

## Town of Taos Purchase Order General Terms and Conditions

**1. Goods and Services.** The Vendor agrees to supply to the Town of Taos the goods, services or construction described on the face of the purchase order, in accordance with the specifications and in accordance with the terms and conditions described herein. Additional or different terms in the Vendor's acknowledgement or other document are hereby rejected.

**2. Cancellation or Change of Purchase Order.** The Town reserves the right to cancel any purchase order at any time prior to shipment of the goods or performance of the service and shall not thereby be subject to any charges or other fees whatsoever as a result of such cancellation. The Town may cancel or make changes to any purchase order subject to an equitable adjustment in the price, delivery schedule, or both, where appropriate.

**3. Nature of Purchase Order.** This purchase order is a contract between the Town of Taos and the Vendor ("the parties"). This purchase order shall be the sole and exclusive statement of the terms of the contract between the parties for the goods, services or construction described. This purchase order is non-exclusive; the Town of Taos is free to engage others to provide the goods, services and construction described herein.

**4. Prices, Taxes.** Prices or fees specified in the purchase order shall be exclusive of gross receipts taxes unless provided otherwise on the purchase order, but inclusive of freight, insurance, packing charges, sales, use, excise, added value and similar taxes, and all customs, duties or governmental impositions unless agreed upon separately in writing between the parties. All taxes to be paid by the Town of Taos shall be separately itemized on the invoice. The Town of Taos shall not be billed at prices higher than stated on the face of the purchase order unless authorized in writing by the Town. The Vendor represents that the prices charged for the goods or services covered by this Order are the lowest prices charged by Vendor and that such prices comply with all applicable law and government regulations in effect at time of quotations, sale and delivery and performance.

**5. Payment Terms, Invoices.** As full consideration for the delivery of goods, services of construction, the Town shall pay Vendor the amount specified in the purchase order upon delivery of the goods, services or construction described in the purchase order, or as otherwise specified in the purchase order. The Vendor shall submit invoices showing the purchase order number, description of goods, quantity, unit prices, extended totals, completion date of services (if any), shipping date, taxes, product serial numbers and any other information requested by the Town. All properly submitted and undisputed invoices will be paid within thirty (30) days after acceptance of the goods, services or construction by the Town. Payment of any invoice shall not constitute acceptance of any goods. An invoice may be rejected for noncompliance with any terms and conditions. Inquiries regarding payment should be directed to Accounts Payable at (575) 751-2027 Original invoice must be sent to: Town of Taos, Attention: Requesting Department, 400 Camino de la Placita, Taos, NM 87571.

**6. Shipping, Delivery, Acceptance.** The Vendor shall package and ship all goods in accordance with industry standards and ensure that the goods, services or construction are received by the Town in good condition and in compliance with the purchase order. The purchase order number must appear on all shipping containers, packing lists, delivery tickets and bills of lading. Time for delivery shall be of the essence. The Vendor shall bear all costs of shipping, transportation and packing unless otherwise agreed to in writing by the Town. Title and risk of loss shall pass to the Town only upon delivery at the destination nominated by the Town or upon final acceptance by the Town, whichever is later. The Town reserves the right to refuse shipments and/or performance of services made before or after the date set forth in the purchase order. If goods ordered are destroyed prior to the title passing to the Town or if the delivery of the goods (and/or performance of services) is not completed on time, the Town may, at its option and in its complete discretion, require delivery of substitute goods of equal quantity and quality, terminate the purchase order as to items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere or to direct the Vendor to ship by the most expeditious means available, all at Vendor's risk and expense. The Vendor assumes all risk of loss, damage or destruction to any goods rejected by the Town. Shipments which do not conform with the terms of this purchase order may be returned to the Vendor and the Vendor shall pay the Town for all handling and transportation costs incurred in connection therewith. Acceptance of deliveries not in conformance with the purchase order shall not be deemed a waiver of the Town's right to hold the Vendor liable for any loss or damage to the Town or modify the Vendor's obligation to make future deliveries in conformance with the terms herein. Acceptance by the Town will occur (i) for services or goods, upon completion to the satisfaction of the Town of any acceptance tests or programs described in the purchase order or attachments thereto, as evidenced by any acceptance certificate signed by the Town; or (ii) on the sixtieth (60th) day following receipt and acceptance by the Town, unless the Vendor is notified in writing within this period that, in the Town's sole judgment, the goods or services do not conform to the specifications, in

which event the Town may return the goods to the Vendor, freight collect, and be refunded all advance payment made therefore.

**7. Dangerous and Hazardous Materials.** Packaging, packing, marketing, labeling, documentation, handling and movement of any materials ordered shall be in accordance with applicable federal and state laws and regulations. All packing sheets, bills of lading or other shipping documents shall specify what is being shipped and carry a certificate that the shipment is in proper condition for transportation.

**8. Warranties.** The Vendor represents and warrants that (i) it is authorized to sell the goods and/or authorized and capable of performing the services set out in the purchase order; (ii) all goods provided and/or services performed will comply with the descriptions and specifications as set out in the purchase order; (iii) all goods provided are of genuine and authentic manufacture, new and unused, and will throughout the warranty period be free from defects in design, materials, workmanship and manufacture, be of satisfactory quality and fit for the purposes communicated by the Town or if not communicated by the Town fit for the purposes as can be reasonably determined; (iv) all services will be performed in a workmanlike and professional manner by employees or subcontractors of the Vendor having a level of skill commensurate with the requirements of the agreed upon scope of work. The Vendor also represents and warrants that the goods and services do not and will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party, and the Vendor shall defend, indemnify and hold the Town of Taos, its Elected Officials, employees, and agents against harmless from damage, liability, claim, loss, costs, expenses and fees which may be incurred on account of infringement or alleged infringement. The foregoing warranties are in addition to all other warranties, express or implied, such as a manufacturer's warranty, and shall survive the delivery, performance, inspection, acceptance or payment by the Town. The Town's inspection, test, approval, acceptance or use of any goods will not relieve the Vendor of any warranties specified herein or otherwise applicable. If the Town identifies a warranty problem during the warranty period, the Town will notify the Vendor and may, at its sole option, and at the Vendor's expense: (i) require the Vendor to correct any defect or nonconformance; (ii) return deficient or nonconforming goods to the Vendor for a full refund of amounts paid for those deficient or non-conforming goods; (iii) correct the deficient or nonconforming goods itself, or (iv) re-perform the services or any part thereof which fails to conform to the Town's specifications. Replacement or repaired goods shall be warranted for the remainder of the warranty period or one year, whichever is longer.

**9. Modification/Changes.** This purchase order constitutes the entire agreement between the parties and all discussions preliminary to creating a contract have merged herein, and no modification hereof shall be effective unless agreed to in writing by the Town of Taos authorized representatives - Procurement and/or the Finance Director; an employee has no authority to agree to a change of the terms of this Purchase Order without prior approval.

### **10. Indemnity/Insurance.**

A. The Vendor Supplier shall indemnify, defend, and hold harmless the Town of Taos, its Elected Officials, employees and agents, from and against any, and all claims, actions, liabilities, damages, losses, costs, and expenses (including attorney's fees) arising out of or in any way connected with the goods, services or construction provided and/or the services performed under the purchase order including without limitation: (i) defective workmanship, quality of material or service (ii) the Vendor's failure to comply with any applicable law, statute, rule or regulation, including without limitation, related to privacy and publicity; (iii) the negligence or willful misconduct of the Vendor, its agents or employees; (iv) death or bodily injury to any person; or (v) damage or destruction to property, caused by, arising out of, connected with or resulting from the goods and/or the acts or omissions of the Vendor, its agents, subcontractors. Should the Vendor's use, or use by its employees, contractors, subcontractors or customers, of any goods or services purchased from the Vendor be threatened by injunction or any legal proceeding, the Vendor shall, at its sole cost and expense, either: (i) substitute fully equivalent non-infringing goods; (ii) modify such goods so that they no longer infringe but remain fully equivalent in functionality; (iii) obtain for the Town, its Elected Officials, employees, or agents the right to continue using such goods; or (iv) if none of the foregoing is possible, refund all amounts paid for the infringing goods. The Vendor shall protect, defend, indemnify, exonerate and hold the Town of Taos, its Elected Officials, employees and agents, harmless from and against any and all suits, claims, liabilities, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with the goods or services provided under this purchase order and for any incidents involving bodily injury, death, or property connected in any way to the goods or services provided under this purchase order or any violation or alleged violation of any federal, state or local law or regulation. The Vendor is and undertakes performance thereof as an independent contractor, with sole responsibility for all persons employed in connection therewith, including

without limitation exclusive liability for the payment of all Federal, State, and Local Unemployment and Disability insurance and all Social Security and other taxes and contributions payable in respect to such persons from and against which liability.

B. The Vender shall provide certificates of insurance evidencing that Vender has purchased the following insurance, which shall remain in full force and effect during the term of this contract: (i) commercial general liability insurance (including contractual liability coverage) on an occurrence basis for bodily injury, death, "broad form" property damage, advertising injury and personal injury, with coverage limits of not less than One Million Dollars (\$1,000,000), per occurrence and One Million Dollars (\$1,000,000), general aggregate for bodily injury and property damage, (ii) auto liability insurance covering all owned, non-owned and hired vehicles, with coverage limits of not less than One Million Dollars (\$1,000,000), per occurrence for bodily injury and property damage, (iii) worker's compensation insurance as required by laws of the State of New Mexico, (iv) employer's liability coverage for injury, disease and death with coverage limits of not less than One Million Dollars (\$1,000,000), per accident and employee, (v) employee dishonesty coverage (including coverage for third-party crimes) for loss of money, securities, and other property with extended coverage to cover property and money at non-owned premises for limits not less than \$250,000 and a deductible no greater than \$5,000, per loss per occurrence, naming the Town as loss payee, (vi) an umbrella liability coverage on an occurrence form, for limits of Three Million Dollars (\$3,000,000), per occurrence and in the aggregate. The insurance policies described herein shall name the Town as an additional insured thereunder. The Vender's insurance coverage shall be considered primary without right of contribution of the Town's insurance policies. Notwithstanding the foregoing, the Vender's insurance policy shall contain a severability of interests clause. Upon request, the Vender shall provide the Town with a certificate of insurance evidencing the insurance coverages required herein. The insurance companies now or hereafter issuing the foregoing insurance policies shall be insurance carriers to be rated A- or better by A.M. Best Company. Any material modification, renewal, replacement or cancellation of such insurance coverages shall require at least thirty (30) days prior written notice to the Town with the exception of non-payment, in which case, such policy shall require ten (10) days prior written notice to the Town. In no event shall the foregoing coverage limits affect or limit in any manner the Vender's contractual liability for indemnification, by endorsement or otherwise.

**11. Audit.** The Town may, with prior advance notification, conduct an inspection of the Vender's facilities; the Vender shall provide all data deemed necessary by the Town of Taos for an adequate inspection.

**12. Governing Law.** This order shall be governed by the Laws of the Town of Taos and the Laws of the State of New Mexico. Venue for all disputes arising hereunder shall be the Eighth Judicial District Court, Taos, State of New Mexico.

**13. Compliance with Law.** The New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 thru 13-1-199 imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

**14. Confidentiality.** No disclosure, description or other communication of any sort shall be made by Vender to any third party of the fact of the Town purchase of goods or services hereunder, or of the details and characteristics thereof without the Town's prior written consent. Any items furnished to Vender by the Town pursuant to this order, including without limitations samples, drawings, patterns and materials, shall remain the property of the Town, shall be held at Vender's risk and shall be returned upon completion of the work or termination of order no disclosure or reproduction thereof in any form shall be made without the Town's written consent. The Vender shall be liable to the Town for any unauthorized disclosure or use of the terms furnished to Vender by the Town.

**15. Force Majeure.** Failure by either party to perform hereunder in whole or in part occasioned by act of God or public enemy, fire explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, government priority, requisition or allocation or any circumstances of like or different character beyond the reasonable control of the party so failing to perform, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within the affected party's power to concede shall not subject and party to any liability to the other party.

**16. Termination/Cancellation.** The Town reserves the right to terminate this order at any time with respect to undelivered goods or services by written notification or oral notice confirmed in writing if Vender: (i) fails to perform or otherwise materially breaches any term of this purchase order and such failure or breach is not remedied within seven (7) days of the Town's notice to do so; (ii) files a petition in bankruptcy, becomes insolvent, or dissolves; (iii) breaches any confidentiality obligations; or (iv) assigns or attempts

to assign this purchase order in whole or in part to a third party without prior written consent of the Town. Notwithstanding the previous sentence, the Town may terminate any purchase order in whole or in part at its discretion and without any liability to the Vendor for damages or loss (whether direct or indirect) upon thirty (30) days written notice to the Vendor, except for payment of the price of the goods supplied and services performed and accepted by the Town prior to the date of termination specified in such notice. The Vendor shall cease to provide goods or services under the applicable purchase order on the date of termination specified in such notice. Upon the termination of the purchase order for any reason, the Vendor shall promptly deliver at the expense of the Vendor and in accordance with the Town's instructions to the Vendor all work product (whether in process or completed) created by the Vendor pursuant to such purchase order prior to the date of termination and all the Town's Confidential Information. The termination of any purchase order shall not affect any obligation of the parties incurred before the termination date. Notwithstanding the termination or expiration of the purchase order, the terms of this contract which by their context, intent and meaning are intended to survive the termination or expiration of the purchase order shall survive.

**17. Assignment.** None of the sums due are to become due nor any of the work to be performed under this purchase order shall be assigned, nor shall the Vender subcontract for completed or substantially completed material called for by this contract without the Town's prior advance written consent. If consent is given, it shall be under condition that the assignee succeeds to all of the terms of this purchase order and shall not relieve the assignor of its duties and responsibilities.

**18. Interpretation.** The contract between the parties consists of any written agreement between the parties, if any, and this purchase order. In the event of a conflict between these documents the terms set forth herein and a separate written agreement, the written agreement shall govern.

**19. Modification, Amendment.** No modification to this purchase order shall be effective unless agreed to in writing by Town of Taos authorized representatives - Procurement or the Finance Director. Town employees have no authority to direct any change in this purchase order or these conditions except by a written change order signed by an authorized Town representative.

**20. Waiver.** The failure of the Town to insist in any one or more instances upon the performance of any of the terms or conditions of this purchase order or to exercise any right here under shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.

**21. Permits, Fees, and Licenses.** The Vendor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.