

Terms and Conditions of Purchase

Clinton Utilities Board (“CUB”), an independent municipal agency of the City of Clinton, Tennessee, created and existing under the laws of the State of Tennessee, as an integral part of each and every procurement of services, supplies, goods, and equipment, agrees to purchase from certain vendors (“Suppliers”) those items (“Procured Items”) listed by CUB’s duly authorized designee on CUB’s written Purchase Order (“PO”), subject, however, to the terms and conditions printed below and any other conditions, instructions, or modifications made by CUB and included on the PO, as well as CUB’s Purchasing Procedures Policy (collectively, the “Terms and Conditions”).

1. Acceptance – Supplier’s acceptance of a PO from CUB constitutes Supplier’s agreement to the Terms and Conditions. Supplier’s imposition of other terms and conditions may, at CUB’s option, constitute a rejection of the PO. If Supplier fails to notify CUB of Supplier’s disagreement with the Terms and Conditions within 15 days after Supplier’s receipt of the PO, or if a whole or partial shipment of any Procured Item is made to CUB by Supplier, then Supplier shall conclusively be deemed to have accepted the Terms and Conditions.
2. Performance - All invoices, labels, shipping documents, and correspondence must contain CUB’s PO number.
3. Delivery – Time, including time of delivery at CUB’s designated receiving location, is of the essence with respect to every PO. If the delivery fails in any respect to conform to the Terms and Conditions, including in particular the time quoted by Supplier for delivery to CUB and specified on the PO, CUB may in its sole discretion (i) reject the whole; (ii) accept the whole; (iii) accept any part and reject the balance; or (iv) cancel the PO and order the Procured Items from another source and recover from Supplier any damages incurred in ordering from another source and any other remedies to which CUB is entitled by law and equity, including under the Uniform Commercial Code, T.C.A. §§ 47-2-101 et. seq.
4. Price - Unless otherwise stated on the PO, the price for any Procured Item shall be the price quoted or bid by the Supplier, inclusive of delivery charges and marked “FOB Clinton, TN – Prepaid.” Any allowable discount for prompt payment is to be calculated from the date the invoice is received in proper form or from the date the Procured Item is received by CUB, whichever is later. ***CUB is exempt from sales or use tax as a municipality.***
5. Count - CUB’s count of Procured Items received shall be accepted as conclusive and final on all shipments. Charges for extras, including, but not limited to, packing, loading, drayage, dunnage, or cartage shall not be accepted unless specifically stated on the PO. No charges will be accepted for packaging, boxes, drums, barrels, reels, cores, etc.
6. Amendments – No variation, amendment, or modification of a PO or the Terms and Conditions shall be binding on CUB unless approved in writing by CUB’s duly authorized designee. Each transaction between CUB and Supplier is separate and distinct. No waiver of any breach of the Terms or Conditions shall be construed as a waiver of any subsequent breach thereof.
7. Compliance - By accepting a PO, Supplier represents, warrants, and guarantees that all federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the manufacture, sale, or delivery of the Procured Items have been satisfied by Supplier, specifically including, but not limited to, environmental, safety, copyright, and patent laws. Supplier shall indemnify and hold CUB harmless from and against any and all claims, demands, damages, judgments, and costs of any nature whatsoever, including reasonable attorneys’ fees and expenses, related to a violation of this section by Supplier or its subsidiaries or affiliates. This provision of indemnity does not in any way constitute a waiver by CUB of its protections under the Governmental Tort Liability Act, T.C.A. §§ 29-20-101 et. seq.
8. Nondiscrimination - CUB is an equal opportunity employer and as such requires that Suppliers not discriminate on the basis of race, color, sex, religion, or ethnic/national origin. Supplier shall comply with the requirements of all applicable state and federal statutes relating to nondiscrimination, including, but not limited to, Title VI of the Civil Rights Act of 1964. No person on the grounds of race, color, sex, religion, or ethnic/national origin shall be excluded from participation in, denied benefits of, or be otherwise subject to discrimination in the performance of a PO. Supplier shall, upon request, show CUB proof of such nondiscrimination. Acceptance of a PO constitutes Supplier’s acknowledgement of and agreement to this provision.
9. Choice of Law; Attorneys’ Fees – Any PO issued by CUB shall be governed by and construed in accordance with the laws of the State of Tennessee. Any lawsuit arising out of a PO shall be brought in Anderson County, Tennessee. Supplier agrees that CUB shall be entitled to recover from Supplier CUB’s reasonable attorneys’ fees and expenses incurred as a result of any dispute arising out of or related to a PO.
10. Force Majeure - Upon any discontinuance or substantial interference with CUB’s business by reason of fire, flood, earthquake, or other acts of God, embargo, civil disturbance, acts of terrorism, governmental regulation, or causes beyond CUB’s control, CUB may cancel any unfilled portion of a PO upon reasonable notice to Supplier.
11. Default – CUB may, by written notice of default to Supplier, cancel the whole or part of any PO or exercise any other remedy provided to CUB by law or equity, including, but not limited to, any remedy under the Uniform Commercial Code, T.C.A. §§ 47-1-101 et. seq. in any of the following circumstances: (i) Supplier fails to deliver the Procured Items within the time quoted by Supplier for delivery to CUB and specified on the PO; (ii) Supplier breaches any of the Terms and Conditions; or (iii) Supplier becomes insolvent or makes assignment for the benefit of creditors, or if there shall be instituted by or against Supplier any proceedings under any bankruptcy, reorganization, arrangement, readjustment or debt or insolvency law of any jurisdiction or for the appointment of a receiver or trustee with respect to any of Supplier’s property.