

## **STANDARD CLAUSES FOR SUFFOLK COUNTY PURCHASE ORDERS**

The parties to a Suffolk County purchase order (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 "Contractor" herein refers to any party other than the County, whether a contractor, licenser, licensee, lessor, lessee or any other party):

### **1. EXECUTORY CLAUSE.**

The County shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

### **2. NON-ASSIGNMENT CLAUSE.**

In accordance with Section 109 of the General Municipal Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the County and any attempts to assign the contract without the County's written consent are null and void. The Contractor may, however, assign its right to receive payment without the County's prior written consent.

### **3. CHANGES/AMENDMENTS.**

The County shall have the right at any time, by written notice, in the form of a Change Order, to the Vendor, to make any changes it deems necessary, including but not limited to, changes in specifications, design, delivery, testing methods, packing, or destination. If any such required changes cause an increase or decrease in the cost of or time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both.

Any claim by the Vendor for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by the Vendor of the Change Order. Price increases, extensions of time for delivery and change in quantity shall not be binding on the County unless evidenced by a form of Change Order issued and signed by the County.

### **4. CANCELLATION.**

The County may cancel this Order in whole or in part at any time for cause by written or FAX notice to the Vendor, effective when sent, in the event that the Vendor: (a) fails to comply with any term or condition of this Order 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 rights or obligations under the Order to a third party without the County's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies which the County may have in law or in equity, the County may also cancel this order or any outstanding deliveries hereunder by notifying the Vendor in writing of such cancellation and the Vendor shall thereupon transfer title and deliver to the County such work in progress or completed material as may be requested by the County. The County shall have no liability to the Vendor beyond payment of any balance owing for Material purchased hereunder and delivered to and accepted by the County prior to the Vendor's receipt of the notice of termination, and for work in progress requested for delivery to the County.

### **5. WORKERS' COMPENSATION BENEFITS.**

In accordance with Section 108 of the General Municipal Law this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as is required to be covered by the provisions of the Workers' Compensation Law.

### **6. NON-DISCRIMINATION REQUIREMENTS.**

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status.

Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract.

## **7. WAGE AND HOURS PROVISIONS.**

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

## **8. SET-OFF RIGHTS.**

The County shall have all of 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 Contractor under this contract up to any amounts due and owing to the County with regard to this contract, any other contract with any County department or agency, including any contract for a term commencing 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. The County shall exercise its set-off rights in accordance with normal County practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the County agency, its representatives, or the County Comptroller and only after consultation with the County Attorney.

## **9. RECORDS.**

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. 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 contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above for the purposes of inspection, auditing and copying.

The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation.

If this is a contract for consulting services, all payments made under the Contract are subject to audit by the Comptroller pursuant to Article V of the Suffolk County Charter. The Contractor further agrees that the Comptroller and the Department shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transactions or other records relating to Services under the Contract. If such an audit discloses overpayments by the County to the Contractor, within thirty (30) days after the issuance of an official audit report by the Comptroller or his duly designated representatives, the Contractor shall repay the amount of such overpayment by check to the order of the Suffolk County Comptroller or shall submit a proposed plan of repayment to the Comptroller. If there is no response, or if satisfactory repayments are not made, the County may recoup overpayments from any amounts due or becoming due to the Contractor from the County under the Contract or any other Fund Source.

The provisions of this paragraph shall survive the expiration or termination of the Contract for a period of six (6) years.

## **10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

**(a) FEDERAL EMPLOYER IDENTIFICATION, NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or Vouchers submitted for payment for the sale of goods or services to the County must include the payee's identification number, i.e., the Contractor's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or County of Suffolk standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

**(b) PRIVACY NOTIFICATION.** The authority to request the above personal information from a Contractor of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the Tax Law. Disclosure of this information by the Contractor or lessor to the County is mandatory.

**11. CONFLICTING TERMS.**

In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**12. GOVERNING LAW.**

This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise. Venue for any action related to this agreement shall be in the Supreme Court, Suffolk County, the United States District court for the Eastern district of new York or, if appropriate, a court of inferior jurisdiction in Suffolk County. All applicable portions of the New York State Uniform Commercial Code shall govern contracts within the State of New York.

**13. NO ARBITRATION.**

Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York in accordance with the applicable rules of Civil Procedure.

**14. SERVICE OF PROCESS.**

In addition to the methods of service allowed by the applicable rules of Civil Procedure, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the County's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the County, in writing, of each and every change of address to which service of process can be made. Service by the County to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**15. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.**

The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law

§165. (Use of Tropical Hardwoods which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation.

Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the County. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the County; otherwise, the bid may not be considered responsive.

Proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the County.

**16. 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 Order. Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which may for any reason occur prior to inspection and acceptance by the County. Mere acknowledgement by the County of delivery or receipt of Materials shall not be deemed or construed as acceptance of the Materials received. No such loss, injury or destruction shall release Vendor from any obligation hereunder.

**17. WARRANTIES.**

The Vendor warrants that any Material supplied hereunder shall conform to the generally recognized manufacturing and safety standards of the Vendor's industry in the United States and shall meet or exceed the Vendor's specifications on performance as detailed in the Vendor's brochures, sales literature and other specifications as may be available to the County.

In addition to any other express or implied warranties, the Vendor warrants that the Material furnished pursuant to this Order will be: (a) free from defects in title, workmanship and material; (b) free from defects in design except to the extent that such items comply with detailed designs provided by the County; (c) of merchantable quality and suitable for the purposes, if any, which are stated on this Order.

If any material covered by this Order is found not to be as warranted, the County may, by written notice to the Vendor: (a) rescind this Order as to such nonconforming Material; (b) accept such Material at an equitable reduction in price; (c) reject such nonconforming Material and require the delivery of suitable replacements.

If the Vendor fails to deliver suitable replacements promptly, the County, with notice of five business days, may replace or correct such Material and charge the Vendor the additional cost occasioned the County thereby, or terminate this Order for default.

Any items corrected or furnished in replacement are subject to all the provisions of this article entitled WARRANTIES to the same extent as items initially furnished or originally ordered.

Cost of replacement, rework, inspection, repackaging and transportation of such corrected Material shall be at the Vendor's expense. This warranty provision shall survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Order and such warranties shall run to the County, its successors, assigns, employees, students, and users of the Material. Nothing herein, however, shall limit the County's rights in law or equity for damages resulting from delivery of defective goods or damage caused during the delivery of goods or provision of services.

Rights granted to the County in this article entitled WARRANTIES are in addition to any other rights or remedies provided elsewhere in this Order or in Law.

#### **18. PROPRIETARY INFORMATION / TITLE TO SPECIFICATIONS.**

All written information obtained by the Vendor from the County in connection with this Order 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 Vendor only to the extent necessary for performance of this Order and shall not be disclosed to any third parties without prior written consent of the County. The Vendor shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Order without prior written consent of the County except as may be required to perform this Order.

#### **19. SHIPPING, PACKAGING AND LABELING.**

All Material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, the County's packaging

specification. The Vendor shall mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of the Vendor and the County. An itemized packing list must accompany each shipment. Each packing slip shall include; this Order number, quantity, item description, order date, shipping date and delivery address, but shall not include pricing information.

All shipments of hazardous materials under this Order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910. 1200, for the transporting and labeling of hazardous materials.

Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made. A second copy must be sent to the Suffolk County Department of Public Works, Purchasing Division, 335 Yaphank Avenue, Yaphank, NY 11908.

The Contractor shall utilize biodegradable and/or backyard-compostable packing materials to the greatest extent possible when shipping goods ordered by any County department. This requirement shall not apply to the packaging and shipping of goods which are regulated by state or federal authorities. In the event a vendor is unable to provide biodegradable and/or backyard-compostable packing materials for a shipment of goods, it must notify the County in writing of the items being shipped in noncompliant packing and the reason why such packaging is necessary. The original packaging of goods shall be exempt from this requirement.

#### **20. INSURANCE AND STATUTORY OBLIGATIONS.**

If any part of this Order involves the Vendor's performance on the County's premises or at any place where the County conducts operations, or with material or equipment furnished to the Vendor by the County, the Vendor shall take all necessary precautions to prevent injury to persons or property during the progress of such work.

The Vendor shall maintain public liability, personal injury, and property damage insurance and employer's liability and compensation insurance, in an amount determined by the County to be appropriate, to protect the County from said risks and from any statutory liabilities whatsoever arising

there from. The Vendor shall produce evidence of such insurance upon request by the County.

**21. INDEMNITY.**

The Vendor will indemnify, defend and hold the County, its directors, officers, employees, agents and students harmless from any loss, expense, claim or damage including reasonable defense costs, arising from any claim or action based on any acts or omissions of the Vendor, its employees, servants, agents or subcontractors.

**22. WORK ON-SITE.**

The following conditions will apply if work is to be performed by the Contractor on County property.

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 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. Contractor shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services and it shall observe, abide by and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Contractor 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 this Order shall govern.

**23. NOTIFICATION OF HAZARDOUS PRODUCT.**

The Vendor hereby agrees to notify the County of any inherent hazard related to the Material being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to the County's Director of Purchasing and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken

by the County or others and any additional information that the County should reasonably expect to know to protect its interest.

**24. WAIVER.**

The failure or forbearance of the County to insist in any instance upon the strict performance of any provision of this Order or to exercise any right or privilege granted to the County hereunder shall not constitute or be construed as a waiver of any such provision or right and the same shall continue in force.

**25. TAX EXEMPTION.**

New York State Tax Law exempts NYS governmental entities such as the County of Rockland, 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. Letter of evidence as issued by the New York State Department of Taxation and Finance is available upon request.

**26. COMPLIANCE WITH LAWS.**

The Vendor certifies that in performing this contract they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

**27. INSPECTION.**

Goods and materials must be properly packaged. Damaged goods and materials 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.

**28. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).