

CITY OF DUNEDIN PURCHASE ORDER TERMS & CONDITIONS

1. **ENTIRE AGREEMENT** - The terms, specifications and drawings included in this order when duly executed constitute the entire agreement between the parties, unless otherwise stated on the face of the order. Acceptance of this Purchase Order will be unqualified, unconditional and subject to and controlled by these Terms and Conditions. The City and Vendor shall not be bound by additional provisions at variance herewith that may appear in the Vendor's quotation, acknowledgement in force, or any other communication from Vendor to the City of Dunedin unless such provision is expressly agreed to in writing by the City. No modification or waiver of terms of this agreement shall be binding unless in writing, signed by the City Manager or his/her delegee, or approved by the City Commission if this Purchase Order exceeds the City Manager's purchasing authority, and confirmed by such a representative of Vendor.
2. **PURCHASE ORDER NUMBER**- Purchase Order Number must appear on all packing slips, invoices, and all correspondence relating to the Order. The City will not be responsible for goods delivered without a Purchase Order Number.
3. **PAYMENT** – Invoices must be mailed to the City's accounts payable address. Any other address will result in a processing delay. Payments shall be made pursuant to the Florida Prompt Payment Act (§218.70 et. seq., Florida Statutes). Invoices must state the Purchase Order Number, unit price(s), extension(s), total, and the ship to address.
4. **PRICES**- All deliveries are F.O.B. destination unless otherwise specified and agreed to by the City in writing.
5. **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 the City to withhold payment without losing discount privileges. Discount privileges will apply from the date of scheduled delivery, the date of receipt of goods, or the date of approved invoice, whichever is later.
6. **DELIVERIES** – In the event of failure to deliver material of the quality or within the time specified, the City may cancel order and buy elsewhere. Failure of the City to exercise this option with respect to any installment shall not be deemed a waiver with respect to future installments, if any.
7. **INSPECTIONS** – Materials shall be received subject to the City's right to inspect and test all materials at destination before acceptance. Goods rejected due to inferior quality or workmanship will be returned to Vendor with charge for transportation both ways, plus labor, loading, packing, etc., and are not to be replaced except upon receipt of written instructions from the City. Vendor shall also pay all costs of inspecting and testing of materials which are rejected.
8. **ACCEPTANCE** – Payment for the goods covered by this order shall not constitute acceptance thereof. Shipment of any part of this order without written acceptance constitutes Vendor's acceptance of order and its conditions.
9. **VARIATION IN QUANTITY**- The City assumes no liability for material produced, processed or shipped in excess of the exact quantity specified in the Purchase Order.
10. **FORCE MAJEURE** – Neither party shall be liable for delays or defaults due to acts of God, government authority or public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes or contingencies reasonably beyond its control. The party also affected, upon prompt written notice the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. At the City's option, deliveries so omitted shall be made on notice thereof to the Vendor, upon cessation of such contingency, even though such might have been operative at the date of this order.
11. **GOVERNMENT REGULATIONS** – Vendor warrants that all applicable laws and regulations of government authority, covering the production, sale and delivery of the materials specified herein, have been complied with and shall indemnify and save the City harmless from and against any liability or loss resulting from Vendor's failure to do so.
12. **TAXES** –The City is tax exempt. If you prepay transportation charges, do not pay tax as the City will not reimburse you for the taxes paid.
13. **WARRANTIES** – In addition to all warranties, established by statute or common law, or set forth elsewhere in this order, Vendor expressly warrants that all material or services covered herein shall conform to all specifications, drawings, samples, and descriptions furnished or adopted by the City, and shall be of best quality and fit and sufficient for the purpose for which purchased. If specified hereon, merchantable, of good material and workmanship and free from all patent and latent defects. The City's failure to give notice to Vendor of any breach of warranty shall not discharge the Vendor's liability thereof. Without limiting the generality of the foregoing, Vendor agrees to be responsible for all defects in design, workmanship and materials which may become apparent within twelve months of receipt by the City.

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- 14. INTELLECTUAL PROPERTY** – Vendor, in accepting this Purchase Order, represents and warrants that the products and services provided do not infringe on any patent, trade mark, copyright or any other intellectual property of any third party. Vendor shall protect and indemnify the City, its mayor, commissioners, officers, employees, attorneys, agents and representatives of, from and against all liability and expense, including reasonable attorneys’ fees, in connection with any and against all claims, judgments and expense arising from infringement or alleged infringement of any United States patent by any of the goods delivered hereunder.
- 15. PERMITS-** Vendor is responsible for obtaining any permits necessary to complete the work covered by this Purchase Order, at its own expense, prior to starting any work under this Purchase Order.
- 16. CITY PREMISES** – If this order requires Vendor services on the City’s premises, such experts or employees shall not thereby be deemed to be the agents or employees of the Vendor. Such parties shall be subject to all safety rules, laws, and regulations, however, Vendor shall be solely responsible for ensuring such compliance and the City has no authority to direct the means and methods of such compliance. Vendor shall keep all materials and premises free from any lien for materials and labor incident to the performance of such services.
- 17. ASSIGNMENT** – Vendor shall not assign this Purchase Order or any part thereof without consent of the City. Such consent will not relive Vendor from its obligations and liabilities under this Purchase Order.
- 18. INDEMNIFICATION-** The parties recognize that Vendor is an independent contractor. Vendor agrees to assume liability for an indemnify, hold harmless, and defend the City, 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 Vendor, its officers, employees, agents, and representatives. Vendor’s liability hereunder shall include all attorney’s fees and costs made by the employees of Vendor against the City and Vendor 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 limit of liability the City may be entitled to under the doctrine of Sovereign Immunity or section 768.28, Florida Statutes.
- 19. INSURANCE-** Vendor shall maintain insurance acceptable to the City in full force and effect throughout the term of this Purchase Order. The City further reserves the right to require Vendor name the City as an additional insured under any insurance policy and to require that the City be provided a certificate of insurance evidencing the required insurance, all in the City’s sole discretion.
- 20. SEVERABILITY-** If any section, subsection, sentence, clause, phrase or portion of these Terms and Conditions are, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent and such holding shall not affect the validity of the remaining portion hereof.
- 21. FISCAL NON-FUNDING-** In the event sufficient budgeted funds are not available for payment to Vendor for a new fiscal period, the City shall notify Vendor of such occurrence and this Purchase Order shall terminate on the last day of the current fiscal period without penalty or expense to the City.
- 22. OCCUPATION SAFETY AND HEALTH ACT** – Vendor certifies that all material, equipment, etc. supplied under terms of the Purchase Order meets all O.S.H.A requirements. Vendor further certifies that, if the material, equipment etc. delivered is subsequently found to be deficient in any O.S.H.A. requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by Vendor. In accordance with O.S.H.A. Hazardous Communications, it is Vendor’s duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at the time of delivery.
- 23. VENUE AND APPLICABLE LAW.** This agreement shall be interpreted in accordance with the laws of the State of Florida. Venue for the purposes of any suit, action or other proceeding arising out of, or relating to, this Purchase Order shall be exclusively in the Sixth Judicial Circuit in and for Pinellas County, Florida for state actions and in the United States District Court for the Middle District of Florida.