

St Charles Purchase Order Terms and Conditions

Offer and Acceptance

1. This purchase order is an offer to purchase the indicated goods. Acceptance of this purchase order is evidence that an agreement exists between the Seller and the City of St. Charles (City).
2. Seller to acknowledge receipt of this order via e-mail to PurchasingGroup@stcharlesil.gov.

Terms

3. **Freight.** All pricing must be **FOB DESTINATION; FREIGHT PREPAID & ALLOWED.** Title to the goods passes from the Seller to the city at the point of destination and Seller pays all freight expense.
4. **Acknowledgement.** If this Order has been issued by the City in response to an offer by the Seller, then the Seller's acceptance of this Order shall constitute agreement by the Seller to the city's additional terms, different terms and modifications. The City does not agree to any additional, different or modified terms contained in the Seller's acknowledgement of the purchase. All additional, different, or modified terms are not binding upon the city unless expressly accepted by the City in writing.
5. **Uniform Commercial Code.** As to terms not expressed within this Order, the Uniform Commercial Code (UCC) shall govern this agreement between the Seller and the City.

Price and Payment

6. **Taxes.** The City is exempt from payment of State, Federal Excise, and Illinois Retailers occupational Taxes. The City's Tax exemption number is E9996-0680-07.
7. **Payment.** (1) Payment will result from a Seller generated invoice emailed to AccountsPayable@stcharlesil.gov, and City verification of receipt and acceptance of material; (2) Checks will be payable only to the company awarded this order. Any circumstances requiring a third party reimbursement must be approved in writing by the city's Director of Finance. (3) The City complies with the Illinois Local Government Prompt payment Act which states that any bill approved for payment shall be paid within 30 days after date of approval.
8. **Invoices.** (1) Invoices must reflect the following applicable information: Name of Seller, Purchase Order Number, Description and stock Number, Quantity Ordered, Quantity shipped, Quantity on Back Order, price as stated on the award document. (2) Invoices will be approved for payment following: acceptance of product, receipt of packing list and invoice, and any other required paperwork. (3) A separate invoice should be generated with each shipment. (4) Any invoice submitted in excess of two (2) months from order completion will not be paid.

Deliveries

9. **Packaging and Timeliness.** Deliveries must (1) include a packing slip within each shipment; (2) be labeled on each package with the Purchase Order number; and (3) delivered between 7:00am-3:30pm Monday – Friday except for holidays.
10. **Ownership.** Title to goods passes from Seller to City at the point of destination, upon physical inspection by the City of the goods found to be acceptable and in full compliance with the solicitation documents and Order. Where circumstances or conditions exist preventing effective inspection of the goods at the time of delivery, the City reserves the right to inspect the goods within a reasonable time subsequent to delivery.
11. **Non-Performance.** Time is of the essence for completion of this Order. The City may cancel the Order, or any portion of it, if delivery is not made within the specified time. Cancellation due to Seller's non-performance constitutes authority of the City to purchase on the open market goods or services of comparable grade to replace the wholly or partially cancelled Order. Seller shall deduct from the Order these quantities purchased by the City. Seller shall reimburse the City for any expenses incurred in excess of the Order prices.
12. **Unavoidable Delay.** Delay in the delivery of goods purchased due to cause beyond Seller's control shall require the Seller with knowledge of the delay to immediately request an extension of time from the City. The City reserves the right to grant the Seller this extension. Failure on the Seller's part to notify the City of "unavoidable delay" is recognized as Seller's non-performance of the Order. Any "unavoidable delay" time extension granted by City must be documented by a Purchase Order Change Order issued by the City as an addendum to this Order.
13. **Collect On Delivery.** COD shipments will not be accepted by the City without specific prior arrangements in writing.
14. **Toxic Substance.** Seller shall comply with the requirements of the Toxic Substance Disclosure to Employees Act, Public Act 83-240, for any materials supplied and covered by the act. Material Safety Data Sheets (MSDS) shall be provided by Seller with each shipment at time of delivery.

Rejection of Goods

15. **City Rights.** In the event the delivered material is found to be defective or does not conform to the solicitation documents and executed contract, the City reserves the right to: (1) Cancel the order upon written notice to the Seller; (2) Deduct such amount from monies owed the Seller, or, with mutual agreement, the Seller may issue a credit to City; (3) Purchase in the open market goods of comparable grade to replace the goods rejected. Such purchases shall be deducted from contract quantities. Seller shall reimburse the City for any expense incurred in excess of contract prices.
16. **Seller Duty.** The Seller agrees, upon notification by the City of rejection of materials, to promptly remove all defected materials from City facilities, at their sole expense.
17. **Public Necessity.** Should public necessity demand it, the City reserves the right to use or consume goods delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Division Manager.

Warranty

18. **The Seller Warrants.** (1) that all goods furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications, or standards incorporated herein; (2) all goods are free from defects in design; (3) all goods are suitable for and will perform in accordance with the purposes for which they were intended.
19. **Commercial Warranty.** The Seller agrees that the goods furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for such goods, and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the City by any other clause of this contract or by law.

Insurance

20. Seller shall procure Commercial General Liability Insurance to include products liability with a limit of \$1,000,000 and name the City as an additional insured on a primary and non-contributory basis. Failure by the city to request the Certificate of Insurance documenting this coverage shall not be construed as a waiver of Seller's obligation.

Indemnify

21. **Patents and Copyrights.** The Seller warrants that the sale or use of its products will not infringe on any United States or foreign patent. The Seller shall indemnify the City against any and all judgments, decrees, legal fees, costs and expenses resulting from such alleged infringement. The Seller will, upon request of the City, and at the Seller's own expense, defend any suit or action which may be brought against the City or those selling or using any related product of the City by reason of any alleged infringement of any patent or copyright in the sale or use of the Seller's products.
22. **Loss and Liability.** The Seller shall hereby defend and indemnify the City, its directors, agents, officers, employees, and elected officials from and against any and all liabilities, losses, claims, demands, damages, costs, fines, penalties, expenses, judgments, and settlements, including, but not limited to reasonable attorney's fees and costs of litigation, and all causes of action of any kind or character, that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit arising out of or connected with, directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions of any agent, subcontractor, or contractor hired to provide any goods or perform any services on behalf of the Seller.

Policy

23. **Non-Discrimination.** The Seller shall comply with all rules and regulations pertaining to public contracts adopted by the State of Illinois and the City inclusive of, but not limited to: The Illinois Human Rights Act, The Equal Employment Opportunity Clauses, The Public Works Employment Discrimination Act, The Civil Rights Act, and The Americans with Disabilities Act.
24. **Non-Waiver of Rights:** No failure of either party to exercise any power given to it thereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.
25. **Courts of Jurisdiction.** The parties agree that any and all disputes, disagreements or litigation, by, between, or amongst them, related to this contract shall be exclusively heard and resolved in the courts of the 16th Judicial Circuit, Kane County, Illinois.
26. **Governing Law.** This agreement is governed by the laws of the State of Illinois.