

PURCHASE ORDER/CONTRACT TERMS AND CONDITIONS

IMPORTANT – READ CAREFULLY BEFORE FILLING ORDER

1. ACCEPTANCE: PURCHASE ORDER CONSTITUTES ENTIRE AGREEMENT -- This Order constitutes the Buyer's offer and shall be accepted by the Seller only in accordance with the terms hereof. Any acceptance herein of an offer of the Seller, or any confirmation herein of a prior agreement between the Buyer and the Seller, is expressly made conditional on the Seller's assent to the additional or different terms contained herein. This Order shall be accepted by the Seller by shipment of goods, materials, equipment, commencement of the work and / or furnishing of the services requested hereunder. Dispatch of the Seller's acknowledgement form or other written document shall also act as an acceptance if it agrees with this Order with respect to the description, amount, price and time of delivery of the goods and/or services ordered. Notwithstanding any waiver in any instance, or any oral agreement, or any instructions, terms and conditions that may be contained in any quotation, acknowledgement, invoice or other written document of the Seller, no addition to, waiver for the future or modification of, any of the provisions contained herein shall be of any force or have any effect unless made expressly in writing and executed by Buyer.

2. E-VERIFY - This P.O. is subject to the **Georgia Security and Immigration Compliance Act**. Pursuant to the **Georgia Security and Immigration Compliance Act of 2006**, as amended by **2011 House Bill 67**, Providers of goods and / or services for the City in excess of \$2,500.00 are hereby notified that all services or work that is to be physically performed within the State of Georgia must be accompanied by proof of the Provider's registration with the E-Verify Program, as established by the United States Department of Homeland Security. Providers must attest to compliance with the requirements of **O.C.G.A. §13-10-91** and the **Georgia Department of Labor Rule 300-10-01-.02** by executing the **Contractor's Affidavit**. Under Georgia law, the City of East Point cannot provide any type of award consideration – Contract or Purchase Order – to a Provider who has not provided a completed affidavit to the City – NO EXCEPTIONS. Quotations / Prices that are received from Providers without such documentation shall be considered "non-compliant" and / or "non-conforming" and / or "non-responsive" and shall not be given Contract or Purchase Order considered.

3. S.A.V.E. - The City of East Point is required by the **S.A.V.E. (Systematic Alien Verification for Entitlements) Program** to verify the status of anyone who applies for a Public Benefit through the City. Public Benefits are defined by state statute, **O.C.G.A. § 50-36-1**, by Federal statute, **8 U.S.C. §1611** and **8 U.S.C. §1621**, and by the Office of the Attorney General. Purchase Orders and Contract awards issued by the City of East Point are considered "Public Benefits." Beginning on January 1st, 2012, any person awarded a Public Benefit must show a secure and verifiable document and complete a **S.A.V.E. Affidavit**. The Selected Contractor / Vendor / Provider shall be required to execute the **S.A.V.E. Affidavit** verifying their status and show a secure and verifiable document prior to the final award of any Contract or Purchase Order by the City.

4. CHANGES – The Buyer shall have the right at any time to make changes in this Order by written notice to the Seller, and the Seller agrees to comply with any and all such changes. If such changes cause a material increase or decrease in the Seller's costs or time of performance of this Order, the Seller shall notify the Buyer immediately and negotiate an adjustment. Adjustments made by the Seller without negotiation shall not be binding upon the Buyer under any conditions.

5. PRICE -- If this Order is not priced it shall not be filled at prices higher than those last quoted and charged to the Buyer for the same goods/services. Charges for handling, boxing, packaging, cartage and/or delivery shall not be allowed or paid by the Buyer unless otherwise expressly stated on this Order. Goods are purchased on a delivered basis, **F.O.B. East Point, Georgia**. It is understood an element of freight is included in the purchase price of the materials, therefore, all freight charges are to be paid by the Supplier to the Carrier without further liability to the City of East Point, its elected officials, employees, representatives, agents and/or consignees.

6. SHIPPING – The Buyer reserves the right to route all shipments. Any and all delays in shipment, regardless of cause, shall be reported immediately by the Seller to the Buyer. Every package or other shipping unit, bill of lading, shipping memorandum and/or invoice must be clearly marked with the Buyer's Purchase Order Number / Contract Number / Quotation Number. The Seller's part number, catalogue number, serial number and/or other identifying number(s) must be shown on all shipping papers and invoices submitted to the City of East Point, Georgia.

7. TIME IS OF THE ESSENCE – The time of the shipment and of other aspects of performance hereunder is of the essence of this agreement.

8. DELIVERY / TITLE / OWNERSHIP -- Unless otherwise agreed, delivery shall be F.O.B. Point of Destination ONLY and the title on / ownership of any goods shall pass to the Buyer upon acceptance of the goods at the final delivery point. Risk of damages or loss following shipment and prior to official acceptance by the Buyer shall be the sole responsibility of the Seller.

9. RIGHT OF INSPECTION / REJECTION – Goods, materials and/or equipment supplied by the Seller shall be received subject to the Buyer's inspection and approval within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, goods, materials and/or equipment may be returned at the Seller's expense. No goods, materials or equipment returned to the Seller as defective, deficient or substandard shall be replaced by the Seller except upon the Buyer's formal written authorization. Goods, materials and/or equipment replaced by the Seller without authorization from the Buyer shall be the sole responsibility of the Seller and under no circumstances shall the Buyer be held liable or responsible for any payment of such.

10. UNAUTHORIZED SHIPMENT OF GOODS / PERFORMANCE OF SERVICES - Goods, materials, equipment and/or services delivered by the Seller to the Buyer without an Order from the Buyer shall be the sole responsibility of the Seller and under no circumstances shall the Buyer be bound or obligated to retain possession of such goods, materials and/or equipment or to incur any costs or obligations associated with the receipt of such unauthorized goods and/or services.

11. ASSIGNMENT -- Neither this Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by the Seller without the prior written consent of the Buyer. The Buyer may transfer or assign the benefits of this agreement, in whole or in part, including without limitation the Seller's warranty, without the approval and/or consent of the Seller.

12. GOVERNING LAW -- This Order, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the State of Georgia wherein the goods, materials and/or equipment shall be installed and/or used, or wherein the work shall be performed.

13. WARRANTY – The Seller warrants that all goods and/or services furnished pursuant to this Order shall be free from defects in materials, design and/or workmanship and shall be in conformity with the requirements of this Order, including any and all drawings and/or specifications, if any, and shall be wholly adequate and reasonably fit for the purpose disclosed in this Order or in such drawings and/or specifications. The Buyer's approval of the Seller's design, materials and/or performance shall not be construed to relieve the Seller of the warranties set forth herein. Without limitation of any rights which the Buyer may have under law by reason of any breach of warranty, goods, materials and/or equipment which are not as warranted herein may at any time within twelve (12) months after the date of delivery be returned to the Seller at the Seller's sole expense. The Buyer, at its option, may require the Seller either to replace such goods, materials and/or equipment at no increase in price (the Seller shall pay all expenses incurred for restocking, repacking, transportation and handling charges both ways and/or any other charges associated with the replacement actions) or to refund the purchase price and any and all charges associated in connection therewith.

14. INVOICES -- All invoices shall be mailed in duplicate to the Buyer's Remittance Office: **City of East Point, Accounts Payables, 2777 East Point Street, East Point, Georgia 30344** as indicated on the face of this Order and shall clearly state the Buyer's Purchase Order Number / Contract Number / Quotation Number on the invoice. A separate invoice and duplicate shall be rendered for each separate order or for each shipment, if more than one (1) is made on any one (1) order. No invoice shall be delivered by the Seller to any employee of the Buyer. An itemized delivery ticket, bearing the Buyer's Purchase Order Number / Contract Number as shown hereon, must be left with the goods, materials and/or equipment to insure their proper receipt. If delivery is made by Carrier, an itemized delivery ticket must be attached to each package or other shipping unit. The payment discount period shall date from receipt of the invoice and not from the date of the invoice nor the date of delivery or receipt of the goods, materials and/or equipment. In case of errors on an invoice, the payment discount period shall date from the receipt of corrected invoices. If the Buyer has agreed to pay shipping costs, the Seller shall use the lowest published freight rates and any excess transportation charges incurred, including any that deviate from the lowest published tariff rates, shall be borne solely by the Seller.

15. PATENT, TRADEMARK, COPYRIGHT INDEMNITY – The Seller agrees to indemnify, save harmless and defend the Buyer from and against any and all suits, claims, damages, costs, and attorney's fees arising out of or in connection with any infringement or claimed infringement of any United States patent, trademark or copyright in the manufacture, use or sale of the goods, materials and/or equipment furnished under this Order. In case said goods, materials and/or equipment is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, the Seller shall, at its own expense, either procure for the Buyer the right to continue using said goods, materials and/or equipment, or at the option of the Buyer either replace same with equally efficient noninfringing goods, materials and/or equipment, or modify it without impairing its efficiency so it becomes noninfringing, or remove said goods, materials and/or equipment and refund the purchase price, the transportation costs, if any, and installation costs thereof.

16. INDEMNITY / INSURANCE – The Seller shall defend, indemnify and hold harmless the Buyer from any claims, suits, judgments, fees and costs (including any and all attorney's fees) based on or arising out of the Seller's products, services and/or the resale or use of the products purchased hereunder including death, personal injury, or damage to property. The Seller agrees to procure and maintain the following insurance coverage: (a) Commercial General Liability insurance, endorsed to name the Buyer, the City of East Point, Georgia, as an additional insured, with limits not less than \$1,000,000 per occurrence, \$1,000,000 Products / Completed Operations, \$1,000,000 Personal / Advertising, (b) Commercial Auto insuring all vehicles used by the Seller (including all owned, hired and non-owned vehicles), and (c) Worker's Compensation with statutory limits and a waiver of subrogation in favor of the Buyer, and Employer's Liability with limits not less than \$500,000 each accident and \$5,000,000 Disease – Each Employee. Evidence of such coverage, in the form of a Certificate of Insurance and providing for thirty (30) days notice to the City of East Point, Georgia, prior to cancellation, shall be sent to the Buyer upon request and shall be delivered to the Buyer not later than seven (7) calendar days following the Buyer's request.

17. COMPLIANCE WITH APPLICABLE LAWS – The Seller, in the performance of this Order, shall comply with the provisions of the Fair Labor Standards Act, as amended, as well as the Regulations and Orders of the Department of Labor issued thereunder, Executive Order No. 11246 as amended, 29 CFR 470, 41 CFR 60-1, 60-250, 60-741, the provisions of the Occupational Safety and Health Act of 1970, and all other applicable Federal, State, and local laws, regulations, rules and ordinances, including but not limited to the those dealing with the protection of the environment. Any and all goods, materials, equipment and/or services provided under this Order shall be in total compliance with and shall in no way violate any applicable laws, ordinances, regulations and orders required from the Federal Government, the State, the County and/or the City wherein the goods, materials, equipment and/or service shall be used and/or provided.

18. CHEMICAL SUBSTANCE IDENTIFICATION - By acceptance of this Order, the Seller certifies that any chemical substance(s) furnished pursuant to this Order has/have been properly labeled, and that proper information on the substance(s), e.g., material safety data sheets, have been provided to the Buyer, pursuant to all Federal, State or local laws and regulations.

19. NONDISCRIMINATION PRACTICES - The Seller agrees that in connection with the performance of providing the goods, materials, equipment and/or work under this contract, the Seller (and/or his subcontractor[s] and/or supplier[s]) agrees not to discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual preference, national origin or disability. The aforesaid provision shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay and/or other forms of compensation, and/or selection for training, including apprenticeship. The Seller (subcontractor[s] / supplier[s]) agrees to post statements of non-discrimination practices in conspicuous places, available for employees and applicants for employment, to see that clearly set forth the provisions of this nondiscrimination clause.

20. REJECTION OF QUOTATIONS / TERMINATION OF ORDER – The City reserves the right to reject any or all quotations, or any portion(s) thereof or to waive any technicalities it deems are not in the best interest of the City. Furthermore, the Buyer, by written notice, may terminate this Order, in whole or in part, with or without due cause. In the event this Order is terminated as a result of the Seller's default, the Seller shall be liable for any and all damages allowed under law or equity, including the excess cost of procuring similar goods, materials, equipment and/or services. If this Order is terminated for the convenience of the Buyer, the Seller shall be compensated to the extent of the goods, materials, equipment and/or services that have been received and accepted by the Buyer prior to the effective date of the termination. Other than to this extent, the Buyer shall not be liable to the Seller for any damages based upon its failure to accept any or all of the goods, materials, equipment and/or services ordered hereon.

21. CONFIDENTIALITY / TRADE SECRETS – Any and all specifications, data and/or other information furnished by the Buyer, or its agents, to the Seller in connection with this Order shall remain the exclusive property of the Buyer and shall be treated by the Seller as proprietary in nature and shall not be disclosed or used, outside the limitation of this Order, without prior written approval from the Director of Contracts and Procurement, the City Manager or the City Council of the City of East Point, Georgia. In addition, the purchase of the Seller's product does not authorize the Seller to use the name of or make reference to the Buyer for any purpose in any releases for public or private dissemination, nor shall the Seller divulge or use in any advertisement or publication any specifications, data, or other information pertaining to or relating to this usage without prior written approval from the Director of Contracts and Procurement, the City Manager or the City Council of the City of East Point, Georgia.

22. CODE OF ETHICS - Any and all vendors, by receiving a Purchase Order or entering into a service and / or contractual agreement with the City of East Point, agree to be bound by and comply with all applicable provisions of **Part 2, Chapter 4, Ethics Policy of the Code of Ordinances of the City of East Point, Georgia**. Full text of this ordinance may be obtained from the City Clerk's Office by telephoning 404.270.7090 or on-line by visiting <http://www.municode.com/>. The City's **Code of Ordinances** may also be found on the City's web site at <http://www.eastpointcity.org> in the "Forms" section under the heading "Municode".