

SAM HOUSTON STATE UNIVERSITY
A Member of The Texas State University System
PURCHASE ORDER TERMS AND CONDITIONS

Seller and SHSU agrees as follows:

1. **Rules, Regulations, and Statutes:** Sam Houston State University (“SHSU”) is an agency of the State of Texas. All purchases must comply with the all rules, regulations, and statutes of the State of Texas, The Texas State University System Rules and Regulations, SHSU policies, and the Purchase Order Terms and Conditions.
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 release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; (d) The 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 with requirements of common carriers and any applicable specifications. SHSU’s count of weight shall be final and conclusive on shipments not accompanied by packing list.
3. **Title & Risk of Loss:** The title and risk of loss of the goods shall not pass to SHSU until SHSU receives and takes possession of the goods at the points(s) of delivery.
4. **Delivery Terms and Transportation Charges:** F.O.B. Destination Freight Prepaid unless delivery terms are specified otherwise in bid; SHSU 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 SHSU shall have the right to designate what method of transportation shall be used to ship the goods.
5. **No Replacement of Defective Tender:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may seasonably notify SHSU of his intention to cure and may then make a conforming tender within the contract time buy not afterward.
6. **Place of Delivery:** The place of delivery shall be that set forth in the “Shipping Information” block of the purchase order. Delivery shall be made during normal working hours, 8:00 a.m. to 4:00 p.m. CST only. Unless prior approval has been obtained from SHSU. Any change thereto shall be effected by modification as provided for in Clause 21, “modifications”, hereof. The terms of this agreement are “no arrival, no sale”.
7. **Invoices & Payments:**
 - a. Seller shall submit a separate invoice on each purchase order or purchase release after each delivery. Invoices must indicate the purchase 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. Invoices are to be submitted in accordance with "Invoice Information" block of the purchase order to the address shown. Payment shall not be due until the above instruments are submitted after delivery. Suppliers must keep SHSU’S Office of Disbursement and Travel Services advised of any changes in your remittance address.
 - b. SHSU's obligation is payable only and solely from funds available for the purpose of this 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 SHSU.
 - c. **Tax Exempt:** Purchases made by SHSU are exempt from the State of Texas or City Sales Tax and Federal Excise tax, per Texas Tax Code, Section 151.309(4). SHSU shall furnish tax exemption certificate upon request.
 - d. SHSU’s standard payment terms are NET 30 days in accordance with Texas Government Code Section 2251 “Prompt Payment Act”. SHSU’s preferred method of payment is via ACH transfer as funds are delivered directly to vendors bank account. By acceptance of this purchase order, unless otherwise noted and agreed to by SHSU in writing, vendor acknowledges acceptance of ACH as the form of payment and is willing to provide the necessary information to facilitate such payment. SHSU utilizes PaymentWorks as the supplier onboarding tool. Supplier will receive an email invite via PaymentWorks to sign up and provide required information.

8. **Vendor Ethics -- Gratuities:** As an agency of the State of Texas and member of The Texas State University System, SHSU holds the trust of the public. All Sellers and persons doing business with SHSU must provide the highest level of ethics and service in all business interactions. A Seller shall not give, offer to give, nor intend to give at any time any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a University employee that might reasonably appear to influence the employee in the discharge of official duties. SHSU may, by written notice to the Seller, cancel this contract without liability to Seller if it determined that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of SHSU with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by SHSU pursuant to this provision, SHSU 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. **Prohibition Against Personal Interest in Contracts:** No faculty, staff or other employee of SHSU shall transact any business in their official capacity with any business entity of which they are officers, agents, or members, or in which they own a controlling interest unless the Texas State University System Board of Regents has reviewed the matter and determined that there is no conflict of interest. Any violation of the section, with the knowledge, expressed or implies, of the person or corporation contracting with SHSU shall render the contract involved voidable by SHSU.
10. **Special Tools & Test Equipment:** If the price stated on the face hereof includes the cost of any special tooling or 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 SHSU and to the extent feasible shall be identified by the Seller as such.
11. **Warranty-Price:**
 - a. The price to be paid by SHSU 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 similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative. SHSU may cancel this contract without liability to Seller for breach or Seller's actual expense.
 - b. The 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 agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty SHSU shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
12. **Warranty-Product:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of SHSU. Seller warrants that the goods furnished will conform to the specifications, drawings, and descriptions listed in the bid invitation, and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
13. **Safety Warranty:** Seller warrants that the product sold to SHSU shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, SHSU may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by SHSU will be at Seller's expense.
14. **No Warranty by SHSU Against Infringements:** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement or the like. SHSU makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall SHSU 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 SHSU to this effect in writing within two weeks after the signing of this agreement. If SHSU does not receive notice and is subsequently held liable for the infringement or the like, Seller will save SHSU harmless. If Seller in good faith ascertains that production of

the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that SHSU will pay Seller the reasonable cost of this search as to infringements.

15. **INDEMNIFICATION.** SELLER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS UNIVERSITY AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, BY ANY PERSON OR ENTITY, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") ARISING OUT OF, IN CONNECTION WITH, , OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF SELLER, OR IT AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY SELLER OR ANYONE FOR WHOSE ACTS SELLER MAYBE LIABLE. IN ADDITION, SELLER WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF , IN CONNECTION WITH, OR RESULTING FROM THIS PURCHASE ORDER OR THE GOODS OR SERVICES PROVIDED UNDER THIS PURCHASE ORDER. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH SELLER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.
16. **Right of Inspection:** SHSU shall have the right to inspect the goods at delivery before accepting them.
17. **Cancellation:** SHSU shall have the right to cancel for default 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 the Seller becomes involved or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which SHSU may have in law or equity.
18. **Termination:** The performance of work under this order may be terminated in whole or in part by SHSU in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "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 SHSU set forth in Clause 15, herein.
19. **Force Majeure:** If by reason of Force Majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and 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 for no 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 or 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 causes not reasonably within the control of the party claiming such inability.
20. **Assignment or Delegation:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of SHSU. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
21. **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 supposed by consideration and is in writing signed by the aggrieved party.

22. **Modifications:** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.
23. **Technology Access Clause:** Seller expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Seller represents and warrants to SHSU that the technology provided to SHSU for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:
- providing equivalent access for effective use by both visual and non-visual means;
 - presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
 - being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this paragraph, the phrase “equivalent access” means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives

Seller represents and warrants (the Electronic and Information Resources (EIR) Accessibility Warranty”) that the electronic and information resources and all associated information, documentation and support that it provides to SHSU under the Agreement (collectively, the “EIRs”) comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code (“TAC”) and Title 1, Chapter 206, Rule §206.70 of the TAC (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). Accordingly Seller represents and warrants to SHSU that the EIR provided to SHSU complies with the accessibility requirements as outlined in TAC 206 and 213 by providing (1) a completed Voluntary Product Accessibility Template (VPAT) attesting to the EIR’s accessible features and capabilities or (2) providing a similarly formatted document as the VPAT attesting to the EIR’s accessible features and capabilities. To the extent Seller becomes aware that the EIRs, or any portion thereof, do not comply with the EIR Accessibility Warranty, then Seller represents and warrants that it will, at no cost to SHSU, either (1) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Warranty or (2) replace the EIRs with new EIRs that satisfy the EIR Accessibility Warranty. In the event the Seller fails or is unable to do so, then SHSU may terminate the Agreement and Seller will refund to SHSU all amounts SHSU has paid under the Agreement within thirty (30) days after the termination date.

24. **Cybersecurity Training Program.** Pursuant to Section 2054.5192, Texas Government Code, Seller and its subcontractors, officers, and employees, who are provided credentials granting access to University’s computer system also known as University’s information system, must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code as selected by University. The cybersecurity training program must be completed during the term and any renewal period of this Agreement. Seller shall verify in writing completion of the program to University within the first thirty (30) calendar days of the term and any renewal period of this Agreement. Failure to comply with the requirements of this section are grounds for termination for cause of this Agreement.
25. **Interpretation-Parole Evidence:** This writing is intended by the parties as a final expression of their agreement and 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 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.
26. **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 in the State of Texas as effective and in force on the date of this agreement.

27. **Advertising:** Seller shall not advertise or publish, without SHSU's prior consent, the fact that SHSU has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
28. **Right to Assurance:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
29. **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in Walker County, Texas.
30. **Right to Audit:** By execution and acceptance of this order, Vendor agrees to provide SHSU and its agents access to Vendor's financial records for audit purposes during regular business hours. Failure to do so will result in termination of this contract.
31. **No Boycott of Israel:** Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either (i) it meets an exemption criteria 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.
32. **Public Information Act:** SHSU strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Seller shall to make any information created or exchanged with SHSU pursuant to this purchase order, that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.
33. **Incorporated Law:** In accordance with Texas Education Code 51.9335, any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to:
 - (1) whether the provision appears on the face of the contract; or
 - (2) whether the contract includes any provision to the contrary.
34. **Nondiscrimination:** In execution of this agreement, Vendor, contractors, subcontractors, their respective employees, and others acting by or through them shall comply with all federal and state policies and laws prohibiting discrimination, harassment, and *sexual misconduct*. Any breach of this covenant may result in termination of this agreement.
35. **Dispute Resolution:** If a dispute, or controversy, or claim arises out of or relates to this contract, the parties will make a good faith attempt to resolve the issues. If the dispute cannot be settled by the parties, the parties agree to follow the dispute resolution process in Chapter 2260 of the Texas Government Code.
36. **Immunity:** Notwithstanding any provision of this contract, nothing herein constitutes a waiver of the constitutional, statutory or common law rights, privileges, defenses or immunities of the parties.
37. **Conflict:** In the event of a conflict between this contract and the terms and conditions of this purchase order, the terms and conditions of this purchase order will control.
38. **U.S. Produced Steel:** Except as provided below the contract shall include a requirement that any iron or steel product produced through a manufacturing process and used in the Project shall be produced in the United States, within the meaning provided in Texas Government Code Section 2252.201.

Exemptions:

- a. Shall not apply to the Project for which the governing body of the Owner determines that.
 1. iron or steel products produced in the United States are not:
 - a. produced in sufficient quantities;
 - b. reasonably available; or
 - c. of a satisfactory quality;
 2. use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or
 3. comply with this Section is inconsistent with the public interest.

- b. Electrical components, equipment and systems, and appurtenances thereto, as described in Texas Government Code Section 2252.203 (b), are exempt from the requirements.

May 26, 2020