

**FORT WORTH INDEPENDENT SCHOOL DISTRICT
PURCHASE ORDER TERMS AND CONDITIONS**

1. **AGREEMENT:** This Purchase Order (“PO”) constitutes a binding contract between the Fort Worth Independent School District (“FWISD” or the “District”) and the vendor identified on the face of the PO (“Vendor”) to furnish the goods and/or services specified on the face of the PO. This PO and the terms and conditions specified in FWISD’s procurement solicitation (“Solicitation”), and any contract entered into between FWISD and Vendor as a consequence of the Solicitation represent the basis for Vendor to deliver the required goods and/or services. This PO, the Solicitation, and any written contract entered into between FWISD and Vendor as a consequence of the Solicitation supersede all prior offers, negotiations, exceptions, and understandings, whether oral or in writing. In the event of a conflict among this PO, the Solicitation, or the contract, the contract shall control. In the event of a conflict between this PO and the Solicitation, the Solicitation shall control. The PO terms and conditions shall supersede and exclude all terms and/or conditions contained in any Vendor order form, order acknowledgement form, invoice, scope of work, terms and conditions, terms of use, or other business form submitted with respect to the goods and/or services provided by Vendor (“Business Forms”). Any terms and/or conditions contained in Vendor’s Business Forms that seek to void or exclude the terms and conditions of this PO shall be null and void.
2. **ACCEPTANCE:** By acceptance of this PO, Vendor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Vendor’s acceptance/signature of this PO, the commencement of work on the goods subject to this PO, or shipment of such goods shall be deemed an effective mode of acceptance of the terms of this PO. 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.
 - a. Under no circumstances is the amount of this PO to be exceeded without the prior written approval of the Purchasing Executive Director or designee.
 - b. No substitution of materials of any kind, or change in, cancellation of, waiver of, or exception to any of the terms or specifications of any PO, contract, or service agreement will be recognized without the prior written authorization of the Purchasing Executive Director or designee.
 - c. FWISD’s PO number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence.
 - d. Address all communication (excluding invoices) concerning this PO to the buyer, at the address on the front of the PO, or by contacting (817) 814-2200.
3. **CHANGES:** FWISD reserves the right to make changes to this PO (e.g., change delivery address). Any changes to the PO shall be communicated to Vendor by the issuance of a written Change Order.
4. **PRICES & PRICE WARRANTY:** FWISD accepts Vendor’s price(s) as recorded on Vendor’s bid/proposal and on this PO but reserves the right to cancel the PO if the prices are to be increased prior to the delivery of goods or the completion of services. The price(s) specified on the face of the PO shall remain firm until FWISD has processed the Vendor’s invoice, or until the goods and/or services have been accepted by FWISD, whichever is later. Vendor is directed not to fill this PO at increased prices without authorization from the Purchasing Executive Director or designee. No separate charges, except those clearly recorded on Vendor’s bid/proposal and on this PO, can or will be allowed. Vendor warrants that the prices for the articles and services sold to FWISD hereunder are not less favorable than those currently extended to any other customer, for the same or similar articles or services in similar quantities. In the event Vendor reduces its price for such article during the term of this PO, Vendor agrees to reduce the prices hereof correspondingly. Vendor warrants that the prices shown on the PO shall be complete and no additional charges of any type shall be added without FWISD’s express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, storage, insurance, boxing, and crating.
5. **WARRANTY:** In addition to the guarantees and warranties provided by law, by accepting this PO, Vendor hereby expressly guarantees, warrants, and represents that:
 - a. 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, all goods and/or services furnished are: (1) new (i.e., previously unused and in their original packaging and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged); (2) free from all defects in material and workmanship; (3) conform to any statements made on the containers or labels or advertisements for such goods or services; (4) meet and conform to all applicable specifications and requirements; (5) adequately contained, packaged, marked, and labeled and are suitable for their ordinary, intended purpose(s) as well as any special purposes specified by FWISD. 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 FWISD. Such warranties shall survive inspection, tests, acceptance, payment, and use;
 - b. all services performed by Vendor, or Vendor’s subcontractors and all material used on FWISD’s behalf, will be completely paid for, and there are no materialman’s or other liens attached to the goods, products, merchandise, materials, or services which are provided to FWISD;
 - c. the goods or services to be delivered hereunder will not infringe on any valid intellectual property right, including any patent, trademark, trade name, or copyright, and that Vendor will, at Vendor’s expense, defend any and all actions or suits charging such infringement and will hold FWISD, its agents, and employees harmless in case of any such action or suit;
 - d. the goods to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable Federal, State, and Local laws and regulations;
 - e. The quantities specified for delivery in this PO are the only quantities required by FWISD. If Vendor delivers quantities in excess of those specified on the PO, FWISD is not required to make any payment for the excess goods and, at FWISD’s election, FWISD 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 FWISD; and
 - f. nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of FWISD.
6. **DELIVERY:**
 - a. All deliveries shall be to the site(s) specified on the PO, be freight prepaid, F.O.B. Destination (Fort Worth ISD, TX), and pricing shall include all shipping, handling, freight, and/or delivery charges unless specifically stated on the PO.
 - b. The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence to this PO. If at any time Vendor believes it may be unable to comply with the delivery or completion schedules, Vendor must immediately notify FWISD’s Executive Director of Purchasing or designee in writing of the probable length of any anticipated delay, the reasons for the delay, and the estimated delivery/completion date(s). In the event of such notification or of an actual failure by Vendor to comply with the delivery or completion schedules, FWISD may, in its sole discretion, in addition to all other remedies, and without liability: (i) require Vendor, at Vendor’s expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay; or (ii) cancel this PO as to items not yet

shipped or services not yet rendered and purchase substitute items or services elsewhere and charge Vendor with any loss incurred. All deliveries shall be made to Central Receiving, Freight Prepaid, Free on Board (F.O.B.) Destination, Full Freight Allowed, Inside Delivery, unless otherwise specified on this PO. Delivery hours are 8:00 am to 3:00 pm, M-F, except for certain holidays.

- c. When a delivery is to be made to a FWISD campus: (a) such delivery shall be made between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday, except on school holidays and (b) such delivery shall be made, and goods shall be placed, inside the campus building in the designated room(s) at no additional charge. FWISD CAN NOT AND WILL NOT ACCEPT TAILGATE DELIVERY AT A SCHOOL ENTRANCE UNLESS SPECIFIED OTHERWISE ON THIS PO.
 - d. All unshipped items on this PO may be canceled ninety (90) days after the date of order, at FWISD's discretion, unless prior approval by FWISD's Purchasing Executive Director has been obtained. Shipments initiated after such date may not be accepted.
- 7. NON-CONFORMANCE:** Vendor assumes all liability for delivering goods and services that do not meet the specification(s) and standard(s) specified on the face of the PO. Any non-conforming goods and/or services that are delivered to FWISD are accepted under a "reservation of FWISD'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 Vendor which are non-conforming as to the quality, quantity, or the delivery schedule shall constitute a breach of this PO and FWISD shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that FWISD does not accept any goods and/or services that have been submitted to FWISD, FWISD is entitled to any and all remedies that are provided by law. In addition to the U.C.C. allowed contract by contract right of set-off, FWISD is entitled to a "party by party" right of set-off. FWISD is not required to mitigate its damages in order to obtain relief for any breach of contract remedies available to it. In addition, FWISD has the right to do any or all of the following, at FWISD's sole discretion:
- a. 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;
 - b. to return the non-conforming goods and/or services to Vendor at FWISD's election and at Vendor's risk and expense for replacement or correction, in which case Vendor shall use best efforts to replace any non-conforming goods and/or services at Vendor's risk and expense;
 - c. to accept the non-conforming goods and/or services subject to an equitable price reduction;
 - d. to replace or correct the non-conforming goods and/or services and charge to Vendor the cost occasioned to FWISD thereby;
 - e. to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by FWISD as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; and/or
 - f. To terminate the PO and/or any contract entered into between FWISD and Vendor.
- 8. INSPECTION/TESTING:** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after FWISD's first use of the goods and/or services, the District shall have the right to inspect and test such goods and services and to reject, in whole or in part, said goods or services which in FWISD's judgment, are defective or nonconforming. Nothing contained in this PO shall relieve in any way Vendor from the obligation of testing, inspection, and quality control. In the event that FWISD does not accept any goods and/or services that have been submitted to FWISD, FWISD is entitled to any and all remedies provided in law or equity. In addition, when products tested fail to meet or exceed all applicable specifications, the cost of the sample used, and the cost of any testing shall be borne by Vendor. Goods, which have been delivered and rejected in whole or in part, may, at FWISD's option, be returned to Vendor at Vendor's risk and expense or disposed of in accordance with FWISD's policies. Vendor may request that rejected goods and services be held by FWISD at Vendor's risk for a reasonable period of time for later disposition at the Vendor's expense.
- 9. INVOICES & PAYMENT TERMS:** Itemized invoices shall be directed to FWISD's Accounts Payable department. In accordance with Tex. Gov't Code § 2251.021, payments are due to Vendor within thirty (30) days after the later of the following: (1) the date FWISD receives the goods; (2) the date the performance of the service is completed; or (3) the date FWISD receives an invoice for the goods and/or services. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and freight waybill when applicable, should be attached to the invoice. All invoices shall include the following: FWISD's PO Number, Invoice Date, Name of Vendor, a brief description of the item, quantity, unit price, extended price, Vendor's complete mailing address and telephone number, and any other substantiating documentation or information as required by the PO. FWISD's obligation is payable only and solely from funds available for the purpose of this purchase. There shall be no interest on any delayed, disputed, or delinquent payment.
- 10. TERMINATION FOR CONVENIENCE OF THE DISTRICT:** FWISD reserves the right to terminate this PO or any part hereof for its sole convenience at any time upon thirty (30) days prior written Notice of Termination. Upon receipt of such Notice of Termination, Vendor shall immediately stop all work, and shall immediately cause any of its suppliers or subcontractors to cease such work. Vendor shall be paid, to the extent of funds appropriated or otherwise legally available for such purpose, a reasonable termination charge consisting of a percentage of the PO price reflecting the percentage of the work performed prior to the Notice of Termination. Vendor shall not be paid for any work done after receipt of the Notice of Termination, or for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided.
- 11. TERMINATION FOR CAUSE:** FWISD may also terminate this PO or any part thereof at any time, by written Notice of Termination (effective in ten (10) days, unless otherwise specified, after the date of such notice, unless Vendor, within such ten (10) day period, cures such default) for cause in the event of any default by Vendor, or if Vendor fails to comply with any of the terms and conditions of this PO. Late deliveries, deliveries of products that are defective, or which do not conform to this PO, and failure to provide FWISD, upon request, of reasonable assurances of future performance, shall all be causes allowing FWISD to terminate this PO. In the event of termination for cause, or due to Vendor's default, FWISD shall not be liable to Vendor for any amount, and Vendor shall be liable to FWISD for any and all damages sustained by reason of the default (including, without limitation, the difference between Vendor's price and the actual purchase price of the good or service on the open market), which gave rise to the termination.
- 12. INSURANCE:** In the event that the PO requires or contemplates performance of services by Vendor's employees or a person under contract to Vendor to be done on FWISD's property, Vendor agrees that all such work shall be done as an independent Vendor and that the persons doing such work shall not be considered employees of FWISD. Vendor shall maintain all necessary insurance coverage, including public liability and Workmen's Compensation insurance sufficient to meet all liabilities mentioned herein. Vendor shall indemnify and save harmless and defend FWISD from any and all claims or liabilities arising out of the work covered by this paragraph.
- 13. INDEMNIFICATION:** VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT (INCLUDING, WITHOUT LIMITATION, THE DISTRICT'S BOARD OF TRUSTEES, EMPLOYEES, AND AGENTS) FROM AND AGAINST ANY AND ALL DAMAGES, CLAIMS, SUITS IN LAW OR IN EQUITY, COSTS (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, LIABILITIES, AND EXPENSES (INCLUDING BUT NOT LIMITED TO THE INJURY OR DEATH OF PERSONS, OR THE LOSS OR DAMAGE TO PROPERTY) ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT IN THE GOODS OR SERVICES PURCHASED HEREUNDER, OR FROM ANY ACT OR OMISSION OF VENDOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS, INCLUDING

WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT, OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY PART OF THE GOODS AND/OR SERVICES THE VENDOR IS REQUIRED TO DELIVER AND/OR PERFORM. This indemnification shall be in addition to the warranty obligations of Vendor and shall survive acceptance and payment of the goods and/or services by FWISD.

14. **ASSIGNMENTS AND SUBCONTRACTING:** No part of this PO may be assigned, subcontracted, transferred, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of FWISD. Any such attempted assignment by Vendor shall be null and void.
15. **PAYMENT SETOFF:** FWISD reserves the right to offset subsequent payments due under this PO, the Solicitation, or Contract by any amount due and owing by Vendor to FWISD, including, without limitation, amounts owed for breach/default of this PO, the Solicitation, or Contract. FWISD is not required to mitigate its damages in order to obtain relief for any breach of contract remedies available to it.
16. **WAIVER:** Failure of FWISD to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify successful Vendor in the event of a breach, or the acceptance of or payment for any goods hereunder, shall not release successful vendor from any of the warranties or obligations of any PO, contract, or service agreement, and shall not be deemed to waive any right of FWISD to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless of when shipped, received, or accepted, or as to any prior or subsequent default hereunder; nor shall any purported oral modification or rescission of a PO, contract, or service agreement by FWISD operate as a waiver of any of the terms hereof.
17. **TAXES:** FWISD is tax-exempt and shall not pay or be liable for taxes for goods and/or services. Vendor shall not include taxes on the invoices. District will furnish a tax exemption certificate upon request.
18. **TITLE:** The title and risk of loss to any and all goods, products, merchandise, materials, and/or services that are provided to FWISD shall pass to FWISD upon acceptance of the item or payment of the applicable invoice, whichever is later.
19. **GOVERNING LAW AND VENUE:** The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this PO. Any dispute under this PO may be brought in the state and federal courts located in Tarrant County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.
20. **SEVERABILITY:** In the event that any one or more of the provisions contained in this PO shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the PO shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.
21. **SAFETY:** The Federal Government requires that FWISD obtain current and accurate Safety Data Sheets for each product, which may contain hazardous substances, create hazardous substances as a by-product, cause harmful physical effects, or otherwise be considered hazardous. Vendor shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services and/or the delivery of goods, including, without limitation, those promulgated by FWISD and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.
22. **PRODUCT RECALL:** Vendor shall notify FWISD's Executive Director of Purchasing 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.
23. **APPROPRIATED FUNDS:** Renewal of this PO or continuation beyond the current fiscal year, if any, will be in accordance with Texas Local Government Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this PO or obligation imposed on FWISD by this PO, FWISD shall have the right to terminate this PO without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of FWISD if it is determined by FWISD, in FWISD's sole discretion, that there are insufficient funds to extend this PO. The parties agree that this PO is a commitment of FWISD's current revenue only.
24. **CERTIFICATIONS:** Vendor hereby agrees to and certifies that:
 - a. Pursuant to Texas Government Code § 2252.152, 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.
 - b. Pursuant to Texas Government Code § 2271.002 and to the extent that Vendor and any of its subcontractors are not sole proprietorships, have greater than ten (10) employees, and the goods and/or services under this PO are for an excess of \$100,000.00, Vendor and any subcontractors must not boycott Israel, and must agree not to boycott Israel during the term of the provision of goods and/or services under this PO.
 - c. If Vendor is a company with 10 or more full-time employees and if the goods and/or services provided under this PO have a value of at least \$100,000 or more, and pursuant to Texas Government Code Chapter 2274, Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the provision of goods and/or services under this PO against a firearm entity or firearm trade association.
 - d. If Vendor is a company with 10 or more full-time employees and if the goods and/or services provided under this PO have a value of at least \$100,000 or more, and pursuant to Texas Government Code Chapter 2274, Vendor does not and will not boycott energy companies now or at any time during the term of the provision of goods and/or services under this PO.
25. **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).