

# PO TERMS AND CONDITIONS

**1. ISSUANCE OF PURCHASE ORDER:** A written purchase order mailed or otherwise furnished to the contractor shall result in a binding contract between the parties without further action by the contractor or the City and County of Honolulu, hereinafter referred to as the "City".

**2. CONTRACTS, REQUEST FOR QUOTATION, SPECIAL PROVISIONS, REQUIREMENTS, DETAILED SPECIFICATIONS OR PLANS:** Where contracts, request for quotation, special provisions, requirements, detailed specifications, plans, or general conditions are referred to or attached hereto, they shall be considered a part to the purchase order as fully as if contained herein. Said contract, request for quotation, special provisions, requirements, detailed specifications, plans, or general conditions shall govern should they conflict with these terms and conditions.

**3. INTERPRETATION:** If there is any doubt as to the meaning of any provision contained in the purchase order, the interpretation by the Director of Budget & Fiscal Services, hereinafter referred to as the "Director," or his/her authorized representative, shall control. All directions and explanations required or necessary to complete the purchase order shall be given by the Director or his/her authorized representative.

**4. TIME AND PLACE OF DELIVERY:** The contractor shall furnish all services and deliver all items to the designated point of delivery in the manner requested by the City within the specified time after the date of purchase order. If delay in the specified completion or delivery is anticipated for reasons which are beyond the control of the contractor, the contractor shall provide a written request for extension of delivery time, setting forth in detail the causes of such delay. The Director, or his/her authorized representative, shall be the final judge and may extend the time for completion or delivery. Such extension shall not be deemed a waiver of the right of the City to terminate the contract for any other additional delay not covered by the specific terms of such extension or extensions. It is mutually understood and agreed by and between the parties to the contract that time of delivery shall be of the essence.

**5. QUALITY OF MATERIAL:** Unless otherwise specified, the materials or items furnished and delivered shall be new and of the quality specified.

**6. LIABILITY OF CONTRACTOR:** The liability of the contractor shall not cease when acceptance is made of the service, goods, or material covered by the contract, but shall continue as provided by any terms of the contract and by law. Any material or good which is found to be damaged or defective within the warranty period shall be immediately removed by the contractor and replaced with a like material or goods in perfect condition. In addition, the contractor shall hold the City and all of its officers, agents, and employees harmless against any and all claims arising out of, or occasioned by, any acts of omissions of the contractor, its officers, agents, or employees, pursuant to the contract, and from any and all claims arising out of, or occasioned by, any damaged or defective material or goods.

**7. PATENTED ARTICLE:** The contractor shall hold the City and all of its officers, agents, servants and employees, harmless against all claims arising from the use of any patented article, patented process or patented appliance used in connection with the contract. Any royalties due or becoming due for the use of any patented article or process shall be paid by the contractor and considered to be originally included within the purchase order price.

**8. RIGHTS AND REMEDIES OF THE CITY AND COUNTY FOR DEFAULT:**

- (a) If any items furnished by the contractor in the performance of the contract or purchase order fails to conform to the specifications herein, or to the sample submitted by the contractor, the City may reject the same, and it shall become the duty of the contractor to reclaim and remove the same forthwith, without expense to the City and immediately to replace all such rejected items with others conforming to such specifications or samples; provided that should the contractor fail, neglect, or refuse to do so, the City shall have the right to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct from any moneys due or that may thereafter become due to the contractor the difference between the price named in the contract or purchase order and the actual cost thereof to the City;
- (b) If the contractor fails to make prompt delivery as specified of any item, the same conditions as to the rights of the City to purchase in the open market and to reimbursement set forth above shall apply, except when delivery is delayed by fire, strike, freight embargo; or Act of God or of the government;
- (c) If the contract or purchase order is cancelled, either in whole or in part, by reason of the default or breach thereof by the contractor, including non-delivery within the time specified, any loss or damage sustained by the City in procuring any items which the contractor therein agreed to supply shall be borne and paid for by the contractor;
- (d) The rights and remedies of the City provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract;
- (e) If the contractor fails to perform the work in accordance with a, b, c and d above, the City may suspend and/or debar the contractor from consideration for award of contracts for a debarment period not to exceed three years, exclusive of any suspension period.

**9. BREACH OF CONTRACT:** In the event of any breach of the terms of the contract by the contractor, the City shall have in addition to any other recourse, the right to terminate the contract or cancel the purchase order without service of notice or resort to legal process and without any legal liability on its part.

**10. TERMINATION FOR CONVENIENCE:** When the interests of the City so require, the contract may be terminated, in whole or in part. Written notice shall be given to the contractor specifying the part of the contract terminated and when termination becomes effective. The contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, will stop work to the extent specified. Compensation due the contractor shall be in accordance with Hawaii Revised Statutes (HRS) Chapter 103D, and Hawaii Administrative Rules (HAR) Chapter 3-125.

**11. ASSIGNING AND SUBLETTING:** The contractor shall not assign or sublet any of the work to be performed or items to be delivered without written permission from the City. The assignment or subcontracting shall not, under any circumstances, relieve the contractor and shall be subject to the provisions thereof.

**12. ASSIGNMENT OF MONEY DUE OR PAYABLE:** No assignment of money due or to become due to a contractor on any City purchase order shall be made without prior written consent of the Director of Budget & Fiscal Services.

**13. PAYMENTS:** Payments will be authorized and made no later than thirty (30) calendar days from the date items or services are received, accepted, and invoiced pursuant to HRS Section 103-10.

**14. CHANGE ORDERS AND MODIFICATIONS:** The Contractor will not undertake to perform any portion of the contract work affected by changes until authorized by the Director or an authorized representative in writing or until a change order or modification has been approved and issued.

**15. PROMPT PAYMENT TO SUBCONTRACTORS AND SUPPLIERS:** The Contractor shall make prompt payment to all subcontractors and suppliers as required by law.

**16. SEXUAL HARASSMENT POLICY FOR EMPLOYER HAVING A CONTRACT WITH THE CITY:** The Contractor pledges compliance with the requirements of City Ordinance Section 1-18 regarding sexual harassment policy.

**17. WAGES, HOURS, AND WORKING CONDITIONS OF EMPLOYEES OF CONTRACTORS PERFORMING SERVICES:** The Contractor certifies compliance with the requirements of HRS Section 103-55, as applicable to any services being performed for contracts in excess of \$25,000.

**18. WAGES AND HOURS OF EMPLOYEES ON PUBLIC WORKS:** The Contractor shall comply with the requirements of HRS Chapter 104 for every contract in excess of \$2,000 for construction.

**19. TAX CLEARANCE:** Tax clearance may be required as a condition of final payment pursuant to HRS Sections 103-53 and 103D-328.

**20. MISCELLANEOUS:** When required, the Contractor shall furnish or specify Energy Star products pursuant to City Ordinance 2-35. The Contractor shall comply with the applicable Campaign Contributions restrictions of HRS Section 11-355. The Contractor shall comply with liquidated damages, insurance, and bonding provisions as may be required by the terms of the contract.

**21. STATUTORY OR ORDINANCE REQUIREMENTS:** The applicable provisions of the Hawaii Revised Statutes (HRS) including Chapters 103 and 103D, as amended, the City Charter, and the City Ordinances shall be deemed to be a part of the purchase order as though fully set forth therein.

Terms & Conditions Revised 1/18/2013