CITY OF STOCKTON TERMS OF PURCHASE (PURCHASE ORDER)

1) DEFINITIONS
The term “Order” means the Purchase Order to which these Standard Terms and Conditions are attached or associated. “City” means City of Stockton, California, a municipal corporation. “Supplier” or “Vendor” means the person or business entity that is identified on the face of this Order to provide the Product hereunder. “Notice” means a specifically and appropriately addressed communication that is written and delivered by confirmed e-mail, facsimile, registered U.S. mail, or other verifiable method. “Product” means all items, materials, equipment, software, labor or other services that are the subject of the Order.

2) PRECEDENCE OF TERMS
If a written contract or agreement (the “Agreement”) has been executed by City and Supplier with reference to the Product ordered hereunder, this Order shall be governed by the terms of such Agreement. If no Agreement exists, however, Supplier’s acknowledgement of, or performance against, this Order shall constitute acceptance of all the terms and conditions stated herein. These terms and conditions will be the complete and exclusive statement of the parties relative to this Order.

3) NON-BINDING COUNTEROFFER
In the event of Supplier does not accept the terms of this Order, and submits a counteroffer to City in writing, Supplier acknowledges and agrees that a binding contract does not exist between the parties on the counter-offered terms proffered by Supplier unless and until City accepts such counteroffer in writing. Any performance by Supplier prior to receipt of City’s written acceptance of the terms of a counteroffer shall be under the terms of this Order.

4) RIGHT OF INSPECTION
All Product furnished by Supplier must be as specified in the Order and will be subject to inspection and approval of City after delivery. City reserves the right to reject and return, at the risk and expense of Supplier, the portion of any Product which may be defective or fail to comply with specifications in the Order without invalidating the remainder of the Order. If rejected, Product will be held for disposition at the expense and risk of Supplier. Payment for Product on this Order prior to inspection shall not constitute acceptance of the Product.

5) TERMINATION
City may terminate this Order at any time with or without cause by providing Notice to Supplier of intent to terminate. Upon receipt of notice of termination, Supplier, unless otherwise directed by City, will terminate promptly all production of non-standard Product to be created under the Order, and shall transfer title and deliver to City all finished non-standard Product. Upon termination under this section, City’s obligation to Supplier will be the Order price for all Product completed at the time City notifies Supplier of its intent to terminate the Order, unless City agrees otherwise in writing, and provided that the Product conforms to the requirements of the Order. Supplier grants City the right to audit Supplier’s records, before or subsequent to payment, to verify amounts requested in any invoice for non-standard Product. City will have no obligation to Supplier under this section if the termination results from a breach or default by Supplier.

6) WARRANTY
Supplier warrants that (i) any Product created or performed by Supplier for City under this Order will conform to specifications, drawings or samples furnished by City to Supplier for a minimum period of one year, and (ii) any standard Product sold by Supplier to other customers besides City will meet or exceed any the standards for such types of product in industry, any express or implied warranty stated or advertised by Supplier or the actual manufacturer of such Product, or any warranties implied by law. Supplier’s warranty shall survive delivery of Product and shall not be deemed waived by City’s failure to discover defects, acceptance of the Product, or payment therefore.
7) OWNERSHIP
Supplier shall have title to and bear the risk of any loss or damage to the Product until the Product is
delivered and accepted by City in conformity with this Order. Upon delivery and acceptance, Product
delivered by Supplier shall become the exclusive property of City. The ownership rights described herein
shall include, but not be limited to, the right to copy, publish, display, transfer, or otherwise use the
Product. All artwork, patterns, dies, models, samples, materials, drawings, specifications, technical
material, advertising material and any other personal property furnished by City to Supplier, or specifically
paid for by City for use in performance of an Order, shall be and remain the property of City and said
property shall be used only for Product benefiting City. Supplier shall return to City or shall dispose of this
property only according to City’s instruction.

8) PROPRIETARY INFORMATION
All documents, materials, information and data provided by City to Supplier pursuant to this Order
("Proprietary Information") shall be considered proprietary and remain the property of the City. Supplier is
licensed to use Proprietary Information only for the purpose of fulfilling its obligations under this Order and
may not release this information to any party without the prior written consent of the City. Supplier shall
not use City’s name, symbol, trademark or service mark without prior written consent of City.

9) INFRINGEMENT INDEMNITY
Supplier shall defend, indemnify and hold harmless City with respect to any suit, claim or proceeding
brought against, or affecting, City alleging that City’s use of any Product covered under this Order
constitutes an infringement of any patent, trademark, trade name, trade secret, copyright or other
proprietary right. Supplier will investigate or otherwise handle every claim, and at City’s request, assist
City in City’s investigation, defense or handling any such claim. The amount of Insurance required shall
not limit the Suppliers liability. Supplier will pay all expenses including reasonable attorney fees, expert
fees and damages or settlement amounts awarded therein. City shall promptly provide notice to Supplier
of any suit, claim or proceeding and shall cooperate with Supplier in the defense or settlement of such
claim. In the event an injunction is obtained against City’s use of any Product as a result of any such
claim, Supplier shall, at its option and expense, either: (i) procure for City the right to continue using the
Product which is the subject of the claim; or (ii) replace or modify the Product so that it substantially meets
or exceeds the original Product specifications, but is no longer subject to the claimed infringement.

10) CHANGES
City shall have the right to make changes in the scope or schedule of the Product to be performed
pursuant to the Order by delivering to the Supplier an amendment to the Order indicating the changes. If
City does not receive Supplier's written objection within seven days of Supplier's receipt of the
amendment, the amendment will become effective on the earlier of the date indicated in the amendment
or the eighth day following Supplier’s receipt. If the amendment affects the cost or time required for the
performance on this Order, an equitable adjustment in price or delivery, or both, shall be incorporated into
the amendment, as agreed by the parties.

11) ASSIGNMENT
Supplier shall not delegate any duties nor assign any rights or interests under this Order without prior
written consent of City. Any such permitted assignment shall not prohibit City from enforcing any of its
rights against the assignee.

12) APPLICABLE LAWS
Supplier’s performance under this Order shall be governed by the laws of the State of California, with
exclusive jurisdiction in San Joaquin County, without regard to its conflicts of law provisions. Supplier
warrants and certifies that Product covered by this Order will be produced in compliance with, and will
comply with, all applicable State, Federal and Local laws, ordinances, rules, standards and regulations.
Under guidelines specified in 29 CFR 1910.1200 (f) and (g) City requests that Supplier label applicable
Product accordingly and provide associated Material Safety Data Sheets (“MSDS”) to City.

13) BUSINESS LICENSE
If services are performed by Supplier within the City’s geographical boundaries as part of Product,
Supplier shall acquire and maintain a City of Stockton business license during the period the Product
covered by the Order is being completed, and shall remit to the City all business license taxes owed for
business conducted in the City. For more information, please contact the City’s Business License Division at (209) 937-8313.

14) ENTIRE AGREEMENT
This Order contains the entire agreement between the City and Supplier for the matters set forth herein and may only be amended by written notice from an authorized representative of the City’s Procurement Services Division. If any provision of the Order is held to be unenforceable, the parties agree that all other provisions of the Order shall remain in full force and effect. The failure of the City to enforce, at any time or for any period of time, any provision of this Order shall not constitute a waiver of such provision or of the right to enforce such provision.

15) INDEMNIFICATION
Supplier shall defend indemnify and hold harmless City from any liability, damage cost or expense, including reasonable attorney fees and expert fees, resulting from any claim by City, its officers or employees, or any third party alleging personal injury or property damage attributable to the intentional or negligent act or omission of Supplier, its employees or subcontractors, while engaged in the provision of Product under this Order.

16) INSURANCE
If requested by a representative of City’s Procurement Services or Risk Management Services divisions, Supplier shall provide proof of insurance coverage, including but not limited to certificates of insurance and endorsements naming “City of Stockton” as an additional insured from insurance providers authorized to transact business in the Supplier’s location and during the period the Product covered by the Order is being completed.

17) AVAILABILITY OF FUNDING
The City may terminate this Order effective on the final day of any given City fiscal year upon the City’s determination to not appropriate sufficient funds in its budgetary process for the ensuing fiscal year. In such event, City shall give Supplier not less than 30 days advance written notice.

18) TERMS OF PAYMENT
City payment terms are set forth on the face of the Order.

19) BILLING INFORMATION
The Order Number must be reflected on each of Supplier’s invoices. Unless you have been set up by City for summary billings each month, each Order shall be invoiced by Supplier separately.

20) TAXES
Federal Excise and other taxes on which exemption is allowed by government agencies, must not be included or added to the price of any item on this order unless otherwise authorized on the face of this Order. Necessary exemption certificates will be supplied upon request if more than what is contained on the face of the purchase order is needed. Any taxes later found to have been included and paid by City shall be refunded by Supplier in the amount of the tax so paid.

21) SHIPPING TERMS
City shipment terms are F.O.B. Destination, Freight Prepaid and Added unless otherwise specified in the Order. Supplier shall observe shipping instructions and, unless otherwise stated in the instructions, shall ship Product in the safest and most economical manner necessary to meet the delivery date specified in the Order. Supplier shall provide an itemized packing list showing the Order number with the shipment. Supplier shall include the Order number on all packages, boxes, invoices and shipping documents. Supplier shall label all individual boxes with stock number and quantity and items with different stock numbers shall be boxed separately. City reserves the right to refuse, at Supplier’s expense, any shipments not containing the Order number or stock numbers as required under this section.

22) DELIVERIES
TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ANY ORDER. If Product is not provided or performed within the times specified in an Order, City may cancel this Order and hold Supplier liable for
damages incurred due to the untimely delivery including, but not limited to, the additional costs resultant from City procuring substitute product elsewhere.

23) PRICE AND QUANTITIES
Prices and quantities set forth in this Order may not be altered by Supplier without the prior written authorization of City, with the exception that quantities of custom paper or printed products, chemicals, or fuel may deviate from those on the Order by the lesser of (i) standard industry practices, or (ii) 3%.

24) FORCE MAJEURE
Neither party shall be liable to the other for default or delay in delivering or accepting Product covered by this Order if such default or delay shall have been caused directly or indirectly by accident, fire, flood, riot, war, Act of God, embargo, acts of terrorism, government order or regulation, military action or inaction, or complete or partial shutdown of plant by any of the foregoing causes or by like or dissimilar cause beyond the reasonable control of the affected party.

IMPORTANT INSTRUCTIONS

1) Purchase Order Number must be shown on all invoices, shipping notices, packages and correspondence.
2) Do not substitute alternative products or services for Product subject to this Order without consent from the City’s assigned procurement representative.
3) Sales tax shall be shown on invoice as a separate item and shall not be included in the Product Price.
4) The City is exempt from Excise Tax. An exemption certificate shall be provided by City upon request.
5) If required, Supplier must provide a Material Safety Data Sheets (MSDS) along with materials provided as part of Product.
6) Supplier must provide an itemized delivery tag or packing slip with each shipment of Product.
7) Unless instructed otherwise by City, Supplier must provide a separate invoice with each Order.
8) If Supplier is unable to provide Product immediately following the receipt of this Order, please contact City’s representative as listed in the “Confirm By” field at the top of the Order and provide the date for delivery.