

# TERMS AND CONDITIONS

**1. COMPLETE AGREEMENT:** This Purchase Order, which consists of these terms and conditions, the conditions contained within the referenced bid number, the contract entered into between Galveston County and Vendor (if any) and any other attached terms, conditions, and specifications of Galveston County, is the sole and exclusive agreement between the parties. It supersedes all other writings and is expressly conditioned upon Vendor's agreement to the conditions hereof. In addition, nothing herein shall be construed to be an acceptance of any terms of Vendor. In the event of any conflict between the terms and conditions of this Purchase Order and any Contract entered into between the County and the Vendor, the terms of the Contract shall prevail.

**2. MODIFICATION:** No modification of this Purchase Order shall be effective without Galveston County's prior written consent. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement, or explain any terms used in this Purchase Order. Galveston County will not be bound by any oral statement, verbal agreement, or other representation contrary to the written specifications, terms, and conditions of this Purchase Order.

**3. CANCELLATION:** GALVESTON COUNTY shall have the right to cancel for default all or any part of this Purchase Order if Vendor breaches any of the terms, conditions, or requirements hereof, or if the Vendor becomes insolvent or commits acts of bankruptcy, or at any time for any reason or no reason prior to acceptance of delivery by GALVESTON COUNTY. Such right of cancellation is in addition to and not in lieu of any other remedies, which GALVESTON COUNTY may have in law or equity.

**4. TERMINATION:** The performance of work under this Purchase Order may be terminated in whole or in part by GALVESTON COUNTY in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Vendor of a "Notice of Termination" specifying the extent to which performance of work under the Purchase 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 GALVESTON COUNTY set forth in Paragraph 3 above.

**5. DELIVERY:** Time is of the essence in this Purchase Order and if delivery of conforming goods or performance of services is not completed by the time(s) promised, GALVESTON COUNTY reserves the right, in addition to its other rights and remedies, to cancel this Purchase Order, to reject nonconforming goods or services in whole or in part on reasonable notice to Vendor, and/or purchase substitute goods or services elsewhere and charge Vendor with any loss incurred. If delay in promised delivery is foreseen, Vendor shall give written notice to GALVESTON COUNTY, and the delivery date may be extended by GALVESTON COUNTY for valid reasons. Vendor must keep GALVESTON COUNTY advised at all times of status of Purchase Order. No substitutions or cancellations will be permitted without the prior written approval of GALVESTON COUNTY Purchasing Department. Delivery shall be made only on weekdays from 8:00a.m. to 5:00p.m., unless prior approval for other delivery times has been obtained. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligation of Vendor severable. C.O.D. shipments will not be accepted.

**6. ACCEPTANCE OF PRODUCTS AND SERVICES:** All products furnished and all services performed under this Purchase Order shall be to the satisfaction of GALVESTON COUNTY and in accordance with the specifications, terms, and conditions of the Purchase Order and any applicable contract. GALVESTON COUNTY reserves the right to inspect the products furnished or the services performed, and to determine the quality, acceptability, and fitness of such products or services.

**7. INVOICING AND PAYMENT:** Vendor shall submit an itemized invoice showing GALVESTON COUNTY Purchase Order number. Invoices must agree in all respects with this Purchase Order. Payment will normally be remitted within thirty (30) days after receipt of a properly submitted invoice. Failure to submit invoices in accordance with the requirements herein may delay payment. All cash discounts offered will be taken if earned. Cash discount will be calculated from date of receipt of properly submitted invoice at the Invoice Address specified on the face of this Purchase Order.

**8. TITLE & RISK OF LOSS:** The title and risk of loss of the goods shall not pass to GALVESTON COUNTY until GALVESTON COUNTY actually receives and takes possession of the goods at the point or points of delivery.

**9. ASSIGNMENT/DELEGATION:** No right or interest in this Purchase Order shall be assigned, and no obligation of Vendor shall be delegated, to any third party without the prior written consent of GALVESTON COUNTY. Any such assignment or delegation by Vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**10. INDEPENDENT CONTRACTOR:** In performing any services hereunder, Vendor is, and undertakes performance thereof as, an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all Federal, State, and local Unemployment and Disability Insurance and all Social Security and/or other taxes and contributions payable in respect of such persons, from and against which liability Vendor agrees to indemnify, exonerate and hold harmless GALVESTON COUNTY.

**11. INSURANCE:** If this Purchase Order requires the presence on GALVESTON COUNTY premises of Vendor's employees, subcontractors or others under Vendor's control, Vendor agrees, prior to commencement of any services hereunder, to transmit to GALVESTON COUNTY certificates of insurance as specified in the contract between parties.

**12. INDEMNIFICATION:** Vendor shall indemnify, exonerate, hold harmless and defend GALVESTON COUNTY and the COUNTY COMMISSIONER'S COURT from and against any actions or suits and any claims, liability, damage, loss, cost or expense as a result of bodily injury or death and/or property damage arising out of or in connection with this Purchase Order, unless caused by the sole negligence of GALVESTON COUNTY.

**13. WARRANTIES:** In addition to all warranties established by law, Vendor hereby warrants and agrees that:

(a) All goods and services covered by this Purchase Order shall conform to the specifications, drawings, samples, or other descriptions set forth herein or otherwise furnished or adopted by GALVESTON COUNTY, and shall be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. GALVESTON COUNTY shall have the right of inspection and approval, and may, at Vendor's expense, reject and return non-conforming goods or require re-performance of services, which are not in compliance with the requirements of this Purchase Order. Defects shall not be deemed waived by GALVESTON COUNTY'S failure to notify Vendor upon receipt of goods or completion of services, or by payment of invoice.

(b) All articles and/or services provided hereunder meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety and Health Administration (Public Law 91-596) and its regulations in effect or proposed as of the date of this Purchase Order.

(c) All goods delivered pursuant to this Purchase Order shall conform to standards established for such goods in accordance with any applicable Federal, State, or local laws and regulations, unless otherwise indicated herein.

(d) The use or sale of any goods delivered hereunder, or any part thereof, does not infringe any adverse existing patent, trademark, copyright, or other intellectual property right. Vendor shall indemnify, exonerate, and save harmless GALVESTON COUNTY, its customers, users of its products, and its and their successors and assigns, or any of them, from and against any and all liability, damage, loss, cost or expense incurred in connection with any claim, suit or action for actual or alleged infringement of any such rights, and Vendor shall defend, at its expense, any such claim suit or action brought against GALVESTON COUNTY, its customers, users of its products and its and their successors and assigns, or any of them.

The foregoing warranties shall survive acceptance of goods and performance of services hereunder.

**14. NON-DISCLOSURE:** Unless required by law or consented to in writing by GALVESTON COUNTY, no disclosure, description, or other communication of any sort shall be made by Vendor to any third party regarding GALVESTON COUNTY'S purchase of goods or services hereunder, or of the details and characteristics thereof. Anything furnished to Vendor by GALVESTON COUNTY pursuant to this Purchase Order, including without limitation, samples, drawings, patterns, and materials shall remain the property of GALVESTON COUNTY, shall be held at Vendor's risk, and shall be returned upon completion of the work. No disclosure or reproduction thereof in any form shall be made without GALVESTON COUNTY'S prior written consent.

**15. FORCE MAJEURE:** Neither party hereto shall be liable for delays or failure to perform any term, condition, or covenant of this Purchase Order due to causes beyond its reasonable control including, but not limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, material or labor restrictions by any government authority, any other natural disaster, or any other circumstances of like character which are beyond the reasonable control of either party. In the event of such delay or failure to perform, the period specified for performance hereunder may be extended for a period equal to the time lost by reasons of the delay, or the total Purchase Order may be reduced by the performance (or portions thereof) omitted during such delay. The provisions of this paragraph shall be effective notwithstanding that such circumstances shall have been operative at the date of this Purchase Order.

**16. GOVERNING LAW:** This Purchase Order shall be governed in accordance with the laws of the State of Texas. Venue shall lie in Galveston County.

**17. COMPLIANCE WITH LAW:** Vendor is aware of, is fully informed about, and in and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-741), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (p196-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.) and all federal laws and regulations, executive orders, state laws, and local laws as are applicable.

**18. BUYER'S PREMISES RULES:** If this Purchase Order requires the presence on GALVESTON COUNTY'S premises of Vendor's employees, subcontractors or others under Vendor's control, Vendor shall comply with all applicable rules of such premises, including without limitation those relative to environmental quality, safety, fire prevention, no smoking, traffic, and parking.

**19. ASSIGNMENT OF OVERCHARGE CLAIMS:** Vendor hereby assigns to GALVESTON COUNTY any and all claims for overcharges associated with this Purchase Order arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973), or arising under the antitrust laws of the State of Texas, Texas Business and Commerce Code Annotated, Sec. 15.01, et seq. (1967).

**20. VENDOR'S AFFIRMATIONS:** By acceptance of this Purchase Order and/or furnishing any of the products or services specified herein, Vendor affirms the following:

(a) That 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.

(b) That Vendor has not violated the antitrust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws.

(c) That no relationship, whether by relative, business associate, capital funding agreement, or any other such kinship, exists between Vendor and any current GALVESTON COUNTY employee, or any person previously employed by GALVESTON COUNTY within the immediate twelve (12) months prior to this award. If such relationship does exist, full disclosure must be made to the GALVESTON COUNTY Purchasing Agent prior to acceptance of Purchase Order for appropriate administrative review and approval.

(d) If Vendor is a corporation, that its Texas franchise taxes are current, or that the corporation is exempt from the payment of the franchise tax, or that the corporation is an out-of-state corporation that is not subject to Texas franchise tax, whichever is applicable.

**21. OPEN RECORDS:** All information, documentation, and other material submitted by Vendor in response to any solicitations or under any resulting contract thereof may be subject to public disclosure under the Texas Public Information Act (TX Gov't Code, Chapter 552). Vendors are hereby notified that GALVESTON COUNTY strictly adheres to this statute and the interpretations thereof rendered by the Courts and/or Texas Attorney General's office. Vendor shall be deemed to have knowledge of this law and how to protect their interests under it. Exceptions to disclosure of information as provided by this statute are intended to protect legitimate interests of the County or Vendor, and are not intended to serve as a means to withhold or delay disclosure of information not covered by these exceptions.

**22. PURCHASING AGENT'S AUTHORITY:** The Galveston County Purchasing Agent is authorized to act on the County's behalf on any matter set forth in this Purchase Order.

**23. NON-WAIVER OF DEFAULTS:** Any failure of GALVESTON COUNTY, at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Purchase Order, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of GALVESTON COUNTY at any time to avail itself of same.

**24. SEVERABILITY:** In the event that any provision of this Purchase Order, or the application thereof to any person or circumstance, is determined by a competent Court of Law to be invalid, unlawful, or unenforceable to any extent, the remainder of this Purchase Order, and the application of such provision to persons or circumstances other than those to which it is determined to be unlawful, unenforceable, or invalid to any extent, shall continue to be valid and may be enforced to the fullest extent permitted by law.