

TEXAS STATE UNIVERSITY

Standard Terms and Conditions

Seller and Buyer agrees as follows:

1. **SELLER TO PACKAGE GOODS** - Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked 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 list.
2. **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.
3. **TITLE & RISK OF LOSS** - The title and risk of loss of the goods shall not pass to Buyer until Buyer receives and takes possession of the goods at the point(s) of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES** - F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods.
5. **NO REPLACEMENT 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.
6. **PLACE OF DELIVERY** - The place of delivery shall be that set forth in the "Shipping Information" block of 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".
7. **INVOICES & PAYMENTS**
 - a. Seller shall submit a separate invoice on each purchase order or purchase release after each delivery. Invoices must indicate the purchase order number or they will be returned to the Seller unpaid. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Invoices are to be submitted in accordance with "Invoice Information" block of the purchase order to the address shown. Payment shall not be due until the above instruments are submitted after delivery. Suppliers must keep the Purchasing Office advised of any changes in your remittance address.
 - b. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer.
 - c. Texas State is sales tax exempt. Do not include Federal Excise, State or City Sales Tax. Buyer shall furnish tax exemption certificate upon request.
 - d. Texas State's standard payment terms are NET 30 Days in accordance with Texas Government Code section 2251 "Prompt Payment", unless otherwise noted on the purchase order.
8. **GRATUITIES** - The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of Texas State University with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled 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.
9. **SPECIAL TOOLS & TEST EQUIPMENT** - If the price stated on the face hereof includes the cost of any special tooling or test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
10. **WARRANTY-PRICE**
 - a. The price to be paid by the Buyer shall be that contained in Seller's bid 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.
 - b. 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 the 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.
11. **WARRANTY-PRODUCT** - Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid 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.
12. **SAFETY WARRANTY** - Seller warrants that the product 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.
13. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS** - As part of this contract for sale, Seller agrees to ascertain whether goods were manufactured in accordance with the specifications attached to this agreement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to an infringement 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, he will notify Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of this search as to infringements.
14. **RIGHT OF INSPECTION** - Buyer shall have the right to inspect the goods at delivery before accepting them.
15. **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 involved or commits acts of 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.
16. **TERMINATION** - The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. 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. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.
17. **FORCE MAJEURE** - Except as otherwise provided, neither Seller nor Buyer, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this agreement caused by Force Majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform. "Force Majeure" is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such Force Majeure or otherwise waive this right as a defense.
18. **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 the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
19. **WAIVER** - No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supposed by consideration and is in writing signed by the aggrieved party.
20. **MODIFICATIONS** - This contract can be modified or rescinded only in writing, signed by both of the parties or their duly authorized agents.
21. **INTERPRETATION-PAROLE EVIDENCE** - This writing is intended by the parties as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement. 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 to control.
22. **APPLICABLE LAW** - This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
23. **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.
24. **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) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
25. **VENUE** - Both parties agree that venue for any litigation arising from this contract shall lie in Hays County, Texas. Notwithstanding any provision of this contract, nothing herein shall be construed as a waiver by Texas State University of its constitutional, statutory or common law rights, privileges, immunities or defenses.
26. **DISPUTE RESOLUTION** - The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used to resolve a dispute arising under this Agreement.
27. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS** - No faculty, staff or other employee of Texas State University shall transact any business in their official capacity with any business entity of which they are officers, agents, or members, or in which they own a controlling interest unless the Texas State University System Board of Regents has reviewed the matter and determined that there is no conflict of interest. Any violation of this section, with the knowledge, expressed or implied, of the person or corporation contracting with the Buyer shall render the contract involved voidable by Texas State University.
28. **RIGHT TO AUDIT** - By execution and acceptance of this order, Vendor agrees to provide Texas State University and its agents access to Vendor's financial records for audit purposes during regular business hours. Failure to do so will result in termination of this contract.
29. **PUBLIC INFORMATION** - Texas State University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Contractor is required to make any information created or exchanged with the state pursuant to this contract, that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
30. In accordance with Texas Education Code, Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:
 - (1) Whether the provision appears on the face of the Agreement or Contract; or
 - (2) Whether the Agreement or Contract includes any provision to the contrary.