

**SAN DIEGO UNIFIED SCHOOL DISTRICT
GENERAL TERMS AND CONDITIONS OF THE PURCHASE ORDER**

The District's Purchase Order is subject to the following terms and conditions: **THESE TERMS AND CONDITIONS ARE SUBORDINATE TO TERMS AND CONDITIONS THAT MAY EXIST UNDER A PREVIOUSLY BOARD APPROVED CONTRACT FOR THE SAME GOODS OR SERVICES.**

1. **ACCEPTANCE OF ORDER:** This order (hereinafter "Order") is District's (hereinafter "Buyer's") offer to Contractor, Seller or Supplier (hereinafter "Seller"). Acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever that is different from or in addition to the terms and conditions of this Order, whether or not such term or condition will materially alter this Order. Seller's commencement of performance or acceptance of this Order in any manner shall conclusively evidence agreement to this Order as written.
2. **PACKAGING AND EXTRAS:** No charges will be allowed for transportation, packaging, packing, or returnable containers agreed to in this Order. Damage to any Item(s) resulting from improper packaging will be charged to Seller.
3. **SPECIFICATIONS:** All Item(s) ordered to specifications shall comply with such specifications current as of the date of this Order unless otherwise specified by Buyer.
4. **PERFORMANCE REQUIREMENTS:**
 - 4.1 Quality Level - Seller shall maintain a quality level of zero defects on all Item(s) shipped to Buyer.
 - 4.2 Forecasts - In the event Buyer has provided Seller any delivery forecast(s), said delivery forecast(s) are being provided by Buyer without liability or obligation. Seller acknowledges and accepts that changes may occur in the delivery forecast(s) and/or quantities listed therein and Seller releases Buyer from any and all damages and claims resulting from changes to delivery forecast(s) and/or quantity changes made thereto.
 - 4.2.1 Schedule Acceleration/Deceleration - Buyer may revise any delivery schedule without cost or change to the unit price stated in the applicable Purchase Order(s) at any time by providing Seller with written notice of the revised schedule.
 - 4.2.2 On-time Delivery - Seller shall maintain an on-time delivery level of 100%. Delivery is considered to be on-time with the agreed-upon schedule date when shipments are received no more than three (3) days ahead or zero (0) days after the scheduled delivery date.
 - 4.2.3 Delivery Performance Measurements - The Parties agree that Seller's On-time Delivery performance is subject to monitoring and the parties agree that failure to maintain the agreed to delivery performance waives any Buyer obligation to fulfill any commitment under this Order and may result in termination.
 - 4.2.4 Remedies - The parties agree that failure to meet the Performance Requirements in this Section 4 may render Seller as a non-preferred supplier, in the sole discretion of Buyer, which can be considered as cause for re-negotiation of this Order or termination. Additionally, the following remedies are also available to Buyer:
 - a. Seller may be obligated to pay liquidated damages in the amount of 0.025% of the value of the delayed Item(s) for each calendar day of delay in delivery of the Item(s) commencing on the day following the due date found on the applicable Purchase Order up to a total of 10% of the value of the of the delayed Item(s), as indicated on the Purchase Order.
 - b. Notwithstanding the foregoing, Buyer reserves all its rights and remedies at law or in equity.
5. **CHANGES:**
 - 5.1 Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, samples or other description to which the Item(s) are to conform, in methods of shipment and packaging, or place of delivery. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Order modified accordingly. Any claim for an equitable adjustment must be made within thirty (30) days of the receipt of such notice. The equitable adjustment shall be made based on negotiations between Buyer and Seller. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this Order as changed. Seller shall make no substitutions or changes to the form, fit, or function of the Item(s) furnished to Buyer by Seller hereunder without prior written notice and approval in writing from Buyer.
 - 5.2 The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformity in any Item(s) furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein.
6. **PAYMENT:** All invoices for item(s) delivered and service(s) performed shall be mailed to San Diego Unified School Buyers, Accounts Payable Department. Accordingly, unless otherwise specified and agreed to with the Buyer's, Seller agrees that SELLER SHALL NOT SUBMIT ANY STATEMENTS OR INVOICES TO BUYER.

7. **WARRANTY:**
- 7.1 SELLER SHALL WARRANT THAT ITEMS SUPPLIED BY SELLER ARE NEW UNLESS SPECIFICALLY APPROVED BY BUYER IN WRITING. ITEMS SHALL NOT BE SURPLUS, RECONDITIONED, RECOVERED OR REMANUFACTURED UNLESS APPROVED BY BUYER IN WRITING.
- 7.2 Seller shall reimburse Buyer for all consequential damages and expenses associated with correcting the defect, failure, authenticity and conformance of the Item(s) including repair, refurbishment, exchange and any other consequential costs associated with correcting the defect, failure, authenticity and conformance at either the Buyer's location or at the Buyer's Customer location(s).
- 7.3 Any other specific product or service warranty shall be expressly included in the manufacturer's standard publications, proposal or quotations.
8. **TERMINATION:** The District shall have the right to terminate this Purchase Order(s) or any part thereof at any time following 30 days written notice:
- 8.1 **For Convenience** – The terms of this subparagraph shall not limit or affect the right of the District to cancel/terminate this Purchase Orders for Cause and shall not apply to a breach of contract. In case of termination by District of all or any part of this Order and/or any Purchase Order(s) without cause, Seller shall submit all claims for amount due from the District within thirty (30) days after the effective date of cancellation/termination. Seller shall maintain complete and accurate records to support Seller's claimed costs. Such records shall be available for verification through audit and analysis by the District. The District's maximum liability shall be limited to the following:
- 8.1.1 In no event shall Seller be entitled to any amount above monies paid and/or owed for work performed up to the date of the termination notice.
- 8.1.2 Seller shall have no claim for any damages, or loss of profit, arising out of any termination for convenience.
- 8.2 **For Default** — The District may, by written notice to Seller, without prejudice to any other rights or remedies provided under this Purchase Order, by law or in equity, terminate this Purchase Order(s) in whole or in part for any of the following circumstances:
- 8.2.1 If Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
- 8.2.2 If Seller fails to perform the work/service or deliver the good(s)/item(s) in accordance with the statement of work, scope, performance requirements or delivery schedules specified herein or any extension thereof;
- 8.2.3 If Seller: 1) fails to perform any of the other terms of this Purchase Order; or 2) fails to make progress as to endanger the performance of this Purchase Order in accordance with its terms, and in either of the two circumstances enumerated in Section 8.2(a) or 8.2(b), does not cure such failure within a period of ten (10) calendar days (or such longer period as the District may authorize in writing) after receipt of notice from the District specifying such failure. In the event the District terminates this Purchase Order in whole or in part as provided in this Section 8.2, the District may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to the District for any excess costs, reasonably incurred for such similar supplies or services.
9. **LIMITATION OF LIABILITY/DISCLAIMER OF DAMAGES.** Buyer's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the Item(s) scheduled for delivery per the Order issued. FURTHER, IN NO EVENT SHALL BUYER BE LIABLE FOR PUNITIVE, DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ITS ACTS OR OMISSIONS HEREUNDER.
10. **RELEASE OF NEWS INFORMATION AND ADVERTISING:** Seller shall not, without the prior written consent of Buyer (a) make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this Order, or (b) in any manner advertise or publish the fact that Buyer has placed this Order.
11. **SELLER'S DATA: (AS APPLICABLE)**
- 11.1 Seller agrees that all data or information, regardless of form and including but not limited to tapes, photo prints and other graphic information, furnished with Item(s) or required to be furnished by this Order, together with any information furnished orally, shall be free from proprietary restriction. Data for which a restrictive use marking is authorized herein or by special agreement, may be duplicated and used by Buyer as required.
- 11.2 To the extent that Seller establishes a claim to statutory copyright in any data first produced and furnished in the performance of this Order, Seller grants the Buyer a royalty-free, perpetual, nonexclusive, irrevocable, worldwide license to publish, distribute, translate, duplicate, exhibit, or perform any such data copyrighted by the Seller with the right to grant sublicenses.
- 11.3 Exclusive of computer software and related documentation, Seller agrees to grant a license for the benefit of Buyer of the same scope set forth in Section 11.2 to any technical data delivered under this Order that are copyrighted by Seller.
- 11.4 Exclusive of computer software and related documentation, Seller further agrees not to knowingly include any material copyrighted by others in technical data delivered under this Order without first obtaining, at no additional cost and for the benefit of Buyer, a license therein of the same scope as set forth in section 13.
12. **LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE (AS APPLICABLE):** Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment or Item(s) shall remain the sole and exclusive property of Seller. Seller grants the Buyer a royalty-free, perpetual, worldwide, irrevocable, nonexclusive license to use such software only in or with the equipment or Item(s). Upon such transfer of software and equipment or Item(s), Buyer may make and distribute archival copies of the software.

- 12.1 Software Licenses shall not have an "Automatic Renewal" or "Evergreen Clause". Software licenses shall expire exactly one year (12 months) or sooner, as indicated in our purchase order.
- 12.2 The Software License provider does hereby agree to remove any and all "Automatic Renewal" or "Evergreen Clauses" from their License Agreement, unless indicated otherwise in writing by the District.
13. **FERPA (AS APPLICABLE):** If Seller will have access to student records, Seller agrees to comply with the Family Educational Rights and Privacy Act of 1974, and all requirements imposed by or pursuant to regulation of the Department of Education and the District (including but not limited to Administrative Regulation and Procedures No. 6525 and 6527) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill contractual obligations with the District. The provisions of the Family Educational Rights and Privacy Act of 1974 include, but are not limited to, ensuring that:
No identification of students or their parent/guardians by persons other than representatives of Seller is permitted;
- 13.1 The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained;
- 13.2 No access to individual student data shall be granted by Consultant/Professional to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of Seller so long as those persons have a legitimate interest in the information.
- Seller recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by Seller. This assurance is binding Seller on and such persons as may be employed by Consultant/Professional to assist in any phase of the contractual obligation to the District.
14. **INDEMNIFICATION:** Seller shall defend, hold harmless and indemnify the Buyer, its Board members, administrators, employees, agents, attorneys and volunteers ("Buyer") from and against all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of Buyer.
15. **INSURANCE: (AS APPLICABLE)**
- 15.1 General: Seller shall procure and maintain for the duration of the Purchase Order, at its sole expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to Buyer. Seller's maintenance of insurance, as required by the Purchase Order, shall not be construed to limit the liability of Seller to the coverage provided by such insurance, or otherwise limit Buyer's recourse to any remedy available at law or in equity.
- 15.2 Minimum Scope of Insurance: Seller shall obtain insurance of the type described below:
- 15.2.1 Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) and include products coverage with limits of at least \$2,000,000 per occurrence, \$4,000,000 general aggregate and a \$2,000,000 products liability aggregate limit. Buyer shall be named as an additional insured under Seller's Commercial General Liability insurance policy using ISO Additional Insured-Sellers Endorsement CG 20-15 or a substitute endorsement providing equivalent coverage.
- 15.2.2 Automobile Liability coverage, with coverage for owned, non-owned or hired ("any" auto) used in the performance of this Agreement with combined single limits of at least \$1,000,000 per accident. *
- 15.2.3 Workers Compensation coverage as required to satisfy California statutory requirements.*
- 15.3 Other Insurance Provisions:
- 15.3.1 Seller's coverage shall be primary insurance as respects Buyer. Any insurance, self-insurance or insurance pool coverage maintained by Buyer shall be excess of Seller's insurance and shall not contribute with it.
- 15.3.2 Seller's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirtieth (30) days prior written notice provided to Buyer.
- 15.3.3 Any deductibles or self-insured retentions must be declared to and approved by Buyer.
- 15.4 Acceptability of Insurers: Insurance is to be placed with insurers authorized to do business in California with a current A.M. Best's rating of no less than A-, VII, unless otherwise acceptable to Buyer. Exception may be made for the California State Compensation Insurance Fund when not specifically rated.
- 15.5 Verification of Coverage: Seller shall furnish Buyer with original certificates and amendatory endorsements, including but not limited to the additional insured endorsement, evidencing compliance with the insurance requirements above before goods, materials or supplies will be accepted by Buyer. Buyer reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.
- 15.6 Special Risks or Circumstances: Buyer reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.
16. **FORCE MAJEURE:** The Seller shall be excused from late and non-delivery of goods hereunder during the time and to the extent that it is prevented from obtaining, delivering or performing in the customary manner by act of God, fire, strike, partial or total interruption of, loss or shortage of transportation facilities, lockout, commandeering of raw materials, products, or facilities by the government, when satisfactory evidence thereof has been presented to the Buyer providing it is satisfactorily established that the late or non-delivery is not due to the fault or negligence of the party not performing.

17. **ASSIGNMENT:** Buyer may assign in whole or in part any of its rights and obligations under this Order without the prior consent of the other party. Seller shall not assign in whole or in part or subcontract in whole or substantially in whole any part of its rights or obligations under this Order without the express written consent of Buyer. The terms and conditions of this Order shall bind any permitted successors and assigns of either party.
18. **COMPLIANCE WITH LAWS:** Seller warrants that it will comply with all federal, state, and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Order including any employment, health or safety agency regulations.
19. **REMEDIES, NON-WAIVER AND INVALIDITY:** Any and all failures, delays, or forbearances of either Party in insisting upon or enforcing at any time or times any of the terms and conditions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment of any such terms and conditions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. The invalidity in whole or in part of any term and condition contained herein shall not affect the validity of any other term and condition. The rights and remedies provided Buyer pursuant to this Agreement shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any term and condition hereof shall not constitute a waiver of any other breach.
20. **APPLICABLE LAW:** This Order shall be governed by, construed and enforced in accordance with the laws of the State of California.
21. **WAIVER:** This Order shall not be amended or modified, nor shall any waiver of any right hereunder be effective unless set forth in a document executed by duly authorized representatives of the parties. The failure to exercise any right under this Order shall not be deemed to be a waiver of such right, and shall not affect the right to enforce each and every right hereof. The waiver of any breach of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of any: a) subsequent breach of such term, provision, covenant or condition; or b) other term, provision, covenant, or condition.
22. **SEVERABILITY:** If any term or condition of this Order is held invalid or unenforceable for any reason, the remaining provisions of this Order shall continue in full force and effect as if this Order had been executed with the invalid portion eliminated, provided the effectiveness of the remaining portions of this Order will not defeat the overall intent of the parties. In such a situation, the parties agree, to the extent legal and possible, to incorporate a replacement provision to accomplish the originally intended effect.
23. **ENTIRE AGREEMENT:** This Order is intended by the Buyer and Seller as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No Amendment or change of any kind shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer. The Purchase Order will be subordinate to the purchasing terms and conditions expressly stated in an agreement if one has been duly signed by the District and the Seller or Contractor.

THE FOLLOWING PROVISIONS ARE REQUIRED IN PURCHASE ORDERS FOR CONTRACTING THAT WILL BE PERFORMED ON SCHOOL SITES AND/OR AROUND CHILDREN.

24. **FINGERPRINT CLEARANCE:** Under Education Code Section 45125.1, Seller and its subcontractors shall ensure that all employees working with the San Diego Unified School District obtain fingerprint background clearance through the California Department of Justice screening process: Seller will ensure that subcontractors will not place any person at a school whom has a conviction of a serious or violent felony as defined in Education Code Section 44830.1 (c)(1), or sex offense as defined in Education Code Section 44010 or controlled substance offense as defined by Education Code Section 44011.
25. **TUBERCULOSIS EXAMINATION:** Seller shall ensure that if there is to be contact with employees working with the San Diego Unified School District, a proper tuberculosis (TB) certificate of clearance will be provided to district prior to commencing initial employment. Seller will ensure that subcontractors will not place any person at a school without a valid TB certificate on file showing the employee was examined and found to be free from active tuberculosis, as defined in Education Code Section 49406.1 (a).
26. Seller agrees that all its agents, employees, subcontractors, and subconsultants who are in the physical presence of students or District employees at District sites are subject to and must comply with all COVID-19 protocols required of District staff under applicable federal, state, and/or local laws. COVID19 protocols may be amended from time to time and may include but are not limited to mandatory vaccination, proof of vaccination, physical distancing, wearing appropriate facial coverings over the nose and mouth or other personal protective equipment, and symptom self-screenings before entering District sites. Weekly COVID-19 testing, and reporting may also be required, when and if applicable. Consultant/Professional shall provide adequate written assurance of its compliance, proof of compliance, or both, upon request from the District.

THE FOLLOWING PROVISIONS ARE REQUIRED IN PURCHASE ORDERS FOR PUBLIC WORKS CONTRACTING:

27. PREVAILING WAGE REQUIREMENT

- 27.1 Attention is called to the fact that State of California prevailing wage requirements apply to this project.
- 27.2 Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" (as that term is defined in the statutes), there shall be paid to each Worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such Worker. For purpose of compliance with prevailing wage law, the Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law

includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.

- 27.3 Copies of the prevailing rate of per diem wages applicable to this Project are on file at the District's office, and shall be made available to any interested party on request; or may be found on the Internet at: <http://www.dir.ca.gov/DLSR/PWD>. The Contractor shall post at appropriate conspicuous weatherproof points on the site of the Project a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Project. Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts for activities for the Project.
- 27.4 Contractor shall certify to the District on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor complied with prevailing wage laws. Prior to the release of any retained funds under this Agreement, the Contractor shall submit to the District a certificate signed by the Contractor performing public works activities stating that prevailing wages were paid as required by law.
- 27.5 Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject Contractor and/or its Subcontractors to penalties, including forfeitures and debarment under Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813.
- 27.6 Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders or regulations.

28. **Employee Fingerprint Verification; Barriers; Employee Surveillance:** At all times when a Site is used or occupied for academic purposes or for other school related functions, no employee or independent contractor to the Contractor or any Subcontractor shall be permitted access to the Site or to perform any Work at the Site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code §45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code §45122.1 and has no criminal felony proceedings (as defined in Education Code §45122.1) pending against her/him; (c) the Contractor or Subcontractor engaging the individual for the Work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) the Contractor or Subcontractor engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having pending criminal felony proceeding pending against her/him.

The provisions of Education Code §45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a Site is being used or occupied for academic purposes or other school related functions. At all other times during the Work, as appropriate, or as directed by the District, to limit contact between workers performing the Work and students and for the safety of students, the Contractor shall:

(i) erect a physical barrier around the Work to limit contact between students and the individuals performing Work; or (ii) designate an employee of the Contractor and require each Subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of the Contractor and Subcontractors, provided that the employees designated for such monitoring and supervision has submitted her/his fingerprints to the Department of Justice under Education Code §45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal proceeding pending against her/him and the Contractor/Subcontractor employee has submitted a Fingerprint Certification attesting to such Department of Justice fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code §45125.2 rests solely with the Contractor; the District will not designate any District personnel for surveillance of the Contractor's employees under Education Code §45125.2(a)(3).