

**STANDARD PURCHASE TERMS AND CONDITIONS  
PURCHASING DIVISION  
CITY OF EULESS, TEXAS**

1. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS - No officer or employee of city shall have a financial interest, direct or indirect, in any contract with city or be financially interested, directly or indirectly, in the sale to city of any land, materials, supplies or services, except on behalf of City as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, expressed or implied, of the person or corporation contracting with the City Council shall render the contract involved by the City Manager or the City Council.

2. SELLER TO PACKAGE GOODS - Seller will package goods in accordance with good commercial practice. Each shipping container, shall be clearly and permanently marked as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase change order number; (c) Container number and total number of container, e.g., box 1 of 4 boxes; and (d) Number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

3. SHIPMENT UNDER RESERVATION PROHIBITED - Seller is not authorized to ship the goods under reservation, and no tender of a bill of lading will operate as a tender of goods.

4. TITLE AND 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 after inspection and acceptance of the goods.

5. DELIVERY TERMS AND TRANSPORTATION CHARGES - F.O.B. Destination and Freight Prepaid unless delivery terms are specified otherwise in Seller's bid; buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid or actual costs, whichever is lower, if the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods.

6. PLACE OF DELIVERY - The place of delivery shall be the set forth in the block of the purchase order or purchase change order entitled "Ship to".

7. RIGHT OF INSPECTION - Buyer shall have the right to inspect the goods upon deliver before accepting them. Seller shall be responsible for all charges for the return to Seller of any goods rejected as being nonconforming under the specifications.

8. INVOICES -

a. Seller shall submit separate invoices in duplicate, on each purchase order or purchase change order after each deliver. Invoices shall indicate the purchase order or purchase change order number. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, should be attached to the invoice. Mail to: The City of Euless, Department and address as set forth in the block of the purchase order or purchase change order entitled "Ship to". Payment shall not be made until the above instruments have been submitted after delivery and acceptance of the goods.

b. Do not include Federal Excise, State or City Sales Tax. The City shall furnish tax exemption certificate.

9. 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 products of the kind and specification covered by this agreement for similar quantities under like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to Seller's current prices on orders by others, or in the alternative upon Buyer's option, Buyer shall have the right to cancel this contract without liability to Seller for breach or for 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 or selling agency is maintained by

Seller for the purpose of securing business. For breach or violation of this warranty, Buyer shall have the right, in addition to any other right or rights arising pursuant to said purchase(s), to cancel this contract without liability and to deduct from the contract price such commission percentage, brokerage or contingent fee, or otherwise to recover the full amount thereof.

10. PRODUCT WARRANTY - Seller shall not limit or exclude any express or implied warranties and any attempt to do so shall render this contract void able at the option of Buyer. Seller's warrants that the goods furnished will conform to Buyer's specifications, drawings, and descriptions listed in the bid invitation, and the sample(s) furnished by Seller, if any. In the event of a conflict between Buyer's specifications, drawings and descriptions, Buyer's specifications shall govern.

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 (OSHA) of 1970, as amended in the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at Seller's expense. In the event Seller fails to make appropriate correction within a reasonable time, any correction made by Buyer will be at Seller's expense. Where no correction is or can be made Seller shall refund all monies received for such goods with thirty (30) days after request is made therefore and confirmed in writing: failure to do so shall constitute breach and cause this contract to terminate immediately.

12. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS OF PATENTS, COPYRIGHTS OR TRADE SECRETS - As part of this contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with Buyer's specifications attached to Buyer's invitation to bid 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 buyer's specification 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 the 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 (2) weeks after the award of this bid, if Buyer does not receive notice and is subsequently held liable for infringement of the like, Seller will indemnify for all full dollar amount thereof. If Seller in good faith ascertains with two (2) weeks after the award of this bid that production of the goods in accordance with Buyer's specification will results in infringement or the like this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringement.

13. PROPRIETARY RIGHTS INDEMNIFICATION - Seller warranty that the goods do not infringement upon or violate any United States patent, copyright, or trade secret. Seller will defend at it's expense any action against Buyer or Buyer as licensee to the extent that it is based on a claim that goods used within the scope of the license hereunder infringe a United States patent, copyright or trade secret, and Seller will pay any costs and damages finally awarded against Buyer or Buyer as Licensee in such action which are attributable to such claim. Should the products become, or in seller's opinion be likely to become, the subject of any claim of infringement. Seller shall procure for Buyer or Buyer as Licensee the right to continue using the goods, replace or modify them to make them non-infringing, or discontinue the license of them.

14. CANCELLATION - Buyer shall have the right to cancel this contract immediately for default on all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof, including warranties of seller, or if seller files for bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies that 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 Buyer, with or without cause, at any time upon the delivery to Seller of a written "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer as set forth in clause 14, herein.

16. ASSIGNMENT - DELEGATION - No right, interest or obligation of Seller under this contract shall be assigned or delegated without the written agreement of Buyer.

Any attempted assignment or delegation of Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

17. WAIVER - No claim or right arising out of a breach of this 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 is in writing and is signed by the aggrieved party.

18. MODIFICATIONS - This contract can be modified or rescinded only by a written agreement signed by both parties.

19. INTERPRETATION AND PAROL EVIDENCE - This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this agreement. Acceptance of or acquiescence in a course of performance 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 shall control.

20. 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 and amended in the State of Texas. Both parties agree that venue for any litigation arising from this contract shall be exclusively in Tarrant County, Texas. This contract shall be governed construed and enforced by the laws of the State of Texas.

21. INDEPENDENT CONTRACTOR - Seller shall operate hereunder as an independent contractor and not as an officer, agent, servant or employee of Buyer. Seller shall have exclusive control of, and the exclusive right to control, the details of its operations hereunder, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and sub-contractors. The doctrine of respondent superior shall not apply as between Buyer and Seller, its officers, agents, employees, contractors and subcontractors. Nothing herein shall be construed as creating a partnership or joint enterprise between Buyer and Seller, its officers, agents, employees, contractors and subcontractors.

22. INDEMNIFICATION - Seller covenants and agrees to, and does hereby, indemnify and hold harmless and defend Buyer, its officers and employees, from and against any and all suits or claims for damages or injuries, including death, to any and all persons or property, whether real or asserted, arising out of or in connection with any negligent act or omission on the part of the seller, its officers, agents, servants, employees or subcontractors, and Seller does hereby assume all liability and responsibility for injuries, claims or suits for damages to persons or property, of whatsoever kind or character, whether real or asserted, occurring during or arising out of the performance of this contract as a result of any negligent act or omission on the part of the Seller, its officers, agents, servants, employees or subcontractors.

23. SEVERABILITY - In case any one or more of the provisions contained in this agreement 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 provision of this agreement, which agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. FISCAL FUNDING LIMITATION - In the event no funds or insufficient funds are appropriated and budgeted or are otherwise available by any means whatsoever in any fiscal period for payments due under this contract, then Buyer will immediately notify Seller of such occurrence and this contract shall be terminated on the last day of the fiscal period for which appropriations were received without penalty or expense to Buyer of any kind whatsoever, except to the portions of annual payments herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available.

25. NOTICES TO PARTIES - Notices addressed to Buyer pursuant to the provisions hereof shall be conclusively determined to have been delivered at the time same is deposited in the United States mail, in a sealed envelope with sufficient postage attached, addressed to Purchasing Manager, City of Euless, 201 N. Ector, Euless, Texas 76039, and notice to Seller shall be conclusively determined to have been delivered at the time same is deposited in the United States mail, in a sealed

envelope with sufficient postage attached, addressed to the address given by Seller in its response to Buyer's invitation to bid.

26. DEFINITION OF BUYER - The City of Euless, its officers, agents, servants, employees, contractors and subcontractors who act on behalf of various City departments, bodies or agencies.

27. NON DISCRIMINATION - Seller hereby covenants and agrees that Seller, its employees, officers, agents, contractors or subcontractors, have fully complied with all provisions of same and that no employee, participant, applicant, contractor or subcontractor has been discriminated against according to the terms of such Ordinance by Seller, its employees, officers, agents, contractor or subcontractors herein.

28. RIGHT TO AUDIT - Vendor agrees that the City shall, until the expiration of three (3) years after final payment under this Purchase Order, have access to and the right to examine any directly pertinent books, documents, papers and records of the Vendor involving transactions relating to this Purchase Order. Vendor agrees that the City shall have access, during normal working hours, to all necessary Vendor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this section. The City shall give Vendor reasonable advance notice of intended audits.

29. DISABILITY - In accordance with the provisions of the Americans With Disabilities Act of 1990 (ADA), contractor/Seller warrants that it and any and all of its subcontractors will not unlawfully discriminate on the basis of disability in the provision of services to general public, nor in the availability, terms and/or conditions of employment for applicants for employment with, or employees of Contractor/Seller or any of its subcontractors. Contractor/Seller warrants it will fully comply with ADA's provisions and any other applicable federal, state and local laws concerning disability and will defend, indemnify and hold City harmless against any claims or allegations asserted by third parties or subcontractors against City arising out of Contractor's/Seller's and/or its subcontractor's alleged failure to comply with the above-referenced laws concerning disability discrimination in the performance of this agreement.