

## Purchase Order Terms and Conditions

1. **Definitions.** **A)** “Bid” means the Contractor’s offer made in response to a solicitation to perform a contract to supply goods or perform services at a specified price. **B)** “Bidder” means a supplier who submits a Bid to the District in response to a solicitation. **C)** “Contract” means Contractor’s Bid; drawings or specifications, if any; these bid/purchase order terms and conditions together with the terms appearing on the reverse side hereof; and any other documents identified therein or herein as incorporated by reference and inclusive of any subsequently issued addenda and/or amendments. **D)** “Contractor” means the business entity designated on the face of this purchase order that is supplying Deliverables to the District. Contractor shall be synonymous with “supplier”, “vendor”, or other similar term. **E)** “Deliverables” means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, and other items to be delivered pursuant to this purchase order including any such items furnished incident to the provision of services. **F)** “District” means the Los Angeles Unified School District.
2. **Assignment; Subcontracting.** The Contractor may not assign this Contract in whole or in part, and/or monies due Contractor, without the prior written consent of the District and surety, if any. Subject to the foregoing, this Contract shall be binding upon the parties and their respective successors and assigns. All subcontractors must be approved in advance by the District. Upon the District’s written request, Contractor shall terminate any subcontractor.
3. **Audit.** The District shall have the right to examine and audit Contractor’s records related to this Contract. Contractor and its subcontractors shall maintain and preserve all such records for a period of at least three (3) years after final payment to Contractor or after final Contract closeout, as determined by the District.
4. **Award of Contract.** The Bidder’s Bid or quotation is deemed a firm offer; issuance of this document as a purchase order evidences the District’s acceptance of that offer. If an award is made on a bid, the contract will be awarded according to the authority granted by the Board of Education of the City of Los Angeles (“Board”) pursuant to California law
5. **Acceptance/Rejection of Bids.** The District may award a contract on an individual item or combination of items, whichever is in the best interest of the District. A bidder may specify that the District’s acceptance of one item shall be contingent upon the District’s acceptance of one or more additional items submitted in the same Bid. Bids shall remain open and valid for 120 days after bid opening date unless otherwise stipulated and may be accepted without further written notice by the District. The Bidder may withdraw its Bid at any time before the Bid opening.
6. **District Name May Not Be Used.** The name and/or logo of the District or any school of the District may not be used in any advertisements or communications which may convey the impression that the District authorizes the solicitation and/or that there may be some connection or endorsement between the District and the Contractor.
7. **Fingerprinting.** The Contractor and its subcontractors shall fully comply with the provisions of Education Code Section 45125.1 when Contractor and/or its subcontractors will have more than limited contact with District pupils.

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8. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the state of California, without regard to conflicts of laws.

9. **Indemnification.** Contractor agrees to indemnify and hold harmless the District, the Board, and their employees, agents, volunteers, affiliates, officers and directors from, and defend each of them against, any injury to person or property, claims, suits, liabilities or expenses (including reasonable attorneys' fees and costs) resulting from or connected with Contractor's performance hereunder, breach of its representations, warranties or obligations hereunder, or Contractor's failure to comply with any applicable law, or regulation.

10. **Independent Contractor.** Contractor shall perform its obligations under this Contract as an independent contractor of the District. Nothing herein shall be deemed to constitute Contractor and the District as partners, joint venturers, or principal and agent. Contractor has no authority to represent the District. Contractor shall not at any time or manner represent that it or any of its subcontractors or agents are in any manner agents or employees of the District.

11. **Independence of Bid.** Unless Bidder is furnishing a joint bid, by submitting this Bid, Bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of antitrust laws.

12. **Insurance.** Upon the District's request, Contractor shall provide, and require its subcontractors to maintain, insurance policy/policies and limits of coverage acceptable to the District to protect against claims that may arise from this Contract.

13. **Joint Bids.** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted, and each participating bidder must sign the joint bid. If the contractor is comprised of more than one legal entity, each entity shall be jointly and severably liable under this contract. In addition, the joint contractors must designate, in writing, one individual having authority to represent them all in matters relating to the contract. The District assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

14. **License.** Upon payment in full for software, Contractor grants the District a perpetual, non-exclusive, worldwide, irrevocable, fully paid right and license, to install and use the software on all computing devices used by or for the benefit of the District. This license is subject to the limitation on the maximum number of end users or other scope limitations listed on the facing page and, if none are listed, this license shall be deemed to be enterprise-wide and the software may be used by all District end users without any maximum number of users. The license shall extend to permit contractors working for the District to use the software in the performance of their duties for the District.

15. **Non-Discrimination.** Contractor shall comply with all laws prohibiting discrimination in employment and shall include this nondiscrimination requirement in all subcontracts to perform work under the Contract.

16. **Order of Precedence.** This Contract constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement and any contrary provisions on packing slips, invoices, or other documents

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submitted by the Contractor. Any conflict or inconsistency among the components of this Contract shall be resolved by giving precedence in the following order: (1) Contractor's Bid; (2) these Contract Terms and Conditions; (3) all other attachments incorporated into the Contract by reference. No term or condition of this Contract may be terminated, modified, rescinded, or waived except by a writing signed by both parties. No modification or waiver of this Contract shall be deemed effected by Contractor's acknowledgment, confirmation or other documentation containing other or different terms. Should any such document from Contractor contain additional or different terms than this Contract, those terms shall be considered proposals by Contractor which are hereby rejected.

**17. Packaging, Delivery and Acceptance.** **A) Packaging.** Items shall be packaged to protect them from damage during transit. Packing slips must include the District Purchase Order number, contents, quantity, and description. Material Safety Data Sheets shall be included when applicable. **B) Delivery.** Contractor shall be responsible for delivery on a free-on-board (FOB) Destination basis and shall incur all costs associated with the delivery unless otherwise specified in this Contract. All deliveries shall be set on the District's dock and/or pallets or as otherwise prescribed by the District. All Deliverables are subject to acceptance by District. District will notify Contractor in writing of any defect or nonconformity and Contractor will repair or replace such defective or nonconforming goods or, at the District's option, refund the purchase price to District. **C) Acceptance.** If items are not properly packaged or identified, or if items are determined by the District to be defective or non-conforming, deliveries or any part thereof may be rejected, and all costs (return and re-delivery) shall be at the Contractor's expense. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the District at destination, notwithstanding any payment or inspection at source. The District shall give written notice of the rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. Acceptance shall not be construed to waive any warranty rights the District may have at law or by express reservation in this Contract with respect to conformity. Title to and risk of loss of Deliverables shall vest in the District upon acceptance.

**18. Performance Guarantee.** A performance guarantee may be required on award of annual contracts which exceed \$100,000.

**19. Samples.** Samples of items may be required by the District for inspection and specification testing and must be furnished free of expense to the District. The samples furnished must be identical in all respects to the items bid and/or specified in the Contract. Samples must be plainly marked with the name of Bidder, bid number, and date of bid opening. Samples may be retained for comparison with deliveries and if not destroyed by tests, may, upon request at the time the sample is furnished, be returned at Contractor's expense. Bidder/Contractor assumes all risk of loss of or damage to samples.

**20. Severability.** If any provision or part of this Contract shall be declared illegal, void, or unenforceable, such term or provision shall be deemed stricken and the remaining provisions shall continue in full force and effect to the extent permitted by law.

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21. **Substitutions.** Product substitutions require the prior, express written authorization from an authorized District representative.

22. **Tax.** The District shall pay only California sales tax and use tax and/or Los Angeles County sales and use tax, as applicable. Contractor shall separately list all applicable taxes on the invoice. The District is exempt from payment of Federal Excise Tax. Contractor shall cooperate with the District in all matters related to taxation and the collection of taxes. The District may, at its option, self-accrue tax and remit same to the state of California pursuant to the District's permit with the state of California.

23. **Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience or for Contractor default. The District shall hold Contractor liable and responsible for all damages which may be sustained because of the Contractor's default. If Contractor fails or neglects to furnish or deliver any of the deliverables listed herein at the prices named and at the time and places stated herein or otherwise fails or neglects to comply with the terms of the Contract, the District may, upon written notice to the Contractor, cancel the Contract in its entirety, or cancel any or all items affected by such default; and may, whether or not the Contract is cancelled in whole or in part, purchase the Deliverables elsewhere without notice to the Contractor. The prices paid by the District at the time such purchase is made shall be the prevailing market prices. Any extra costs incurred by such default may be collected by the District from the Contractor.

24. **Title.** Title to and risk of loss of Deliverables shall pass to and vest in the District upon final acceptance by the District.

26. **Warranty.** **A)** Contractor warrants that all Deliverables furnished hereunder will be free from defects in design, material, and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions. All warranties shall be in addition to any warranties available under law and any standard Contractor warranty. **B)** At the time of delivery, no software shall contain any virus, "Trojan horse," timer, counter or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed and created. **C)** No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind. There is no action, suit, proceeding, or material claim or investigation pending or threatened against Contractor, that, if adversely determined, might affect any Deliverable or restrict the District's right to use any Deliverable. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding. **D)** Contractor warrants it has full title to the Deliverables and has the right to grant the District the rights and licenses contemplated herein without the requirement for consent of any third party.