

## Del Mar College, Corpus Christi, Texas Standard Purchase Terms and Conditions

Any provision of this Purchase Order which varies or contradicts the provisions of a written agreement between the College (Buyer) and the Vendor (Seller) shall be null and void and of no force or effect.

To the extent not inconsistent with a written agreement between the College and Vendor, the following additional terms and conditions shall apply to the purchase of Goods from the Vendor:

1. **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with best commercial practice. Each shipping container shall be clearly and permanently marked with (a) Sellers name and address, (b) Consignees name and address, (c) purchase order number, (d) container number and total number of containers (e.g., box 2 of 4), and (e) the number of the container bearing the packing slip. Seller shall bear cost of packing and packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyers 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 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 receives and takes possession of the goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Unless otherwise specified, all deliveries hereunder shall be FOB Destination, freight prepaid.
5. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of the contract with the College 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 reasonably notify Buyer of its intention to cure and may then make a conforming tender within the contract time but not afterward. Rejected products will be returned at Seller's expense, including transportation both ways and all related labor and packing costs.
6. **PLACE AND TIMES OF DELIVERY:** The place of delivery shall be that set forth in the block of the Purchase Order entitled "Ship To" Any change thereto shall be effected by modification as provided in Clause 19 hereof. Deliveries shall be made during normal working hours only, 8:00 a.m. to 5:00 p.m. Monday through Thursday and 8:00 a.m. to 12:00 noon Friday.
7. **INVOICES AND PAYMENTS:**
  - a. Seller shall submit itemized invoices, in triplicate, on each purchase order for goods that have been shipped. Invoices shall indicate the purchase order number and must be limited to only one purchase order per invoice. Invoices shall be itemized and transportation charges, if applicable and not included in the cost of goods, shall be listed separately. A copy of the bill of lading or freight waybill when applicable, should be attached to the invoice. Mail invoices to Accounts Payable Dept., Del Mar College, 101 Baldwin Blvd, Corpus Christi, TX 78404-3897. Payment shall not be due until the above instruments are submitted after delivery. Payment will be made within thirty (30) days following receipt and acceptance of materials. Suppliers should keep the Accounts Payable Department advised of any change in remittance address.
  - 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. The College is exempt from Federal Excise Taxes and the State of Texas Limited Sales Tax under TEX. TAX-GEN. ANN. Art 20.01 et seq. and TEX. REV. STAT. ANN Arts 1066C and 1118X, and Texas Comptroller General rules regarding tax exempt purchases. State sales tax no. 1-74-6003102-8. Federal tax no. 74-73-0345K. An exemption certificate will be furnished upon request.
  8. **GRATUITIES:** The Buyer may, by written notice to the Seller, cancel its purchase 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 Seller or any agent or representative of Seller, to any officer or employee of Del Mar College with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of such a contract. In the event the purchase 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 a gratuities.
9. **WARRANTY-PRICE:**
  - a. The price to be paid by the Buyer shall be that contained in Seller's bid or as negotiated from Seller's proposal. Seller warrants this price to be no higher than Seller's current prices on orders by others or products of the kind and specification covered by this agreement for similar quantities under similar 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 its purchase contract without liability to Seller for breach or seller's actual expense.
  - b. 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 selling agencies maintained by the Seller for purposes 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 its purchase contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
10. **WARRANTY-PRODUCT:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract void at the option of Buyer. Seller warrants that the goods furnished will be merchantable, free from defects in design, material and workmanship and shall conform to specifications, drawings and descriptions listed in the order or contained in the invitation for bids or proposals and to the sample(s) furnished by Seller, if any.
11. **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 Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.
12. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of its contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to its agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specifications will not give rise to such a claim and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify buyer to this effect in writing within two weeks after signing its agreement. If Buyer does not receive notice and is subsequently held liable for infringement or the like, Seller will save Buyer harmless. If 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.
13. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them.
14. **CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered part of the order if Seller breaches any of the terms hereof including warranties of Seller or if the 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.
15. **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 delivery to Seller of a "Notice of Termination" specifying the extent to which performance of the work under the order is terminated and the date upon which such termination becomes effective. Such a right of termination is in addition to, not in lieu of, rights of Buyer set forth in Clause 14 herein.
16. **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 in writing to the other party within a reasonable time after occurrence of the event or cause relied upon. 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. As employed herein, the term Force Majeure shall mean acts of God; strikes, lockouts or other industrial disturbances; act of public enemy; orders of any kind of the Government of the United States or the State of Texas or any civil or military authority; insurrection; riot; epidemic; landslide; lightning; earthquake; fire; hurricane; storm; flood; washouts; droughts; arrests; restraint or government and people; civil disturbance; explosion; 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 or 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.
17. **ASSIGNMENT – DELEGATION:** No right or interest in the purchase 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.
18. **WAIVER:** No claim or right arising out of a breach of the purchase 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.
19. **MODIFICATION:** The purchase contract can be modified or rescinded only in writing signed by both of the parties or their duly authorized agents.
20. **INTERPRETATION – PAROL EVIDENCE:** Acceptance or acquiescence in the course of performance rendered under the purchase contract 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.
21. **ADVERTISING:** Seller shall not advertise or publish without Buyer's prior consent the fact that Buyer has entered into the purchase contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
22. **RIGHT TO ASSURANCE:** Whenever one party to the purchase contract in good faith has reason to question the other party's intent to perform, it may demand that the other party give written assurance of its 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.
23. **VENUE:** Both parties agree that venue for any litigation arising from this contract shall be in Nueces County, Texas.
24. **CONFLICTS OF INTEREST:** Seller agrees to take all appropriate steps to assure that the College does not knowingly enter into a purchasing commitment which would result in a conflict of interest situation. In general, employees of the College, members of the Board of Regents, and the spouse or minor children of same shall not enter into purchasing contracts with the College nor shall businesses in which such individuals have a financial interest sell to the College. Full disclosure of any relevant information or financial interest shall be provided in writing to the Director of Purchasing for review prior entering into any purchase commitment.