

# TOWN OF LEESBURG, VIRGINIA

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Applicable Laws:** This Purchase Order (PO) shall be governed by and is subject in all respects, whether as to validity, construction, capacity, performance, or otherwise to the laws of the Commonwealth of Virginia and the Town of Leesburg, Virginia, Procurement Policy adopted August 8, 2000, as amended. This PO is subject to, and the Contractor shall at all times observe and comply with, all applicable federal, state, or local laws, ordinances, and regulations which in any manner affect the conduct of the work or those engaged or employed on the work, including but not limited to: the Civil Rights Act of 1964; the Virginia Fair Employment Contracting Act of 1975; the Federal Immigration Reform and Control Act of 1986; the Rehabilitation Act of 1973 Section 504; the Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

2. **Definitions:** As used herein, the following terms shall have the following meanings:

**Town:** Any entity for whom the Procurement Office, Town of Leesburg, Virginia has served as the Purchasing Agent, including, without limitation, the Town of Leesburg, Virginia, its officers, agents and employees.

**Contractor:** The individual or organization named on the front of a PO issued by the Town, whether identified on the PO as "Contractor", "Vendor", or any similar term.

3. **Precedence of Terms:** To the extent that Contractor has entered into a separate written agreement with the Town for the equipment, goods or services provided pursuant to this PO and this PO is issued in accordance with such agreement, the Terms and Conditions of that agreement shall control in the event of any conflict with the terms and conditions stated in this PO.

4. **Acceptance:** This PO constitutes the Town's offer and shall be accepted by the Contractor only in accordance with the terms hereof. Any acceptance of an offer of Contractor, or any confirmation herein of a prior agreement between the Town and the Contractor, is expressly made conditional on Contractor's assent to the additional or different terms contained herein. This PO may be accepted by Contractor by commencement of work, shipment of goods, or furnishing of services hereunder. Dispatch of Contractor's acknowledgement form or other written document will also act as acceptance if the terms of such document agree with this PO. Notwithstanding (a) any oral communications or instructions, (b) terms and conditions contained in any quotation, acknowledgement, invoice or other written document of Contractor, or (c) previous waiver in any instance, no addition to, waiver for the future, or modification of any of the provisions herein contained shall be of any force or effect unless made in writing and executed by the Town. The Town will not be bound in any manner for goods delivered or services rendered except on the basis of this PO and all conditions contained herein. By accepting this PO the Contractor understands and agrees that any and all terms and conditions contained on Contractor's acknowledgement or other Contractor forms that are in conflict with those contained herein are null and void.

5. **Right to Inspection and Rejection:** By accepting this order, Contractor warrants that goods or services delivered must be strictly in accordance with the referenced bid, proposal or quote, and shall not deviate in any way from terms, conditions or specifications of such bid, proposal or quote. Equipment, materials and/or supplies delivered on this order shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of the Contractor. Contractor will bear the cost of Town's inspection of rejected merchandise and the cost of return thereof.

6. **Changes and Modifications:** No substitution, change or deviation shall be made without approval from the Town in writing. The Town shall have the right at any time to make changes in this PO by written notice to Contractor, and Contractor agrees to comply with such changes. If such changes cause a material increase or decrease in Contractor's costs or time of performance of this PO, Contractor shall notify the Town immediately and negotiate an adjustment.

7. **Sales Tax:** As a political subdivision of the Commonwealth of Virginia, the Town is exempt from local, state and federal taxes. Such taxes must not be charged or included in the price. If tax is included, the amount thereof will be deducted from the invoice amount.

8. **Delivery and Title:** Unless agreed to otherwise by the Town in writing, delivery shall be F.O.B. Destination and the title shall pass to the Town upon acceptance. Risk of damages or loss following shipment and prior to acceptance by the Town shall be the responsibility of the Contractor. All freight and transportation charges are to be pre-paid by the Contractor to the carrier without further liability to the Town. Delays in shipment shall be reported immediately to the Town. If shipment is made by freight or express and charges added to invoice, the original bill of lading properly receipted shall accompany invoice. Charges for boxing, packaging or cartage will not be allowed or paid by the Town unless otherwise expressly stated on this PO.

9. **Contractor Verification Requirement:** The Town has implemented a Contractor verification process. Contractor information required by the Town must be verified through the Town's third-party validation service provider. Contractor must comply with this requirement to conduct business with the Town and receive payments. Instructions and additional information on how to comply with this requirement can be obtained from the Town's website at: <https://www.leesburgva.gov/departments/finance/accounting/vendor-verification>.

10. **Invoices:** All invoices shall be submitted through the Town's invoice submission portal located at: <https://www.leesburgva.gov/departments/finance/accounting/vendor-invoices>. Instructions and additional information on how to comply with this requirement can be obtained from the website. The Town's PO number shall be shown by Contractor on all related invoices, delivery memoranda, bills of lading, packages and/or correspondence. An invoice shall be rendered for each order or for each shipment if more than one is made on an order. If delivery is made by carrier, an itemized delivery ticket must be attached to the package or other shipping unit.

11. **Payment Terms:** Payment will be authorized by the Town following receipt of a valid invoice and delivery of goods or completion of services, whichever is later. Payment terms shall be "Net 30 Days" unless otherwise agreed by the Town in writing. The payment terms stated herein must appear on the Contractor's invoice, and failure to comply with this requirement may result in the invoice being returned to the Contractor for correction. Unless otherwise agreed by the Town in writing, late payment charges shall not exceed one percent (1%) per month of the invoice amount due. If offered by the Contractor, a payment discount shall begin from the date of proper receipt of a valid invoice, or from the date of acceptable receipt of the goods or services, which occurs later.

12. **Time of the Essence:** Time of shipment and of other aspects of performance hereunder is of the essence of this agreement.

13. **Insurance:** Unless otherwise agreed by the Town in writing, Contractors performing work on Town property shall maintain at a minimum the following insurance coverages: (a) Commercial General Liability Insurance, with limits no less than \$1,000,000 per occurrence; (b) Commercial Automobile Liability (including all owned, hired and non-owned vehicles), with limits no less than \$1,000,000.00; and (c) Worker's Compensation with statutory limits. Evidence of such coverage, in the form of a Certificate of Insurance endorsed to name the Town as an additional insured, shall be provided to the Town prior to the commencement of work.

14. **Indemnification:** To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the Town, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by Contractor's performance of this PO and the referenced bid, proposal or quote.

15. **Termination at Option of Town:** The Town, by written notice, may terminate this PO in whole or in part. If this PO is terminated for convenience of the Town, including events of non-appropriation, the Contractor will be compensated to the extent that the goods or services have been accepted by the Town prior to the effective date of the termination. Other than such compensation, the Town shall not be liable to the Contractor for any damages on account of the Town's failure to accept all of the items or services ordered.

16. **Cancellation for Default:** In the event this PO is cancelled by the Town as a result of default by the Contractor, including failure to deliver the goods or services ordered by the time specified, the Contractor shall be liable for all damages available to the Town in law or in equity, including the excess cost to re-procure similar items from other sources. The Contractor shall reimburse the Town for all costs in excess of the price stated in this PO when re-procurement is made from an alternative source; or, in the event that there is a balance the Town owes to the Contractor from prior transactions, an amount equal to the additional expense incurred by the Town as a result of the Contractor's nonperformance shall be deducted from such balance as payment.

17. **Force Majeure:** No delay in, or failure of, performance by either the Town or the Contractor will constitute default or give rise to any claim for damages if and to the extent caused by the occurrence of an event beyond the control of the affected party, including but not limited to, acts of governmental authority, acts of God, strikes or other concerted acts of workmen, fire, flood, riots, war, rebellion, terrorism, or sabotage.

18. **Authorization to Conduct Business in Virginia:** Contractor, if organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership, shall be authorized to transact business in Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. If Contractor is a business entity as described in this paragraph, Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia (if applicable) to be revoked or cancelled at any time during the term of the contract. The Town may void this PO if Contractor fails to remain in compliance with the provisions of this paragraph.

### THE FOLLOWING PROVISIONS APPLY TO ALL PURCHASE ORDERS OVER \$10,000.00:

19. **Non-discrimination in Employment:** During the performance of this contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the Contractor has contracts of over \$10,000.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that such Contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.

The Contractor shall include the provisions of the subdivisions A and B in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

20. **Drug-free Workplace:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.