

HCISD'S Purchase Order Terms and Conditions

SELLER'S WARRANTIES

1. **Warranty of Title.** The seller warrants that the title conveyed under the terms of this contract shall be good; that the Seller is the lawful owner of the goods and has right to sell the same; and that the goods are free from all claims and encumbrances. Seller does hereby agree to defend the same against all persons lawfully claiming the whole or any part thereof.
2. **Warranty Against Infringement of Patents/Trademarks.** The Seller warrants that the goods shall be delivered free from the rightful claim of any person by way of patent or trademark infringement or the like. Seller undertakes to indemnify HCISD against all judgments, decrees, costs and expenses resulting from such alleged infringement and covenants that Seller will upon request of HCISD and at Seller's own expense, defend, or assist in the defense of, any suit or action which may be brought against HCISD or those selling or using any product of Seller by reason of any alleged infringement of any patent in the sale or use of Seller's products.
3. **Warranty of Merchantability, Fitness for Particular Purpose, etc.** The Seller warrants that the goods are merchantable within the meaning of Section 2.314 of the Texas Business and Commerce Code, that the goods shall be fit for the ordinary purposes for which such goods are used, and that the goods shall be fit for the particular purposes contemplated by HCISD. HCISD is relying on the Seller's skill and judgment to select or furnish goods suitable for HCISD's purpose.
4. **Quality Warranty.** The Seller warrants that the goods are manufactured in a good and workmanlike manner, according to the specifications, of the best materials, and to the satisfaction of HCISD. If HCISD shall in good faith be dissatisfied with the goods on delivery, it shall be entitled to reject them.
5. **No Waiver.** HCISD's failure to give notice to Seller of any breach of any warranty does not give rise to a waiver of any warranty hereunder.

HCISD'S RIGHTS AND REMEDIES

1. **HCISD's Right of Inspection.** HCISD has the right to inspect the goods upon arrival at the place designated by HCISD. HCISD's right of inspection shall include any reasonable manner of testing to determine the conformity of the goods to the contract specifications. Notwithstanding any provision of this contract, HCISD shall have the right to inspect the goods prior to payment and acceptance.
2. **HCISD's Right to Reject Goods.** The failure by the Seller to perform any part of this contract shall entitle HCISD, at its option, either to reject the goods and repudiate the contract or to retain the goods, subject to a right to compensation or damages for such breach of contract. Each shipment containing non-conforming goods may be accepted or rejected as a whole or accepted in part, at HCISD's option.
Within 60 days after tender of delivery to or receipt by HCISD of any shipment of goods, HCISD shall inform Seller of HCISD's only duty shall be to either (1) store the goods for Seller's account or (2) reship them to Seller. However, under no circumstances will HCISD be required to resell the goods. Upon rejection of the goods by HCISD, HCISD retains a security interest in the goods in its possession or control for any payment made upon their price and certain other reasonably incurred expenses.
3. **HCISD's Right to Revoke Acceptance.** HCISD may revoke acceptance of the goods within 60 days after HCISD has discovered the defect in the non-conforming goods. Upon its revocation of acceptance, HCISD has the same rights and duties with regard to the goods as if it had rejected them.
4. **Right of Cancellation.** HCISD reserves the right to cancel this contract or any delivery made pursuant to this contract if the goods or the tender of delivery fail in any respect to conform to the specifications described herein. The failure by the Seller to perform any material part of this contract shall entitle HCISD, at HCISD's option, either within 60 days after delivery thereof

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to reject the goods and repudiate the contract or retain the goods, subject to a right of compensation or damages for such breach of contract. Further, in the event that HCISD reasonably believes that Seller is not making such progress as would enable Seller to deliver the goods in a timely manner, HCISD may cancel this contract upon notice of Seller.

5. **HCISD's Right to Recover Price.** Upon breach of this contract by Seller, HCISD may recover so much of the price as has been paid, in addition to its right to recover money damages. Seller grants HCISD a security interest in all goods that are identified to the contract as security for any and all monies advanced by HCISD to Seller.
6. **HCISD's Right to Cover; Determination of Damages.** If the Seller fails to make delivery or repudiates the contract or if HCISD rightfully rejects the goods or justifiably revokes acceptance thereof, then with respect to any goods involved and with respect to the whole contract if the breach goes to the whole contract, HCISD may cancel the contract and may in addition to recovering so much of the price has been paid, (1) "cover" and have damages as to all goods affected whether or not they have been identified to the contract or (2) recover damages for non-delivery or repudiation by the Seller. HCISD may "cover" by making any reasonable purchase of goods in substitution for those due from the Seller. If HCISD chooses to cover, HCISD shall recover from the Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.
7. **Specific Performance and Replevin.** HCISD's right to specific performance shall be available to it if the goods contracted for cannot be purchased by it in the open market, or are unique and cannot be readily replaced by other goods. HCISD shall have the right to replevy goods identified to the contract where such right of replevin otherwise exists, without regard to any efforts made by it to cover.
8. **HCISD's Right to Terminate on Insolvency of Seller.** If the Seller becomes bankrupt or insolvent, or if a receiver is appointed for the Seller, HCISD shall have the right to terminate this contract upon written notice to the Seller, without prejudice to any claim to damages or any other right of HCISD under this contract at the time of such termination.

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The Seller's recover and HCISD's extent of liability in any case where the Seller shall be entitled to damages under this contract shall be limited to the difference between the contract price and the market price at the place for tender, and in no event shall the Seller be entitled to lost profits or incidental or consequential damages.

RISK OF LOSS AND IDENTIFICATION OF GOODS

The risk of loss or damage to the goods, from whatever cause arising shall be borne by the Seller until HCISD receives actual physical possession of the goods. Title and risk of loss shall not pass to HCISD, and shall remain with the Seller, until after a proper inspection of the goods has been completed without rejection. Identification of the goods to this contract will occur at the time they have been manufactured according to the specifications of this contract or otherwise designated by the Seller as the goods to which this contract refers.