

Del Mar College, Corpus Christi, TX
Minor Construction Standard Terms and Conditions

Any provision of these Minor Construction Standard Terms and Conditions which varies or contradicts the provisions of a written agreement between the College (Owner, Buyer) and the Contractor (Seller) shall be null and void and of no force and effect. To the extent not inconsistent with a written agreement between the College and Contractor, these terms and conditions shall apply to the Minor Construction Project (the Project).

1. Contract Documents: For Projects of less than \$50,000 in total cost, the contract documents for the Project will be in the form of a purchase order issued and signed by the College's Director of Purchasing or designee. The purchase order is understood to incorporate by reference these Minor Construction Standard Terms and Conditions; any request for quotation, statement of work, specifications, and/or drawings describing the Project issued by the College; the successful offer and any changes made during clarification, technical or price discussions prior to issue of the College's purchase order. These articles shall collectively constitute the contract and shall become a part of the purchase order as if fully set forth therein. In the event of conflict between the documents, the order of precedence shall begin with the most recent dated document (highest precedence) followed, in date sequence, by older dated documents.

2. Time of Completion: Time is of the essence. Contractor shall complete the work on or before the expected delivery date shown on the purchase order. If the work is not timely completed, Owner shall be entitled to recover from Contractor, at Owner's sole election: (a) all loss or damage incurred or sustained by the Owner including but not limited to additional construction costs, fees, interest, loss of revenue, professional fees and attorneys fees; or (b) liquidated damages in the amount of two hundred fifty and 00/100 Dollars (\$250.00) per day for each calendar day (excluding Saturdays and Sundays) thereafter until the Project is completed.

3. Scope of Work: Contractor agrees to furnish, at his own expense all supervision, labor, demolition, construction and administrative services, materials, tools, equipment and miscellaneous supplies, coordination of all subcontractors, tests, inspections, and other items that are necessary to and appropriate for the finishing, equipping and functioning of the facilities and structures, together with all additional, collateral and incidental work and services required for the full and final completion of the Project, and everything incidental thereto, as shown on or properly inferable from the work order, purchase order, drawings, specifications, statement of work, or similar documents provided by Owner. As part of the Work, the Contractor shall furnish and assume full responsibility for everything required for the orderly progress and proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated into the Work including, but not limited to, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, transportation, telephone, water, sanitary facilities, temporary facilities, utilities and all other facilities and incidentals.

4. Changes: The College may direct changes in the work by issuing a written Change Order, signed by the Director of Purchasing, to Contractor. If any change causes an increase or decrease in the cost or period of performance, an equitable adjustment shall be made, as applicable. No equitable adjustment shall be made for any claim involved in any change unless the change was approved and confirmed in writing by the College's Purchasing Department. Contractor waives all claims for equitable adjustment not made within ten (10) working days, Monday through Friday, after the basis for such claim has first arisen.

5. Contract Administrator: A Construction Manager or Contract Administrator shall be assigned by the Owner to represent the Owner in administration of the work to be performed under this contract. The Administrator shall have no right to authorize changes that are outside the scope and compensation of the contract, nor shall the Administrator's actions be construed as giving implied approval of any such change. Changes to the scope or compensation of the contract can only be affected by a properly executed written change to the contract, signed by the Owner's Director of Purchasing or designee.

6. Examination of Project Scope and Site: Prior to submission of an offer or price quotation for performance of the Project, each Offeror shall examine and, by inspection or inquiry, become fully informed of the project site and the scope, character and amount of work to be done. Should any error, omission or conflict occur in the drawings, specifications, or statement of work, the Offeror shall have the same explained and adjusted prior to accepting a contract. Failure of Offeror to become fully informed in these matters will not serve to relieve him of the obligation to complete the project within the agreed time at the agreed price.

7. Permits, Fees and Compliance: Contractor shall, at Contractor's expense, apply for, procure and maintain all required and necessary licenses, permits, inspections, government fees, and approvals, and issue all required notices or notifications, in compliance with applicable laws and ordinances. Contractor shall at all times perform its services in compliance with said laws and ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work, and shall promptly notify Owner if the Project requirements are at variance therewith.

8. Wage Scale: This Project is subject to the provisions of Chapter 2258 Texas Government Code, as amended, (The "Act") the terms of which require that not less than the general prevailing rate of current per diem wages for work of similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holidays and overtime work, shall be paid by the Contractor to all laborers, workmen and mechanics employed on the Project. Owner has ascertained that the general prevailing rate of per diem wages in this locality for each craft or type of workman or mechanic needed to carry out the Contract are those prevailing wage rates as determined by the U. S. Department of Labor. A contractor or subcontractor, in violation of the provisions of the Code is liable for the penalties provided in the Code. Owner will, upon request, provide contractor with a wage determination.

9. Standard of Performance:

- a. Contractor warrants and guarantees to the Owner that the Work shall be performed in a manner consistent with a high standard of construction practices for projects of a similar nature. Contractor covenants and warrants that it shall be responsible for performing and completing, and for causing any Subcontractors to perform and complete the Work in accordance with all Laws applicable to the Site and/or the Work.
- b. The Contractor warrants to the Owner that materials and equipment furnished will be of good quality and new, that the Work will be free from defects not inherent in the quality required or permitted, will be fully compatible with existing materials and equipment and that the Work will conform with all requirements. Work not conforming to these requirements, including Substitutions not properly approved and authorized, may be considered defective.
- c. The Contractor shall comply with recognized workmanship quality standards within the industry as applicable to each unit of Work. All references to standards whether for materials, processes, assemblies, workmanship, performance, or similar purpose shall mean, unless otherwise noted, the most recent available published version of such standard. When reference is made to standards, the standards are to be made a part of this contract, and to have the same effect as if fully reproduced herein. It is a requirement that each category of trades person or installer performing the Work be pre-qualified, to the extent of being familiar with applicable and recognized quality standards for that category of Work, and being
- d. capable of workmanship complying with those standards.
- e. Contractor is responsible for ensuring a safe and hazardous-free work place for all personnel in the areas affected by the project, shall

enforce strict discipline and good order among the Contractor's employees and other persons involved in the Project, and shall not permit employment or utilization of unfit persons or persons not skilled in tasks assigned to them.

10. Correction of the Work: In the event that Owner determines that any portion of the project work is not in accord with the requirements of this contract, and also determines in its sole discretion that removal and replacement of the Defective Work will adversely impact the Construction Schedule, the Owner may either 1) direct the Contractor to remove and replace the Defective Work without cost to the Owner or adjustment in the Contract Time or 2) accept the Defective Work and issue a deductive Change Order reducing the Contract Sum by an amount which, in the Owner's reasonable discretion, is appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made and shall not require the acceptance of the Contractor.

11. Warranty: Contractor warrants that all materials and equipment furnished under this Contract will, unless otherwise specified in the Contract Documents, be new and the best of their respective kind, and that all work will be of good quality and workmanship, free from faults and defects. All materials, equipment or work not meeting this standard will be considered defective and Contractor shall promptly correct all such defects as directed by the Contract Administrator. Contractor shall assign to Owner (if assignable) or enforce for the benefit of Owner (if not assignable) any guarantees provided by any manufacturers or sellers of machinery or equipment incorporated into the Work. If within one (1) year after the date of acceptance by Owner or a longer period if prescribed by law or any other guarantee, any of the materials, equipment or work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly upon receipt of written notice from Owner and shall repair any damage to adjacent facilities occasioned by such correction. This warranty excludes remedy for damage or defect caused by abuse, modifications not made by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear during normal usage.

12. Workman's Compensation and Liability Insurance:

a. Workman's Compensation For the duration of the Project and one year thereafter, the Contractor shall provide Workman's Compensation Insurance coverage per statutory requirements of Title IV Texas Labor Code for all employees of the Contractor providing services on the Project. Coverage will be based on proper reporting of classification codes and payroll amounts. The Contractor shall require any and all of its subcontractors to provide appropriate Workman's Compensation Insurance for any and all of their employees.

b. Liability Insurance: For the duration of the project, the Contractor shall at the Contractor's expense secure and maintain in full force and effect the following minimum liability insurance written by an insurance company lawfully authorized to do business in the State of Texas: General Liability Combined Single Limit: \$500,000; Property Damage Combined Single Limit \$500,000; Automobile / Vehicle Combined Single Limit: \$500,000; Owners/Contractors Protective Liability Combined Single Limit \$500,000; Umbrella in excess of primary coverage: \$1,000,000.00

c. Contractor's Representation of Compliance By accepting the Contract, the Contractor is certifying and representing to the Owner that all employees of the Contractor and of Contractor's subcontractors on the Project will be covered by worker's compensation and the Contractor will be covered by liability Insurance as described above and that all coverage agreements will be filed with the appropriate insurance carriers or Texas state agency. Upon request of Owner, Contractor agrees to promptly furnish copies of certificates of coverage or insurance. Contractor understands and agrees that the coverage described herein is mandatory regardless of the size or scope of the Project, that there is no "de minimus" exception to the requirements, and that Contractor's failure to comply with these provisions will be considered a breach of contract by the Contractor which will entitle the Owner to terminate the contract.

13. Presence on College Premises / Worksite Conduct: Contractor agrees that all persons working for or on behalf of Contractor whose duties bring them upon the premises of the College shall obey the fire, safety, traffic, parking and security regulations established by the College and shall comply with the reasonable directions of the College's officers. Contractor shall be responsible for the acts of its employees and agents while on the College's premises. All laborers and workers, while working in and around the Project, shall act in a professional manner. The Contractor shall enforce proper discipline and decorum among all laborers and workers on the Project and shall control, among other things: 1) noise, including music; 2) the use of offensive language; 3) smoking or drinking of alcoholic beverages on the Project Site; 4) physical violence; 5) riding in the passenger elevators; 6) thievery; and 7) the transportation of articles or materials deemed hazardous. If Owner determines, in its sole discretion, that any laborer needs to be removed due to his or her failure to comply with the terms of this provision, the Contractor will remove such laborer from the Project Site immediately.

14. Testing and Inspection of the Work: All construction shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance. The Contractor shall afford safe access to the Work Site upon reasonable request by the Owner or any governmental agency to perform tests, inspections or observations. Any such inspection or test shall be for the sole benefit of the Owner and shall not relieve the Contractor of the responsibility of assuring that the construction strictly complies with this contract. Inspections and tests shall not be construed as constituting or implying acceptance of the construction

15. Indemnification:

- a. Contractor shall indemnify and hold harmless and defend the Owner, its officers, employees, and agents from any and all claims, suits, actions, costs, regulatory fines and liability and fees, including attorney fees, because of any negligent act or omission, or misconduct of the Contractor, its employees and agents, or its subcontractor (s) connected with the performance of this Agreement. Except as to professional liability, such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided.
- b. Nothing contained herein shall be construed as prohibiting the Owner, its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Contractor shall be liable for the costs, fees, and expense incurred in the defense of any such claims, actions, or suits.
- c. Contractor shall be responsible for any and all damages to property or persons and for any losses or costs to repair or remedy construction as a result of any negligent act or omission, or misconduct in the performance of its work and its subcontractor' work and shall indemnify and hold harmless the Owner, its officers, agents and employees from all suits, claims, actions or damages of any nature whatsoever resulting there from unless such loss, damage, injury or loss results from or arises out of the error, omission and/or negligent acts of the Owner or its officers, employees or agents. Acceptance of the work will not relieve the Contractor of the responsibility for subsequent correction of any such error, omissions and/or negligent acts or of its liability for loss or damage resulting there from. Except as to professional liability, these indemnities shall not be limited by the listing of any insurance coverage.
- d. Contractor shall not be responsible for any damages that may occur as a result of any modifications made to the plans of the Contractor by others without the Contractor's knowledge, or for damages that may occur because of the improper or negligent acts of others.

16. Protection of the Work and Use of Premises:

- a. The Contractor shall promptly repair or remedy, to the specifications of the College's Director of Physical Facilities, any damage and loss other than damage or loss insured under property insurance provided or required by this contract to property at the site caused in whole or in part by the Contractor, their subcontractor(s) or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.
- b. During the performance of all Work, Contractor shall at all times keep the Site and such streets, highways, and roads, and properties which it may utilize free from waste materials, debris and/or rubbish and shall employ adequate dust control measures. If accumulation of such materials, debris, rubbish or dust constitutes a nuisance or safety hazard or is otherwise objectionable in any way, as reasonably determined

by Owner, Contractor shall promptly remove them. If any claim, demand, suit, losses, or action be brought by a person affected by the transportation of materials, equipment, goods or wastes to and from the Site, Contractor shall defend, indemnify and hold harmless all Indemnified Parties.

17. Cleaning Up: Contractor shall keep the project premises free at all times from accumulation of waste material and rubbish resulting from work on the Project. Combustibles shall be removed daily. Upon completion of the Project, all waste, rubbish, debris, tools and surplus material shall be removed and the premises left in an approved condition. If Contractor fails to clean up the premises at completion, Owner may do so and charge the Contractor for the cost thereof. Immediately before turning any portion of the Project over to the Owner, where there is exterior glass, the Contractor shall have all interior surfaces of such glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material that will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

18. Owner's Right to Stop Work or Terminate: Owner expressly retains the right to stop work on the Project if the Contractor fails to correct work or fails to carry out work which is not in accord with the Contract Documents. Additionally, the owner may, without prejudice to other rights or remedies available, and after giving the Contractor seven days written notice, terminate this agreement if: (a) the Contractor fails to supply enough properly skilled workers or proper materials for an unreasonably long period of time during work on the Project; (b) fails to properly pay subcontractor's for materials or labor, disregards laws, ordinances, rules, regulations or orders of public authority having jurisdiction; or (c) otherwise is guilty of substantial breach of any provision of the Contract. If Owner should terminate the Contract, then Owner shall be entitled to all rights of recovery described in the paragraph entitled "Time of Completion" above. In addition to these rights, if the Owner should terminate, the Owner may: (a) take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor; (b) accept assignment of subcontracts; and (c) finish the Project by whatever reasonable method the owner may deem expedient.

19. Payment Bond Required for Contracts in Excess of \$25,000: If the contract amount exceeds \$25,000, the selected Offeror shall furnish a Payment Bond in the amount of the full contract price and in the form promulgated by Owner. Such bonds must be written by a company, or companies, acceptable to and approved by Owner. The selected Offeror will be responsible for bonding the entire job at the time of execution of the Construction Contract and shall include the premium for such bonds in his Proposal. No additional safeguards will be required by Owner if the bonds meet all of the following requirements:

- a. The bond must be executed by a corporate surety or corporate sureties duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue surety bonds.
- b. The surety or sureties executing such bond must be listed in the most current issue of U.S. Department of Treasury Circular 570 (hereafter called "Circular 570") as an acceptable surety to execute bonds for federal projects.
- c. The amount for which the bond is written shall not exceed the underwriting limitation prescribed by Circular 570 for the surety or sureties executing such bond.

20. Invoicing and Payment: Unless otherwise noted in the Contract Documents, this Project contemplates submission by Contractor and payment by Owner of one invoice upon satisfactory completion of the Project. Contractor shall submit invoices to the Director of Purchasing, Del Mar College, 101 Baldwin Blvd, Corpus Christi, TX 78404-3897. At the College's election, payment shall be conditioned upon delivery by the Contractor of a notarized affidavit (in a form provided by Owner) that all of Contractor's bills, accounts, obligations and liabilities to subcontractors, employees, laborers, suppliers, and the like arising from this Project have been paid and discharged and that the Project has been fully completed and performed.

21. Amendments and Modifications: The nature and scope of services specified in this Agreement may only be modified by written amendment to this Agreement, approved by both parties. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

22. Successors and Assigns: The Owner and Contractor each bind themselves and their partners, successors, executors, administrators and assigns to the other party of the Agreement and to the partners, successors, executors administrators and assigns of such other party in respect to all covenants of this Agreement. Except as above, neither the Owner nor the Contractor shall assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the Owner and the Contractor.

23. Savings: If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

24. Non-Waiver of Rights: No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

25. Notice: Notice shall be delivered as follows: If to the Owner, to the Director of Purchasing and Business Services, Del Mar College, 101 Baldwin Blvd, Corpus Christi, TX 78404-3897. If to the Contractor to the "Vendor" address on the face of this document unless otherwise agreed.

26. Risk of Loss: Regardless of passage of title, the risk of loss to any of the Work and to any goods, materials, equipment and furnishings, provided or to be provided under this contract shall remain with the Contractor until Project Completion. Should any of the Work, and such goods, materials, equipment and furnishings, be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to the Owner, the Contractor shall repair or replace the same. The Bonds and insurance protection required by this contract or otherwise provided by the Owner or the Contractor shall in no way limit the responsibility of the Contractor under this Paragraph.

27. Governing Law and Venue: This Agreement shall be governed by the laws of the State of Texas both as to interpretation and performance. Both parties agree that venue for any action related to this agreement shall be in Nueces County, Texas.

28. Entire Agreement: This Agreement sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.