

## Clint Independent School District Standard Terms and Conditions

**1. Seller of Package Goods:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed 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; and (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. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**2. Shipment Under Reservation Prohibited:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.

**3. Title and Risk of Loss:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.

**4. Delivery Terms and Transportation Charges:** All deliveries shall be freight prepaid FOB destination

with bid prices reflecting freight and delivery charges to locations within the District, unless otherwise described in the Special Terms and Conditions of this invitation to bid. Buyer 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 Buyer shall have the right to designate what method of transportation shall be used to ship the goods.

**5. No Placement 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. All delivered equipment, materials or merchandise must be new, unused, and in the manufacturer's original packing unless otherwise specified. 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 reasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.

**6. Place of Delivery:** The District will issue purchase orders during the bid period. No deliveries will be accepted without a corresponding valid purchase order. Delivery must occur within sixty (60) days after receipt of order (ARO) unless otherwise specified on the District purchase order. Failure to deliver awarded merchandise within 60 days will cancel the order. The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this agreement are "no arrival, no sale."

**7. Invoices and Payments:**

a. Seller shall submit separate invoices, in duplicate, on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, shall be attached to the invoice. Mail to: Clint Independent School District, Attn: Business Services Department, 14521 Horizon Blvd., El Paso, Texas 79928. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Business Services Department advised of any changes in your remittance addresses.

b. Buyer's obligation is payable only and solely from funds available for the purpose of the 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 Buyer.

c. Do not include Federal Excise, State or City Sales Tax. The District will furnish tax exemption certificate(s), if required.

**8. Gratuities:** The buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer 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 the District 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 canceled by Buyer pursuant to this provision, Buyer 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. Special Tools and Test Equipment:** If the price stated on the face hereof includes the cost of any special tooling or

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special 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 the Buyer and to the extent feasible shall be identified by the Seller as such.

### **10. Warranty Price:**

a. The price to be paid by the Buyer 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, Buyer 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, the Buyer 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.

**11. Warranty Products:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. 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. All equipment items awarded as a result of the bid will be covered by an all parts and labor warranty, including any/all transportation charges, for a minimum period of one (1) year, or as specified in the Special Conditions section of this bid.

**12. Safety Warranty:** Seller warrants that the product sold to Buyer 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, Buyer 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 or 30 days whichever is shorter, correction may be made by the Buyer at Seller's expense.

**13. No Warranty By Buyer 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 will give rise to the rightful claim of any third person by way of infringement or the like. Buyer 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 Buyer be liable to Seller for indemnification in the event that Seller issued 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 Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer 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 Buyer will pay Seller the reasonable cost of his search as to infringements.

**14. Right of Inspection:** Buyer shall have the right to inspect the goods at delivery before accepting them.

**15. Cancellation:** Buyer 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 insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies, which Buyer may have in law or equity.

**16. Termination:** The performance of work under this order may be terminated in whole or in part by the Buyer 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 Buyer set forth in Clause 15, herein.

**17. 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 Force Majeure in writing to

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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 herein 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 an act or acts of God, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, acts of war, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, arrests, restraint of government and people, civil disturbances, explosions, strikes, lockouts, or other industrial disturbances, breakage or accidents to machinery, pipelines or canal, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party of parties when such settlement is unfavorable in the judgment of the party having the difficulty.

**18. Assignment Delegation:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**19. 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 supported by consideration and is in writing signed by the aggrieved.

**20. Modifications:** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

**21. Examples:** When an article of a particular make or trade name is specified, it is done to establish a quality standard and is not intended to eliminate competing articles of equal standard. Vendors are at liberty to quote on substitutions giving complete details along with catalogs showing full specifications of each item. If no substitutions are indicated, it will be assumed that Quotes are based on the specifications provided.

**22. Purchases:** Any purchases made on behalf of the District shall be made using an approved and signed purchase order. A sample copy of an approved and signed purchase order will be provided upon request. Vendors should not accept verbal orders over the phone, if done it is done at your own risk. The Buyer will not be held liable for and will refuse payment for any goods, merchandise or services delivered by the Seller without an approved purchase order in place.

**23. Backorders:** The Buyer does not accept backorders and partial payments will not be made. In the event that an item ordered is not currently available then the Seller must contact the Buyer to notify them of the backorder. The Buyer will then decide whether to proceed with the order, less the back ordered item, or cancel the order.

**24. Interpretation Parole Evidence:** This writing is intended by the parties as a final expression of their agreement and is intended 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.

**25. 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.

**26. Advertising:** Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer 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.

**27. 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

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repudiation of the contract.

28. **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in El Paso County, Texas.

**29. Prohibition Against Personal Interest in Contracts:**

- a. Any board member which has any substantial interest, either direct or indirect, in any business entity seeking to contract with the district, shall before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.
- b. No employee of the District will have a direct financial interest in any contract with the District, nor will an employee have a direct financial interest in the sale to the District of any land, equipment, supplies and materials, or services. Any violation of this policy will render the contract involved void, unless such contract or sale is approved by the Board of Trustees after full disclosure.

**30. Bid Responses:**

- a. Bidders are encouraged to submit bids on any or all items or services their firms can provide. The award will be made to the lowest responsible bidder who submits a responsible bid, as per bid specifications, which is the most advantageous to the District. All prices are to be your lowest and best net price, F.O.B. Destination, on each item. The unit price for each item offered is to include all applicable discounts. In case of error in extension, unit price will govern.
- b. A specific statement of delivery after receipt of order (ARO), for each item must be made a part of this bid, and will be a significant determinant in the award for an item where price differences exist if requested on the bid form.
- c. Bids will not be accepted and tabulated unless the Vendor Identification portion of the bid form is completely filled out and contains an original signature, in ink, by an authorized representative of the company. Each bid form response shall be typewritten or handwritten in ink. By the signature affixed to the bid form, the bidder thereby certifies that neither the bidder nor the firm, corporation, partnership or institution represented by the bidder, or anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15:01 et seq. Texas Business and Commerce Code, or the antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Unsigned bids will be considered a NO BID.

31. **Estimated Quantities:** It is specifically understood and agreed that the quantities shown on the bid form are estimates, based on projected use, and are for bid purposes only. The District has no commitment to the vendor to purchase a specific quantity until a Purchase Order is issued. Any increase in quantities will be paid for at the quoted bid price, unless required by law to be re-bid. It is further understood that the supplier will not have any claim against the District for the purchase of quantities less than the estimated amount.

32. **Product Standards:** When a brand name and identification numbers are shown on the bid form, they indicate an acceptable standard, the features of which must be considered when bidding equals. This brand name is used only to establish a quality level, and basic features required. Bids on equivalent or better items are encouraged, but must be accompanied with appropriate information for evaluation purposes. Failure to include such information will disqualify the bid on that item. If bidding on other than reference specifications, bid must identify manufacturer, brand, model, etc., of the article being offered. If other than brand(s) specified is offered, complete descriptive information in literature form of each article being bid must be included with the bid. If bidder takes no exception to specifications of reference data, he will be required to furnish brand names, models, etc., as specified.

33. **Product Samples and Demonstrations:** Samples and/or demonstrations for evaluation purposes must be provided, at no cost or obligation to the District, within ten (10) days of request unless specified otherwise in the Special Terms and Conditions attached to this bid invitation. Samples, if not destroyed in examination, will be returned to the bidder on request, at the bidder's expense. Each sample, when requested, should be marked "Product Sample" and include bidder's name, address, phone number, Bid Number and item number.

34. **Awarding Bids:** The District in accordance with Section 44.031(B) of the Public Education Code may consider the following or combination of the following in the awarding of bids and proposals

Purchase Price

Reputation of the vendor and the vendors goods or services The quality of the vendors goods or services

The extent to which the goods or services meet the district needs The vendor's past relationship with district

The impact on the ability of the district to comply with laws and rules relating to historically under-utilized businesses

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The total long-term cost to the district to acquire the vendor's goods or services and any other relevant factor specifically listed in the request for bids or proposals

35. **Right to Re-bid:** The District reserves the right to re-bid any item contained in this bid invitation, when fair market value of the item(s) is reduced by a factor of ten (10) percent.

36. **Price Per Unit:** Unit prices are to be based on the unit of measure requested on the bid form provided such as each, pound, serving, pair, gross, foot, pint, gallon or ounce. Failure to do so will disqualify the bid on that time. All charges, including delivery costs, must be included in the bid price.

37. **Term of Contract:** Bid prices must prevail for a period of one year from the date of award unless stated otherwise in the Special Terms and Conditions of the attached Bid Invitation.

38. **Non-appropriations Clause:** This agreement is subject to the appropriation of funds by the District in its budget adopted for any fiscal year for the specific purpose of making payments pursuant to this Agreement for that fiscal year. The obligation of the District pursuant to this agreement in any fiscal year for which this Agreement is in effect shall constitute a current expense of the district for that fiscal year only, and shall not constitute an indebtedness of the District of any monies other than those lawfully appropriated in any fiscal year. In the event of non-appropriation of funds in any fiscal year to make payments pursuant to this Agreement, this Agreement may be terminated.

39. **Extensions:** The District reserves the option to renew this contract for an additional period(s) if service is satisfactory of one year and if escalation does not exceed five (5) percent per year, or if price reductions are offered; and the renewal is agreed to in writing by both parties.

40. **Failure to Honor Bid Prices:** Any vendor failing to honor a bid submitted or delivering items not meeting specifications may be removed from the bid list for a period of two (2) years. Items delivered not as specified on the award will be the responsibility of the vendor to recover and credit to the District at no expense to the District.

41. **Failure to Respond to Bid Invitation:** Failure to participate in two (2) successive bid invitations will constitute grounds to remove a vendor from the bid list.

42. **Bid Withdrawal:** Any request to withdraw a bid prior to the scheduled time of opening must be submitted in writing to the Director of Purchasing.

43. **Requests for Interpretation and Clarification:** If any bidder is in doubt as to the meaning of any part of this bid document, he may submit to the Purchasing Manager, a written request for an interpretation thereof at least seventy-two (72) hours prior to the hour for opening of bids. The person submitting the request will be responsible for its prompt delivery. An interpretation of the proposed documents will be made only by addendum thereto duly issued, and a copy of such addendum will be mailed or delivered to each company receiving a set of the bid documents. The District will not be responsible for any other explanation or interpretations of the proposed documents. All respondents wishing to contest a recommendation for award of solicitations are required to submit a letter to the Board of Trustees relevant to the bid stating the reason(s) for contesting the recommendation of award of bid(s). This letter will be filed with the Superintendent of schools no less than forty-eight (48) hours prior to the meeting of the Board of Trustees where this particular bid is on the agenda for action.

44. **Failure to Meet All Terms and Conditions:** Failure to meet all Standard Terms and Conditions will constitute grounds for invalidating the bid(s).

45. **Material Safety Data Sheets (MSDS):** The District requires product verification in the form of MSDS reports for all items for which the MSDS are available. MSDS shall be submitted at the time of the bid opening and with each delivery of those materials. MSDS shall be submitted for any product offered as an alternate to the Specifications.

46. **Deviations:** List any deviations from the specifications on the accompanying deviations form. Bidders must list all deviations for products offered as equals to specified products.

47. **Penalties for Non-Performance:** If at any time, the contractor fails to fulfill or abide by the terms, conditions, or specifications of the contract, the District reserves the right to:

a. Purchase on the open market and charge the contractor the difference between contract and actual purchase price, or

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- b. Deduce such charges from existing invoice totals due at the time, or
- c. Cancel the contract within thirty (30) days written notification of intent.

48. **Bidder Qualification:** All bidders shall be required to prove their qualifications concerning the following criteria:

- a. Financial capabilities
- b. Bonding status
- c. Contractual history (references)
- d. Ability to fulfill and abide by the terms and specifications
- e. Quality and stability of product and sources.

49. **Felony Conviction Notice/Debarment and Suspension:** Texas Education Code requires that "a person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." In addition, the District cannot enter into a contract with any company that has been debarred or suspended under the terms of Executive Order 12549, "Debarment and Suspension." Certification that the contractor has not been debarred or suspended must likewise appear in the Felony Conviction/Debarment Notice. All bidders are required to complete this form, regardless of status.

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50. **Insurance Requirements:** Insurance required - The contractor shall provide the following insurance certification in the amounts shown and under the conditions noted before any authorization will be given to commence delivery or installation. Certificates of Insurance may be submitted to CISD by the successful bidder after the award is made.

General

1. No work will be commenced until all requirements of this section have been approved by the District in writing. The District will be furnished a certificate of insurance acceptable, prior to the commencement of any work.
2. The insurance shall contain a provision that at least thirty (30) days prior written notice shall be given to the District in the event of cancellation, material change or non-renewal.
3. Insurance shall be underwritten by a company rated not less than B+VII in the Best's latest published guide
4. There shall be a hold harmless agreement in which the contractor assumes liability on the contract and holds the District harmless.
5. The contractor shall purchase and maintain in force the following kinds of insurance and bonds for operations under construction contracts and as specified in each section:

Casualty Insurance

Workers' compensation – Statutory Limits

Employers liability:

<u>\$ 500,000</u>	<u>Each accident</u>
<u>\$ 500,000</u>	<u>Disease – Policy limit</u>
<u>\$ 500,000</u>	<u>Disease – Each employee</u>

General Liability:

<u>\$1,000,000</u>	<u>Each Occurrence</u>
<u>\$2,000,000</u>	<u>General Aggregate</u>
<u>\$2,000,000</u>	<u>Products/Completed Operations</u>
<u>\$1,000,000</u>	<u>Personal &amp; Advertising Injury</u>
<u>\$ 50,000</u>	<u>Fire Damage Legal Liability</u>
<u>\$ 5,000</u>	<u>Premises Medical Payments</u>

**District to be named as an additional insured**

Automobile Liability \$1,000,000 combined single limit for bodily and/or Property damage

**District to be named as an additional insured**

Excess /Umbrella liability \$3,000,000 per occurrence

No deletions/exclusions from standard coverage form allowed without written consent of the District.

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**51. Noting Proprietary Information:** If the offeror wishes to protect trade secrets or proprietary information contained in the proposal, a note must be attached to the first page of the proposal specifically stating which data or other materials should not be subject to disclosure and noting the page(s) on which the information appears. The offeror must state the reason why protection is necessary.

**52. Public Inspection of Procurement Records:** Proposals submitted will be subject to public inspection in accordance with the Texas Procurement Act. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Texas Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.