

## TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE:** This Purchase order becomes a binding contract, subject to these terms and conditions, upon the earlier of: (a) Seller's acknowledgment of the Purchase Order; (b) delivery of goods in whole or in part; (c) or commencement of work on the goods subject to this Purchase Order. Except as provided below, acceptance of this Purchase Order is limited to these terms and conditions. Any modification of this Purchase Order, to be valid, must be in writing and signed by County's authorized representative. Any form of Seller containing additional or contrary terms and conditions of sale will not have the effect of deleting, modifying or adding to these terms and conditions, unless expressly accepted in writing by County.
2. **PRICES:** Seller's Prices charged to County will be as set forth in the Purchase Order for the goods or services, and if not set forth, will not be higher than the last price charged or quoted to County in writing. Seller warrants that the prices for the goods or services sold under this Purchase Order are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities.
3. **EXTRA CHARGES:** No charges will be allowed for packing, boxing, cartage, or any other extra charges unless agreed to in writing by County.
4. **WARRANTIES:** Seller expressly warrants and covenants that: (a) it owns all goods and services supplied; (b) all goods and services supplied will conform to County's order, will be merchantable, fit and sufficient for the particular purpose intended and free from defects, liens and patent infringements; and (c) all goods purchased under this Purchase Order will conform in all respects with the specifications, drawings, samples, or quality control or other procedures or descriptions furnished or approved by County prior to sale. In the event that County sells or leases the goods supplied to a third party, all warranties made in this Purchase Order and all other warranties made by the Seller with respect to the goods may be assigned by County to the third party. County may inspect and reject nonconforming goods and may, at County's option, either return the rejected goods at Seller's expense, or hold them pending Seller's reasonable instructions. Seller will be charged with transportation both ways, and will not replace goods except on receipt of a replacement purchase order from County.
5. **DEFECTIVE GOODS:** If the goods furnished by Seller prove to be defective in any respect, and bodily injury, property damage or economic loss results, Seller agrees to indemnify, hold harmless and defend County from all claims, including third-party claims, expenses, attorneys' fees, settlement costs and judgments arising out of or due to the bodily injury, property damage or economic loss, including consequential damages, as are caused or as are the result of or alleged to be the result of goods furnished by Seller, except where the bodily injury, property damage or economic loss is due to the sole negligence of County.
6. **TERMINATION WITHOUT CAUSE:** County reserves the right to terminate this Purchase Order or any part of this Purchase Order for its sole convenience. In the event of termination under this Paragraph, Seller will immediately stop all work, and will immediately cause any of its suppliers or subcontractors to cease all work related to this Purchase Order. Seller will be paid a termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller will not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.
7. **TERMINATION FOR CAUSE:** County will have the unrestricted right to terminate this Purchase Order, without any obligation to Seller, upon the happening of any one or more of the following events: (a) Seller's insolvency or commission of an act effecting or evidencing bankruptcy; (b) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (c) appointment of a receiver for Seller by any court of competent jurisdiction; (d) Seller's failure to make deliveries within the time specified by this Purchase Order or a previous Purchase Order; (e) Seller's failure to perform any other provisions of this Purchase Order or a previous Purchase Order; and (f) cancellation of any government contract for which this Purchase Order is issued. The acceptance of goods or performances after the occurrence of any of the above enumerated events will not affect the right of County to terminate under this Paragraph.
8. **CONFIDENTIALITY:** This Purchase Order is confidential between County and the Seller and it is agreed by the Seller that none of the details connected with this Purchase Order will be published or disclosed to any third party without County's written consent. Seller will not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor will any information relating to the order be disclosed without Purchaser's written permission.
9. **COMPLIANCE:** Seller agrees that the goods or services produced or rendered pursuant to this Purchase Order will be produced and rendered in accordance with all applicable Federal, State and local laws, orders and regulations.
10. **PATENTS:** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against County or its agents, customer, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished under this Purchase Order, and Seller further agrees to indemnify County, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any suit or proceeding, including any settlement arising under this paragraph. County may be represented by and actively participate through its own counsel in any suit or proceeding if it so desires, and the costs of representation will be paid by Seller.
11. **INSURANCE:** In the event Seller's duties under this Purchase Order require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on County's property, the Seller agrees that all work will be done as an independent contractor and that the persons doing the work will not be considered employees of County. Seller will maintain all necessary insurance coverage, including public liability and Workers' Compensation insurance. Seller will indemnify and save harmless and defend County from any and all claims or liabilities arising out of the work covered by this Purchase Order.
12. **TITLE OF RISK OF LOSS:** Except as otherwise expressly provided, title to and risk of loss on all items shipped by Seller to County will pass to County at the F.O.B. point designated in this Purchase Order. Cost of all return shipments, for whatever reason returned, will be borne by Seller and title and risk of loss will pass to Seller at the F.O.B. point as determined by County.
13. **INDEMNIFICATION:** Seller will defend, indemnify and hold harmless County against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from (a) any breach of any of these terms and conditions; (b) any defect in the goods or services purchased under this Purchase Order; or (c) any act or omission of Seller, its agents, employees or subcontractors. This indemnification will be in addition to the warranty obligations of Seller.
14. **CHANGES:** County will have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment will be made and this Purchase Order will be modified in writing accordingly. Seller agrees to accept any such changes subject to this Paragraph.
15. **INSPECTION/TESTING:** Payment for the goods delivered under this Purchase Order will not constitute acceptance of the goods. County will have the right to inspect the goods and to reject any or all of the goods which are in County's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities order under this Purchase Order may be returned to Seller at its expense and in addition to County's other rights, County may charge Seller all expenses of unpacking, examining, repacking and reshipping the goods. In the event County receives goods whose defects or nonconformity is not apparent on examination, County reserves the right to require replacement, as well as payment of damages. Nothing contained in this Purchase Order will relieve Seller in any way from the obligation of testing, inspection and quality control.
16. **WAIVER:** The remedies contained in this Purchase Order will be cumulative, and additional to any other remedies provided in law or equity. No waiver of a breach of any provision of this Purchase Order will constitute a waiver of any other breach, or of any provisions, and no course of conduct, nor any delay by County in exercising any rights under this Purchase Order will waive any rights of County to modify this Purchase Order.
17. **FORCE MAJEURE:** County reserves the right to cancel all or any part of this Purchase Order which has not actually been shipped by Seller, in the event County's business is interrupted because of strikes, labor disturbances, lockout, riot, fire, act of God, the public enemy, or any other cause, if beyond the reasonable efforts of County to control.
18. **NON-ASSIGNMENT:** This Purchase Order is issued to Seller in reliance upon Seller's personal performance of the duties imposed and by accepting same Seller agrees not to assign this Purchase Order, delegate the performance of its duties, or substitute materials manufactured by others without the written consent of County. Any assignment, delegation, or substitution attempted without the previous written consent of County will effect, at the option of County, a cancellation of all County's obligations under this Purchase Order.
19. **JURISDICTION:** This Purchase Order will, in all respects, be interpreted and governed by the laws of the State of Ohio, other than those relating to conflicts of laws. All disputes arising under this Purchase Order not resolved by mediation must be litigated in the Summit County Court of Common Pleas and Seller submits itself to the jurisdiction and venue of that court.
20. **ENTIRE AGREEMENT:** This Purchase Order, and any documents referred to on the face and back of this Purchase Order, constitute the entire agreement between the parties.
21. **SETOFF:** All claims for money due, or to become due, from County will be subject to deduction or setoff by County by reason of any counterclaim arising out of this or any other transaction with Seller.
22. **SHIPMENT:** If, in order to comply with County's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any increased transportation costs will be paid for by Seller unless County caused the necessity for the rerouting or expedited handling.
23. **LIMITATION ON COUNTY'S LIABILITY:** In no event will County be liable for anticipated profits or for incidental or consequential damages. County's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Purchase Order or from the performance or breach of this Purchasing Order will in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. County will not be liable for penalties of any description. Any action resulting from any breach on the part of County as to the goods or services delivered under this Purchase Order will be commenced within one year after the cause of action has accrued.
24. **OHIO COOPERATIVE PURCHASING PROGRAM:** If this agreement is entered into pursuant to The Ohio Cooperative Purchasing Program, these terms and conditions shall apply to the agreement to the extent they do not conflict with the State Terms and Conditions.