

PURCHASE ORDER (PO) TERMS AND CONDITIONS

1. **GENERAL PROVISIONS:** "City" means the City of Morro Bay. "Vendor" means the entity providing materials, supplies, equipment, or services ("supplies/services") hereunder. Time is of the essence in performance by Vendor of this PO. These terms and conditions constitute the entire agreement between parties hereto with respect to subject matter of this PO and supersede any prior or contemporaneous oral or written agreements pertaining thereto, with exception of if there is a written agreement between City and Vendor, executed consistent with City Municipal Code § 3.08.060 (as amended) by City Manager, City Mayor, or a City Department Head, then terms of that agreement supersede in event of any inconsistency with terms of this PO.
2. **ACCEPTANCE OF THIS PO:** Agreement by Vendor to furnish the supplies/services hereby ordered, or Vendor's commencement of such performance, or Vendor's acceptance of any payment, shall constitute acceptance by Vendor of this PO on the terms and conditions stated herein. Any terms or conditions proposed by Vendor inconsistent with or in addition to the terms and conditions contained herein shall be void and of no effect unless specifically agreed to by City in writing. In event this PO does not state price or delivery, City is not bound to any prices or delivery to which it has not specifically agreed to in writing.
3. **SELL OR ASSIGN:** Vendor shall not sell, assign, or transfer any PO obligations, duties, or rights without written consent of the City.
4. **BUSINESS CERTIFICATE, LAWS, LICENSES & PERMITS:** Vendor must have a current and valid City Business Tax Certificate and pay applicable Business Taxes. Vendor shall comply with all applicable federal, State and local laws, rules and regulations pertaining to supplies/services. Vendor shall obtain all necessary licenses/permits related to the supplies/services at Vendor's cost.
5. **INDEMNIFICATION:** Vendor agrees to indemnify, defend, and hold harmless City and its officers, employees and agents from and against any and all liability and expenses, including defense costs and legal fees, and claims for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury or property damage, arising out of: the negligent performance of this PO by, or the reckless or willful misconduct by, Vendor and its subcontractors, vendors, or suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the City. This obligation: shall survive expiration or termination of this PO or final payment thereunder; does not have a condition precedent of PO payment for enforcement; and, is in addition to any other rights or remedies which City may have. In the event of any dispute between Vendor and City, as to whether liability arises from the sole negligence or willful misconduct of the City, Vendor will be obligated to pay for City's defense until such time as a final judgment adjudicates City as responsible for defense costs.
6. **TAXES, CHARGES & F.O.B.:** This PO may be subject to California sales tax. City is exempt from federal excise tax. Shipping, handling, packing, transportation, and any other fees or charges are responsibility of Vendor and are not chargeable to City, unless specified otherwise herein. All orders are shipped F.O.B. Destination.
7. **WARRANTY:** Vendor fully warrants all supplies/services purchased by City under this PO shall be fit and sufficient for the purpose intended, merchantable, of good materials and workmanship, in good working order and free from defect or faulty workmanship, for a minimum of one year (or longer, as consistent with industry norm and/or as Vendor otherwise provides, whichever is longer) after the date of final acceptance by City, and all materials, supplies and equipment provided pursuant to this PO shall be of the newest make and model available, unless otherwise stated herein.
8. **LAWS GOVERNING CONTRACT:** This PO is governed by California law, was entered into in California, and the County of San Luis Obispo is the only appropriate forum for any litigation as a result of breach hereof or any questions risen herefrom.
9. **AUTHORIZED DISTRIBUTOR:** Vendor represents Vendor is an authorized distributor of the materials, supplies and equipment to which this PO may apply. City reserves the right to cancel this PO, at any time, if City determines Vendor is not an authorized distributor of the materials, supplies and/or equipment ordered.
10. **INSURANCE:** If Vendor performs work on City premises, then Vendor shall provide insurance certificates and endorsements to City Clerk, prior to performance of work, in form and content satisfactory to City, for both: (i) general liability insurance in amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including policy endorsements naming City and its officers, employees and agents as additional insureds under policy, as well as for (ii) any other coverage as required by City in its sole reasonable discretion.
11. **PAYMENT:** Payment will be made only upon receipt of all supplies/services and invoices, which are as specified and in accordance with terms of this PO, unless otherwise stated herein.
12. **REJECTION OF SUPPLIES/SERVICES:** All supplies/services provided by Vendor shall be as specified and are subject to inspection and approval by City. City reserves the right to reject any supplies/services which do not comply with PO specifications.
13. **DELIVERY ADDRESS & TITLE:** Vendor shall deliver to delivery address on this PO. Deliveries received at other locations may not be accepted at sole discretion of City. Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by Vendor or Vendor's agent to City shall pass to City only upon City's inspection and acceptance of such items at City's premises.
14. **DEFAULT BY VENDOR:** City reserves the right to cancel at any time any or all supplies/services, either: (i) for any reason, or (ii) if supplies/services not delivered/performed as agreed or within the time specified ("default"). In case of default by Vendor, City may procure the supplies/services from any source available, and Vendor shall owe City difference between the actual market price to City thereof and the price named in this PO.
15. **CHANGES IN PO:** This PO shall not be amended except by written agreement signed by parties hereto. No oral understandings are valid unless agreed to in writing between the parties hereto.
16. **INTERPRETATION:** Terms of this PO shall be construed in accordance with meaning of language used and shall not be construed for or against either City or Vendor by reason of PO authorship, headings used, or any other rule of construction.
17. **WAIVER, REMEDIES & SEVERABILITY:** The waiver of any PO breach shall not be deemed waiver of any other or subsequent breach. City's failure to object to provisions in any communication from Vendor shall not be deemed an acceptance of such provisions. Remedies herein are cumulative and additional to any other remedies at law or in equity. If any part of this PO is declared invalid or unenforceable the remaining PO portions are severable and valid.
18. **ATTORNEYS' FEES.** If either party to this PO is required to initiate or defend any legal action concerning this PO, the prevailing party in such legal action shall be entitled to reasonable attorneys' fees.
19. **INDEPENDENT CONTRACTOR:** Vendor and its employees, agents, subcontractors, vendors, and suppliers shall be considered independent contractors and not employees or agents of City.
20. **NON-LIABILITY OF CITY OFFICERS & EMPLOYEES:** No City officer or employee shall be personally liable to Vendor in event of any default or breach by City of this PO.
21. **CONFIDENTIALITY:** Vendor shall keep confidential and not disclose or use in any way confidential business or technical information that City may disclose in connection with this PO or Vendor may learn as a result of entering City property to deliver supplies/services or to perform work hereunder.