

**CITY OF BETHLEHEM
TERMS AND CONDITIONS
FOR THE PURCHASE OF GOODS AND SERVICES**

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE PURCHASE ORDER BETWEEN CITY OF BETHLEHEM AND SELLER IDENTIFIED THEREIN:

1. Applicability.

(a) These terms and conditions of purchase (these "Terms") and the terms set forth in the Purchase Order, if any, are the only terms which govern the purchase of the goods ("Goods") and services ("Services") by City of Bethlehem ("City") from the seller named on the Purchase Order ("Seller"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The purchase order (the "Purchase Order") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. These Terms expressly limit Seller's acceptance to these Terms. Fulfillment of or other performance under this Purchase Order constitutes acceptance of these Terms.

2. Delivery of Goods and Performance of Services.

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If no delivery date is specified, Seller shall deliver the Goods within thirty (30) days of Seller's receipt of the Purchase Order. If Seller fails to deliver the Goods in full on the Delivery Date, City may terminate these Terms immediately by providing written notice to Seller and Seller shall indemnify City against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the address specified in the Purchase Order (the "Delivery Point") during City's normal business hours or as otherwise instructed by City. Seller shall pack all goods for shipment according to City's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide City prior written notice if it requires City to return any packaging material. Any return of such packaging material shall be made at Seller's risk of loss and expense.

(c) Seller shall provide the Services to City as described and in accordance with the dates or schedule set forth on the purchase order and in accordance with the

terms and conditions set forth in these Terms.

(d) Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services.

3. Quantity. If Seller delivers more the quantity of Goods ordered, City may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If City does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. The Purchase Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Purchase Order.

5. Title and Risk of Loss. Title and risk of loss passes to City upon delivery of the Goods at the Delivery Point.

6. Inspection and Rejection of Nonconforming Goods. City has the right to inspect the Goods on or after the Delivery Date. City, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If City rejects any portion of the Goods, City has the right, effective upon written notice to Seller, to: (a) rescind the Purchase Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If City requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, City may replace them with goods from a third party and charge Seller the cost thereof and terminate the Purchase Order pursuant to these Terms. Any inspection or other action by City under this Section shall not reduce or otherwise affect Seller's obligations under these Terms, and City shall have the right to conduct further inspections after Seller has carried out its remedial actions.

7. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "Price"). No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of City.

8. Payment Terms. Seller shall issue an invoice to City on or any time after the completion of delivery and only in accordance with these Terms. Invoices must be presented to the Accounts Payable Department at ap@bethlehem-pa.gov. City shall pay all properly invoiced amounts due to Seller within thirty (30) days after City's receipt of such invoice, except for any amounts disputed by City in good faith. In the event of a payment dispute, City shall deliver a written statement to Seller no later than thirty (30) days prior to the date payment is due on the

disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section . The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under these Terms notwithstanding any such dispute.

9. Termination. In addition to any remedies that may be provided under these Terms, City may terminate these Terms by written notice to Seller at any time, without cause. If City terminates these Terms for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by City prior to the termination.

10. Seller's Obligations Regarding Services. Seller shall: (a) before the date on which the Services are to start, obtain, and at all times during the term of the Purchase Order, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services; (b) comply with all rules, regulations and policies of City, including security procedures concerning systems and data and remote access thereto, building security procedures, and general health and safety practices and procedures; (c) maintain complete and accurate records relating to the provision of the Services under these Terms, including records of the time spent and materials used by Seller in providing the Services in such form as City shall approve; (d) ensure that all persons, whether employees, agents, or anyone acting for or on behalf of Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services; and (e) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by City.

11. Change Orders. City may at any time, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Services. Seller shall within ten (10) days of receipt of a Change Order submit to City a firm cost proposal for the Change Order. If City accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of the Purchase Order, including these Terms. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in Seller's compensation or the performance deadlines under the Purchase Order.

12. Warranties.

(a) Seller warrants to City that for a period of one (1) year from the Delivery Date, all Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security

interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by City.

(b) Seller warrants to City that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under these Terms.

(c) The warranties set forth in this Section are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of City's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If City gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to City, and, if applicable, (ii) repair or re-perform the applicable Services.

13. General Indemnification. Seller shall defend, indemnify and hold harmless City, its respective employees, officers, council members, and agents (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms, including but not limited to any defect in the Goods, any error or omission in furnishing the Services, and delay in delivering the Goods or furnishing the Services. This Section shall not apply to Losses due to the sole fault or negligence of City.

14. Liquidated Damages. In addition to any amounts due to City under Section 13, if Seller fails to deliver the Goods or Products by the Delivery Date (the "Seller Breach"), Seller shall pay to City an amount equal to One Hundred Dollars (\$100.00) for each day a Seller Breach continues (the "Liquidated Damages"). The parties intend that the Liquidated Damages constitute compensation, and not a penalty. The parties acknowledge and agree that City's harm caused by a Seller Breach would be impossible or very difficult to accurately estimate at the time of contract, and that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from a Seller Breach. City may deduct and retain the amount of Liquidated Damages out of the monies which may be due or become due to Seller under these Terms.

15. LIMITATION OF LIABILITY. IN NO EVENT WILL CITY OR INDEMNITEES (DEFINED ABOVE) BE LIABLE FOR, AND SELLER WAIVES ITS RIGHT TO, ANY LOSS OF REVENUE, PROFITS, OR DATA, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) WHICH ARISES OUT OF CITY'S PERFORMANCE OR NON-PERFORMANCE UNDER, OR TERMINATION OF, THESE TERMS.

16. Preservation of Defenses. In executing these Terms, Seller agrees and understands that, except as expressly set forth in these Terms, City does not waive and expressly reserves all defenses, rights or immunities at law or in equity arising under applicable governmental immunity laws and statutes, also including the Pennsylvania Political Subdivisions Tort Claims Act.

17. Insurance. During the term of these Terms, unless otherwise stated in the Purchase Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than One Million Dollars (\$1,000,000.00) with financially sound and reputable insurers. Upon City's request, Seller shall provide City with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms.

18. Bond Requirements. To the extent applicable to the Services, Seller shall, at its own expense, furnish and deliver to City the bonds identified in the Purchase Order.

19. Taxes. Seller shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Seller hereunder. City does not represent or warrant tax liability or exemptions applicable by City or to Seller, its work or compensation under these Terms. Seller is independently responsible for ascertaining its tax liabilities.

20. Offsetting Accounts. Seller acknowledges and agrees that City may deduct, retain and offset against any and all amounts payable to Seller under these Terms, any and all amounts owed by Seller to City on account of any and all contracts, obligations, accounts, liens, real estate or income taxes, water and sewer utility account arrearages, judgments and/or any other thing or matter, whether the same is or are related or unrelated to these Terms, or pre-date or post-date these Terms, regardless of amount.

21. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms.

22. Buy American. Seller shall comply all applicable laws, regulations, and ordinances relating to the situs of

products used in the performance of the Services or delivery of the Goods, including, as applicable, the City of Bethlehem Buy American Ordinance, *Article 122.01 et seq.*, Pennsylvania Steel Products Procurement Act, *73 P.S. Section 1881, et seq.*, and the requirements of the Build America, Buy America (BABA) Act, *41 USC 8301 note*, and all applicable rules and notices, each as may be amended, modified or replaced from time to time.

23. Safety. All equipment and work methods utilized by Seller in furnishing any goods and/or services under this Contract shall comply with OSHA and any other applicable federal, state and local safety statutes, rules, regulations and/or ordinances, and shall be the sole responsibility of Seller.

24. Subject to Appropriations. In the event no funds or insufficient funds are appropriated and budgeted or are otherwise not available in any fiscal year for payments under the Purchase Order, City shall notify Seller of such occurrence and these Terms shall terminate on the last day of the fiscal year for which appropriations were received without penalty or expense to City.

25. Waiver. No waiver by City of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by City. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

26. No Presumption Against Drafting Party. Each of the parties to these Terms acknowledges that it has been represented by, or has had the opportunity to retain the advice of, independent counsel in connection with these Terms and the transactions contemplated by these Terms, and therefore, waive the application of any rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document. In furtherance thereof, Seller does further waive any claim or contention that these Terms should be construed against City on the basis that these Terms was prepared by the City.

27. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, pandemics, epidemics, or explosion; (c) government order, law, or action; (d) national or regional emergency; and (e) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue.

The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice given by it under this Section, the other party may thereafter terminate these Terms upon thirty (30) days' written notice.

28. Truth-In-Negotiation Certificate. To the extent applicable, performance under the Purchase Order by Seller shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in these Terms are accurate, complete and current as of the date of the Agreement. The said rates and costs shall be adjusted to exclude any significant sums should City determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rates or due to inaccurate representations of fees paid to outside Sellers. City shall exercise its rights under this Section (or certification) within one (1) year following payment.

29. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under these Terms without the prior written consent of City. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. these Terms.

30. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

31. No Third-Party Beneficiaries. These Terms is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

32. Governing Law; Venue. All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. The exclusive venue for resolution of all disputes, claims and actions, whether the same involves litigation, arbitration or otherwise, shall be in Northampton

County, Commonwealth of Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such venue in any such suit, action or proceeding.

33. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the purchase order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

34. Severability. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction.

35. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of these Terms including, but not limited to, the following provisions: Indemnification, Insurance, Compliance with Laws, Governing Law, Venue, and Survival.

36. Records Availability, Inspection and the "Right to Know Law." The Pennsylvania Right-to-Know Law, 65 P.S. § 67.101 et seq ("RTKL"), applies to these Terms and potentially some or all of the records generated pursuant to these Terms. Seller acknowledges and agrees to the applicability of the RTKL to the Goods and/or Services and its obligations to cooperate by providing documents in response to requests for public records as defined under the RTKL. This provision requiring Seller's cooperation shall not be interpreted to waive any provision or interpretation under the RTKL that a record is not a public record or is subject to confidentiality, privacy or proprietary protections applicable under the RTKL or another law.

37. Amendment and Modification. These Terms may only be amended or modified by the City, in its sole discretion, from time to time upon publication to the City website.

Last Updated: January 1, 2024