

PURCHASE OF GOODS TERMS AND CONDITIONS

These terms and conditions apply to the Parties named on a Durham County Purchase Order. These Terms and Conditions are incorporated into the Purchase Order in their entirety. The Purchase Order and these Terms and Conditions make up the entirety of the Agreement between the Parties named on the Purchase Order, unless otherwise agreed to in writing by the Parties. The Purchase Order and these Terms and Conditions, together and in their entirety may be referred to interchangeably as the "Agreement" or "Contract." The Purchaser as described herein is the County of Durham. The Seller as described herein is the individual, corporation, or other entity named and described on the Purchase Order.

1. TERMS.

- A. The Seller, in consideration of the sum shown on the Purchase Order, hereby sells to Purchaser the goods and services at the times, in the manner, at the prices, and at the place(s), pursuant to the provisions and specifications as set forth herein and on the purchase Order. **No charges of any kind not appearing in the Purchase Order will be accepted or paid by Purchaser.** It is Purchaser's discretion to accept items shipped in excess of the quantity ordered and any over shipment may be returned at Seller's expense.
 - B. The effective date and term shall be those date(s) shown on the Purchase Order.
 - C. Shipments received prior to delivery date without previous approval by Purchaser may be returned or stored at Seller's expense.
 - D. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all crates, packages, packing slips, invoices, and correspondence shipped or mailed to Purchaser. All items will be accompanied by assembly instructions and operating and repair manuals, as applicable. Purchaser's count will be accepted as conclusive on all shipments not accompanied by a packing slip.
 - E. The parts, material, and workmanship of all items are subject to inspection, testing and counting by Purchaser. Purchaser may reject for full credit or require prompt correction or replacement at Seller's expense, including the expense of unpacking, examining, repacking, storing and transporting of any item defective in material or workmanship or otherwise not in conformity or specifications provided by Purchaser. Goods will be delivered to the Purchaser in new condition and undamaged (unless otherwise specified by Purchaser).
 - F. This order to Seller is not transferable or assignable without the written permission of Purchaser. Seller is an independent contractor and is not an agent or employee of Purchaser.
 - G. Seller warrants that it is the sole owner of the described goods and that it has the unrestricted right to convey a clear title to the Purchaser free and clear of all encumbrances.
2. **CHANGE:** Purchaser reserves the right to change, modify and/or cancel this order upon issuance of a change order. If the Purchaser is not notified to the contrary in writing within 10 days after the issuance of the change order, the changed and/or modification and/or cancellation is considered accepted by the Seller.

3. **WARRANTY OF GOODS AND MATERIALS:** Seller expressly warrants that all goods, provided or used by the Seller will: conform to the drawings, specifications, samples or other descriptions furnished by the Purchaser or by the Seller; meet requirements detailed in the scope of work; be of good materials and workmanship and free from defect. This express warranty shall not be waived by reason of acceptance of the goods or payment made by the Purchaser. Seller also warrants that all items sold or furnished under this order have been produced, sold, delivered and furnished in compliance with all applicable laws and regulations.

THE SELLER WARRANTS THE MERCHANTABLE QUALITY OF THE GOODS SOLD HEREUNDER AND THAT SUCH GOODS ARE FIT FOR THE PURPOSES FOR WHICH THEY WERE PURCHASED. SUCH WARRANTIES ARE IN ADDITION TO ALL EXPRESS WARRANTIES AND WILL RUN TO THE BENEFIT OF THE PURCHASER. THE SELLER'S PERIOD OF WARRANTY WITH RESPECT TO EACH ITEM WILL BE AT LEAST AS LONG AS THAT OF THE MANUFACTURER OF SUCH ITEM, AND SELLER WILL HONOR SAME.

4. **INDEMNITY.** To the fullest extent permitted by law, PURCHASER hereby reserves the right to recover legal expenses including attorney fees, litigation expenses and court costs as well as actual damages or losses suffered by PURCHASER, if SELLER is found to be a proximate cause of damages or losses suffered by PURCHASER, resulting from SELLER's performance during the execution of this Contract.
5. **INSURANCE.** Seller shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the Seller shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the Purchaser. In the event Seller's Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. Seller shall advise the Purchaser of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. Seller's insurance shall be primary and any insurance or self-funded liability programs maintained by the Purchaser shall not contribute with respect to the Seller's insurance. Purchaser shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the Seller. In the event Seller's Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

5.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

5.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage.

5.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than **\$1,000,000** per occurrence.

By requiring insurance herein, the Purchaser does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage and limits shall not be deemed as a limitation on Seller's liability under the indemnities granted to the Purchaser in this Contract. Seller shall provide the Purchaser a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. Seller shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the Purchaser at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce the obligations of the Seller to maintain such insurance or to meet its obligations under the indemnification provisions.

Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the Purchaser, which immunity is hereby reserved to the Purchaser.

6. **TERMINATION.** The Purchaser may, by written notice, terminate this contract in whole or in part, for failure of Seller to perform, including failure to deliver as and when specified. If so terminated, Seller shall be liable for all damages, including, without limitation, 1) the excess cost of re-procuring similar goods or services, 2) shipping charges for any items the Purchaser may at its option return to Seller, including items already delivered but for which Seller no longer has any use because of default, 3) amounts paid by Purchaser for any items it has received but returns to Seller, and 4) any other damages permitted by applicable law. Purchaser shall have the right to pursue any remedies provided by applicable laws.
7. **EXISTENCE.** Seller warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under all applicable laws, is duly qualified to do business in the State of North Carolina, and has full power and authority to enter into and fulfill all the terms and conditions of this Agreement.
8. **COMPLIANCE WITH LAWS.** Seller shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Occupational Safety and Health Administration, (iv) the Fair Labor Standards Act, and (v) the Wage and Hour Division. In the event Seller is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and Seller may be declared ineligible for further COUNTY contracts.
9. **E-VERIFY.** As a condition of payment for services and/or goods received under this agreement, Seller shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Seller provides the services and/or goods to the County utilizing a subcontractor, Seller shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Seller shall verify, by affidavit, compliance of the terms of this section upon request by the Purchaser.
10. **EMPLOYMENT ADVERTISING REQUIREMENTS.** Seller shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout term of this Agreement; provided that the foregoing requirement does not limit Seller's ability to advertise and/or otherwise post job openings with other organizations or media outlets.
11. **SECURITY BACKGROUND CHECKS.** The Seller is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining County identification badges and allowed unescorted access to County facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those employees of the Seller

who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Seller employee from employment on a County contract unless explicitly mandated by law.

The Seller will send the results of the background checks, prior to commencing work at Durham County Government, to their County point of contact who will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office, as needed, on any negative determinations. The Security Manager will notify the Seller's County point of contact of the results of the review. Seller can appeal a negative determination by the Security Manager to the County Manager or the County Manager's designee for final disposition. Appeals need to be submitted in writing to the County point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check.

This information shall be updated annually by the Seller, 90 days prior to the renewal or extension of the contract and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings disabled.

Additional background screening may be necessary at specific county buildings. The Seller shall provide names of all individuals in the Contractor communications log and to the County Representative. This information will be reviewed annually.

For those Seller's employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The Seller will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. Seller can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Seller and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings disabled.

- 12. DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Purchaser and the Seller, arising from this Agreement or the services and/or goods being provided by the Seller, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or the County Manager's designee, shall notify the Mediator who will conduct a mediation and notify the Seller in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to

mitigate any potential damages including utilization of schedule changes and alternate means of providing the services and/or goods. The costs of the mediation shall be divided equally between the parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or goods being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

13. **NOTICES.** All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent pursuant to the contact information and addresses shown on the Purchase Order.
14. **CORPORATE AUTHORITY.** By agreeing to the Purchase Order, the person so agreeing for Seller certifies that he/she has read the Purchase Order and these Terms and Conditions, and that he/she is duly authorized to execute the agreement on behalf of the Seller.
15. **HEADINGS:** The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This agreement shall be deemed to have been drafted by both parties and no purposes of interpretation shall be made to the contrary.
16. **GOVERNING LAW.** This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
17. **REQUIRED PROVISIONS FOR CONTRACTS/AGREEMENTS/GRANTS UTILIZING FEDERAL FUNDS.** Pursuant to the Federal Uniform Guidance Appendix II to 2 CFR Part 200, if Federal Funds are involved in this Contract/Agreement/Grant Agreement, by executing this Contract/Agreement/Grant Agreement, the Contractor/Vendor/Grantee, certifies that it agrees to and is in compliance with the provisions specified in Exhibit B – Federal Uniform Guidance Contract Provisions Certification.
18. **MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM.** It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects of the County’s contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County’s contracting programs.
19. **ENTIRE CONTRACT.** As stated in the opening paragraph above, this contract shall constitute the entire understanding between Purchaser and Seller and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.
20. Agreement to the Purchase Order automatically includes agreement to these Terms and Conditions.