

**Henderson County
Terms and Conditions**

By acceptance of a purchase order with Henderson County, or by entering into the contract or agreement with Henderson County to which this "Terms and Conditions" is attached, the vendor to Henderson County or contractor with Henderson County (as the situation may be, hereinafter referred to as the "seller"), declares that all supplies, materials, equipment, apparatus and services furnished to Henderson County pursuant to the purchase order or contract/agreement will be furnished according to the following terms and conditions, which terms and conditions shall supersede any language to the contrary in any other documentation of such purchase order or contract/agreement.

1. **QUESTIONS CONCERNING THE PURCHASE ORDER:** Contact the **Ship to Department** shown.
2. **PURCHASE ORDER NUMBER:** The purchase order number must appear on all invoices, packing slips, correspondence, and bills of lading.
3. **PRICE:** All goods and/or services must be billed to Henderson County (County) at prices and quantities not to exceed those stated on the purchase order. All invoices, packages, shipping 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. **INVOICES:** Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
5. **CASH DISCOUNTS:** All cash discounts will be effective from the date of actual receipt of a correct and approved invoice by the ordering department.
6. **PAYMENT TERMS:** The County agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The County does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
7. **TAXES: Henderson County is NOT Sales Tax-Exempt.** Prices shown on the County's purchase orders do not include tax; however, all applicable taxes shall be paid by the County. Seller shall itemize taxes on the seller's invoice. It should be noted that the County is exempt from Federal Excise Tax except as required to be paid by law.
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 Seller'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 County and the Seller. 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 County.
9. **DELIVERY/ACCEPTANCE OF GOODS:** All quotations are solicited on a delivered price basis. When the County accepts a quotation not including all shipping charges, your claim for reimbursement must be itemized on the invoice and supported with a copy of the original freight bill. The packing list shall be enclosed in each box or package. 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 County 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 Seller until the County has made acceptance. Rejected goods shall be returned to the Seller at Seller's risk and expense. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the County may have against the seller.
10. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless the County, 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:** This purchase order shall be considered a written contract and requires the County to be endorsed as additional insured for General Liability, Automobile Liability, and Umbrella Liability Insurance Policies. Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence limit/\$2,000,000 aggregate limit for bodily injury, property damage, or personal injury; (b) Professional Liability Insurance in an amount not less than \$1,000,000 per occurrence (if providing professional services); (c) Worker's Compensation Insurance as required by the State of North Carolina General Statutes: (d) Commercial Automobile Insurance applicable to bodily injury and property damage covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 combined single limit. Negotiated written contracts may require additional insurance coverage. A Certificate of Insurance shall be furnished prior to the commencement of services. The Certificate Holder shall be County of Henderson, Attn: Finance Dept., 113 N Main Street, Hendersonville, NC 28792.
12. **APPLICABLE LAWS:** By acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state, or federal laws and regulations and agrees to indemnify and defend the County against any loss, cost, liability, or damage by reason of seller's violation of any laws.
13. **E-VERIFY:** North Carolina General Statute §143-133.3 prohibits the County 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. Contactor 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. **IRAN DIVESTMENT:** By acceptance of this purchase order, vendors, contractors, and/or subcontractors certify they are not listed and will not utilize a subcontractor listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.59, Iran Divestment Act Certification.
15. **FEDERAL FUNDS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
 - A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.
 - B. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000)

When federal funds are expended by Henderson County, Henderson County reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other vendors when it is in the best interest of Henderson County.
 - C. 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):

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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); Huawei/ZTE Ban (2 C.F.R. 200.216); Domestic Preference Clause (2 C.F.R. 200.322). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

16. **FEMA PROVISIONS:** The following provisions are required and apply when federal funds are expended by Henderson County for any contract resulting from this procurement process.
- A. **Changes:** Changes or modifications to the original contract will only be allowed if the following provisions are met:
 - 1. The change is within the scope of its grant or cooperative agreement
 - 2. The amount of the change has budgetary funds available
 - 3. The change does not fundamentally modify the project and
 - 4. The change is reasonable for the completion of the project
 - B. **Access to Records:** The contractor agrees to provide Henderson County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcripts.

The Contractor agrees to permit any of the forgoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to work being completed under the contract.
 - C. **DHS, Seal, Logo, and Flags:** The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA approval
 - D. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
 - E. **No Obligation by Federal Government:** The Federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
 - F. **Program Fraud and False or Fraudulent or Related Acts:** The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

17. **CANCELLATION:** The County 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 seller 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 seller not to perform as agreed.

18. **WARRANTY:** The seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the County 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 County. The seller also warrants that the goods do not infringe any patent,

registered trademark or copyright and agrees to hold the County harmless in the event of any infringement or claim thereof. Additionally, seller warrants that the goods are free and clear of all liens and encumbrances and that seller has a good and marketable title to the same.

- 19. **HAZARDOUS CHEMICALS:** The seller 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. The seller shall ensure that the County is provided an appropriate current Material Safety Data Sheets (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.
- 20. **NON-DISCRIMINATION:** The County 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 County are expected to fully comply with the County's non-discrimination policies.
- 21. **VERBAL AGREEMENT:** The County will not be bound by any verbal agreements.
- 22. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the seller is an independent contractor and not an agent of the County, and as such, seller, his or her agents and employees shall not be entitled to any County employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension, or retirement benefits.
- 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 County of Henderson, State of North Carolina.
- 24. **PUBLIC RECORDS.** The seller acknowledges that notwithstanding any other provision to the contrary (including any statements regarding confidential information), this agreement, the confidential information and any documents, memorandum, data, reports, analyses, compilations, records, pricing and evaluation of all or any portion of the transactions contemplated by this agreement may be deemed public records and subject to disclosure, in whole or in part, pursuant to the North Carolina Public Records Law. The County will provide the seller with reasonably prompt notice of any intended disclosures or requests for disclosure pursuant to the North Carolina Public Records Law. The seller may then choose to seek judicial protection of the confidential information consistent with all applicable laws and regulations. Should a public records request be made for information the seller claims are proprietary in nature, the County will, within a reasonable time, notify the seller of such public records request. The seller shall, within five (5) business days of said notification, provide notice to the County that it does or does not object to the County disclosing the requested information pursuant to the subject public records request. If the seller objects to the disclosure of the requested information, the seller agrees that it shall be solely responsible for the defense of and the cost of defending any claim or complaint against the County for its refusal to disclose confidential information. The seller agrees that if any such complaint or claim is filed it will indemnify the County and will reimburse the County for any and all damages awarded against the County its refusal to disclose the requested information. The seller agrees that it releases the County from all loss, liability, claims or expense, including attorney's fees, arising out of or related to the release or disclosure or failure by the County to release or disclose confidential information. The seller further agrees that it waives the right to file any court action for any such release, disclosure, or failure to release or disclose confidential information.
- 25. **Cyber Security Breach**
Where a security breach or unauthorized release, as those terms are defined or used in Article 2A of Chapter 75 of the North Carolina Statutes, or in any other state or federal regulation, occurs and is attributed to the Contractor (or any subcontractor thereof), the Contractor shall promptly pay or reimburse Henderson County for all the costs to Henderson County for all required notifications under all applicable laws, including any associated legal fees incurred by Henderson County, and shall indemnify Henderson County from any liability resulting from the security breach or unauthorized release.
- 26. **Cyber-Insurance:** The Seller shall maintain cyber liability insurance with an insurer permitted to offer the same in North Carolina in the minimum insurance amount per occurrence based on the Contractor's Security Scorecard (securityscorecard.com) rating, but in no event less than \$1,000,000.00. Such insurance shall include third-party coverage for incidents or associated impacts caused directly or indirectly by the Seller,

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Seller's subcontractors, and shall name Henderson County as an additional insured. The Contractor shall provide the County with a Certificate of Insurance for such coverage.

Security Rating	Required cyber insurance limits
90 or above	\$1,000,000 or above
80-89, inclusive	\$2,000,000 or above
70-79, inclusive	\$3,000,000 or above
60-69, inclusive	\$4,000,000 or above
Below 60	\$5,000,000 or above

If the Contractor's Security Scorecard rating is less than 90, the County and the Contractor agree to work to assist the Contract to improve their rating.

27. **NON-APPROPRIATION:** No provision of any agreement between the County and the seller (the "Agreement") shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any Constitutional debt limitation. No provision of the Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of the Constitution of North Carolina. The Agreement shall not directly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any fiscal year in which the Agreement is in effect; provided, however, that any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due under the Agreement will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Agreement, and the taxing power of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement. No provision of the Agreement shall be construed to pledge or create a lien of any class or source of the County's moneys, nor shall any provision of the Agreement restrict the future issuance of any of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict this provision and any other provision of the Agreement, this provision shall take priority and control.