

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 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/Administration/Purchasing/documentation. 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. SELLER may not assign this purchase order or assign, transfer or delegate, in whole or in part, any of its interest in, or rights or obligations under, the purchase order without the prior written consent of BUYER, and any attempted or purported assignment, transfer or delegation thereof without such consent shall be null and void.
17. By providing the goods and/or services described herein, SELLER, Under Section 231.006 of the Texas Family Code regarding child support, represents and warrants that it is not ineligible to receive the specified payment and acknowledges that the purchase order may be terminated and payment may be withheld if this certification is inaccurate.
18. By providing the goods and/or services described herein, SELLER represents and warrants that it is not ineligible to receive the purchase order in accordance with Section 161.0085 of the Texas Health and Safety Code. SELLERS with a "vaccine passport" requirement are not eligible to enter into a contract/purchase order payable with Texas state funds.
19. By providing the goods and/or services described herein, SELLER represents and warrants that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.
20. By providing the goods and/or services described herein, SELLER represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
21. All purchase orders valued at \$50,000 or more require approval by the BUYER's Board of Trustees.
22. By providing the goods and/or services described herein, SELLER represents and warrants that the provision of goods and services or other performance under this purchase order with BUYER does not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. If circumstances change during the course of the purchase order, SELLER shall promptly notify BUYER.

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23. Information, documentation, and other material in connection with this purchase order may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

In accordance with Section 2252.907 of the Texas Government Code, by providing the goods and/or services described herein, SELLER represents and warrants that it understands and agrees that it is required to make any information created or exchanged with BUYER or the State of Texas pursuant to the purchase order, and 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 BUYER.

24. By providing the goods and/or services described herein, SELLER represents and warrants that the individual who submitted the offer and the documents made part of the offer is authorized to make the offer and sign such documents on behalf of the SELLER and to bind the SELLER under any purchase order that may result from the submission of the offer.

25. By providing the goods and/or services described herein, SELLER represents and warrants that it and its principals are not suspended or debarred from doing business with the State of Texas or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the U.S. General Services Administration.

26. Pursuant to Texas Government Code 2155.077(a)(2), SELLER represents and warrants that all statements and information SELLER submitted to the BUYER, including by way of example and not limitation, SELLER's offer, price proposal, quote, and Statement of Work, were true and correct. A finding that SELLER misrepresented the facts during the procurement or performance of the purchase order may lead to the BUYER terminating or voiding the purchase order.

27. The purchase shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of El Paso County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to BUYER.

28. *Note: In accordance with Texas Government Code 2271, this section only applies to a contract that (1) is between BUYER and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more. Section 2271.001 of the Government Code defines "company" to be the meaning assigned by Section 808.001 of the Texas Government Code, except that the term does not include a sole proprietorship.*

BUYER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. "Boycott Israel" has the meaning assigned by Section 808.001 of the Texas Government Code.

By providing the goods and/or services described herein, SELLER represents and warrants that (1) it does not, and shall not for the term on this purchase order, boycott Israel or (2) the verification required by Section 2271.002 of the Government Code does not apply to this purchase order. If circumstances relevant to this provision change during the term of this purchase order, SELLER shall promptly notify BUYER.

29. *Note: In accordance with Texas Government Code 2274, this section only applies to a contract that (1) is between BUYER and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more. Section 2274.001 of the Government Code defines "company" to be the meaning assigned by Section 809.001 of the Government Code, except that the term does not include a sole proprietorship.*

Except as provided by Government Code Section 2274.002, Subsection (c), BUYER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. "Boycott energy company" has the meaning assigned by Section 809.001 of the Government Code.

By providing the goods and/or services described herein, SELLER represents and warrants that (1) it does not, and will not for the term of this purchase order, boycott energy companies or (2) the verification required by Section 2274.002 of the Government Code does not apply to this purchase order. If circumstances relevant to this provision change during the term of this purchase order, SELLER shall promptly notify BUYER.

30. *Note: In accordance with Texas Government Code 2274, this section only applies to a contract that (1) is between BUYER and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more. Section 2274.001 of the Government Code defines "company" as a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*

Except as provided by Government Code Section 2274.002(c), and Section 2274.003 of the Government Code, BUYER may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. Government Code Section 2274.002(c) states this does not apply to (1) contracts with a sole-source provider; or (2) if BUYER does not receive any bids from a company that is able to provide the written verification required by that subsection.

30. *Continued*

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and (B) does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases. "Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine. "Firearm entity" means: (A) a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and (B) a sport shooting range as defined by Section 250.001, Local Government Code. "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that: (A) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual; (B) has two or more firearm entities as members; and (C) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

By providing the goods and/or services described herein, SELLER represents and warrants that: (1) it does not, and will not for the term of the purchase order, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Government Code does not apply to this purchase order. If circumstances relevant to this provision change during the term of this purchase order, SELLER shall promptly notify BUYER.

31. *Note: In accordance with Section 2274.0103 of the Texas Government Code, this section only applies to a contract in which SELLER would be granted direct or remote access to or control of critical infrastructure, in this state, other than access specifically allowed for product warranty and support purposes.*

Pursuant to Texas Government Code Section 2274.0102, by providing the goods and/or services described herein, SELLER represents and warrants that neither it nor its parent company, nor any affiliate of SELLER or its parent company, is (1) majority owned or controlled by citizens or governmental entities of China, Iran, North Korea, Russia, or any other country designated by the Governor under Texas Government Code Section 2274.0103, or (2) headquartered in any of those countries.

32. *Note: In accordance with Section 2054.138 of the Texas Government Code, this section applies only when the BUYER is entering into or renewing a contract/purchase order with a vendor authorized to access, transmit, use, or store data for the BUYER. BUYER shall determine its security controls which shall be proportional to BUYER'S risk under contract based on the sensitivity of its data.*

Pursuant to Section 2054.138 of the Texas Government Code, by providing the goods and/or services described herein, SELLER represents and warrants that it will comply with the security controls required under this purchase order and will maintain records and make them available to BUYER as evidence of SELLER'S compliance with the required controls.

33. *Note: In accordance with Section 361 of the Texas Health and Safety Code, this section only applies to a contract or purchase order in which SELLER would be selling or leasing covered television equipment as defined by Section 361.91(3) of the Texas Health and Safety Code to the District.*

By providing the goods and/or services described herein, SELLER represents and warrants that it is compliant with Subchapter Z, Chapter 361 of the Texas Health and Safety Code related to the Television Equipment Recycling Program.

34. *Note: In accordance with Section 361 of the Texas Health and Safety Code, this section only applies to a purchase order for the purchase or lease of computer equipment, which is defined in Section 361.952(2) of the Texas Health and Safety Code as "a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner."*

By providing the goods and/or services described herein, SELLER represents and warrants that it is in compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code related to the Computer Equipment Recycling Program and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

35. *Note: This section applies to contracts for architectural or engineering services.*

Pursuant to Section 2254.0031 of the Texas Government Code, which incorporates by reference Section 271.904(d) of the Texas Local Government Code, SELLER shall perform services (1) with professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.