

TJC Purchase Order Terms and Conditions

1. DELIVERY; SUBSTITUTIONS; INVOICES: Goods shall be delivered and services performed during normal business hours. Goods shall be delivered to the College's address identified in this Purchase Order. If delay in delivery or performance is foreseen, Contractor shall give prompt written notice to College's Purchasing Office. Upon notice, the College has the right to extend the delivery or performance date in its sole discretion. Contractor shall keep the College advised at all times of the status of delivery and performance under this Purchase Order. Contractor shall only tender for acceptance those goods and services that conform to the requirements of this Purchase Order. Substitutions, cancellations and price changes will require prior written consent of the College. Default in promised delivery or performance or failure to conform to the requirements of this Purchase Order authorizes the College to purchase goods or services elsewhere and charge to Contractor any excess cost of such repurchase. Contractor shall show this Purchase Order number on all packages, shipments, and invoices.

2. TITLE AND RISK OF LOSS: Title to and risk of loss to any goods to be delivered under this Purchase Order shall not pass to the College until the College actually receives and takes possession of such goods at the point of delivery.

3. WARRANTIES: In addition to all warranties established by law, Contractor hereby represents, covenants, certifies, warrants and agrees that:

(a) it will comply with all requirements of this Purchase Order.

(b) if Contractor is a corporation or a limited liability company, it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas.

(c) if Contractor is a corporation or a limited liability company, it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Texas Tax Code*, or is exempt from the payment of such taxes, or is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable, and that if this certification is false or inaccurate, at the College's option, this Purchase Order may be terminated and payment withheld.

(d) in accordance with Section 231.006, *Texas Family Code*, the individual or business entity named in this Purchase Order is not ineligible to receive the award of or payment under this Purchase Order and this Purchase Order may be terminated and payment may be withheld if this certification is inaccurate.

(e) all goods and services covered by this Purchase Order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by the College (collectively "specifications"), and shall be new, merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. The College shall have the right of inspection and approval and may reject and return goods or require re-performance of services at Contractor's expense if defective or not in compliance with the specifications. Defects shall not be deemed waived by the College's failure to notify Contractor upon receipt of goods or completion of services or by payment of invoice.

(f) no disclosure, description, or other communication of any sort shall be made by Contractor to any third person of the fact of the College's purchase of goods or services hereunder, or of the details and characteristics thereof without the College's prior written consent. Anything furnished to Contractor by the College pursuant to this Purchase Order including without limitation samples, drawings, patterns, and materials shall remain the property of the College, shall be held at Contractor's risk, and shall be returned to the College upon the College's request, and no disclosure or reproduction thereof in any form shall be made without the College's prior written consent.

(g) all goods delivered or services provided pursuant to this Purchase Order shall conform to standards established for such goods and services by any applicable federal, state,

or local laws or regulations, including without limitation those standards promulgated by the federal Occupational Safety and Health Administration (OSHA) and the Texas Hazard Communication Act, Chapter 502, *Texas Health and Safety Code*.

(h) use or sale of any goods delivered hereunder, except (with respect to patents) goods produced to the College's detailed design, will not infringe any adverse valid patent, copyright, trademark or other intellectual property right.

(i) the price to be paid by the College shall be that contained in Contractor's bid, which Contractor warrants to be no higher than Contractor's current prices on orders by others for goods or services of the kind covered by this Purchase Order for similar quantities to similar customers under similar conditions. In the event Contractor breaches this warranty, the prices shall be reduced to Contractor's current prices on orders by others or, in the alternative, the College may cancel this Purchase Order without liability to Contractor.

(j) the foregoing representations, covenants, certifications, warranties and agreements shall survive acceptance of goods as well as performance of services hereunder.

4. ANTITRUST LAWS; CLAIMS FOR OVERCHARGES: Contractor warrants and represents that neither Contractor nor any party acting on behalf of Contractor has violated the antitrust laws of the United States or of the State of Texas. Contractor hereby assigns to the College any and all claims for overcharges associated with this Purchase Order which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., or of the State of Texas, Tex. Bus. & Comm. Code Sec. 15.01, et seq.

5. COMPLIANCE WITH LAW AND COLLEGE RULES:

(a) Contractor is fully informed concerning and is in full compliance with its obligations, if any, under the following:

- (1) Equal Employment Opportunities provisions of the Civil Rights Act of 1964, as amended;
- (2) Executive Order 11701, as amended;
- (3) Executive Order 11246, as amended;
- (4) Rehabilitation Act of 1973, as implemented by 41 CFR 60-741, as amended
- (5) Vietnam Era Veterans Readjustment Act of 1974 as implemented by 41CFR 60-250, as amended;
- (6) Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended.

(b) If this Purchase Order requires the presence on the College's premises of Contractor's employees, agents, subcontractors or suppliers, Contractor shall cause such parties to comply with all applicable rules of the College, including without limitation those relative to environmental quality, safety, and fire protection.

6. INDEPENDENT CONTRACTOR: In performing any services hereunder, Contractor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all federal, state, and local unemployment and disability insurance premiums and fees and all social security and other taxes and contributions payable in respect of such persons, from and against which liability Contractor agrees to indemnify, defend, exonerate and hold harmless the College.

7. INDEMNITY: Contractor shall defend (with college choosing defense counsel), indemnify and hold harmless college, the Board of Trustees ("Board"), and their officers, agents and employees (collectively the "indemnified parties") from and against all actions, suits, demands, costs, damages, liabilities and all other claims, including reasonable attorneys' fees and court costs (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 by the acts, omissions or willful misconduct of contractor or its agents, employees, subcontractors or suppliers. In addition, contractor shall defend (with the college choosing defense counsel),

indemnify and hold harmless the indemnified parties 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.

8. INSURANCE: If this Purchase Order requires the presence on the College's premises of Contractor's employees, agents, suppliers or permitted subcontractors (if any), Seller agrees to maintain and to cause its agents, suppliers and permitted subcontractors (if any) to maintain the following insurance coverages for at least the specified limits:

<u>Coverages</u>	<u>Limits</u>
Workers' Compensation	Statutory Limits
Employer's Liability	\$1,000,000 per accident and employee
Commercial General Liability (Including contractual liability)	\$1,000,000 per occurrence
Product/Completed Ops	\$1,000,000 aggregate
Auto Liability	\$1,000,000 combined single limit

All policies (except Workers' Compensation) shall name the College, the Board of Trustees of Tyler Junior College ("Board") and their officers and employees as Additional Insureds. A Waiver of Subrogation in favor of the College and the Board and thirty (30) day notice of cancellation is required on all policies. Certificates of insurance verifying the foregoing requirements shall be provided to the College prior to commencement of any services under this Purchase Order.

9. VENUE; CHOICE OF LAW: Smith County, Texas, shall be the proper place of venue for suit on or in respect to this Purchase Order. This Purchase Order and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

10. ASSIGNMENT AND DELEGATION: Contractor may not assign any of its rights or delegate any of its obligations under this Purchase Order without the College's prior written consent. Any assignment or delegation attempted by Contractor in violation of this clause shall be void and ineffective for all purposes.

11. ENTIRE AGREEMENT; MODIFICATIONS: This Purchase Order supersedes all prior agreements, written or oral, between Contractor and the College and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by the College and Contractor.

12. LOSS OF FUNDING: Performance by College under this Purchase Order may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board. If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then the College shall issue written notice to Contractor and the College may terminate this Purchase Order without further duty or obligation hereunder. Contractor acknowledges that appropriation, allotment, and allocation of funds are beyond the control of the College.

13. DISPUTE RESOLUTION: College and Contractor shall attempt to resolve any claim for breach of contract made by Contractor in the ordinary course of business. The Director of Campus Services of the College shall examine Contractor's claim and any counterclaim and negotiate with the Contractor in an effort to resolve such claims. The parties hereto specifically

agree that (1) neither the issuance of this Purchase Order by the College nor any other conduct, action or inaction of any representative of the College relating to this Purchase Order constitutes or is intended to constitute a waiver of the College's or the State's sovereign immunity to suit; and (2) College has not waived its right to seek redress in the courts.

14. HIPAA COMPLIANCE: Contractor agrees to keep private and to secure any information provided by the College that is considered either Individually Identifiable Health Information ("IIHI") by the Health Insurance Portability and Accountability Act of 1996, codified at 42 USC § 1320d through d-8 ("HIPAA"), or Protected Health Information ("PHI") as promulgated in 45 CFR Part 164 ("HIPAA Privacy Regulations") and 45 CFR Part 142 ("HIPAA Security Regulations"). Contractor agrees to only use and disclose PHI (i) received from the College, (ii) used, created, received, maintained or disclosed by the College, or (iii) otherwise associated with the College (collectively, "College PHI") as required to perform the services outlined in this Purchase Order, which services may include the proper management and administration of this Purchase Order and data aggregation services for the health care operations of the College. Contractor will not use or further disclose the College PHI other than as permitted under this Purchase Order and Contractor will use appropriate safeguards to prevent the use or disclosure of the College PHI for any reason other than as provided by this Purchase Order. Contractor agrees to promptly notify the college of any use or disclosure of the College PHI not permitted under this Purchase Order. Contractor agrees to notify the College of its corrective actions to cure any breaches of this Section, HIPAA, or the HIPAA Privacy Regulations as soon as possible. Contractor understands that the College may terminate this Purchase Order immediately without liability to Contractor if Contractor's actions are not successful in remedying the breach. College may also report the problem to the Secretary of Health and Human Services. Contractor shall require any of its agents or subcontractors who receive the College PHI to be bound by the same restrictions and conditions set forth in this Purchase Order. Contractor agrees to comply with §164.524 (Access of Individuals to PHI), 164.526 (Amendment of PHI) and 164.528 (Accounting of Disclosures of PHI) of the HIPAA Privacy Regulations. Contractor agrees to make its internal practices, books, and records relating to the use and disclosure of the College PHI available to the Secretary of Health and Human Services or the College for purposes of determining the Contractor's compliance with the HIPAA Privacy Regulations. After Contractor has completed working with or using the College PHI, Contractor agrees to return or destroy all College PHI, if feasible, and if not feasible, Contractor agrees to continue to protect the College PHI from wrongful uses and disclosures. If Contractor decides to destroy the College PHI under this Purchase Order, Contractor will maintain a record of the proper destruction of College PHI or provide the College with notice and certification of proper destruction of the College PHI.

15. STATE SALES TAX EXEMPTION CERTIFICATE: The undersigned claims an exemption from taxes for purchase of tangible personal property described in this numbered order purchased from contractor and/or shipper listed above.

16. INVOICING INSTRUCTIONS: Vendor will submit an invoice with each shipment of goods or within 10 days after the end of any month during which Vendor performs services. Vendor will submit invoice within 10 days after complete performance of all obligations under this Purchase Order. Each invoice will include the College's purchase order number and sufficient description of the goods and services to support payment. Mail invoices to Tyler Junior College, Accounts Payable, P.O. Box 9020, Tyler, TX 75711. Direct invoicing questions to Accounts Payable by email at accountspayable@tjc.edu, by phone at (903)510-2435, or by fax to (903)510-2602.

17. SHIPPING INSTRUCTIONS: Show on the exterior of all cartons purchase order number, shippers name and address, vendor name as it appears on order, number of pieces. Packing slip must be on exterior of carton. Perishable shipments must be noted with a label on outside of carton and contain storage requirements. Direct shipping questions to Supervisor, Receiving

at (903) 510-2006.

18. CERTIFICATIONS OF NON-SEGREGATED FACILITIES & EQUAL EMPLOYMENT OPPORTUNITIES COMPLIANCE: The acceptance of this document will signify his/her compliance with the provision of SECTION 202 of EXECUTIVE ORDER No. 11246 pertaining to Equal Employment Opportunities, effective September 24, 1965; and its amendment, EXECUTIVE ORDER No. 11375, effective October 13, 1967, insofar as Section 202 is affected by changing the word "creed" to "religion" and adding the word "sex". The signing will also serve as written affirmation of the following CERTIFICATION OF NON-SEGREGATED FACILITIES. By the acceptance of this order, the bidder, offerer, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his establishments, and that he/she does not permit *his/her employees* to perform their services at any location under his/her control where segregated facilities are maintained. He/She certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his establishments, and that he/she will not permit his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offerer, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, rest rooms and wash rooms, entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex or national origin, because of habit, locale, custom or otherwise. He/She further agrees that he/she will retain such certifications in his files and that he/she will forward the following notice in such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES. A Certification of Non-segregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not exempt from the provision of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statement in offers is prescribed in 18 U.S.C. 1001.

19. AFFIRMATIVE ACTION COMPLIANCE: In addition to the above certification, if this order exceeds \$50,000.00 the seller must have included as part of his bid a copy of his written Civil Rights "Affirmative Action Compliance Program". If a bidder is not required to have such a written program he must have so stated on the bid form indicating the reason he is not required to have such a written program.

20. PAYMENT TERMS: Net 30 Days from receipt of merchandise/services or invoice, whichever is later, in accordance with the Texas Prompt Payment Act.

21. LIMITATIONS: The Parties are aware that there are constitutional and statutory limitations on the authority of organization to enter into certain terms and conditions that may be a part of this Agreement, including those terms and conditions relating to liens on organization's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on organization except to the extent authorized by the Laws and Constitution of the State of Texas.

22. SUSPENSION/DEBARMENT: Vendor confirms that neither Vendor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States ("U.S.") federal government Procurement or Nonprocurement Programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.epls.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Vendor further certifies that it is not identified on the Texas Comptroller's list of scrutinized companies doing business with Sudan or Iran or a list of companies known to have contracts with or to provide services or supplies to a foreign terrorist organization. Vendor will provide immediate written notification to TJC if at any time Vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when TJC issues a Purchase Order, if any. If it is later determined that Vendor knowingly rendered an erroneous certification, in addition to the other remedies available to TJC, TJC may terminate the Purchase for default by Vendor.

23. DOMESTIC PREFERENCES FOR PROCUREMENT AND BUY AMERICAN PROVISIONS: As appropriate and to the extent consistent with law, TJC has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) when spending federal funds. Vendor agrees that the requirements of this section will be included in all subawards, including all contracts and purchase orders for work or products under this award, to the greatest extent practicable under a Federal award. (Purchases that are made with non-Federal funds or grants are excluded from the Buy American Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.

24. TX-RAMP CERTIFICATION: Pursuant to Section 2054.0593(d)-(f) of the Texas Government Code, relating to cloud computing State Risk and Authorization Management program, Contractor represents and warrants that it complies with the requirements of the State Risk and Authorization Management Program and Contractor agrees that throughout the term of the contract it shall maintain its certifications and comply with the program requirements in the performance of the contract.

25. NOTICES: Notwithstanding any other requirements for notices given by a party under this Purchase Order, if Contractor intends to deliver written notice to College pursuant to Section 2251.054, Texas Government Code, then Contractor shall send that notice to College as follows:

Tyler Junior College
P.O. Box 9020
Tyler, Texas 75711-9020
E-mail: Shelly.Roberts@tjc.edu
Attention: Shelly Roberts
Director, Contract Administration

College shall have the right to change this contact information by written instructions to Contractor.

Tyler Junior College is a public junior college authorized under the laws of the State of Texas.