

Purchase Order
Terms and Conditions

ENTIRE AGREEMENT

This Purchase Order embodies the entire agreement between THE CITY OF GRAND JUNCTION and SELLER and supersedes all other writings. The parties shall not be bound by, or be liable for, any statement, representation, promise, induction or understanding not set forth herein.

PRICE

Unless otherwise specified in the Purchase Order, any price stated in the Purchase Order for the purchase of Goods or Services is a firm fixed-price.

PACKING, MARKING AND SHIPPING

SELLER shall pack, mark and ship all goods and supplies in accordance with the requirements of this Purchase Order so as to be in compliance with transportation regulations and good commercial practice(s) for protection and shipment. SELLER shall secure the most advantageous transportation service and rates consistent therewith. No separate or additional charge is payable by THE CITY OF GRAND JUNCTION for containers, crating, boxing and bundling, dunnage, drayage or storing unless specifically stated in the Purchase Order.

TITLE

Title as evidenced by and including but not limited to manufacturers statements of origin ((MSO'S) to all goods furnished hereunder shall pass directly from the SELLER to CITY OF GRAND JUNCTION at the F.O.B. destination as specified on the Purchase Order Form.

QUALITY STANDARDS

SELLER shall ensure that the Products shall comply with the standards of quality specified by the Purchase Order or those customary in the industry if no requirement is specified. THE CITY OF GRAND JUNCTION's right to inspect examine, and test the Products shall extend through the time of shipment and a reasonable time after arrival at the final destination. SELLER's failure to adhere to the standards of quality required under this Purchase Order shall be deemed to be reasonable grounds for termination. THE CITY OF GRAND JUNCTION may demand in writing, that SELLER provide adequate assurances and documentation of SELLER'S ability to meet said standards.

The Products shall not be deemed accepted until finally inspected and accepted by THE CITY OF GRAND JUNCTION's representative. The inspection or failure to make inspection, examination or test of, or payment for, or acceptance of the Products shall in no way relieve the SELLER from its obligation to conform to all of the requirements of this Purchase Order and shall in no way impair THE CITY OF GRAND JUNCTION's right to reject or revoke acceptance of nonconforming Products, or to avail itself of any other remedies to which THE CITY OF GRAND JUNCTION may be entitled, notwithstanding THE CITY OF GRAND JUNCTION's knowledge of the nonconformity, its substantiality or the ease of its discovery.

WARRANTIES – GUARANTEES

SELLER warrants that the goods shall be free from liens and defects in design, material, workmanship and title, and shall conform in all respects to the terms of this Purchase Order, and shall be new and of the best quality, if no quality is specified. Unless otherwise provided in this Purchase Order, the following warranties shall apply. If, anytime prior to one (1) year from the date of first use, or eighteen (18) months from the date of final delivery whichever comes first, it appears that the goods, or any part thereof, do not conform to these warranties or the specifications, and THE CITY OF GRAND JUNCTION so notifies SELLER within a reasonable time after its discovery, SELLER shall promptly correct such nonconformity to the satisfaction of THE CITY OF GRAND JUNCTION, at SELLER'S sole expense, failing which THE CITY OF GRAND JUNCTION may reject or revoke acceptance and recover by purchasing substitute goods, or THE CITY OF GRAND JUNCTION may proceed to make corrections or accomplish SELLER'S work by the most expeditious means available, the costs of recovery or correction shall be the SELLER'S liability hereunder and shall extend to all damages caused by the breach of any of the foregoing warranties, including incidental damages such as removal, inspection, costs of return, or warehousing. SELLER shall not be liable for consequential damages, such as loss of profit, loss of use or production, or costs of capital. This warranty is in addition to the manufacturers warranty of the goods.

WAIVER

The failure of either party to insist on performance of any provisions of this Purchase Order shall not be construed as a waiver of that provision in any later instance.

APPLICABLE LAW

Any suit filed relative to this Purchase Order must be filed in a court of competent jurisdiction in Mesa County, Colorado.

RELEASE AGAINST LIENS AND CLAIMS

SELLER shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used providing the Products. THE CITY OF GRAND JUNCTION may require SELLER to submit satisfactory evidence of payment and releases of all such claims. If there is any evidence of any such unpaid claim, THE CITY OF GRAND JUNCTION may withhold any payment until SELLER has furnished such evidence of payment and release and shall indemnify and defend THE CITY OF GRAND JUNCTION against any liability or loss arising from any such claim.

In order to assure THE CITY OF GRAND JUNCTION of the prompt and unrestricted use for which the Products under this Purchase Order are procured, SELLER agrees to waive any and all liens, which it might otherwise assert in the resolution of disputes arising out of the performance of this Purchase Order. This waiver is not intended to be, nor will it be construed to be, a limitation of any SELLER's other rights under this Purchase Order or its other legal remedies.

INDEMNITY AND HOLD HARMLESS

SELLER hereby indemnifies and shall defend and hold harmless CITY OF GRAND JUNCTION and their employees or authorized representatives of the foregoing from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature. Including those arising out of injury to or death of SELLER'S employees, whether arising before or after completion of the work using the products hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of SELLER, or of its lower-tier contractors or lower-tier suppliers or of anyone acting under its direction or control or on its behalf, in connection with or incidental to the performance of this Purchase Order.

SELLER's aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, of the party indemnified to the fullest extent permitted by law but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

COMPLIANCE

SELLER warrants that all Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Products are subject. SELLER shall execute and deliver to THE CITY OF GRAND JUNCTION any documents as may be required to effect or evidence such compliance. All laws and regulations required to be incorporated in agreements such as this one are hereby incorporated herein by reference.

SELLER hereby agrees to indemnify, defend and hold THE CITY OF GRAND JUNCTION and its respective affiliates harmless from and against any and all claims, legal actions, final judgments, reasonable attorney's fees, civil fines and other losses of which any may incur as a result of the sale or delivery of products and services to THE CITY OF GRAND JUNCTION hereunder which do not meet all requirements of such laws and regulations.

CONFLICTS, DISCREPENCIES, ERRORS AND OMISSIONS

The Purchase Order Form and all documents listed therein are essential parts of the Purchase Order and a requirement occurring in one is binding as though occurring in all.