

# HARBOR REGIONAL CENTER

## TERMS AND CONDITIONS OF PURCHASE ORDER

- 1. Purchase Governed by Terms and Conditions of Purchase Order.** The materials, supplies, or services covered by this Purchase Order shall be furnished by Service provider subject to all the terms and conditions set forth in this Purchase Order, including but not limited to those set forth in the following paragraphs. Service Provider, in accepting this Purchase Order, agrees to be bound by and to comply with all of said terms and conditions, and no other terms or conditions shall be binding upon the parties hereto unless accepted by them in writing. Shipment of all or any portion of the materials or supplies or the performance of all or any portion of the services covered by this Purchase Order shall constitute unqualified acceptance of all its terms and conditions, provided that this Purchase Order has not been cancelled, terminated, or withdrawn before such shipment or performance. The terms of any proposal referred to in this Purchase Order are included and made a part of the Purchase Order only to the extent of specifying the nature of the materials, supplies, or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this Purchase Order.
- 2. Compliance with Terms and Conditions.** Materials, supplies, or services furnished shall be exactly as specified in this Purchase Order, free from all defects in design, workmanship, or materials. If materials, supplies, or services are found to be defective or not as specified, then in addition to and not in lieu of HRC's other remedies: (a) HRC may reject them in whole or in part, require Service Provider to correct them without charge, or require delivery of such materials; supplies, or services at a reduction in price which is equitable under the circumstances; (b) if Service Provider is unable or refuses to correct such items within a time deemed reasonable by HRC, HRC may, effective forthwith upon delivery of written notice of termination of Service Provider, terminate the Purchase Order in whole or in part; (c) Service Provider shall bear all costs incident to the rejection of materials, supplies, or services which shall be in addition to any costs for which Service Provider may become liable to HRC under other provisions of the Purchase Order; and (d) Service Provider shall reimburse HRC for all transportation costs paid on rejected items and all advance payments made to Service Provider for unaccepted materials, supplies, or services. Notwithstanding final acceptance of payment by HRC or anything to the contrary contained herein, Service Provider shall be liable for any latent defects in design, workmanship, or materials in any of the materials, supplies delivered or services performed under this Purchase Order.
- 3. Changes.** HRC may make changes within the general scope of this Purchase Order in (a) drawings or specifications for specially manufactured supplies, (b) place of delivery, or (c) method of shipment or packing of the order, by giving notice to Service Provider and subsequently confirming such changes in writing. If any such changes affect the cost to Service Provider or the time required for performance of this Purchase Order, an equitable adjustment in the price or delivery charges or both shall be made. No changes shall be made without the prior written approval of HRC. Unless waived by HRC in writing, any claim of Service Provider for an adjustment under this Paragraph 3 must be made in writing within thirty (30) days from the date of receipt by Service Provider or written notification of such change, whichever is later in time. Nothing in this Paragraph 3 shall excuse Service Provider from filling any Purchase Order as changed.
- 4. Title.** The materials or supplies purchased hereunder shall be subject to HRC's right to reject upon inspection, and title thereto shall pass to HRC upon delivery and acceptance by HRC.
- 5. Payment. Extra Charges and Drafts.** Service Provider shall be paid, upon submission of acceptable invoices, for materials or supplies delivered and accepted, or services rendered and accepted. HRC will not pay cartage, shipping, packing or boxing expenses, unless specified in this Purchase Order. Drafts will not be honored. Invoices must be accompanied by transportation receipts. HRC shall not be responsible for any goods or services delivered without Purchase Orders. Service Provider shall not deliver invoices to any employees of HRC. Invoices shall be mailed to HRC on a timely basis after completion of work specified under purchase order.
- 6. Termination.**
  - a. Upon Default.** HRC may by written notice (effective upon the giving of such notice) terminate this Purchase Order in whole or in part for Service Provider's default. Service Provider shall be in default if Service Provider (1) refuses or fails to comply with the provisions of the Purchase Order, (2) fails to make progress on its performance hereunder and / or endangers its performance hereunder and does not cure such failure or endangerment within a reasonable period of time, or (3) fails to make deliveries of the materials or supplies or perform the services within the time specified herein or in any written extension thereof signed by HRC. In the event of default, HRC may purchase or otherwise secure materials, supplies, or services elsewhere, and except as otherwise provided herein, Service Provider shall be liable to HRC for its excess costs.
  - b. Without Cause.** HRC may by written notice to Service Provider and for its own convenience cancel this Purchase Order, either in whole or in part at any time, effective thirty (30) days after the giving of such written notice. In addition, HRC may by written notice to Service Provider, effective upon the giving of such notice, cancel this order, either in whole or in part at any time in the event that the individual client of HRC for whom materials, supplies, or services are being purchased (the "Client"), or the Client's family is dissatisfied with the materials, supplies, or services provided by Service Provider and purchased hereby. In the event of cancellation pursuant to this Paragraph 6. b. HRC shall pay Service Provider, as full compensation for all of Service Provider's right hereunder, the unit or pro rata Purchase Order price for the units delivered and accepted, and the services rendered under this Purchase Order which have been delivered by Service Provider and accepted by HRC prior to such cancellation.
  - c. Rights Not Conclusive.** The rights and remedies of HRC provided in this Paragraph 6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.
  - d. Definition of Service Provider.** As used in this paragraph 6 the word "Service Provider" includes Service Provider and his sub-suppliers at any tier.
- 7. Warranty.** Service Provider agrees that materials, supplies, or services furnished under this Purchase Order shall be covered by the most favorable warranties the Service Provider gives to any customer for the same or substantially similar materials, supplies, or services. Such warranties are in addition to and do not limit any other warranties afforded to HRC by law or by this Purchase Order.
- 8. Independent Contractor.** Service Provider is an independent contractor, and is not an employee of HRC. Except as otherwise provided herein. Service Provider shall determine the method, details and means of performing the services required of Service Provider under this Purchase Order. Service Provider shall be required to pay any and all taxes which may be or become due for or in connection with services required by this Purchase Order.
- 9. Assignment.** This Purchase Order is not assignable by Service Provider without the prior written approval of HRC.
- 10. Indemnity.**
  - a. Patent Indemnity.** Service Provider agrees to indemnify HRC, its officers, agents servants, and employees against liability of any kind (including attorneys fees, costs and expenses incurred) for the use of any invention or discovery, or for the infringement of any letters patent or copyright, occurring in the performance of this Purchase Order or arising by reason of the use of disposal by or for the account of HRC of any such invention or discovery.
  - b. General Indemnity.** Service Provider hereby expressly agrees to indemnify HRC from all liability, losses, claims, demands, damages, judgments and costs (including but not limited to reasonable attorney's fees) for or arising from, in connection with, or incidental to this Purchase Order, or with or to any and all services, materials, or supplies to be provided to HRC or the Client by Service Provider, whether caused by the negligence of Service Provider or its agents or employees, or otherwise. Service Provider shall, at its expense, carry adequate insurance to fully protect both the Service Provider and HRC from all liability, losses, claims, demands, damages, judgments and costs (including but not limited to reasonable attorneys' fees), of any nature for damage to property or for personal injury (included but not limited to death), which may arise from the performance of the Purchase Order, and shall provide to HRC Upon request a current Certificate of Insurance showing HRC as an additional insured on such policies.
- 11. Affirmative Action.** Service Provider shall not maintain or provide racially segregated facilities for employees at any establishment under Service Provider's control. Service Provider agrees to adhere to the principles set forth in Executive Orders 11246 and 11375 and to undertake specifically (a) to maintain employment policies and practices that affirmatively promote quality of opportunity for minority group persons and women, (b) to take affirmative steps to hire and promote women and minority group persons at all jobs levels and all aspects of employment, (c) to communicate this policy in both English and Spanish to all persons concerned within Service Provider's company, and with outside recruiting services and the minority community at large, (d) to provide HRC, upon request, with a break down of Service Provider's labor force by ethnic group, sex and job category, and (e) to discuss with HRC Service Provider's policies and practices relating to Service Provider's affirmative action program.
- 12. Books and Records.**
  - a. Maintenance.** Service Provider shall maintain (and the California Department of Development Services and HRC shall have access to) accurate and complete books, documents, papers and records ("Records") of the purchase by HRC of the materials, supplies, or services provided for in this Purchase Order. Such Records shall set forth the type of services provided and the date and / or time such materials, supplies, or services are provided. Progress in fulfilling Service Provider's obligations under this Purchase Order shall be submitted by Service Provider to HRC at least monthly in a format to be specified by HRC.
  - b. Preservation.** Service Provider agrees to maintain and preserve until five (5) years after the service has been performed and to permit the State of California (or any of its duly authorized representatives) and HRC to have access to and to examine and audit any and all pertinent books, documents, papers, and records relative to this Purchase Order.
- 13. General Provisions.**
  - a. Attorney' Fees.** If any suit is brought because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Purchase Order, the prevailing party or parties in such suit shall be entitled to recover from the other party or parties reasonable attorney's fees and other costs incurred in that suit, in addition to any other relief to which they may be entitled.
  - b. Jurisdiction.** It is the invention of the parties that the laws of the State of California shall govern the validity of this Purchase Order, the construction of its terms and the interpretation of the rights and duties of the parties.
  - c. Severability.** If any provision of this Agreement is held to be inoperative unenforceable or otherwise invalid, the remaining provisions hereof shall be carried into effect without regard to such inoperative, unenforceable or otherwise invalid provisions.
  - d. Headings, Gender, and Number.** Article, section, subsection, paragraph and subparagraph headings are not to be considered part of this Purchase Order, are solely for convenience of reference, and are not intended to be full or accurate descriptions of the contents of any such article, section, subsection, paragraph, or subparagraph. In addition, the masculine, feminine of neuter gender and the singular or plural number shall each be deemed to include the other whenever the context so indicates.