ANGELO STATE UNIVERSITY PURCHASE ORDER TERMS AND CONDITIONS

1. PROCUREMENT REQUIREMENTS

1.1 “University” shall mean either Angelo State University or Texas Tech University System. Both agencies are agencies of the State of Texas.

1.2 Vendor acknowledges, by signing any agreement documents and/or supplying the requested commodities and/or fulfilling the requested services that the Vendor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional written and signed agreement or purchase order and all associated documents and amendments. The University disclaims any terms and conditions provided by the Vendor unless agreed upon in writing by the parties. In the absence of such agreement between these terms and conditions and any terms and conditions provided by the Vendor, the terms and conditions provided herein shall prevail.

1.3 This Purchase Order supersedes all prior agreements, written or oral, between Vendor and the University and will constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. This Purchase Order and each of its provisions will be binding upon the parties and may not be waived, modified, amended, or altered except in writing, signed by the University’s Director of Purchasing or their designee and the Vendor. Waivers of a provision in one instance shall not preclude enforcement thereof on future occasions.

1.4 Vendor agrees that it will comply with federal, state, or local laws or regulations applicable to Vendor’s performance under the purchase order or agreement. Vendor further agrees that it will comply with applicable University Operating Policies and Procedures located at https://www.angelo.edu/pomnal/.

1.5 Purchases made for University use are exempt from the Texas State Sales tax and Federal Excise tax. Tax exemption certificates are available upon request. The University’s Texas taxpayer identification number is 7337737373. If the University is billed for any exempt taxes, they will be deducted from the invoice payment.

1.6 Vendor shall not assign, delegate, or subcontract any purchase order or agreement or any rights resulting from a bid or proposal without the prior written consent of the University and any attempt to the contrary shall be void and of no legal effect.

1.7 Headings are for reference purposes only and have no substantive effect.

1.8 All communications relating to this Purchase Order shall be directed to the Purchasing Department. When contacting the University’s Purchasing Department, the vendor/proposer shall provide the purchase order number for reference purposes. All notices, consents, approvals, demands, requests, or other communications relating to this Purchase Order shall be in writing and shall be delivered to Angelo State University, Purchasing Department, ASU Station #11034, San Angelo, Texas 76909 or hand delivered to Angelo State University, Administration Bldg, Room 110, 2601 W Ave N, San Angelo, Texas. All such correspondence must reference the purchase order number.

2. SPECIFICATIONS

2.1 Unless otherwise specified, items shall be new and unused and of current production.

2.2 All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from UL, FMRC or NEMA.

2.3 Samples, when requested, must be furnished free of expense to the University. If not destroyed in examination, they will be returned to the Vendor, on request, at Vendor’s expense. Each sample should be marked with Vendor’s name and address.

3. DELIVERY, INSPECTIONS AND TESTS

3.1 All prices must be FOB destination, freight prepaid, unless agreed upon on the purchase order document.

3.2 University shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by Vendor. Vendor at its option may reject all or any portion of such goods or services which do not conform in University’s sole discretion comply in every respect with each and every term and condition of this Purchase Order or that are damaged in transit. University may reject the effect the entire goods and services tendered even if only a portion thereof is nonconformity. If University elects to accept nonconforming goods or services, University, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate University for the nonconformity. Any acceptance by University, even if nonconformal, shall not be deemed waiver of or consent to any such defects, or waiver of rights to any other claims, remedies, or other consequences from any previous nonconformities.

3.3 No inspection, tests, approval (including design approval), or acceptance of items shall relieve Vendor from responsibility for latent defects, material misstatements or omissions, or Vendor’s warranty obligations.

3.4 Manufacturer or production of Items ordered shall be subject to the University’s acceptance or rejection of the product and any additional written and signed agreement or purchase order. All such correspondence must reference the purchase order number.

3.5 If Vendor is exempt from the payment of those taxes, or that 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.

3.6 The University is billed for any exempt taxes, they will be deducted from the invoice payment.

3.7 Delivery shall be made during normal working hours only, unless prior written approval has been obtained from University. No collect shipments will be accepted.

3.8 If delay is unforeseen, Vendor shall give written notice to the University’s Purchasing Department. Vendor must keep University advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes University to purchase supplies elsewhere and charge full increase, if any, in cost and handling to defaulting Vendor.

3.9 No substitutions are permitted without written approval of the University’s Purchasing Department.

3.10 Vendor shall bear all risk of loss on items covered by any resulting purchase order until final acceptance at the destination specified on the purchase order. University shall inspect the goods, but will not test or inspect the goods with respect to any defect unless a statement of default is received from University. Vendor shall promptly notify University of any such default, and University shall determine the same.

3.11 Vendor shall be responsible for the care and preservation of all items received until consumption by the University.

3.12 Each sample, when furnished, shall be marked with Vendor’s name and address.

3.13 The University is exempt from the payment of those taxes, or that 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.

3.14 Vendor shall bear all risk of loss on items covered by any resulting purchase order until final acceptance at the destination specified on the purchase order for default as provided in Termination Section.

3.15 No inspection, tests, approval (including design approval), or acceptance of items shall relieve Vendor from responsibility for latent defects, material misstatements or omissions, or Vendor’s warranty obligations.

3.16 Manufacturer or production of Items ordered shall be subject to the University’s acceptance or rejection of the product and any additional written and signed agreement or purchase order. All such correspondence must reference the purchase order number.

4. HAZARDOUS SUBSTANCE

4.1 “Hazardous Substance” means any pollutant, contaminant, hazardous or toxic substance or waste, solid waste, petroleum or any byproduct thereof, or any other chemical, substance or material listed or regulated by any governmental agency.

4.2 “Environmental Law” means any federal, state, local or other governmental statute, regulation, law or ordinance dealing with the protection of human health, natural resources and/or the environment now or hereafter in effect including, without limitation, any and all claims or causes of action based upon such governmental statute, regulation, law or ordinance.


4.4 Vendor shall notify the University in writing of every article ordered or supplied under this Purchase Order or stored or used by Vendor on the University property that contain Hazardous Substances or substances for which the law requires a Material Safety Data Sheet (MSDS).

4.5 Such notification shall be given upon purchase or prior to introduction of such substances onto University property and shall include, at a minimum, information regarding the substance including but not limited to Material Safety Data Sheets and product labeling as required by Texas Health and Safety Code, Chapter 502.

4.6 The University is exempt from the payment of those taxes, or that 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.

4.7 The University’s Director of Purchasing or their designee and the Vendor. Waiver of a provision in one instance shall not preclude enforcement thereof on future occasions.

5. WARRANTIES

5.1 Vendor warrants that Items furnished hereunder will: (i) be free from material defects in design, material and workmanship; (ii) be suitable for any particular purposes made known to Vendor in writing; (iii) be in accordance with all specifications and process data; (iv) substantially conform with any related sample, model, description, label or identification furnished by Vendor, and substantially conform to any specific requirements of any purchase order or agreement; (v) substantially conform with any related sample, model, description, labeling or identification furnished by Vendor, and substantially conform to any specific requirements of any purchase order or agreement.

5.2 Unless otherwise agreed in writing, all hardware and items are transferred to the University free and clear of all liens and encumbrances.

5.3 Unless designated as “reconditioned” or “used”, all hardware and replacement parts are warranted to be new.

5.4 Items furnished hereunder shall be as tested and inspected by Vendor. Vendor shall test and inspect Items to ensure that Items will perform as specified. Items will be warranted for the period of time specified in the purchase order or agreement, or the full period as provided herein, whichever is longer.

5.5 If Items are found within twelve (12) months after acceptance (or such longer period specified by Vendor) not to be as warranted; the University may require the work to be corrected or may return all defective items (and other items supplied by Vendor that are materially diminished thereby) to Vendor, at Vendor’s expense, for replacement or credit at Vendor’s option, be returned to the Vendor or held for disposition at Vendor’s expense.

5.6 Replacements are warranted for the latter of the remaining warranty period or ninety (90) days.

5.7 Manufacturer's standard warranty shall apply unless otherwise stated in the solicitation.

6. PAYMENT TO VENDORS

6.1 The University’s payment terms are thirty (30) days for undisputed invoices. The late payment rate established annually by the State of Texas shall be applicable after thirty (30) days.

6.2 Invoices must reference the Purchase Order number or they will be returned unpaid.

6.3 The due date for disbursement to the University will commence on the date of receipt of University’s receipt of all goods and services or receipt of the invoice.

6.4 Payment shall be made in accordance with Texas Government Code Chapter 2251.

6.5 Your invoice must be addressed and mailed to Angelo State University, Accounts Payable Department, ASU Station #11034, San Angelo, Texas 76909 unless specifically instructed otherwise in writing by the University’s Director of Purchasing.

6.6 If 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.

6.7 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.
11. TERMINATION
11.1 The University may at any time by written notice suspend or cancel any purchase order or agreement or any part thereof without cause.
11.2 The University shall pay Vendor a reasonable cancellation charge, determined by the University in good faith, for work-in-process (not exceeding the price for cancelled items) to the extent that Vendor's costs for such items cannot be mitigated.
11.3 Off-the-shelf items that are readily marketable and any rented facilities that can be readily rebooked shall not be subject to a cancellation charge.

16. FEDERAL FUNDS
16.1 The University is a recipient of federal funds from various federal agencies. The University shall require Vendors to comply with all federal regulations relating to the use of federal funds. In addition, Vendors agree to follow all applicable clauses from OMB Circular A-110 to lower-tier subcontractors.
16.1.1 Prohibition of non-Segregated Facilities FAR 52.222.21
16.1.2 Equal Opportunity FAR 52.222.26 and Executive Order 12246 as amended by Executive Order 13757 and supplemented by 41 CFR part 60
16.1.3 Clandestine anti-kickback Act (for construction and repair) 18 USC §§ 874 as supplemented by Department of Labor regulations 29 CFR part 3
16.1.4 Davis-Bacon Act, as amended 40 USC 276a to a
16.1.5 Anti-kickback FAR 52.222-5
16.1.6 Restrictions on Subcontractor Sales to the Government FAR 52-208.6
16.1.7 Contract Work Hours and Safety Standards Act FAR 52.222-3
16.1.8 Rights to Inventions Made Under a Contract or Agreement - 37 CFR part 401
16.1.9 Preference for Privately Owned U.S. Flag Commercial Vessels - FAR 52.247-64
16.1.10 Preference for US Flag Carriers FAR 52.247-63
16.1.11 Hazardous Material Identification and Material Safety Data policy (when applicable) FAR 52.223-3
16.1.12 Filing of Patent Applications FAR 52.227-10
16.1.13 Patent Rights - Revisions to the Contract Short and Long Forms FAR 52.227-11, FAR 52.227-12 and FAR 52.227-13 Validation of Restrictive Markings on Technical Data FAR 52.227-707
16.1.14 Buy American Act – Supplies FAR 52.225-1

16.2 FEDERAL REQUIREMENTS ON PURCHASES greater than $2,500
16.2.1 Affirmative Action for Workers with Disabilities - 52.222-36 and Executive Order 11758
16.2.2 Occupational Safety and Health 29 USC 651
16.2.3 Service Contracts Act
16.2.4 Contract Work Hours and Safety Standards Act 40 USC 327-333

16.3 FEDERAL REQUIREMENTS on PURCHASES greater than $10,000
16.3.1 Examination of Records by Comptroller General (if document was entered by negotiation) FAR 52.215-1
16.3.2 Audit Negotiations (if document was entered by negotiation) FAR 52.215-2
16.3.3 Walsh-Healy Public Contracts Act FAR 52.222-20
16.3.4 Affirmative Action for Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-35
16.3.5 Employment Reports on Special Disabled Veterans and Vietnam of the Vietnam Era FAR 52.222-37

16.4 FEDERAL REQUIREMENTS on PURCHASES greater than $25,000
16.4.1 Restrictions on Certain Foreign Purchases FAR 52.225-19
16.4.2 Responsibility for Supplies FAR 52.246-16
16.4.3 Debarment and Suspension. Executive Order 12549 and 12699, FAR 52.209-5

16.5 FEDERAL REQUIREMENTS on PURCHASES greater than $100,000
16.5.1 Clean Air Act – 42 USC 7401, et seq and Executive Order 11738
16.5.2 Federal Water Pollution Control Act 33 USC 1251, et seq
16.5.3 Byrd Anti-Lobbying Amendment – 31 USC 1352
16.5.4 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions FAR 52.203-11
16.5.5 Limitations on Payments to Influence Certain Federal Transactions FAR 52.203-12
16.5.6 Audit and Records – Negotiation (Applies only if this was entered into by negotiation) FAR 52.215-2
16.5.7 Utilization of Small Business Concerns FAR 52.219-8
16.5.8 Notice and Assistance Regarding Patent and Copyright Infringements FAR 52.227.2
16.5.9 Authorization and Consent Patents and Copyrights FAR 52.227-1
16.5.10 Subcontractor Cost or Pricing Data Modifications FAR 52.215-46.13

16.6 FEDERAL REQUIREMENTS on PURCHASES greater than $500,000
16.6.1 Small Business Subcontracting Plan FAR 52.219.9

17. AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING
17.1 This Purchase Order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products). Vendors may contact the Purchaser if they have questions about the funding provided on the Purchase Order.

18. LIABILITY FOR INJURY
18.1 Vendor shall defend, indemnify and hold the University harmless against liability for personal injury and property damage caused by items or services furnished hereunder by Vendor, its subcontractors and agents.
18.2 If the purchase order or agreement involves any provision of service to the University, Vendor shall procure and maintain the following insurance during the term of the purchase order or agreement (in addition to any additional policies required on a specific bid/proposal): (i) Commercial General Liability insurance including coverage for premises operations, products-completed operations and personal injury in the amount of $1,000,000 per occurrence and $1,000,000 annual aggregate, (ii) Automobile Liability Insurance in the amount of $1,000,000 combined single limit, and (iii) Workers' Compensation insurance.
18.3 The Vendor shall provide the University's Purchasing department with certificates of insurance evidencing the required insurance prior to the effective date of any purchase order or agreement.

19. ADVANCED TECHNOLOGY CLAUSE
19.1 The Vendor expressly acknowledges that a state agency cannot expend funds in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to the University that the technology provided to University for purchase is capable, either by means of features included within the technology or because it is readily adaptable by use with other technology, of providing equivalent access for effective use by both visual and non-visual means;
19.2 presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and
19.3 being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase 'equivalent access' means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means, such as accessible devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

20. ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY POLICY
20.1 As authorized by Chapter 2054, Subchapter M of the Texas Government Code, the Texas Department of Information Resources (“DIR”) has adopted rules (the “DIR Accessibility Rules”) governing how Texas institutions of higher education relate to, develop, procure, maintain, and use “electronic and information resources” (or “EIRs”) so that the EIRs may be accessed by individuals with disabilities. Such DIR Accessibility Rules are set forth in Title 1, Chapter 206, Rule 206.70 of the Texas Administrative Code and in Title 1, Chapter 231 of the Texas Administrative Code.
20.2 Vendors will be required to provide required documentation to evidence the accessibility of Electronic and Information Resources.

21. IRON OR STEEL PROJECTS
21.1 To the extent this purchase relates to a project as defined Tex. Gov’t Code §2252.201(5) (a project to construct, remodel, or alter a building, structure, or infrastructure; to supply material for such a project; or to finance, refinance, or provide funds for such a project), and no exemption in Tex. Gov’t Code §2252.203 applies, any iron or steel product produced through a manufacturing process and used in the project that is the subject of this purchase must be produced in the United States (as defined in Tex. Gov’t Code §2252.204).

22. ISRAEL BOYCOTT
22.1 Pursuant to Texas Gov’t Code Section 2271.001, Vendor affirmatively states that it does not boycott Israel. Additionally, Vendor shall not engage in a boycott of Israel during the term of this Agreement.

23. VENDOR CERTIFICATION
Vendor certifies this purchase is not prohibited under Tex. Gov’t Code §2261.252(a) and agrees that if Contractor's certification is or becomes untrue, this purchase order or related contract is void, and Vendor will not seek and waives its right to seek any legal or equitable remedy for past or future performance under this purchase order or related contract, including damages, whether under breach of contract, unjust enrichment, or any other legal theory; specific performance; and injunctive relief.