

NORTH EAST INDEPENDENT SCHOOL DISTRICT PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE** – A Purchase Order (“PO”) constitutes a binding contract between the Vendor and North East Independent School District (“NEISD”), to furnish the goods and/or services specified in the PO. Acceptance of the Vendor’s goods and/or services does not equal acceptance of any of the terms and conditions or other contractual provisions which may be stated in the Vendor’s documentation or agreements, nor does it indicate that NEISD has agreed that the Vendor has complied with all obligations for any purchase and/or underlying contract provisions.
 - a) Under no circumstances is the amount indicated in a PO, including but not limited to pricing on a per unit basis, to be exceeded without prior approval of the Executive Director of Procurement & eCommerce 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 PO, as well as any underlying contract or service agreement will be recognized without the prior written authorization of the Executive Director of Procurement & eCommerce or designee.
 - c) NEISD’s PO number must appear on all invoices, delivery memoranda, bills of lading, packages, and correspondence.
 - d) Address all communication (excluding invoices) concerning this purchase order to the Executive Director of Procurement & eCommerce, at the address on the front of the PO, or by contacting (210) 407-0175.
2. **AGREEMENT** – Any PO and the terms and conditions specified in NEISD’s procurement solicitation (“RFP”) and any contract entered into between NEISD and Vendor as a consequence of the RFP represent the basis for Vendor to deliver the required goods and/or services. The PO, the RFP, and any contract entered into between NEISD 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 a PO, the applicable RFP or contract, the contract shall control. In the event of a conflict between a PO and the applicable RFP, the RFP shall control.
3. **VALIDATION** – A valid PO exists 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 NEISD’s Executive Director of Procurement & eCommerce or designee appears in the space provided.
4. **PRICES** – NEISD accepts Vendor’s price(s) as recorded on Vendor’s applicable bid/proposal and/or contract and on the PO but reserves the right to cancel the PO if the prices increase prior to the delivery of goods to or the completion of services for the District. The price(s) specified on the PO shall remain firm until NEISD has processed the Vendor’s invoice, or until the goods and/or services have been accepted by NEISD, whichever is later. Vendor is directed not to fill a PO at increased prices above what has been specified in a prior PO, applicable bid/proposal and/or contract without authorization from the Executive Director of Procurement & eCommerce or designee. No separate charges, except those clearly recorded on Vendor’s applicable bid/proposal or contract and on this PO can or will be allowed.
5. **DISCOUNTS** – Cash discount periods will be computed either from the date of delivery and/or acceptance of the goods ordered and/or services provided or the date of receipt of correct and proper invoices prepared in accordance with the terms of the District’s PO, whichever date is later.
6. **TAX EXEMPT** – NEISD is tax-exempt. Vendor shall not include taxes on any invoice. NEISD’s Tax Identification Number is 74-6015301.
7. **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 NEISD, for a period of one (1) year from the date of acceptance of the goods and/or services or payment of the applicable invoice, whichever is later. Neither acceptance of, nor payment of, said goods and services shall constitute a waiver or modification of any of the warranties of Vendor or the rights of NEISD;
 - b) all services performed by Vendor or its subcontractors, assignees or representatives and all material used on NEISD’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 NEISD, and that Vendor will indemnify and hold NEISD, its trustees, employees and agents harmless against any such liens placed on such materials;
 - c) 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 hold NEISD, its trustees, employees, and agents harmless in case of any such action or suit;
 - d) 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
 - e) nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of NEISD.
8. **GOVERNING LAW** – The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern the PO. The exclusive jurisdiction for any dispute under this PO is the state and federal courts located in San Antonio, Bexar County, Texas.
9. **APPROPRIATED FUNDS** – Renewal of a 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 the PO or obligation imposed on NEISD by the PO, NEISD shall have the right to terminate a PO without default or liability to Vendor resulting from such termination, effective as of the expiration of each budget period of NEISD if it is determined by NEISD, in NEISD’s sole discretion, that there are insufficient funds to extend the PO. The parties agree that the PO is a commitment of NEISD’s current revenue only.
10. **INSPECTION** – Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after NEISD’s first use of the goods and/or services, NEISD 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 the PO, the applicable RFP, and/or any contract entered into between NEISD and Vendor as a consequence of the applicable RFP. This right shall exist even if payment has already been made by NEISD to the Vendor. Goods or services which, in the sole opinion of NEISD, fail to conform to the required specification(s) or standard(s) may be considered non-conforming.
11. **NON-CONFORMANCE** – Vendor assumes all liability for delivering goods that do not meet the specification(s) and standard(s) specified on the PO. Any non-conforming goods and/or services which are delivered to NEISD are accepted under a “reservation of NEISD’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 the PO and NEISD shall have the absolute right to reject the goods and/or services, in whole or in part. In the event that NEISD does not accept any goods and/or services which have been submitted to NEISD, NEISD 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, NEISD is entitled to a “party by party” right of set off. NEISD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it. In addition, NEISD has the right to do any or all of the following, in NEISD’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 NEISD’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 NEISD thereby;
 - e) to recover by offset or otherwise any and all expenses, costs, price reductions, and damages paid, incurred, or suffered by NEISD as a result of the holding, return, replacement, correction, reductions, or rejections of non-conforming goods and/or services; and/or
 - f) to terminate the PO and/or any contract entered into between NEISD and Vendor.
12. **TITLE AND RISK OF LOSS**—The title and risk of loss of the goods shall not pass to NEISD until NEISD actually receives and takes possession of the goods at the point of delivery.

13. **DELIVERY**

- a) All deliveries shall be to the site(s) specified on the PO, be freight prepaid, F.O.B. Destination (North East ISD, TX), and pricing shall include all shipping, handling, freight, and/or delivery charges. With the exception of shipments to the Distribution Center (9805 Broadway), NEISD has no facilities for off-loading deliveries. Unless specifically stated otherwise, all shipments MUST include "inside delivery." "Dock Side" deliveries and/or deliveries requiring buyer unloading, except to 9805 Broadway or if specifically stated on the PO, will be refused.
 - b) The obligation of Vendor to meet the delivery dates, specifications, and quantities set forth in the PO is of the essence to any PO. If, at any time, Vendor believes it may be unable to comply with the delivery or completion schedules, then Vendor must immediately notify NEISD's Executive Director of Procurement & eCommerce 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, NEISD may, in addition to all other remedies, require Vendor, at Vendor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.
 - c) When a delivery is to be made to an NEISD campus: (a) such delivery shall be made between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday, except on school holidays and (b) such delivery shall be made and goods shall be placed inside the campus building in the designated room(s) at no additional charge. Delivery personnel of Vendor may be required to comply with any applicable campus visitor security protocols, including being required to show valid identification. NEISD CANNOT AND WILL NOT ACCEPT TAILGATE DELIVERY AT A SCHOOL ENTRANCE UNLESS SPECIFIED OTHERWISE ON THE PO.
 - d) **All unshipped items on the PO will automatically be cancelled ninety (90) days after date of order** unless prior approval by NEISD's Executive Director of Procurement & eCommerce has been obtained. Shipments initiated after such date may not be accepted.
 - e) NEISD will not be responsible for double shipments.
 - f) C.O.D. shipments are permitted.
14. **PAYMENT TERMS** - Itemized invoices shall be directed to NEISD's Accounts Payable department. In accordance with Tex. Gov't Code § 2251.021, payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date NEISD receives the goods; (2) the date the performance of the service is completed; or (3) the date NEISD receives an invoice for the goods and/or services.
15. **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. Invoices for partial shipments is acceptable. Do not reference more than one purchase order per invoice.
16. **MATERIAL SAFETY DATA SHEETS (MSDS)** - The Federal Government requires that NEISD 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. Vendor shall provide the MSDS sheets to NEISD for any products purchased meeting this requirement.
17. **PRODUCT RECALL** - Vendor shall notify the NEISD's Executive Director of Procurement & eCommerce 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.
18. **TITLE** - The title to any and all goods, products, merchandise, materials, and/or services that are provided to NEISD shall pass to NEISD upon acceptance of the good or payment of the applicable invoice, whichever is later.
19. **NON-WAIVER** - Failure of NEISD 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 NEISD 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 NEISD operate as a waiver of any of the terms hereof.
20. **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 accepted by NEISD in writing.
21. **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. Vendor further certifies and verifies that neither Vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any (the "Vendor Companies"), boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of the PO. For purposes of any PO, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.
22. **CONFLICT OF INTEREST** - In accordance with Section 176.006 of the Texas Local Government Code, Vendor must file, on an annual basis, a Conflict of Interest Questionnaire with the NEISD Director of Records Management. The Form CIQ and instructions can be found on at www.neisd.net, under "Departments," then "Procurement & eCommerce."
23. **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).