

STANDARD TERMS AND CONDITIONS – SERVICES

The following terms and conditions are requirements that bind PROVIDER. These terms and conditions communicate CUSTOMER'S expectation with regard to PROVIDER'S services in connection with CUSTOMER'S purchase. 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 "CUSTOMER" 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. **Invoices and Payments:**
 - a. PROVIDER is required to provide a proper invoice that coincides with contract requirements. For ongoing services, payment may be made monthly upon receipt of a proper invoice. PROVIDER will not be paid in advance. At a minimum, the invoice shall include the list of services provided, the dates of services, and location(s) where services were provided during the billing period.
 - b. For each purchase order (when used), PROVIDER shall submit separate invoices, in duplicate, 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. 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 CUSTOMER'S Accounts Payable section advised of any changes in your remittance addresses.
 - c. Do NOT include Federal Excise, State or City Sales Tax. CUSTOMER shall furnish tax exemption certificate, if required. CUSTOMER'S Tax Permit number is #741590220 and shall be reflected on each purchase order.
3. **Gratuities:** CUSTOMER may, by written notice to PROVIDER, cancel this contract without liability to PROVIDER if it is determined by CUSTOMER that gratuities, in the form of entertainment, gifts, or anything of monetary value, were offered or given by PROVIDER, or any agent, or representative of PROVIDER, to any officer or employee of CUSTOMER 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 CUSTOMER pursuant to this provision, CUSTOMER shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by PROVIDER in providing such gratuities.
4. **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 PROVIDER for the purpose of filling this order(s), such special tooling equipment and any process sheets related thereto shall become the property of CUSTOMER and to the extent feasible shall be identified by PROVIDER as such.
5. **Cancellation:** CUSTOMER shall have the right to cancel for default all or any part of the undelivered portion of this order if PROVIDER breaches any of the terms hereof, including warranties of PROVIDER or if PROVIDER becomes insolvent or files for bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which CUSTOMER may have in law or equity.
6. **Termination:** The performance of work under this agreement may be terminated in whole or in part by CUSTOMER for any reason. Termination of work hereunder shall be effected by the delivery to PROVIDER 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. PROVIDER shall be paid only for the performance of work up to the date of termination if CUSTOMER exercises its right to terminate. Such right of termination is in addition to, and not in lieu of, rights of CUSTOMER set forth herein. CUSTOMER shall have the right to terminate any agreement with or without cause upon ten (10) days' notice to Vendor. Valid causes for termination of this agreement by CUSTOMER for cause include, but are not limited to:
 - a. Lack of funds by CUSTOMER: Lack of funds includes, but is not limited to, non-appropriation and/or non-availability of funds.
 - b. 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."
 - c. Failure to meet bidding specifications as determined by CUSTOMER.
 - d. In the event that PROVIDER becomes insolvent or commits act(s) of bankruptcy, PROVIDER shall notify CUSTOMER in writing immediately.
 - e. Breach of warranties
 - f. Breach by PROVIDER of any term and condition of the agreement
 - g. Any unethical business practice or attempt to misrepresent or commit fraud against CUSTOMER.
7. **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.

8. **Assignment Delegation:** No right or interest in this contract shall be assigned or delegation of any obligation made by PROVIDER without the written permission of CUSTOMER. Any attempted assignment or delegation by PROVIDER shall be void and ineffective for all purposes unless made in conformity with this paragraph.
9. **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 CUSTOMER'S sovereign immunity.
10. **Modifications:** This contract can be modified or rescinded only by written amendment signed by both of the parties or their duly authorized agents.
11. **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.
12. **Advertising:** PROVIDER shall not advertise or publish, without CUSTOMER'S prior consent, the fact that CUSTOMER 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.
13. **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.
14. **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in Travis County, Texas unless agreed to in writing by authorized representatives for both parties..
15. **Prohibition Against Personal Interest in Contracts:** Any CUSTOMER Board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with CUSTOMER, 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 Texas Local Government Code, Ch. 171.* For anyone doing business with a

local government entity, such as CUSTOMER, a Conflict of Interest Questionnaire must be filed by PROVIDER in accordance with Texas Local Government Code Ch. 176. If PROVIDER becomes aware of facts that require the statement to be filed during the term of this agreement, PROVIDER will file a new Questionnaire with the records administrator of CUSTOMER no later than the seventh (7th) business day after PROVIDER became aware of such facts. *See Texas Local Government Code, Ch. 171.*

16. **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.
17. **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.
18. **NON-APPROPRIATION OF FUNDS CLAUSE:** Where applicable with a multi-year contract, renewal of contracts will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-year contracts. For applicable contracts, the Victoria Independent
19. CUSTOMER 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 CUSTOMER 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 CUSTOMER.
20. **Equal Opportunity:** CUSTOMER 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.
21. **Required Provisions:**
 - a. Pursuant to Texas Government Code Chapter 2271, as amended, if this contract is valued at \$100,000 or more and if PROVIDER has at least ten (10) full time employees, then PROVIDER, by its execution of this Agreement represents and warrants to the Owner that PROVIDER 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 CUSTOMER 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, PROVIDER 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. PROVIDER 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 PROVIDER 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 PROVIDER agrees that the contract can be terminated if PROVIDER 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, PROVIDER 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. PROVIDER 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 PROVIDER has at least ten (10) full-time employees, then PROVIDER represents and warrants to the Owner that PROVIDER 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 PROVIDER has at least ten (10) full-time employees, then PROVIDER represents and warrants to the Owner that PROVIDER 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.

22. Insurance: PROVIDER represents and warrants that PROVIDER will maintain any insurance policies required by and in accordance with any insurance requirements specified by CUSTOMER in the underlying agreement and further agrees to make the certificates of insurance and insurance policies available to CUSTOMER upon request.
23. Contractual Relationship: Nothing herein shall be construed as creating the relationship of employer or employee between CUSTOMER and PROVIDER or between CUSTOMER and PROVIDER'S employees. CUSTOMER shall not be subject to any obligation or liabilities of PROVIDER or PROVIDER'S employees incurred in the performance of the contract unless otherwise herein authorized. PROVIDER is an independent contractor and nothing contained herein shall constitute or designate PROVIDER or any of PROVIDER'S employees as employees of CUSTOMER. Neither PROVIDER nor PROVIDER'S employees shall be entitled to any benefits established for CUSTOMER'S employees nor covered by CUSTOMER'S Worker's Compensation program.
24. Compliance with CUSTOMER policies and procedure: While on CUSTOMER premises, PROVIDER agrees to comply with all CUSTOMER'S policies, procedures, rules and regulations.
25. Records: PROVIDER agrees to provide to CUSTOMER, 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 PROVIDER which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. PROVIDER also agrees to maintain all required records for five (5) years after CUSTOMER makes final payment and all other pending matters are closed.