

Abilene Independent School District
Purchase Order TERMS AND CONDITIONS

ACCEPTANCE – This Purchase Order (“PO”) constitutes a binding contract between Vendor and Abilene Independent School District (“AISD”), to furnish the goods and/or services specified on the face of the PO. By acceptance of this PO, Vendor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Acceptance of Vendor’s goods and/or services does not equal acceptance of any of the terms and conditions or other contractual provisions which may be stated in Vendor’s documentation or agreements.

AGREEMENT – This PO and the terms and conditions specified in the Request for Proposals (“RFP”) (if any) and any contract entered into between AISD and the Vendor as a consequence of the RFP represent the basis for Vendor to deliver the required goods and/or services. This PO, the RFP, and any contract entered into between AISD and Vendor as a consequence of the RFP supersede all prior offers, negotiations, exceptions and understandings, whether oral or in writing. In the event of a conflict among this PO, the RFP, or the contract, the contract shall control. In the event of a conflict between this PO and the RFP, the RFP shall control.

ASSIGNMENT – The rights and responsibilities of Vendor to furnish the goods and/or services specified herein shall not be subcontracted, assigned, transferred, mortgaged, pledged or otherwise disposed of or encumbered in any way by Vendor, unless previously accepted by AISD and Vendor in writing.

CANCELLATION – AISD reserves the right to cancel this PO at any time. If this PO is canceled pursuant to the Vendor’s default, AISD may obtain similar goods or service(s) elsewhere, and charge Vendor for any damages incurred.

CERTIFICATION REGARDING TERRORIST ORGANIZATIONS – Vendor hereby certifies that it is not a company identified on the Texas Comptroller’s list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

CERTIFICATION REGARDING BOYCOTTING OF ISRAEL - If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. The Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the “Vendor Companies”), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term “boycott” shall mean and include 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 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. NOTE: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the above law in any state contract. In compliance with the Court’s order, the Owner will not seek enforcement of this law until further order of the court or a higher court having jurisdiction over the issue.

CHANGES – AISD reserves the right to make changes to this PO (e.g., increase/decrease quantities, change delivery address). Any changes to the PO shall be communicated to the Vendor by the issuance of a written Change Order.

DELIVERY – Vendor shall deliver all goods Free On Board (F.O.B.) Destination, Full Freight Allowed, unless otherwise specified on the PO. Vendor must strictly adhere to the delivery and completion schedules specified on the PO. The obligation of the Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence of this PO. If, at any time, the Vendor believes it may be unable to comply with the delivery or completion schedules, then the Vendor must immediately notify AISD’s Director of Purchasing in writing of the probable length of any anticipated delay and the reasons for it. In the event of such notification or of an actual failure by the Vendor to comply with the delivery or completion schedules, AISD may, in addition to all other remedies, require the Vendor, at Vendor’s expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.

GOVERNING LAW AND VENUE – The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this PO. The exclusive jurisdiction for any dispute under this PO is the state and federal courts located in Abilene, Taylor County, Texas.

ABILENE INDEPENDENT SCHOOL DISTRICT (“AISD”) – An independent school district located in Abilene, Texas.

INDEMNIFICATION – Vendor shall indemnify and hold harmless AISD (including but not limited to AISD’s Board of Trustees, employees, and agents) from all claims of liability, costs, expenses, attorney’s fees, fines, penalties, or damages to third parties (including but not limited to the injury or death of persons, or the loss or damage to property) arising out of or in connection with the performance of Vendor, its employees, agents, and/or subcontractors. Vendor’s obligation under this clause shall survive acceptance and the payment of the goods and/or services by AISD.

INSURANCE – Vendor shall be required to carry insurance protection sufficient to meet all the liabilities that are mentioned herein and that meet the minimum insurance requirements outlined in the RFP and/or any contract entered into between AISD and Vendor as a consequence of the RFP.

Whereas a RFP does not exist, the following insurance provisions indicate the minimum insurance acceptable from any vendor while on AISD property unless otherwise agreed to by AISD.

Vendor shall carry insurance with responsible carriers acceptable to AISD rated A or better, by A.M. Best with minimum limits of liability coverage, as stated below, against claims for damages caused by bodily injury, including death, to employees and third parties, and claims for property damage., **Vendor shall furnish Certificates of Acord to AISD indicating compliance with this paragraph.** Insofar as allowed by law, such Certificates shall indicate an agreement by each carrier not to cancel or significantly diminish coverage without a minimum of thirty (30) days prior written notice to AISD.

Commercial General Insurance

Bodily Injury and Property Damage Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Operations Aggregate	\$1,000,000
Fire Damage (any one fire)	\$500,000

Medical Expenses Any One Person \$5,000

Ensure that General Liability policy is not endorsed with CG2294, as this endorsement modifies Exclusion L in the ISO GL0001 policy form.

Umbrella or Excess Liability

Contract Amounts \$100,000 - \$500,000

Each Occurrence \$1,000,000

Aggregate \$1,000,000

Worker' Compensation

Employers Liability Insurance Statutory Limits

\$500,000

Business (Commercial) Automobile Liability Insurance

Automobile Liability covering any auto (Combined Single Limit) \$1,000,000

- Vendor shall maintain such insurance in full force and effect throughout the duration of the Contract.
- AISD shall be named as an additional insured on the automobile and commercial general liability policies.
- A waiver of subrogation shall be issued in favor of AISD in the workers' compensation, automobile and commercial general liability policies.
- Vendor shall provide AISD with original certificates of insurance, acceptable to AISD.
- In the event there is a deductible on any policy, AISD may ask Vendor to provide evidence to the satisfaction of AISD that Vendor is able to satisfy the deductible.
- Notice regarding insurance and **cancellation or changes** should be mailed to the Director of Purchasing.
- AISD reserves the right to require additional insurance coverage to be carried by Vendor as deemed desirable by AISD, depending on the type of project or service(s).

INSPECTION – Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after AISD's first use of the goods and/or services, AISD reserves the absolute right to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor, to insure that they comply with this PO, the RFP, and/or any contract entered into between AISD and Vendor as a consequence of the RFP. This right shall exist even if payment has already been made by AISD to the Vendor. Goods or services which, in the sole opinion of AISD, fail to conform to the required specification(s) or standard(s) may be considered non-conforming.

NON-CONFORMANCE – Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the face of the PO. Any non-conforming goods and/or services which are delivered to AISD are accepted under a "reservation of AISD's rights" to contest, dispute, request offsets, reject, or return the non-conforming goods and/or services, in whole or in part. Any tender of goods or performance of services by the Vendor which are non-conforming as to the quality, quantity, or the delivery schedule shall constitute a breach of this PO and AISD shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that AISD does not accept any goods and/or services which have been submitted to AISD, AISD is entitled to any and all remedies that are provided by law. In addition thereto, AISD has the right to do any or all of the following, in AISD's sole discretion:

- to hold the non-conforming goods and/or services for a reasonable period at Vendor's risk and expense pending a determination to accept or reject any or all thereof;
- to return the non-conforming goods and/or services to the Vendor at AISD's election and at the Vendor's risk and expense for replacement or correction, in which case the Vendor shall use best efforts to replace any non-conforming goods and/or services at the Vendor's risk and expense;
- to accept the non-conforming goods and/or services subject to an equitable price reduction;
- to replace or correct the non-conforming goods and/or services and charge to the Vendor the cost occasioned to AISD thereby;
- to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by AISD as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; or
- to terminate this PO and/or any contract entered into between AISD and Vendor.

NO SUBSTITUTION – By acceptance of this PO, Vendor agrees to deliver the goods and/or render the services in conformance with the specifications and descriptions identified on the face of the PO, the RFP and/or any contract entered into between AISD and Vendor as a consequence of the RFP. Unless otherwise specified, the Vendor shall not deliver substitutes or inferior materials without prior, written authorization from AISD.

PAYMENT TERMS – Itemized invoices shall be directed to AISD Accounts Payable department. In accordance with Tex. Gov't Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date AISD receives the goods; (2) the date the performance of the service is completed; or (3) the date AISD receives an invoice for the goods and/or services.

PERFORMANCE – By acceptance of this PO, Vendor agrees to use best efforts to furnish the goods and/or services mutually agreed upon.

PRICES – The price(s) specified on the face of the PO shall remain firm until AISD has processed Vendor's invoice, or until the goods and/or services have been accepted by AISD, whichever is later. Prices may be negotiated during the renewal period of any contract entered into between AISD and the Vendor as a consequence of the RFP.

PRODUCT RECALL – Vendor shall notify the Director of Purchasing for AISD immediately if a product recall is instituted on any good and/or service Vendor has delivered or if Vendor discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.

QUANTITIES – The quantities specified for delivery in the PO are the only quantities required by AISD. Therefore, if Vendor delivers quantities in excess of those specified on the face of the PO, AISD is not required to make any payment for the excess goods and, at AISD's election, may keep or return the excess goods. All risk and expense for the return of the quantities of goods in excess of those specified on the face of the PO shall be borne by Vendor unless prior written authorization is issued by AISD.

QUALITY – In the event no quality is specified on the face of the PO, in the RFP, or in any contract entered into between AISD and Vendor as a consequence of the RFP, the goods delivered and/or services rendered hereunder shall be of the best quality. Vendor shall ensure that all goods delivered to AISD be new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged. Vendor also warrants that all services will conform to the standard(s) established in this PO, the RFP, and/or any contract entered into between AISD and Vendor as a consequence of the RFP.

SAFETY – If applicable, Vendor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. Vendor shall comply with OSHA safety rules and any other safety guidelines and standards as required by AISD. Vendor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.

SETOFFS AND RETAINAGES – In addition to the U.C.C. allowed contract by contract right of setoff, AISD is entitled to a “party by party” right of set off. AISD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it.

TAXES – AISD is tax-exempt. Vendor shall not include taxes on the invoice.

TITLE – The title to any and all goods, products, merchandise, materials, and/or services that are provided to AISD shall pass to AISD upon acceptance of the good or payment of the applicable invoice, whichever is later.

WARRANTY – Vendor warrants that all goods and/or services furnished are free from all defects in material and workmanship, meet and conform to all applicable specifications and requirements, and be suitable for its ordinary, intended purpose(s) as well as any special purposes specified by AISD, for a period of one (1) year from the date of acceptance of the goods and/or services or payment of the applicable invoice, whichever is later. Neither acceptance of, nor payment of, said goods and services shall constitute a waiver or modification of any of the warranties of Vendor, or the rights of AISD. Vendor warrants and represents that all services performed by it or its subcontractors and all material used on AISD's behalf, will be completely paid for and that there are no materialman's or other liens attached to the goods, products, merchandise, materials, or services which are provided to AISD.

FEDERAL FUNDS: If the source of funds for this purchase is federal funds, the following federal provisions apply, as applicable: the Davis-Bacon Act (40 U.S.C. § 276a / 29 CFR Part 5), the Copeland “Anti-Kickback” Act (18 U.S.C. § 874 / 29 CFR Part 5), the Equal Opportunity Employment requirements (Executive Orders 11246 and 11375 / 41 CFR Chapter 60), the McNamara-O'Hara Service Contract Act (41 U.S.C. 351), Section 306 of the Clean Air Act (42 U.S.C. § 1857h, Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15), the Contract Work Hours and Safety Act (40 U.S.C. § 3701-3708; 29 C.F.R. Part 5), Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), Debarment and Suspension (Executive Orders 12549 and 12689), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), the Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 (“EDGAR”), and mandatory standards and policies contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).