

**STANDARD PURCHASE TERMS AND CONDITIONS
DEPARTMENT OF PURCHASING
BRAZOS COUNTY, TEXAS**

Seller and Buyer agree 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 to 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.

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 actually accepts the goods at the point or points of delivery.

4. **FOB POINT** - Delivery of all products under this contract shall be made Free On Board to final destination, at the address shown in this contract or as indicated on each Delivery Order placed against this contract. The title and risk of loss of the goods shall not pass to Brazos County until receipt and acceptance takes place at the F.O.B. point.

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 seasonably 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 block of the purchase order release entitled "Ship To". 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 AND PAYMENTS

- a. Seller shall submit separate invoices on each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number, if applicable. 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. Mail to: Brazos County Auditor's Office, PO Box 914, Bryan, Texas 77806. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Auditor's Office advised of any changes in your remittance addresses.
- 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. Do not include Federal Excise, State, County, or City Sales Tax. The County shall furnish tax exemption certificate upon request.

8. **GRATUITIES** - The 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 otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of Brazos County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the 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.

9. **SPECIAL TOOLS & TEST 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, 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. **PRODUCT WARRANTIES** - 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 the 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** - Seller warrants that all applicable patents and Copyrights which may exist on items bid upon have been adhered to and further warrants that Brazos County shall not be liable for any infringement of those rights. Seller agrees to defend Brazos County in any legal cause of action resulting from any violations to existing patents, licenses, or copyrights applicable to items sold hereunder.

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 Seller

becomes insolvent 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** - 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 such Force Majeure in writing to the other party within a reasonable time 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, act of public enemies, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, 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 the 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 judgement of the party having the difficulty.

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. **WAIVERS** - 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 supported by consideration and is in writing signed by the aggrieved party.

20. **MODIFICATIONS** - This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

21. **INTERPRETATION PAROL EVIDENCE** - This writing is intended by the parties as a final expression of their agreement and is intended 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. Nothing in the purchase order or contract shall be construed to waive Brazos County's sovereign immunity. Brazos County does not agree to submit disputes arising out of the purchase order or contract to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. Brazos County does not agree to pay any and/or all attorney fees incurred by Seller in any way associated with this purchase order. Brazos County does not agree that all disputes (including any claims or counterclaims) arising from or related to this purchase order or contract shall be resolved without a jury. Therefore, any references to waiver of jury trial are hereby deleted. Seller agrees that the laws of the State of Texas govern all disputes arising out of or relating to this purchase order and contract.

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 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 be in Bryan, Brazos County, Texas.

26. POTENTIAL CONFLICTS OF INTEREST – An outside consultant or contractor is prohibited from submitting a bid for services on a Brazos County project of which the consultant or contractor was a designer or other previous contributor, or was an affiliated, subsidiary, joint venturer or was in any other manner associated by ownership to any party that was a designer or other previous contributor. If such a consultant or contractor submits a prohibited bid, that bid shall be disqualified on the basis of conflict of interest, no matter when the conflict is discovered by Brazos County. Potential bidders are advised that they may have disclosure requirements pursuant to Texas Local Government Code, Chapter 176. This law requires persons desiring to do business with the County to disclose any gifts valued in excess of \$250.00 given to any County Official or the County Official's family member during the preceding twelve (12) month period. The disclosure questionnaire must be filed with the Brazos County Clerk. Refer to Texas Local Government Code, Chapter 176 for the details of this law.

27. By accepting this Purchase Order, the seller verifies that it does not boycott Israel and will not boycott Israel during the term of the contract with Brazos County.

28. By acceptance of Purchase Order, Seller agrees that under the Constitution and laws of the State of Texas, Brazos County cannot enter into an agreement whereby Brazos County agrees to indemnify or hold harmless another party; therefore, all references of any kind to Brazos County defending, indemnifying, holding or saving harmless Seller or any other party for any reason are hereby deleted. Seller shall indemnify and defend Brazos County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of Seller, its agents, servants or employees, performed under this purchase order or contract that result from the negligent act, error, or omission of Seller or any of Seller's agents, servants or employees.

29. Section 29. Public Information Act and Open Meetings Act. By acceptance of purchase Order, Seller agrees that Brazos County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision related to this purchase order or contract to the contrary, Brazos County will make any information related to this purchase order or contract, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to Brazos County by Seller shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. Seller agrees that the terms and conditions of this purchase order, contract, and Seller's Quotation are not proprietary or confidential information.

By acceptance of purchase order, Seller expressly acknowledges that Brazos County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the contract to the contrary, Seller will comply with the provisions of the Texas Open Meetings Act in relation to this purchase order.

30. By acceptance of purchase order, Seller agrees that in the event there is a conflict between this purchase order and Seller's quote or contract, the terms of this document (the standard purchase terms and conditions) controls to the extent of the conflict.