

CHEROKEE COUNTY STANDARD TERMS & CONDITIONS OF PURCHASE

1. **PURCHASE DOCUMENTS** - This purchase order or agreement (the "PO") and all attachments, including these Standard Terms and Conditions of Purchase ("Terms," and together with the PO, the Agreement") for the purchase of certain goods ("Goods") is the complete agreement by and between Cherokee County purchasing the Goods or Services as set forth on the PO ("Buyer") and the Vendor selling the Goods ("Seller"), and constitutes the full understanding of the parties, and the complete and exclusive statement of the terms of their agreement. No other documents, including Seller's proposal, Terms & Conditions, quotation, order confirmation and acknowledgement forms, and no condition, understanding or agreement purporting to modify or vary the terms of the Agreement will be binding unless hereafter made in writing.
2. **SELLER ACCEPTANCE OF TERMS & CONDITIONS** Seller acknowledges that Seller has read, understands, and agrees to be bound by the terms and conditions set forth in the Agreement. If Seller objects to any terms and conditions, Seller will (a) notify Buyer in writing within three (3) days of receipt of the PO; and (b) withhold acceptance of the PO and not start any performance, or ship any Goods in connection with the PO until/unless such objection is settled in writing signed by Buyer and Seller. In the event of a conflict between the PO and these Terms and Conditions, the PO will govern and control.
3. **CANCELATION / TERMINATION** Buyer may at its sole election may terminate this purchase order or any part thereof for cause if Seller: 1. Fails to deliver the goods or perform the services in accordance with Buyer's specified schedule. 2. Becomes insolvent or the subject of any bankruptcy proceedings.
In the event of termination, Buyer will not be liable to Seller for any amount and Seller will be liable to Buyer for all damages sustained by Buyer by reason of the default that gave rise to termination.
In addition, Buyer may terminate this purchase order for its own convenience in whole or part, and for any reason at any time upon written notice to Seller. In such an event: 1. Buyer will make an equitable termination payment to Seller based on the proportion of the work completed. 2. Buyer will make an equitable termination payment to Seller based on the actual direct costs incurred by Seller in connection with such termination, which must be less than the original purchase order value.
4. **DELIVERY** - Time is of the essence with regards to all material obligations of this purchase order. Shipments in greater or lesser quantities than ordered may be returned by Buyer at Seller's expense. Seller is not relieved under any circumstances of the obligation to procure alternative suppliers or materials with respect to purchased materials, labor, or services except by written consent of Buyer.
5. **INSPECTION** - Buyer, or its representative will have the right to inspect and test the goods or services ordered hereunder at any time prior to delivery. The goods or services will not be deemed acceptable until Buyer confirms so in writing or issues a waiver for Buyer to proceed with shipment.
6. **WARRANTY** - Seller warrants that the goods delivered and / or services rendered are: 1. Free from defects in design, workmanship, and material. 2. Are in strict accordance with the specifications. 3. Are new, of merchantable quality and fit for the intended purpose.
Seller agrees to promptly repair or replace at Buyer's option and without costs to Buyer, any goods delivered, and services rendered, which are found by Buyer to be defective, non-conforming or otherwise not in accordance with this warranty within the later of: 1. Twelve (12) months after commencement of use of goods or services. 2. In the case of goods, eighteen (18) months after the date of delivery by Seller of the goods to Buyer or the Buyer's customers. In addition, Seller agrees to promptly repair or replace at Buyer's option and without costs to Buyer, any property of Seller or Seller's customers that was damaged as a result of defective or non-conforming goods or services. Seller agrees to extend the warranty for any goods or services for twelve (12) months starting from the date such repaired or replaced goods or services were accepted by Buyer.
7. **PAYMENT TERMS / PRICING** - All prices described in this purchase order are firm unless otherwise agreed to in writing signed by Buyer. Seller's entire compensation for its performance under this purchase order, where applicable, will include all applicable charges for federal, state, and local taxes. Buyer will not be responsible for any additional costs. Unless otherwise stated on the purchase order, all payment terms are thirty (30) days based upon receipt of complete invoice.
8. **BUYER DISPUTES** - If Buyer disputes all or any portion of an invoice, Buyer will be required to pay only the un-disputed amount. Buyer will be entitled to set off any amount Seller owes Buyer or any of the Buyer's affiliates.
9. **INDEMNIFICATION** - Seller will defend, indemnify and hold harmless Cherokee County (Buyer), its parents, subsidiaries and affiliates, and its and their respective directors, officers, partners, employees, agents, successors and assigns (the "Indemnified Parties") against all claims, demands, lawsuits, damages, liabilities, losses, costs and expenses (including court costs and attorneys' fees) and judgments or settlements of any kind arising out of or resulting in any way from Seller's, or Sellers' agents', employees' and contractors' acts or omissions, or failure to comply with any obligations of this purchase order, or from any breach of any representation or warranty under the purchase order. Seller will not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each respective indemnified Party and without an unconditional release of all claims by each claimant or plaintiff. This Section 9 survives termination or expiration of the purchase order.
In any and all claims against the County or County Parties, by any employee of the Seller, anyone directly or indirectly employed by the Seller, or anyone for whose acts the Seller may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Seller under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the County and County Parties will survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions that occurred during the performance of this purchase order.
10. **INSURANCE AND WORK ON PREMISES** - *If Seller is required to work on Buyer's property*, Seller must have and maintain in full force and effect for the duration of this purchase order, insuring against claims for injuries to persons or damages to property which may arise from or in connection with the execution of the purchase order by the Seller, its agents, representatives, or employees. See **Standard Insurance Guidelines** posted to the Cherokee County website for limits and other guidance.
11. **INTELLECTUAL PROPERTY** - Seller represents and warrants that all products delivered, and services performed pursuant to this purchase order and the sale or use do not infringe on any patent, trade secrets, copyright, trademark, or other proprietary intellectual property rights and that Seller will, at Seller's expense, defend and hold harmless Buyer and Buyer's customers from and against all claims, demands, actions, and liabilities.
12. **GOVERNING LAW** - This purchase order will be governed by the laws of the state of Georgia without regard to conflicts of law principles. The parties hereby submit to the exclusive jurisdiction of the federal and state courts of the state of Georgia for the resolution of any claim under this purchase order.
13. **CHANGES** - Buyer will have the right to make changes or modifications in the goods and/or services ordered under this purchase order, and Seller agrees to perform such changes in accordance with the terms of this purchase order. If, in Seller's opinion such changes will cause an increase or decrease in the cost of, or time required for, Seller will notify Buyer promptly.
14. **LIMITATION OF LIABILITY** - In no event will either party be liable to the other, whether in contract, tort (including negligence), warranty, or any other legal theory for any indirect, consequential, punitive, and exemplary damages such as, but not limited to, cost of capital, loss of anticipated profits or revenue. The liability of the parties whether in contract tort (including negligence), warranty, or any other legal theory will be limited to the contract price.