

PURCHASE ORDER  
TERMS AND CONDITIONS

The seller agrees that the following terms and conditions will be applicable.

1. If seller refuses to accept this order exactly as written, he will return it at once with explanation.
2. Purchaser will not be responsible for any goods delivered without purchase order.
3. Seller will send separate invoice for each purchase order number.
4. Seller will deliver no invoices to purchaser's employees.
5. No boxing, packing or cartage charges will be allowed by purchaser unless specifically authorized on the face of this order.
6. It shall be understood that the cash discount period to purchaser will date from the receipt of the invoice or from the date of the receipt of goods, whichever is later.
7. The risk of loss of and damage to the goods which are the subject of this order shall be and remain in the seller until the goods are delivered to the destination set out in the order and accepted by the purchaser or its nominee.
8. In the event of the seller's failure to deliver as and when specified or to perform as and when specified, purchaser reserves the right to cancel this order, or any part thereof, without prejudice to its other rights, and seller agrees that purchaser may return part or all of any shipment made and may charge seller with any loss or expense sustained as a result of such failure to deliver or perform.
9. In the event any article, service or process sold, delivered and/or performed hereunder shall be covered by any patent, copyright, or application for either, seller will indemnify and save harmless purchaser from any and all loss, cost or expenses on account of any and all claims, suits, or judgments on account of the use or sale of such article or the use of such service or process in violation of rights under such patent, copyright, or application for either.
10. In the event any article, service or process sold and delivered or sold and performed hereunder shall be defective in any respect whatsoever, seller will indemnify and save harmless purchaser from all loss or the payment of all sums of money by reason of all accidents, injuries, or damages to persons or property that may happen or occur in connection with the use or sale of such article, service or process and are contributed to by said defective condition.
11. If seller performs services or constructs, erects, inspects or delivers hereunder, seller will indemnify and save harmless buyer from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that may happen to occur in connection therewith. In addition, Seller shall, at the request of Purchaser, provide Purchaser with a certificate of insurance from a company acceptable to Purchaser naming Purchaser as an additional insured with coverage in amounts satisfactory to Purchaser, in Purchaser's sole discretion.
12. Purchaser reserves the right to place in seller's plant, at purchaser's expense an inspector or inspectors who shall be permitted to inspect before shipment, or during the process of manufacture, any material on this order.
13. Seller agrees not to release any advertising copy mentioning purchaser or quoting the opinion of any of purchaser's employees.
14. Seller represents and warrants that no Federal or State statute or regulations, or municipal ordinance, has been or will be violated in the manufacturing, sale and delivery or any article or service sold and delivered hereunder and if such violation has or does occur seller will indemnify and save harmless purchaser from all loss, penalties, or the payment of all sums of money on account of such violation.
15. Unless this contract is exempt therefrom, the contract provisions of Section 202 of Executive Order No. 11246, dated September 24, 1965, Equal Employment Opportunity—Government Contractors and Subcontractors, and any subsequent changes thereto are to the extent they may be applicable, made a part of this contract by reference.
16. Any contractors supplying both services and materials or only materials shall be paid all sales or use taxes on materials so furnished and shall indemnify and save harmless purchaser from any damages, costs, expenses or penalties, on account of such taxes.
17. Purchaser may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice or course of dealing to the contrary.

18. The terms and conditions of sale as stated in this order govern in event of conflict with any terms or seller's proposal, and are not subject to change by reason of any written or verbal statements by seller or by any terms stated in seller's acknowledgement unless same be accepted in writing by the City of Gastonia.
19. Termination for cause and convenience of the City of Gastonia. The performance of work and/or delivery of ordered materials, supplies, equipment and/or service under this contract may be terminated by the City of Gastonia, in whole or in part, whenever it is determined to be in the best interest of the City of Gastonia, be it cause or convenience including, but not limited to, termination for failure to perform, inaccuracy or other material breach of any of its covenants, representations, or obligations, and the failure, inaccuracy or breach continues for a period of \_\_\_ days after the City provides notice to the vendor. Any such termination shall be effected by the delivery to the vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment and/or services are terminated, and the date upon which such termination becomes effective. After receipt of a notice of termination, the vendor shall stop work and/or place no further orders under the contract on the date and to the extent specified in the Notice of Termination.
20. Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
21. The City of Gastonia in accordance with the provisions of Title VI of the Civil Rights Act of 1964, United States Department of Transportation (DOT) Order 1050.2A, Title 49 Code of Federal Regulations (CFR) Part 21, the Civil Rights Restoration Act of 1987 and other pertinent nondiscrimination authorities hereby notifies its service providers and contractors that during the performance of this contract, the service provider or contractor for itself, its assignees and successors will assure that no person shall, on the ground of race, color, national origin, limited English Proficiency, income-level, sex, sexual orientation, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination or excluded from participating in any activity conducted under this contract.
22. Prohibition on Contracting for Covered Telecommunications Equipment or Services.
  - a. Definitions. Unless otherwise defined in this contract, capitalized terms used in this section shall have the meanings ascribed thereto in this section.
    - i. "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
    - ii. "Covered Foreign Country" means the People's Republic of China.
    - iii. "Covered Telecommunications Equipment or Services" means (i) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (ii) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (iii) telecommunications or video surveillance services provided by such entities or using such equipment; or (iv) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
    - iv. "Critical Technology" means (i) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (ii) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (iii) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (iv) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material); (v) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (vi) emerging and foundational technologies controlled pursuant to §1758 of the Export Control Reform Act of 2018 (50 U.S.C. §4817).
    - v. "Interconnection Arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

- vi. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
- vii. "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.
- viii. "Telecommunications Equipment or Services" means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

b. Prohibitions.

- i. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- ii. Unless an exception in applies, contractor and any subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a federal government to:
  - 1. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
  - 2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
  - 3. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or
  - 4. Provide, as part of its performance of this contract, any subcontract; any other contractual instrument; or any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.

c. Exceptions.

- i. This clause does not prohibit contractor or subcontractors from providing:
  - 1. A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or
  - 2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- ii. By necessary implication and regulation, the prohibitions also do not apply to:
  - 1. Covered telecommunications equipment that:
    - a. Is not used as a Substantial or Essential Component of any system and
    - b. Is not used as Critical Technology of any system.
  - 2. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

d. Reporting Requirement.

- i. In the event contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if contractor is notified of such by a subcontractor at any tier or by any other source, contractor shall report the information in paragraph 4(b) of this section to City, unless procedures for reporting the information are established elsewhere in this contract.
- ii. ). Contractor shall report the following information to City pursuant to paragraph 4(a) of this section:
  - 1. Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - 2. Within ten business days of submitting the information in paragraph 4(b)(i) of this section, any further available information about mitigation actions undertaken or recommended. In addition, contractor shall describe (1) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (2) any additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

- e. Subcontractor. Contractor shall cause to be inserted into all subcontracts and other contractual instruments relating to the performance of this contract the substance of this Section I, including this paragraph 5.

23. Buy USA - Domestic preference for certain procurements using federal funds. Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

These terms and conditions apply to electronic transactions/purchasing card transactions using ARPA funds.

24. In addition to these printed PO Terms and Conditions, additional FEMA contract provisions found in the [FEMA Contract Provisions Template](#) may apply and are incorporated herein by reference.
25. In addition to these printed PO Terms and Conditions, see the [City of Gastonia – American Rescue Plan Act \(ARPA\) Contract Addendum](#) for any purchase orders involving ARPA funds.