

PRAIRIE VIEW A&M UNIVERSITY (PVAMU) TERMS AND CONDITIONS
ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF THE
PURCHASE ANY EXCEPTIONS THERETO MUST BE IN WRITING

1. **SPECIFICATIONS AND VENDOR REQUIREMENTS** - Vendors shall comply with all federal, state, local laws, statutes, rules and regulations applicable to the performance of its obligations under this Agreement.
 - 1.1 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.
 - 1.2 Unless otherwise specified, items shall be new and unused and of current production, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in an Invitation for Bid (IFB).
 - 1.3 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.
 - 1.4 PVAMU will not be bound by any oral statement of representation contrary to the written specifications of this Purchase Order.
 - 1.5 Applicable manufacturer's standard warranty shall apply unless otherwise stated in a corresponding Invitation for Bid (IFB). A copy of all such warranties should be submitted to the PVAMU Procurement Office bill to address on the form.
 - 1.6 Purchases should be "F.O.B. destination, freight prepaid and allowed". 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.
 - 1.7 PVAMU 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 University.
 - 1.8 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.
 - 1.9 Prices are firm for 90 days from the offer, unless otherwise agreed to in writing. Cash discounts were not considered in determining the best value. All cash discounts will be taken if earned.
 - 1.10 Non-Assignment - Vendor shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of PVAMU.
2. **DELIVERY** - If delay is foreseen, vendor shall give written notice to PVAMU. Vendor must keep PVAMU advised at all times of status of order. Default of promised delivery (without accepted reasons) or failure to meet specifications authorizes PVAMU to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting vendor. Compensatory or liquidated damages may be assessed.
 - 2.1 No substitutions or cancellations permitted without written approval of PVAMU Procurement Office.
 - 2.2 Delivery shall be made during normal working hours only, unless prior approval has been obtained from PVAMU Procurement Office.
 - 2.3 Each shipment must be accompanied by a packing slip showing the PVAMU Purchase Order number and the description, quantity shipped and any backordered quantity for each item shipped. Each package must be clearly marked with the destination address.
 - 2.4 **INSPECTION AND TESTS**. All goods will be subject to inspection and test by PVAMU to the extent practicable at all times and places. Authorized PVAMU personnel shall have access to any VENDOR'S place of business for the purpose of inspecting merchandise. Tests shall be performed on samples submitted with the bid 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 used and the cost of the testing shall be borne by the VENDOR. Goods which have been delivered and rejected in whole or in part may, at PVAMU's option, be returned to the VENDOR or held for disposition at VENDOR'S risk and expense. Latent defects may result in revocation of acceptance.
3. **AWARD OF CONTRACT** - This Purchase Order is a contract between the Vendor and PVAMU. The terms and conditions of this Purchase Order, and if applicable, an accompanying IFB or other written contract constitute the entire written agreement between the Vendor and PVAMU.
 - 3.1 **INDEPENDENT CONTRACTOR**. Notwithstanding any provision of this Agreement to the contrary, the Parties hereto are independent contractors. No employer-employee, partnership, agency, or joint venture relationship is created by this Agreement or by Vendor's service to PVAMU. Except as specifically required under the terms of this Agreement, Vendor's (and its representatives, agents, employees and subcontractors) will not represent themselves to be an agent or representative of PVAMU or A&M SYSTEM. As an independent contractor, Vendor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers' compensation insurance. Vendor and its employees shall observe and abide by all applicable PVAMU policies, regulations, rules and procedures, including those applicable to conduct on its premises.
- 3.2 The terms and conditions of this purchase order may not be amended unless agreed to in writing between vendor and PVAMU. Requested modifications or changes to the terms of this purchase order must be submitted in writing to the issuing Procurement Officer and confirmed in writing with a modified purchase order prior to performance of the contract.
- 3.3 This contract shall be governed, construed and interpreted by the Constitution and under the laws of the State of Texas as the same may be amended from time to time. Any legal actions must be filed in Waller County, Texas.
- 3.4 **FUNDING OUT**: This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature.
- 3.5 **CONFLICTING TERMS & CONDITIONS**: Negotiated terms and conditions may take precedence over the terms and conditions of this purchase order if said terms and conditions are considered in determining the best value or are in the best interest of the University. Additional terms and conditions attached to a bid, quote or other vendor document will not be considered unless specifically referred to on the form. **WARNING: SUCH TERMS AND CONDITIONS MAY RESULT IN DISQUALIFICATION OF A BID. (E.G. BIDS WITH THE LAWS OF A STATE OTHER THAN TEXAS, REQUIREMENTS FOR PREPAYMENT, LIMITATIONS ON REMEDIES, ETC.). TO THE EXTENT THE LANGUAGE IN THE PURCHASE ORDER IS IN CONFLICT WITH ANY LANGUAGE IN THE VENDOR'S CONTRACT DOCUMENTS, THE LANGUAGE OF THE PURCHASE ORDER WILL CONTROL.**
4. **PAYMENT** - Payment will be made upon submittal and approval of a valid invoice. The University shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice. A properly submitted invoice will be in accordance with Texas Administrative Code, Title 34, Part 1, Chapter 20, Subchapter D. Payments.
 - 4.1 Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Vendor agrees that any payments owing to Vendor under this Agreement may be applied directly toward certain debts or delinquencies that Vendor owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
5. **PATENTS OR COPYRIGHTS** - The vendor agrees to protect PVAMU from claims involving infringement of patents or copyrights.
6. **VENDOR ASSIGNMENTS** - Vendor hereby assigns to PVAMU any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. Section 1, et. Seq. (1973), and the antitrust laws of the State of Texas, TEX Bus. & Comm. Code Ann. Sec. 15.01, et. Seq. (1967). Vendor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it without the prior written consent of PVAMU.
7. **VENDOR AFFIRMATION** - Vendor acknowledges that any false statement made by the vendor, whether communicated verbally or in writing, constitutes a material breach of contract and shall void, if applicable, any submitted bid or any resulting contracts, and the vendor shall be removed from all vendor lists. By accepting this purchase order and providing the goods and services indicated herein, the vendor hereby certifies that:
 - 7.1 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 this purchase order.
 - 7.2 Vendor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) and all subsequent immigration laws and amendments.
 - 7.3 Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas.
 - 7.4 Neither vendor nor the firm, corporation, partnership or institution represented by the vendor, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of this State, or the Federal Antitrust Laws (see Section 6 above) nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.
 - 7.5 Vendor has not received compensation for participation in the preparation of the specification for this purchase order.
 - 7.6 **Delinquent Child Support Obligations**. 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 all arrears are paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, Vendor certifies that it is not ineligible to receive the payments

under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

- 7.7 Pursuant to Section 2155.004 Government Code vendor certifies that the individual or business entity name in this purchase order is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.
- 7.8 The Contractor must comply with the applicable provisions of the Drug-Free Work Place Act of 1988.
- 7.9 Vendor shall defend, indemnify, and hold harmless the State of Texas, PVAMU all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Vendor or any agent, employee, subcontractor, or Vendor in the execution or performance of this contract.
- 7.10 Vendor agrees that any payment due under this contract will be applied towards eliminating any debt or delinquency, regardless of when it arises, including but not limited to delinquent taxes and child support that is owed to the State of Texas. Vendor shall comply with rules adopted by the state under §§403.055, 403.0551, 2252.903, Gov't Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas 7.11 Vendor agrees to comply with Government Code 2155.4441, pertaining to service contract use of products in the State of Texas.
- 7.11 To the extent that Texas Government Code, Chapter 2270 applies to this Agreement, Vendor/Contractor certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Vendor/Contractor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- 7.12 Pursuant to Subchapter F, Chapter 2252.152, Texas Government Code, Vendor certifies Vendor is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated if this certification is inaccurate.
- 7.13 Vendor certifies that the entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>
8. **DISPUTE RESOLUTION** - Dispute Resolution. To the extent that Chapter 2260, Texas Government Code is applicable to this Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by PVAMU and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of PVAMU who shall examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim. This provision and nothing in this Agreement waives PVAMU's sovereign immunity to suit or liability, and PVAMU has not waived its right to seek redress in the courts.
9. **NON-WAIVER** - Vendor expressly acknowledges that PVAMU is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by PVAMU of its right to claim such exemptions, privileges, and immunities as may be provided by law.
10. **STATE AUDITOR'S OFFICE** - Vendor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Vendor will include this provision in all contracts with permitted subcontractors.
11. **PUBLIC INFORMATION ACT** - Vendor acknowledges that PVAMU 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 PVAMU's written request, Vendor will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of PVAMU to PVAMU in a non-proprietary format acceptable to PVAMU that is accessible by the public. Vendor acknowledges that PVAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 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. **LIMITATIONS OR NON-WAIVER** - As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of PVAMU to enter

into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on PVAMU'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"). Terms and conditions related to the Limitations will not be binding on PVAMU except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this Agreement by PVAMU nor any other conduct, action, or inaction of any representative of PVAMU relating to this Agreement constitutes or is intended to constitute a waiver of PVAMU's or the state's sovereign immunity.

- 12.1 **Non-Waiver Privileges and Immunities**. PVAMU is an agency of the state of Texas and under the Constitution and the laws of the state of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has authority as is granted to it under the Constitution and the laws of the state of Texas. Vendor expressly acknowledges that PVAMU is an agency of the state of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by PVAMU of its right to claim such exemptions, remedies, privileges, and immunities as may be provided by law, including the sovereign immunity of PVAMU.
13. **EXPORT CONTROL** - Vendor agrees to 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, PVAMU typically does not take receipt of export-controlled goods, technical data, services or technology ("Materials") except as may be specifically agreed by PVAMU. Vendor agrees that it will not provide or make accessible to PVAMU any export controlled Materials without first informing PVAMU of the export-controlled nature to the Materials and obtaining from PVAMU its written consent to accept such Materials as well as any specific instructions for delivering controlled Materials to PVAMU. Vendor agrees to obtain government approval or export license if required from the appropriate US Government agency and to share that information with PVAMU prior to delivery of such Materials. In the event that any purchased item is export controlled under the U.S. Export Control Regulations, Vendor shall provide PVAMU with the export control classification and failure to do so may result in the cancellation of the respective purchase order or agreement.
14. **INFORMATION SECURITY** - Pursuant to Title 1, Chapter 202, §202.77 of the Texas Administrative Code, VENDOR hereby acknowledges responsibility to comply with all applicable PVAMU policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by PVAMU.

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 Section 51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by PVAMU to be essential to the continued performance of the mission of PVAMU, the unavailability of which would result in consequences to PVAMU.

In the event Vendor should obtain or be granted access to Confidential and/or Mission Critical Information of PVAMU Information"), Vendor will keep and protect PVAMU Information confidential to no less than the same degree of care as required by PVAMU policies, rules and procedures. At the expiration or early termination of this Agreement, Vendor agrees to return all PVAMU Information or agrees to provide adequate certification that the PVAMU Information has been destroyed. Vendor, its employees, agents, contractors, and subcontractors shall use the PVAMU Information solely in connection with performance by Vendor of the services provided to PVAMU pursuant to this Agreement, and for no other purpose. Should Vendor, its employees, agents, contractors, or subcontractors acquire other PVAMU 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 PVAMU non-disclosure agreement applicable to this Agreement.

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 PVAMU Information, that request shall be directed to PVAMU's designated contact. Further, Vendor is responsible for reporting all security breaches directly to PVAMU.

15. **FEDERAL PROVISIONS** - If this order is a contract or subcontract under a U.S. Grant or Government Prime Contract, the applicable clauses listed through the websites below are incorporated into, and form a part of the terms and conditions of this order. In the event of any conflict between the terms and conditions of this Section 15.0 and any other provisions of this order, the terms and conditions of this Section 15.0 shall prevail. The term "UG" means Uniform Guidance, including revisions in effect on the date of this order. The term "FAR" means the Federal Acquisition Regulations, including revisions in effect on the date of this order. As used in the websites below, the terms "contract officer" and "Government" shall mean either buyer or the government (or the government Contracting Officer who has cognizance over buyer's prime contract), or both, as may be applicable and determined by buyer. The term "Contractor" shall mean "seller". In no event shall any such reference to a "Disputes" clause be construed to allow the seller, without the concurrence or approval of buyer, to prosecute and appeal either directly or in the name of buyer to the contracting officer for such Grant or Prime Contract. Seller represents that it has accessibility to the full text of UG and FAR through the following websites:
FAR - <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>
UG - https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl
16. **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.
17. **FORCE MAJEURE** - Neither party shall be held liable or responsible to the other Party no be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party's reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).
18. **INSURANCE** - Vendor acknowledges that, because PVAMU is an agency of the state of Texas, liability for the tortious conduct of employees of PVAMU or for injuries caused by conditions or use of tangible state property is provided solely by the provisions of the Texas Tort Claims Act (Texas Civil Practice and Remedies Code Chapters 101 and 104); and that workers' compensation insurance coverage for employees of PVAMU is provided by the A&M SYSTEM as mandated by the provisions of Chapter 502, Texas Labor Code. PVAMU shall have the right, at its option, to (a) obtain liability insurance protecting PVAMU and its employees and property insurance protecting PVAMU's buildings and contents, to the extent authorized by Section 51.966, Texas Education Code, or other law, or (b) self-insure against any risk that may be incurred by PVAMU as a result of its operations under the Agreement.
19. **NOT ELIGIBLE FOR REHIRE** - Vendor is responsible for ensuring that its employees involved in any work being performed for PVAMU under this Agreement have not been designated as "Not Eligible for Rehire" as defined in A&M System policy 32.02, *Discipline and Dismissal of Employees*, Section 4 ("NEFR Employee"). In the event PVAMU becomes aware that Vendor has a NEFR Employee involved in any work being performed under this Agreement, PVAMU will have the sole right to demand removal of such NEFR Employee from work being performed under this Agreement. Non-conformance to this requirement may be grounds for termination of this Agreement by PVAMU.
20. **VENUE** - Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against PVAMU is to be in the county in which the principal office of PVAMU's governing officer is located.
21. **USE OF NAME** - Each Party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that Party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that Party. Neither Party may use the Marks of the other without the advance written consent of that Party, except that each Party may use the name of the other Party in factual statements that, in context, are not misleading.
22. **SEVERABILITY** - In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The Parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and shall become effective on the date designated by such law or by regulation.
23. **EXECUTIVE ORDER GA-48** - Hardening of State Government, Vendor is not and if applicable, none of its holding companies or subsidiaries are a) listed in Section 889 of the 2019 National Defense Authorization Act ("NDAA") regarding telecommunications and video surveillance; b) listed in Section 1260H of the 2021 NDAA regarding Chinese military companies in the US; c) owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4 List"); or d) controlled by any governing or regulatory body located in a country on the 15 C.F.R. § 791.4 List. Respondent acknowledges that a false certification is grounds for immediate termination of any resulting contract or purchase order with no further obligation on the part of PVAMU.