

## LEE COUNTY STANDARD TERMS AND CONDITIONS

AS OF 06/01/2017

1. The term "**Vendor**" shall mean the party furnishing the goods, materials, equipment and/or services so specified herein. The term "**Buyer**" shall mean Lee County, a political subdivision of the State of Florida (also known as Lee County Board of County Commissioners).
2. All Purchase Orders shall be filled at prices quoted to the **Buyer**. No increase from the quoted price will be authorized unless approved in writing by the **Buyer**.
3. All invoices shall be addressed as indicated on the front of the Purchase Order and must include the **Vendor's** name and phone number, and clearly list quantities, item descriptions, and units of measure. **Vendor** shall indicate on all invoices the Purchase Order number and terms of payment. Substitution of any portion of the Purchase Order will not be allowed unless the **Buyer** is notified and gives approval in writing of the substitution.
4. **Vendor** will promptly acknowledge the Purchase Order, and indicate the shipping date (definite or approximate), if applicable. **Buyer** will not pay freight or express charges, except by prior written agreement. All shipping will be FOB Destination. **Buyer** reserves the right to route all shipments. Shipments described on bill of lading shall take the lowest legal freight rate. Deliveries will be made Monday through Friday, excluding Lee County holidays unless otherwise stated. Delivery must actually be made within the time stated by the **Vendor**. Delays in shipment shall be immediately reported by **Vendor** to **Buyer**. **Buyer** reserves the right to cancel the Purchase Order and purchase elsewhere if delivery is not timely as stated.
5. Until acceptance by the **Buyer**, risk of loss or damage shall remain with the **Vendor**. The **Vendor** shall be responsible for filing, processing, and collecting all damage claims with the shipping carrier and/or their insurance. All items shall be securely packed to deter against damage and comply with shipping carrier's requirements as to applicable tariffs. To assist the **Vendor** with damage claims, the **Buyer** shall: (i) record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; (ii) report damage to the carrier and the **Vendor**; and (iii) provide the **Vendor** with a copy of the shipping carrier's Bill of Lading and damage inspection report.
6. If specifications are not met, material may be returned at the **Vendor's** expense and risk. **Vendors** will be notified of over-shipments and/or incorrect shipments. If return authorizations are not received within thirty (30) days, such items shall be considered as donations to the **Buyer**. In case of default by **Vendor**, **Buyer** may procure the articles or services covered by the Purchase Order from other sources and hold the **Vendor** responsible for any excess expense.
7. Inspection and acceptance of commodities shall be as follows:
  - (a) For **Vendor**-installed products, the date of acceptance is the date the **Buyer** accepts the product as installed and in good working order, as determined by any appropriate acceptance testing, and the **Buyer** shall certify in writing to the **Vendor** when the product is accepted (if training or other post-installation services are included in the purchase, the acceptance shall be conditional).
  - (b) For **Buyer**-installed products, the date of acceptance shall be the date of inspection.
8. Inspection and acceptance of services shall be as follows:

Each phase of the services rendered under this Purchase Order is subject to the **Buyer's** inspection during both the **Vendor's** operations and after completion of the tasks including quality of work. When the **Vendor** is satisfied with the completion of the contracted work, and prior to acceptance of any phase of work, **Vendor** shall submit a written request for an inspection to the **Buyer**. After inspection, the **Buyer** will issue a list of deficiencies, if any. Upon completion of the list, and correction of all deficiencies by the **Vendor**, the **Vendor** shall notify the **Buyer** that the work has been completed satisfactorily. Final inspection shall be performed prior to Purchase Order expiration date or September 30<sup>th</sup>, of the current year, whichever is earlier.

9. If work is performed on **Buyer's** property, work shall not be considered complete until all rubbish and unused material due to, or connected with, the work is removed and the premises are left in a safe and tidy condition.
10. If insurance is required, the **Vendor** shall maintain insurance acceptable to **Buyer** in full force and in effect throughout the term of the Purchase Order and, upon request, the **Vendor** shall provide to **Buyer** a certificate of insurance with **Buyer** named as additional insured.
11. **Vendor** shall comply with all federal, state, and local laws and regulations applicable to the articles, materials or services constituting the Purchase Order and shall upon request of **Buyer** furnish such proof of compliance. The **Vendor** shall have in its possession any applicable permits or licenses that may be required by federal, state, or local law to furnish products or services under the scope of the Purchase Order.
12. **Vendor** shall not subcontract any portion of the Purchase Order without prior written approval of **Buyer**. If such approval is granted, it shall not relieve the **Vendor** from liability hereunder. The Purchase Order cannot be assigned. If the Purchase Order cannot be filled by the person or firm to whom it is issued, it shall be returned to the **Buyer**.
13. Unless otherwise stated in the Purchase Order, in addition to any warranty implied by law or fact, and any other express warranties, the **Vendor** expressly warrants all items to be free from defects in title, design, workmanship and materials, to conform strictly to applicable specifications, drawings, approved samples, if any; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other services warranties of the **Vendor**, shall run to **Buyer**. All warranties shall survive inspection, test, acceptance of and payment by **Buyer**.
14. Acceptance of the Purchase Order serves as certification that the **Vendor** or its principals: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have not within a three-year period preceding the Purchase Order been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or agreement/contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and (d) have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.
15. The **Vendor** hereby guarantees the **Buyer** that all material, supplies, services and equipment as listed on the Purchase Order meet the requirements, specifications and standards as provided for under the Occupational Safety and Health Act of 1970, as from time to time amended and in force on the date hereof.
16. If applicable, the **Vendor** shall provide to **Buyer** all material safety data sheets (MSDS) upon delivery of materials.
17. Any dispute regarding the Purchase Order shall be governed by Florida law. Furthermore, any such disputes shall be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
18. The **Vendor**, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under the Purchase Order the legal status of an independent contractor, and in no manner shall they be deemed employees of the **Buyer** or deemed to be entitled to any benefits associated with such employment. During the term of the Purchase Order, **Vendor** shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and

all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide **Buyer** with certification of such insurance upon request. The **Vendor** remains responsible for all applicable federal, state, and local taxes and all FICA contributions.

19. **Buyer** is exempt from any sales taxes.
20. The **Vendor** shall be fully liable for the actions of its directors, officers, members, partners, or subcontractors, and the employees and agents of each of them, and shall fully indemnify and hold harmless the **Buyer**, its employees, agents and assigns from claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate levels), arising from or relating to personal injury or death, and damage to real property or tangible personal property alleged to be caused in whole or in part by the **Vendor**, its officers, directors, members, partners, or subcontractors, and employees or agents of any of them provided, however, that the **Vendor** shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the **Buyer**.
21. To the extent applicable, the **Vendor** shall fully indemnify and hold harmless the **Buyer**, and its agents, employees, and assigns from any claims, suits, actions, damages, and costs of every type and description, including attorneys' fees (at both trial and appellate level), arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to the misuse or modification of **Vendor's** products by the **Buyer** or any of its agents, employees, and assigns, or to the operation or use of **Vendor's** products by the **Buyer** or any of its agents, employees, and assigns in a manner not contemplated by the Purchase Order.
22. This agreement for indemnification shall continue in force for five (5) years from the date of full completion of all obligations of the **Vendor** under the Purchase Order. In the event that there is a conflict between this agreement and any other applicable indemnification agreement between the **Buyer** and the **Vendor**, the agreement which provides the most protection for the **Buyer** shall take precedence.
23. Any indemnification by Lee County, as provided for in the Purchase Order, shall only be to the extent and limit provided in Section 768.28, Florida Statutes, as may be amended from time to time, and shall not be considered a waiver of any statutory or constitutional sovereign immunity protections. Any clause in an agreement where the **Buyer**, as the customer, indemnifies the **Vendor** is unacceptable. Any consideration of indemnification must be approved by the County Attorney's Office.
24. If the Purchase Order is a multi-term Purchase Order, automatic renewals are prohibited. Automatic renewals may be considered but must be approved by the Department of Procurement Management. All funds for payment by the County under the Purchase Order are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under the Purchase Order, the County will terminate the Purchase Order, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by the Purchase Order is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of the Purchase Order, cancellation shall be accepted by the Vendor on fifteen (15) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under the Purchase Order beyond the date of termination.
25. The Buyer shall have the right at any time upon fifteen (15) days' written notice to the Vendor to terminate this Purchase Order in whole or in part for any reason whatsoever. In the event of such termination, the Buyer will be responsible to Vendor only for fees and compensation earned by the Vendor prior to the effective date of said termination. In no event shall the Buyer be responsible for lost profits of Vendor or any other elements of breach of contract. After receipt of a notice of termination, except as otherwise directed, the Vendor must stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except

as necessary for completion of such portion of the work not terminated; terminate all contractors and subcontracts; and settle all outstanding liabilities and claims. The Buyer's rights under the Purchase Order shall survive the termination or expiration of this Purchase Order and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under the Purchase Order.

26. Payment terms are thirty (30) days (construction project) or forty-five (45) days (non-construction) net from the date of the accepted invoice, provided that the goods and services were received in satisfactory condition. Interest and penalties shall be paid in accordance with the Florida Government Prompt Payment Act, Florida Statutes 218.70-218.76 (2015).
27. Should a dispute arise, the **Buyer** will attempt to resolve all problems but the will not accept third party arbitration or binding arbitration. The **Buyer** may agree to mediation prior to formal litigation. In addition, the **Buyer** will not waive its right to a jury trial.
28. The Purchase Order and all supporting documentation are subject to Chapter 119, Florida Statutes, unless otherwise exempt or confidential. Vendor specifically acknowledges its obligations to comply with §119.0701, Florida Statutes, with regard to public records, and shall:
  - 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under the Purchase Order;
  - 2) upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
  - 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of the Purchase Order and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

**IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901; [PUBLICRECORDS@LEEGOV.COM](mailto:PUBLICRECORDS@LEEGOV.COM); <http://www.leegov.com/publicrecords>.**

29. Any Purchase Order requiring travel or per diem will be subject to the travel rules as shown in the **Buyer's** Procurement Policy, as may be amended from time to time.
30. In the event of a claim, including but not limited to damages, penalties, or costs, the **Buyer** shall promptly notify the **Vendor** in writing by prepaid certified mail (return receipt requested), or by delivery through any nationally recognized courier service (such as Federal Express or UPS) which provides evidence of delivery, to the **Vendor** address provided on the Purchase Order.
31. The **Buyer** may, in addition to other remedies available to it at law or equity, and upon written notice to the **Vendor**, retain such monies from amounts due the **Vendor** as may be deemed by the **Buyer** to be necessary to satisfy any claim, including but not limited to damages, penalties, costs asserted by or against

- it. The **Buyer** may set off any liability or other obligation of the **Vendor** or its affiliates to the **Buyer** against any payments due the **Vendor** under any Agreement/Contract/ Purchase Order with the **Buyer**.
32. The provisions of the Purchase Order are severable, and if any one or more provisions may be determined to be unconstitutional, illegal or otherwise unenforceable by a court of competent jurisdiction, in whole or in part, the remaining provisions, and any partially unenforceable provisions to the extent enforceable, shall nevertheless be binding and enforceable.
  33. Any other condition not contained in this document will be annotated within the context of a Purchase Order.
  34. Unless a formal written Lee County Agreement/Contract was executed between the **Buyer** and **Vendor**, the Purchase Order, including the terms and conditions shown above contains the complete and final agreement between the **Buyer** and **Vendor** and no other agreement in any way modifying any of said terms and conditions will be binding upon the **Buyer** unless made in writing and signed by the **Buyer**. The **Vendor** may not unilaterally modify the terms of the Purchase Order by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the **Vendor's** Purchase Order or fiscal forms or other documents forwarded by the **Vendor** for payment. A formal written Lee County Agreement/Contract shall always take precedence over this document and a Purchase Order. **Buyer's** acceptance of product or processing of documentation on forms furnished by the **Vendor** for approval or payment shall not constitute acceptance of any proposed modification to terms and conditions.