



Needham Public Schools
Terms & Conditions of Order

Requisition #:

1. **General Acceptance:** The Supplier (hereinafter the “Contractor”), by accepting this order, agrees that the conditions and terms specified herein, as well as the terms and conditions of: (s) any bid solicitation or certification of compliance that may have preceded this order; (b) any bonds, certificates of insurance and licenses that may have been required by the Town of Needham in connection with this order, are hereby incorporated by reference into any purchase order or contract (hereinafter the “Contract”), issued by the Needham Public Schools (hereinafter “The Town.”) Subject to clause 2, these terms and conditions will prevail in any conflict between them and the terms of any offer or acceptance by the Contractor.
2. **Special Conditions:** Needham Schools may impose alternate an alternate contract format for purchases of services; for purchases of goods or services totaling \$50,000; for contracts issued under M.G.L. Chapter 149, M.G.L. Chapter 30 s39M, or M.G.L. Chapter 7, s38A1/2-O); or for other purchases as directed by the Needham Public Schools, the terms and conditions of which shall wholly replace the Terms and Conditions specified herein.
3. **Scope of Work:** The Contractor shall furnish all supplies, materials and equipment as specified by the purchase order or contract and subject to this clause.
 - a. **Packing:** The Supplier is responsible for ensuring that the goods are packed so as to ensure safe delivery.
 - b. **Delivery:** Delivery of the goods must be made in the manner specified on the face of this order. The Town may specify in writing a date and time for delivery. Notwithstanding the foregoing, the Contractor shall not be liable for delay in delivery due to causes beyond the Contractor’s control and without Contractor’s fault or negligence, provided the Contractor exercises due diligence in promptly notifying the Town of conditions which will result in delay, and provided further, if the Contractor’s delay is caused by default of a subcontractor or supplier, such default arises out of causes beyond the control of both the Contractor and subcontractor or supplier and without the fault or negligence of either of them, and the supplies to be furnished by the subcontractor or supplier were not obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule. Freight terms shall be as noted on the face of this order.
 - c. **Quality:** The goods must be delivered free from defects in materials and workmanship, and at least of merchantable quality. The Town can inspect the goods at any time prior to acceptance and reject any goods found not to conform to the terms of the Purchase Order/Contract. After acceptance, the Town can reject goods for any non-conformity that could not have been discovered by reasonable inspection before acceptance. The Town shall not be liable to pay for any rejected goods or for any damage done to, or costs arising from, inspection or rejection of the goods. If the Town rejects any goods, the Contractor must, without prejudice to the Town’s rights otherwise arising under the Purchase Order/Contract or the general law, comply with the Town’s wishes to: (a) replace, without cost to the Town, the rejected goods with goods in all respects in accordance with the Purchase Order/Contract; (b) refund any payment for the rejected goods; or (c) repair the goods, on site or otherwise, to the satisfaction of the Town; and, in the case of (a) or (b), must remove the rejected goods at the Contractor’s expense.
 - d. **Substitution:** Non-conforming goods will not be accepted. The Town must approve in writing, any substitution of non-conforming goods, prior to shipment.
 - e. **Material Safety Data Sheets:** The Contractor shall furnish a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance (pursuant to M.G.L. Chapter 111F s. 8-10, and the regulations contained in 44 O.M.R. s. 21.06) that is shipped against this order.
4. **Risk of Loss:** The vendor assumes risk of loss for commodities in transit. Subject to Clause 3, the risk of loss of or damage to the goods passes to the Town upon delivery.
5. **Warranty:** Where the Town gives prompt notice of any defect or omission discovered in goods during any warranty period, the Supplier must correct that defect or omission without delay and at no cost to the Town. The Supplier must meet all costs of and incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
6. **Ship To:** The Contractor shall address all shipments as noted on the face of this order. All correspondence, packages and invoices must indicate the purchase order number, requisitioned by name and delivery address as indicated on this order.
7. **Amount of Contract:** Subject to Clause 9, the total amount to be paid under this Contract shall not exceed the amount shown on the face of this purchase order.

- 8. Inclusive Price:** Unless otherwise stated, unit prices are inclusive of all costs. There shall be no markup for reimbursable expenses for which the supplier is liable; amounts payable for the use of patents, copyright, registered designs, trade marks and other intellectual property rights; charges for the supply of goods; extra charges for testing, inspection or packaging; charges for consultants, subcontractors, plans, equipment, models, renderings, travel, reproductions, postage and delivery, overhead, administration, profit or other expense.
- 9. Change in Scope of Services:** If this Purchase Order/Contract is pursuant to M.G.L. Ch. 30B, the Town may increase the quantity of supplies or services or both specified in this Purchase Order/Contract, provided: (a) the unit prices remain the same or less; (b) the procurement officer has specified in writing that an increase is necessary to fulfill the actual needs of the Town and is more economical and practical than awarding another contract; (c) the Town and Contractor agree to the increase in writing; (d) the increase in the total contract price does not exceed twenty five (25) percent, but a contract for the purchase of gasoline, special fuel, fuel oil, road salt or other ice and snow control supplies shall not be subject to this limit; and (d) the Town, with the agreement of the Contractor, may reduce the unit price for supplies or services or both specified in a contract to be paid by the Town at any time during the term of the contract or when an option to renew, extend or purchase is exercised.
- 10. Payment:** The Town shall make payment as follows:
- a. All invoices must be submitted to the "Bill To Address" referenced on the front of this purchase order and must indicate the Town's purchase order number;
 - b. In order to effect payment, a W-9 form, executed by the Contractor, which reflects the Contractor's legal name and remittance address or addresses must be on file at the Town;
 - c. Subject to Clause 3,
 - i. The Town shall make payment thirty (30) after receipt of an invoice for work performed or materials supplied the previous month;
 - ii. With any invoice the Contractor shall submit evidence satisfactory to the Town that the goods or supplies have been delivered, or that the work has been completed;
 - iii. If for any reason the Town makes a payment under this Agreement in error, the Town may recover the amount overpaid or, if applicable, may apply any overpayment to a future installment payment; and
 - iv. The Town is not responsible for payment of invoices sent to an address other than specified at the end of this Article, or for payment of invoices that do not reference a valid Town Purchase Order number.
 - v. All payments are subject to appropriation or other availability of funds.
 - vi. The Town shall not be subject to interest charged on late balances, per M.G.L. Ch. 41 s.51.
 - d. Invoices under this agreement are to be sent to: Needham Public Schools Business Office 1330 Highland Avenue, Needham MA 202492. If this Purchase Order does not agree with the Contractor's quotation, contact the Director of Financial Operations before performance begins.
- 11. Tax Exempt Status:** The Town represents that it is exempt from federal excise, state, and local taxes, and that sales to it are exempted from Massachusetts sales and use tax. If in the future the Town becomes subject to any such taxes, the Town shall reimburse the Contractor for the tax paid by the Contractor on behalf of the Town. Any other taxes imposed on the Contractor shall be borne solely by the Contractor.
- 12. Notice:** Direct all correspondence to the Director of Financial Operations, Needham Public Schools, 1330 Highland Avenue, Needham MA 202492, 781-455-0400 x 206. If this Purchase Order does not agree with the Contractor's quotation, contact the Director of Financial Operations before performance begins.
- 13. Insurance:** The Contractor shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the Town in connection with any operations included in this Agreement. General liability coverage shall be in the amount of at least \$300,000 per occurrence and \$500,000 aggregate for bodily injury liability and \$300,000 per occurrence and \$500,000 aggregate for property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$100,000 per person and \$300,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability. All insurance coverage shall be in force from the time of the Agreement to the date when all work under the Agreement is completed and accepted by the Town. The Contractor shall, before commencing performance of this contract, provide for the payment of compensation and the furnishing of other benefits by an insurance company duly licensed to do business in accordance with Massachusetts General Laws, Chapter 152, as amended, to all employed under the Agreement and shall continue such insurance in full force and effect during the term of the contract.
- 14. Indemnification:** The Contractor shall indemnify, defend, and save harmless the Town and all of the Town's officers, agents and employees from and against all suits and claims of liability of every name and nature, including costs of defending any action, for or on account of any injuries to persons or damage to property of the Town or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the Contractor, its subcontractors and its and their agents or employees in the performance of the work covered by the Agreement and/or failure to comply with terms and conditions of the Agreement, but only in

respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by the Agreement and to the extent such injuries or damages are not covered by the Town's insurance. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the Contractor under the Agreement.

- 15. Materials and Workmanship:** Unless otherwise specified, all materials and equipment incorporated in the work under these Terms and Conditions shall be new. All workmanship shall be first class and by persons qualified in the respective trades.
- 16. Guarantee of Work:** Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract. If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the Town are rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Town and at its own expense: (a) Make goods and services conform to this Agreement; (b) Make good all damage to the Town, or equipment or contents thereof, which, in the opinion of the Town, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Agreement; and (c) Make good any work or material, or the equipment or site, which is disturbed in fulfilling any such guarantee.
- 17. Assignment:** The Supplier shall not, without consent in writing of the Town, assign or delegate, in whole or in part, or otherwise transfer any right, liability, responsibility, obligation, duty or interest under the Purchase Order/Contract.
- 18. Certifications:** By executing this agreement, the Contractor under pains and penalties of perjury certifies that: a) The Contractor is and shall remain qualified to perform all services required by this Agreement, including obtaining the requisite licenses, registrations, permits and resources for performance. b) The Contractor shall comply with all applicable federal, state and local laws and regulations. c) The Contractor has provided a quotation that was made and submitted in good faith and without collusion or fraud with any other person; d) The Contractor has the means and experience to fulfill the terms of this Agreement. e) The Contractor shall affirmatively disclose the details of any pertinent judgment, criminal conviction, investigation or litigation pending against it or any of its officers, directors, agents or subcontractors of which the Contractor has knowledge or learns of during the term of the Agreement. f) If an employer, the Contractor certifies compliance with applicable state and federal employment laws or regulations, including but not limited to minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 (Federal Family and Medical Leave Act; AGO Consumers and Civil Rights. g) The Contractor, if paid from federal funding sources, certifies that it complies with: E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor;" 18 U.S.C. 874 and 40 U.S.C. 276c (Copeland "Anti-Kickback" Act); 40 U.S.C. 276a to a-7 (Davis-Bacon Act, as Amended); 40 U.S.C. 327-333 (Contract Work Hours and Safety Standards Act); 37 CFR part 401 (Rights to Inventions Made Under a Contract or Agreement); 42 U.S.C. 6201 (Energy Policy and Conservation Act); 42 U.S.C. 7401 et seq., as amended (Clean Air Act); 33 U.S.C. 1251 et seq., as amended (Federal Water Pollution Control Act); 31 U.S.C. 1352, as implemented 34 CFR Part 82 (Byrd Anti-Lobbying Amendment); E.O.s 12549 and 12689 (Debarment and Suspension); Section 106 of "TVPA" (Trafficking Victims Protection Act of 2000); American Recovery and Reinvestment Act of 2009; Pub. L. 111-5 ("ARRA"), Section 1605 of ARRA; and 2 CFR part 176.140 (Buy American.)
- 19. Conflict of Interest:** By executing this Purchase Order/Contract, the Contractor acknowledges that the Town is a municipality for the purposes of Massachusetts General Law Chapter 268A (the Massachusetts Conflict of Interest statute), and agrees, as circumstances require, to take actions and to forebear from taking actions so as to be in compliance at all times with the obligations of the Contractor based on said statute.
- 20. Confidentiality:** The Supplier shall comply with M.G.L. Ch. 66A if the Supplier becomes a "holder" of "personal data." The Supplier shall also protect the physical security and restrict any access to personal or other Town data in the Supplier's possession, or used by the Supplier in the performance of a Purchase Order/Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.
- 21. Interpretation:** In these Terms and Conditions of Order: (a) "manufacture" includes grow, extract, produce, process and/or assemble, (b) "goods" includes materials, plant, equipment and/or associated services or the provision of services alone.
- 22. Subcontracting:** The Contractor shall not subcontract any of the work, which it is required to perform under this Agreement to any corporation, entity or person without the prior written approval of the Town.

- 23. Binding Agreement and Assignment of Interest:** This Agreement shall be binding upon the Town and the Contractor and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the Town and the Contractor. Neither the Town nor the Contractor shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.
- 24. Contract Amendments:** All contract amendments must be in writing and signed by officials with authority to bind the Contractor and Town of Needham.
- 25. Nonperformance:** In the case of any default on the part of the Contractor with respect to any of the terms of this Agreement, the Town shall give written notice thereof, and if said default is not made good within such time as the Town shall specify in writing, the Town shall notify the Contractor in writing that there has been a breach of the Agreement and thereafter the Town shall have the right to terminate this Agreement and secure the completion of the work remaining to be done on such terms and in such manner as the Town shall determine, and the Contractor shall pay for the completion of such work and reimburse the Town for all expenses incurred by reason of said breach. The Contractor in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Agreement sum, and the amount of any balance due the Contractor shall be determined by the Town and certified to the Contractor.
- 26. Termination:** The Town may cancel this order in whole or in part by written notice to the Contractor without liability, if the Contractor: (a) fails to deliver the goods by the date required by the Purchase Order/Contract; (b) is in breach of any other material term of the Purchase Order/Contract; (c) being an individual, commits an act of bankruptcy or becomes a bankrupt; or (d) being a corporation, is the subject of a compromise or arrangement with its creditors; in respect of property of which a receiver or a receiver and manager is appointed; or in respect of which a liquidator is appointed. In addition to 15 (a) through (d) above, the Town shall have the right to terminate in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of the Purchase Order/Contract, or in the event of an unforeseen public emergency mandating immediate Town action. If the purchase order indicates that it is placed under a federal grant or award, the Town shall have the right to terminate the Agreement under Section 52.249-1 of the Federal Acquisition Regulation (FAR.)
- 27. Consent to Venue:** The Contractor and Town agrees that it shall commence and litigate all actions or proceedings arising in connection with this Agreement exclusively in the Dedham District Court or in the Norfolk Superior Court, both of which are located in the County of Norfolk, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the Contractor commencing or prosecuting any litigation against the Town, with respect to or arising out of this Agreement, in any court of forum other than those specified in this paragraph. It is further agreed that the parties to this Agreement hereby waive their rights to a jury trial.
- 28. Applicable Law:** The Purchase Order/Contract and performance thereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.
- 29. Severability:** If a court declares one or more of the provisions of this Agreement invalid, the validity of the remaining provision of this Agreement shall not be affected thereby.
- 30. Good Faith Certification.** By accepting this purchase order, the vendor certifies under penalties of perjury that the attached quote was made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.
- 31. Certificate Of Compliance With Massachusetts Tax Laws:** By accepting this purchase order, the vendor certifies that the Vendor is in compliance with Federal tax laws; State tax laws including G.L. c. 62C, G.L. c. 62C, s. 49A (the Vendor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support and is in good standing with respect to all returns due and taxes payable to the commissioner of revenue); reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12.