

MIDLAND COUNTY
PURCHASING
STANDARD TERMS AND CONDITIONS

1. **PACKING:** Seller will package goods in accordance with good commercial practice and mark them clearly. Seller shall bear the cost of packaging. Packaging will facilitate lowest transportation cost and will conform to common carrier requirements. Buyer's count or weight will be final where there are no packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Shipment under reservation is prohibited and tender of a bill of lading will not operate as tender of the goods.
3. **TITLE AND RISK OF LOSS:** Title shall remain with the Seller until Buyer takes possession at delivery point. Vendor hereby assigns to Purchaser any and all claims for overcharges associated with contract which arise under the antitrust laws of the United States, 15 USCA Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
4. **DELIVERY AND TRANSPORTATION:** Transportation shall be FOB destination, freight prepaid unless provided otherwise. Buyer shall have the right to designate method of transportation.
5. **NO PLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery must comply with these terms. A tender that does not conform constitutes a breach. Substitute conforming tender may not cure the breach unless made within the contract time.
6. **DELIVERY POINT:** Place of delivery shall be as set forth on the purchase order. Any change shall require a modification under Clause 20.
7. **INVOICES AND PAYMENTS:** Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, 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, shall be attached to the invoice. Mail invoices to:

Midland County Auditor's Department

P. O. Box 421

Midland, TX 79702

Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the County Auditor's Department advised of any change in remittance address.

Buyer's obligation is payable only and solely from funds available for the purpose of the 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.

Do not include Federal Excise, State, County or City Sales Tax. County shall furnish tax exemption certificate, if required.

Midland County vendor payments are made twice each month after cutoff for auditing transactions on the First and Third Mondays. Payment for the goods or services represented hereby will be made as agreed with Seller BUT NOT EARLIER THAN immediately after the Second or Fourth Monday following the First or Third Monday when compliance with these terms and conditions is certified. Midland County will pay neither interest nor penalty on payments considered late by the Seller.

8. GRATUITIES: The Buyer may, by written notice to the Seller, cancel this without liability to the Buyer if it is determined by Buyer that gratuities, in any form, were offered, breaching Midland County's Purchasing Code of Ethics.
9. SPECIAL TOOLS AND 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 filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer, and to the extent feasible, shall be identified by the Seller as such.
10. WARRANTY PRICE: The price to be paid by Buyer shall be that shown on the face of the Purchase Order or, in the case of competitive bidding, the price contained in the Seller's bid, which Seller warrants to be no higher than his current prices on similar orders.

Seller warrants that no person or selling agency has employed or retained to solicit or secure this contract upon an agreement of understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach, Buyer shall have the right, in addition to any other rights, to cancel this contract without liability to Buyer.

11. WARRANTY PRODUCTS: If Seller shall attempt to limit or exclude any implied warranties, this contract is voidable. Seller warrants that the goods furnished conform to the specifications, drawing, and descriptions listed in the bid invitation or on the purchase order face. In the event of conflict between documents, the specifications shall govern.
12. SAFETY WARRANTY: Seller warrants that the products conform to standards promulgated pursuant to the Occupational Safety and Health Act of 1970.
13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS: Seller agrees to ascertain whether goods produced in accordance with the specifications will give rise to the claim of any third person for infringement or the like and will hold Buyer harmless in case of such infringement. Buyer makes no warranty that the specifications will not give rise to such a claim.
14. RIGHT OF INSPECTION: Buyer shall have the right to inspect the goods at delivery before accepting them.
15. CANCELLATION: In addition to the other available remedies, Buyer shall have the right to cancel this contract if Seller breaches any of these terms and conditions, becomes insolvent, or commits acts of bankruptcy.
16. TERMINATION: The performance of work under this contract may be terminated by the Buyer by delivering to Seller a "Notice of Termination" specifying the extent the order is terminated and the date it is to become effective. Such right is in addition to and not in lieu of rights of Buyer set forth in Clause 15 herein.
17. FORCE MAJEURE: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations, such party shall give notice of Force Majeure to the other party in writing within a reasonable time. The obligation of the party giving notice shall be suspended during the continuance of the inability then claimed. Such party shall attempt to overcome such inability with all reasonable dispatch.

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 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, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other cause not reasonable within the control of the party claiming such inability.

18. ASSIGNMENT DELEGATION: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written consent of Buyer.
19. WAIVER: No claim or right arising out of a breach of this contact shall be discharged by waiver or renunciation without consideration, and such waiver or renunciation must be in writing.
20. MODIFICATIONS: This contract can be modified or rescinded only in writing signed by both of the parties or their duly authorized agents.
21. INTERPRETATION PAROLE EVIDENCE: This writing is intended by the parties as a complete, exclusive and final expression of their agreement.
22. APPLICABLE LAW: This agreement shall be governed by the Texas State Purchasing Act (Texas Local Government Code Section 262) and Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Code as adopted in the State of Texas as effective and in force on the date of this agreement. Seller agrees to comply with federal, state and local codes, regulations and laws.
23. ADVERTISING: Seller shall not advertise, without Buyer's consent, that Buyer has entered into this contract.
24. RIGHT TO ASSURANCE: Whenever one party has reason to question the other party's intent, he may demand that the other party give written assurance of his intent to perform. If no assurance is given within five days, the demanding party may treat the failure as an anticipatory repudiation of this contract.
25. VENUE: The venue for any litigation arising from this contract shall lie in Midland County, Texas.
26. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with Midland County shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.
27. INSURANCE: Where required by Buyer on the face of the Purchase Order or in separate specifications for the product or service, Seller shall provide proof of insurance satisfactory to Buyer in the coverage's and amounts stipulated.
28. Vendor Agrees not to charge Midland County a price higher than that charged to any other customer for a similar purchase.
29. As required by Texas Government Code, Chapter 2271, all contracts having a value of \$100,000.00 with a vendor that has 10 or more full-time employees MUST include a written verification from the vendor that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Midland County is prohibited from doing business with any company that refuses to sign this verification.
30. **A Purchase Order is required on all materials purchased on behalf of Midland County.**