

**MIDWESTERN STATE UNIVERSITY
STANDARD TERMS AND CONDITIONS**

TO VENDOR OF MIDWESTERN STATE UNIVERSITY:

The Purchasing Office, under the direction of the Chief Financial Officer, has authority to obligate Midwestern State University ("MSU") for the purchase of the supplies, equipment and service. MSU will not assume liability for payment of obligations undertaken which have not been made in accordance with MSU policies and procedures and approved by the designated purchasing officers for MSU.

DELIVERY:

1. If delay in delivery is foreseen, Vendor shall notify MSU, Purchasing Office, 2733 Midwestern Parkway, Wichita Falls, TX 76308, (940) 397-4277. MSU has the right to extend delivery date if reasons appear valid. Default in promised delivery (without acceptable reasons) or failure to meet specifications authorizes MSU to purchase supplies elsewhere and charge full increase in cost, if any, to defaulting contractor.
2. No substitutions or cancellations permitted without approval of MSU's Purchasing Office.
3. The Texas Health and Safety Code, Chapter 502, Texas Hazard Communication Act, requires chemical manufacturers and distributors to provide Material Safety Data Sheets (MSDS's) for hazardous materials sold. Products covered by the Act must be accompanied by a MSDS and such product labeled in compliance with the law. If the product is not covered under the Act, a statement of exemption must be provided.
4. Delivery shall be made during normal working hours only to the location shown on the front side of this purchase order.

PAYMENT:

1. MSU is exempt from State Sales Tax and Federal Excise Tax. Tax Exemption Certificate furnished on request.
2. Vendor shall submit an itemized invoice showing purchase order ("Order") number and a valid Vendor ID number.
3. Materials will be considered received by MSU upon final acceptance by the end user.
4. If a Vendor is a taxable entity as defined by Chapter 171, Texas Tax Code ("Chapter 171"), Vendor certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Vendor is exempt from the payment of those taxes, or that Vendor is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
5. Pursuant to Sections 2107.008 and 2252.903, Texas Government Code, Vendor agrees that any payments owing to Vendor under this Order may be applied directly toward any debt or delinquency that Vendor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
6. Pursuant to the Texas Family Code Section 231.006, Texas Government Code Sections 2155.004 and 2155.006, Vendor certifies that it is not ineligible to receive the Order and payments pursuant to the Order and acknowledges that the Order may be terminated and payment withheld if this representation and warranty is inaccurate.
7. All payments shall be made in accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act). Standard payment terms in accordance with the Texas Prompt Payment Act are net 30 days from receipt of materials/services, or receipt of invoice, whichever is later, unless otherwise specified by the purchase order. Invoices shall be mailed to **3410 Taft Blvd, Wichita Falls, TX 76308, Attn: Purchasing**.
8. All payments shall be in accordance with MSU's policy and procedures located online at:
<https://msutexas.edu/purchasing/assets/files/purchasing-general/purchasingmanualmay2013.pdf>

GENERAL:

ALTERNATIVE DISPUTE RESOLUTION: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by MSU and Vendor to attempt to resolve any claim for breach of contract made by Vendor, to the extent it is applicable to the Order and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by MSU or the State of Texas of the right to seek redress in a court of law.

ASSIGNMENT: The parties recognize that this Order is based upon the skill and expertise of the parties and therefore agree that the Order and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this Order.

COMPLIANCE WITH LAW: Vendor shall certify that he/she or it is in compliance with all applicable state and federal laws, including non-discrimination laws as it relates to the terms and conditions of the Order.

NON-APPROPRIATIONS: Vendor understands that MSU is a governmental entity, and should the Legislature fail to provide funding for any period during the term of this Order, MSU shall be excused for all liability for payment. MSU is required to give Vendor written notice within thirty (30) days after learning that the funds will not be available. Upon receiving written notice from MSU, this Order will automatically terminate.

NOTICES: Any notice given under this Order by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

OFFICIALS NOT TO BENEFIT: No trustee, officer, director, regent, employee, administrator and representative of MSU shall be admitted to any share or part of this Order or to benefit that may arise therefrom.

GOVERNING LAW/VENUE: This Order and any incorporated documents shall be governed by and construed in accordance with the laws of the State of Texas. The exclusive venue of any suit brought concerning this Order and any incorporated documents is fixed in any Court of competent jurisdiction in Wichita County, Texas.

SUBCONTRACTS: Any subcontracts and outside associates or consultants required by Vendor in connection with the services covered by this Order will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Vendor shall ensure that each subcontractor complies with all provisions of the Order. Vendor shall remain liable for the acts and omissions of such subcontractor (s) and the proper performance and delivery of the products and/or services set forth in the Order.

TAX EXEMPTION: MSU and Vendor agree that MSU will not be required to pay any taxes for which it can demonstrate an exemption.

CONFIDENTIALITY: Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval.

INTELLECTUAL PROPERTY: Vendor represents that it has all intellectual property rights necessary to enter into and perform its obligations under the Order and shall indemnify, defend, and hold harmless the State of Texas and MSU against any action, claim, liability, loss or expense related to such intellectual property rights and representations. Vendor will pay any damages attributable to such claim that are awarded against the State of Texas and/or MSU in a judgment or settlement.

INDEMNIFICATION: Vendor shall indemnify and hold harmless MSU, and each of its regents, officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages and liabilities, including without limitation attorneys' fees and reasonable litigation costs, arising out of, connected with, or resulting from any acts or omissions of Vendor or any agent, employee, subcontractor, or supplier of Vendor in the execution or performance of this Order, to the extent the claim arises from negligence, willful act, breach of contract or violation of law.

ACCESSIBILITY & SECTION 508 COMPLIANCE: Vendor is required to supply detailed information on how their proposed products, services and solutions address the requirements of Section 508 of the Rehabilitation Act of 1973 (revised)(if applicable). For each Information Communication Technology (ICT) product or service included in solicitation responses subject to Texas Administrative Code 1 TAC 206 & 1 TAC 213 (which includes the U.S. Section 508 technical specifications), the Vendor shall provide documentation of how each requirements or specification is met. If the vendor plans to provide commercial off the shelf (COTS) software as part or all of a solicitation response, the vendor shall provide a completed Voluntary Product Accessibility Template (VPAT) for each COTS product offered. For third party COTS products, the vendor must obtain and submit VPATS or links to them from the third party as part of the solicitation response. The VPAT template can be obtained at ITI's website: <https://www.itic.org/dotAsset/db71ce67-c44a-4925-8d46-f8a76c3a1db2.doc>

INSURANCE: In the event Vendor, its employees, agents, or subcontractors enter MSU property in the performance of this Order, Vendor shall maintain: (i) public liability and property damage insurance in the amount of \$100,000 per occurrence; (ii) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers

Liability coverage of \$500,000 per accident; (iii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iv) for engineers and architects only: Professional Liability coverage of \$5,000,000 per occurrence; and (v) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against MSU. Comprehensive General Liability and Commercial Automobile Liability policies must name MSU as Additional Insured. Vendor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by MSU. Vendor shall provide MSU Certificates of Insurance evidencing these insurance requirements prior to the start of the work.

AUDIT; INDEPENDENT AUDITS; RIGHT TO AUDIT; RETENTION; SUPPORTING DOCUMENTS: Vendor agrees and authorizes MSU and /or the State Auditor (collectively, "Auditor") to conduct audits or investigations in connection with this Order.

Vendor agrees to cooperate with Auditors conducting such audits or investigations and to provide all information and documents reasonably requested. Vendor will include this provision in all contracts with permitted subcontractors.

LIMITATIONS: The parties are aware that there are constitutional and statutory limitations on the authority of MSU (a state agency) to enter into certain terms and conditions of the Order, including, but not limited to, those terms and conditions relating to liens on MSU'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 MSU except to the extent authorized by the laws and Constitution of the State of Texas.

SOVEREIGN IMMUNITY: Except as otherwise provided by Texas law, neither the execution of the Order by MSU nor any other conduct, action or inaction of any MSU representative relating to the Order is a waiver of sovereign immunity by MSU or the State of Texas.

REPRESENTATIONS BY VENDOR: If Vendor is a business entity, Vendor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Order and is authorized to execute this Order according to its terms on behalf of Vendor.

PRODUCTS AND MATERIALS PRODUCED IN TEXAS: If Vendor will provide services under the Order, Vendor covenants and agrees that in performing its duties and obligations under the Order, it will purchase products and materials produced outside of Texas.

TRAVEL EXPENSES: If the Order requires MSU to reimburse for travel expenses, the Vendor shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines applicable to State of Texas employees.

RISK OF LOSS: All work performed by Vendor pursuant of the Order will be at Vendor's exclusive risk until final and complete acceptance of the work by MSU. In the case of any loss or damage to the work prior to MSU's acceptance, such loss or damage will be Vendor's responsibility.

PUBLICITY: Vendor shall not use MSU's name, logo, or likeness in any press release, marketing materials or other public announcement without receiving MSU's prior written approval.

LEGAL CONSTRUCTION/SEVERABILITY: In the event that any one or more of the provisions contained in this Order 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 provision, and this Order shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Order are declared to be severable. The Parties may mutually agree to renegotiate the Order to cure such illegality/invalidity or unconstitutionally if such may be reasonably accomplished.

NON-WAIVER: No covenant or condition of this Order may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

INDEPENDENT CONTRACTOR: This agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, partnership, or formal business organization of any kind, and the rights and obligations of the parties shall only be those expressly set forth herein. The relationship of the Vendor to MSU is and shall continue

to be that of an independent contractor, and no liability or benefits, such as worker's compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Order or its performance. No relationship, other than that of independent contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor.

TERMINATION FOR CONVENIENCE: Upon written notice to the Vendor, MSU may terminate this Order/Contract, in whole or in part, whenever MSU shall determine that such termination is in the best interest of MSU. MSU shall pay all reasonable costs incurred up to the date of termination. Vendor shall not be reimbursed for anticipatory profits.

TERMINATION FOR DEFAULT: When the Vendor has not performed or has unsatisfactorily performed the Order/contract, payment shall be withheld at the discretion of MSU. Failure on the part of a Vendor to fulfill contractual obligations shall be considered just cause for termination of the Order/contract and the Vendor is not entitled to recover any costs incurred by the Vendor up to the date of termination.

EMERGENCY HEALTH AND SAFETY PROCEDURES: In the event of pandemic, epidemic, viral outbreak, health crisis, or other emergency ("Emergency"), MSU may, at its sole discretion, implement new or modified health and safety procedures in order to protect the health and safety of the MSU community. In the event of Emergency, Contractor agrees to adhere to all such procedures and related directives from MSU when entering onto and performing services on MSU's campus. The current MSU COVID-19 Updates can be found at <https://msutexas.edu/coronavirus/index.php>

CONFIDENTIALITY:

- Texas Public Information Act. Notwithstanding any provision of this Order, University shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to University in an electronic format.
- FERPA. University hereby provides notice and the parties acknowledge that the Family Educational Rights and Privacy Act ("FERPA") applies to student educational records. No disclosure or re-disclosure of personally identifiable information of any Student shall be made except as allowed by FERPA and each party will limit its use of such information obtained from the other party to what is reasonable and necessary for legitimate educational interests under the purposes of this Order.
- HIPAA. The parties shall comply with all applicable federal, state, and local laws and regulations, including the Health Insurance Portability and Accountability Act ("HIPAA") and any other applicable law regulating the privacy of patient information. The parties will maintain the confidentiality of individually identifiable health information as required by HIPAA and as required by state law.

Marketing/Name/Licensed Marks:

Each party is the sole and exclusive owner of its name and Licensed Marks ("Licensed Marks" means the designs, trademarks, servicemarks, logotypes, seals, and certain logographics and/or symbols it has come to be associated with). Neither party may use the name or Licensed Marks of the other party in any advertising or promotional material except with the prior review, approval, and express written permission of the other party for a nonexclusive and nontransferable right to utilize the other party's name and/or Licensed Marks; likewise, neither party shall have the right to sublicense others to use the other party's name or Licensed Marks or to assign any part of them without the prior written consent of the other party. Each party reserves the right to review and approve all copy for news releases for the event. Permission required from MSU under this subsection must be obtained through its Marketing and Public Information Office.

Disclosure of Interested Parties:

This Order is subject to Texas Government Code Section 2252.908 and Chapter 46 of the Texas Ethics Commission. Accordingly, Vendor must comply with the statutory requirements before Midwestern State University may execute and enter into this Agreement. Pursuant to Texas Government Code Section 2252.908 and Chapter 46 of the rules of the Texas Ethics Commission, a state agency such as Midwestern State University may not enter into certain statutorily defined contracts with a business entity unless the business entity, in accordance with said statute and administrative rules, fills out and electronically files Texas Ethics Commission Form 1295 "Certificate of Interested Parties" with the Texas Ethics Commission at its website. The business entity then must generate a copy of the filing (either hard copy or

electronic) showing the filing certification number issued by the Commission's website, sign and swear to the hard copy, and deliver that copy to the state agency along with the signed contract. The state agency will then file notice of its receipt of both the completed disclosure of interested parties and the certification of filing with the Texas Ethics Commission not later than the 30th day after the state agency receives the Form 1295.

Entities that Boycott Israel:

If Vendor is required to make a certification pursuant to Section 2270.002 of the Texas Government Code, Vendor certifies that Vendor does not boycott Israel and will not boycott Israel during the term of the Order resulting from this solicitation. If Vendor does not make that certification, Vendor must indicate that in its Response and state why the certification is not Required.

ENTIRE AGREEMENT: This Order constitutes the entire contract and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing.