

Purchase Order: Standard Terms & Conditions

The following Standard Terms and Conditions shall apply to all purchase orders issued by the County of Cuyahoga, Ohio, a body corporate and politic and a political subdivision of the State of Ohio organized and existing under the Charter of Cuyahoga County effective January 1, 2010, as same may have been amended, modified, and supplemented. Throughout these Terms and Conditions, Cuyahoga County shall be referred to as "County" and vendors or service providers shall be referred to as "Seller". No additional terms or conditions shall apply.

1. **PRICES.** Prices charged to County will be as set forth in the Purchase Order for the goods or service, 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.
2. **ADDITIONAL CHARGES.** No charges will be allowed for packing, boxing, cartage, travel expenses or any other extra charges unless expressly accepted in writing, and signed by County's authorized representative.
3. **SPECIFICATIONS.** The County has prepared specifications for the goods and services acquired under this Purchase Order. Where a brand name or equal specification is used, use of brand name is for the purpose of describing the base standard of quality, performance and characteristics desired only, and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. Seller shall comply with the specifications and, if applicable, the insurance requirements.
4. **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; or (c) 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 forms of the Seller containing additional or contrary terms and conditions of sale will not have the effect of deleting, modifying or adding to the terms and conditions of this Purchase Order, unless expressly accepted in writing, and signed by County's authorized representative.
5. **INSPECTION AND TESTING.** Payment for the goods delivered under this Purchase Order shall not constitute acceptance. County shall have the right to inspect the goods and reject any or all of the goods which the County determines to be defective or nonconforming. Goods rejected and supplied in excess of quantities required under this Purchase Order may be returned to Seller at its expense. County may charge Seller for all expenses, including, but not limited to unpacking, examining and repacking such goods. Materials rejected because of failure to meet specifications and standards are to be removed by Seller from Destination at Seller's expense within thirty (30) days of notification from Ordering Department. In the event the County receives goods whose defect or nonconformity are not apparent upon examination, County reserves the right to require replacement, as well as payment of damages. Seller will not replace goods except on receipt of a replacement purchase order from County. Nothing contained in this Purchase Order will relieve the Seller in any way from the obligation of testing, inspection and quality control.
6. **PAYMENTS.** Unless otherwise agreed, payment terms are NET 30 days upon receipt of invoice. County does not agree to pay late fees, penalties or interest charges.
7. **PURCHASE ORDER NUMBER.** The Purchase Order Number shall be shown on all boxes, packages, shipping documents, invoices, and correspondence.
8. **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 any goods or service fail to comply with this Section, the Seller shall repair, replace, or in the event that a Seller cannot repair or replace, they shall refund to the County the amount paid for the non-conforming item within 30 days of the County providing notice to the Seller. These remedies shall be in addition to any remedies as set forth in the UCC. 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.

9. DEFECTIVE GOODS. If the goods furnished by the 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.
10. 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.
11. GOVERNING LAW AND JURISDICTION. This Purchase Order shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Purchase Order, and each party consents to the exclusive jurisdiction of such courts. Seller hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason. All Purchase Orders in which the County is a party, including this Purchase Order, are subject to the Cuyahoga County Code including, but not limited to, Title 4: Ethics and Title 5: Contracts and Purchasing, and the parties agree to comply with the County Code and all other applicable laws, ordinances, resolutions, regulations, rules and policies of the County as an integral part of this Purchase Order. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>
12. INSURANCE. Seller agrees to comply with the applicable standard insurance requirements as posted on the Cuyahoga County website.
13. INDEMNIFICATION. Seller hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) any acts or omissions of Seller, including all of its officers, owners, principals, subcontractors, employees, and agents; (b) breach or default by Seller under any terms or provisions of this Purchase Order; (c) any defect in the goods or services purchased under this Purchase Order. This indemnification will be in addition to the warranty obligations of Seller.
14. NO INDEMNITY BY COUNTY. Seller acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. Seller agrees that no provision of this Purchase Order or any other Purchase Order or agreement between Seller and the County may be interpreted to obligate the County to indemnify or defend Seller or any other party.
15. ENTIRE AGREEMENT. This Purchase Order and any documents incorporated herein, constitute the entire and exclusive agreement between the parties with respect to its subject matter.
16. ASSIGNMENT. Seller shall not assign, transfer, convey or otherwise dispose of this Purchase Order, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Purchase Order without the written approval of the County.
17. TAXES. The County is exempt from all taxes except Ohio Road Tax. In the event the Seller charges the County taxes for which it is exempt, and County pays such taxes, the Seller shall automatically refund such amounts.
18. 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.
19. 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 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.
20. CERTIFICATIONS. Seller certifies, represents and warrants that:

- a) it is not subject to an “unresolved” finding for recovery under Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Purchase Order is void ab initio, and Seller must immediately repay to the County any funds paid under this Purchase Order;
 - b) has been properly authorized to provide goods and services under this Purchase Order;
 - c) has good and marketable title to any goods delivered under this Purchase Order and in which title passes to the County;
 - d) has the right and ability to grant the license provided in any goods in which title does not pass to the County; all warranties provided for the goods and services are in accordance with the Seller’s standard warranties;
 - e) that the goods and services shall substantially conform to the Specifications during the warranty period;
 - f) that the goods and services do not infringe on the intellectual property rights of any third party;
 - g) is and will remain in compliance with the County Code and all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by Seller.
21. **FORCE MAJEURE.** Neither Party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party’s reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.
22. **TERMINATION FOR CONVENIENCE.** The County may terminate this Purchase Order, or any provision under this Purchase Order, for its convenience and without cause. Any notice of termination will be effective thirty (30) days after the Seller receives it. If the termination is for the convenience of the County, Seller will be entitled to compensation for any goods that Seller has delivered before termination. Any fees paid in advance shall be returned to the County at a prorated amount. No early termination fees shall apply to the County.
23. **TERMINATION FOR CAUSE.** County will have 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 against Seller; (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 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 the County to terminate under this Paragraph. Any fees paid in advance shall be returned to the County at a prorated amount. No early termination fees shall apply to the County.
24. **NO APPARENT AUTHORITY/PROPER APPROVALS.** Seller recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County Code.
25. **RISK OF LOSS.** Except as otherwise expressly provided, risk of loss on all items shipped by Seller to County will pass to County at the F.O.B. Destination 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. Shipping point as determined by County.
26. **TITLE.** Title to the goods purchased under this Purchase Order passes to the County upon inspection and acceptance. County shall approve and process payment for the goods upon passing of the title.
27. **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 provision, 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.
28. **SETOFF.** All claims for monies 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.
29. **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.

30. LIMITATION ON COUNTY LIABILITY. In no event will County be liable for anticipated profits or for indirect, 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. The seller will be liable for all direct damages due to the fault or negligence of the Seller.
31. OHIO COOPERATIVE PURCHASING PROGRAM. If this Purchase Order is made pursuant to The Ohio Cooperative Purchasing Program, these terms and conditions shall apply to the extent that they do not conflict with the State Terms and Conditions.
32. HEADINGS. The section headings appearing in this Purchase Order are inserted only as a matter of convenience and in no way define, limit, or describe the scope or extent of such section.
33. EQUAL EMPLOYMENT OPPORTUNITY. Seller will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.
34. DRUG-FREE WORKPLACE. Seller must comply with all applicable state and federal laws regarding keeping a drug-free workplace. Seller must make a good faith effort to ensure that all its employees, while working on County property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.
35. ANTI-DISCRIMINATION. Seller agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and a violation of this term shall be deemed a material breach of this Purchase Order. It shall be the policy of Seller to provide equal opportunity to all business persons seeking to contact, or otherwise interested in contracting with Seller, including various eligible Small Business Enterprises, but that such a policy does not create an obligation on the part of Seller to enter into any particular agreements.
36. SECURITY. Where applicable, Seller agrees to comply with all County security provisions as set forth in the Cuyahoga County Information Technology Policies.
37. ELECTRONIC SIGNATURE POLICY. PROVIDER AGREES ON BEHALF OF THE SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, THAT ALL CONTRACT DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.