

## **Buncombe County Terms and Conditions for**

### **Purchase orders and Procurement Card Transactions**

In accepting this Purchase Order and procurement card transaction (“Order”), from Buncombe County North Carolina (the “County”), your company (the “Supplier”), acknowledges and agrees to abide by the Terms and Conditions set forth below. Additional terms and conditions stated on the face of this Purchase Order shall take precedence over any conflicting terms and conditions stated below. Any terms and conditions not stated on the face of this Purchase Order but incorporated by reference therein shall be binding only if provided or signed by the County and attached hereto. In the event that a binding written contract signed by both the Supplier and the County exists, the terms and conditions of that contract shall supersede any conflicting terms and conditions below or on the face of this Purchase Order.

**COUNTY RIGHT TO CANCEL OR RESCIND** - The County reserves the right to cancel or otherwise rescind a Purchase Order based on the County’s best interest.

**PURCHASE ORDER REQUIRED** -The County will not be responsible for any equipment, supplies, and/or services delivered without a Purchase Order and assumes no obligation for products or services shipped or delivered in excess of the quantity ordered. Any unauthorized products or services are subject to the County’s rejection and shall be returned at the Supplier’s expense. All packages must bear the correct Purchase Order number on the outside of each package or shipping container.

**SUPPLIER FAILURE TO DELIVER** – In the event of Supplier’s failure to deliver as and when specified, or to perform as and when specified, the County reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and Supplier agrees that the County may return part of any shipment so made and may charge Supplier with any loss expense sustained as a result of such failure to deliver or perform.

**CHANGES** – If Supplier refuses to accept this purchase order exactly as written, Supplier will return it at once with explanation. Any changes to this Purchase Order will be considered a ‘Change Order’ and requires the written acceptance of both parties to become effective. This will include product or service substitutions, cost changes, and delivery schedule changes.

**INVOICES** - Supplier will deliver invoices to the County at the address or electronically at website shown on the face of this Purchase Order. Supplier will send separate invoices for each purchase order number and invoices must be itemized in accordance with the items listed on the Purchase Order.

**PRICE** – The itemized price listed for products and services on the Supplier invoice must match that specified on the Purchase Order. No boxing, packing, cartage, or shipping charges will be allowed by the County unless specifically authorized on the face of this Purchase Order. Any cash discount period to

County will date from County's receipt of the invoice or from the date of the receipt of goods, whichever is later.

**TAXES** - Supplier shall pay all sales or use taxes that are or become due in connection with any products or services provided hereunder, and shall indemnify and save harmless the County from any damages, costs, fees, expenses, or penalties on account of such taxes. Supplier may charge the County only for those taxes that are set forth as a separate line item on the face of this purchase order. The County is exempt from Federal Excise Tax. If any form of such tax is billed on the invoice, it must be shown as a separate item. Tax Exemption Certificates will be furnished upon request.

**DELIVERY/TITLE** - Unless otherwise agreed, delivery shall be f.o.b. point of destination and title shall pass to County upon acceptance at the final delivery point. Risk of damages or loss following shipment and prior to acceptance by County shall be the responsibility of Supplier.

**RIGHT OF INSPECTION AND REJECTION** – Equipment, supplies, and services supplied by Supplier shall be received subject to the County's inspection and approval either during manufacturing or delivery (with prior arrangement), or within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Supplier's expense. No material or equipment returned to Supplier as defective shall be replaced except upon the County's formal authorization.

**ASSIGNMENT** - Neither this Purchase Order nor any interest therein nor shall any claim arising hereunder be transferred or assigned by Supplier without the prior written consent of the County. Supplier may transfer or assign the benefits of this agreement, in whole or in part, including without limitation the County's warranty, without the approval of County.

**WARRANTY/PERFORMANCE** - Supplier warrants that the products and services furnished pursuant to this Purchase Order shall: (a) comply with all federal, state and local laws applicable thereto; (b) satisfy all requirements set forth on the face of this purchase order and any applicable documentation incorporated herein; (c) meet industry standards and be suitable for the purpose intended; (d) be of merchantable quality; and (e) be free from defects in title, labor, material or fabrication.

**INDEMNIFICATION - INFRINGEMENT** - Supplier will defend, indemnify, and save the County harmless from any and all loss, damages, costs, fees, and expenses incurred on account of any and all claims, suits, or judgments alleging that any product or service provided under this purchase order violates any patent, copyright, trade secret, trade name, or any other intellectual property right of any nature.

**INDEMNIFICATION – DAMAGES** - If any product provided hereunder is defective in any respect whatsoever, Supplier will defend, indemnify, and save County harmless from all loss, damages, costs, fees, and expenses incurred by reason of such defect, including without limitation all liability arising from any accidents, injuries, or damages to persons or property that may result in whole or in part from such product.

**INDEMNIFICATION – CONSEQUENCES OF ACTIONS** - If Supplier performs services or constructs, erects, inspects, or delivers hereunder, Supplier will indemnify and save harmless the County from all loss, damages, costs, fees, or expenses incurred in connection with any accidents, injuries, or damages to persons or property that may result in whole or in part from the performance thereof.

**USE OF COUNTY NAME OR LOGO** - Supplier agrees not to release any advertising or other materials using the County's trademark, quoting the opinion of any County employee or implying in any way that the County indorses Supplier or its products or services.

**FEDERAL OR STATE STATUTE** - Supplier represents and warrants that no federal or state statute or regulation or municipal ordinance has been or will be violated in the manufacture, sale, or delivery of any product or service sold and delivered hereunder and if such violation has or does occur, Supplier will indemnify and save the County harmless from all loss, penalties, fees, costs, and expenses resulting in whole or in part from such violation.

**E-VERIFY REQUIREMENTS** - As a condition for payment under this purchase order, Supplier shall: (i) comply with N.C. Gen. Stat. Sections 64-25 et seq. (the "E-Verify Requirements"); and (ii) cause each subcontractor hereunder to comply with such requirements. Supplier will indemnify and save harmless the County from all losses, damages, fees, costs, expenses, fines, and other liabilities resulting from any failure by Supplier or any subcontractor to comply with the E-Verify Requirements.

**IRAN DIVESTMENT ACT CERTIFICATION** - Supplier certifies that, as of the date of the purchase order, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Supplier shall not utilize in the performance of the purchase order any subcontractor that is identified on the Final Divestment List.

**INSURANCE** – If performing services under this purchase order the Supplier shall procure and maintain at its sole expense, before performance of services hereunder:

Commercial General Liability insurance in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability. Business Automobile Liability insurance covering all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence and shall include uninsured/underinsured motorist coverage per NC General Statute 20-279-21. Workers Compensation coverage at the statutory limits in compliance with applicable State and Federal laws. Supplier shall ensure that any subcontractors also have workers compensation coverage at the statutory limits. Employer's Liability coverage with minimum limits of \$500,000 each accident and \$500,000 each employee disease. Supplier shall agree these General Conditions constitute an insured contract and shall name Buncombe County as an additional insured under the Commercial General Liability policy. Before commencing work and for any subsequent renewals, Supplier shall furnish the County with certificates of insurance evidencing the above coverages and amounts on an approved form. Supplier hereby grants the County a waiver of any right of subrogation which any insurer of said Supplier may acquire against the County by virtue of payment of any loss under such insurance. Supplier agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County and delivered in accordance with the policy provisions. All

insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County. The limits of coverage under each insurance policy maintained by the Supplier shall not be interpreted as limiting the Supplier's liability and obligations. Nothing in this section is intended to affect or abrogate Buncombe County's governmental immunity.

**STRICT COMPLIANCE** - The County may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing.

**MATERIAL SAFETY DATA SHEETS** – Current Material Safety Data Sheets, when applicable to the order, shall be provided by Supplier in accordance with all regulations.

**VENUE FOR LEGAL ACTIONS** - This purchase order is governed by North Carolina law without regard to its conflicts of law principles. Any legal actions arising from this purchase order shall be brought in Buncombe County, North Carolina.

**FEDERAL FUNDS**- If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).

In addition to printed PO Terms & Conditions, FEMA contract provisions found in FEMA Contract Provisions Template at the link below apply to purchases, as does ability to terminate due to cause/convenience.

[https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT\\_ContractProvisionsTemplate\\_9-30-19.pdf](https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf)