Agency will not be responsible for goods delivered without a purchase order number.

**12) TITLE AND RISK OF LOSS** - Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury or destruction of goods which may for any reason occur prior to acceptance by the County/Agency. No such loss, injury or damage shall release the Vendor from any obligations hereunder.

**13) INSPECTION** - Goods are subject to inspection upon delivery. Damaged goods will not be accepted or if the damage is not readily apparent at the time of delivery, the goods shall be returned at no cost to the County/Agency. The County/Agency reserves the right to inspect the goods at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery. The County/Agency also reserves the right to reject or refuse acceptance of goods which are not in accordance with County/Agency's instructions, specifications or Vendor's warranties (expressed or implied). Goods not accepted will be returned at Vendor's risk and expense. Payment for any goods shall be deemed an acceptance of the order. In the event the vendor cannot fulfill an acceptable order, the payment shall be refunded.

**14) WARRANTY** - The Vendor warrants that all goods and services furnished will conform in all respects to the terms of the County/Agency's order including drawings, specifications or standards incorporated into the County/Agency's order. Vendor further warrants that all goods and services are free from defects in materials, workmanship and design. Vendor also warrants the goods and services are suitable and will perform in accordance with the purposes for which they are intended.

**15) INDEMNITY PROVISION** - Unless superseded by mutually agreed upon terms signed by both parties, vendor shall indemnify, pay the costs of defense, including attorney's fees and hold harmless County/Agency from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property, by or from said Vendor; or by or in consequence of any neglect in safeguarding the work; or through the use of unacceptable materials in the construction or improvements; or by, or on account of, any act of omission, neglect or misconduct of the said Vendor, on account of any act or amounts recovered under the "Workers Compensation Law" or of any other laws, bylaws, ordinance, order of decrees, except only such injury or damage as shall have been occasioned by the sole negligence of County/Agency. The first ten dollars (\$10.00) of compensation received by the Vendor represents specific consideration for this indemnification obligation. Exemption: Any public entity, department or agency that by state or federal law is prohibited from indemnifying County/Agency under the terms of this purchase order is exempt from the indemnity provision herein.

**16) PATENTS AND COPYRIGHTS** - Vendor agrees to County/Agency and hold it harmless from and against all claims, liability, loss, damage or expense, including counsel fees, arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon, with respect to the goods or any part thereof covered by this order and such obligation shall survive acceptance of the goods and payment thereof by County/Agency.

**17) INSURANCE** - The Vendor shall maintain insurance acceptable to County/Agency, in full force and effect throughout the term of this Agreement. The Vendor must provide a Certificate of Insurance in accordance with the insurance requirements, evidencing such coverage prior to the commencement of any work under this agreement if requested by the County/Agency.

**18) PUBLIC RECORDS** - All vendors are hereby notified that all bids, proposals, quotations, RFI responses, agreements, invoices, correspondence, and any other documents submitted to the County/Agency may become public property, unless otherwise exempt by law, and are subject to public disclosure in accordance with Ohio Public Records Law. All public records will be made available upon formal written request at the earliest time permitted by law.

**19) RELATIONSHIP OF THE PARTIES** - The Vendor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venture of County/Agency. No officer or employee of the County/Agency shall have a fraudulent or unlawful financial interest, direct or indirect, in any contract with the County/Agency, or be financially interested, directly or indirectly, in the sale to the County/Agency of any land, materials, supplies or services unless otherwise noted by Ohio Revised Code. Violation of this section with the knowledge, expressed or implied, of the person or corporation conducting business with the governing body of the County/Agency shall render the order involved void. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the agreement, at the discretion of County/Agency. Vendor is responsible for payment of all Social Security taxes and Bureau of Workers Compensation contributions for itself and any of its employees.

**20) PERMITS, FEES AND COSTS** - The Vendor is responsible for determining and paying any fees that may be necessary to perform this agreement and determining and acquiring any and all permits and licenses required by any Federal, State or local government entity, agency or board that may be necessary to perform this agreement. The Vendor shall maintain any and all permits and licenses required to complete this agreement.

**21) PREVAILING WAGE** - It shall be the responsibility of the Vendor to comply, when applicable, with the requirements of the State of Ohio Revised Code chapter 4115 and the State of Ohio Administrative Rules and Regulations 41001:9-4 and shall pay each laborer, worker and mechanic employed by the Vendor not less than the prevailing rate of wages as determined by the Ohio Department of Commerce.

**22) TERMINATION** - County/Agency reserves the right to terminate this agreement, in whole or in part, without cause by giving ten (10) days prior written notice to the Vendor of the intention to terminate or with cause if at any time the Vendor fails to fulfill or abide by any of the terms or conditions specified. Failure of the Vendor to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the sole discretion of County/Agency. In addition to all other legal remedies available to County/Agency, the County/Agency reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of request, as determined by County/Agency.

**23) GOVERNING LAW** - This agreement shall be governed by and construed according to the laws of the State of Ohio. Venue for any action related to this contract shall be in Montgomery County, Ohio.

**24) REMEDIES** - The County/Agency shall have all rights and remedies afforded under the Universal Commercial Code and State of Ohio law in contract and in tort, including, but not limited to, the rejection of goods, refund, incidental, consequential and compensatory damages and reasonable attorney fees.

**25) SEVERABILITY** - If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

**26) NON-WAIVER OF RIGHTS** - No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms set forth.

**27) DEBARMENT** - By accepting this purchase order, the vendor certifies that, under penalty of perjury and under other such penalties as the laws of this state and the United States of America provide, that the company or any person associated there with in the capacity of owner or any position involving the administration of federal funds is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency or determined ineligible by any federal agency within the past three (3) years; or does not have a proposed debarment pending, or had a civil judgment rendered against the company, or themselves by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

**28) 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 the agreement, then such party shall give notice and full particulars of 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 is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer periods and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The terms Force Majeure as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States or State of Ohio or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints 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. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

**29) SAFETY DATA SHEETS** - In accordance with OSHA Hazardous Communications Standards, it is the Vendor's duty to advise if a product is a toxic substance and to provide a Safety Data Sheet at time of delivery.

**30) NON-EXCLUSIVE AGREEMENT** - Award of this Agreement shall impose no obligation to County/Agency to utilize the vendor for all work of this type, which may develop during the agreement period. This is not an exclusive agreement. County/Agency specifically reserves the right to concurrently agree with other companies to provide similar work if it deems such action to be in County/Agency's best interest. In the case of multiple-term agreements, this provision shall apply separately to each term.