

BARNSTABLE COUNTY

Purchase Order Terms and Conditions

This purchase order issued by the County of Barnstable (hereinafter "County") and the attached description of product/services to be provided and price quote submitted by the supplier/contractor/consultant named in this purchase order (hereinafter "vendor") shall constitute the contract between the County and the vendor. This purchase order, description of product/services and price quote constitute the entire agreement between the parties (hereinafter "contract") and there are no contracts other than those incorporated herein. In the instance of the purchase order resulting from a state contract or intergovernmental collaborative bid, the terms and conditions of that bid and/or contract will apply, and the terms stated herein shall be supplemental to those terms. The contract may not be changed, altered, amended, modified, or terminated orally and any such change, alteration, amendment, or modification must be in writing and executed by the parties hereto.

FOR AND IN CONSIDERATION of the payments by the County and delivery of the product/services by the vendor, the VENDOR hereby agrees to provide the product and/or services and the County agrees to pay the contract price in accordance with the terms of this contract.

1. **ACCEPTANCE:** The Contractor, by accepting this contract, agrees to all the conditions and terms specified herein, on attachments hereto, on the reverse hereof, and on any bid inquiry that may have preceded this award. Direct all correspondence relative to this contract to the Barnstable County, Purchasing Department, Barnstable, MA 02630. Prices cannot be altered during the term unless that was a condition of Contractor's bid. Unless otherwise stated, unit prices are inclusive of all costs.
2. **SHIP TO:** To ensure that delivery is made to the correct location, please address all shipments as noted on the face of this order. All correspondence, packages, and invoices must indicate the purchase order number, departmental name, and delivery address as indicated on this order.
3. **DELIVERY:** Deliveries shall be strictly in accordance with the schedule set out or referred to in the order and in exact quantities ordered. Notwithstanding the foregoing, Contractor shall not be liable for delay in delivery due to causes beyond Contractor's control and without Contractor's fault or negligence, provided Contractor exercises due diligence in promptly notifying County of conditions which will result in delay, and provided further, if Contractor's delay is caused by the default of a subcontractor or supplier, such default arises out of causes beyond the control of both Contractor and subcontractor or supplier, and without the fault or negligence of either of them, and the supplies or services to be furnished by the subcontractor or supplier were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.
4. **INSPECTION OF GOODS:** The County shall have a reasonable time after delivery to inspect the goods delivered or services rendered under this contract and to reject or revoke acceptance of any not conforming with the terms of this agreement. Rejected goods will be returned to Contractor at Contractor's expense. Rejected services will be reworked and all costs associated with the rework will be charged to Contractor.
5. **SUBSTITUTION OF GOODS:** Goods not conforming with this contract will not be accepted. The County must approve, in writing, any substitution of non-conforming goods prior to shipment.
6. **MATERIAL SAFETY DATA SHEETS:** Contractor shall submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance (pursuant to M.G.L. C. 11 IF s 8,9 and 10 and the regulations contained in 441 OMR s 21.06) that is shipped against this order.
7. **CONTRACTOR'S WARRANTY:** Contractor herein warrants and covenants that the subject merchandise complies with all applicable federal, state and local statutes, rules and regulations for the installation and use of said merchandise for the purpose for which said merchandise is being purchased or rented.
8. **PAYMENT:** All invoices must be submitted to the BILL TO ADDRESS referenced on the front of this purchase order and must indicate the County's purchase order number and the name of the department listed in the SHIP TO ATTENTION line. Note that in order to effect payment, a W-8 or W-9 form, as appropriate, executed by the Contractor, which reflects the Contractor's current legal and remittance address or addresses, must be on file at the county. Payment shall be made in accordance with M.G.L. C.29, s.29c and 815 CMR 4.00.
9. **DEFAULT:** In the event of default by Contractor, including failure to deliver any item ordered within a reasonable time after acceptance of this contract, or if the County rightfully rejects the goods or services or revokes acceptance, the County may without waiving any other remedy permitted by law, make covering purchases of goods or services and hold Contractor liable for all additional costs incurred. Further, in such event, the County, at its option, may be relieved of any duty to accept such items as are subsequently delivered pursuant to this contract.
10. If this contract does not agree with Contractor's quotation, contact the County before performance begins. Prior to performance, the County may require additional information from the Contractor in order to ensure that the firm is qualified, and that the product or service offered will meet the need for which it is intended.
11. **FORCE MAJEURE:** The Contract shall be subject to Force Majeure considerations. Either party hereto shall be excused from performance of any act under the contract if prevented from the performance of any act required by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party. The period for the performance of such obligation shall be extended for an equivalent period for no additional cost. Continued prevention from performance by such causes for periods aggregating sixty (60) or more days shall be deemed to render performance impossible, and either party shall thereafter have the right to terminate this contract.
12. **TERMINATION OF CONTRACT:** Unless excused from performance by Force Majeure, if the Vendor shall fail to fulfill in a timely and satisfactory manner its obligations under this contract, or if the Vendor shall violate any of the covenants, conditions, or stipulations of this contract, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the vendor, then the County shall thereupon have the right to terminate this contract by giving written notice to the vendor of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Additionally, the County, by written notice, may terminate this contract, in whole or in part, when it is in the County's best interest. If this contract is terminated, the County shall be liable only for payment under the payment provisions of this contract for services or goods received before the effective date of termination.
13. **GOVERNING LAW:** This contract is governed by the laws of the Commonwealth of Massachusetts.
14. **INSURANCE:** If the contract requires the vendor to perform work on County property, no work shall be performed by vendor under this contract on County property unless and until vendor submits a certificate of insurance naming the County of Barnstable as an additional insured in full compliance with the County's insurance policies for liability, property damage and workmen's compensation as applicable. Email certification to Purchasing Division purchasing@capecod.gov. Insurance is to remain current during performance of this contract.
15. **INDEMNIFICATION:** The Vendor shall indemnify, defend and hold harmless the County, its elected or duly appointed officers, and employees against liability, losses, damages or expenses (including legal expenses) resulting from any claim based upon breach of this contract or negligent or intentional misdeeds or omission of the Vendor, its employees or its agents in providing its service(s) to the County pursuant to the Contract.
16. **TAX EXEMPT:** The County is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates when called upon to do so. The County is also exempt from Massachusetts Sales Tax.
17. **NON-DISCRIMINATION:** The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment.
18. **STATE TAX - M.G.L. C.62C, s.49A and C. 15 IA, s. 19A:** Each Contractor must certify under penalties of perjury that they' have filed all state returns and paid all state taxes as required under law.

This Purchase Order in its entirety constitutes a written contract with the County of Barnstable pursuant to the provision of Chapter 30B, Subsection (a) as amended by 2013, 38, Section 49 effective July 1, 2013.

The terms of this contract cannot be modified, altered, or changed without the specific written approval of the County.