

San Diego County Office of Education (“SDCOE”) Terms and Conditions of Purchase

The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller, in accepting this order, agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent it specifies the materials, supplies, or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

1. INSPECTION. The services, materials and supplies furnished shall be exactly as specified in this order free from all defects in Seller's performance, design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by SDCOE at all times and places. If, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, SDCOE may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by SDCOE, SDCOE may terminate the order in whole or in part. Seller shall bear all risks as to rejected services and, in addition to any costs for which Seller may become liable to SDCOE under other provisions of this order, shall reimburse SDCOE for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

2. CHANGES. SDCOE may make changes within the general scope of this order in drawings and specifications for specially manufactured supplies, place of delivery, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be allowed without written approval of SDCOE. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless SDCOE waives this condition in writing. Nothing in this Article shall excuse Seller from proceeding with performance of the order as changed hereunder.

3. TERMINATION.

A. SDCOE may, by written notice stating the extent and effective date, cancel and/or terminate this order for convenience in whole or in part, at any time. SDCOE shall pay Seller as full compensation for performance upon such termination:

- (1) the unit or pro rata order price for the performed and accepted portion; and
- (2) A reasonable amount, not otherwise recoverable from other sources by Seller as approved by SDCOE, with respect to the unperformed or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price. Seller shall have no claim for any damages, or loss of profit, arising out of any termination for convenience.

B. SDCOE may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to perform the services within the time specified or any written extension thereof. In such event, SDCOE may purchase or otherwise secure services and, except as otherwise provided herein, Seller shall be liable to SDCOE for any excess costs occasioned SDCOE thereby. If, after notice of termination for default, SDCOE determines that the Seller was not in default or that the failure to perform this order was due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of SDCOE, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of SDCOE, unless SDCOE shall determine that the services covered by this order were obtainable by Seller from other sources in sufficient time to meet the required performance schedule.

C. If SDCOE determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, SDCOE may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller; any extension granted shall be effective only if given in writing. If such delay is due to failure of SDCOE, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of SDCOE to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

D. The rights and remedies of SDCOE provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

E. As used in this Article, the word "Seller" includes Seller and its sub-suppliers at any tier.

4. TITLE. Title to the material and supplies purchased hereunder shall pass directly from Seller to SDCOE at the f.o.b. point shown, or as otherwise specified in this order, subject to the right of SDCOE to reject upon inspection.

5. PAYMENT, EXTRA CHARGES, DRAFTS. Seller shall be paid, upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. SDCOE will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored. Invoices must be accompanied by shipping documents or photocopies of such, if transportation is payable and charged as a separate item.

6. CHARACTER OF SERVICES. Seller, as an independent contractor, shall furnish all equipment, personnel and material sufficient to provide the services expeditiously and efficiently during as many hours per shift and shifts per week and at such locations as SDCOE may so require and designate.

7. INDEMNITY.

A. General. Seller shall defend, indemnify, and hold harmless SDCOE, its officers, employees, and agents, from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Seller's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Seller, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Seller's direction and control.

B. Proprietary Rights. Seller shall indemnify, defend, and hold harmless SDCOE, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Seller's furnishing or supplying SDCOE with parts, goods, components, programs, practices, or methods under this order or SDCOE's use of such parts, goods, components, programs, practices, or methods supplied by Seller under this order constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The foregoing shall not apply unless SDCOE has informed Seller as soon as practicable of the suit or action alleging such infringement. Seller shall not settle such suit or action without the consent of SDCOE. SDCOE retains the right to participate in the defense against any such suit or action.

C. Products. Seller shall fully indemnify, defend, and hold harmless SDCOE from and against any and all claim, action, and liability, for injury, death, and property damage, arising out of the

dispensing or use of any of Seller's product provided under authorized SDCOE orders. In addition to the liability imposed by law on the Seller for damage or injury (including death) to persons or property by reason of the negligence, willful acts or omissions, or strict liability of the Seller or his agents, which liability is not impaired or otherwise affected hereby, the Seller hereby assumes liability for and agrees to save SDCOE harmless and indemnify it from every expense, liability or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any act or omission of the Seller.

SDCOE agrees to provide Seller with prompt notice of any such claims and to permit Seller to defend any claim or suit, and that it will cooperate fully in such defense.

8. DECLARED VALUATION OF SHIPMENTS. Except as otherwise provided on the face of this order, all shipments by Seller under this order for SDCOE's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.

9. WARRANTY. Seller agrees that the supplies or services furnished under this order shall be covered by the most favorable commercial warranties the Seller gives to any customer for the same or substantially similar supplies or services, or such other more favorable warranties as specified in this order. The rights and remedies so provided are in addition to and do not limit any rights afforded to SDCOE by any other article of this order. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the services or supplies by SDCOE.

10. ASSIGNMENT. This order is assignable by SDCOE. Except as to any payment due hereunder, this order may not be assigned or subcontracted by Seller without written approval of SDCOE. In case such consent is given, it shall not relieve Seller from any of the obligations of this Agreement and any transferee shall be considered the agent of Seller and, as between the parties hereto, Seller shall be and remain liable as if no such transfer had been made.

11. EQUAL OPPORTUNITY AFFIRMATIVE ACTION. Seller shall not maintain or provide racially segregated facilities for employees at any establishment under its control. Seller agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair Employment and Housing Act (Government Code section 12900 et seq.). Expressly, Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition (as defined by California Code section 12925f), marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era. Seller shall further specifically undertake affirmative action regarding the hiring, promotion and treatment of minority group persons, women, the handicapped,

and disabled veterans and veterans of the Vietnam era. Seller shall communicate this policy in both English and Spanish to all persons concerned within its company, with outside recruiting services, and the minority community at large. Seller shall provide SDCOE on request a breakdown of its labor force by groups, specifying the above characteristics within job categories, and shall discuss with SDCOE its policies and practices relating to its affirmative action programs.

13. INSURANCE. Seller, at its sole cost and expense, shall insure its activities in connection with the work under this order and obtain, keep in force, and maintain insurance as follows (unless the insurance requirements are stated otherwise in the purchase order):

- A. 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 \$1,000,000 per occurrence, \$1,000,000 general aggregate and a \$1,000,000 products liability aggregate limit. SDCOE shall be named as an additional insured under Seller's Commercial General Liability insurance policy.
- B. Automobile Liability coverage, with coverage for owned, non-owned or hired ("any" auto) used in the performance of this Agreement with combined single limits meeting statutory requirements. (REQUIRED ONLY IF SELLER DRIVES ON SDCOE PREMISES IN THE COURSE OF PERFORMING WORK FOR SDCOE.)
- C. Workers' Compensation as required by California State law.

It is understood that the coverage and limits referred to under a., b., and c. above shall not in any way limit the liability of Seller. Seller's coverage shall be primary as respects SDCOE. Any insurance, self-insurance or insurance pool coverage maintained by SDCOE shall be excess of Seller's insurance and shall not contribute to it. Upon request of SDCOE, Seller shall furnish original certificates and amendatory endorsements, including but not limited to the additional insured endorsement, evidencing compliance with the insurance requirements. SDCOE reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.

- (1) Seller's insurance shall provide for thirty (30)-days advance written notice to SDCOE of any modification, change, or cancellation of any of the above insurance coverage.
- (2) Indicate that The San Diego County Office of Education has been endorsed as an additional insured for the coverage referred to under a. and b. This provision shall only apply in proportion to and to the extent of the negligent acts or omissions of Seller, its officers, agents, or employees.
- (3) Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and

collectible insurance or program of self-insurance carried or maintained by SDCOE.

14. PERMITS. Seller agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision in which the work under this order is performed. Seller shall be liable for all damages and shall indemnify and save SDCOE harmless from and against all damages and liability which may arise out of failure of Seller to secure and pay for any such licenses or permits or to comply fully with any and all applicable laws, ordinances and regulations.

15. SAFETY DATA SHEETS. With the invoice or with delivery, the Seller must provide SDCOE with a Safety Data Sheet (MSDS or SDS) for each product which contains any substance of "The list of 800 Hazardous Substances" published by the State Director of Industrial Relations. (See Hazardous Substances Information and Training Act, California State Code, Sections 6360 through 6399.7).

16. WAIVER OF DEFAULT. Any failure of SDCOE at any time, or from time to time, to enforce or require the strict keeping and performance by Seller of any of the terms or conditions of this order shall not constitute a waiver by SDCOE of a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of SDCOE at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

17. TAXES. Seller shall pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the performance of work under this order, and all applicable sales, use, excise, transportation, privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall save SDCOE harmless from liability for any such contributions, premiums, and taxes.

18. OTHER APPLICABLE LAWS. Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations shall be deemed to be incorporated herein. 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. GOVERNING LAW. The law of the State of California shall control this document and any order to which it is appended.

20. CONFLICT OF INTEREST- EMPLOYEE-VENDOR RELATIONSHIP. The State of California Political Reform Act prohibits an employee, or near relative of an employee, from making or participating in the making of a decision if there exists an "employee-vendor relationship". The seller who is awarded this purchase order to rent or sell goods or to provide services hereby

certifies that no employee or near relative of an employee is employed by or owns or controls more than 10% interest in their business. Vendor hereby certifies these conditions and does so by their performance of this Purchase Order.

If such interest shall exist, unless such existence is otherwise noted as acceptable on the face of this purchase order, as a condition precedent to the performance of this purchase order, proposer shall disclose the name(s) of the employee(s) or near relative(s) of an employee and describe the degree of financial interest or employment by their firm immediately to SDCOE. The mere existence of such a financial interest or employment shall not be cause for cancellation of this order. However, such information will be submitted to SDCOE for review and consideration prior to performance of this purchase order/contract.

21. ADDITIONAL SELLER CERTIFICATIONS.

By Seller's performance under this order, Seller certifies, under penalty of perjury under the laws of the State of California, that no employee or entity providing services under the terms and conditions of this contract is currently listed as excluded on the federal System for Award Management (SAM), the federal Health and Human Services Office of Inspector General List of Excluded Individuals/Entities (LEIE), or the State of California Medi-Cal Suspended and Ineligible list.

Seller also certifies that the above deliverables and/or services were delivered and/or performed specifically for this contract in accordance with the terms and conditions set forth therein.

22. COMPLIANCE WITH SANCTIONS. Seller has reviewed their investments and contracts to ensure compliance with any economic sanctions imposed by the Federal Government or State of California. Provisions include, but are not limited to: the Iran Contracting Act (Californian Public Contract Code Section 2200 et seq.); US imposed Sanctions on Russia (Federal Executive Order 14065 et seq.; CA Executive Order N-6-22)

Provisions 23 and 24 Apply to Purchase Orders for Contracting That Will Be Performed on School Sites and/or when Children are Present:

23. FINGERPRINT CLEARANCE. Under Education Code Section 45125.1, Contractor and its subcontractors shall ensure that all employees working with the SDCOE obtain fingerprint background clearance through the California Department of Justice screening process. Contractor will ensure that subcontractors will not place any person at a school who has been convicted 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.

24. TUBERCULOSIS EXAMINATION. Contractor and its subcontractors shall ensure that their employees working with the SDCOE will provide a tuberculosis (TB) certificate of clearance prior to commencing work at the SDCOE. Contractor will ensure that subcontractors will not place any person at a school without

a valid TB certificate on file showing their employee was examined and found to be free from active tuberculosis, as defined in Education Code Section 49406.1 (a).

The Following Provisions Also Apply if Federal Contract and/or Grant Funds Are Used:

25. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS.

(Applicable if PO >\$100,000 and is against federal contract or grant funds.)

In accordance with 31 USC 1352, and FAR 52.203-11 and FAR 52.203-12, each tier certifies to the tier above, by virtue of performance of this agreement, that to the best of its knowledge and belief, that: No Federal appropriated funds have been/will be paid, by or on behalf of Seller, to any person for influencing/attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Seller shall complete and submit to SDCOE, OMB Standard Form-LLL, "Disclosure Form to Report Lobbying".

26. RIGHT TO AUDIT- FEDERAL SPONSORING AGENCY.

(Applicable if the PO is > \$10,000, if it is established based on negotiation, and is issued using Federal Grant Funds.) SDCOE, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, or records of the Seller which are directly pertinent to this order for the purpose of making audits, examinations, excerpts and transcriptions.

27. DEBARRED OR SUSPENDED PARTIES

(Applicable if PO is > \$100,000 and is issued using Federal Grant Funds.)

No contract shall be made to parties listed on the General Services Administration's list of parties excluded from Federal Procurement or Non-procurement programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension."

Upon offering to provide the goods and/or services set forth herein, and prior to entering into and performing hereunder, the Seller shall have certified and does so by providing the goods and/or services ordered above, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency. Sub awardees, that is, other corporations, partnerships, or other legal entities (called "lower tier" participants), must make the same certification to the applicant organization concerning their covered transactions.

28. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.

(Applicable on all POs against government contracts and grants regardless of value.)

It continues to be the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with grant, cooperative agreement, or contract funds should be American-made.

29. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS- FIRST TIER SUBCONTRACTOR.

(Applicable if PO is > \$25,000 and is issued using Federal Contract Funds.)

The Seller certifies to the best of its knowledge and belief, that it nor any of its principals a) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; b) have not within a three year period preceding this award been convicted of or had a civil judgment rendered against them for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to this submission of offers; or commission of embezzlement , theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property; and c) are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated herein. The Seller certifies that they have not, within a three year period preceding this offer, had one or more contracts terminated for default by any federal agency.

“Principals” for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segments, and similar positions.)

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Section 1001, Title 18, United States Code.

Certification of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to SDCOE, SDCOE may terminate the contract for default.

Seller hereby certifies these conditions and does so by providing the goods/services purchased hereunder.

The following provisions apply to all Public Works Projects:

30. ALL CONTRACTORS MUST BE REGISTERED WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS.

No contractor or subcontractor may be listed on a bid proposal

for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.