



ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF THE PURCHASE. ANY EXCEPTIONS THERETO MUST BE IN WRITING. ACCEPTANCE IS SUBJECT TO THE AGENCY'S TERMS AND CONDITIONS. THESE SUPERSEDE ANY OTHER TERMS AND CONDITIONS ISSUED BY THE VENDOR.

The following are the terms and conditions for Texas A&M AgriLife Research, Texas A&M AgriLife Extension Service, and Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL), hereafter referred to as the Agency.

1. VENDOR REQUIREMENTS.

- 1.1 Vendor must comply with all rules, regulations and statutes relating to purchasing in the State of Texas in addition to the requirements of this form.
1.2 Pricing must be quoted on a "per unit" basis, extended as indicated. Any trade discounts included must be itemized and deducted from extended prices. Unit prices shall govern in the event of extension errors. Vendor guarantees product or service offered will meet or exceed specifications included.
1.3 Purchases should be "F.O.B. Destination, freight prepaid and allowed", or Incoterms "Delivered Duty Paid" (DDP) for products imported in the United States. However, if Vendor quoted freight otherwise, then face of order should show exact delivery cost and who bears cost if not included in unit price.
1.4 Prices are firm for within 90 days of the offer. Cash discounts were not considered in determining the best value. All cash discounts will be taken if earned.
1.5 Purchases made for use by the Agency are exempt from the State Sales Tax and Federal Excise Tax. Tax Exemption Certificate will be furnished by the Agency upon request.
1.6 The Agency reserves the right to accept or reject all or any part of any offer, waive minor technicalities and issue the purchase order to the vendor that best serves the interests of the Agency.
1.7 Any agreement may be extended up to three (3) months at the sole discretion of the Agency.
1.8 Consistent and continued tie offers could cause rejection of offers by the Agency and/or investigation of antitrust violations.

2. SPECIFICATIONS.

- 2.1 Any catalogue, brand name or manufacturer's reference used is descriptive only (not restrictive) and is used to indicate type and quality desired. Therefore, offers of brands of like nature and quality were considered unless otherwise specified. Vendor will be required to furnish brand names, numbers, etc., as specified on the purchase order unless noted otherwise at time of offer.
2.2 All items shall be new and unused, including containers suitable for shipment and storage, unless otherwise indicated. Oral agreements to the contrary will not be recognized.
2.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
2.4 The Agency will not be bound by any oral statement or representation contrary to the specifications of this purchase.
2.5 Manufacturer's standard warranty shall apply unless otherwise stated.

3. DELIVERY.

- 3.1 Delivery time listed reflects the number of days required to place material in receiving Agency's designated location under normal conditions. Failure to state delivery time obligates Vendor to complete delivery in 14 calendar days.
3.2 If delay is foreseen, Vendor shall give written notice to the Texas A&M AgriLife Purchasing Department. The Agency has the right to extend delivery date for valid reasons. Default in promised delivery, without accepted reasons, or failure to meet specifications, authorizes the Agency to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor.
3.3 No substitutions or cancellation permitted without written approval of the Texas A&M AgriLife Purchasing Department.
3.4 Delivery shall be made during normal working hours unless prior approval for late delivery has been obtained from the Agency.

- 4. INSPECTIONS AND TESTS. All goods will be subject to inspection and testing by the Agency to the extent practicable at all times and places. Authorized Agency personnel shall have access to any vendor's place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted or on samples taken from regular shipment. In the event products tested fail to meet or exceed all conditions and requirements of the

specifications, the cost of the sample and the cost of the testing shall be borne by Vendor. Goods which have been delivered and rejected in whole or in part may, at the Agency's option, be returned to Vendor or held for disposition at Vendor's risk and expense. Latent defects may result in revocation of acceptance.

- 5. VENDOR AFFIRMATIONS. By accepting this order, Vendor affirms any false statement is a material breach of contract and shall void the submitted quote or any resulting contracts, and Vendor shall be removed from all bid lists. By acceptance of this order, Vendor hereby certifies the following:

- 5.1 Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.
5.2 If Vendor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Vendor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Vendor is exempt from the payment of franchise (margin) taxes.
5.3 Neither Vendor nor the firm, corporation, partnership or institution represented by Vendor, or anyone acting for such firm, corporation, partnership or institution has violated the antitrust laws of this State, codified in §15.01, et seq., Texas Business and Commerce Code, or the Federal Antitrust Laws, nor communicated directly or indirectly the offer made to any competitor or any other person engaged in such line of business.
5.4 The Agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the Agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. Under §2155.004(b), Texas Government Code, Vendor certifies that the individual or business entity is not ineligible to receive this contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
5.5 Vendor shall defend, indemnify, and hold harmless the State of Texas and the Agency, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings costs, damages, and liabilities, from any acts or omissions of Vendor or any agent, employee, subcontractor, or supplier of Vendor in the execution or performance of this purchase order.
5.6 Pursuant to §2107.008 and §2252.903, Texas Government Code, Vendor agrees that any payments due under this purchase order will be applied towards any debt or delinquency that is owed to the State of Texas.
5.7 Vendor certifies that they are in compliance with §669.003 of the Texas Government Code, relating to contracting with an executive of a state agency. If §669.003 applies, Vendor will complete and return the following information to the Texas A&M AgriLife Purchasing Department:
Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Vendor: _____
Date of Employment with Vendor: _____
5.8 Vendor agrees to comply with Texas Government Code §2155.4441, pertaining to service contract use of products produced in the State of Texas when they are available at a price and time comparable to products and materials produced outside this state.
5.9 Vendor understands that acceptance of funds under this purchase order acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct any audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office, or its successor, in the conduct of the audit or investigation, including providing all records requested.

Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor and the requirement to cooperate is included in any subcontract awards.

- 5.10 Pursuant to Chapter 2271, Texas Government Code, Vendor certifies Vendor 1) does not currently boycott Israel and 2) will not boycott Israel during the term of this purchase order or contract. Vendor acknowledges this agreement may be terminated and payment withheld if this certification is inaccurate.
- 5.11 Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Vendor certifies Vendor is not engaged in business with Sudan, Iran, or a foreign terrorist organization. Vendor acknowledges this agreement may be terminated and payment withheld if this certification is inaccurate.
- 5.12 A state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been convicted of any offense related to the direct support or promotion of human trafficking. Under §2155.0061, Texas Government Code, the Vendor certifies that the individual or business entity named in this purchase order is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
- 5.13 By accepting this agreement, Vendor and each person signing on behalf of Vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by the Agency or TAMUS, has direct or indirect financial interest in the award of this agreement, or in the services to which this agreement relates, or in any of the profits, real or potential, thereof.
- 5.14 Vendor acknowledges and understands that §2252.901, Texas Government Code, prohibits TAMUS from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the Agency within the past twelve (12) months. If Vendor is an individual, by accepting this purchase order or contract, Vendor certifies that §2252.901, Texas Government Code, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.
- 5.15 A child support obligor who is more than 30 days delinquent in paying child support, and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until (a) all arrears have been paid or (b) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under §231.006, Texas Family Code, the Vendor certifies that the individual or business entity named in this contract is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 5.16 Vendor acknowledges it is their responsibility to ensure that employees participating in work for any Texas A&M System member have not been designated by the Texas A&M System as Not Eligible for Rehire as defined in System Policy 32.02, §4. Non-conformance to this requirement may be grounds for termination of this agreement.
- 6. CONFLICTING TERMS & CONDITIONS.** As a state agency, the Agency is subject to constitutional and statutory limitations on its ability to enter into certain contractual terms and conditions. Terms and conditions issued and/or referenced by Vendor relating to these limitations will only be binding on the Agency to the extent permitted by the Constitution and the laws of the State of Texas.
- WARNING: CONFLICTING TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF THE QUOTE. (E.G., QUOTES WITH THE LAWS OF A STATE OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC.)**
7. **AWARD OF CONTRACT.** A quote or response to an Invitation for Bid ("IFB") is an offer to contract with the Agency based upon the terms, conditions and specifications contained herein. Offers do not become contracts until they are accepted, and an authorized purchase order is issued.

8. **PAYMENT.** All invoices shall be itemized, showing order number and Agency purchase order number. The Agency will incur no penalty for late payment if payment is made in 30 or fewer days from receipt of goods or services and an uncontested invoice. All payments will be made in accordance with the Texas Prompt Payment Act, Texas Government Code, Chapter 2251. Payments will be made by direct deposit whenever possible. In order to receive payment under this contract, Vendor must electronically submit an invoice to the Agency as instructed on the purchase order. The invoice must include the following information and/or attachments to ensure payment:
- (1) Name and address of Vendor.
 - (2) Vendor's Texas Identification Number (TIN).
 - (3) Vendor's invoice remittance address.
 - (4) The purchase order or contract number authorizing the delivery of products or services.
 - (5) A description of what Vendor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, Vendor must also include the payment number (e.g., 1 of 36).

Please note: If the invoice is not emailed as instructed, payment may be delayed.

9. **PATENTS OR COPYRIGHTS.** Vendor agrees to protect the Agency from claims involving infringement of patents or copyrights.
10. **VENDOR ASSIGNMENTS.** Vendor hereby assigns to the Agency any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States 15 U.S.C.A. §1, et seq. (1973), and which arise under the antitrust laws of the State of Texas, Texas Business and Commerce Code Ann. §15.01, et. Seq. (1967).
11. **PUBLIC INFORMATION.** Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Pursuant to Texas Government Code, §552.021 and §552.023, individuals are entitled to request, receive, review, and correct information collected by the Agency related to the individual. Please submit requests for information via email to openrecords@ag.tamu.edu.
- Vendor acknowledges that the Agency is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this agreement, as well as any other disclosure of information required by applicable Texas law. Upon the Agency's written request, Vendor will promptly provide specified contracting information exchanged or created under this agreement for or on behalf of the Agency. Vendor acknowledges that the Agency may be required to post a copy of the fully executed agreement on its internet website in compliance with §2261.253(a)(1), Texas Government Code. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement, and Vendor agrees that this agreement can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter.
12. **EXPORT CONTROL.** Vendor will comply with all applicable US Export Control laws and regulations to include the Export Administration Regulations (EAR), the International Traffic in Arms (ITAR) and any other applicable US export laws and regulations. As an institution of higher learning, the Agency typically does not take receipt of export-controlled goods, technical data, services or technology ("Materials") except as may be specifically agreed by the Agency. Vendor will not provide or make accessible to the Agency any export controlled Materials without first informing the Agency of the export-controlled nature of the Materials and obtaining from the Agency its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to the Agency. Vendor will obtain government approval or export license, if required, from the appropriate US government agency and will share that information with the Agency prior to delivery of such Materials. In the event that any purchased item is export controlled under the US Export Control Regulations, Vendor will provide the Agency with the export control classification and failure to do so may result in the cancellation of this agreement.

13. **VENDOR ACCESS.** Vendor hereby acknowledges responsibility to comply with all applicable Agency policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptance use policies, and non-disclosure as

required by the Agency.

For purposes of this section concerning vendor access, 'Confidential Information' is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in §51.914 of the Texas Education Code); and medical records. 'Mission Critical Information' is information that is defined by the Agency to be essential to the continued performance of the mission of the Agency, the unavailability of which would result in consequences to the Agency.

In the event Vendor should obtain or be granted access to Confidential and/or Mission Critical Information of the Agency ("Agency Information"), Vendor will keep and protect Agency Information confidential to no less than the same degree of care as required by Agency policies, rules and procedures. At the expiration or early termination of this agreement, Vendor agrees to return all Agency Information or agrees to provide adequate certification that the Agency Information has been destroyed. Vendor, its employees, agents, contractors, and subcontractors shall use the Agency Information solely in connection with performance by Vendor of the services provided to the Agency pursuant to this agreement, and for no other purpose. Should Vendor, its employees, agents, contractors, or subcontractors acquire other Agency Information during the course of this agreement, it shall not be used for Vendor's own purposes or divulged to third parties. Vendor shall comply with all terms and conditions of any Agency non-disclosure agreement applicable to this agreement. Failure to comply with the requirement not to release information, except for the sole purpose stated above, will result in cancellation of this agreement and eligibility for Vendor to receive any Agency Information from the Agency for a period of not less than five (5) years.

Both parties shall each provide contact information for specific individuals. Should the designated contact for either party need to be changed, the new contact information shall be updated and provided to the respective parties within 24 hours of any staff changes. Should Vendor have a need to access Agency Information, that request shall be directed to the Agency's designated contact. Further, Vendor is responsible for reporting all security breaches directly to Texas A&M AgriLife Information Technology's Chief Information Security Officer.

14. **ACCESS BY INDIVIDUALS WITH DISABILITIES.** Vendor represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to the Agency under this agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Vendor becomes aware that the EIRs, or any portion thereof, do not comply then Vendor represents and warrants that it will, at no cost to the Agency, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.
15. **SUSTAINABILITY.** The Agency is committed to Agency-wide sustainability initiatives. Support of these initiatives necessarily includes the purchase of goods and services that minimize the impact on the environment to the greatest extent possible. The Agency requests Vendor's assistance in campus sustainability initiatives by informing in any bid response, or other discussions, of Vendor's sustainability practices or environmentally sustainable product offerings. For example, alternative products available from Vendor which may be recyclable or reusable, end of life (obsolescence) return of equipment to Vendor, energy-saving devices, return to Vendor of shipping containers, packaging or like excess materials.
16. **DISPUTE RESOLUTION.** Vendor must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this agreement and is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code.

To initiate the process, Vendor shall submit written notice, as required by Subchapter B, to:

Dr. Elizabeth Parker, Texas A&M AgriLife Research
Dr. Angela Burkham, Texas A&M AgriLife Extension Service
Dr. Amy Swinford, Texas A&M Veterinary Medical Diagnostic Laboratory (TVMDL)

Said notice shall also be given to all other representatives of the Agency and Vendor otherwise entitled to notice under the parties' agreement. Compliance by Vendor with Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.

17. **FORCE MAJEURE.** Neither party will be in breach of its obligations under this agreement (other than payment obligations) or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if, and to the extent that, it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. Force Majeure is defined as: 1) acts of God; 2) war; 3) acts of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strikes; 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemics, pandemics, or other national, state, or regional emergencies; and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and which notice must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s).

Notwithstanding the foregoing, a party's financial inability to perform its obligations shall in no event constitute a Force Majeure.

18. **INDEPENDENT CONTRACTOR.** Vendor is an independent contractor, and neither Vendor, nor any employee of Vendor, shall be deemed to be an agent or employee of the Agency. The Agency will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Vendor shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of the Agency relative to conduct on its premises.
19. **GOVERNING LAW.** The validity of this agreement and all matters pertaining to this agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
20. **VENUE.** Pursuant to §85.18, Texas Education Code, venue for any suit filed against the Agency shall be in Brazos County, Texas.
21. **RECORDS RETENTION.** Vendor shall preserve all contracting information, as defined under Texas Government Code, §552.003(7), related to this agreement for the duration of the agreement and for seven (7) years after the conclusion of the agreement.
22. **NON-DISCRIMINATION.** Vendor and its agents and employees are prohibited from engaging in or allowing any impermissible discrimination on the basis of race, religion, color, national origin, age, sex, disability, genetic information or veteran status in relation to (1) Vendor's employment practices; (2) the performance of Vendor's obligations under this agreement. In performing its obligations under this agreement, Vendor shall be subject to, and shall comply with, all currently effective or subsequently promulgated policies regarding non-discrimination issued by either the Agency or the Texas A&M University System.
23. **TERMINATION.**
- 23.1 **Convenience.** The Agency may, in its sole discretion, terminate this agreement upon thirty (30) days' written notice to Vendor. Such notice may be provided by facsimile or certified mail return receipt requested and is effective upon Vendor's receipt. In the event of such termination, Vendor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of

termination. The Agency shall be liable only for payments for any goods or services ordered from Vendor before the termination date.

- 23.2 Cause/Default. In the event of substantial failure by Vendor to perform in accordance with the terms of this agreement, the Agency may terminate this agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the Agency.
- 23.3 Loss of Funding. This agreement is subject to termination or cancellation, without penalty to the Agency, either in whole or in part, subject to availability of state, federal, or local funding.
- 23.4 Rights upon Termination or Expiration. In the event this agreement is terminated for any reason, or upon its expiration, the Agency shall retain ownership of all associated work products and documentation obtained from Vendor under this agreement. Further, the Agency and the State of Texas shall not be liable to Vendor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Vendor may be entitled to the remedies provided in Texas Government Code, Chapter 2260. No later than the first calendar day after the termination of this agreement, or at the Agency's request, Vendor shall deliver to the Agency all completed, or partially completed, work and any and all documentation or other products and results of these services.