



## **TOWN OF BLACK MOUNTAIN**

### ***Purchasing Terms and Conditions***

*The Terms and Conditions listed below will govern all matters relating to the goods and services provided by you or your company (the "Vendor") to the Town of Black Mountain (the "Town") under a Town issued Purchase Order ("Purchase Order"). Additional terms and conditions stated on the face of the Purchase Order shall take precedence over any conflicting terms and conditions stated below. Any terms and conditions not stated on the face of the Purchase Order but incorporated by reference therein shall be binding. By acceptance of the purchase order, the vendor or contractor (referred to as the "Vendor"), declares that the supplies, materials, equipment, apparatus, or services will be furnished according to the following terms and conditions:*

1. **INVOICES:** All invoices are to be Emailed to [ap@tobm.org](mailto:ap@tobm.org) or Mailed to the Town of Black Mountain, Attn: Accounts Payable, 160 Midland Ave. Black Mountain, NC 28711. Invoices for partial deliveries must be indicated as such and final invoices should indicate completion of order. All invoices must have a unique invoice number. Purchase Order number must appear on the invoice. The Vendor must provide a separate invoice for each Purchase Order number. Failure to comply with any of these items may result in delayed payment.
2. **PURCHASE ORDER REQUIRED:** The Town of Black Mountain requires a purchase order for purchases and services in the amount of \$1,000 or more. The Town will not be liable for payment for equipment, supplies, and/or services delivered without **PRIOR** issuance of a Purchase Order for the total purchase and assumes no obligation for products or services shipped or delivered in excess of the quantity ordered. Purchase Orders cannot be issued after deliverance. Any unauthorized products or services are subject to the Town's rejection and shall be returned at the Supplier's expense.
3. **PRICE:** All goods and/or services must be billed to the Town of Black Mountain (Town) at prices and quantities not to exceed those stated on the purchase order. All invoices, notices or the like affecting this order shall contain the applicable purchase order number. All prices are quoted F.O.B. Destination unless specifically indicated otherwise.
4. **"Open" or "Blanket" Purchase Orders:** "Open" or "Blanket" purchase order amounts and quantities are based on an estimation of needed materials and/or services; therefore, amounts and quantities are subject to change at any-time by issuance of a modified purchase order or by notification of purchase order cancellation
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the Finance department or from the receipt of goods, whichever is later.
6. **PAYMENT TERMS:** The Town agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The Town does not agree to the payment of late charges or finance charges assessed by the Vendor for any reason. Invoices are payable in U.S. funds.
7. **TAXES: The Town is NOT Sales Tax-Exempt.** Prices shown on the Town's purchase orders do not include tax; however, all applicable taxes shall be paid by the Town. Vendor shall itemize



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taxes on the Vendor's invoice. It should be noted that the Town is exempt from Federal Excise Tax except as required to be paid by law. Supplier shall pay all sales and use taxes that are or become due in connection with any products or services provided hereunder, and shall indemnify and save harmless the City from any damages, costs, fees, expenses, or penalties on account of such taxes.

8. **AGREEMENT TERMS:** Absent a negotiated contract, this purchase order is limited to the terms and conditions contained on the face and back hereof. Any additional or different terms in the Vendor's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument. This purchase order including all contracts, references and/or insertions, with the stated terms and conditions thereon shall constitute the complete agreement between the Town and the Vendor. The terms and conditions of this order shall not be modified by any verbal understanding and shall only be binding if agreed to in writing by the Town.
9. **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the Town accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. All deliveries on this order must be in full accordance with specifications, properly identified with the purchase order number and must not exceed the quantities specified. The Town shall have the right to inspect and test all items supplied under the order before making acceptance. Risk of loss and title to all goods received shall remain with the Vendor until the Town has made acceptance. Rejected goods shall be returned to the Vendor at Vendor's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the Town may have against the Vendor.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Vendor's own risk and the Vendor expressly agrees to indemnify and hold harmless the Town, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
11. **INSURANCE:** If performing services/labor on Town of Black Mountain Property, a Vendor shall procure and maintain at its sole expense, before performance of services hereunder:
  1. **Commercial General Liability insurance** in an amount not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.
  2. **Business Automobile Liability insurance** covering all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 each occurrence and shall include uninsured/underinsured motorist coverage per NC General Statute 20-279-21.
  3. **Workers Compensation coverage** at the statutory limits in compliance with applicable State and Federal laws. Supplier shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.
  4. **Employer's Liability coverage** with minimum limits of \$500,000 each accident and \$500,000 each employee disease.



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Supplier shall agree these General Conditions constitute an insured contract and shall name Town of Black Mountain as an additional insured under the Commercial General Liability policy. Before commencing work and for any subsequent renewals, Supplier shall furnish the Town with certificates of insurance evidencing the above coverages and amounts on an approved form. Supplier hereby grants the Town a waiver of any right of subrogation which any insurer of said Supplier may acquire against the Town by virtue of payment of any loss under such insurance. Supplier agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the Town and delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the Town. The limits of coverage under each insurance policy maintained by the Supplier shall not be interpreted as limiting the Supplier's liability and obligations.

The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing.

12. **APPLICABLE LAWS:** To the fullest extent allowed by law, by acceptance of this order, Vendor represents that the goods covered by this order are in full compliance with all applicable local, state or federal laws, statute and regulations and agrees to indemnify and defend the Town against any loss, cost, liability or damage by reason of Vendor's violation of any laws.
13. **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the Town from entering into contracts with contractors and subcontractors who have not complied with the requirement of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if contractor utilizes a subcontractor, contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
14. **CANCELLATION:** The Town reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the Vendor to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified or for any other reason which causes the Vendor not to perform as agreed.
15. **WARRANTY:** The Vendor expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the Town and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance, or payment by the Town. The Vendor also warrants that the goods do not infringe any patent, registered trademark or copyright and agrees to hold the Town harmless in the event of any infringement or claim thereof. Additionally, Vendor warrants that the goods are free and clear of all liens and encumbrances and that Vendor has a good and marketable title to the same.
16. **USE OF TOWN NAME OR LOGO:** Supplier agrees not to release any advertising or other materials using the Town's trademark, quoting the opinion of any Town employee, or implying in any way that the Town indorses Supplier or its products or services.



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17. **HAZARDOUS CHEMICALS:** The Vendor shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements.
18. **MATERIAL SAFETY DATA SHEETS (MSDS):** The Vendor shall ensure that the Town is provided an appropriate current MSDS with or prior to the initial shipment of a hazardous chemical, and with or prior to the first shipment after the MSDS is updated.
19. **NON-DISCRIMINATION:** The Town does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the Town are expected to fully comply with the Town's non-discrimination policies.
20. **VERBAL AGREEMENT:** The Town will not be bound by any verbal agreements.
21. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the Vendor is an independent contractor and not an agent of the Town, and as such, Vendor, his or her agents and employees shall not be entitled to any Town employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension or retirement benefits.
22. **IRAN DIVESTMENT ACT CERTIFICATION** - Supplier certifies that, as of the date of the purchase order, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 143-6A-4. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 143C-6A-5(b), Supplier shall not utilize in the performance of the purchase order any subcontractor that is identified on the Final Divestment List.
23. **GOVERNING LAW:** All terms and conditions shall be interpreted in accordance with the laws of the State of North Carolina. Any legal actions arising from default of this contract shall be brought only in the Buncombe County, North Carolina.
24. **NON-APPROPRIATION OF FUNDS:** The Town of Black Mountain shall in the initial proposal for each of the Town's annual budgets include the amount of all payments and estimated additional payments coming due during the Fiscal Year to which such budget applied. Notwithstanding that the Town Finance Staff has included such an appropriation for all required payments in a proposed budget; the Governing Board may determine not to include such an appropriation in the Town's final budget for such fiscal year. It is hereby agreed that the Town of Black Mountain will not be in default if the Governing Board elects not to include an appropriation for the Payments and will not be required to pay the balance of the payments, provided that the Town of Black Mountain has used its best efforts to obtain the necessary funding and that the equipment leased is not replaced with like kind equipment.
25. **DOMESTIC PREFERENCES FOR PROCUREMENT (2 C.F.R. § 200.322):** As appropriate and to the extent consistent with law, the Nonfederal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods,



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products, or materials produced in the United States (including, but not limited to iron, aluminum, steel, cement, and other manufactured products)

26. **FEDERAL FUNDS-** If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324). In addition to printed PO Terms & Conditions, FEMA contract provisions found in FEMA Contract Provisions Template at the link below apply to purchases, as does ability to terminate due to cause/ convenience

[https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT\\_ContractProvisionsTemplate\\_9-30-19.pdf](https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf)

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