



## Ada County Procurement Purchase Order Terms for Goods

Revised 7/1/2018

1. **DEFINITIONS:** The following terms shall have the meaning stated herein: "Agreement" shall mean the Ada County Purchase Order for the Goods to be procured, this Ada County Procurement Purchase Order Terms for Goods, and all attached and referenced documents in the Purchase Order; "County" shall mean Ada County, a duly formed and existing county pursuant to the laws and Constitution of the State of Idaho; "Goods" shall have the meaning described in the U.C.C; "Seller" shall mean the supplier named on the front of the Purchase Order, including its agents, sales personnel, shipping and receiving personnel, and other employees acting on its behalf; "U.C.C." shall mean Idaho Code, Title 28, Chapter 2, as it may amended from time to time.

2. **TERMINATION:** The County may terminate the Agreement when the Seller has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, the Seller will be responsible for any costs incurred by the County to replace the Goods, including but not limited to procurement of replacement Goods. The County, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

3. MODIFICATIONS/ALTERATIONS:

a. Writing required: Any proposed modifications or alterations to the terms of the Agreement shall be ineffective and void unless agreed to in a writing duly executed by the parties.

b. Board signature required: Any modifications or alterations of the terms of the Agreement shall be ineffective and void unless approved by the Board of Ada County Commissioners at an open meeting.

c. Non-conforming amendments rejected: Any proposed modifications or alterations of the Agreement not complying with the above conditions shall be null and void, including but not limited to any software "click-through" dialogue boxes, "shrink-wrap" terms, or any other standard-form terms or conditions which might be contained, presented, or found within any software program(s) or within any packaging, whether in electronic or hardcopy format, even if "accepted," received, or otherwise acknowledged by any County user/administrator.

d. Rejection of limitations or exclusions of default warranties or remedies: Ada County rejects all terms in any writing from the Seller that limit or disclaim any warranty provided by U.C.C. Additionally, Ada County rejects all terms in any writing from the Seller that limit or exclude remedies available to a buyer under U.C.C

4. CONFORMING GOODS: The Goods shall conform in all respects with the County's solicitation documents. In the event of nonconformity, and without limitation upon any other remedy, the County shall have no financial obligation in regard to the non-conforming Goods. The Seller shall pay all costs for removal of non-conforming Goods from County premises.

5. DIFFERENCE IN TERMS AND CONDITIONS: In the event Seller's proposal is referenced as part of the Agreement, the Ada County Procurement Purchase Order Terms for Goods shall control in the case of a conflict.

6. TAXES: Ada County is generally exempt from payment of Idaho state sales and use taxes. If the Seller is required to pay any taxes incurred as a result of doing business with The County, it shall be the sole responsibility of the Seller to pay the taxes.

7. WARRANTIES:

a. Warranty. Goods to be procured hereunder are warranted to be of merchantable quality, free of defects of material, design, or workmanship, and suitable for ordinary use as is more fully described in the U.C.C.

b. Warranty of title. Seller warrants that it has title to the Goods to be procured, and that the title to the Goods is free of all liens and encumbrances.

c. Save harmless. Seller agrees to protect, save harmless, and indemnify Ada County from all damages, claims, demands and/or judgments for actual or alleged breach of warranty, negligence, insufficiency or illegality of design, manufacture, fabrication, assembly, processing, labeling, or infringement of patent or copyright, arising out of the purchase, resale, or other use of the Goods to be procured hereunder. Seller shall defend Ada County from all suits, whether at law or in equity, alleging damages, claims, demands and/or judgments for actual or alleged breach of warranty, negligence, insufficiency or illegality of design, manufacture, fabrication, assembly, processing, labeling, or infringement of patent or copyright, arising from the purchase, resale, or other use of the Goods to be procured hereunder. Defense shall be provided by counsel chosen by Ada County, and Seller shall bear all costs, fees, and expenses of such defense, including, but not limited to, attorney's fees and expenses, court costs, and expert witness fees and expenses.

8. SELLER RESPONSIBILITY: The Seller assumes full and sole responsibility for all tasks related to the purchase and delivery of all Goods included in the Agreement, whether or not the Seller is the actual manufacturer or producer of such Goods. Further, the Seller will be the sole point of contact regarding the Agreement, including payment of charges resulting from the use or purchase of Goods selected.

9. COMMODITY STATUS: It is understood and agreed that any Goods offered or shipped shall be new and in first class condition, and that all containers for the Goods shall be new and suitable for storage or shipment, unless otherwise indicated by the County in the specifications. Demonstrators; or previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. The warranty shall include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.

10. SHIPPING, DELIVERY, AND INSTALLATION: All orders will be shipped directly to the ordering departments at the location specified, on an F.O.B. Destination Freight Prepaid and Allowed basis with all transportation, unloading, uncrating, drayage, and all other associated delivery and handling charges incidental to and associated with completion of the Agreement paid by the Seller. If installation is required, pricing shall include all charges associated with a complete installation at the location specified.

11. RISK OF LOSS: Risk of loss and responsibility and liability for loss or damage will remain with Seller until final inspection and acceptance by County. Responsibility will pass to the County, except as to the latent defects, fraud and Seller's warranty obligations, upon completion of inspection and acceptance. Such loss, injury or destruction occurring at the risk of seller shall not release the Seller from any obligation under the Agreement.

12. ASSIGNMENTS: Seller shall not assign the Agreement, any order, or any interest herein without prior written approval of the County. Assignment of the Agreement without approval shall, at the option of the County, cause immediate termination of the Agreement so assigned. All rights of action, for any breach of such Agreement assignment are reserved to the County.

13. GOVERNMENT REGULATIONS: Seller guarantees that all Goods meet or exceed the requirements and guidelines established by the Occupational Safety and Health Act, Consumer Product Safety Council, Environmental Protection agency, or other regulatory agencies.

14. SAFETY INFORMATION: All Goods regulated by the William-Steiger Occupational Safety and Health Act of 1970, proposed and/or used in the performance of the Agreement, must conform to the standards required by that act. Seller must furnish all Safety Data Sheets (SDS) for any regulated Goods at the time of delivery.

15. USE OF THE COUNTY NAME: Seller agrees that it will not, prior to, in the course of, or after performance under the Agreement use the County's name in any advertising or promotional media as a customer or client of Seller without the prior written consent of the County.

16. PAYMENT TERMS: Ada County will normally pay properly submitted vendor invoices within thirty (30) days of receipt providing Goods have been delivered, installed (if required), and accepted as specified.

17. FORCE MAJEURE: Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather, provided that in all cases the Seller shall notify the County promptly in writing of any cause for delay and the County concurs that the delay was beyond the control and without the fault or negligence of the Seller.

18. GOVERNING LAW: The Agreement shall be construed in accordance with, and governed by the laws of the State of Idaho. Any action to enforce the provisions of the Agreement shall be brought in Fourth District Court in Ada County, Idaho.

19. ENTIRE AGREEMENT: The Agreement shall constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous bids, proposals, or quotations, both oral and written, discussions, representations, commitments, course of dealing, and all other communications between the parties.

20. SEVERABILITY: In the event any provision or section of the Agreement is found unconscionable, the remaining provisions shall nevertheless be enforceable and shall be carried into effect.

21. DEBARMENT: By submitting this bid/proposal, the bidder/proposer warrants and certifies that he is eligible to submit a bid/proposal because he is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a transaction by any Federal or State agency.