

Nueces County Purchase Order Standard Terms and Conditions

SELLER TO PACKAGE GOODS:

The seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) the seller's name and address; (b) the consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable; (c) the 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. The 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. The County's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

SHIPMENT UNDER RESERVATION PROHIBITED:

The 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.

TITLE AND RISK OF LOSS:

The title and risk of loss of the goods shall not pass to the County until the County physically receives and takes possession of the goods at the point or points of delivery.

DELIVERY TERMS AND TRANSPORTATION CHARGES:

F.O.B. destination freight prepaid unless delivery terms are specified otherwise in bid: the County agrees to reimburse the seller for transportation costs in the amount specified in the seller's bid, or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided the County shall have the right to designate what method of transportation shall be used to ship the goods.

NO PLACEMENT 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 the 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 the County of his intention to cure and may then make a conforming tender within the contract time but not afterward.

PLACE OF DELIVERY:

The place of delivery shall be that set forth on the purchase order. Any change thereto shall be affected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this agreement are no arrival, no sale.

INVOICES AND PAYMENTS:

The seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Mail to the SEND INVOICE TO indicated on the purchase order. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Auditor's department advised of any changes in your remittance addresses.

The County's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available. Goods delivered but unpaid because of lack of funds will be returned by the County to seller.

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Do not include Federal Excise, State or City Sales Tax. The county shall furnish tax exemption certificate, if required.

GRATUITIES:

The County may, by written notice to the seller, cancel this contract without liability to the seller if it is determined by the County 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 Nueces County with a view toward securing a contract or securing favorable treatment with respect to awarding or amending or making any determination with respect to the performance of such a contract. In the event the County cancels this contract pursuant to this provision.

SPECIAL TOOLS AND 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 the seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the County and to the extent feasible shall be identified by the seller as such.

WARRANTY PRICE:

The price to be paid by the County shall be that contained in seller's bid which seller warrants to be no higher than the 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 the 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, the County may cancel this contract without liability to the seller for breach or the seller's actual expense.

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 County 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.

WARRANTY PRODUCTS:

The 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 County. The 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 the seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

SAFETY WARRANTY:

The seller warrants that the product sold to the County shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act (OSHA) of 1970. In the event the product does not conform to OSHA standards, the County 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 the County will be at the seller's expense.

NO WARRANTY BY COUNTY AGAINST INFRINGEMENTS:

As part of this contract for sale the seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of

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infringement or the like. The County makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall the County be liable to the seller for indemnification in the event that the seller is sued on the grounds of infringement or the like. If the seller is of the opinion that an infringement or the like will result, he will notify the County to this effect in writing within two weeks after the signing of this agreement. If the County does not receive notice and is subsequently held liable for the infringement or the like, the seller will indemnify and save the County harmless. If the 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.

RIGHT OF INSPECTION:

The County shall have the right to inspect the goods at delivery before accepting them.

CANCELLATION:

The County shall have the right to cancel for default of all or any part of the undelivered portion of this order if the seller breaches any of the terms hereof including warranties of the seller or if the seller becomes in-solvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that the County may have in law or equity.

TERMINATION:

The County may terminate performance of work under this order in whole or in part in accordance with this provision. Termination of work hereunder shall be affected 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 the County set forth in the Cancellation clause above.

ASSIGNMENT DELEGATION:

No right or interest in this contract shall be assigned or delegation of any obligation made by the seller without the written permission of the County. Any attempted assignment or delegation by the seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

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 supported by consideration and is in writing signed by the aggrieved

MODIFICATIONS:

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

INTERPRETATION PAROLE 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.

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APPLICABLE LAW:

This Uniform Commercial Code shall govern this agreement. 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.

ADVERTISING:

The seller shall not advertise or publish, without the County’s prior consent, the fact that the County 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.

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.

GOVERNING LAW AND VENUE:

This Agreement has been executed and delivered and shall be interpreted and enforced in accordance with the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Nueces County, Texas.

PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:

Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the county, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation. Vernon’s Texas Codes Annotated, Local Government Code, Chapter 171.

COMPLIANCE WITH LAWS:

Seller shall comply with all applicable Federal, State, and local laws, statutes, codes, rules, and regulations, and the orders and decrees of any court, or administrative bodies or tribunal, in any manner affecting the performance of this agreement, including, without limitation, worker’s compensation laws, minimum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Seller shall furnish the Buyer with satisfactory proof of its compliance.

INDEMNIFICATION:

THE SELLER SHALL SAVE HARMLESS THE BUYER AND ITS OFFICERS AND EMPLOYEES FROM ALL CLAIMS AND LIABILITY DUE TO ACTIVITIES OF ITSELF, ITS AGENTS, OR EMPLOYEES PERFORMED UNDER THIS CONTRACT AND WHICH ARE CAUSED BY OR RESULT FROM ERROR, OMISSION, OR NEGLIGENT ACT OF THE SELLER OR OF ANY PERSON EMPLOYED BY THE SELLER. THE SELLER SHALL ALSO SAVE HARMLESS THE BUYER FROM ANY AND ALL EXPENSE, INCLUDING, BUT NOT LIMITED TO, ATTORNEY FEES WHICH MAY BE INCURRED BY THE BUYER IN LITIGATION OR OTHERWISE RESISTING SAID CLAIM OR LIABILITIES WHICH MAY BE IMPOSED ON THE BUYER AS A RESULT OF SUCH ERROR, OMISSION, OR NEGLIGENT ACTIVITY BY THE SELLER, ITS AGENTS, OR EMPLOYEES.