

RETAIL DIVISION OF THE STATE PRESERVATION BOARD
Purchase Order Terms & Conditions

All goods/services must be listed on the Purchase Order (PO) form. If any changes to the scope of work are made, the Vendor must obtain a new or revised PO from the Retail Division of the State Preservation Board (SPB). The SPB is only obligated to pay for the goods/services listed on the PO. By accepting the PO and providing goods and/or services to the SPB, the governing body for the Texas Capitol Giftshops and the Museum Store in the Bob Bullock Texas State History Museum, the Vendor agrees to comply with the Purchase Order Terms and Conditions (POTCs) listed below. In the event of any conflict or inconsistency between these POTCs and any other part of the PO, the terms of the POTCs shall prevail. Any terms and conditions attached to a PO will not be considered, unless specifically referred to on the PO. The SPB reserves the right to refuse all shipments which fail to comply with any or all of these POTCs.

1. Packing and Shipping:

- A. PO number must appear on invoice and on all cartons.
- B. All cartons must be numbered (i.e. 1 of 3, 2 of 3, and 3 of 3).
- C. Unless agreed to in advance, vendor must ship via lowest possible freight. Freight charges may not exceed 10% of invoice total unless Vendor has received prior authorization from the SPB.
- D. A packing list must accompany all shipments.
- E. Prices on PO are firm and fixed. SPB must be notified of any price changes prior to shipping. Vendor may produce and charge for production overruns up to 10% over the SPB's order quantity.
- F. The cancellation date of all POs is 30 days after the order date unless otherwise stated on PO or unless Vendor has obtained prior authorization to ship goods past the cancellation date.

2. Independent Contractor: For the purposes of the PO, the Vendor shall be considered an independent professional and is not to be considered an employee of the SPB or the State of Texas. The Vendor may not enter into any agreement or make any representation on behalf of the SPB or the State of Texas.

3. Choice of Law/Jurisdiction: The PO shall be governed by, construed, and interpreted in accordance with the laws of the State of Texas. Any legal actions must be filed in Travis County, Texas. In the event of litigation the SPB shall not pay Vendor's attorney's fees unless directed to do so by a court of law.

4. Dispute Resolution: Any dispute arising under the PO is subject to Texas Government Code, Chapter 2260, and use of the dispute resolution process provided for in that chapter is required by law.

5. Indemnification: The Vendor shall defend, indemnify, and hold harmless the SPB, the State of Texas, all of its officers, agents, and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities arising out of, connected with, or resulting from any acts or omissions of the Vendor or any agent, employee, subcontractor, or supplier of the Vendor in the execution or performance of the PO. Any provisions binding the SPB to do the same are void.

6. Limited Liability: The SPB will not be liable for any incidental, indirect, special, or consequential damages under contract, tort (including negligence), or other legal theory. The SPB's liability to Vendor under the PO will not exceed the total charges to be paid by the SPB to Vendor under the PO.

7. Damage to Grounds and Buildings: Vendor shall be financially responsible for any and all damage done by its employees, agents and subcontractors to the SPB grounds and buildings. Vendor is responsible for the removal of all debris resulting from work performed under the PO.

8. Patents and Copyrights: The Vendor shall protect the SPB, the State of Texas, all of its officers, agents, and employees from and against all claims involving infringement of patents or copyrights arising out of, connected with, or resulting from the Vendor's execution or performance of the PO. The Vendor understands that all work products including deliverables, source and object code and documentation, in whole or in part, will be deemed works made for hire of the SPB and for purposes of copyright law and copyright will belong solely to the SPB.

9. No-Fault Termination: The SPB may, at its option and sole discretion, terminate the PO, in whole or in part, at any time, for any reason whatsoever, by giving a written notice to the Vendor at least thirty (30) days prior to the effective date of termination.

10. Termination for Default: The SPB may terminate the PO immediately for default by providing written notice to the Vendor of such termination if the Vendor fails to execute the work properly, performs the work in an unsatisfactory manner, or fails to perform any provision of the PO. In the event of termination for default, the SPB shall have all remedies against the Vendor as provided by law.

11. Termination by Vendor: The Vendor may request termination of the PO for a valid reason by giving sixty (60) days written notice to the SPB.

12. Force Majeure: The SPB may grant relief from performance of the PO if the Vendor is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Vendor. The burden of proof for the need for such relief shall rest upon the Vendor. To obtain release based on force majeure, the Vendor shall file a written request with the SPB.

13. Assignment: The Vendor shall not assign the whole or any part of the PO without the SPB's prior written consent. The PO is void if sold or assigned to another company without written approval of the SPB. The SPB may sub-lease or assign equipment and related services provided via the PO to other entities which contract with the SPB to provide agency support or services.

14. Notice of Administrative Changes: The Vendor shall provide written notification of administrative changes, including changes to company name, address, telephone number, and billing instructions, to the SPB as soon as possible, but not later than thirty (30) days from the date of the change.

15. Substitutions: Substitutions are not permitted without the written approval of the SPB.

16. Public Disclosure: Information, documents, and other materials related to the Purchase Order may be subject to public disclosure pursuant to Texas Government Code, Chapter 552 (the "Public Information Act"). No public disclosures or news releases pertaining to the PO shall be made without prior written approval of the SPB. The Vendor is prohibited from using PO information such as sales values, volumes, or the State of Texas or the SPB as customers in sales brochures or other promotions or advertisements, including press releases, unless prior written approval is obtained from the SPB.

17. **Antitrust:** The Vendor certifies that the business entity named on the PO has not violated the antitrust laws of the State of Texas or of the United States. The Vendor hereby assigns to the SPB any and all claims for overages associated with the PO which arise under the antitrust laws of the State of Texas or of the United States.

18. **Affirmation Clauses:**

A. The Vendor affirms that he has not given, offered to give, or 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 the PO. Any instances of unethical conduct, undisclosed conflicts of interest and/or potential conflicts of interest, and other improprieties by a Vendor are grounds for termination of the PO.

B. The Vendor certifies that the individual or business entity named in the PO is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a State agency.

C. Pursuant to Texas Government Code, Section 2155.004 and Texas Family Code, Section 231.006 (relating to child support), the Vendor certifies that the individual or business entity named in the PO is not ineligible to receive the specified PO and acknowledges that the PO may be terminated and payment withheld if this certification is inaccurate.

D. The Vendor agrees that any payments due under the PO will be applied toward any debt, including but not limited to delinquent taxes and child support, that is owed to the State of Texas.

E. The Vendor has not received compensation for the participation in the preparation of the specifications for the service or good covered by this PO.

F. The Vendor certifies that the business entity named in this PO is not currently delinquent in the payment of any franchise tax owed the State of Texas.

G. Conflict of Interest: Vendor has disclosed any existing or potential conflict of interest relative to the performance of the contract. Failure to do so will be grounds for the termination of this PO.

19. **Taxes:** Purchases made for state uses are exempt from Texas State Sales Tax and Federal Excise Tax. An Excise Tax Exemption Certificate will be furnished upon written request to the SPB.

20. **Right to Audit:** The Vendor understands that acceptance of funds under the PO acts as acceptance of the authority of the State Auditor's Office, the SPB, or any successor agency, to conduct an audit or investigation in connection with those funds. The Vendor further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing all requested records. The Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Vendor and the requirement to cooperate is included in any subcontract it awards.

21. **Severability:** If any term or condition of this PO shall be held invalid or unenforceable, the remainder of this PO shall not be affected and shall be valid and enforceable.

Invoicing Instructions: To receive payment, the Vendor must submit an invoice to: SPB ACCOUNTING. THE INVOICE MUST NOT BE INCLUDED WITH THE MERCHANDISE SENT TO THE SPB WAREHOUSE. The invoice must include the following:

1. The Vendor's name and mailing address;
2. Name and telephone number of a person designated by the Vendor to answer questions regarding the invoice;
3. SPB PO Number;
4. Valid Texas Identification number (TIN) issued by the Comptroller of Public Accounts;
5. Description of each item for the goods/services listed on the PO in sufficient detail to identify the order that relates to the invoice; and
6. Shipment date of goods listed on the PO or dates of services covered by the invoice.

The SPB will incur no penalty for late payment if payment is made in 30 or fewer days from the later of receipt of goods/services or an uncontested invoice.