

TOWN OF PROSPER
STANDARD TERMS & CONDITIONS FOR PURCHASE ORDERS

1. **SELLER TO 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 order 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 the lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Town'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 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 Town until Town actually receives and takes possession of the goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Destination, Town of Prosper, Texas with all delivery charges to be pre-paid by Seller, unless delivery terms are specified otherwise in bid. Town 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 Town 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. If a tender is made that does not fully conform, such nonconforming tender 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 notify Town of Seller's intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by written modification, only, 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 on each purchase order, hereafter referred to as "contract", 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 weight bill when applicable, should be attached to the invoice. Mail to: Town of Prosper, Attn: Accounts Payable, 121 W. Broadway Street, Prosper, TX 75028, or email to accounts_payable@prospertx.gov. Payment shall not be due until the above instruments are submitted after delivery. Payment terms are Net 30 days per the Texas Prompt Payment Act. Suppliers should keep the Accounts Payable Office advised of any changes in remittance addresses.

(b) Town's obligation hereunder is payable only and solely from funds available for the purpose of the purchase. In the event the performance of this contract extends across fiscal years, which fiscal year extends from October 1 through September 30, the failure of the Town to appropriate funds for such new fiscal year 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 Town.

(c) Do not include Federal Excise, State or City Sales Tax. Town shall furnish tax exemption certificate, if required.
8. **GRATUITIES:** The Town may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Town 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 Town of Prosper 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 cancelled by Town pursuant to this provision, Town 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 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 Town and to the extent feasible shall be identified by the Seller as such.
10. **WARRANTY PRICE:** (a) The price to be paid by the Town shall be that contained in Seller's bid which amount 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, Town 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 of violation of this warranty, the Town 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 Town. 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.
12. **SAFETY WARRANTY:** Seller warrants that the product sold to Town shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970 ("OSHA"). In the event the product does not conform to OSHA standards, Town 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, any correction made by Town will be at Seller's expense.
13. **NO WARRANTY BY TOWN 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. Town 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 Town be liable to Seller for indemnification in the event that Seller is sued 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 Town to this effect in writing within two weeks after the signing of this agreement. **If Town does not receive notice and is subsequently held liable for the infringement of the like, Seller will save and hold Town harmless and indemnify Town from and against and y and all claims, damages, costs and expenses of any kind and nature specifically including, but not limited to, attorney's fees, expert witness fees and all cost related to such claim of infringement.** 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 Town will pay Seller the reasonable cost of his search as to infringements.
14. **RIGHT OF INSPECTION:** Town shall have the right to inspect the goods at delivery before accepting them.
15. **CANCELLATION:** Town 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 files for or is otherwise placed in bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Town 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 Town 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 Town 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 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 hereinafter 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 acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.
18. **ASSIGNMENT DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation hereunder made by Seller without the previous written permission of the Town. 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 may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.
21. **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.