

### **Purchase Order Terms and Conditions**

**1. Acceptance.**

By delivering the ordered goods or commencing performance under this Order, the Artist agrees to the specifications, terms and conditions in or referenced by this document (collectively, the "Order"). The Artist's additional or different terms and conditions are expressly excluded from this Order and the City of San Luis Obispo ("City") does not agree to such terms or conditions, unless such agreement is made expressly, in writing by the City's authorized representative.

**2. Business Tax.**

Artists aged 18 years and older, must have a valid City of San Luis Obispo business tax certificate prior to execution of the contract. Additional information regarding the City's business tax program may be obtained by calling (805) 781-7134.

**3. Ability to Perform.**

Artist warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

**4. Warranties.**

Artist warrants that all goods delivered will be free from defects in workmanship, material and manufacture; are new (not refurbished or reconditioned) unless otherwise stated in this Order; are of merchantable quality and fit for the purpose intended by the City to the extent that purpose has been disclosed to the Artist; complies with the requirements of this Order; and complies with all applicable laws and regulations. The Artist also warrants that all services performed under this Order shall be rendered in a good and workmanlike manner by skilled personnel in compliance with all applicable laws and regulations.

**5. Changes.**

No change or modification in terms may be made without express authorization, in writing by the City's authorized representative.

**6. Delivery.**

The Artist agrees that time is of the essence to delivery and any other performance required under this Order. No charge for delivery, parcel post, packing, cartage, insurance, license fees, permits, or any other purpose will be paid by the City unless it is expressly included on the face of this Order. The Artist must arrange for the lowest- cost transportation and prepay and add freight to its invoice. If delivery is made by a carrier, an itemized delivery ticket must be attached to the outside of the package. Each container or package must be marked with the Order number.

**7. Laws to be Observed.**

The Artist shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City of San Luis Obispo ordinances, regulations and adopted codes during its performance of the work.

8. Payment of Taxes.

The contract prices shall include full compensation for all taxes that the Artist may be required to pay.

9. Permits and Licenses.

The Artist shall procure all required permits and licenses, pay all charges and fees, and give all notices necessary.

10. Immigration Act of 1986.

The Artist warrants on behalf of itself and all sub-Vendors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

11. Artist Non-Discrimination.

In the performance of this work, the Artist agrees that it will not engage in, nor permit such sub-Vendors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

12. Work Delays.

Should the Artist be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of the City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at the City's sole option, be extended for such periods as may be agreed upon by the City and the Artist.

13. Payment Terms.

The City shall pay to the artist a stipend of \$800 is upon the City's acceptance of the artist's final conceptual rendering.

14. Inspection.

The Artist shall furnish City with every reasonable opportunity for City to ascertain that the services of the Artist are being performed in accordance with the requirements and intentions of this contract. All work done and all materials furnished, if any, shall be subject to the City's inspection and approval. The inspection of such work shall not relieve the Artist of any of its obligations to fulfill its contract requirements.

15. Audit.

The City shall have the option of inspecting and/or auditing all records and other written materials used by the Artist in preparing its invoices to City as a condition precedent to any payment to the Artist.

16. Interests of the Artist.

The Artist covenants that it presently has no interest and shall not acquire any interest direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Artist further covenants that, in the performance of this work, no sub-Vendor or person having such an interest shall be employed. The Artist certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City. It is hereby expressly agreed that, in the performance of the work hereunder, the Artist shall at all times be deemed an independent Vendor and not an agent or employee of the City.

17. Hold Harmless and Indemnification.

The Artist agrees to defend, indemnify, protect and hold the City and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Artist's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of the Artist, and its agents, officers or employees, in the performance of all obligations under this Agreement, and all expenses of investigating and defending against same; provided, however, that the Artist's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

18. Contract Assignment.

The Artist shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the City.

19. Termination.

The City may terminate all or part of this Order for any or no reason at any time by giving notice to the Artist. Should the City terminate this Order for convenience, the City shall be liable as follows: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten (10) percent of the total purchase price; (b) for custom products, the less of a reasonable price for the raw materials, components work in progress and any finished units on hand or the price per unit reflected on this Order. For termination of any services pursuant to this Order, the City's liability will be the lesser of a reasonable price for the services rendered prior to termination, or the price for the services reflected on this Order. Upon termination notice from the City, the Artist must, unless otherwise directed, cease work and follow the City's directions as to work in progress and finished goods.

20. Ownership of Materials.

The Artist warrants that, prior to transfer of the work to the City, the Artist was the sole owner of any copyright, propriety and/or other intellectual property interests in the work and has the authority to convey all such rights thereto. The Artist irrevocably assigns and grants to the City all right, title, copyright, propriety interests, and any intellectual property interests in and to the work in perpetuity. All original drawings, plan documents and other materials prepared by or in possession of the Artist as part of the work or services under these specifications shall become the permanent property of the City and shall be delivered to the City upon demand. The Artist waives, releases, and disclaims any and all rights, demands, or claims against the City for City's use or duplication of the work, including but not limited to

City's use of all or part of the work for commercial or marketing purposes. As the sole owner of the work, the City has the absolute right to determine the manner, scope, and duration of use of the work, and to modify the work, without seeking permissions or approval from the Artist.

21. Waiver of moral rights:

The Artist waives, releases, and disclaims any and all rights, demands or claims as may arise at any time against the City that the Vendor may have with respect to the work produced under the terms of this Order arising under the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.) The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the work, without seeking permission or approval from Vendor.

22. Release of Reports and Information.

Any reports, information, data, or other material given to, prepared by or assembled by the Artist as part of the work or services under these specifications shall be the property of City, and shall not be made available to any individual or organization by the Artist without the prior written approval of the City.

23. Copies of Reports and Information.

If the City requests additional copies of reports, drawings, specifications, or any other material in addition to what the Artist is required to furnish in limited quantities as part of the work or services under these specifications, the Artist shall provide such additional copies as are requested, and City shall compensate the Artist for the costs of duplicating of such copies at the Artist's direct expense.

24. Entirety of compensation:

The Artist agrees that payment provided by this Order shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals. Vendor waives any and all future claims for additional compensation in any form and under any circumstances.

25. Recognition of artist:

The City agrees to recognize the Artist on the City's website as the creator of the work on the City's social media accounts for the duration of the City's use of the Artist's work. The Artist will be identified as "Artist's Name here, Artist".