

Stafford Municipal School District
PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE – This Purchase Order constitutes a binding contract between the Vendor and Stafford Municipal School District (“SMSD”), to furnish the goods and/or services specified on the face of the Purchase Order. By acceptance of this Purchase Order, the Vendor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Acceptance of the 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 the Vendor’s documentation or agreements.

AGREEMENT – This Purchase Order and the terms and conditions specified in the Request for Proposals (“RFP”) and any contract entered into between SMSD and the Vendor as a consequence of the RFP represent the basis for the Vendor to deliver the required goods and/or services. This Purchase Order, the RFP, and any contract entered into between SMSD and the 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 Purchase Order, the RFP, or the contract, the contract shall control. In the event of a conflict between this Purchase Order and the RFP, the RFP shall control.

ASSIGNMENT – The rights and responsibilities of the 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 the Vendor, unless previously accepted by SMSD and the Vendor in writing.

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

CERTIFICATIONS – The 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. If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this PO has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Chapter 2270 of the Texas Government Code, Vendor hereby certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the “Vendor Companies”), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this PO. For purposes of this PO, 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.

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

COMPLIANCE WITH LAWS – Vendor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers’ compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. Vendor understands that Vendor is ineligible to receive a contract award with SMSD if Vendor or its principal(s) is listed on the government wide exclusions in the System for Award Management (Debarment and Suspension Orders Executive Orders 12549 and 12689). For the entire duration of this Purchase Order, Vendor and all subcontractors shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Purchase Order.

DELIVERY – The Vendor shall deliver all goods Free On Board (F.O.B.) Destination, Full Freight Allowed, unless otherwise specified on the Purchase Order. The Vendor must strictly adhere to the delivery and completion schedules specified on the Purchase Order. The obligation of the Vendor to meet the delivery dates, specifications, and quantities set forth in the Purchase Order is of the essence of this Purchase Order. 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 SMSD’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, SMSD may, in addition to all other remedies, require the Vendor, at the 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 Purchase Order. The exclusive jurisdiction for any dispute under this Purchase Order is the state and federal courts located in Fort Bend County, Texas.

INDEMNIFICATION – **The Vendor shall indemnify and hold harmless SMSD (including but not limited to SMSD’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 the 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 SMSD.**

INSURANCE – The 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 SMSD and the Vendor as a consequence of the RFP.

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

NON-CONFORMANCE – The Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the face of the Purchase Order. Any non-conforming goods and/or services which are delivered to SMSD are accepted under a “reservation of SMSD’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 Purchase Order and SMSD shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that SMSD does not accept any goods and/or

services which have been submitted to SMSD, SMSD is entitled to any and all remedies that are provided by law. In addition thereto, SMSD has the right to do any or all of the following, in SMSD's sole discretion:

- to hold the non-conforming goods and/or services for a reasonable period at the 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 SMSD'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 SMSD thereby;
- to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by SMSD as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; or
- to terminate this Purchase Order and/or any contract entered into between SMSD and the Vendor.

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

PAYMENT TERMS – Itemized invoices shall be directed to SMSD 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 SMSD receives the goods; (2) the date the performance of the service is completed; or (3) the date SMSD receives an invoice for the goods and/or services.

PERFORMANCE – By acceptance of this Purchase Order, the 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 Purchase Order shall remain firm until SMSD has processed the Vendor's invoice, or until the goods and/or services have been accepted by SMSD, whichever is later. Prices may be negotiated during the renewal period of any contract entered into between SMSD and the Vendor as a consequence of the RFP.

PRODUCT RECALL – The Vendor shall notify the Purchasing Agent of SMSD immediately if a product recall is instituted on any good and/or service the Vendor has delivered or if the 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 Purchase Order are the only quantities required by SMSD. Therefore, if the Vendor delivers quantities in excess of those specified on the face of the Purchase Order, SMSD is not required to make any payment for the excess goods and, at SMSD'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 Purchase Order shall be borne by the Vendor unless prior written authorization is issued by SMSD.

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

SAFETY – If applicable, the Vendor shall deliver Material Safety Data Sheets (MSDS) with the requested goods. The Vendor shall comply with OSHA safety rules and any other safety guidelines and standards as required by SMSD. The 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, SMSD is entitled to a "party by party" right of set off. SMSD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it.

TAXES – SMSD is tax-exempt. The 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 SMSD shall pass to SMSD upon acceptance of the good or payment of the applicable invoice, whichever is later.

WARRANTY – The 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 SMSD, 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 the Vendor, or the rights of SMSD. The Vendor warrants and represents that all services performed by it or its subcontractors and all material used on SMSD'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 SMSD.

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).