

# **PURCHASE ORDER TERMS AND CONDITIONS**

City of Boulder, Colorado

Effective: August 1, 2024

THESE PURCHASE ORDER TERMS AND CONDITIONS (these “PO Terms”) are incorporated by reference into the purchase order (“PO”) offered by the City of Boulder, Colorado (the “City”) to the party from which the City desires to purchase certain materials and/or services (“Contractor”) (collectively, the “Parties” and each a “Party”). Together, the PO and these PO Terms constitute a contract between the City and Contractor (this “Contract”). Contractor’s acceptance of the PO is evidence of Contractor’s acceptance of this Contract, including these PO Terms. These PO Terms shall apply only in those circumstances in which no other contract/agreement has been executed by the City and Contractor with regard to the same materials and/or services identified in the PO. If a separate contract/agreement has been fully executed, the terms and conditions included in the executed contract/agreement shall apply and shall supersede these PO Terms. The City and Contractor may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

These terms are effective as of August 1, 2024, and shall bind the City and Contractor for all POs entered into on or after that date.

## **GOODS TERMS**

For all PO’s concerning the delivery of goods, materials, equipment, supplies, or personal property of any kind (collectively, “Goods”), the following terms and conditions shall apply:

1. **DELIVERY; INSPECTION; WARRANTIES.** Contractor agrees to deliver the Goods to the place as designated by the City. Title shall pass to the City only upon the City’s receipt and acceptance of the Goods. Risk of loss, destruction, or damage to the Goods shall be borne by Contractor until title passes to the City. Shipments must be F.O.B. City of Boulder, Boulder, CO. Goods are subject to City inspection on arrival. Goods delivered shall conform to the specifications included in the PO and the City shall not be liable for payment for non-conforming materials. All Goods shall be free from defects in materials and workmanship, shall conform to their specifications and documents, shall be fit and safe for their intended purposes, and shall be produced and delivered in full compliance with applicable law. Contractor warrants and guarantees to the City that it possesses full, clear and unrestricted title to all Goods furnished under the PO, free and clear of any and all liens, restrictions, reservations, security interest encumbrances and claims of others.
2. **DELAYS.** Contractor shall not be liable for any delay or non-performance due to the failure of the source of supply from which Contractor obtains materials to make delivery, or due to delays in transportation, labor strikes, floods, fires, acts of God, or to the acts or regulations of any governmental authority or any branch or agency thereof. In the event of delay or non-performance by Contractor for any reason except as set forth above, the City shall be free to obtain said materials from other sources without incurring liability or damages to Contractor.
3. **PAYMENT.** The City agrees to pay the purchase price for the materials listed on the PO. Payment by the City shall be made within 30 days following the receipt of an invoice from Contractor, subject to final acceptance of the materials, including verification as to quantities and qualities. Each invoice shall include the City’s PO number and reference the City staff

member who initiated the purchase.

4. TAX EXEMPTION. By statute the City is exempt from state and local taxes. The City's State Tax Exemption Number is 98-03489.

### **SERVICE TERMS**

For all PO's concerning the rendering of services to the City, the following terms and conditions shall apply:

1. PAYMENT. The City shall pay Contractor the amounts agreed to in the PO within thirty (30) days following receipt of Contractor's invoice for the services. The City may withhold payment of fees and charges that the City disputes in good faith. If the City in good faith disputes all or any portion of an invoice for fees and charges, the City shall notify Contractor of such disputed amount and the basis for the City's dispute together with any appropriate information supporting the City's position. If the City withholds any disputed fees and charges, the City shall pay the undisputed portion of the invoice by the due date and shall notify Contractor of the disputed portion of the invoice. The Parties shall then attempt to resolve the disputed portion of such invoice as soon as possible. Upon resolution of the disputed portion, the City shall pay to Contractor the resolved amount. Neither the failure to dispute any fees or charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right the City may otherwise have to dispute any fee or charge or amount or recover any amount previously paid. Contractor shall be reimbursed only for out-of-pocket expenses that are expressly provided for in the PO or which have been approved in advance in writing by the City, provided Contractor has furnished such documentation for authorized expenses as the City may reasonably request.
  
2. INSURANCE.
  - (a) Limits. Contractor shall procure and maintain in force while Contract is in effect, at its own cost, the following minimum coverages:
    - (1) Workers' Compensation and Employers' Liability:  
State of Colorado: Statutory
    - (2) General Liability:
      - (i) General Aggregate Limit: \$2,000,000
      - (ii) Each Occurrence Limit: \$1,000,000
    - (3) Automobile Liability:<sup>1</sup>  
Bodily Injury & Property Damage Combined  
Single Limit: \$1,000,000
    - (4) Professional Liability (errors and omissions)<sup>2</sup>
      - (i) Each Claim/Loss: \$1,000,000
      - (ii) Aggregate: \$1,000,000
  - (b) Coverage. Insurance required by these PO Terms shall:
    - (1) Be primary coverage;
    - (2) Include the **City, its officials, and its employees as additional insureds as their**

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<sup>1</sup> Applicable only if Contractor, its agents, employees, or representatives will be using motor vehicles in Colorado while performing the services.

<sup>2</sup> Applicable only to licensed professionals.

- interest may appear** (except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
- (3) Include a waiver of subrogation for General Liability coverage.
  - (4) Be issued from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
  - (5) Be procured and maintained in full force and effect for duration of work.
- (c) Certificates. Certificates of Insurance evidencing the coverages described herein, shall be forwarded to City's Purchasing Department. **Certificate Holder shall be: City of Boulder, 1777 Broadway, Boulder, CO 80302.**
- (d) Cancellation. Within seven days after receiving insurer's notice of cancellation or reduction in coverage, Contractor, or its insurance broker, shall notify the City. In either such case, Contractor shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

The City of Boulder may require that this coverage remain in place for one year after the Services have been project is completed.

### **TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS**

All POs shall be subject to the following terms and conditions:

1. **ENTIRE AGREEMENT; AMENDMENT; ASSIGNMENT; NO THIRD-PARTY BENEFICIARIES.** This Contract is the complete integration of all understandings between the City and Contractor. Any additional or different terms and conditions proposed by Contractor are objected to and hereby rejected. This Contract explicitly supersedes any additional or different terms and conditions. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the parties to this Contract. Contractor shall not assign this Contract without the written consent of the City, which may withhold such consent in its sole discretion. This Contract is solely for the benefit of the Parties and shall not confer any rights upon any person or entity not a party to the PO.
  - A. Different, Subsequent or Additional Online Agreement or License Terms. In the event Contractor is providing the City with access to software or online or digital technology (e.g., hosted services; SaaS; cloud services), the City acknowledges that Contractor may need to require that the City, its employees and authorized agents (collectively, "City Personnel") consent to online terms via online consents, terms of services/use, click-through, click-wrap, end-user license agreements, software licensing agreements, service level agreements, or any similar online agreement or license terms (collectively, "Online Agreements"). The Parties agree that the consent by City Personnel to any Online Agreements does not bind the City to any terms which purport to: (1) require that the City to indemnify or defend Contractor or any third party; (2) cause the City to be in violation of any law, rule, regulation, rule, ordinance, or binding governmental authority document; (3) cause the City to waive or relinquish any of its rights and protections afforded under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, Colorado Revised Statutes; (4) cause the City to violate Article X, § 20 of the Colorado Constitution (TABOR) or any of the City's limitations

on multi-fiscal year expenditures and the requirements of lawful appropriation as a condition of payment or recovery; (5) prevent the City from fulfilling its obligations under the Colorado Open Records Act, §§ 24-72-101, *et seq.*, Colorado Revised Statutes; or (6) include terms, conditions, or requirements that are materially and irreconcilably contrary to these PO Terms. As between the City and Contractor, any such terms in such Online Agreements shall be deemed stricken from such Online Agreements and without force or effect. The City reserves all rights and defenses pertaining to Online Agreements, including the right to challenge their validity or enforceability, in whole or in part.

2. **ADHERENCE TO LAWS.** Contractor shall be cognizant of, and adhere to, all federal and state laws, rules, regulations, ordinances, decrees, order, and binding guidance (collectively, all “Laws”) that in any way affect the PO or Contractor’s performance of the services, or delivery of the Goods, thereunder. Contractor will not violate any applicable Laws in delivering services or Goods to the City. **CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY THIRD PARTY CLAIM OR LIABILITY TO THE EXTENT CAUSED BY THE INTENTIONAL OR NEGLIGENT VIOLATION OF ANY LAW BY CONTRACTOR, WHETHER BY ITSELF, ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES.**
  
3. **APPLICABLE LAW; VENUE & JURISDICTION.** This Contract shall be construed in accordance with the laws of the State of Colorado. Any action or proceeding brought to interpret or enforce the provisions of this Contract shall be brought before the state or federal court for Boulder County, Colorado and each Party consents to jurisdiction and venue before such courts.
  
4. **INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS AND THE HEIRS, EXECUTORS, SUCCESSORS, AND PERMITTED ASSIGNS OF ANY OF THE FOREGOING FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, OBLIGATIONS, DEMANDS, ASSESSMENTS, FINES AND PENALTIES (WHETHER CIVIL OR CRIMINAL), LIABILITIES, EXPENSES AND COSTS (INCLUDING REASONABLE ATTORNEYS’ FEES AND COSTS OF DEFENSE), BODILY AND OTHER PERSONAL INJURIES, DAMAGE TO TANGIBLE PROPERTY, AND OTHER DAMAGES, OF ANY KIND OR NATURE, ARISING FROM OR RELATED TO: (I) ANY NEGLIGENT OR INTENTIONAL ACT OR OMISSION BY CONTRACTOR OR ITS REPRESENTATIVES IN THE PERFORMANCE OF CONTRACTOR’S OBLIGATIONS UNDER THIS CONTRACT, OR (II) ANY MATERIAL BREACH IN A REPRESENTATION, WARRANTY, COVENANT OR OBLIGATION OF CONTRACTOR CONTAINED IN THIS CONTRACT.** Contractor is not obligated to indemnify the City in any manner whatsoever for instances where the City’s own negligence was a factor that substantially contributed to the harm. Contractor’s obligation to indemnify the City as set forth in this Contract shall survive the termination or expiration of this Contract. If this Contract is for architectural, engineering, or surveying services; design; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction, Contractor’s obligation to indemnify or hold

harmless the City shall be limited to the amount represented by the degree or percentage of negligence or fault attributable to Contractor or its agents, representatives, subcontractors or suppliers. If this Contract is for architectural, engineering, surveying, or other design services, then the extent of Contractor's obligation to indemnify or hold harmless the City may be determined only after its liability or fault has been determined by adjudication, or otherwise resolved by mutual agreement between Contractor and the City.

5. **GOVERNMENTAL IMMUNITY.** Nothing herein shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of C.R.S. § 24-10-101 *et seq.*, as now or hereafter amended.
6. **INDEPENDENT CONTRACTOR.** The relationship between Contractor and the City is that of an independent contractor. Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the City. No employee or officer of the City shall supervise Contractor. **Contractor is not entitled to worker's compensation benefits and is obligated to directly pay federal and state income tax on money earned under the purchase order.**
7. **TERMINATION.** If either Party materially defaults in the performance of any term of this Contract (other than by nonpayment) and does not substantially cure such default within thirty (30) days after receiving written notice of such default, then the non-defaulting Party may terminate this Contract by providing ten (10) days prior written notice of termination to the defaulting Party. In addition to the foregoing, the City may, at any time, terminate services for its own convenience and without cause of any nature by giving Contractor written notice at least seven days in advance of the termination date. City shall pay all outstanding invoices for materials delivered and accepted and/or services provided prior to the date of termination. Upon such payment, all obligations of the City to Contractor shall cease. The waiver of any breach of a term, provision or requirement of these PO Terms shall not be construed as or deemed to be a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision or requirement.
8. **TABOR.** The Parties understand and acknowledge that the City is subject to Article X, § 20, of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, notwithstanding anything in this Contract to the contrary, all payment obligations of the City are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the City and applicable law. Upon the failure to appropriate such funds, this Contract shall be deemed terminated.

9. **NO REQUIREMENTS CONTRACT.** Nothing in this Contract shall be construed as a requirements contract, and notwithstanding anything to the contrary contained herein, this Contract shall not be interpreted to prevent the City from obtaining from third parties, or providing to itself, any or all of the Goods or services identified in the PO.
10. **MEDIA RELEASES.** Except for any announcement intended solely for internal distribution by Contractor or any disclosure required by legal, accounting, or regulatory requirements beyond the reasonable control of Contractor, all media releases, public announcements, or public disclosures (including, but not limited to, promotional or marketing material) by Contractor or its employees or agents relating to this Contract or its subject matter, or including the name, trade mark, or symbol of the City, shall be coordinated with and approved in writing by the City, at the City's sole discretion, prior to the release thereof. Contractor shall not represent directly or indirectly that any Services provided by Contractor to the City has been approved or endorsed by the City or include the name, trade mark, or symbol of the City on a list of Contractor's customers without the City's express written consent.
11. **WAIVER.** The failure of either Party at any time to require performance by the other party of any provision of this Contract shall not affect in any way the full right to require such performance at any subsequent time, nor shall the waiver by either Party of a breach of any provision of this Contract be taken or held to be a waiver of the provision itself.
12. **TIME OF PERFORMANCE.** Time is expressly made of the essence with respect to each and every term and provision of this Contract.
13. **SURVIVAL.** Any and all provisions of this Contract that, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Contract shall survive any expiration or termination of this Contract.
14. **NO LIMITATION OF LIABILITY.** There shall be no limitation on Contractor's liability for damages resulting from the acts or omissions of Contractor, its directors, officers, subcontractors, employees, agents, representatives, or assigns.