

TERMS AND CONDITIONS

This is an El Paso County Community College District purchase order. The District is collectively referred to hereinafter as BUYER.

All purchases made by BUYER are contingent upon the acceptance of these Terms and Conditions by Vendor, hereinafter as SELLER.

IF YOU ARE UNABLE TO COMPLY WITH THESE TERMS AND CONDITIONS, NOTIFY BUYER'S REPRESENTATIVE SHOWN ON THE FACE OF THIS PURCHASE ORDER AT ONCE.

1. This purchase order is valid only when signed by BUYER's authorized representative and a valid purchase order number appears at the top.
2. The party to which this purchase order is issued (SELLER) is an independent contractor and under no circumstances will SELLER be considered or construed to be an employee, agent, or representative of BUYER. SELLER agrees that it is an equal opportunity employer and will comply with all applicable federal, state, and local laws and regulations.
3. As an institution of higher education and a political subdivision of the State of Texas, in accordance with the State of Texas and Federal Tax Codes, BUYER hereby certifies it is exempt from the payment of property, sales, use, franchise, excise, and most other taxes (Exempt No. 1-741690850-1). In the event it is determined that BUYER is legally liable for payment of taxes for which an exemption is claimed, BUYER will remit such taxes to the applicable taxing authority.
4. No substitution of goods, change of services, delivery dates, Free on Board (F.O.B.) point, or price increases of any nature shall be made unless expressly assented to by prior written approval of the BUYER. No modification of this purchase order shall bind BUYER unless BUYER agrees to the modification in writing.
5. SELLER shall be responsible for the industry-standard packing of goods which conforms to requirements of the carrier's tariffs and all federal and state laws. Containers must be clearly marked with lot number, destination, address, and purchase order number. SELLER shall bear the cost of packaging unless otherwise provided herein. SELLER is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of the goods.
6. Goods to be provided and/or services to be performed shall be in accordance with the terms, prices, delivery time, and specifications as required under this purchase order. Unless shown otherwise on this purchase order, the price(s) shown include(s) the cost for: (a) freight, delivery, unloading, and placement of the goods in the designated location within a building; and (b) for equipment and furniture: uncrating, complete assembly, adjustment, testing, and removal of all debris. Time is of the essence in the delivery of all goods and/or provision of all services.
7. All shipments are to be made "F.O.B. Destination" and risk of loss and/or title to the goods will not pass to BUYER until the goods are accepted at the delivery destination. BUYER shall have the right to count and inspect the goods at delivery before acceptance is final. SELLER shall be liable for handling claims for, and the replacement of, goods lost or damaged prior to acceptance by BUYER.
8. In addition to the warranties provided by law, SELLER expressly warrants that it has the right to sell the goods and/or services provided under this purchase order and such goods and/or services (a) will be in full conformity with the specifications, plans, and samples approved by BUYER; will be new, of good quality, material, and workmanship; will be merchantable, fit for the use and purpose for which they were intended; and will be free from defects; (b) will be manufactured, sold, delivered, and installed in compliance with the provisions of all applicable federal, state, and local laws, ordinances, rules, and regulations; and (c) will not infringe on any valid patent, trademark, trade name, or copyright. Any and all warranties made by the manufacturer or supplier of goods delivered by SELLER are hereby assigned to BUYER and nothing contained herein shall exclude or affect the operation of any implied warranties arising in favor of BUYER. SELLER will bear the cost of inspecting, testing and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance, and payment and shall accrue to BUYER.
9. In addition to other rights provided for herein and by law, BUYER reserves the right to: (a) inspect the goods at SELLER's location before shipment; (b) inspect goods delivered and reject/return those which are damaged, incomplete, do not meet specifications, and/or reasonable standards of quality; (c) reject goods shipped contrary to instructions or in containers which do not meet recognized standards; and (d) cancel the order, without penalty or prejudice, if not filled within the time specified on purchase order. BUYER may return rejected goods or excess shipments on this order or may hold goods subject to SELLER's direction at SELLER's sole risk and expense. In either event, BUYER may charge SELLER with the cost of shipping, unpacking, inspecting, reshipping, and other like expenses, or offset such costs against amounts otherwise payable by BUYER to SELLER. If the product, or any part thereof, is held to constitute an infringement and/or the use of the product, or any part thereof, is enjoined, SELLER shall, at its own expense, either procure for BUYER the right to use or continue using the product or replace same with an equivalent non-infringing product or modify the product so that it becomes non-infringing or, if the foregoing options are not possible, refund to BUYER the sums paid to SELLER for the purchase, or right to use said product.
10. Where SELLER or its agent(s) have personnel making deliveries to or performing services at BUYER's premises, SELLER or its agent(s) must carry public liability, property damage, and workers' compensation insurance with carriers authorized to provide such insurance under the laws of the State of Texas as outlined in the District's General Conditions, which can be accessed on the District's website at www.epcc.edu/purchasing. A hard copy of these conditions can be requested from the BUYER's representative whose name appears on the front of this document.
11. If the goods and/or services described in this Purchase Order require that SELLER have access to BUYER's protected information or to protected information belonging to BUYER's employees and/or students such as, by way of example and not limitation social security numbers, then by accepting this Purchase Order, SELLER agrees to enter into a separate Confidentiality Agreement with BUYER. A copy of this Agreement can be obtained by calling (915) 831-6496.
12. Invoices are to be submitted only to BUYER's Accounts Payable Department as specified on the face of this purchase order, and only for the goods that have been delivered or services that have been provided. Invoices will not be paid if they (a) do not reference this purchase order number; (b) are for a higher cost than shown on this purchase order; (c) list goods or services other than those shown on this purchase order; or (d) are damaged or incomplete. Invoices must show the quantity, description, and unit cost of items. Incorrect invoices must be corrected by SELLER. Neither this purchase order nor payments to be made may be assigned without the express written consent of BUYER. Any attempted assignment or delegation by SELLER shall be wholly void.
13. Within thirty (30) days from receipt of a properly executed and undisputed invoice, or date of receipt of goods or services, whichever is most current, payment will be processed for goods or services provided hereunder. Any discounts will be calculated from the date of receipt of the invoice or receipt of the goods or services, whichever is most current. Payment for any goods or services does not constitute final acceptance.
14. This purchase order will automatically terminate at the end of the applicable budget period unless otherwise specified herein. BUYER reserves the right to cancel this Purchase Order at any time without penalty or prejudice. Cancellation of this Purchase Order shall be automatic upon the occurrence of the following conditions, unless expressly assented to by BUYER in writing: (a) incomplete order, where not all merchandise is received by BUYER on or before the "Delivery Date" shown herein; or (b) outstanding orders that are not received on or before the end of the District's fiscal year (August 31).
15. To the fullest extent of the law, SELLER agrees to indemnify, defend, and hold whole and harmless BUYER, its trustees, officers, employees, and agents from and against all claims, demands, causes of action, losses, and expenses, including without limitation, reasonable attorneys' fees and costs of defense arising out of or incident to (a) SELLER's performance hereunder; (b) the presence of the SELLER, its employees, agents, or invitees on BUYER's premises; (c) any breach of warranty of SELLER contained herein; and (d) any claim of patent, trademark, copyright, franchise, or other intellectual property infringement by goods and/or services provided by SELLER hereunder, provided that SELLER shall not be liable for losses to the extent caused by negligence or willful misconduct of any indemnified party.
16. Pursuant to the provisions of Texas Government Code Title 10, Subtitle F, Chapter 2271, by providing the goods and/or services described herein, SELLER attests that it: 1. does not boycott Israel, and 2. will not boycott Israel during the term of this contract. Pursuant to Section 2271.001, Texas Government Code: "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. This applies only to a "Company" defined as: a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit, but excludes a sole proprietorship. This section applies only if (1) SELLER is a company with 10 or more full-time employees; and (2) if the value of this purchase order contract is \$100,000 or more.
17. Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
18. All contracts valued at \$50,000 or more require approval by the BUYER's Board of Trustees under Board Policy 4.10.04, such approval having been obtained in a duly called public meeting.
19. This purchase order shall be governed by, and any disputes shall be settled pursuant to, the laws of the State of Texas, with venue in El Paso, Texas.