



3/8/2023

Kingsport City Schools
Attn: Sandra Sloan
400 Clinchfield Street, Ste. 200
Kingsport, TN 37660

Re: Renewal of Grocery and Beverage Items (the "Bid")

Dear Sandra Sloan:

We greatly appreciate the opportunity we have had to service you under the Bid award during this school year. This letter is to inform you that the Gordon Food Service, Inc. ("GFS") would like to renew the Bid for the 2023/2024 school year as outlined in this letter. While GFS's desire to meet all of your pricing and service expectations is strong; GFS's offer to renew the Bid is expressly conditioned on the following:

- The attached Supplemental Terms and Conditions for Bid Proposals (the "Supplemental Terms") applying to the supply of goods for the 2023/2024 school year and any subsequent renewal.
- The prices for the 2023/2024 school year are subject to adjustment as outlined in the Supplemental Terms.

If the terms contained in this letter and the Supplemental Terms are acceptable, please sign, date and return a signed copy of this letter to me at your earliest opportunity. We greatly value our business partnership and your understanding and support.

Sincerely,



Bradley King
Bid Department Supervisor

Acknowledged and accepted by Kingsport City Schools:

Signed: _____

Name: _____

Title: _____

SUPPLEMENTAL TERMS AND CONDITIONS FOR BID PROPOSALS

1. **Applicability.** These supplemental terms and conditions (collectively, the “**Terms**”) are an integral part of Gordon Food Service, Inc.’s or any subsidiaries’ (“**Gordon**”) proposal (the “**Bid Proposal**”) provided in response to a request for proposal or similar document or request (the “**RFP**”) issued by a customer or a group purchasing organization or co-operative on behalf of itself and/or its members (each, a “**Customer**”). The Terms shall apply to all sales of goods and services (collectively, “**Products**”) supplied from time to time by Gordon to any Customer in connection with the RFP and Bid Proposal and any resulting contract or otherwise.

2. **Contract Terms.** By awarding the Bid to Gordon or ordering Products from Gordon, each Customer agrees that the terms of the resulting contract will be governed by and construed in accordance with the terms and clarifications included in Gordon’s Bid Proposal (including but not limited to these Terms), which will become part of the resulting contract (a “**Contract**”). The Contract will comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything to the contrary in the RFP or any purchase order or other document issued by any Customer, in the event of a conflict between or among the terms of the documents which comprise the Contract, the documents will control in the following order: the Bid Proposal, these Terms, and the RFP. Any purchase order or other document issued by any Customer containing any inconsistent or additional terms to the Contract is expressly rejected and does not serve to modify or amend these Terms or the Contract.

3. **Warranty.**

a. Gordon warrants to Customer that all Products (a) while in Gordon’s possession or control, will be handled, stored and transported by Gordon in compliance with all applicable laws, regulations and other legal requirements, and (b) will not, while in Gordon’s possession or control, become mislabeled or adulterated, due to the act or omission of Gordon or its employees or agents, so as not to comply with all applicable laws, regulations and other legal requirements. **GORDON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM, USAGE IN TRADE, OR BY COURSE OF DEALING.**

b. Gordon does not manufacture any of the Products. The availability of Products does not indicate an affiliation with or endorsement of any Product or manufacturer. Gordon will assign to Customer all of its rights against the manufacturers and suppliers of the Products under the warranties (if any) which Gordon receives, to the extent the rights are assignable. Gordon shall provide reasonable support to Customer in the pursuit of any such warranty claims, provided that there is no additional cost to Gordon.

4. **Indemnification.** Subject to these Terms and in full replacement of any provisions in the RFP or otherwise relating to indemnification, Gordon will indemnify and defend Customer against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses, including reasonable attorneys’ fees, that are sought by any third-party from Customer arising out of: (a) any negligent or more culpable act or omission of Gordon (including any reckless or willful misconduct) in connection with its performance of its obligations under the Contract; and (b) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Gordon (including any reckless or willful misconduct). The foregoing obligation to indemnify and defend will not apply to the extent such claim or corresponding losses arise out of or result from the negligence or more culpable act or omission of Customer or its employees or agents. This Section sets forth the entire liability and obligation of Gordon and the sole and exclusive remedy for the indemnified party for any damages covered under this Section.

5. **Limitation of Liability.** In no event shall Gordon be liable under the Contract or otherwise, to Customer or any other person or entity for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, including, but not limited to, attorneys’ fees, lost profits or revenues or diminution in value,

arising out of, relating to, or in connection with any breach of these Terms or the Contract, regardless of: (a) whether such damages were foreseeable, (b) whether or not Gordon was advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.

6. **Excusable Delays.** Gordon shall not be liable for delays or failure to perform due, directly or indirectly, to: (a) causes beyond Gordon's reasonable control, (b) shortage of utility, facility, material or labor, delay in transportation, breakdown, including mechanical, electrical or other equipment failure, or (c) acts of God or nature, acts (including failure to act) of any governmental authority, wars (declared or undeclared), terrorist acts, strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, disease, quarantine, pandemics, and epidemics). The parties acknowledge that, as of the date hereof, the parties are aware of, and have knowledge of the pandemic and global health crisis commonly known as COVID-19 ("**COVID**"). Despite their awareness or knowledge, the parties agree COVID and its effects could constitute events that could potentially excuse delay or non-performance under this Section. The parties also waive any argument that COVID and its effects cannot constitute such events due to the parties' awareness or knowledge of COVID and its effects or that COVID and its effects were allegedly foreseeable.

7. **Firm Adjustable Pricing.** The prices of the Products included in the Bid Proposal are based on Product costs negotiated with vendors ("**Product Cost**") and other factors. Gordon negotiates Product Cost for extended periods of time in an effort to keep Product prices firm. However, extenuating circumstances may result in an unexpected price increase from the vendor or require Gordon to procure Product from an alternate source who may not honor the negotiated Product Cost. In addition, interruptions in the labor market and rapid inflation make it impossible for Gordon to tender a competitive mark-up on the Product Cost without significant risk of providing the Products at a loss due to future changes. Accordingly, and notwithstanding anything to the contrary in the RFP, Contract or otherwise, the Product prices contained in the Bid Proposal are offered conditionally on Gordon's ability to pass through increased costs or operational expenses as outlined in this Section. Commencing on the date that Gordon's Bid Proposal or renewal proposal, as applicable, is submitted, the price of the Products will be recalculated and set by Gordon according to (a) the prevailing Product Cost each August, October, January and March.

8. **COVID-19 Protocols.** This Contract for supplies/products is not subject to (a) the Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated as of September 9, 2021, including but not limited to any resulting administrative rulemaking, regulations, policies, or other guidance or publications (collectively, the "**EO**"), and (b) the requirements set forth in Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555 (Nov. 5, 2021) (the "**CMS Rule**" and, together with the EO, the "**Vaccination Requirements**"). Notwithstanding anything to the contrary in the RFP, Contract or otherwise, Gordon's Bid Proposal is expressly conditioned on the foregoing, and the Vaccination Requirements and any other requirement that Gordon vaccinate its employees are expressly rejected and do not serve to modify or amend these Terms or the Contract.

9. **Additional Charges.** The prices offered in Gordon's Bid Proposal are subject to certain additional charges not included in Gordon's Bid Proposal and the prices of the Products may include one or more additional charges if the Product is: (a) ordered in less than whole case quantities (to the extent available); (b) cross-docked from a Gordon distribution center to the selling Gordon distribution center due to having weekly sales of less than 20 cases; or (c) ordered for expedited delivery and fulfilled by Gordon's affiliate, Gordon Food Service Store LLC.

10. **Minimum Delivery Amount.** Irrespective of the absence of any minimum order amount or any lesser minimum order amount specified in the RFP, Contract or otherwise, the minimum order amount to receive a delivery shall be \$750.00 per order.

11. **Policies and Procedures.** Gordon recognizes that Customer may have certain policies and procedures that are attached to the RFP, incorporated by reference in the RFP, or which Customer may otherwise request be acknowledged and accepted by Gordon in some other form or instrument (collectively, the "**Customer Policies**"). Gordon agrees to comply with such Customer Policies, but only to the extent that (a) Gordon has affirmatively agreed to comply with in writing, (b) the Customer Policies are limited to employee conduct or appearance while on Customer's premises and have been adequately disclosed in writing to Gordon's employees in

advance; (c) the Customer Policies are consistent with the provisions contained in Section 8 of these Terms; (d) the Customer Policies are consistent with the terms and conditions contained in the Contract; (e) the Customer Policies are not contrary to and do not conflict with Gordon's own policies and procedures; and (f) the Customer Policies do not require Gordon to incur any additional costs or expenses other than what is already contemplated in its Bid Proposal for the distribution of the Products. Gordon will not be bound by any amendments, updates, or changes to the Customer Policies, unless Gordon has separately agreed in writing to comply.

12. **Substitutions; Cost Coverage.** If Gordon is required to provide a substitute for the original Product, Gordon will make commercially reasonable efforts to find a replacement Product that has generally comparable specifications and has a similar price. Notwithstanding anything to the contrary in the RFP, Contract or otherwise, the price of a substitute Product may be higher or lower than the price of the original Product. Should Gordon not be able to provide the original Product or provide an acceptable substitute Product, Customer may purchase such Product from another source for the period of time that Gordon is unable to provide the Product or an acceptable substitute. Gordon shall not be responsible for any difference in price of any Product purchased from another source or any substitute Product, or be liable for any costs, expenses, or losses incurred by Customer as a result of Gordon's breach of the Contract or its inability to supply one or more Products, notwithstanding anything to the contrary in the RFP, Contract or otherwise. Gordon makes no representation or warranty that the prices offered by Gordon are better than or more favorable than the prices offered by Gordon to any other customer. If Gordon offers a better price to another customer, Gordon shall have no obligation to match such price for Customer or issue a credit or refund to Customer, or otherwise adjust the price for Customer, if the price paid by Customer on any Product is not as favorable, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

13. **Proprietary Inventory.** If Customer requests and Gordon agrees to bring into inventory any Product that is primarily purchased only by Customer at the servicing Gordon distribution center (each, a "Proprietary Product"), the entire inventory of such Product, as replenished from time to time by Gordon, must be purchased by Customer. In the event Customer ceases to purchase a Proprietary Product, Customer must purchase all remaining inventory of such Proprietary Product within 30 days of Gordon's written notice to Customer. If the inventory is not purchased within 30 days, Gordon may dispose of the inventory in any reasonable manner and Customer agrees to pay Gordon the applicable bid price for each case of Proprietary Product comprising the inventory plus Gordon's costs and expenses to dispose of the inventory.

14. **Taxes.** With the exception of any tax applied against Gordon's income, Customer shall be solely liable and shall indemnify Gordon for any tax, levy or other governmental obligation due or arising related to the sale of Products by Gordon to Customer or otherwise arising pursuant to the Contract.

15. **Renewals.** Any renewal or extension of the Contract term must be mutually agreed to by Gordon and Customer in a written instrument signed by both parties, notwithstanding anything to the contrary in the RFP, Contract or otherwise.

16. **Termination.** Gordon reserves the right to terminate the Contract for any or no reason by providing Customer ninety (90) days' written notice.

17. **Confidentiality.** Gordon shall have no confidentiality obligation to Customer for any information or documentation Gordon may obtain in the performance of its obligations under the Contract.

18. **Setoff.** Customer shall have no right of setoff against any sums due to Gordon under the Contract or otherwise.

19. **No Assignment.** Customer shall not assign its rights under the Contract without Gordon's prior written consent.