

REGION 8 EDUCATION SERVICE CENTER PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE** – This Purchase Order (“PO”) constitutes a binding contract between the Vendor and Region 8 Education Service Center (“ESC8”), to furnish the goods and/or services specified on the face of the PO or on referenced attachments thereto. Acceptance of the Vendor’s goods and/or services does not constitute acceptance by ESC8 of any of the terms and conditions or other contractual provisions which may be stated in the Vendor’s documentation or agreements unless otherwise affirmatively agreed in writing by the parties and executed by an authorized official of ESC8.
 - a. Under no circumstances is the amount of this purchase order to be exceeded without prior approval of the Chief Financial Officer 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 purchase order, contract, or service agreement will be recognized without the prior written authorization of the Chief Financial Officer or designee.
 - c. ESC8’s purchase order number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence.
 - d. Address all communication concerning this purchase order to the Chief Financial Officer, at the address on the front of the purchase order, or call (903) 575-2665.
2. **AGREEMENT** – This PO and the terms and conditions specified in ESC8’s procurement solicitation or cooperative contract (“RFP”) and/or any contract entered into between ESC8 and Vendor as a consequence of the RFP represent the basis for Vendor to deliver the required goods and/or services. This PO, the RFP, and any contract entered into between ESC8 and 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 PO, the RFP, or the contract, the contract shall control. In the event of a conflict between this PO and the RFP, the RFP shall control.
3. **VALIDATION** – This is a valid PO only when the following two conditions have been met: (a) A PO number appears in the space provided; and (b) a written or stamped signature of ESC8’s Chief Financial Officer or designee appears in the space provided.
3. **PRICES** – ESC8 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 Purchase Order shall remain firm until ESC8 has processed the Vendor’s invoice, or until the goods and/or services have been accepted by ESC8, whichever is later. Vendor is directed not to fill this PO at increased prices without authorization from the Chief Financial Officer or designee. No separate charges, except those clearly recorded on Vendor’s bid/proposal and on this PO can or will be allowed unless otherwise agreed by the ESC8’s Chief Financial Officer or designee.
4. **TAX EXEMPT** – ESC8 is tax-exempt. Vendor shall not include taxes on the invoice. ESC8’s Tax Identification Number is 1-75-1246741.
5. **WARRANTY, GUARANTEE, LAWS AND REGULATIONS** – In addition to the guarantees and warranties provided by law, by accepting this PO, Vendor hereby expressly guarantees, warrants, and represents that:
 - a. all goods and/or services furnished are new ((i.e., previously unused and in their original packaging and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged), 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 ESC8 for the period of the Manufacturer’s warranty or otherwise agrees to in writing by ESC8’s Chief Financial Officer or designee all services performed by it or its subcontractors and all material used on ESC8’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 ESC8;
 - b. the goods 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 save ESC8, its agents and employees, harmless in case of any such action or suit;
 - c. 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; and
 - d. nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of ESC8.
5. **GOVERNING LAW** – The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this PO. The exclusive jurisdiction for any dispute under this PO shall be in a court of competent jurisdiction located in Camp County, Texas.
6. **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 ESC8 by this PO, ESC8 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 ESC8 if it is determined by ESC8, in ESC8’s sole discretion, that there are insufficient funds to extend this PO. The parties agree that this PO is a commitment of ESC8’s current revenue only.
7. **INSPECTION** – Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after ESC8’s first use of the goods and/or services, ESC8 reserves the absolute right to inspect, test, and reject all goods and/or services, in whole or in part, furnished by Vendor, to ensure that they comply with this PO, the RFP, and/or any contract entered into between ESC8 and Vendor as a consequence of the RFP. This right shall exist even if payment has already been made by ESC8 to the Vendor. Goods or services which, in the sole opinion of ESC8, fail to conform to the required specification(s) or standard(s) may be considered non-conforming.
8. **NON-CONFORMANCE** – Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the face of the PO. Any non-conforming goods and/or services which are delivered to ESC8 are accepted under a “reservation of ESC8’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 ESC8 shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that ESC8 does not accept any goods and/or services which have been submitted to ESC8, ESC8 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 setoff, ESC8 is entitled to a “party by party” right of set off. ESC8 is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it. In addition, ESC8 has the right to do any or all of the following, in ESC8’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 ESC8’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 ESC8 thereby;
 - e. to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by ESC8 as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; and/or
 - f. to terminate, at will, the PO and/or any contract entered into between ESC8 and Vendor.
9. **DELIVERY**
 - a. All deliveries shall be to the site(s) specified on the purchase order, be freight prepaid, F.O.B. Destination (ESC 8 Pittsburg, TX), and pricing shall include all shipping, handling, freight, and/or delivery charges unless otherwise agreed by the parties in writing by the ESC8’s Chief Financial Officer or designee. With the exception of shipments to ESC8 (4845 N. Hwy 271), ESC8 has no facilities for off-loading deliveries. Unless specifically stated otherwise, all shipments MUST include “inside delivery”. “The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence of this PO. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor must immediately notify ESC8’s Chief Financial Officer 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 Vendor to comply with the delivery or completion schedules, ESC8 may, in addition to all other remedies, require Vendor, at Vendor’s expense to expedite shipping.
 - b. Delivery shall be made between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday, except on ESC8 holidays, which can be found at www.esc8.net
 - c. **All unshipped items on this PO will automatically be cancelled ninety (90) days after date of order** unless prior approval by ESC8’s Chief Financial Officer has been obtained. Shipments initiated after such date may not be accepted.
10. **PAYMENT TERMS** - Itemized invoices shall be directed to ESC8’s Accounts Payable department. In accordance with Tex. Gov’t Code § 2251.021, Except as provided below, a payment by the ESC under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of: 1. The date the ESC received the goods under the contract; 2. The date the performance of the service under the contract is completed; or 3. The date on which the ESC receives an invoice for the goods or services. Exception: A payment under a contract executed on or after September 1, 1993, owed by an ESC whose board meets only once a month or less frequently is overdue on the 46th day after the later event described above. The renewal, amendment, or extension of a contract executed on or before September 1, 1993, is considered to be the execution of a new contract.
11. **INVOICING REQUIREMENTS** - All invoices shall include the following: PO Number; Invoice Date, Name of Vendor, brief description of the item, quantity, unit price, and extended price; Vendor’s complete mailing address and telephone number; any other substantiating documentation or information as required by the PO.
12. **MATERIAL SAFETY DATA SHEETS (MSDS)** - The Federal Government requires that ESC8 obtain current and accurate Material 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.

13. **PRODUCT RECALL** – Vendor shall notify the ESC8’s Chief Financial Officer 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.
14. **TITLE** – The title to any and all goods, products, merchandise, materials, and/or services that are provided to ESC8 shall pass to ESC8 upon acceptance of the good or payment of the applicable invoice, whichever is later.
15. **NON-WAIVER** - Failure of ESC8 to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided here in or by law or to properly notify successful Vendor in the event of 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 ESC8 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 ESC8 operate as a waiver of any of the terms hereof.
16. **NO ASSIGNMENT** – The rights and responsibilities of 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 agreed by ESC8 and Vendor in writing.
17. **CERTIFICATIONS** –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. Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Respondent shall state any facts that make it exempt from the boycott certification in its Response.
18. **CONFLICT OF INTEREST** – In accordance with Section 176.006 of the Texas Local Government Code, Vendor must file, if required under the statute, on an annual basis, a Conflict of Interest Questionnaire with the ESC8 Chief Financial Officer.
19. **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), Title VI of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; 2 CFR Ch. II (1–1–15 Edition) § 200.322 Procurement of recovered materials.
20. **COMPLIANCE WITH FEDERAL FUNDS PURCHASES:** In accordance with 2 CFR Part 200, Subpart E, Cost Principles, all purchases made with federal funds, regardless of the method of purchase, must be determined to be:
 - Reasonable in cost (comparable to current fair market value)
 - necessary to carry out the objectives of the federal program
 - allowable under the federal cost principles and the terms and conditions of the award
 - allocable (chargeable or assignable) to the grant program based on the relative benefits received.