

STANDARD TERMS AND CONDITIONS – PRODUCTS / GOODS

The following terms and conditions are requirements that bind the SELLER. These terms and conditions communicate BUYER'S expectations with regard to the SELLER'S products/goods in connection with BUYER'S purchase(s). These terms and conditions are applicable on all such matters to which they are attached.

1. Definitions:
 - a. Education Service Center Region 13 shall be referred to as "BUYER" and/or "CUSTOMER" throughout this and related documents.
 - b. The terms "Purchase Order," "Contract," and "Agreement" and their derivatives may be used interchangeably in these terms and conditions and related documents.
2. SELLER of Package Goods: SELLER will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows:
 - a. SELLER'S name and address.
 - b. Consignee's name, address and purchase order or purchase release number and the supply agreement number, if applicable.
 - c. Container number and total number of containers, e.g. box 1 of 4 boxes; and
 - d. The number of the container bearing the packing slip.SELLER shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. BUYER'S count or weight shall be final and conclusive on shipments not accompanied by packing lists.
3. Shipment Under Reservation Prohibited: SELLER is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
4. Title and Risk of Loss: The title and risk of loss of the goods shall not pass to Buyer until Buyer physically receives and takes possession of the goods at the point(s) of delivery and has taken action to specifically signify that BUYER accepts the goods as conforming. Mere acceptance of delivery shall not be acceptance as conforming.
5. Delivery Terms and Transportation Charges: Unless terms are specified otherwise and agreed to in writing by the parties, F.O.B. Destination (as specified by BUYER) (or other specified destination) Freight Prepaid; SELLER pays all the shipping costs until the cargo arrives at BUYER. No tailgate or curbside deliveries will be permitted; shipment must arrive at destination with proper equipment to make delivery inside BUYER'S building.

The delivery date and/or date of installation AFTER receipt of a purchase order will not vary from a SELLER'S offer. In its acceptance of any offer, BUYER is relying on the promised delivery date and/or installation as material and basic to its acceptance, unless otherwise indicated. In the event the SELLER fails to deliver as and when promised, BUYER reserves the right to cancel its accepting order, any part thereof, and SELLER agrees that BUYER may return all or part of any shipment so made, and may charge the SELLER with any loss or expense sustained as a result of such failure to deliver as promised. Shipments that weigh over seventy (70) pounds and/or have a cubic volume that exceeds fifteen (15) cubic feet shall be shipped on a pallet. The standard exceptions to this rule are air freight routing, United Parcel Service (UPS) or United States Postal Service (USPS).
6. No Placement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and SELLER shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the SELLER may reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
7. Penalties for Non-Performance: If, at any time, SELLER fails to fulfill or abide by the terms, conditions, or specification of the agreement, BUYER reserves the right to:
 - a. Purchase on the open market and charge SELLER the difference between contract and actual purchase price, or
 - b. Deduct such charges from existing invoice totals due at the time, or
 - c. Cancel the contract by written notification of intent to SELLER.
8. Place of Delivery: The place of delivery shall be the location set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, Modifications, hereof. The terms of this agreement are no arrival, no sale. SELLER should keep BUYER advised of the status of orders as failure to meet delivery dates may result in removal from the approved bidders/SELLERs list or may result in BUYER'S non-acceptance or rejection of goods received pursuant to the purchase order at no liability to BUYER.
9. Invoices and Payments:
 - a. For each purchase order (when used), SELLER shall submit separate invoices, in duplicate, after each delivery, or for each 30-day period, etc. Invoices shall indicate the purchase order(s) number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weighbill when applicable, should be attached to the invoice. Mail to: Education Service Center Region 13, Attn: Accounts Payable, 5701 Springdale Road, Austin, Texas 78723. Payment shall not be due until the above instruments are submitted. Suppliers should keep BUYER'S Accounts Payable section advised of any changes in your remittance addresses.
 - b. Under special conditions when purchase orders are not used and a representative of BUYER is physically present to receive items, then a work order or a delivery order number is referenced on the delivery ticket, signed by BUYER representative and dated. In this instance, invoices are normally prepared monthly and forwarded to BUYER Accounts Payable office for processing and payment.
 - c. Do NOT include Federal Excise, State or City Sales Tax. BUYER shall furnish tax exemption certificate, if required. BUYER'S Tax Permit number is 741590220 and shall be reflected on each purchase order. (*See Tex. Educ. Code 8.005.*)
 - d. BUYER is subject to the Texas Prompt Payment Act, Texas Government Code 2251. Undisputed payments due and unpaid under this agreement shall be made pursuant to the Texas Prompt Payment Act.

10. **Gratuities:** BUYER may, by written notice to the SELLER, cancel this contract without liability to SELLER if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or anything of monetary value, were offered or given by the SELLER, or any agent, or representative of the SELLER, to any officer or employee of BUYER with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or making of any determinations with respect to the performing of such a contract. In the event this contract is canceled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by SELLER in providing such gratuities.
11. **Special Tools and Equipment:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by SELLER for the purpose of filling this order(s), such special tooling equipment and any process sheets related thereto shall become the property of BUYER and to the extent feasible shall be identified by the SELLER as such.
12. **Warranty Price:**
- The price to be paid by BUYER shall be that contained in SELLER'S offer which SELLER warrants to be no higher than SELLER'S current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event SELLER breaches this warranty, the prices of the items shall be reduced to the SELLER'S current prices on orders by others, or, in the alternative, Buyer may cancel this contract without liability to SELLER for breach or SELLER'S actual expense.
 - The SELLER warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the SELLER for the purpose of securing business. For breach or violation of this warranty, BUYER shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
13. **Warranty Products:** SELLER shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of BUYER. SELLER warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the procurement invitation and to the sample(s) furnished by SELLER, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
14. **Safety Warranty:** SELLER warrants that the product(s) sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the SELLER'S expense. In the event SELLER fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at SELLER'S expense.
15. **No Warranty by Buyer Against Infringements:** As part of this contract for sale, SELLER agrees to ascertain whether goods manufactured in accordance with the specifications attached to the agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to SELLER for indemnification in the event that SELLER is sued on the grounds of infringement or the like. If SELLER is of the opinion that an infringement or the like will result, SELLER will notify Buyer to this effect in writing within two (2) weeks after the signing of this agreement. Both parties retain the right to terminate this contract at no cost to the other party if either party independently ascertains the existence of a copyright/trademark violation or other infringement. The right to terminate can only be exercised upon sixty (60) days written notice to the other party. In the event any article to be sold or delivered hereunder is covered by any patent, copyright, trademark, or application thereof, the SELLER shall indemnify and hold harmless BUYER, its Trustees and employees from any and all loss, cost, expenses and legal fees on account of any claims, legal actions, or judgments on account of manufacture, sale, or use of such article in violation of infringement or the like, of rights under such patent, copyright, trademark or application.
16. **Right of Inspection:** Buyer shall have the right to inspect the goods at delivery before accepting them. Final inspection shall be made at the site after delivery. In case of rejection of product(s)/good(s) (where applicable) for failure to meet contract requirements, or as otherwise provided herein, SELLER shall, without charge, promptly remove such rejected or damaged product(s)/good(s) and replace the product(s)/good(s) by delivering to the same inspection point product(s)/good(s) which meets the contract requirements without any additional expense to BUYER for freight of other charges.
17. **Cancellation:** BUYER shall have the right to cancel for default all or any part of the undelivered portion of this order if SELLER breaches any of the terms hereof, including warranties of SELLER or if the SELLER becomes insolvent or files for bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which Buyer may have in law or equity.
18. **Termination:** The performance of work under this order may be terminated in whole or in part by BUYER for any reason. Termination of work hereunder shall be effected by the delivery to the SELLER of a Notice of Termination specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. The SELLER shall be paid only for the performance of work up to the date of termination if BUYER exercises its right to terminate. Such right of termination is in addition to, and not in lieu of, rights of Buyer set forth herein. BUYER shall have the right to terminate any agreement with or without cause upon ten (10) days' notice to SELLER. Valid causes for termination of this agreement by BUYER for cause include, but are not limited to:
- Lack of funds by BUYER: Lack of funds includes, but is not limited to, non-appropriation and/or non-availability of funds.
 - Non-compliance with federal regulations including, but not limited to, the "Contract Work Hours and Safety Standards Act," the "Equal Employment Opportunity Act," and the "Energy Policy and Conservation Act."
 - Failure to meet bidding specifications as determined by BUYER.
- In the event that SELLER becomes insolvent or commits act(s) of bankruptcy, SELLER shall notify BUYER in writing immediately. Delivery of items on two (2) or more occasions that are rejected by BUYER.
- Failure to deliver the item(s) within the specified time.
 - Breach of warranties
 - Breach by bidder of any term and condition of the agreement
 - Any unethical business practice or attempt to misrepresent or commit fraud against BUYER.

19. **Force Majeure:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within ten (10) days after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics and pandemics, landslides, lightening, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.
20. **Assignment Delegation:** No right or interest in this contract shall be assigned or delegation of any obligation made by SELLER without the written permission of BUYER. Any attempted assignment or delegation by SELLER shall be void and ineffective for all purposes unless made in conformity with this paragraph.
21. **Waiver:** The waiver by either party of a breach of any provision of this agreement will not be construed as a waiver of any subsequent breach. The invalidity, in whole or in part, of any provision of this agreement will not affect the validity of the remaining provisions. Notwithstanding anything contained herein to the contrary, no provision herein may be construed as a waiver of BUYER'S sovereign immunity.
22. **Modifications:** This contract can be modified or rescinded only by written amendment signed by both of the parties or their duly authorized agents.
23. **Interpretation Parole Evidence:** This writing is intended by the parties as a sole and final expression of their agreement, and is intended also as a complete and exclusive statement of the terms of their agreement. This writing supersedes all prior oral and written agreements. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is controlling.
24. **Applicable Law:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term Universal Commercial Code is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective on the date of this agreement. This agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are performable in the County where the goods will be delivered.
25. **Advertising:** SELLER shall not advertise or publish, without BUYER'S prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
26. **Right to Assurance:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) business days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
27. **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in the county where BUYER'S administrative offices are located unless agreed to in writing by authorized representatives for both parties.
28. **Prohibition Against Personal Interest in Contracts:** Any BUYER Board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with BUYER, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. *See Tex. Loc. Gov't Code, Ch. 171.*
- For anyone doing business with a local government entity, such as BUYER, a Conflict of Interest Questionnaire must be filed by SELLER in accordance with Texas Local Government Code Ch. 176. If the SELLER becomes aware of facts that require the statement to be filed during the term of this agreement, the SELLER will file a new Questionnaire with the records administrator of BUYER no later than the seventh (7th) business day after SELLER became aware of such facts. *See Tex. Loc. Gov't Code, 171.*
29. **Monetary Amounts:** Sums of money shall be indicated both by Unit Cost and Total Item Cost. In case of discrepancy, the Unit Cost shall govern.
30. **Discounts:** Cash Discounts offered may be considered in determining the successful supplier. Cash discount period shall start from date of receipt of acceptable invoice or from date of receipt of acceptable material, whichever is the later. Purchase Order number must appear on all invoices and delivery tickets.
31. **Item Quantities:** BUYER reserves the right to increase or decrease quantities. Modification of Special Conditions and/or Specifications will be done by supplemental procurement instructions.
32. **Purchase Order:** Unless otherwise specified herein, goods shall not be delivered, nor services performed without a copy of a purchase order, issued to the supplier and signed by a duly authorized representative of BUYER.
33. **NON-APPROPRIATION OF FUNDS CLAUSE:** Where applicable with a multi-year contract, renewal of contracts will be in accordance with *Tex. Loc. Gov't Code. 271.903* concerning non-appropriation of funds for multi-year contracts. For applicable contracts, BUYER reserves the right to rescind the contract at the end of each fiscal year (as of August 31) if it is determined that there are insufficient funds to extend the contract. Further, should BUYER not approve funds for this Agreement, this Agreement shall automatically terminate on the last day of the fiscal year for which funds have been appropriated at no further cost or obligation of BUYER.
34. **Equal Opportunity:** BUYER encourages offers from any company or individual regardless of race, color, national origin, age, religion, sex, marital or veteran status, the presence of a medical

condition, disability, or any other legally protected status.

35. Recycled Products: BUYER shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.
36. Material Safety Data Sheets (“MSDS”): MSDS reports must accompany any item(s) that require such information, or must be made available by SELLER to BUYER prior to delivery.
37. Liens: All items delivered under this agreement must be free of all liens and upon request, a formal release of all liens will be delivered to BUYER.
38. Insurance: SELLER represents and warrants that SELLER will maintain any insurance policies required by and in accordance with any insurance requirements specified by BUYER in the underlying agreement and further agrees to make the certificates of insurance and insurance policies available to BUYER upon request.
39. Contractual Relationship: Nothing herein shall be construed as creating the relationship of employer or employee between BUYER and SELLER or between BUYER and SELLER’S employees. BUYER shall not be subject to any obligation or liabilities of the SELLER or SELLER’S employees incurred in the performance of the contract unless otherwise herein authorized. The SELLER is an independent SELLER and nothing contained herein shall constitute or designate the SELLER of any of SELLER’S employees as employees of BUYER. Neither the SELLER nor SELLER’S employees shall be entitled to any benefits established for BUYER’S employees nor covered by BUYER’S Worker’s Compensation program.
40. Records: SELLER agrees to provide to BUYER, the Texas Education Agency, the Comptroller General of the United States, or any other duly authorized representatives access to any books, documents, papers, and records of the SELLER which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. SELLER also agrees to maintain all required records for five (5) years after BUYER makes final payment and all other pending matters are closed.
41. Other Required Provisions:
 - a. Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if the SELLER has at least ten (10) full time employees, then the SELLER, by its execution of this Agreement represents and warrants to the Owner that the SELLER does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship.
 - b. Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if Contractor has at least ten (10) full-time employees, then Contractor represents and warrants to BUYER that the Contractor does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

This section does not apply to a sole proprietorship.

- c. Under Section 231.006 of the Texas Family Code, the SELLER certifies that the individual or business entity named in this Contract is not ineligible to receive the specified payments and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- d. SELLER verifies and affirms that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If SELLER has misrepresented its inclusion on the Comptroller’s list such omission or misrepresentation will void this Agreement.
- e. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the SELLER agrees that the contract can be terminated if the SELLER knowingly or intentionally fails to comply with a requirement of that subchapter. Therefore, if the value of this Project is One Million Dollars (\$1,000,000.00) or more, the SELLER agrees to : (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Owner for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the Owner; and (3) on completion of the contract, either: (a) provide at no cost to the Owner all contracting information related to the contract that is in the custody or possession of the entity; or (b) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Owner.
- f. SELLER shall take all actions and shall comply with all federal, state, and local legal requirements, and shall also comply with all recommendations of the Centers for Disease Control.
- g. Pursuant to Texas Government Code Chapters 2274 and 809, if this contract is valued at \$100,000 or more and if SELLER has at least ten (10) full-time employees, then SELLER represents and warrants to the Owner that the SELLER does not boycott energy companies and will not boycott energy companies during the term of this Agreement. This provision does not apply to sole proprietorships.
- h. Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if SELLER has at least ten (10) full-time employees, then SELLER represents and warrants to the Owner that the SELLER does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This provision does not apply to sole proprietorships.