

## PURCHASE ORDER TERMS AND CONDITIONS

**Acceptance:** This order is merely an offer to purchase and is not an acceptance of any other offer or the confirmation of an existing contract. No reference herein to Supplier's quotation, bid, proposal or any other document prepared by Supplier shall constitute District's acceptance of any term or condition contained in such document. Delivery by Supplier of goods or services covered by this order or the commencement of performance by Supplier of the work covered by this order shall be deemed as acceptance by Supplier of this offer.

**Applicable Law, Jurisdiction and Venue:** This contract shall be construed and interpreted according to the laws of the State of Nevada. The venue of any action brought hereunder shall be Clark County, Nevada.

**Attorneys Fees:** The parties agree that in the event of a dispute, each party will bear its own cost of litigation and attorneys' fees.

**Cancellation or Default:** The District reserves the right to cancel this order for its convenience or default. In the event of a breach by the Supplier of any of the provisions of this contract, the District reserves the right to cancel and terminate this order forthwith upon giving written notice to Supplier. Supplier shall be liable for damages suffered by District resulting from Supplier's breach of contract.

**Changes:** No alteration in any of the terms, conditions, delivery, price, quality, or specifications of this order will be effective without written consent of the District's Purchasing Department. Substitutions of like or similar items are not allowed without written consent from the Purchasing Department and a confirming change order to the original purchase order. The District reserves the right to increase or decrease the quantity of ordered items, or may purchase all of the order or any part of the order, as determined by the District.

**Compliance with Applicable Laws:** Supplier shall comply with all applicable statutes, laws, ordinances, codes, orders, rules, regulations, proclamations, and other governmental requirements, and all provision required thereby to be included in this order are incorporated by reference.

**Compliance with FERPA:** In the event that the District shares education records with the Supplier, the following provision shall apply. Supplier is a contractor or outside service provider with whom the District has outsourced institutional services or functions that it would otherwise use employees to perform. For purposes of the Family Educational Rights and Privacy Act (FERPA), Supplier constitutes a school official with a legitimate educational interest in obtaining access to education records, and will only have access to those particular education records in which they have a legitimate educational interest. Supplier shall be under the direct control of the District with respect to the maintenance and use of personally identifiable information from education records provided under this Agreement. Supplier is subject to the same conditions on the use and re-disclosure of personally identifiable information from education records that govern other school officials, including 34 C.F.R. § 99.33 and the requirements established by the District.

**Conflict of Interest/Nepotism:** The Supplier is hereby put on notice, by this clause, that it is his/her responsibility to disclose any relationship or affinity with a Board of School Trustee or an Authorizing Official in writing to the Director of Purchasing & Warehousing. Failure to properly disclose such relationship will result in termination of the purchase contract and may jeopardize the Supplier's future business with the District.

**Conflicting Terms:** The above terms and conditions may only be modified by the District with the exception of clauses which may be in conflict with any specification, bid, proposal, or contract pertaining to this project. Specification, bid, proposal, or contract terms and conditions will take precedence.

**Controversies and Claims Subject to Arbitration:** In the event of a dispute, the District's Purchasing Department will schedule a meeting with the Supplier to attempt to mediate and resolve any outstanding claims or disputes prior to initiating a request for arbitration (or commencing litigation). If through good faith efforts the matter is not resolved within fourteen (14) working days after the scheduled meeting, the parties may agree to continue mediation or may decide to proceed with the formal resolution process set forth herein.

**Cooling Off Period:** The District may not enter into any contract, directly or indirectly, with any employee or former employee for a period of one year from the date of termination of employment other than as a member of a bargaining unit, or as a substitute employee, unless (1) there is full disclosure of the nature and extent of the employee's or former employee's interest in the matter, and (2) the contract is noticed and acted upon in an open session before the Board of School Trustees and approved by a majority of the Trustees.

**Delivery:** For any exception to the delivery date as specified on this order, Supplier shall give prior notification and obtain approval thereto from District's Purchasing Department. With respect to delivery under this order, time is of the essence and the order is subject to termination for failure to deliver on time.

The acceptance by District of late performance with or without objection or reservation shall not waive the right to claim damage for breach, nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Supplier.

**Federal Funding:** In the event federal funds are used for payment of all or part of this agreement: Supplier certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published at pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

**Force Majeure:** Neither party shall be liable for failure or delay in performance under this order due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, acts of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining governmental approvals, permits, licenses or allocations, or any other causes which are not within such party's reasonable control, whether or not of the kind specifically enumerated above. During any period of Supplier's inability to perform, Buyer may acquire from others, without incurring liability to Supplier, said required goods or services.

**Formal Dispute:** In the event that mediation is unsuccessful, the controversy or claim arising out of or related to the Agreement, or the breach thereof, shall be settled by arbitration, unless the District, at its sole option, rejects arbitration by so notifying the Supplier. If the District rejects arbitration, the Supplier shall have thirty (30) days from the date of the receipt of the notice of rejection to commence litigation(s) by the service of a summons and complaint upon the District. Failure to effect service upon the District within said time period shall act as a bar to litigation of the claim, which was the subject of the request for arbitration. If the matter is arbitrated, the rules of the American Arbitration Association shall apply. Judgment on such awards may be entered by Nevada courts. The parties agree that no attorney fees may be awarded by any arbitrator to any party or sub-tier party that arise out of or relate to any and all claims, and other claims and disputes pertaining to the Agreement (in any case).

**Identification:** All invoices, packing lists, packages, boxes, shipping notices, and other written documents affecting this order shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this order, indicating the content therein. Invoices will not be processed for payment until all items invoiced are received. The contents of each package or box shall contain items for one purchase order only. Each purchase order shall be packaged and invoiced separately. Do not combine purchase orders on packing lists or packages.

**Infringements:** Supplier agrees to protect and hold harmless the District against all claims for patent, trademark, copyright, or franchising infringement arising from the purchase, installation, or use of material ordered on this order, and to assume all expense and damage arising from such claims.

**Invoices:** An original and one copy of the invoice are required for payment, and shall reference the appropriate purchase order number and include the Supplier FTIN. Invoices should be mailed to the Accounts Payable Department at Clark County School District, 2832 E. Flamingo, Las Vegas, Nevada 89121 unless otherwise directed.

**Invoices and Prompt Payment Discounts:** In the event the District is entitled to a cash discount, the period of computation for said discount or for other specified payment periods shall commence on the date of receipt of the merchandise or service or receipt of a corrected completed invoice, whichever is later.

**Non-Discrimination:** The parties agree to be bound by applicable state and federal rules governing Equal Employment Opportunity and non-discrimination.

**No Third Party Rights:** This contract is made for the benefit of the District and the Supplier, and not for any outside party.

**Rejection:** All goods or materials purchased herein are subject to approval by the District. Any rejection of goods or material resulting because of non-conformity to the terms, conditions, and specifications of this order, whether held by District or returned will be at the Supplier's risk and expense.

**Shipping Instructions:** Each invoice for shipping charges shall contain the original or a copy of the bill indicating that total payment for shipping has been made. The District will not accept C.O.D. deliveries. Twenty-four hour advance notification is required for all large deliveries exceeding 10 pallets or 8,000 pounds. Notification may be faxed to 702-799-3391 or called in to 702-799-5463.

**Supplier's Liability:** Supplier assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any personal injury or alleged personal injury (including death), and/or damage or destruction or alleged damage or destruction to property sustained or alleged to have been sustained in connection with or to have arisen out of the performance of the work by Supplier, its agents, and employees. Supplier shall indemnify and hold harmless the District, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims, and shall defend any suit or action brought against any or all of them based on any alleged personal injury or damage, and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action.

**Taxes:** The District is exempt from Nevada State sales tax as provided by NRS 372.325, NRS 374.330, and NRS 377 when applicable. The District's Federal Tax Identification Number is 88-6000030.

**Uniform Commercial Code:** Article 2 of the Uniform Commercial Code, including but not limited to, all rights, obligations, remedies and warranties set forth therein, shall apply to this order regardless of whether it covers services, the leasing of goods or any other transaction not expressly within the scope of Article 2.

**Use by Other Government Entities:** Nevada Revised Statutes 332.195 states that local governments and the state of Nevada may use the contracts of other local governments of Nevada, if approved by the successful Bidder. The local government that originally awarded the contract is not liable for the obligations of the local government that uses the contract.

**Warranty:** Supplier warrants articles supplied under this order conform to specifications herein and are fit for the purpose for which such goods are ordinarily employed.