



## TOWN OF INDIAN SHORES

### PURCHASE ORDER TERMS & CONDITIONS

**1. ENTIRE AGREEMENT:** The terms, specifications, and drawings included in this order when duly executed constitute the entire agreement between the parties, unless otherwise stated on the face of the order. Performance under this Purchase Order will be unqualified, unconditional, and subject to and controlled by these Terms and Conditions. The Town of Indian Shores (Town) shall not be bound by additional terms at variance herewith that may appear in the Vendor's bid, quote, or terms referenced in those documents, unless such terms are expressly agreed to in writing by the Town in the Purchase Order. No modification or waiver of the terms of this agreement, once entered, shall be binding unless in writing, and signed by the Parties.

**2. PURCHASE ORDER NUMBER:** A Purchase Order Number must appear on all packing slips, invoices, and all correspondence relating to the Order. The Town will not be responsible for goods delivered without a Purchase Order Number.

**3. PAYMENT:** Invoices must be emailed to [AP@myindianshores.com](mailto:AP@myindianshores.com) or mailed to the Accounts Payable office at 19305 Gulf Boulevard, Indian Shores, FL 33785. Any other address will result in a processing delay. Invoices must state the Purchase Order Number, unit price(s), extension(s), total, and the ship-to address. Payment will not be processed until items are received and accepted. Pursuant to Florida Statutes § 218.74(2), payment for commodities or services other than construction services shall be 45 days from the date on which a proper invoice is received by the Town's finance department unless the invoice is disputed. Pursuant to Florida Statutes § 218.735(1), the Town will either dispute an invoice for construction services within 20 days of receipt, or, if undisputed, pay the invoice within 25 days of receipt.

**4. DISCOUNTS:** Delay in receiving an invoice, invoicing for materials shipped ahead of specified schedule, or invoices rendered with errors or omissions will be considered just cause for the Town to withhold payment without losing discount privileges. Discount privileges will apply from the date of scheduled delivery, the date of receipt of goods, or the date of approved invoice, whichever is later.

**5. DELIVERIES:** In the event of failure to deliver material of quality or within the time specified, the Town may cancel the order and buy elsewhere. Failure of the Town to exercise this option with respect to any installment shall not be deemed a waiver with respect to future installments, if any.

**6. INSPECTIONS:** Materials shall be received subject to the Town's right to inspect and test all materials at their destination before acceptance. Goods rejected due to inferior quality or workmanship will be returned to the Vendor with a charge for transportation both ways, plus labor, loading, packing, etc., and are not to be replaced except upon receipt of written instructions from the Town. The Vendor shall also pay all costs of inspecting and testing of materials which are rejected.

**7. ACCEPTANCE; DISPUTES:** The Town does not usually make advanced payments for commodities or services. However, in the event payment in advance is made, such payment shall not constitute acceptance thereof. Pursuant to Florida Statutes § 218.76, in the event the Town disputes an invoice, it will notify Vendor in writing of the deficiency and indicate what corrective action the Vendor must take to allow the invoice to be processed. The Parties will follow the invoice dispute resolution procedures set forth in Florida Statutes § 218.735 (related to construction) and § 218.76.

**8. VARIATION IN QUANTITY:** The Town assumes no liability for material produced, processed, or shipped, or for services provided, in excess of quantity or service hours/levels specified in the Purchase Order.

**9. FORCE MAJEURE:** Neither party shall be liable for delays or defaults due to acts of God, government authority, public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes, or contingencies reasonably beyond its control. The party also affected, upon prompt written notice by the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. At the Town's option, deliveries so omitted shall be made on notice thereof to the Vendor, upon cessation of such contingency, even though such might have been operative at the date of this order.

**10. GOVERNMENT REGULATIONS:** Vendor warrants that all applicable laws and regulations of government authority, covering the production, sale and delivery of the materials specified herein, have been complied with and vendor shall indemnify and hold the Town harmless from and against any liability or loss resulting from Vendor's failure to do so.

**11. TAXES:** The Town is tax exempt. If the Vendor prepays transportation charges, the Vendor should not pay tax as the Town will not reimburse the Vendor for the taxes paid. The Town's Florida State Tax Exemption number is 85-8012595896C-6 and Federal Tax ID is 59-6000274.

**12. WARRANTIES:** In addition to all warranties, established by statute or common law, or set forth elsewhere in this order, Vendor expressly warrants that all material or services covered herein shall conform to all specifications, drawings, samples, and descriptions furnished or adopted by the Town, and shall be of best quality and fit, and sufficient for the purpose for which purchased. Materials shall be merchantable, of good material and workmanship and free from all patent and latent defects. The Town's failure to give notice to Vendor of any breach of warranty shall not discharge the Vendor's liability thereof. Without limiting the generality of the foregoing, Vendor agrees to be responsible for all defects in design, workmanship, and materials which may become apparent within twelve months of receipt by the Town.

**13. INTELLECTUAL PROPERTY:** Vendor, in accepting this Purchase Order, represents and warrants that the products and services provided do not infringe on any patent, trademark, copyright or any other intellectual property of any third party. Vendor shall protect and indemnify the Town, its mayor, commissioners, officers, employees, attorneys, agents, and representatives of, from and against all liability and expense, including reasonable attorneys' fees, in connection with any and against all claims, judgments and expense arising from infringement or alleged infringement of any United States patent by any of the goods delivered hereunder.

**14. PERMITS:** Vendor is responsible for obtaining any permits necessary to complete the work covered by this Purchase Order, at its own expense, prior to starting any work under this Purchase Order.

**15. TOWN PREMISES:** If this order requires Vendor's services to be provided on the Town's premises, the Vendor's employees, subcontractors, officers, or other agents shall not, while engaged in such performance, be deemed to be the agents or employees of the Town. Such Vendor employees or agents shall, while engaged in such performance, be subject to all safety rules, laws, and regulations applicable to the Town's premises, and Vendor shall be solely responsible for ensuring its employees and agents comply with such rules, laws, and regulations. The

Town has no authority to direct the means and methods of such compliance. Vendor shall keep all materials and all Town property free from any lien for materials and labor incident to the performance of such services.

**16. ASSIGNMENT/SUBCONTRACTING:** Vendor shall not assign this Purchase Order or any rights or obligations thereunder, nor shall Vendor subcontract performance under this Purchase Order, to any other party without the express prior written approval of the Town Administrator. Such approval will not relieve Vendor from its obligations and liabilities under this Purchase Order unless expressly provided otherwise in the written approval.

**17. INDEMNIFICATION:** The Vendor shall indemnify, hold harmless, and defend the Town, its officers, employees, agents, and attorneys from and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits inequity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, arising directly or indirectly out of or in connection with any negligent and/or deliberate act or omission of Vendor, its officers, employees, agents, subcontractors, assignees and representatives. Vendor's liability hereunder shall include all attorney's fees and costs made by the employees of Vendor against the Town and Vendor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination, cancellation or expiration of this Purchase Order and shall not be limited by the amount of any insurance required to be obtained or maintained under this Purchase Order. Nothing contained herein shall be construed as a waiver of any limit of liability the Town may be entitled to under the doctrine of Sovereign Immunity or Section 768.28, Florida Statutes.

**18. INSURANCE:** Vendor shall maintain insurance acceptable to the Town of Indian Shores in full force and effect throughout the term of this Purchase Order. The Town of Indian Shores further reserves the right to require Vendor name the Town of Indian Shores as an additional insured under any insurance policy and to require that the Town of Indian Shores be provided a certificate of insurance evidencing the required insurance, all in the Town of Indian Shores' sole discretion.

**19. SEVERABILITY:** If any section, subsection, sentence, clause, phrase or portion of these Terms and Conditions are, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent and such holding shall not affect the validity of the remaining portion hereof.

**20. FISCAL NON-FUNDING:** In the event sufficient budgeted funds are not available for payment to Vendor for a new fiscal period, the Town shall notify Vendor of such occurrence and this Purchase Order shall terminate on the last day of the current fiscal period without penalty or expense to the Town.

**21. OCCUPATION SAFETY AND HEALTH ACT:** Vendor certifies that all material, equipment, etc. supplied under the terms of the Purchase Order meets all OSHA requirements. Vendor further certifies that, if the material, equipment etc. delivered is subsequently found to be deficient in any OSHA requirement in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the Vendor. In accordance with OSHA Hazardous Communications, it is Vendor's duty to advise if a product is a toxic substance and to provide a Material Safety Data Sheet at the time of delivery.

**22. VENUE AND APPLICABLE LAW; ATTORNEYS FEES:** This agreement shall be interpreted in accordance with the laws of the State of Florida. Venue for the purposes of any suit, action or other proceeding arising out of, or relating to, this Purchase Order shall be exclusively in the Sixth Judicial Circuit in and for Pinellas County, Florida for state actions and in the United States District Court for the Middle District of Florida. In the event of any litigation between the parties related to the interpretation or enforcement of this Agreement, each Party shall bear its own attorney fees and costs during all litigation, including required dispute resolution and appellate proceedings, regardless of the outcome of the proceedings.

**23. SHIPPING AND HANDLING:** Unless otherwise specified, all goods are to be shipped prepaid, FOB Destination. When shipping address indicates a room number and/or inside delivery, it is the Vendor's responsibility to make delivery to that location at no additional charge. Where specific authorization is granted to ship goods to FOB shipping point, Vendor agrees to prepay all shipping charges and route as instructed. No COD shipments will be accepted. No charges will be allowed for handling including, but not limited to, packing, wrapping, bags, containers, or reels, unless otherwise stated.

**24. REJECTION:** All goods or materials delivered or installed, and all services provided, as a result of this order, are subject to review, inspection and approval by the Town. Any rejections of goods, materials services provided under this order due to nonconformity with the terms and specifications set forth in this order or manufacturer specifications and warranties, or, as to services, performed or installed not in accordance with industry standards, best practices, and licensure requirements, whether held by the Town or removed or returned, will be remedied, or replaced at the Vendor's risk and expense.

**25. PUBLIC RECORDS:** Vendor will be required to comply with Section 119.0701, Florida Statutes, as may be amended from time to time. Questions regarding the application of Chapter 119, Florida Statutes, as to the Vendor's duty to provide public records relating to this PO, should be directed to the **FREDDIE LOZANO AT (727) 595-4020, [flozano@myindianshores.com](mailto:flozano@myindianshores.com), 19305 Gulf Boulevard, Indian Shores, FL 33785.**

**26. ORDER OF PRECEDENCE:** When this PO is issued after the results of a request for quote, bid, or proposal, additional terms and conditions, if any, contained in the solicitation or resulting contract shall control. In the event any provision in a Vendor's quote, bid or proposal conflicts with the Town's solicitation document, the terms of the Town's procurement code, or the terms of this order, those terms shall take precedence over the conflicting Vendor terms.

**27. GRANT FUNDS:** The Vendor must sign and acknowledge the Federal Grant Compliance requirements, if applicable, for any purchases made with Federal, State or Local grant funding.

**28. E-VERIFY:** Vendor agrees and acknowledges that the Town is a public employer that is subject to the E-Verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of Section 448.095, F.S., apply to this Contract.