

**CITY OF CORINTH**  
**TERMS & CONDITIONS FOR PURCHASE ORDERS**

Seller and Buyer agree to comply with the following terms and conditions. These Terms and Conditions along with the Purchase Order constitute a contract between the Seller and Buyer, the Seller's issuing an invoice and/or providing any of the goods and services described in the Purchase Order. In the event of a conflict between these Terms and Conditions and a separate written agreement between the Seller and Buyer, the terms of the separate written agreement shall prevail.

**1. SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase order release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2. SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

**3. TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

**4. DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Inside Delivery, Municipal Facility, Corinth, Texas, and shall include all delivery and packaging costs. The Buyer assumes no liability for goods delivered in damaged or unacceptable condition. The Seller shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by Seller of damage.

**5. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Seller may notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

**6. PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications", hereof. The terms of this contract are "no arrival, no sale".

**7. INVOICES AND PAYMENTS:** (a) Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and

transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Invoices shall be sent by electronic mail to: [accountspayable@corinthtx.gov](mailto:accountspayable@corinthtx.gov). Payments shall be made thirty days after the goods are delivered to the Buyer, or a correct invoice is received, whichever is later. Suppliers should keep the Accounts Payable Office advised of any changes in remittance addresses. (b) Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer. (c) Do not include Federal Excise, State or City Sales Tax. Buyer shall furnish tax exemption certificate, if required.

**8. GRATUITIES:** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of the City of Corinth with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

**9. SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

**10. WARRANTY PRICE:** (a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. (b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**11. WARRANTY PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in

the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

**12. SAFETY WARRANTY:** Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.

**13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two weeks after the signing of this contract. If Buyer does not receive notice and is subsequently held liable for the infringement of the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.

**14. RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them. Nonconforming goods may be returned at Seller's costs.

**15. CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

**16. TERMINATION:** The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein. Buyer may terminate for convenience with 30 days notice or for non-appropriation.

**17. FORCE MAJEURE:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract 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 it is affected by such Force Majeure, shall be suspended during the continuance of the

inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint 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.

**18. ASSIGNMENT DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**19. WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

**20. MODIFICATIONS:** This contract may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents. This shall include any change orders.

**21. INTERPRETATION PAROLE EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

**22. APPLICABLE LAW:** This contract shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this contract.

**23. ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

**24. RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written

assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

**25. VENUE:** Both parties agree that venue for any litigation arising from this contract shall lie in Denton County, Texas.

**26. DISCLOSURE:** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Corinth must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at <https://ethics.state.tx.us/>, must be filed with the City Secretary of the City of Corinth no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Corinth or submits to the City of Corinth an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Corinth. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Seller should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Corinth to comply with the filing requirements of Chapter 176.

**27. INDEPENDENT CONTRACTOR:** Seller shall be considered an independent contractor and not an agent, servant, employee, or representative of Buyer in the performance of the work. No term or provision herein or act of the Seller shall be construed as changing that status.

**28. TERMINATION FOR DEFAULT:** Buyer reserves the right to enforce the performance of any Purchase Order in any manner prescribed by law or deemed to be in the best interest of Buyer in the event of breach or default. The Buyer reserves the right to terminate any purchase order and/or agreement with the Seller in the event the Seller fails to: (a) meet delivery schedules, or (b) otherwise perform in accordance with these terms and conditions.

**29. PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code. Post-award protests must be submitted in written form to the City Manager within five (5) working days after award. The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest.

**30. INDEMNIFICATION: SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD BUYER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING SERIOUS BODILY**

INJURY AND DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SELLER'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY SELLER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF BUYER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE SELLER AND BUYER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

**31. SEVERABILITY:** In case any one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**32. IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C 1324a):** The Buyer supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Buyer comply with the requirements of IRCA and shall notify the Buyer within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Buyer may terminate a contract with the Seller if the Buyer determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Buyer of an IRCA violation.

**33. ADA COMPLIANCE:** All goods and services provided to the Buyer must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Seller will be required to certify compliance, if required under the law or otherwise required by the Buyer.

**34. PROTECTION OF RESIDENT WORKERS:** The Buyer actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Seller

shall establish appropriate procedures and controls so no services under the contract will be performed by any worker who is not legally eligible to perform such services or employment. The Buyer reserves the right to audit Seller's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the contract. The audit will be at the Buyer's expense.

**35. TEXAS GOVERNMENT CODE CHAPTER 2252.** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Consultant affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

**36. TEXAS GOVERNMENT CODE CHAPTER 2271.** Pursuant to Texas Government Code Chapter 2271, Consultant affirms that execution of this Agreement serves as written verification that Consultant: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement. This section shall not apply if Consultant employs fewer than ten (10) full-time employees, or if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00.

**37. TEXAS GOVERNMENT CODE CHAPTER 2274.** Pursuant to Texas Government Code Chapter 2274, Consultant verifies the following:

A. Consultant: (1) does not boycott energy companies, as defined by Texas Government Code Section 809.001; and (2) will not boycott energy companies during the term of this Agreement.

B. Consultant: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as those terms are defined in that chapter; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

This section shall not apply if Consultant employs fewer than ten (10) full-time employees, if the funds to be paid wholly or partly from public funds of the City under this Agreement are less than \$100,000.00, or if this Agreement is otherwise exempted from the requirements of Texas Government Code Chapter 2274.

**38. INSURANCE:** Seller shall obtain and maintain in full force at Seller expense, throughout the duration of the Contract and any warranty or extension periods, the required insurance identified below.

a. **Workers' Compensation** Seller shall carry insurance as required by Texas Labor Code, Title 5. Workers' Compensation. The Seller and all sub-Sellers shall maintain coverage for all subject workers.

b. **General Commercial Liability (CGL)** Seller shall carry commercial general liability coverage ("CGL") in an amount not less than \$1 million per occurrence and aggregate limit of not

less than \$2,000,000 per occurrence for damage to property or personal injury arising from Seller's work under this Contract.

**c. Automobile Liability** Seller, if driving to deliver Goods or Services under this Purchase Order, shall carry insurance with coverage of not less than \$1,000,000 each accident. The insurance shall include coverage for any auto, or all owned, scheduled, hired and non-owned auto.

**d. Excess and Umbrella Insurance Coverage** may be used in any combination to supplement the required limits for general liability and auto liability coverage in section b and c above.

**e. Continuous Coverage; Notice of Cancellation:** The Seller agrees to maintain continuous, uninterrupted coverage while the Contract is in effect. There shall be no termination, cancellation, material change, potential exhaustion of aggregate limits or non-renewal of coverage without thirty (30) calendar days written notice from Seller to the City. If the insurance is canceled or terminated prior to completion of the Contract, Seller shall immediately notify the City and provide a new policy with the same terms. Any failure to comply with this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract. Seller must provide proof of such coverage by additional endorsement.

**f. Additional Insured:** The liability insurance coverages, except Professional Liability, Errors and Omissions, or Workers' Compensation, shall be without prejudice to coverage otherwise existing, and shall name the City of Aubrey and its bureaus/divisions, officers, agents, and employees as Additional Insureds, with respect to the Seller's Services to be performed, or Goods to be provided. Coverage shall be primary and non-contributory with any other insurance and self- insurance. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

**g. Proof of Insurance and Certificate(s) of Insurance:** Seller shall provide proof of insurance through acceptable certificate(s) of insurance and additional insured endorsement form(s) to the City prior to any bid or contract award if required by the procurement documents (e.g., Request for Proposal), or at execution of Purchase Order and prior to any commencement of work or delivery of Goods or Services thereunder. The Certificate(s) are insufficient as proof of Additional Insured coverage or waiver of subrogation; Seller must furnish copies of the endorsements specifying all of the parties who are endorsed on the policy as Additional Insureds (or Loss Payees). Insurance coverages required under this Purchase Order shall be obtained from insurance companies acceptable to the City of Aubrey. The Seller shall pay for all deductibles and premium. Buyer reserves the right to require, at any time, complete, copies of required insurance policies, including endorsements evidencing the coverage the required.

**h. Waivers of Subrogation.** To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Purchase Order. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

**i. Sub-Seller(s):** At Buyer's request, Seller shall provide evidence that Sub-Sellers, if any, performing work or providing Goods or Services under the Contract have the same types and amounts of coverages as required of the Seller.

**39. DESCRIPTION OF SERVICES.** Seller agrees to work closely with Buyer to fulfill the contract's purpose, including adhering to referenced contracts, bid documents, and quotes.

**40. PERFORMANCE OF WORK.** Seller and its associates must be qualified and shall perform work in a good and workmanlike manner. Deliverables shall be fit for their intended purpose.;

**41. TERM.** The purchase order remains in effect through the stated expiration or delivery date unless extended in writing or terminated under these Terms.

**42. OWNERSHIP OF DOCUMENTS.** All materials created under this contract belong to the Buyer. Seller will provide these upon request and comply with the Texas Public Information Act. Seller is responsible for marking proprietary information.

**43. PATENT RIGHTS.** Seller shall indemnify Buyer for infringement claims related to goods or services provided.

**44. INTERLOCAL/COOPERATIVE CONTRACT.** Buyer is entitled to rights under interlocal or cooperative agreements as if directly a party.

**45. DEBARMENT/SUSPENSION.** Seller certifies that it is not debarred, suspended, or otherwise excluded from participating in federal, state, or local government contracts. Buyer reserves the right to terminate this contract immediately upon discovery of such debarment or suspension.

**46. RECORDS RETENTION & AUDIT.** Seller shall maintain all records related to the contract for a minimum of three (3) years after final payment and shall make them available for inspection by Buyer, state, or federal auditors upon request.

**47. RIGHT TO AUDIT.** Buy or its designee shall have the right to audit and inspect Seller's records related to this agreement during and after performance, at reasonable times and upon reasonable notice.

**48. CONFIDENTIALITY.** Seller shall maintain in confidence all non-public information received during the performance of this agreement and shall not disclose it except as required by law.