

## **RESTRICTED FUNDS TERMS AND CONDITIONS**

1. **GENERAL:** When the Purchasing Agent (the Purchasing Agent) for the New Mexico Institute of Mining and Technology (New Mexico Tech) issues a purchase document in response to Supplier's bid, a binding contract is created governed by the law of the State of New Mexico and consisting of Supplier's bid and New Mexico Tech's purchase document. Any inconsistency or conflict between or among Supplier's bid and the purchase document shall be resolved in the following descending order of preference: (a) order-specific provisions which are typed or handwritten by New Mexico Tech on the purchase document; (b) documents expressly incorporated by reference on the face page(s) of the purchase document; (c) these Standard Terms and Conditions; (d) any statement of Work attached to the purchase document; and (e) any specifications attached to the purchase document. Rescission, modification or waiver of any provision of any resulting purchase order/contract is not allowed unless issued by the Purchasing Agent in writing.
2. **SPECIFICATIONS:** The specifications in this purchase order are the minimum acceptable. When specific manufacturer and model numbers are used, it is to establish a design, type construction, quality, functional capability and/or performance level desired. Alternates may be bid, identified by manufacturer, stock number and adequate information to establish equivalency.
3. **QUALITY:** Unless otherwise indicated, all material shall be first quality. Items that are used, demonstrators, obsolete, seconds or which have been discontinued, are unacceptable without prior written approval of the Purchasing Agent.
4. **PRICING:** New Mexico Tech qualifies for governmental and educational discounts. Unit prices shall reflect these discounts. Unit prices shall be shown on all bids. If an apparent mistake exists in the extended price, the unit price shall govern in bid evaluation and contract administration.
5. **DISCOUNTS AND PAYMENT TERMS:** In determining awards, discounts for early payment will not be used in computing the low bid. Payment terms and discount times will be computed from the date of satisfactory receipt of the items/services, or a correct invoice, whichever is later. The point of receipt shall be the delivery address for shipments, or the billing address for invoices, as specified on the purchase order.
6. **INSPECTION, ACCEPTANCE AND REJECTION:** New Mexico Tech may (a) inspect materials and workmanship at any time, from time to time, and at reasonable locations, (b) require Supplier to repair, replace or reimburse the amount paid for any rejected materials or workmanship, and (c) accept any materials or workmanship and upon discovery of nonconformity either reject or retain and at Supplier's expense rework the nonconforming materials or workmanship. At the request of New Mexico Tech, Supplier at its risk and expense shall remove any rejected materials promptly after notification of rejection.
7. **ASSIGNMENT AND DELEGATION:** No right or duty of Supplier may be assigned or delegated in whole or in part without the prior written consent of the Purchasing Agent. Any purported assignment or delegation without such prior written consent shall be void.
8. **SAFETY REQUIREMENTS:** All materials, equipment and supplies furnished to New Mexico Tech must comply fully with all safety requirements as set forth by the State of New Mexico, Rules of the Industrial Commission on Safety and all other applicable OSHA and other standards. Material Safety Data Sheets (MSDS) shall be furnished to New Mexico Tech upon request.
9. **WARRANTY OF MATERIALS AND EQUIPMENT:** Supplier warrants the materials, supplies, services and workmanship to be furnished to be exactly as specified in this order, free from defects in design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein,

any samples furnished by Supplier, and applicable law. All applicable UCC warranties, express and implied, are incorporated herein.

10. **TAXES:** No price bid should include taxes. Any applicable taxes to be charged should be separately entered on the bid form where indicated.
11. **INDEMNIFICATION AND INSURANCE:** Supplier assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including but not limited to death) and/or damage to or destruction of property sustained or alleged to have been sustained in connection with or arising out of (a) any materials, services and workmanship furnished by Supplier or (b) any act or failure to act of Supplier, its agents, employees, subcontractors or consultants. Supplier shall indemnify and hold harmless New Mexico Tech, its regents, officers, agents and employees from any and all liability for such losses, expenses, damages, demands and claims, shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury (including death and/or damage or destruction of property, and shall pay all damages, costs and expenses, including but not limited to attorneys fees, in connection with or resulting from such suit or action. In any event, New Mexico Tech's liability shall always be subject to the limitations of the New Mexico Tort Claims Act.

Supplier agrees that it and its subcontractors will maintain (a) public liability and property damage insurance in adequate amounts covering all of its potential obligations and liabilities pursuant to this Paragraph 11 and (b) workers' compensation coverage covering all employees performing any duties relating to this order.

12. **CANCELLATION AND DEFAULT:** New Mexico Tech reserves the right to cancel any purchase order or contract, in whole or in part, at any time and without penalty, due to non-appropriation of funds or failure of Supplier to comply with any applicable terms, conditions and/or specifications. In the event of Supplier's default, New Mexico Tech may exercise any or all rights available to it at law or in equity, including but not limited to those provided in Article 2 of the UCC. Supplier's obligations under the warranty and indemnity provisions hereof shall survive cancellation.
13. **CHANGES:** New Mexico Tech may make changes within the general scope of this order by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of, this order, an appropriate equitable adjustment shall be made. No change by Supplier shall be recognized without written approval by the Purchasing Agent. Any claim of Supplier for an equitable adjustment under this Paragraph 13 must be made to the Purchasing Agent in writing within thirty (30) days from the date of receipt by Supplier of notification of such change, unless the Purchasing Agent waives this condition. Nothing in this Paragraph 13 shall excuse Supplier from proceeding with performance of the order as changed hereunder.
14. **NON-APPROPRIATIONS:** The performance under this Purchase Order by New Mexico Tech is contingent upon availability of sufficient funds and sufficient appropriations and authorizations being made by the funding entity(s) for such performance. New Mexico Tech's decision as to whether sufficient funds are available and whether sufficient appropriations and authorizations have been made shall be made in good faith and in its sole discretion, shall be accepted unconditionally by the Contractor, and shall be final. If New Mexico Tech decides that sufficient funds are not available and/or sufficient appropriations and/or authorizations have not been made, it shall notify the Contractor of its decision in writing and may either terminate this Agreement or propose modifications to accommodate the insufficient funds and/or appropriations and/or authorizations. If New Mexico Tech proposes modifications, the Contractor shall within thirty (30) days after receiving New Mexico Tech's notice give New Mexico Tech written notice that it has elected either to (i) accept the proposed modifications or (ii) terminate this Agreement. If the Contractor fails timely to give such notice, it shall be deemed to have accepted the proposed modifications. In no event shall New Mexico Tech be liable for any financial or other penalty on account of any termination or modification of this Agreement as a result of insufficient funds, appropriations or authorizations.

15. **PENALTIES:** The New Mexico Procurement Code, Sections 13-1-28 et seq., imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, kickbacks, and other unlawful conduct.
16. **TITLE AND DELIVERY:** Title to and risk of loss of materials and workmanship furnished hereunder shall pass to New Mexico Tech at the F.O.B. point specified in the purchase order, subject to the rights of New Mexico Tech to reject or refuse to receive or retain upon inspection. Payment for materials or workmanship prior to inspection shall not constitute acceptance and is without prejudice to any and all rights of New Mexico Tech. For any exception to the delivery date(s) specified, Supplier shall give prior notification and obtain written approval from the Purchasing Agent. Time is of the essence and the order is subject to termination for failure to deliver on time.
16. **RELEASE OF INFORMATION:** Supplier shall not publish, distribute or use any information developed under or about the existence of this transaction or use the name(s), logo(s) or trademark(s) of New Mexico Tech or any of its divisions or affiliates for the purpose of advertising, making a news release, creating a business reference, creating website content, or for any other purpose, without the prior written approval of the Purchasing Agent.
17. **E-VERIFICATION:** The Immigration Reform and Control Act of 1986, Pub L 99-603 (8 USC 1324a) requires the employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States. This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices. Submission of the information required is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986. More information regarding the employment requirements can be found at the following website: <http://www.uscis.gov/files/form/i-9.pdf>

**NEW MEXICO TECH E-Verify Company ID Number is 165512**

#### **SPECIAL CONDITIONS OF BID**

1. **F.O.B. DESTINATION:** Delivery is to be to F.O.B. DESTINATION, to the location identified in the resulting purchase order.
2. **PERFORMANCE:** Supplier must be capable of providing the materials and workmanship according to the delivery scheduled quoted. In the event Supplier fails to meet such schedule, New Mexico Tech shall notify Supplier that it is delinquent. Failure to mitigate the delivery problem may result in New Mexico Tech terminating the contract. It is important that Supplier provide materials and workmanship on schedule without delay.
3. **ALTERNATE BID ITEMS:** The Manufacturer and Model Numbers furnished in the purchase order or resulting specifications are to establish the standard of performance and characteristics desired and not intended to limit or restrict competition. New Mexico Tech reserves the right to reject any materials and/or workmanship not meeting specifications or less than equal in performance and characteristics to the applicable specifications.

4. **MATERIAL SAFETY DATA SHEETS:** Supplier will be required to provide Material Safety Data Sheets, with and upon delivery, for any HAZARDOUS MATERIAL, TOXIC SUBSTANCE, INFECTIOUS AGENT or PESTICIDES applicable to any purchase order.
5. **FIRM PRICE:** The prices of the resulting purchase order shall prevail upon acknowledgment of the order, or shipment of the items, by Supplier.

#### **GOVERNMENT FLOW-DOWN PROVISIONS**

The resulting order is subcontracted under a U.S. Government Prime Contract, the applicable clauses listed below are incorporated into, and form a part, of the terms and conditions of the resulting order. In the event of any conflict between previously referenced terms and conditions and the Government Flow-Down Provisions, the Government Flow-Down Provisions take precedence. The clauses contained in the following paragraphs of the Federal Acquisition Regulations (FAR) are incorporated herein by reference. For purposes of this Purchase Order, in the following clauses, the term "contract" shall mean "this order", the term "contractor" shall mean "Seller" and the term "Government" and "Contracting Officer" shall mean "New Mexico Institute of Mining and Technology (New Mexico Tech)" and the "Director of Purchasing Services" respectively.

The following provisions of the FAR apply at the specified order dollar amounts:

<b>Title</b>	<b>Applicability</b>	<b>FAR Reference</b>
Equal Employment Opportunity	All Orders	52.222-26
Debarment and Suspension	All Orders Over \$100K	52.209-5
Rights in Data	All R&D Orders	52.227-14
Anti-Kickback Act	Construction Over \$2K	52.203-7, 52.203-12
Audit & Negotiations	All Orders Over \$100K	52-215-2
Davis Bacon Act	Construction Over \$2K	52.222-6
Contract Work Hours and Safety Standards	Construction and Labor Hour Contracts Over \$2.5K	52.222-4
E-Verification	All Orders	52.222-54
Certification and Disclosure Regarding Payments to Influence Certain Transactions	All Orders Over \$100K	52.203-11
Clean Air Act	All Orders Over \$100K	52.223-1
Patent Rights	All Orders	52.227-11, 52.227-12
Buy American Act	All Orders Over \$3K	52.225-1

#### **CERTIFICATION OF TAX EXEMPT STATUS**

The New Mexico Institute of Mining and Technology (New Mexico Tech) is an agency of the State of New Mexico. In accordance with State statutes, Sections 7-9-13 and 7-9-54, sales of TANGIBLE PERSONAL PROPERTY to the Institute are specifically exempted from the state Gross Receipts Tax.

This certification is consistent with State statutes Sections 7-9-5 and 7-9-43(B) and issued in lieu of "NONTAXABLE TRANSACTION CERTIFICATES". This certification is also provided on all purchase orders issued by New Mexico Tech. It is to be retained by Supplier as evidence that sales of tangible personal property to New Mexico Tech are deductible from Supplier's gross receipts. This exemption does not apply to the purchase of SERVICES, LEASES OF PROPERTY, or ITEMS PURCHASED FOR A CONSTRUCTION PROJECT.

All bid amounts shall EXCLUDE any applicable Gross Receipts Tax. If the resulting contract is taxable, show the amount of the tax as a separate item on the itemized list.

Federal Registration #: 85-6000-411

New Mexico Identification #: CRS 01-507116-002