

Lewis County Standard Purchase Order Terms and Conditions

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STANDARD CLAUSES FOR LEWIS COUNTY PURCHASE ORDER

The parties to all purchase orders (hereinafter “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract. (The word “Seller” herein refers to any party other than the County, whether a Seller, licensor, licensee, lessor, lessee or any other party.)

EXECUTORY CLAUSE

The County shall have no liability under this contract beyond funds appropriated and available for this contract.

ASSIGNMENT; SUBCONTRACTING

Seller shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, unless the written consent of the County has first been obtained. Any attempted or purported assignment without such prior written consent shall be void. The provisions of this clause shall not hinder, prevent, or affect any assignment by Seller for the benefit of its creditors made pursuant to the Laws of the State of New York. Seller will not subcontract its duties hereunder without the prior written consent of the County. This provision does not prohibit Seller from entering into employment contracts or contracts for the acquisition of goods or facilities or the provision of services which are ancillary to the main purpose of this Agreement and are not directly related to the provision of goods hereunder without the consent of the County. Prior to submitting a subcontractor for approval under this Section, Seller shall diligently inquire into the capability, qualifications, and background of the subcontractor, and the submission of a subcontractor for approval shall constitute an affirmative representation by Seller that the subcontractor is fully capable, qualified, and licensed to provide the subcontracted services. Any subcontract entered into by Seller pursuant to this section shall provide that Seller will retain ultimate control and responsibility for the goods and services provided under the subcontract and that the subcontractor shall be bound by the provisions of the Agreement between the Parties and any other requirements applicable to Seller in the provision of goods pursuant to the Agreement. No contractual relationship shall be deemed to exist between any subcontractor and the County, nor shall Seller be relieved of any of its obligations under this Agreement, as a consequence of any subcontract approved by the County under this Section.

CHANGES/AMENDMENTS

The County shall have the right to issue a written Change Order to the Seller to make any changes it deems necessary, including but not limited to changes in specifications, delivery, packing, or destination. If such required changes cause an increase or decrease in the cost of or time required for performance, an equitable adjustment may be made in the contract price or delivery schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Seller of the Change Order. Price increases, extensions of time for delivery, and changes in quantity shall not be binding on the County unless included in a Change Order issued and signed by the County.

CANCELLATIONS

The County may cancel this Contract in whole or in part, without cause, upon written or electronic notice to the Seller, effective when sent, provided such notice is sent at least fifteen (15) days prior to the delivery date specified on the face of this Contract. The County may cancel this Contract in whole or in part at any time for cause by written or electronic notice to the Seller, effective when sent, in the event that the Seller: (a) fails to comply with any term or condition of this Contract including, but not limited to, delivery terms; or (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; or (c) files a voluntary petition in bankruptcy; or (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; or (e) voluntarily ceases trading; or (f) merges with or is acquired by a third party; or (g) assigns any of its right or obligations under the Contract to a third party without the County's advance written consent.

INSURANCE REQUIREMENTS

Seller shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation Insurance, Employer's Liability Insurance, Disability Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, and other insurance with stated minimum coverages, all as listed in the "Vendor Guidelines & Insurance Requirements" section of this website.

NON-DISCRIMINATION REQUIREMENTS

In accordance with Article 15 of the Executive Law and all other State and Federal statutory and constitutional non-discrimination provisions, Seller will not discriminate against any employee or applicant for employment because of race, creed, color, gender, nationality, age, disability, sexual orientation, or marital status.

SET-OFF RIGHTS

The County shall have all its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purposes of setoff any moneys due to the Seller under this contract up to any amounts due and owing to the County with regard to this contract and any other contract with any other Department or Agency of County, including any contract commenced prior to the term of this contract, plus any amounts due and owing to the County for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

RECORDS

The Seller shall establish and maintain complete and accurate records, directly pertinent to performance under this contract. The Records must be retained by Seller for six years after the final payment or termination of this contract, whichever later occurs. County and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Seller within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and/or copying.

GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without regard to conflict of law principles thereof.

VENUE AND DISPUTES

1. Any and all disputes involving this Contract, including the breach or alleged breach thereof, shall be submitted to a New York State Court of competent jurisdiction located within Lewis County, New York, and shall not be subject to arbitration. Pending final resolution of a dispute, the Seller shall proceed diligently with contract performance. The Seller waives any dispute or claims not made in writing and received by the County within six months of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain, and any money requested must be fully supported by adequate documentation.
2. The Seller hereby voluntarily and irrevocably submits itself to the jurisdiction of all New York State Courts of competent jurisdiction located within Lewis County, New York, in which any litigation may be brought based upon or arising out of this Agreement.
3. Any legal process or notice connected with any litigation may be served upon the Seller in a manner provided by the New York Civil Practice Law and Rules, or by United States registered mail, postage prepaid, addressed to the Seller at the address specified in the Notice provision of this Agreement, or the Seller's last known address, and Seller further agrees that service in such a manner shall constitute good and valid service of process upon the Seller.
4. The Seller hereby waives any defense which might be available to it any such litigation based upon or alleging lack of jurisdiction or venue; or, in the event that process is served by registered mail as provided in the preceding subsection, the Seller waives any defense of invalid service of process, and agrees that it will duly enter its appearance in any such action.
5. This Agreement may be presented in court as conclusive evidence of the foregoing Agreement as to jurisdiction and service of process.

ELECTRONIC TRANSMISSION

If this contract is transmitted by facsimile or by other means of electronic transmission,

including but not limited to e-mail, such transmission shall have the legal significance of a duly executed original delivered to the Seller, but only if the Transmit Terminal Identification on the Data Sheet includes the notation "Lewis County Purchasing".

TITLE AND RISK OF LOSS

Terms of shipping are F.O.B the County's delivery location unless otherwise noted within the terms of this Contract. Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury, or destruction of goods and materials contracted herein which may for any reason occur prior to acceptance by the County. No such loss, injury or destruction shall release Seller from any obligation hereunder. Delivery shall not be deemed complete and title to the goods shall not pass to the County until the goods have been actually received and accepted by the County.

DELIVERY AND ACCEPTANCE

Time of delivery is the essence of this contract. The County has the right to refuse any goods and to cancel all or part of the goods not conforming to applicable specifications, drawings, samples, or descriptions. Acceptance of any part of the contract shall not bind the County to accept future shipments, nor deprive it of the right to return goods already accepted. Should shipment of any part of this contract be delayed beyond the time specified in the proposal or quotation for the same, or beyond the time specified herein, or if no time is specified, then beyond a reasonable time, or if any article should fail to comply with specifications, the County reserves the right to purchase such articles at the market price for immediate delivery and any excess in the cost of same over the price shown herein is to be paid by the Seller under this contract, or deducted from monies now due or hereafter accruing to him from the County. Goods must be properly packaged. Damaged goods will not be accepted, or if the damage is not readily apparent at the time of delivery, the goods shall be returned at no cost to the County. The County reserves the right to inspect the goods within a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the goods at the time of delivery.

WARRANTIES

The Seller warrants that any Goods supplied hereunder shall conform to the generally recognized manufacturing and safety standards of the Seller's industry in the United States and shall meet or exceed the Seller's specifications on performance as detailed in the Seller's brochures, sales literature, and other specifications as may be available to the County. In addition to any other express or implied warranties, the Seller warrants that the Goods furnished pursuant to the Contract will be: (a) free from defects in title, workmanship and goods; (b) of merchantable quality and suitable for the purposes, if any, which are stated on this Contract (c) Compliant with detailed designs provided by the County, if applicable. If any goods covered by this Contract are found not to be as warranted, the County may, by written notice to the Seller: (a) rescind this Contract as to such non-conforming Goods; (b) accept such Goods at an equitable reduction in price; or (c) reject such non-conforming Goods and require the delivery of suitable replacements. If the Seller fails to deliver suitable replacements within ten (10) days, the County, with notice of five business days, may replace or correct such Goods and charge the Seller the additional cost occasioned the County thereby, or terminate this Contract for default. Any goods corrected or furnished in replacement are subject to all the provisions of this article entitled WARRANTIES to the same extent as goods initially furnished or originally

contracted. All costs associated with such corrected or replaced goods shall be solely at the Seller's expense. This warranty provision shall survive any inspection, delivery, acceptance, payment, expiration, or earlier termination of this Contract, and such warranties shall run to the County, its officers, agents, and employees, and all users of the goods as applicable. Rights and remedies granted to the County in this article entitled WARRANTIES are in addition to any other rights or remedies provided elsewhere in the Contract or otherwise provided in law or equity. Seller agrees that it will supply any and all documents necessary for the County to be fully eligible for all manufacturers and other applicable warranties, guarantees, and safeguards relative to the performance of any and all goods under this contract.

PROPRIETARY INFORMATION/TITLE TO SPECIFICATIONS

All written information obtained by the Seller from the County in connection with this Contract and which is identified as proprietary, including but not limited to, any logo's, specifications, drawings, blueprints and software programs, shall remain the property of the County, shall be used by the Seller only to the extent necessary for performance of this Contract and shall not be disclosed to any third parties without prior written consent of the County. The Seller shall not make or authorize any news release, advertisement, or other disclosure that shall deny or confirm the existence of this Contract without prior written consent of the County, except as may be required to perform this Contract.

SHIPPING PACKAGING AND LABELING

All Goods purchased hereunder must be packed and packaged to ensure their safe delivery in accordance with good commercial practice and, where indicated, the County's specific packaging specifications. An itemized packing list must accompany each shipment. Each packing slip shall include: the Contract number, quantity, item description, contract date, shipping date, and delivery address, but shall not include pricing information. All goods, wrappers, and containers must bear markings and labels required by applicable federal, state, and municipal laws and regulations for the protection and safety of persons and property, and Seller warrants that prices include all charges for packing, crating, and transportation to F.O.B. point. All shipments of hazardous goods under this Contract shall comply with current U.S. Department of Transportation (DOT) regulations as currently published in 49 CFR 100-199, and the labeling shall meet the Current U. S. Occupational Safety and Health Administration (OSHA) regulations as currently published in 29 CFR 1910.200, for the transporting and labeling of hazardous goods. The NYS Right to Know Law and the OSHA Hazard Communication Standard (29 CFR 1910.200 Revised August 24, 1987) require that manufacturers prepare and submit to the County of Lewis a material safety data sheet for any products that have been evaluated and determined to contain hazardous substances. Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous goods, and these sheets shall be resubmitted if any changes or updates, as required, are made.

INDEMNIFICATION

CONTRACTOR agrees to indemnify, defend and hold harmless COUNTY, and its officers, employees and agents from and against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, whether incurred as a result of a claim by a

third party or any other person or entity, arising out of or in any way related to: (a) the work or operations of CONTRACTOR in the performance of this Agreement; or (b) CONTRACTOR'S failure to comply with any of the provisions of this Agreement or of the Law. Insofar as the facts and Law relating to any claim would preclude COUNTY or its officers, employees, or agents from being completely indemnified by CONTRACTOR, COUNTY and its officers, employees, and agents shall be partially indemnified by CONTRACTOR to the fullest extent permitted by Law. The acts or omissions of any party employed directly or indirectly by CONTRACTOR, shall be deemed to be those of CONTRACTOR for the purposes of the CONTRACTOR's obligations to defend, indemnify, and hold harmless under this Section. The fact that a party so employed by CONTRACTOR is alleged to or is proven to have acted outside the scope of employment, agency, or contract shall not relieve CONTRACTOR of any of its duties under this Section.

PATENT INDEMNITY

The Seller agrees to indemnify, hold harmless, and defend the County, its officers, agents and employees with respect to any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements), known or unknown, contingent or otherwise, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or in any way related to the actual or alleged infringements of any Letter, Patent, Registered or Industrial Design, Trademark or Trade Name, Trade Secret, Copyright or other protected right in any country resulting from any sale, use or manufacture of any Goods delivered hereunder and to pay and discharge all judgments, decrees, and awards rendered therein or by reason thereof and bear all expenses and legal fees (including the County's) associated herewith at delivered hereunder.

WORK ON-SITE

The following conditions will apply if work is to be performed by the Seller at any of the County's locations. The work shall be performed in a first-class and workmanlike manner by qualified and efficient workers who shall not cause labor conflicts with any workers employed by the County or others working at the County's facilities. The work shall be performed in strict conformity with the strictest quality standards mandated and/or recommended by all generally recognized organizations establishing quality standards for work of the type to be performed hereunder. Seller shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services. It shall observe, abide by, and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Seller shall control the manner and means of the labor and services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications, or other documents incorporated as part of the Contract shall govern.

NON-WAIVER

In the event that the terms and conditions of the Contract are not strictly enforced by the

County, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Contract, or shall such non-enforcement prevent the County from enforcing each and every term of this Contract thereafter.

TAX EXEMPTION

New York State Tax Law exempts NYS governmental entities, such as the County of Lewis, from payment of NYS Sales and use taxes on purchases. Tax exemption numbers and Form ST-119.1, Exempt Organization Exempt Purchase Certificates, are not issued to NYS governmental entities. A letter of evidence, as issued by the New York State Department of Taxation and Finance, is available upon request.

COMPLIANCE WITH LAWS

The Seller agrees that during the performance of work required pursuant to this Agreement, Seller and all officers, employees, agents, or representatives working under Seller's direction shall strictly comply with all local, state, or federal law, ordinances, rules, or regulations applicable to this Contract.

FORCE MAJEURE

Neither Party to this Agreement shall be responsible for the consequences of acts of God (such as tornado, flood, hurricane, etc.), lockouts, or other labor disturbances; riots, insurrections and civil commotions; embargoes; shortage or unavailability of materials, supplies, labor, equipment and systems, sabotage, vandalism, terrorism, changes in the requirements of laws, statutes, regulations, and other legal requirements; orders or judgments; and any other similar matters beyond the reasonable control of the party in question.

NOTICES

Any notice required to be provided under this Agreement, shall be complete when received by the party to whom it is transmitted in writing to the following individuals at the following addresses: Any notice required to be given by one party to the other relative to this Agreement shall be directed to the person at the address listed below.

MUNICIPALITY – Lewis County c/o Purchasing Director, 7660 North State St, Lowville, NY 13367

Seller shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the County. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the Parties. Except as provided herein, as an independent contractor, Seller shall be solely responsible for determining the means and methods of providing goods consistent with this Agreement and shall have complete charge and responsibility for Seller's personnel, agents, and any subcontractors. In accordance with such status as independent contractor Seller covenants and agrees that Seller will not hold himself/herself out as, or claim to be officers or employees of the County, or of any department, agency or unit thereof by reason hereof, and that he/she will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County including, but not limited to, Workers' Compensation coverage, health benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.