



7/14/16

**Hendry County
Purchase Order Terms and Conditions**

1. Offer

The order set forth in the Purchase Order is subject to cancellation by HENDRY COUNTY without notice if not accepted by VENDOR within fourteen (14) days of issuance.

2. Acceptance and Confirmation

By providing goods or services under the subject Purchase Order, VENDOR accepts these Terms and Conditions. This Purchase Order (including all documents attached to or referenced herein) constitutes the entire agreement between the parties, unless otherwise specifically noted by HENDRY COUNTY on the face of this Purchase Order. If additional terms are necessary, a formal written contract will be required instead of a Purchase Order. If there is a formal written contract, its provisions shall prevail to the extent of any conflict with these Terms and Conditions. VENDOR is deemed to be on notice that HENDRY COUNTY objects to any additional or different terms and conditions contained in any acknowledgement, invoice or other communication from VENDOR, or any similar act by VENDOR, notwithstanding HENDRY COUNTY's acceptance or payment for any delivery of goods and/or services.

3. Inspection

Partial shipments of multiple line items are acceptable unless otherwise stipulated. All goods and/or services delivered hereunder shall be received subject to HENDRY COUNTY's inspection and approval, and payment therefor shall not constitute acceptance. All payments are subject to adjustment for shortage or rejection. VENDOR further agrees that undiscovered delivery of nonconforming goods and/or services is not a waiver of HENDRY COUNTY's right to insist upon further compliance with all specifications.

To the extent that a Purchase Order requires a series of performances by VENDOR, HENDRY COUNTY prospectively reserves the right to cancel the entire remainder of the Purchase Order if goods and/or services provided during the term of the Purchase Order are non-conforming or otherwise rejected by HENDRY COUNTY.

4. Risk of Loss

The risk of loss or damage to all goods or materials shall remain with VENDOR until arrival at HENDRY COUNTY. Goods or materials found to be damaged or defective, or which fail to conform to the Purchase Order upon arrival at HENDRY COUNTY, may be rejected by HENDRY COUNTY and returned or held at VENDOR's risk and expense. HENDRY COUNTY may charge to VENDOR all expenses of inspecting, unpacking, examining, repacking, storing and reshipping any rejected goods. HENDRY COUNTY shall receive credit at the invoice price or, at HENDRY COUNTY's option, replacement for such goods or materials, but in no event will such goods or materials be replaced by VENDOR without a written replacement order from HENDRY COUNTY.

5. Quantity/Price

The Purchase Order amount shall not be exceeded without a modification to the Purchase Order approved by HENDRY COUNTY, notwithstanding increased quantities or conditions which may be needed to perform VENDOR's obligations hereunder, nor shall the VENDOR be entitled to any additional time or payment for time required for the submission and consideration of any such request. The foregoing sentence shall not apply to work or services provided when required to alleviate an emergency condition not caused by the VENDOR's actions or omissions.

6. Shipping and Invoices

- a) All goods are Freight on Board destination and must be suitably packed and prepared to secure the lowest transportation rates and to comply with all carrier regulations. Risk of loss of any goods sold hereunder shall transfer to HENDRY COUNTY at the time and place of delivery; provided that risk of loss prior to actual receipt of the goods by HENDRY COUNTY nonetheless remains with VENDOR. Delivery must actually be effected within the time stated on the Purchase Order. HENDRY COUNTY reserves the right to cancel the order and purchase elsewhere if delivery is not timely as stated on the Purchase Order. Deliveries shall be made between 8:00 A.M. and 5:00 P.M., Monday through Friday (holidays excepted) unless otherwise stated. In case of default by the VENDOR, HENDRY COUNTY may procure the articles or service covered by this order from other sources and hold the VENDOR responsible for any excess expense occasioned thereby.
- b) No charges will be paid by HENDRY COUNTY for packing or crating unless otherwise specifically stated in this Purchase Order. Unless otherwise provided in this Purchase Order, no invoices shall be issued or payments made prior to delivery. Unless freight and other charges are itemized, any discount will be taken on the full amount of invoice. VENDOR is to prepay shipping charges and add to invoice, unless HENDRY COUNTY agreed otherwise by previous agreement.
- c) All shipments of goods scheduled on the same day via the same route must be consolidated. Each shipping container must be consecutively numbered and marked to show this Purchase Order number. The container and Purchase Order numbers must be indicated on the bill of lading. Packing slips must show Purchase Order number and must be included on each package of less than container load (LCL) shipments and/or with each car load of equipment. HENDRY COUNTY reserves the right to refuse or return any shipment or equipment at VENDOR'S expense that is not marked with Purchase Order numbers. VENDOR agrees to declare to the carrier the value of any shipment made under this Purchase Order and the full invoice value of such shipment.
- d) All invoices must contain the Purchase Order number and any other specific information as identified on the Purchase Order. Discounts of prompt payment will be computed from the date of receipt of goods or from date of receipt of invoices, whichever is later. Payment will be made upon delivery of the goods or performance of the services and receipt of a proper invoice and will be made in compliance with Chapter 218, Fla. Stat., otherwise known as the "Local Government Prompt Payment Act."

7. Time is of the Essence

Time for delivery of goods or performance of services under this Purchase Order is of the essence. Failure of VENDOR to meet delivery schedules or deliver within a reasonable time, as interpreted by HENDRY COUNTY alone, shall entitle HENDRY COUNTY to seek all remedies

available to it at law or in equity. VENDOR agrees to reimburse HENDRY COUNTY for any expenses incurred in enforcing its rights.

8. No Liens

All work performed hereunder shall be accomplished in a manner that will result in no liens, claims or encumbrances being imposed on HENDRY COUNTY's property or against HENDRY COUNTY. In the event any materialman or subcontractor of VENDOR should file any lien on the property of HENDRY COUNTY or otherwise file a claim against HENDRY COUNTY, VENDOR shall obtain the release and satisfaction of the lien or claim within ten (10) days of its filing. VENDOR shall be liable for any consequential damages to HENDRY COUNTY resulting from the filing of any lien or claim.

9. Modifications

HENDRY COUNTY may at any time and by written notice make changes to drawings and specifications, shipping instructions, quantities and delivery schedules within the general scope of this Purchase Order. Should any such change increase or decrease the cost of or the time required for performance of the Purchase Order, an equitable adjustment in the price and/or delivery schedule will be negotiated by HENDRY COUNTY and VENDOR. Notwithstanding the foregoing, VENDOR has an affirmative obligation to give notice if the changes will decrease costs. Any claims for adjustment by VENDOR must be made within thirty (30) days from the date the change is ordered or within such additional period of time as may be agreed upon by the parties.

10. Warranties

VENDOR expressly warrants that the work, goods, materials and/or services covered by this Purchase Order are of the quantity, quality, materials, workmanship, size, description, and dimensions specified in the applicable specifications, drawings, samples or other descriptions furnished or specified by HENDRY COUNTY, and will be of satisfactory material and quality of production, free from defects and sufficient for the purpose intended for at least one (1) year after delivery. Such express warranty shall not be deemed waived by reason of either the acceptance of the work, goods, materials and/or services, or the payment therefor, or both, unless otherwise stated. Goods shall be delivered free from any security interest or other lien, encumbrance or claim of any third party. These warranties shall survive inspection, acceptance, passage of title and payment by HENDRY COUNTY. Nothing herein shall be deemed to be a waiver by HENDRY COUNTY of any manufacturer warranties, either express or implied.

11. Advertising

No VENDOR providing goods and services to HENDRY COUNTY shall advertise the fact that it has contracted with HENDRY COUNTY for goods and/or services, or appropriate or make use of HENDRY COUNTY's name or other identifying marks or property without the prior written consent of HENDRY COUNTY's Purchasing Department.

12. Indemnification

VENDOR hereby assumes entire responsibility and liability, to the maximum extent provided by law, for any and all damage, loss or injury of any kind or nature whatever to persons or property caused by or resulting from the goods or services provided. VENDOR shall indemnify and hold harmless HENDRY COUNTY and its Commissioners, employees, agents and instrumentalities from

any and all claims, suits, liabilities, expenses, losses or damages, including attorney's fees and costs of defense, which HENDRY COUNTY or its Commissioners, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the provision of goods or services by VENDOR or its board members, officers, employees, agents, servants, partners, principals or subcontractors.

In case any suit or other proceeding shall be brought against HENDRY COUNTY at any time on account or by reason of any act, action, neglect, omission or default by VENDOR or any of its subcontractors, VENDOR hereby agrees to assume the defense thereof and to defend the same at VENDOR's own expense, and to pay any and all costs, charges, attorney's fees and other expenses, and any and all judgment that may be incurred or obtained against HENDRY COUNTY and any judgment or other lien placed upon or obtained against the property of HENDRY COUNTY, as a result of such suit or proceeding. VENDOR will at once cause the same to be dissolved and discharged by giving bond or otherwise. VENDOR and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents and shall comply with all laws and regulations. HENDRY COUNTY shall not be responsible or be held liable for any damage to persons or property consequent upon the use, misuse or failure of any equipment used by VENDOR or any of its subcontractors, even though such equipment be furnished or lent to VENDOR or to any of its subcontractors by HENDRY COUNTY.

VENDOR expressly understands and agrees that any insurance protection required by this Purchase Order or otherwise provided by VENDOR shall in no way limit the responsibility to indemnify, keep and save harmless and defend HENDRY COUNTY or its Commissioners, employees, agents and instrumentalities as herein provided.

13. Warranty of Non-Infringement

- a) VENDOR represents and warrants that all goods sold or services performed under this Purchase Order are: 1) in compliance with applicable laws; 2) do not infringe any patent, trademark, copyright or trade secret; and 3) do not constitute unfair competition.
- b) VENDOR shall indemnify and hold harmless HENDRY COUNTY from and against any and all claims, including claims of negligence, costs and expenses, including but not limited to attorneys' fees, which arise from any claim, suit or proceeding alleging that HENDRY COUNTY's use of the goods and/or services provided under this Purchase Order are inconsistent with VENDOR's representations and warranties in section 13(a).
- c) If any claim which arises from VENDOR'S breach of section 13(a) has occurred or is likely to occur, VENDOR may, at HENDRY COUNTY'S option, procure for HENDRY COUNTY the right to continue using the goods or services, or replace or modify the goods or services so that they become non-infringing (without any material degradation in performance, quality, functionality or additional cost to HENDRY COUNTY).

14. Insurance Requirements

VENDOR, at its sole expense, shall maintain commercial general liability insurance in the minimum amount of \$300,000 per person/per occurrence and workers' compensation insurance in accordance with State law. The liability insurance shall include coverage for products and completed operations. Providing and maintaining adequate insurance coverage is a material

obligation of VENDOR. All such insurance shall be primary to any insurance or self-insurance maintained by HENDRY COUNTY, and VENDOR hereby agrees to furnish HENDRY COUNTY certificates of insurance upon request. Failure of HENDRY COUNTY to demand such certificates or to identify a deficiency from evidence provided will not be construed as a waiver of VENDOR'S obligation to maintain such insurance. All insurance policies shall be executed through insurers authorized or eligible to write policies in the State of Florida.

15. Work on County Premises

In the event VENDOR is to perform work on HENDRY COUNTY'S premises, VENDOR shall carry on said work at its own risk until the same is fully completed and accepted. In case of any accident, destruction or injury to the work or materials before its final completion and acceptance, VENDOR shall repair and replace forthwith the work or materials so injured, damaged and destroyed at VENDOR'S own expense and to the satisfaction of HENDRY COUNTY. When materials and equipment are furnished by others for installation or erection by VENDOR, VENDOR shall receive, unload, store and handle same at the site and be responsible therefor as though such materials or equipment were being furnished by VENDOR under the Purchase Order.

16. Laws and Regulations

In fulfilling the terms of this Purchase Order, VENDOR agrees that it will comply with all federal, state, and local laws, rules, codes and ordinances that are applicable to the conduct of its business. Further, VENDOR acknowledges and without exception or stipulation shall be fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. §1324, et. seq. and regulations relating thereto, as either may be amended. Failure by VENDOR to comply with the laws referenced herein shall constitute a breach of the Purchase Order and HENDRY COUNTY shall have the right to unilaterally terminate said Purchase Order immediately.

17. Force Majeure

Neither HENDRY COUNTY nor VENDOR shall be responsible for any delay or failure in performance resulting from any cause beyond its control, including, but without limitation to, war, strikes, civil disturbances and acts of nature. When VENDOR has knowledge of any actual or potential force majeure or other conditions which will delay or threatens to delay timely performance of this Purchase Order, VENDOR shall immediately give notice thereof, including all relevant information with respect to what steps VENDOR is taking to complete delivery of the goods and/or services to HENDRY COUNTY.

18. Assignment

VENDOR may not assign this Purchase Order or any money due or to become due without the prior written consent of HENDRY COUNTY. Any assignment made without such consent shall be deemed void.

19. Taxes

Goods and services procured subject to this Purchase Order are exempt from Florida sales and use tax and from federal excise tax.

20. Annual Appropriations

HENDRY COUNTY's performance and obligation to pay under this Purchase Order shall be contingent upon an annual appropriation of funds.

21. Termination

HENDRY COUNTY, at its sole discretion, reserves the right to terminate this Purchase Order without cause by written notice. Upon receipt of such notice, VENDOR shall not incur any additional costs under this Purchase Order. HENDRY COUNTY shall be liable only for reasonable costs incurred by VENDOR prior to receipt of notice of termination. HENDRY COUNTY shall be the sole judge of "reasonable costs." This Purchase Order may be terminated immediately by HENDRY COUNTY for breach by VENDOR of the terms and conditions of this Purchase Order, provided that HENDRY COUNTY has provided VENDOR with notice of such breach and VENDOR has failed to cure within five (5) days of receipt of such notice.

22. Fraud and Misrepresentation

Any VENDOR that attempts to meet its contractual obligations with HENDRY COUNTY through fraud, misrepresentation or material misstatement is subject to cancellation or termination of any Purchase Order with HENDRY COUNTY. VENDOR shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

23. Material Safety Data Sheet

VENDOR agrees to furnish HENDRY COUNTY with a current Material Safety Data Sheet (MSDS) on or before delivery of each and every hazardous chemical or substance purchased. Appropriate labels and MSDS's shall be provided to the ordering department for all shipments.

24. Uniform Commercial Code

The Uniform Commercial Code, as set forth in Florida Statutes Chapter 672, shall prevail as the basis for contractual obligations between HENDRY COUNTY and VENDOR for any terms and conditions not specifically stated herein.

25. Disclosure

VENDOR warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for VENDOR to solicit or secure this Purchase Order and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bonafide employee working solely for VENDOR, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of this Purchase Order.

26. Miscellaneous

- a) This Purchase Order constitutes the entire and exclusive agreement between HENDRY COUNTY and VENDOR with reference to the goods or services. This Purchase Order supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.
- b) This Purchase Order shall be governed by the laws of the State of Florida. VENDOR consents to the jurisdiction of Florida courts over it. The venue for any action brought to enforce any of the terms and conditions of this Purchase Order shall be HENDRY COUNTY, Florida.

- c) Failure of HENDRY COUNTY to act immediately in response to a breach of this Purchase Order by VENDOR shall not constitute a waiver of breach. Waiver by HENDRY COUNTY of any default by VENDOR hereunder shall not be deemed a waiver of any subsequent default by VENDOR.
- d) All notices under this Purchase Order shall be sent to the respective addresses on the Purchase Order by certified mail, return receipt requested, by overnight courier service, or by personal delivery and will be deemed effective upon receipt. Postage, delivery and other charges shall be paid by the sender. A party may change its address for notice by written notice complying with the requirements of this section.
- e) VENDOR is an independent contractor. No party to this Purchase Order shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties, and nothing in this Purchase Order shall be deemed to contemplate either party as a partner, agent or representative of the other party.