



COUNTY OF FREDERICK, VIRGINIA

Finance Department
(540) 665-5610

PURCHASE ORDER INSTRUCTIONS, PAYMENTS, TERMS & CONDITIONS

1. The general terms and conditions which follow apply to all purchases and become a definite part of each award issued by the County of Frederick, Virginia, unless otherwise specified. Vendors, Contractors and/or Service Providers (collectively referred to as "Vendor") are expected to inform themselves fully as to the conditions, requirements, and specifications before accepting POs; failure to do so will be at the Vendor's own risk and relief cannot be secured on the plea of error.
2. Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, all POs issued by the County of Frederick, Virginia ("County") will bind Vendors to applicable conditions and requirements herein set forth unless otherwise specified.
3. The Purchase Order ("PO") number on issued POs must be shown on all invoices, delivery memoranda, bills of lading, packages and/or correspondence; otherwise clearance for payment may be delayed.
4. Unless otherwise specified on the contract or PO, invoices are to be submitted directly to the "BILL TO" address specified on the PO. Invoices must be complete in detail and issued for each PO immediately upon completion of the shipment or services. Unless otherwise authorized, all delivery related costs are included in the purchase price. If the freight terms on the PO allow for freight to be pre-paid and added to the invoice, the original bill of lading must be attached. Order must be complete before rendering invoice. Payment will not be made until all items or services ordered are received, unless progress payments are authorized. If shipment is made by freight or express, the original, properly receipted bill of lading must accompany invoice.
5. Any additional or different terms or conditions stated in any PO or other document issued by Vendor in connection with this PO are expressly rejected by the County and will have no effect and will not, under any circumstances, be binding on the County unless otherwise agreed to by the County by separate written document.

PAYMENTS

1. Payment shall be made after satisfactory performance of the contract, in accordance with all the provisions thereof, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Vendor's failure to perform in accordance with the provisions of the contract or any modifications thereto.
2. Vendor shall indicate the payment methods that they will accept. Frederick County offers two payment methods, purchasing card (VISA credit card) or ACH (electronic deposit). The Vendor's flexibility regarding payment methods considered will be part of the Vendor selection process. Acceptance of payment by purchasing card usually means that the Vendor will need to have credit card processing capability, however, the County encourages Vendors to check with their financial institutions to ascertain precisely what is necessary to comply with the purchasing card requirement. Frederick County will not pay additional fees in excess of the offered price to Vendor for purchasing card acceptance to include, but not limited to, convenience fees and/or surcharges.
3. Frederick County will make all payments by purchasing card when Vendor has indicated, either directly or indirectly, that credit card is an acceptable method of payment for goods and/or services.
4. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent (1%) per month.
5. Exemption from Taxes: The County is exempt from provisions of Virginia Sales and Use Taxes and Federal Excise Taxes. Frederick County's Federal Excise Tax Exemption Number is 54-6001290.
6. Payment to Subcontractors: Vendor agrees to make payments to subcontractors in accordance with the Code of Virginia, § 2.2-4354, which stipulates within seven days after receipt of amounts paid to the Contractor by the County for work performed by a subcontractor under the contract, the Contractor shall: (i) pay its subcontractor(s) for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor(s) under the contract; or (ii) notify the County and the subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment. The Contractor shall pay interest to any subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt

by the Contractor of payment from the County for work performed by the subcontractor under that contract, except for amounts withheld as allowed in the previous sentence. The Contractor shall include the provisions of this paragraph in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

7. Partial Payments: Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
8. Payment For Equipment, Installation, And Testing: When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Vendor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

TERMS AND CONDITIONS

1. Terms and Conditions Accepted: These terms and conditions (including promised delivery or performance completion) are deemed accepted by Vendor unless the Finance Department is notified otherwise within TEN (10) DAYS of receipt by Vendor. Failure to contest these terms shall be deemed acceptance by the Vendor.
2. Vendor Authorized to Transact Business: By virtue of entering into this Purchase Order, and pursuant to Code of Virginia § 2.2-4311.2, any Vendor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a limited liability partnership represents and warrants that it is authorized to transact business in the Commonwealth 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. The proper legal name of the Vendor must be included in all invoices. Vendor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The County may declare any contract with a Vendor not in compliance with this provision to be void regardless of performance provided.
3. Vendor Licensing, Registration, and Certification: Vendor certifies that it has in effect all licenses, certifications and classifications necessary to perform the work included in this PO in accordance with Title 54.1 of the Code of Virginia and in accordance with the laws, rules, and regulations of the Commonwealth of Virginia, Department for Professional and Occupational Regulation, or such other regulatory authority as may be applicable. If this certification is not correct, this PO is invalid, and the County shall be responsible for no payment regardless of the degree of performance by Vendor.
4. Vendor Terms and Conditions: Vendor terms and conditions included or referenced in any Vendor documentation or Vendor website will not be considered to be part of this PO and will have no effect unless expressly agreed to by the County by separate document.
5. Assignment: Vendor may not assign or transfer this PO in whole or in part except with the prior written consent of the County, which may be withheld in the County's sole and exclusive discretion.
6. Successors and Assigns: The terms, conditions, provisions, and undertakings of this PO shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
7. Free on Board (FOB), Risk of Loss, and Title: All prices are to be quoted FOB Destination. The risk of loss from any casualty, regardless of the cause, shall be on the Vendor until the items have been delivered to the place specified in the PO and accepted by the County.
8. Insurance: Vendor, and any of its subcontractors, shall, at its sole expense, obtain and maintain during its performance the insurance policies and/or bonds, if any, that may be required by this PO and the laws of the United States and the Commonwealth of Virginia.
9. Changes by Vendor: No changes, deletions, substitutions, or additions may be made by the Vendor to this PO, including these terms and conditions, without the express written approval of the County by separate document. If approved, a Change Order will be issued.
10. Inspection: The County shall have a reasonable time after receipt of items and before payment to inspect and/or test all items for conformity to this PO. Items must be strictly in accordance with the PO and shall not deviate in any way

from the terms, conditions, or specifications of the contract. Partial orders will be accepted, and payment processed at the discretion of the County. If rejected, such items shall remain the property of Vendor, which shall be responsible for all costs to return rejected items. Rejected items not reclaimed by the Vendor within 90 days of notification by the County shall be considered abandoned and may be disposed of in compliance with established County policies, regulations, or guidelines for such property.

11. Guarantees and Warranties: All guarantees and warranties required shall be furnished by the Vendor and shall be delivered to the County before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.
12. Covenant Against Contingent Fees: The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
13. Termination: If Vendor refuses or fails to perform any terms of this PO, including poor services, work, or materials, the County may, with written notice to the Vendor, terminate this PO in whole or in part. In addition to any right to terminate, the County may enforce any remedy available by law or in equity in connection with such default, and Vendor shall be liable for all damages to the County resulting from Vendor's default. The County further reserves the right to obtain immediately such items from other Vendors in the event of Vendor's default. The County may also terminate this PO for convenience by giving written notice to Vendor at least 15-days prior to the effective date of cancellation. Any such termination shall be without liability of any type to the County except for payment of completed items delivered or services rendered to and accepted by the County. The County may exercise its right of setoff as to any amounts the County may owe the Vendor. The County may require Vendor to transfer title and deliver to the County any or all items produced or procured by Vendor for performance of the work terminated.
14. Appropriation of Funds: All funds for payments by the County under this PO are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds for the items provided under this PO, this PO will terminate automatically without termination charge or other liability to the County on the last day of the then current fiscal year or when the appropriation made for the then current year for the item covered by this PO is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this PO, cancellation will be accepted by the Vendor, and the County shall not be obligated under this PO beyond the date of termination other than to make payment for delivery or performance prior to notice of termination.
15. County Officials and Employees: No County official or employee shall be admitted to any share or part of this PO or to any benefit that may arise from this PO which is not made available to the general public. All agreements entered into by the County shall be in accordance with "Ethics in Public Contracting" provisions of the Code of Virginia, §§ 2.2-4367 through 2.2-4377, as amended.
16. Non-Discrimination: The County does not discriminate against any bidder or offeror on the basis of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law relating to discrimination in employment in the performance of its procurement activity. For every contract in excess of \$10,000, Vendor shall comply with the nondiscrimination provisions of Code of Virginia § 2.2- 4311, as amended.
17. Faith-Based Organizations: In accordance with the Code of Virginia § 2.2-4343.1, the County does not discriminate against faith-based organizations.
18. Immigration Reform and Control Act: In accepting this PO, the Vendor certifies that it does not and will not during the performance of this Agreement knowingly violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
19. Drug-Free Workplace: Vendor shall comply with the drug-free workplace provisions and shall include the provisions of the Code of Virginia § 2.2-4312, as amended from time to time, in all POs and contracts over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
20. Indemnification: Vendor agrees to indemnify and hold harmless the County and its officers, agents, elected and appointed officials, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, fines, penalties, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of Vendor's or its employees', agents', or subcontractors' actions, activities, or omissions, arising out of or resulting from any work or items to be provided under this PO. The Vendor agrees that it shall, at its sole expense, appear, defend, and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County or its agencies in any such action, the Vendor

shall, at its own expense, satisfy and discharge the same. This indemnification shall survive the completion, expiration, or earlier termination of this PO.

21. Vendor Liable for Property Damage: Vendor shall be responsible for damage to property caused by performance of this PO. Vendor shall repair to proper working order or replace to the satisfaction of the County any property damaged either directly or indirectly by Vendor's actions.
22. Non-Liability: Neither party shall be held responsible for failure to perform the duties and responsibilities imposed upon it by this PO if such failure to perform is due to fires, riots, rebellions, natural disasters, wars, or any act of God beyond the control of the parties, which makes performance impossible or illegal, unless otherwise specified in this PO.
23. Contractual Disputes: Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the vendor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County, which shall render a decision in writing and mail or otherwise forward a copy thereof to the vendor within ninety (90) days of the dispute being submitted. The decision of the County shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A vendor may not institute legal action, prior to receipt of the County's decision on the claim, unless the County fails to render such decision within the time specified.
24. Legal Action: No vendor or potential vendor shall institute any legal action until all statutory requirements have been met.
25. Governing Law and Forum Selection: By virtue of entering into this PO, Vendor submits itself to a court of competent jurisdiction serving Frederick County, Virginia, and further agrees that this PO is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such court according to the laws of the Commonwealth of Virginia.
26. Virginia Freedom of Information Act: Public inspection of all records is strictly governed by Code of Virginia 2.2-4342 and in accordance with the Virginia Freedom of Information Act (VA Code 2.2-3700 et seq). Any inspection of procurement transactions shall be subject to reasonable restrictions to ensure the security and integrity of the records. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.