

CITY OF COMMERCE CITY PURCHASE ORDER TERMS & CONDITIONS (revised 9/3/2026)

1. **NON-EXCLUSIVE:** This Purchase Order is non-exclusive. The City of Commerce City (the “City”) does not guarantee any minimum purchase other than as provided herein.
2. **RISK OF LOSS:** Vendor shall bear the risk of loss, injury or destruction of goods prior to acceptance by the City . Delivery, inspection, and testing shall be at Vendor’s risk. Loss, injury or destruction shall not release Vendor from any obligation hereunder.
3. **DEFINITIONS:**
Purchase Order - A purchaser’s written document to a supplier formalizing all terms and conditions of a proposed transaction
Free on Board - The point at which a title changes hands from the supplier to the buyer at the destination of the shipment when the buyer signs for the goods. The supplier owns the goods in transit, assumes responsibility for carrier selection, and files any claims for damages incurred during this period.
4. **TIME IS OF THE ESSENCE:** Vendor agrees time is an essential requirement of the Purchase Order (together with the hereinafter defined Conditions and any other attachments, exhibits, specifications or appendices whether attached or incorporated by reference, the “PO”), which references these Terms and Conditions (“Conditions”). Goods or services shall be delivered or performed on or by the time indicated on the PO. If no time is indicated, then goods or services shall be delivered or performed as soon as good practice and due diligence permit. Vendor shall deliver goods to the address identified on the PO, Free on Board (“FOB”) destination.
5. **INSPECTION; TRANSFER OF OWNERSHIP:** Ownership of goods shall pass to the City only upon the City’s inspection of said goods and acceptance thereof. Payment does not constitute acceptance. Prior to acceptance, all goods and services are subject to inspection/testing by the City at its sole discretion. Vendor shall bear the cost of any inspection/testing that reveal goods or services are defective or do not meet specifications, and the City shall have the right to reject or to require correction of such goods or services. The City will notify Vendor as soon as reasonably practical thereof. At the City’s option, rejected goods will be either held for a reasonable period of time pending Vendor’s instruction as to disposal thereof or returned to Vendor at its risk and expense. Delivered goods shall be deemed accepted only once testing and inspection, if performed, demonstrate conformance with the PO.
6. **ACCEPTANCE OF CONDITIONS:** The PO shall represent the entire and exclusive agreement between the City and Vendor. Vendor may be asked to sign these terms and conditions. However, regardless of the existence of a signed PO, Vendor’s performance of any services or shipment of any goods covered by this PO shall constitute Vendor’s acceptance of these Conditions. Any modification of the PO must be approved in writing by the City.
7. **ORDER OF PRECEDENCE:** These Conditions may not be superseded, altered, deleted, or added to without the express written consent of the City. In case of conflict, the following order of precedence shall prevail: 1. Change Orders; 2. City Contract, if issued; 3. Expressly approved, written exceptions as noted on the PO; 4. these Conditions; 5. Vendor’s proposal, bid, or quote.
8. **TERMINATION:** The City may terminate the PO, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, the City’s sole liability shall be limited to payment of the amount due for the goods accepted by the City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by the City shall not be a waiver of any claims the City may have against Vendor. If Vendor fails to properly perform any of its obligations under the PO, the City shall notify Vendor in writing of such non-performance, including a period to remedy the Vendor’s non-performance. If the Vendor fails to correct the performance within the time given by the City, the City may terminate Vendor’s right to proceed with the PO or such part thereof as to which there has been delay or failure. Vendor shall continue performance of the PO to the extent not terminated. In the event the Vendor fails to perform, Vendor shall be liable for all excess costs incurred by the City for procuring similar goods or services.
9. **COMPLIANCE WITH LAWS AND REGULATIONS:** Vendor shall comply with all applicable federal, state and local laws and regulations, including all City codes, ordinances, rules, and policies. Any violation of the law is a violation of the PO and may result in termination thereof.

10. **INSURANCE:** Unless otherwise approved by the City's Risk Management Division, Vendor shall, at its expense and for the duration of the services or other terms of the PO and any related warranty period, obtain and maintain:
- Commercial General Liability Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 General Aggregate covering all operations by or on behalf of the City on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.
 - Automobile Insurance covering any auto, including owned, hired and non-owned, with a combined single limit of \$1,000,000.
 - Worker's Compensation Insurance as required by Colorado Statute covering all Vendor's employees acting within the course and scope of their employment pursuant to the PO. The City, its officers, agents, and employees shall be listed as "Additional Insureds" on General and Automobile Liability, and other insurance policies as required. Before any services whatsoever are performed upon the premises of others, Vendor shall furnish the City with a current Certificate of Insurance demonstrating the required coverages identified above. Such Certificate shall include commencement and termination dates for such coverages, and Vendor agrees that such coverages shall be maintained until the services are completed, accepted, and any warranty provision has expired. This insurance requirement shall not apply if the PO is solely for goods, as determined by the City, unless specifically stated otherwise in the PO. If the PO is solely for goods, then Vendor is fully responsible for goods until the City's acceptance of such goods. Vendor's insurances shall include property, general, and product liability coverage, and Vendor shall provide proof thereof at the City's request.
11. **WARRANTY:** In addition to any warranty implied by law or fact, and any other express warranties, Vendor expressly warrants all goods, articles, materials and services covered by the PO will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended, and will be performed with the highest degree of care and competence in accordance with accepted standards for services of a similar nature. Vendor agrees to hold the City harmless from any loss, damage or expense which the City may suffer or incur on account of Vendor's breach of warranty. Vendor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty provided by Vendor after the date of acceptance of the goods furnished hereunder (acceptance not to be unreasonably delayed), resulting from imperfect or defective services done or materials furnished by the Vendor. Acceptance or use of goods by the City shall not constitute a waiver of any claim under this warranty. Except as otherwise provided in the PO, Vendor's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use.
12. **PRICE, SHIPPING, AND TAXES:** Vendor shall acquire all permits and licenses; pay all charges, taxes and fees; and give all notices necessary to fulfill the PO, the cost of which has been included in the prices contained herein. The City shall not be liable for the payment of taxes, late charges or penalties of any nature. The price of all goods/services shall reflect all applicable tax exemptions. All pricing is FOB destination unless otherwise specified. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify the City in writing of any price decreases immediately, and the City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified in the PO. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage, which results from the delivery and/or unloading of goods, within twenty-four (24) hours after the contamination or spillage, or sooner if required by law.
13. **INTELLECTUAL PROPERTY:** Any research, reports, studies, data, photographs, negatives or other documents, drawings or materials (collectively "materials") delivered by Vendor in performance of its obligations under the PO shall be the exclusive property of City. Ownership rights shall include, but not be limited to the right to copy, publish, display, transfer, prepare derivative works, or otherwise use materials. Software license terms may be incorporated herein by

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an End User License Agreement signed by the City. Any 'click-wrap' agreement, terms of use, electronic acceptance or other terms and conditions not agreed to in writing by the City are of no force and effect.

14. **INDEMNIFICATION:** Vendor will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of the PO by Vendor, its employees, agents, or other persons acting under the Vendor's direction or control. Vendor will indemnify and hold harmless the City, as well as its elected and appointed officials current and former officers and employees, servants, volunteers, agents, attorneys, representatives, insurance carriers, and self-insurance pools ("Indemnified Parties"), from any and all liability claims, demands, actions, damages, losses judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified parties as a result of or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of or failure to observe any applicable standard of care by Vendor and/or its employees, agents, or representatives or other persons acting under Vendor's direction or control. Vendor will include the provisions of this Section in any such subcontracts engaged to perform any part of the services and/or engaged to provide any deliverables. The provisions set forth in this Section will survive the acceptance of goods by the City and the satisfaction, expiration or termination of this PO.

Insurance coverage requirements specified in this PO shall in no way lessen or limit the liability of the Vendor under the terms of this indemnification obligation. The Vendor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

15. **ASSIGNMENT/THIRD PARTY BENEFICIARY:** Vendor shall not assign or subcontract any of its rights or obligations under the PO without the written consent of the City. In the event the City permits an assignment or subcontract, Vendor shall continue to be liable under the PO and any permitted assignee or subcontractor shall be bound by these Conditions. The PO is intended solely for the benefit of the City and Vendor without third party beneficiaries.
16. **INDEPENDENT CONTRACTOR:** Vendor shall act as an independent contractor and not as agent of the City, is not entitled to workers' compensation benefits from the City, and is obligated to pay federal and state income tax on monies earned pursuant to the PO.
17. **EQUAL OPPORTUNITY:** In connection with performance under the PO, Vendor shall not unlawfully discriminate against any subcontractor, employee or applicant for employment on the basis of race, religion, color, sex, immigration status, gender identity or expression, sexual orientation, national origin, military or veteran status, or disability; as more fully described in 41 CFR § 60-1.4.
18. **SUBCONTRACTS:** Unless otherwise specified in the PO, Vendor shall not enter into any subcontract in connection with its obligations under the PO without the prior written approval of the City. Vendor shall submit to the City a copy of each subcontract upon request. All subcontracts entered into by Vendor in connection with the PO shall comply with all provisions of the PO.
19. **VENUE, CHOICE OF LAW, DISPUTES:** Venue for all legal actions shall lie in Adams County, State of Colorado and shall be governed by the laws of the State of Colorado as well as the Charter and Municipal Code of the City.
20. **CLEAN UP:** If Vendor performs services on City property, services shall not be considered complete until all rubbish and unused material due to, or connected with, the goods or services is removed and the premises are left in a safe and tidy condition.
21. **SURVIVAL/SEVERABILITY:** The invalidity or unenforceability of any provision of the PO including these Conditions shall not affect the validity or enforceability of any other provision thereof. If, under the remaining effective provisions, the parties can continue to perform their obligations in accordance with the PO, then the parties shall do so. All terms and conditions of the PO, including these Conditions, that by their nature must survive termination or expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period.

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22. NOTICE: All notices given under the PO shall be in writing, including email, and shall be delivered to the contacts for each party listed on the PO or other controlling document. Either party may change its contact or contact information by notice submitted in writing to the other party without formal modification to the PO.
23. CITY FINANCIAL OBLIGATIONS: Nothing in the PO shall be construed or deemed as creating a multiple-year fiscal obligation of the City. All obligations of the City pursuant to the PO are subject to prior annual appropriation.
24. PAYMENT: Payment to Vendor will be due 30 days after receipt of goods or completion of services and acceptance of a proper invoice. The PO number must be referenced on the invoice. The City may withhold payment due to Vendor's failure to comply with the PO or because unacceptable goods were delivered as determined by the City's inspection. The City shall notify Vendor of any unsatisfactory performance as soon as reasonably practical so that it may be corrected before payment is delayed, if possible. The City must have the Vendor's completed W-9 on file to make payment. Payment alone does not constitute acceptance.
25. CONSTRUCTION: The headings in the PO and these Conditions are inserted for convenience and identification only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of the PO and these Conditions or any other provision thereof. When the context requires, the gender of all words used in the PO and these Conditions shall include the masculine, feminine and neutral, and the number of all words shall include the singular and the plural.
26. COUNTERPART EXECUTION; ELECTRONIC DISPOSITION: If signatures are required for the PO, the PO may be executed in counterparts, which together will constitute one and the same agreement. Each party will have the right to rely on an electronic signature on the PO, and such signature shall be deemed an original signature for purposes of validity of the PO. The parties agree that signatures transmitted electronically and manual signatures shall be binding as of the date signed and to the same extent as original signatures. In making proof of the PO, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties. Furthermore, the original of the PO, including the signature page, may be scanned and stored in a computer database or similar device, and any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of the PO, may be used for any purpose as if it were the original, including proof of the content of the original writing.