

TERMS AND CONDITIONS

1. **ACCEPTANCE:** Seller shall be bound by this Purchase Order and its terms and conditions on the earlier of: (a) the date that it executes and returns to Buyer the acknowledgment copy of this Purchase Order, or (b) the date that is ten (10) calendar days after the date stated on the first page of the Purchase Order. This Purchase Order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms or conditions proposed by Seller are rejected unless expressly assented to in writing by Buyer. No contract shall exist except as hereinabove provided, unless otherwise mutually agreed by the parties hereto in writing. Unless such a written agreement has been entered into by Buyer and Seller, each shipment received, or service rendered, shall be deemed to have been made and received only upon the terms and conditions of the Purchase Order, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, or other instrument created by Seller and notwithstanding Buyer's acceptance of, or payment for, any shipment or service
2. **INVOICES:** Invoices for shipments made or services rendered must contain Buyer's valid Purchase Order Number and Seller's Federal Tax ID number (unless previously on file with Buyer) and must be addressed and mailed to the Accounts Payable Division of Cleveland Metroparks. Invoices that do not comply with these requirements will not be honored by Buyer. Buyer will not pay any finance charges.
3. **BILLING AND PAYMENT:** Seller will bill Buyer on a monthly basis for all goods and services provided in the prior month. Failure to submit a proper billing within 90 days of receipt by Buyer of acceptable goods or services will result in nonpayment. **SELLER HEREBY EXPRESSLY WAIVES ANY RIGHTS, CLAIMS OR ACTIONS TO COLLECT PAYMENT UNDER QUANTUM MERUIT, UNJUST ENRICHMENT, OR OTHERWISE IN THE EVENT OF SELLER'S FAILURE TO SUBMIT TIMELY OR PROPER BILLING.**
4. **INSPECTION AND ACCEPTANCE:** Payment for any items delivered under this Purchase Order shall not constitute acceptance thereof. The date payment is due shall be computed from the later of the date when Buyer receives a correct invoice or the date when Buyer receives conforming items. All items purchased hereunder are subject to inspection at Buyer's destination either before or after payment or before or after acceptance, at Buyer's option. Buyer reserves the right to reject and refuse acceptance of items that are not in accordance with the instructions, specifications, drawings and data or Seller's warranties (express or implied). Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including transportation charges both ways. No replacement of rejected items shall be made unless specified by Buyer in writing. Buyer shall not be liable for failure to accept any of the items, if such failure is the result of any cause beyond the control of Buyer. Among such causes, but not definitive thereof, are fires, floods, Acts of God, strikes, differences with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's plant for any cause. Acceptance of any of the items shall not bind Buyer to accept future shipments, nor deprive it of the right to return items already accepted. Acceptance of all or any part of the items shall not be deemed to be a waiver of Buyer's right either to cancel or to return at Seller's risk and expense all or any portion of the items because of failure to conform to this Purchase Order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs, damage to materials, or articles caused by improper boxing, crating or packing, and loss of profits or other special damages incurred by Buyer. Such rights shall be in addition to any other remedies provided by law. Cash discount periods will be computed from the date of delivery and acceptance of the shipment or services, or from the date of receipt of an invoice that complies with the terms and conditions of the Purchase Order, whichever date is later.
5. **DELIVERY:** Time is of the essence in the performance of this Purchase Order, and if delivery of items is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routings of items (the difference in cost between the expedited routing and the order routing costs shall be paid by Seller); (b) terminate this Purchase Order by notice effective when received by Seller as to stated items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions. Buyer will have no liability for payment for items delivered to Buyer which are in excess of quantities specified in this Purchase Order and delivery schedules. Such items shall be subject to rejection and return at Seller's expense, including transportation charges both ways. Buyer will not be liable for any material or production costs incurred by Seller in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedules. Shipments in greater or lesser quantities than those set forth in the Purchase Order may be returned to Seller at Seller's expense unless any such shipment is expressly authorized in writing by Buyer. Without limiting the generality of the foregoing, Buyer will not: (i) accept over-runs on printed material unless otherwise authorized in writing by Buyer; or (ii) pay any restocking charges for excess items returned. Seller shall provide and mail under separate cover Material Safety Data Sheets for products shown on the Purchase Order to the designated shipping destination and Director of Risk Management at Cleveland Metroparks, 4101 Fulton Parkway, Cleveland, Ohio 44144.
6. **SERVICES:** If the Purchase Order requires the provision of services, including but not limited to delivery services, temporary labor, or services for contracting or subcontracting work, then Seller agrees that such services are to be provided by Seller as an independent contractor and **NOT CONSIDERED TO BE EMPLOYEES OF BUYER FOR THE PURPOSE OF OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM (OPERS) MEMBERSHIP**, and that Buyer is to have no responsibility for bodily injury to, death of, or loss of employment by Seller, or Seller's officers, employees or agents. In the event that Buyer's machinery, equipment and/or employees are used by Seller in the provision of such services, such machinery, equipment and/or employees shall be considered as being under sole custody, control and employ of Seller during the period of such use by Seller. If the Purchase Order provides for services that may involve the alteration or relocation of any structure or material that may contain hazardous materials as defined by current laws or regulations, then Seller shall not proceed with any portion of the services prior to receipt of written permission from Buyer, specifically the Director of Procurement. Upon Buyer's request, Seller shall furnish to Buyer the following: certification of compliance with Equal Opportunity provisions of law, certification of non-delinquency of personal property taxes owing to the State of Ohio, evidence of payment of prevailing wages, evidence of provisions for satisfying workers' and unemployment compensation claims, and/or such fidelity or performance bonds and evidence of insurance at levels and with companies acceptable to Buyer.
7. **PROPERTY OF BUYER:** Unless otherwise provided in this Purchase Order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Such property other than material shall not be modified without the written consent of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as being owned by Buyer and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be listed in writing and kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this Purchase Order, it shall be subject to inspection and removal by Buyer, and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property, prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.
8. **COMPLIANCE WITH LAWS:** Seller agrees that, in its acceptance and/or performance of this Purchase Order, it has and will comply with all applicable laws, statutes, ordinances, rules, regulations or orders of any governmental or regulatory body having jurisdiction over Buyer, Seller and/or actions taken in relation to this Purchase Order (including without limitation manufacturing, storage, shipment, sale, or other work).
9. **SELLER'S WARRANTIES:** Seller hereby warrants that the items furnished hereunder shall be free from defects in material, workmanship and design, of merchantable quality and fit for Buyer's purposes and that they shall conform with Buyer's instructions, specifications, drawings and/or data. Seller hereby further warrants that the items furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this Purchase Order. Seller agrees that these warranties shall survive acceptance of the items. Seller further warrants that all services performed for or on behalf of Buyer will be performed in a competent, workmanlike manner and shall be free from faults and defects. Said warranties shall be in addition to any warranties of additional scope given by Seller to Buyer. None of said warranties and no other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a Purchase Order Change Notice or Revision issued and signed by Buyer's authorized representative.

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10. **INDEMNIFICATION:** Seller agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations and expenses, including court costs and attorneys' fees, (a) related in any way to this Purchase Order, or the services performed or items delivered hereunder, which are claimed or made by any person, firm, association or corporation, including employees, workers, servants or agents of Seller and/or its subcontractors arising from any cause or for any reason whatsoever, and (b) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, mask work or other proprietary right by reason of the manufacture, use or sale of the items or services covered by this Purchase Order, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer.
11. **CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this Purchase Order if Seller fails to make reasonable progress towards completion of the order at the times specified, if Seller does not make deliveries as specified in the delivery schedule, if Seller breaches any of the terms hereof including warranties of Seller, if Seller makes an arrangement, extension or assignment for the benefit of creditors, if Seller dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets, if Seller becomes insolvent or if Seller generally does not pay its debts as they become due. If this Purchase Order is cancelled for default, Buyer may require Seller to transfer title and deliver to Buyer any (1) completed items, and (2) partially completed items and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights that Seller has specifically produced or acquired for the terminated portion of this Purchase Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. The rights and remedies of Buyer set forth in this Article are in addition to, and not in lieu of, any other remedies that Buyer may have in law or equity or pursuant to other terms of this Purchase Order. If, after cancellation pursuant to this term, it is determined by a court of competent jurisdiction, or otherwise, that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued pursuant to Section 12 hereof.
12. **TERMINATION:** Buyer may terminate performance of work under this Purchase Order in whole or from time to time in part by written notice of termination, whereupon Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Seller will promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within 60 days after receipt of such notice of termination, Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of Seller relating to this Purchase Order. Buyer will pay Seller without duplication, the Purchase Order price for finished work accepted by Buyer and the cost to Seller of work in process and raw material allocable to the terminated work, based on any audit Buyer may conduct and United States generally accepted accounting principles; less, however, (a) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (b) the agreed value of any items used or sold by Seller with Buyer's consent; and (c) the cost of any defective, damaged or destroyed work or material. Buyer will make no payments for finished work, work in process or raw material fabricated or procured by Seller in excess of any order or release. Notwithstanding the above, payments made under this Section shall not exceed the aggregate price specified in this Purchase Order less payments otherwise made or to be made, and adjustments shall be made reducing the payments hereunder for costs of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire order had it been completed. **PAYMENT MADE UNDER THIS SECTION CONSTITUTES BUYER'S ONLY LIABILITY IN THE EVENT THIS ORDER IS TERMINATED HEREUNDER.** Except as otherwise provided in this Purchase Order, the provisions of this Section will not apply to any cancellation by Buyer for default by Seller or for any other cause allowed by law or under this Purchase Order. Except as otherwise provided in Section 11, the provisions of this Section will not apply to any cancellation by Buyer for default by Seller. **IN NO EVENT SHALL SELLER BE ENTITLED TO ANTICIPATORY PROFITS OR TO SPECIAL OR CONSEQUENTIAL DAMAGES UNDER THIS PURCHASE ORDER.**
13. **CONFIDENTIALITY/INTELLECTUAL PROPERTY RIGHTS:** All information furnished or made available by Buyer to Seller or to Seller's employees or subcontractors in connection with the items or services covered by this Purchase Order shall be treated as confidential and shall not be disclosed by Seller, its employees and subcontractors to any third party either in whole or in part, without Buyer's prior written consent. Seller agrees not to assert any claim against Buyer with respect to any information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by this Purchase Order. Seller agrees that all designs, drawings, processes, compositions of material, specifications, software, works or other technical information made or furnished by Seller in connection with the items or services covered by this Purchase Order, including all rights thereto, shall be the sole and exclusive property of Buyer, free from any restriction, and Seller shall protect same against unauthorized disclosure to or use by any third party. Seller hereby assigns to Buyer all right, title and interest in and to all trademarks, copyrights, and mask work rights in any material created for Buyer in connection with this Purchase Order. The confidentiality provisions and the obligations of this paragraph shall survive termination or completion of this Purchase Order.
14. **ASSIGNMENT:** None of Seller's obligations due or to become due nor any of the work to be performed under this Purchase Order shall be assigned nor shall Seller subcontract for completed or substantially completed material called for by this Purchase Order without Buyer's prior written consent. This Purchase Order, including without limitation these terms and conditions, shall be binding on any and all successors and permitted assigns of Seller, or acquirers of Seller's business or operations (whether by acquisition of stock, assets or otherwise).
15. **WAIVER:** The failure of Buyer to insist, in any one or more instances upon the performance of any of the terms, covenants or conditions of this Purchase Order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
16. **REMEDIES:** The remedies provided for herein shall be cumulative and in addition to any other or further remedies provided by law or equity. Buyer shall have the right to set off against any amounts payable by Buyer to Seller under this Purchase Order or any other agreements between Buyer and Seller any amounts which Seller owes to Buyer under this Purchase Order or otherwise. In the event of any disputes arising under this Purchase Order, Buyer and Seller shall proceed diligently with the performance required hereunder pending resolution of any such dispute. If any portion of this Purchase Order is invalid or unenforceable, the remaining portions of this Purchase Order shall remain valid and enforceable.
17. **GOVERNING LAW:** This Purchase Order, including without limitation these terms and conditions, shall be construed and enforced in accordance with the laws of the State of Ohio.
18. **ENTIRE AGREEMENT:** The Purchase Order, including without limitation these terms and conditions, contains the entire agreement between Buyer and Seller if not expressly provided in writing to the contrary by supplement to the Purchase Order or otherwise.
19. **FISCAL OFFICER'S CERTIFICATE:** The Fiscal Officer's Certificate contained within the Purchase Order shall be deemed to be a "Then and Now Certificate," as applicable for purposes of compliance with Section 5705.41 of the Ohio Revised Code.