

Garden City, Georgia
Standard Purchase Order Terms & Conditions for Goods and Services

Please note that these Purchase Order Terms and Conditions may be supplemented by additional terms or modified by special instructions included with an Official Purchase Order issued by Garden City, Georgia. In the event of a conflict between these Purchase Order Terms and Conditions and additional terms or special instructions, the latter shall govern.

A. DEFINITIONS. The following words shall be defined as set forth below:

1. **“Garden City” or “City”** means the City of Garden City, Georgia.
2. **“Purchase Order”** means the agreement between Garden City and the Vendor as defined by the Garden City Purchase Order Terms and Conditions.
3. **“Vendor”** means the provider of the goods and/or services under the Purchase Order.
4. **“Quote”** means the Vendor’s submitted written quote.
5. **“Net 30”** means 30 calendar days from the receipt of goods and/or services, or the receipt of any invoice by the Garden City Finance Department, Accounts Payable, whichever occurs later.

B. CONTROLLING TERMS AND CONDITIONS. The terms, conditions, and specifications of the Vendor’s Quote are hereby incorporated by reference and made a part hereof just as if they had been fully set out herein. Any inconsistency or conflict among the provisions of the Purchase Order and any incorporated documents shall be resolved as follows: First, by giving preference to the specific provisions of the Purchase Order; Second, by giving preference to the specific provisions of the bid solicitation, RFQ, or RFP; and, Third, by giving preference to the specific provisions of the Vendor’s Response. Any pre-printed terms and conditions included on Vendor’s forms or invoices shall be null and void.

C. TERM. The term of the Purchase Order between the City and the Vendor shall begin on the date of the Purchase Order and end on upon completion of all deliverables (the Term), unless terminated earlier in accordance with the controlling terms and conditions. This Purchase Order shall not be deemed to create a debt of Garden City for the payment of any sum beyond the fiscal year in which the appropriations have been made.

D. DELIVERABLES.

1. **Specifications.** All goods, services, and other deliverables the Vendor is required to provide under the Purchase Order must comply with the specifications contained in the Purchase Order and any description contained in Vendor’s written quote.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. Destination, freight prepaid and included to the location(s) specified in the Purchase Order. All items shall be at the Vendor’s risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Vendor to remedy without cost to Garden City, regardless of when the hidden damage is discovered.
3. **Non-Exclusive Rights and No Minimums Guaranteed.** The contract created by the Purchase Order is not exclusive. Garden City reserves the right to select other Vendors to provide goods and services similar to goods and services described in the Purchase Order during the Term.
4. **Assurance.** If at any time the City in good faith determines that it questions Vendor’s ability or intent to perform, then Vendor agrees to provide the City with written assurance fully satisfactory to the City, in the City’s sole discretion, of Vendor’s ability and intent to fully perform. Such assurance shall be provided within the time and in the manner specified by the City. Vendor shall immediately notify the City of any circumstance which may cause Contractor to fail to fully perform. Upon the City’s good faith determination that Vendor cannot or will not perform, the City may deem this Purchase Order to be breached by Vendor (unless performance is excused as provided below) and may re-procure from other sources.

E. COMPENSATION.

1. **Pricing.** The Vendor will be paid for the goods and services sold pursuant to the Purchase Order in accordance with the Purchase Order. Unless clearly stated otherwise in the Purchase Order, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. **Billing.** The Vendor shall submit an invoice for goods and services supplied to Garden City under the Purchase Order at the billing address identified by Garden City. Payments will be made Net 30 of receipt of invoice or receipt of goods and services, whichever occurs later.
3. **Delay of Payment Due to Vendor's Failure.** If Garden City in good faith determines that the Vendor has failed to perform or deliver any service or product as required by the Purchase Order, the Vendor shall not be entitled to any compensation under the Purchase Order until such service or product is performed or delivered. In this event, Garden City may withhold that portion of the Vendor's compensation which represents payment for services or products that were not performed or delivered.
4. **Assignments.** Vendor shall neither assign any right nor delegate any duty without the prior written consent of the City. Notwithstanding any notice of assignment, the City's tender of payment to the Vendor named herein or to any person reasonably believed by the City to be entitled to payment shall fully satisfy the City's obligation to pay, and in no event shall the City be obligated to pay additional sums or be liable for any damages due to failure to pay the correct party.

F. TERMINATION.

1. **Immediate Termination.** This Purchase Order will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the City cannot fulfill its obligations under the Purchase Order, which determination is at the City's sole discretion and shall be conclusive.
2. **Termination upon Notice.** Following thirty (30) calendar days' written notice, the City may terminate the Purchase Order in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor.
3. **Payment Limitation in Event of Termination.** In the event of termination of the Purchase Order for any reason by Garden City, the City shall pay only those amounts, if any, due and owing to the Vendor for goods and services actually rendered up to and including the date of. Payment will be made only upon submission of invoices and proper proof of the Vendor's claim. This provision in no way limits the remedies available to the City under the Purchase Order in the event of termination.
4. **Vendor's Termination Duties.** Upon receipt of notice of termination or upon request of Garden City, the Vendor shall cease work under the Purchase Order and take all necessary or appropriate steps to limit disbursements and minimize costs. Vendor shall immediately cease using and return to Garden City any personal property or materials, whether tangible or intangible, provided by the City to the Vendor. Further, the Vendor shall immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Vendor.

G. INSURANCE AND BONDS.

Vendor shall provide all insurance and all required bonds in accordance with the Purchase Order. Unless more specific insurance provisions are attached, the following shall be required of any Vendor providing services:

1. Commercial General Liability (bodily, injury, property damage, personal injury) with a single limit of not less than \$2,000,000.00 for a single occurrence;
2. Automobile Liability insurance, with a single limit of not less than \$1,000,000 for a single occurrence.

Commercial General Liability and Automobile insurance policies shall include the following provisions:

- Additional Insureds: The City, its Mayor and Council, employees, agents, representatives and volunteers shall be included as additional insureds by endorsement.

- **Primary Coverage:** Above insurance shall be primary as respects all other insurance or self-insurance in force. The City's insurance or self-insurance shall be excess and noncontributory.
- **Cancellation Notice:** Thirty (30) days prior written notice of cancellation or material change in the insurance must be given to the City.
- **Waiver of Subrogation:** Vendor and Vendor's insurance companies waive their rights to subrogation against the above named insureds by endorsement.

Worker's Compensation insurance and employer's liability insurance must cover all persons who the Vendor may employ in carrying out the services hereunder. Worker's Compensation insurance will be in accordance with the worker's compensation laws of the State of Georgia.

H. WARRANTIES.

1. **Warranties.** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it are merchantable and shall at a minimum conform to the standards in the Vendor's industry. The warranties expressed in the Purchase Order are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor. Acceptance by Garden City shall not relieve the Vendor of its warranty or any other obligation under the Purchase Order.
2. **Standard of Performance.** Vendor warrants that all services hereunder shall be performed by personnel experienced and highly skilled in their profession and in accordance with the highest applicable standards of professionalism for comparable or similar services. Vendor shall be responsible for the professional quality, timeliness, coordination and completeness of the services. Vendor personnel assigned to perform the services shall be as proposed by Vendor and approved by the City. No such personnel of Vendor shall be reassigned without the approval of the City. Vendor shall use only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Vendor agrees to replace any of its employees whose work is considered by the City to be unsatisfactory or contrary to the requirements of the services to be performed hereunder. The City shall not supervise nor control the details of Vendor's, but rather shall be interested only in the results of Vendor's services.
3. **Originality and Title to Concepts, Materials, and Goods Produced.** Vendor represents and warrants that all the concepts, materials, goods and services produced, or provided to Garden City pursuant to the terms of the Purchase Order shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Vendor represents and warrants that title to any property assigned, conveyed or licensed to Garden City is good and that transfer of title or license to the City is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
4. **Authority to Enter into Purchase Order.** The Vendor represents and warrants that it has full authority to enter into the Purchase Order and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to Garden City.

I. INDEMNITY AND WAIVER.

Vendor agrees to forever indemnify, defend and hold Garden City harmless from and against, and to waive any and all claims against the City for, any and all claims, suits and demands of liability loss or damage whatsoever, including attorney's fees, whether direct or consequential, on account of: (1) any loss, injury, death or damage to any person or property (including without limitation all agents and employees of Vendor and the City and all property owned by, leased to or used by either Vendor or the City, or both) or (2) any loss or damage to business or reputation or privacy of any person, arising in whole or in part in any way from, connected to, or related to Vendor's performance, and regardless of whether such loss, injury, death or damage to person or property results in whole or in part from (a) the negligence or omission of the City, (b) any product liability of the City or any person, or (c) any strict liability of the City or any person. There are excluded from the above indemnity and waiver provisions any such claims, suits and demands of liability, loss or damage resulting

solely from the City's gross recklessness, active negligence, or willful intent to injure. As used in this indemnity and waiver provision, and for purpose of Vendor's insurance, the "City" shall be deemed to include Garden City, Georgia, its Mayor and Council, employees, agents, representatives and volunteers, and its insurer, if any. Vendor, at its expense, shall further defend, indemnify and hold harmless the City, its Mayor and Council, employees, agents, representatives and volunteers, from and against any and all claims and demands which may be made to the extent that it is based on a claim that any services furnished hereunder infringed a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right. Vendor shall pay all costs, fees, and damage which may be incurred by the "City" for any such claim or action or the settlement thereof.

J. CONFLICT OF INTEREST.

- (a) The City's policy requires avoidance of real or apparent conflict of interests. No official of the City shall knowingly participate in the drafting, selection, award or administration of a Request for Proposal, Request for Quotation, or Purchase Order with Vendor if such official or member of the official's immediate family, has a material financial interest in Vendor, or is negotiating or has any arrangement concerning, prospective employment with Vendor.
- (b) No officer, employee or agent of the City shall either solicit or accept gratuities, favors or anything of monetary value from Vendor, including any contingent fee.
- (c) If Vendor has reason to believe any official, employee, or agent of the City has violated any provision of this paragraph, it immediately shall notify the City of the suspected violation by sending notice thereof to the City, explaining the situation in full. Vendor's failure to so notify the City shall be a material breach of this agreement and the City, at its option, may terminate this Purchase Order.

K. OCCUPATIONAL SAFETY AND HEALTH ACT.

Vendor will comply with the Occupational Safety and Health Act of 1970, including all federal and state standards and regulations in accordance with the Act. Vendor is responsible for compliance with this Act by its agents, employees, suppliers, assignees, and subcontractors. Vendor is also responsible for supplying all materials and services under this Purchase Order. Vendor agrees to indemnify the City and save it harmless from all loss and damage (including attorney's fees) arising from the failure of Vendor to comply with this Act.

L. NON-DISCRIMINATION IN EMPLOYMENT.

Vendor hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and the Executive Order 11246, dated September 24, 1965, and as amended by Executive Order 11375. Vendor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, disability, veteran status, sexual orientation, gender identify, sex, genetic information, or age. In addition, Vendor shall provide, if necessary, assurance of compliance with provisions of Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), Title IX of the Education Amendments of 1972 (Pub. L. 92-318), and the Age Discrimination Act of 1975 (Pub. L. 94-135).

M. PURCHASE ORDER ADMINISTRATION

- 1. **Compliance with the Law.** The Vendor, its employees, agents, and sub-Vendors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Purchase Order.
- 2. **Drug-free Workplace.** The Vendor hereby certifies as follows:
 - a. Vendor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Purchase Order; and

- b. If Vendor has more than one employee, including Vendor, Vendor shall provide for such employee(s) a drug-free workplace, in accordance with Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Purchase Order; and
- c. Vendor will secure from any sub-Vendor hired to work on any job assigned under this Purchase Order the following written certification: "As part of the sub-Purchase Ordering agreement with (Vendor's Name), (Sub-Vendor's Name) certifies to the Vendor that a drug-free workplace will be provided for the sub-Vendor's employees during the performance of this Purchase Order pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Vendor may be suspended, terminated, or debarred if it is determined that Vendor has made false certification hereunder or if Vendor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

- 3. **Amendments.** The Purchase Order may be amended in writing by mutual consent of the parties. All amendments to the Purchase Order must be in writing and fully executed by duly authorized representatives of the parties.
- 4. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Purchase Order. The Purchase Order is intended only to benefit Garden City and the Vendor.
- 5. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Purchase Order without regard to the choice of law provisions of law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Purchase Order, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Chatham County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to Garden City.
- 6. **Integration.** The Purchase Order represents the entire agreement between the parties.
- 7. **Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Purchase Order on behalf of Garden City.
- 8. **Severability.** If any provision of the Purchase Order is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Purchase Order.
- 9. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Purchase Order.
- 10. **Debarred, Suspended and Ineligible Status.** Vendor certifies that neither it nor any of its sub-Vendors have been debarred, suspended or declared ineligible by any agency of the State of Georgia. Vendor will immediately notify Garden City if Vendor is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Vendors by a federal entity.
- 11. **Taxes.** Garden City is exempt from certain sales and use taxes. By executing the Purchase Order the Vendor certifies it is either (a) collects, and remits Garden City sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2.
- 12. **Force Majeure.** Neither party will be liable to the other party for nonperformance resulting from labor strikes, riots, wars, acts of governmental authorities preventing performance, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of the party.
- 13. **Obligations Beyond Purchase Order Term.** The Purchase Order shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Purchase Order. All

obligations of the Vendor incurred or existing under the Purchase Order as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Purchase Order.

- 14. Transition Cooperation and Cooperation with other Vendors.** Vendor agrees that upon termination of this Purchase Order for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to Garden City or another Vendor. The Vendor shall provide full disclosure to Garden City and the third-party Vendor about the equipment, software, or services required to perform services for Garden City. The Vendor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to Garden City.
- 15. Certification of Non-collusion.** By accepting and acting on a Purchase Order, Vendor warrants that the Vendor's Quote is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. The supplier understands and agrees that collusive bidding is a violation of state and federal law and may result in fines, prison sentences, and civil damage awards.
- 16. Software Licenses.** Software licenses required for use of any or all goods or services provided on the Purchase Order shall not be valid or enforceable until and unless they have been reviewed and approved by Garden City and if required, fully executed by authorized representatives of both Garden City and the software Licensor.