

PROSPER PORTLAND: PURCHASE ORDER TERMS AND CONDITIONS

The following General Provisions for Prosper Portland Purchase Orders will govern the Purchase Order ("PO") between the PORTLAND DEVELOPMENT COMMISSION d/b/a PROSPER PORTLAND ("Prosper Portland") and the seller of goods or services listed on the first page of the PO (the "Vendor"). If either the "Materials" or "Services" box is indicated on the first page of this PO, then the corresponding "Special Provisions for Materials Purchase Orders" or "Special Provisions for Services Purchase Orders" also apply.

"GENERAL PROVISIONS" FOR PROSPER PORTLAND PURCHASE ORDERS

1. Termination. Prosper Portland may terminate this PO for any reason by giving thirty (30) days written notice to the Vendor at the Vendor's address recorded on the first page of the PO. Vendor or Prosper Portland may terminate this PO in the event of a breach of the PO by the other party if the breach is not satisfactorily cured within ten (10) days of delivery of written notice detailing the nature of the breach. The passage of the PO expiration date shall not extinguish or limit either party's right to enforce this PO with respect to any default or defect in performance that has not been cured.

2. Indemnification. Vendor shall indemnify, save, hold harmless and, if requested, defend Prosper Portland, the City of Portland, and each of their respective officers, agents, and employees from all claims, suits, or actions of any nature whatsoever, including professionally negligent acts, errors or omissions, resulting from or arising out of the activities of Vendor or its subcontractors, agents, or employees under this PO; however, nothing herein shall require indemnification of Prosper Portland for liability attributable to Prosper Portland's sole negligence.

3. Access to and Retention of Books and Records. Vendor shall maintain and Prosper Portland and its authorized representatives shall have access to the books, documents, papers, and records of Vendor which are directly pertinent to this PO for the purpose of audits, examination, and making copies for a period of three (3) calendar years from the expiration date of this PO.

4. Recycled Products. Unless otherwise required, Vendor shall use recycled and recyclable products to the maximum extent economically feasible in the provision of goods or performance of services under this PO.

5. Backup withholding. Payment information will be reported to the IRS under the name provided on the first page of the PO. Information not matching IRS records may be subject to twenty percent (20%) backup withholding.

6. Assignment, Subcontracting, and Successors. Vendor shall not assign, transfer, or subcontract any rights nor delegate any responsibilities under this PO, in whole or in part, without the prior written approval of Prosper Portland. Notwithstanding Prosper Portland's approval of an assignee, transferee, or subcontractor, Vendor shall remain obligated for full performance hereunder. The provisions of this PO are binding upon and inure to the benefit of the parties to the PO and their respective approved assignees, transferees, and successors.

7. No Third-party Beneficiaries. No person not a party to this PO is an intended beneficiary of this PO and no person not a party to this PO has any right to enforce any term of this PO.

8. Independent Contractor. Vendor agrees that it is engaged by Prosper Portland under this PO as an independent contractor and is responsible for any and all federal, state, and/or local taxes and

fees applicable to payments under this PO. Vendor, its subcontractor, and their employees are not employees of Prosper Portland and are not eligible to receive any benefits outside of this PO, including federal social security, health benefits, workers' compensation, unemployment benefits, or retirement benefits.

9. Compliance with Applicable Law. Vendor agrees to comply with all federal, state and local laws, ordinances, executive orders and regulations ("Laws") applicable to the work to be done under this PO. Vendor agrees to comply with all Laws prohibiting discrimination on the basis of race, sex, sexual orientation, marital status, national origin, religion, age or disability. In addition, Vendor acknowledges its understanding that Prosper Portland is a public agency and the public contracting and procurement requirements of ORS Chapter 279 (such as ORS 279B.220, 279B.225, 279B.230 and 279B.235 – as each may be applicable to this PO) are hereby incorporated by reference into this PO.

10. Governing Law, Venue, and Consent to Jurisdiction. This PO shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim(s)") between Prosper Portland and Vendor that arises from or relates to this PO shall be brought and conducted solely and exclusively in the Circuit Court of the State of Oregon for Multnomah County; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon or the United States Bankruptcy Court for the District of Oregon, as applicable. VENDOR, BY EXECUTION OF THIS PO, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SAID COURTS.

11. Amendments. Except for changes to the expiration date of this PO, all changes must be in writing and signed by the Parties. The expiration date of this PO may be changed through email approval between the Vendor and Prosper Portland.

12. Waiver, Severability. The failure of Prosper Portland to enforce any provision of this PO shall not constitute a waiver by Prosper Portland of that or any other provision of this PO. The parties agree that if any term or provision of this PO is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this PO did not contain the particular term or provision held to be invalid.

“SPECIAL PROVISIONS” FOR PROSPER PORTLAND PURCHASE ORDERS

SPECIAL PROVISIONS FOR MATERIALS PURCHASE ORDERS

1. Delivery. Deliveries will be FOB DESTINATION. Vendor remains liable for latent defects, fraud, and warranties.

2. Inspections. Prosper Portland shall be given reasonable time to inspect and test the goods. Prosper Portland may reject non-conforming goods and require Vendor to correct them without charge or deliver them at a reduced price, as negotiated. If Vendor does not cure any defects within a reasonable time, Prosper Portland may reject the goods and cancel the PO in whole or in part. This paragraph does not affect or limit Prosper Portland's rights, including its rights under the Uniform Commercial Code, ORS Chapter 72 (UCC).

3. Warranties. Vendor represents and warrants to Prosper Portland that the goods are new, current, fully-warranted by the manufacturer and suitable for and will perform in accordance with the purposes for which they were intended. Delivered goods shall comply with specifications and be free from defects in labor, material and manufacture. All UCC implied and expressed warranties are hereby incorporated in this PO. Vendor shall transfer all warranties to Prosper Portland.

4. Acceptance of PO Terms and Conditions. This PO is Prosper Portland's offer to purchase the goods described on the PO from Vendor. Prosper Portland's placement of this order is expressly conditioned upon Vendor's acceptance of all terms and conditions of this PO. By fulfilling the order placed with this PO, Vendor expressly acknowledges and accepts that the terms and conditions contained in this PO shall govern the transaction between Prosper Portland and Vendor for this order and take precedence over any conflicting terms or conditions contained in any Vendor documentation.

5. Time is of the Essence. Vendor agrees that time is of the essence under this PO.

6. Payment. Prosper Portland shall pay Vendor within 30 days from (i) the date the goods are delivered and accepted or (ii) the date the invoice is received, whichever is later.

7. Tax Exemption. Prosper Portland is exempt from Federal Excise and Transportation taxes and all prices shall exclude any such taxes. See the front page of this PO for Prosper Portland's tax exemption number.

8. Safety and Health Requirements. Vendor represents and warrants that the goods comply with all federal and Oregon safety and health requirements.

9. Material Safety Data Sheets. Vendor shall provide Prosper Portland with a Material Safety Data Sheet (MSDS) for any goods for which such sheets are required to be published. Vendor shall label, tag, or mark such goods.

SPECIAL PROVISIONS FOR SERVICES PURCHASE ORDERS

1. Standard of Care. Vendor shall perform all services at the same level of professional skill, care, diligence, and standards as other professionals performing similar services under similar conditions. For services not meeting this standard, (a) Vendor will re-perform any services or correct any inconsistencies, errors, or omissions in the work products without additional compensation and without undue delay, or (b) Prosper Portland, in its sole discretion, may terminate this PO pursuant to Section 1 under the General Provisions of this PO.

2. Ownership of Work Product. All work products of the Vendor which result from this PO are the exclusive property of Prosper Portland. Prosper Portland shall have the unrestricted right to use, reuse, publish, assign, convey, and license the Work Products. Work products do not include any pre-existing work of the Vendor. If the services performed under this PO entail creative talent or the exercise of imaginativeness beyond what a person of ordinary talent might create, including, but not limited to, the creation of any artwork, illustrations, publication design, copywriting, photography, etc., Prosper Portland and Vendor intend that such work products be collectively deemed a “work made for hire” as that term is defined under the Copyright Act and of which Prosper Portland shall be deemed the author. If for any reason the work products are not deemed a “work made for hire,” Vendor hereby irrevocably assigns to Prosper Portland all its right, title, and interest in and to any and all of the work products, whether arising from copyright, trademark, or any other state or federal intellectual property law or doctrine. Contractor forever waives any and all rights relating to the artwork products, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Vendor may refer to the Work Products in its marketing materials for promotional and advertising purposes.

3. Confidentiality. All services, including reports, opinions and information, to be furnished under this PO are confidential and shall not be divulged by Vendor or Vendor's agents or employees, in whole or in part, to any person other than to representatives of Prosper Portland, except by testimony under oath in a judicial proceeding or as otherwise required by law or authorized in writing by an authorized representative of Prosper Portland.