

PURCHASE ORDER

THIS PURCHASE ORDER IS CONDITIONED UPON COMPLIANCE BY THE VENDOR WITH ALL FEDERAL, STATE, AND LOCAL SAFETY, HEALTH AND ENVIRONMENTAL REGULATIONS INCLUDING, BUT NOT LIMITED TO, ALL LABELING, PACKAGING, AND SHIPPING REQUIREMENTS. IT IS A FURTHER REQUIREMENT THAT A MATERIAL SAFETY DATA SHEET BE PROVIDED BY THE VENDOR IN EVERY INSTANCE REQUIRED BY SUCH REGULATION(S).

CITY OF LAKEWOOD, OH - FED. TAX I.D. # (TIN) 34-6001633

VENDOR COPY



PAGE: **VOID**
 P.O. NO: **VOID**
 DATE: **VOID**

MAIL ALL INVOICES TO

FINANCE DEPT. ATTN A/P
 CITY OF LAKEWOOD
 12650 DETROIT AVE.
 LAKEWOOD, OHIO 44107

TO:

SHIP TO

1. A PACKING LIST MUST BE ATTACHED TO THE OUTSIDE OF ONE CARTON PLAINLY MARKED.
2. PURCHASE ORDER NO. AND UNIT OF MEASURE PER CARTON (TOTAL QUANTITY PER CARTON) MUST APPEAR ON ALL CARTONS, PACKING LISTS, INVOICES AND CORRESPONDENCE.

VENDOR NO.	DELIVER BY	SHIP VIA	F.O.B.	FREIGHT	TERMS
REQ. NO.	ACCOUNT NO.	PROJECT	CONFIRM TO	VENDOR PHONE	

LINE NO.	QUANTITY	UOM	ITEM NO. AND DESCRIPTION	UNIT COST	EXTENDED COST
THIS ORDER IS EXEMPT FROM FEDERAL & STATE TAXES					
VOID					

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS LISTED ON THE REVERSE SIDE HEREOF, AND BY ACCEPTING THIS ORDER THE SELLER AGREES TO BE BOUND THEREBY.

City of Lakewood
 By _____
 Purchasing Manager
 PHONE: 216 529-6075 • FAX: 216 529-6806

It is hereby certified that both at the time of the making of this contract or order and at the date of the execution of this certificate, the amount of funds required to pay this contract or order has been appropriated for the purpose of this contract or order and is in the treasury or in the process of collection to the credit of the Fund free from any previous encumbrance.

 Director of Finance

This order is subject to the following terms and conditions as well as those appearing on the reverse side hereof.

Section 1 Acceptance of Terms

Acceptance of this order is limited to acceptance of the express terms contained on the face and back of this order. And those terms included by reference and agreed upon by the City of Lakewood and the vendor in any Blanket Purchase Agreement, Annual Pricing Agreement, or contract in existence which this order shall be charged against. Any proposal for additional or different terms or any attempt by the Vendor to vary any of the terms contained herein, either directly or by reference, is hereby objected to and rejected unless agreed to in writing by the City of Lakewood. Any additional terms which are not agreed to in writing by the City shall be deemed a material alteration of the agreement. Acceptance or rejection by the City of any additional terms and conditions shall not constitute an acceptance of any other terms and conditions. The issuance of this order by the City of Lakewood constitutes an acceptance of the offer and the Vendor acknowledges that this order does represent agreement. The Vendor shall notify the City in writing within 10 days of receipt of this order if such an agreement and acknowledgement do not exist on its part.

Section 2 Termination For Convenience

The City of Lakewood reserves the right to terminate this order or any part thereof for its convenience if it is determined to be in the best interest of the City. In such event that this contract is so terminated, the Vendor agrees to stop work and shall immediately cause any of its suppliers or subcontractors utilized to fulfill this order to stop work pertinent to this order. The Vendor shall be paid for any direct costs actually resulting from termination. In addition, the Vendor may be paid an equitable adjustment on the percentage of work completed or performed. Vendor shall not be paid for any work done after receipt of the Notice of Termination, nor for any costs incurred by Vendor suppliers or subcontractors which the Vendor could have reasonably avoided.

Section 3 Termination For Default

The City of Lakewood may terminate this order or any part thereof for cause in the event of any default by the Vendor, or if the Vendor fails to comply with any of the terms and conditions of this agreement. Late deliveries, deliveries of products, supply(ies), service(s), which are defective or which do not conform to this order, and failure to provide the City, upon request, reasonable assurances of future performance, shall all be causes allowing the City to terminate this order for cause. In the event of termination for cause, the City shall not be liable to the Vendor for any amount, and the Vendor shall be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination.

Section 4 Warranty

The Vendor warrants that all products, supplies and/or services furnished shall be of merchantable quality and free from any latent or patent defects in workmanship or material. The Vendor warrants that the products, supplies, and/or services furnished herein are suited and appropriate for use as intended, if the Vendor has been informed of the intended use. The Vendor shall indemnify and hold the City of Lakewood harmless against all liability and expenses including counsel fees arising from such breach of warranty.

Section 5 Prices

The Vendor warrants that the prices for the articles sold to City of Lakewood under this order are not less favorable than those currently extended to any other customer for the same or like articles in equal or similar quantities, to include the U.S. Government. Under no circumstances will the Vendor's invoices for goods or services hereunder exceed the prices set forth in this agreement.

Section 6 Force Majeure

The City may delay delivery or acceptance of products, supplies, and/or services in the event of any unforeseen circumstance that is occasioned by causes beyond its control. The Vendor shall hold such goods at the direction of the City and shall deliver them when the cause affecting the delay has been removed at no additional cost to the City. Causes beyond the City of Lakewood's control shall include actions taken in the best interest of the City of Lakewood or failure of the City to act when such action is required, strike, or other labor trouble, fire or other acts of God.

Section 7 Patents and Patent Infringement

The Vendor warrants that the product(s), supply(ies) or service(s) specified herein, and their use alone or in combination according to Vendor specifications or recommendations, will not infringe any United States or foreign patent, copyright or trademark. In the case that the use of any aforementioned product(s), supply(ies) or service(s) is found to constitute patent, copyright or trademark infringement and their use is enjoined, the City of Lakewood may, at its sole option, pursue any remedy or remedies available at law or in equity to relieve itself of any claim or charge, and shall not be held liable to the Vendor or any third party.

Section 8 Indemnification

The Vendor agrees to protect, defend, hold harmless and indemnify the City of Lakewood from and against any and all claims/actions, liabilities, losses, costs and expenses arising out of any actual or alleged infringements of any patent, trademark, or copyright by any merchandise sold to the City. The Vendor also agrees to the aforementioned with regard to any circumstance(s) arising out of any actual or alleged death of or injury to any person, damage to any property, or any other damage or loss by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defects, whether latent or patent, in any product(s), supply(ies) and/or service(s).

Section 9 Insurance

The Vendor shall maintain such insurance as will cover and include the entire obligation assumed in this order, as well as such insurance as will protect itself from claims and liability under the Workmen's Compensation Act and from any other claims or liability for damages including bodily injury and for damages to property which may arise from operations under this order.

Section 10 Change

The City of Lakewood shall have the right to make changes in drawings, specifications or instructions for work, in methods of shipments, packaging and schedule(s) and place(s) of delivery pertaining to any material and work covered by this order, and the Vendor agrees to comply with such change notice(s). Such change notice(s) shall be in writing, signed by duly authorized representatives of the City and the Vendor. If such changes result in a decrease or increase in the Vendor cost or in the schedule for performance, an equitable adjustment in the price and adjustment in the time or schedule or performance will be made. Such adjustment(s) shall be made in writing.

Section 11 Inspection/Testing/Rejection

No substitute will be accepted without specific written approval from the City of Lakewood. The City reserves the right to reject and hold subject to your disposal all materials not conforming to specifications noted on this order. The City of Lakewood's inspection shall be final. Payment for goods delivered here under shall not constitute acceptance thereof. Goods rejected may be returned to the Vendor at the Vendor's expense. Goods supplied in excess of the quantities called for herein may be returned at the Vendor's expense and the City may charge the Vendor all expenses regarding unpacking, examining, re-packing, and re-shipping such goods.

Section 12 Remedies

Each of the rights and remedies reserved by the City of Lakewood in this order are cumulative and in addition to any other or further remedies provided in law or equity or in this order.

Section 13 Deliveries

Delivery of goods is not complete until goods have been actually received and accepted by the City of Lakewood. Risk of loss, or damage of goods during transit is the Vendor's responsibility. The obligation of the Vendor to meet the delivery dates, specifications, and quantities set forth herein is of the essence of this order. Deliveries are to be made both in quantities and at times specified herein or, if not, at such quantities and times specified pursuant to written instruction from the City of Lakewood. Shipments in greater or lesser quantity than ordered may be returned at Vendor expense, unless written authorization to ship and/or accept such shipments is issued by the City. Failure to deliver according to schedule may result in cancellation of all or part of this order in accordance with the default provisions thereof. Goods that are delivered in advance of schedule are delivered at risk of the Vendor at no additional cost to the City of Lakewood. Advance delivery does not necessarily warrant payment to be made in advance of any agreed to payment schedule.

Section 14 Entire Agreement/Integration Clause

Except when issued to carry out a written contract between the parties, this order constitutes the entire agreement of sale and purchase of the product(s), supply(ies) or service(s) and is expressly limited to and made conditional upon the acceptance of all terms and conditions. Any additional or different terms and conditions contained in any prior quotation or that may be contained in any acknowledgement of this order shall be deemed objected to by the City of Lakewood without further notice of objection and shall be of no effect nor under any circumstances be binding upon the City. The vendor shall be deemed to have assented to all terms and conditions hereof if any performance is entertained by the Vendor.

Section 15 Assignments/Subcontracts

This order and any payments to be made hereunder may not be assigned or transferred without prior written approval by the City of Lakewood. No delegation of any obligation or of the performance of any obligation by either the Vendor or the City shall be made without the written permission of the other party. Any attempted delegation or assignment shall be void and unenforceable for all purposes unless made in conformity with this paragraph. All claims for monies due or to become due from the City of Lakewood shall be subject to deduction by the City for any setoff or counter-claim arising out of this or any other orders with the Vendor whether such setoff or counter-claim arose before or after such assignment by the Vendor.

Section 16 Packaging and Labeling

All goods must be packaged and labelled in accordance with good commercial practices, unless a specific manner of packaging and/or labeling is requested in writing by the City. Unless otherwise stated in writing, no charge will be issued for packaging, boxing, cartage, or insurance to the City, and the Vendor agrees to prepay all such charges.

Section 17 Invoices

Invoices must be issued upon shipment of material. Invoices are paid from date of receipt of material, not on the basis of the Vendor invoice date. All invoices must show the Vendor order number, City of Lakewood P.O. number, and routing. All invoices must be addressed to the Finance Department, City of Lakewood as indicated on the face of this P.O. Discount terms must be shown on the invoice.

Section 18 Payment

The Vendor shall be paid upon submission of acceptable invoices for product(s), supply(ies), and/or service(s) performed and accepted. Acceptance of this order constitutes a warranty by the Vendor to the City of Lakewood that the prices to be charged for articles or services do not exceed prices charged to any other customer for the same items with similar quantities and delivery requirements. Payment terms shall be Net 30 unless otherwise specified on the face of this Purchase Order.

Section 19 Applicable Law

This Agreement shall be deemed to be made in Lakewood, Ohio, regardless of the order in which the signatures of the parties shall be affixed hereto, and shall be interpreted, and the rights and liabilities of parties hereto determined, in accordance with the laws of the State of Ohio, including but not limited to the Charter, ordinances and resolutions of the City.

Section 20 Labor Disputes

Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this order, the Vendor shall immediately notify the City of Lakewood and furnish relevant details.

Section 21 Taxes

The City of Lakewood is exempt from federal, state, and local taxes.

Section 22 Risk of Loss

All risks of loss or of damages to product(s) or supply(ies) to be delivered by the Vendor hereunder shall be on the Vendor until title to the product(s) or supply(ies) passes to the City of Lakewood. The Vendor shall bear all risk of loss or damage to goods rejected by the City after notice of rejection until such product(s) or supply(ies) are redelivered to the City except for the loss, destruction or of damage to such rejected goods resulting from gross negligence of the City. The term "free on board" or other commercial abbreviation if used on any document related to the transaction contemplated herein, will not be deemed to relate to the time when or place where the ownership of and responsibility for the products is transferred from the Vendor to the City of Lakewood. The Vendor will pay all freight and insurance costs to the point of delivery specified in this order.

Section 23 Cash Discounts

Time in connection with any discount offered will be computed from (A) the scheduled delivery date (B) the date of actual delivery or (C) the date an acceptable invoice is received, whichever is later. Payment is deemed to be made for the purposes of earning a discount on the date of mailing the City of Lakewood's check.

Section 24 Compliance With Law

The Vendor warrants that all goods supplied hereunder will have been produced in compliance with all applicable federal, state, and local laws, orders, rules, and regulations.

Section 25 Limitation of Buyer Liability, Statute of Limitations

In no event shall the City of Lakewood be liable for anticipated profits or for incidental or consequential damages. The City's liability on any claim of any kind for loss or damage arising out of or connected with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the product(s), supply(ies), and/or service(s) thereof which gives rise to the claim. The City shall not be liable for penalties of any description. Any action resulting from any breach on the part of the City as to the product(s), supply(ies) and/or service(s) delivered hereunder must be commenced within one year of the delivery or performance.

Section 26 Gratuities

The Vendor has not and will not offer nor give to any employee, agent or representative of the City of Lakewood any gratuity with the view toward securing any business from the City of Lakewood by influencing such person with respect to the terms, conditions, or performance of any contract or order from the City of Lakewood. Any breach of this clause shall be a material breach of each and every contract between the Vendor and the City of Lakewood.

Section 27 Inconsistent Terms and Conditions

If there is any inconsistency between the terms and conditions and (A) the face of the order and (B) any supplemental agreement(s), the face of the order shall prevail unless expressly stated in writing in any supplemental agreement such as a Blanket Purchase Order or Annual Pricing Agreement that another order of precedent has been established and agreed to.

Section 28 Anti-Kickback Statute

The Vendor warrants that it is in full compliance with the provisions of the Anti-kickback Statute, as amended, Public Law 86-698, 74 Stat. 740, 41 U.S.C. 51-54 and shall hold the City of Lakewood harmless from any liability resulting from failure of such compliance.

Section 29 Buy American Act

The Vendor warrants that goods delivered under this order will be mined or produced in the United States or manufactured therein to the extent required under the Buy American Act (41 U.S.C.).

Section 30 Equal Opportunity

All applicable laws, rules, and regulations relative to the Equal Employment Opportunity to include all Executive orders and the Civil Rights Act of 1964 are incorporated by reference. All laws, rules, and regulations applicable to the hiring and employment of disabled veterans and veterans of the Vietnam era, as well as to the hiring of individuals with physical or mental handicaps, are also incorporated herein by this specific reference.

Section 31 Agreement

All covenants, representations, and warranties contained herein or made by or on behalf of the Company in connection with the transactions contemplated hereby shall survive the execution and delivery of this Agreement.

Section 32 Binding Agreement

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

Section 33 Original Agreement

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 34 Invalid Provisions

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.