

## STANDARD TERMS AND CONDITIONS OF PURCHASE

## TARRANT COUNTY COLLEGE DISTRICT

1. **SUPPLIER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly marked with: (a) Seller's name, address and phone number (b) Buyer's name, address and purchase order number (c) container number referenced to the total number of containers (d) the number of the container with the packing slip. Supplier shall bear the cost of packaging unless otherwise provided. Seller will secure the lowest transportation costs and conform to the requirements of common carriers and applicable specifications. Buyer's 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 shall operate as a tender of goods.
  3. **TITLE AND RISK OF LOSS:** The title and risk of loss of goods shall not pass from Seller to Buyer until Buyer receives and takes possession of goods at the point(s) of delivery.
  4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Terms shall be Destination Freight prepaid (F.O.B., destination) unless specified otherwise. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid, or actual costs, whichever is lower. If Seller's quoted delivery terms do not include transportation costs, Buyer shall have the right to designate the method of transportation to be used.
  5. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of delivery of goods must fully comply with all provisions of this agreement regarding time of delivery, quality and the like. A tender which does not fully conform shall be deemed a breach of agreement and Seller shall not have the right to substitute a conforming tender, except where the time for performance has not yet expired, Seller may reasonably notify Buyer of intent to cure and may then make a conforming tender within the agreement time, but not afterwards.
  6. **PLACE 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 affected by modification as provided for in Clause 20, "Modifications" herein. The terms of this agreement are "no arrival, no sale."
  7. **INVOICES & PAYMENTS:** Seller shall submit separate invoices, in duplicate, for each purchase order subsequent to actual delivery. Invoices shall reference the applicable purchase order number. Invoices shall be itemized and transportation charges must be listed separately. Invoices shall not include federal excise, state, or city sales tax and Buyer shall furnish tax exemption certifications. A copy of the bill of lading and freight waybill, if any, shall be attached to invoices. Mail invoices to: Tarrant County College, Attn: Accounts Payable, 300 Trinity Campus Circle, TRCF 4600D, Fort Worth, TX 76102. Payment shall not be due to Seller until the above instruments are submitted subsequent to actual delivery. Seller shall advise Buyer's Accounts Payable Department of any change to remittance address.
  8. **GRATUITIES:** The Buyer may, by written notice to Seller, cancel this agreement without liability to Seller if Buyer shall determine 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 Buyer with a view toward securing an agreement or securing favorable treatment with respect to the awarding, amending or making determinations with respect to the performing of such agreement. In the event this agreement 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 gratuities.
  9. **SPECIAL TOOLS & 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 Seller for the purpose of performing under this agreement, such special tooling equipment and any process sheets related thereto shall become the property of Buyer and, to the extent feasible, shall be identified by Seller as such.
  10. **WARRANTY PRICE:** (a) The price to be paid by Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for goods of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of goods under this agreement shall be reduced to Seller's current prices on order by others. Should Seller fail to do otherwise, Buyer shall have the option to cancel this agreement without liability to Seller. (b) Seller warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by Seller for the purpose of securing business. In case of breach or violation of this warranty, Buyer shall have the right, in addition to any other right or rights, to cancel this agreement without liability and to deduct from the agreement price, or otherwise recover the full amount of such aforementioned commission, percentage, brokerage or contingent fee.
  11. **WARRANTY PRODUCT:** Seller shall not limit or exclude any implied warranties and an attempt to do so shall render this agreement voidable at the option of the Buyer. Seller warrants that goods furnished hereunder will conform to the specifications, drawings and descriptions listed herein and to the sample(s) furnished by Seller, if any. In the event of conflict between specifications, drawings, and descriptions, the specifications shall govern.
  12. **SAFETY WARRANTY:** Seller warrants that goods sold to Buyer shall conform to standards set by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event goods do not conform to OSHA standards, Buyer may return goods for correction or replacement at Seller's expense. In the event Seller fails to make appropriate correction(s) within a reasonable time, correction(s) made by Buyer, if any, shall be at Seller's expense.
  13. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this agreement, Seller agrees to ascertain whether goods manufactured in accordance with specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that production of goods according to the specification will not give rise to such a claim and in no event shall Buyer be liable to Seller in the event Seller is sued on the grounds of infringement or the like. If Seller is of the opinion an infringement or the like will result, Seller shall notify Buyer to this effect, in writing, within two weeks after acknowledgement of this agreement.
- If Buyer does not receive notice and is subsequently held liable for infringement or the like, Seller will hold Buyer harmless. If Seller, in good faith, ascertains that production for the goods in accordance with the specifications will result in infringement or the like, this agreement shall be null and void, except that Buyer will pay Seller reasonable costs associated with the search as to infringement.
13. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect goods at delivery before accepting them.
  14. **CANCELLATION:** Buyer shall have the right to cancel for default any or all the undelivered portion of this agreement if Seller shall breach any of the terms hereof, including warranties of Seller, or if Seller shall become insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies to which Buyer may have in law or equity.
  15. **TERMINATION:** The performance of work under this agreement may be terminated in whole or in part by Buyer in accordance with this provision. Termination of work hereunder shall be effected by delivery to Seller a "Notice of Termination" specifying the extent to which performance of work under this agreement is terminated and the date upon which such termination shall become effective. Such right of termination is in addition to and not in lieu of the rights of Buyer set forth in Section 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 obligations under this agreement, then such party shall give notice, with the full particulars of such Force Majeure, in writing, to the other party within a reasonable time after occurrence of the event or cause relied upon and 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 not for a longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipeline, 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 and 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 judgment of the party having the difficulty.
  18. **ASSIGNMENT – DELEGATION:** No right or interest in this agreement shall be assigned or delegated by Seller without the written permission of 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.
  19. **WAIVER:** No claim or right arising out of a breach of this agreement can be discharged in whole or in part by waiver or renunciation of the claim unless the waiver or renunciation is supported by consideration, in writing, by the aggrieved party.
  20. **MODIFICATIONS:** This agreement can be modified or rescinded only by a written instrument, signed by both parties.
  21. **INTERPRETATION – PAROLE EVIDENCE:** This writing is intended by the parties as the final expression of agreement and is intended also as a complete and exclusive statement of the terms of 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.
  22. **APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted by the State of Texas and as is effective and in force on the date of this agreement.
  23. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior written consent, the fact that Buyer has entered into this agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
  24. **RIGHT TO ASSURANCE:** When one party to this agreement, 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 the intent to perform. In the event such a demand is made and no assurance is provided within five (5) calendar days of the demand, the demanding party may treat this failure as an anticipatory repudiation of the agreement.
  25. **VENUE:** Both parties agree that venue for any litigation arising from this agreement shall be in Fort Worth, Tarrant County, Texas.
  26. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer or employee of Buyer shall have a financial interest, direct or indirect, in any agreement with Seller, or be financially interested, directly or indirectly, in the sale to Buyer of any land, materials, supplies or service, except on behalf of Buyer as an officer or employee. Any willful violation of this section shall constitute malfeasance in office and any officer or employee guilty thereof shall be subject to removal from office or position. Any violation of this section by Seller, with knowledge of the same, expressed or implied, shall render the contract voidable by Buyer authority.
  27. **INSURANCE REQUIREMENTS:** Form part of this agreement and are found at [www.tccd.edu](http://www.tccd.edu) (Click "Business and Community" then click "General Information" found under the caption "Doing Business with TCCD," then click "Insurance Requirements.")