

Houston-Galveston Area Council: Purchase Order Terms and Conditions

A. ACCEPTANCE

1. This Order is H-GAC's offer to purchase the goods and/or services described on the purchase order from Contractor. H-GAC's placement of this Order with Contractor is expressly conditioned upon Contractor's acceptance of all the terms and conditions of purchase contained on or attached to this Order. H-GAC shall accept the item(s) on the twentieth (20) business day after the date of receipt of the item(s) by H-GAC unless prior to the twentieth (20th) day, H-GAC's Procurement Program, or authorized designee delivers a notice to the Contractor stating the reason(s) why the items have not been accepted.
2. Any additional or different terms and conditions which may appear in and communication from Contractor are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by H-GAC's Procurement Program and no such additional or different terms or conditions in any printed form of Contractor shall become part of this order despite H-GAC's acceptance of goods and/or services, unless such acceptance specifically recognizes and assents to their inclusions.
3. This Order contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No understandings, statements, promises or inducements contrary to the terms of this Order exist. This order cannot be changed or terminated orally.

B. MODIFICATION

Except as otherwise provided, this Order shall be subject to change, modification, or amendment only by the mutual written consent of the parties hereto.

C. IDENTIFICATION

All invoices, shipping notices, instructions, manuals and other written documents affecting this Order shall contain the applicable purchase order number. Packing lists shall be enclosed in each box or package shipped pursuant to this Order, indicating the contents. Invoices will not be processed for payment until all items invoiced are received.

D. SHIPPING

All goods are to be shipped prepaid, F.O.B. Destination, unless otherwise agreed. Where H-GAC has so authorized in writing, goods may be shipped F.O.B. Origin, but Contractor shall prepay all shipping charges, route the goods by the least expensive common carrier, or the carrier specified, and list charges as a separate item on Contractor's invoice. Each invoice for shipping charges shall be accompanied by the original or a copy of the bill indicating that such charges have been paid. H-GAC reserves the right to reject C.O.D. shipments. Contractor shall not insure the goods for H-GAC's account during shipment except upon H-GAC's written request, or where the shipping mode is parcel post.

E. DELIVERY

Time is of the essence, and this Order may be terminated if delivery is not made or services are not performed by the date specified. No change in the scheduled delivery date or performance will be permitted without H-GAC's written consent. No acceptance of goods or services after the scheduled delivery date will waive H-GAC's rights with respect to such late delivery nor shall it be deemed as a waiver of future compliance with the terms hereof.

F. FORCE MAJEURE

To the extent that either party shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with H-GAC.

G. INVOICES and PAYMENT

H-GAC's standard payment term is to pay thirty (30) days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Tx. Gov't. Code, Ch. 2251).

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H. FIRM PRICE

The price(s) specified on the face of the purchase order and/or the change order is firm, and may not be increased or supplemented on the contractor's invoice.

I. FISCAL FUNDING

H-GAC is a political subdivision of the State of Texas. H-GAC shall have the right, upon failure of the governing body of the Houston-Galveston Area Council, to appropriate finances to meet the terms and obligation herein, and to terminate this Order as of the effective date of such lack of fiscal funding. H-GAC agrees to include a request for funding for this Order in all budgets during the term thereof.

J. TAXES

H-GAC is a government agency and is exempt from payment of Sales Tax. Unless the H-GAC Request for Quote Form or specifications specifically indicates otherwise, the price bid must be net exclusive of the previously mentioned taxes.

K. LIENS, CLAIMS AND ENCUMBRANCES

Contractor warrants and represents that all the goods, when delivered hereunder, will be free and clear of all liens, claims and or encumbrances of every kind.

L. REJECTION

All goods purchased hereunder are subject to inspection and approval. In the event H-GAC rejects any item(s) the contractor shall have ten (10) days after receipt of notice of such rejection to replace any item(s) with replacements which conform to this Order, at no additional cost to H-GAC. Goods rejected by H-GAC shall be held, transported and/or stored at contractor's sole expense. Contractor shall promptly reimburse H-GAC for any such expenses.

M. TERMINATION

By H-GAC for Convenience:

The H-GAC Procurement Program may terminate this Order at any time upon thirty (30) calendar days notice in writing to the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, discontinue all services in connection with the performance of the Order and shall proceed to cancel promptly all existing Orders insofar as such orders are chargeable as soon as practicable after the receipt of notice of termination, the Contractor shall submit a statement to the H-GAC Procurement Program showing in detail the services performed or items delivered under this Order to date of termination. H-GAC agrees to compensate the Contractor for that portion of the prescribed charges for which the services were actually performed or items delivered under this Order and not previously paid.

By H-GAC for Default by the Contractor:

In the event that the materials and/or services furnished by the Contractor do not conform to the standard set forth herein, or if the deliveries and servicing of this Order do not conform to the requirements detailed herein, H-GAC through a written notice from the H-GAC Procurement Program to the Contractor describing such default may as its options:

1. Terminate the Order for default and H-GAC shall have no further obligation under the Order.
2. Allow the Contractor to cure default within a reasonable time as specified in the notice. H-GAC, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of termination, the Contractor cures such default to H-GAC's satisfaction, then the proposed termination shall be ineffective. If the Contractor fails to cure such default prior to the proposed date of termination, then H-GAC may terminate its performance under this Order as of such date and have no further obligation under the Order.

In the event of failure to deliver any or all of the items or to perform required services, H-GAC may cover its loss by reasonably procuring from another source the items not delivered or the services not performed. The Contractor shall be responsible for and shall pay to H-GAC immediately upon demand the difference in price between that offered by the Contractor and that which H-GAC was forced to pay for covering the Contractor's failure to deliver or perform services.

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N. DEFAULT

H-GAC may, subject to paragraph "M" by written notice of default to Contractor, cancel the whole, or any part, of this Order or exercise any other remedy provided H-GAC of goods by law or in equity including any remedy under the Uniform Commercial Code, in any of the following circumstances:

1. If Contractor fails to make delivery of the goods or to perform the services within the time specified or any extension thereof;
2. If, in H-GAC's good faith judgment, the contractor fails to perform any of the other provisions of this Order or fails to cure such failed performance within a period of ten (10) days, or such longer period as H-GAC may authorize in writing after receipt of notice from H-GAC specifying such failure;
3. If Contractor is in breach of any of the terms or conditions of this Order; or
4. If Contractor becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Contractor any proceeding under bankruptcy, reorganization, arrangement or readjustment of debt or insolvency law of any jurisdiction or for the appointment of a trustee in respect to any of Contractor's property and such proceeding is not dismissed or cured within sixty (60) days.

O. REMEDIES

Not by the way of limitation, the remedies of the parties include:

1. If H-GAC cancels this Order in whole or in part as provided in paragraph "M", H-GAC may procure, upon such terms and in such manner, as H-GAC may deem appropriate, the goods or services similar to those cancelled and Contractor shall be liable to H-GAC for any excess costs, incidental or consequential damages for such similar supplies of services provided that Contractor shall continue the performance of this Order to the extent not called under the provisions of this Order.
2. The rights and remedies of H-GAC provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law under this Order.
3. The failure of H-GAC to insist upon strict performance of any of the terms of this Order or to exercise any rights hereunder shall not be construed as a waiver of H-GAC's rights.
4. The Contractor may be excused from performance under this Order provided the Contractor notifies H-GAC within ten (10) days of discovery of any of the below named events:
 - a. Acts of God, or of public enemy, acts of the government with lawful jurisdiction over Contractor in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.
 - b. The Contractor's failure to perform is caused by default of a supplier of sub-contractor and if such default arises out of causes beyond the control of both the Contractor and the supplier or sub-contractor and without the fault or recognition of either of them, provided that the contractor agrees to make a concerted effort to obtain supplies or services from other sources in time to meet required delivery schedule(s), if such events or causes names above cause a supplier default.

P. WARRANTIES

Contractor warrants that each item delivered will (1) be new (unless otherwise specified on the face of the purchase order, change order or specifications), free from liens and defects in design, materials, workmanship and defects in title (including any defect in the contractor's right to sell a patented or copyrighted product or to use a patented process), (2) conform in all respects to the terms of the purchase order, change order or specifications, and (3) be of the best quality, if no specific quality is established in the specification(s). If within one (1) year from the date of acceptance by H-GAC, it appears that an item, or any commercial unit thereof, does not conform to these warranties, and the H-GAC Procurement Program notifies the contractor within a reasonable amount of time after discovery, the contractor shall correct such nonconformity to the satisfaction of the H-GAC Procurement Program at the contractor's expense.

Should this occur, H-GAC may revoke acceptance, and purchase substitute item's correcting the nonconformity. The cost of the substitute item(s) correcting any nonconforming item(s) shall be borne by the contractor. Additionally, the contractor shall transfer to the H-GAC any manufacturer's warranty that it has for the item(s).

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O. SUCCESSORS AND ASSIGNS

This Order shall bind and benefit the respective parties and their legal successors, and shall not be assignable, in whole or in part, by any party hereto without first obtaining the written consent of the other party. This provision is not intended to limit the Contractor's ability to assign receivables under this Order, but applies to performance of the Order. Nothing herein shall be construed as creating any personal liability on the part of any agent of H-GAC.

R. QUALITY STANDARDS

If a special brand is listed in this Order, the goods being purchased must meet the standard for quality, performance, and use of such brand. If Contractor is willing to supply an equivalent to the designated special brand, it must provide H-GAC with descriptive literature identifying its brand, including the quality, performance and specifications.

S. INSPECTION AND QUALITY CONTROL

All items furnished under this order shall be subject to inspection and tests. To the extent practicable inspection may be made at any time and place, including the period of manufacture and prior to acceptance.

T. INFRINGEMENTS

Contractor warrants that H-GAC's purchase, installation, and/or use of the goods covered hereby will not result in any claim of infringement, or actual infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Contractor shall indemnify and hold H-GAC harmless from and against all claims, losses, expenses, damages, causes of action and liabilities of every kind and nature, including without limitation, reasonable attorney's fee (without waiver of Contractor's obligation to indemnify H-GAC hereunder), arising from or out of any breach of the foregoing warranties and representations.

U. RISK OF LOSS

Regardless of F.O.B. Point, Contractor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to acceptance by H-GAC. No such loss, injury or destruction shall release Contractor from any obligations hereunder.

1. Contractor shall indemnify and hold H-GAC harmless from and against all claims, demands, losses, expenses, damages, causes of action and liabilities of every kind and nature including, without limitation, reasonable attorney's fees and costs, without waiver of Contractor's obligation to indemnify H-GAC hereunder arising from or out of any alleged breach of any Contractor's obligations or warranties hereunder or from other acts or omissions of Contractor, its directors, Officer's, agents, representatives, employees and sub-contractors, however caused, instituted by persons who purchase from H-GAC or use product purchased from Contractor.

2. Contractor is solely liable for its employees, agents, contractors or sub-contractors and their actions while on H-GAC's premises and the Contractor indemnifies and will protect H-GAC from all losses, claims, expenses, and damages arising from or out of the presence or activity of Contractor's employees while on H-GAC premises.

V. EQUAL EMPLOYMENT OPPORTUNITY

Contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations.

W. TITLE VI REQUIREMENTS

Contractor will be required to comply with all requirements imposed by Title VI of the Civil Rights Acts of 1964 (49 U.S.C. Section 2000d), the Regulations of DOT issued hereunder (49 C.F.R. part 21), and the assurances by H-GAC thereto.

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X. CONFLICT OF INTEREST

Chapter 176 of the Texas Local Government Code requires contractors and consultants seeking to do business with H-GAC to file a conflict of interest questionnaire (CIQ) if they have an employment or other business relationship with an H-GAC officer or an officer's close family member. The required questionnaire and instructions are located at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/CIQ.pdf>. H-GAC officers include its Board of Directors and Executive Director, who are listed on this website. The CIQ must be completed and filed with a bid, request for quote or proposal response, if an employment or business relationship defined in the law exists.

Y. ADVERTISING

No advertising or publicity matter having or containing any reference to H-GAC or any of its staff members shall be made by Contractor or anyone on Contractor's behalf unless Contractor has the written consent of H-GAC.

Z. LAW

This order is made subject to the Constitution and laws of the State of Texas. The laws of the State of Texas shall govern this Order and the venue of any action brought hereunder may be bid in or transferred to the State of Texas.

AA. FEDERAL COMPLIANCE

Contractor agrees to comply with any additional federal regulations or statutes that may apply to the purchase as applicable to the funding source utilized. H-GAC will make a good faith effort to make the Contractor of the specific applicable provisions that apply to the purchase, however, Contractor is responsible to comply with at least the applicable provisions (as determined by monetary thresholds of the award) the most current version of the provisions contained at 2 CFR 200 Appendix II, and these contract provisions are incorporated by reference to these Terms and Conditions, if not already covered in the preceding provisions of this document.