

FAIRFAX COUNTY PURCHASE ORDER TERMS AND CONDITIONS

INSTRUCTIONS TO CONTRACTORS

1. **DELIVERY DATE:** Delivery or performance must be made by date specified. If delivery cannot be made as specified, advise Contact on purchase order.
2. **PACKING LIST / DELIVERY TICKET:** A packing list or delivery ticket must be furnished with each shipment indicating the Purchase Order number, contractor name, item description, quantity ordered, and quantity shipped.
3. **INSPECTION:** Upon receipt, the County is entitled to inspect and test any equipment, materials, or supplies. If rejected, items will remain the property of the contractor.
4. **CHANGES IN PURCHASE ORDER:** Contractor shall deliver goods or perform services strictly in accordance with documents referred to and shall not deviate or substitute in any way from terms, conditions, or specifications of this purchase without the prior approval of the County. No changes or substitutions may be made in any of the provisions of this order without a valid Purchase Order Change.
5. **PRICES / PROMPT PAYMENT:** All prices are F.O.B. Destination with transportation charges prepaid, unless otherwise stated in the order. In the absence of other contractual terms, payment shall be due NET 30 days after receipt of a proper invoice, or acceptance of materials or services, whichever is later. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a proper invoice, or acceptance of materials or services, whichever is later.
6. **TAXES:** Sales to the County are normally exempt from State taxes. Invoices resulting from this purchase will be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-6001796. State sales and use tax certificate of exemption form ST-12 may be specifically issued upon request by calling 703-324-3206.
7. **INVOICES / PAYMENTS:**
 - A. Purchase Order number (PO number) shall be shown on all invoices, packages and/or correspondence.
 - B. Each Purchase Order must be invoiced separately. Do not use a single invoice for multiple Purchase Orders.
 - C. Questions:
 - I. For Public Schools: Department of Financial Services, 571-423-3636.
 - II. For County Government: Department of Finance, 703-324-2530.

TERMS AND CONDITIONS

1. **GENERAL:** These terms and conditions supersede any terms and conditions offered by contractor unless the parties agree otherwise in a separate written agreement executed by authorized representatives of both parties.

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2. **APPLICABLE LAWS:** This order is subject to the laws of the Commonwealth of Virginia and the *Fairfax County Purchasing Resolution*.
3. **ADDITIONAL AGREEMENTS:** Contractors shall not enter into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with County employees or other County end users; such agreements will be null and void, and without effect.
4. **PURCHASE ORDER REQUIRED:** All orders require a duly signed and authorized official Purchase Order issued by the County. The County will accept no responsibility for any goods or services without a valid purchase order. The County is not bound by any provision in a contract or ordering document that may or will cause the County, its agencies or employees to make or otherwise authorize an obligation in excess of the amount appropriated by the Fairfax County Board of Supervisors for such purpose.
5. **ETHICS IN PUBLIC CONTRACTING:** The Ethics in Public Contracting provisions of §§ 2.2-4367 through 2.2-4377 of the Code of Virginia, as amended, are applicable to all contracts entered into by the County.
6. **CONTRACTUAL DISPUTES:** Any dispute concerning a question of fact as a result of this contract which is not disposed of by agreement shall be decided by the County Purchasing Agent, in accordance with Article 5, Section 5 of the Fairfax County Purchasing Resolution.
7. **INDEMNIFICATION:**
 - A. **General Indemnification.** Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
 - B. **Intellectual Property Indemnification.** In addition to the General Indemnification, Contractor will indemnify the County for and defend the County

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against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Section 7, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in this Section 7, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

C. **Right to Participate in Defense.** The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before raising such defense or entering into such resolution.

D. **No Indemnification by the County: The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in Contractor's invoice or quote, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.**

8. **INSURANCE:** In the absence of other contractual terms, for work performed on Fairfax County owned or leased facilities or property, the Contractor shall maintain at a minimum, the following insurance coverages: Workers Compensation - statutory requirements and benefits; Employer's Liability - \$1,000,000; Commercial General Liability - \$1,000,000 per occurrence/\$2,000,000 aggregate; Automobile Liability - \$1,000,000 per occurrence/aggregate. Cyber Liability (*applies to businesses who access, store, disseminate, or use County data in the performance of services to the County*) – Contractor must maintain a minimum limit of liability of \$1,000,000 per occurrence.

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In no event should the contractor construe these or any minimum required limits to be its limit of liability to the County. The firm agrees to provide the County with a valid Certificate of Insurance upon the County's request and agrees to obtain additional insurance (with proof to the County) if the Certificate of Insurance fails to demonstrate compliance with the contractor's insurance obligations to the County.

9. **NON-DISCRIMINATION:** Fairfax County does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1., or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

10. **NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE:** The County is required to comply with state and federal disability legislation: 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. Specifically, Fairfax County, may not, through its Contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

11. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor certifies that it does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

12. **NONVISUAL ACCESS:** All information technology, which is purchased or upgraded by the County, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
 - A. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - B. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - C. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - D. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually

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impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards set out this Section is not required if the Purchasing Agent determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

13. **PROHIBITION ON THE USE OF CERTAIN PRODUCTS, SERVICES, APPLICATIONS, AND WEBSITES:** Fairfax County may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the Commonwealth of Virginia and/or the U.S. Federal Government, including the Department of Homeland Security for use on federal systems.
14. **VENUE:** Venue for any claim under a contract or arising out of an order is exclusively in the state courts of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.
15. **CHOICE OF LAW:** Any contract or ordering document will be governed for all purposes by and construed in accordance with the laws of the Commonwealth of Virginia.
16. **SOVEREIGN IMMUNITY:** The County does not waive its sovereign immunity or any other applicable requirement under Virginia law for bringing claims against the County.
17. **ELECTRONIC SIGNATURES:** Contractors agree that contracts and other associated documents may be executed using electronic signatures and delivered by electronic means. When electronic signatures are used, Contractors agree that the signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
18. **FEDERALLY FUNDED PURCHASES:** The standards set forth in the Code of Federal Regulations, 2 CFR §§ 200.318 - 326, including Appendix II to Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards), as amended, will apply to purchases made using federal funds. Said standards are incorporated herein as if stated in their entirety. In addition, the required federal terms and conditions set forth in the document titled "Federally Funded Purchase Order - Additional Terms and Conditions" are incorporated as terms of the Purchase Order. In the event of a conflict between the County's Terms and Conditions and the Federal Terms and Conditions, the Federal Terms and Conditions shall prevail.

****MANDATORY PROVISIONS FOR CONTRACTS AND PURCHASE ORDERS
OVER \$10,000****

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1. **NON-DISCRIMINATION:** During the performance of this contract, the contractor agrees as:
 - A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there 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.
 - B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
 - C. 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 will include the provisions of paragraphs A, B, and C above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

****MANDATORY PROVISIONS FOR CONTRACTS AND PURCHASE ORDERS
OVER \$200,000****

1. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH:** A contractor 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 the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
2. **DRUG FREE WORKPLACE:** During the performance of a contract, the contractor agrees to provide a drug-free workplace for the contractor's employees in accordance with Article 3, Section 3, C. of the Fairfax County Purchasing Resolution.
3. **AUDIT BY THE COUNTY:** The County or its agent has reasonable access to and the right to examine any records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form, electronic form, or any other form. The Purchasing Agent may accept modifications to this requirement, in their discretion.