



Purchase Order Terms and Conditions

1. Offer/Acceptance. The Purchase Order, together with these terms and conditions and any other contracts, attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference (collectively the "PO") shall represent the entire and exclusive agreement between BVSD and the Vendor. If this PO refers to Vendor's bid or proposal, this is an ACCEPTANCE of Vendor's OFFER TO SELL in accordance with the terms and conditions of this PO. If a bid or proposal is not referenced, this PO is an OFFER TO BUY, subject to Vendor's acceptance, demonstrated by Vendor's performance or written acceptance of this PO. Any COUNTER-OFFER TO SELL automatically CANCELS this PO, unless a change order accepting the counter-offer is issued in accordance with §4 accepting a counter-offer. BVSD shall not be responsible or liable for goods or services delivered or performed prior to issuance of this PO.

2. Order of Precedence. Fully executed contracts and/or agreements ("Contract") between BVSD and Vendor shall be incorporated into the PO. In the event of a conflict or inconsistency within the documents comprising this PO, such conflict or inconsistency shall be resolved by giving preference to the documents in the following order of priority: (a) the Purchase Order, (b) the contract, (c) these Terms and Conditions, and (d) any attachments, exhibits, specifications, or appendices, whether attached or incorporated by reference. Any terms and conditions included on Vendor's forms or invoices not included in this PO are void.

3. Safety Information. All chemicals, equipment, and materials proposed or used in the performance of this PO shall conform to the requirements of the Occupational Safety and Health Act of 1970. Whenever applicable, Vendor shall furnish all Material Safety Data Sheets (MSDS) with the goods at the time of delivery. Failure to provide this information may result in delay of payment.

4. Changes. Vendor shall furnish goods or services in strict accordance with the specifications and price set forth for each item. This PO shall not be modified, superseded or otherwise altered, except in writing signed by BVSD and accepted by Vendor. If this PO is for goods only and Vendor has not delivered the goods prior to the expiration of this PO, but Vendor delivers all of the goods to BVSD only after expiration of this PO, then BVSD, in its sole discretion, may accept the goods under this PO by extending this PO and delivering the modification to Vendor; however, regardless of anything to the contrary, if BVSD does not extend this PO for any reason then the goods delivered after expiration of this PO shall be deemed rejected, Vendor shall arrange the return of all delivered goods at Vendor's sole expense, and BVSD shall have no liability for any such goods.

5. Delivery. Unless otherwise specified in this PO, delivery shall be FOB destination, with transportation and handling charges paid by Vendor. BVSD is relying on the promised delivery date and any installation or service performance set forth in this PO as material and basic to BVSD's acceptance. If Vendor fails to deliver or perform as and when promised, BVSD, in its sole discretion, may cancel its order, or any part thereof, without prejudice to its other rights, return all or part of any shipment so made, and charge Vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence. Shipment must be made to the "SHIP TO" address shown on the PO. Failure to do so may cause delay in payment until receipt and inspection can be confirmed.

6. Reporting. If Vendor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this PO or may affect Vendor's ability to perform its obligations under this PO, Vendor shall, within 10 days after being served, notify BVSD of such action and deliver copies of such pleading or document to BVSD. Vendor shall disclose, in a timely manner, in writing to BVSD all violations of federal or state criminal law involving fraud, bribery, or gratuity violations potentially affecting this PO. BVSD may impose any remedies available, which may include, without limitation, suspension or debarment.

7. Conflicts of Interest. Vendor acknowledges that with respect to this PO, even the appearance of a conflict of interest is harmful to BVSD's interests. Absent BVSD's prior written approval, Vendor shall refrain from any practices, activities, or relationships that reasonably

may appear to be in conflict with the full performance of Vendor's obligations to BVSD hereunder. If a conflict or appearance of a conflict of interest exists, or if Vendor is uncertain as to such, Vendor shall submit to BVSD a disclosure statement setting forth the relevant details for BVSD's consideration. Failure to promptly submit a disclosure statement or to follow BVSD's direction with respect to the actual or apparent conflict constitutes a breach of this PO.

8. Warranties. All provisions and remedies of the Colorado Uniform Commercial Code, CRS, Title 4 ("UCC"), relating to implied or express warranties for goods are incorporated herein, in addition to any warranties contained in this PO. The Vendor warrants and guarantees to BVSD that all equipment and materials to be furnished under this proposal are free from all defects in workmanship and materials. The Vendor further warrants, guarantees and agrees to remedy all such defects and to replace, at Vendor's expense and at no expense to BVSD, any or all labor, transportation, part or parts of the equipment or materials to be furnished under this proposal which are or become defective due to such defects within 12 months after date of receipt by BVSD.

9. Inspection and Acceptance. BVSD's final acceptance of goods or services is contingent upon completion of all applicable inspection procedures. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. BVSD shall have the right to inspect goods or services provided under this PO at all reasonable times and places. BVSD shall be the sole judge in determining "equals" with regard to conformance with the specifications outlined in this PO for quality, price, and performance. If any of the goods or services do not conform to this PO, BVSD, at its sole discretion, may require Vendor to either (a) replace the goods specified by BVSD or (b) perform the services again, without additional payment from BVSD. When defects in the quality or quantity of goods or services cannot be corrected by replacement or re-performance, BVSD may (c) require Vendor to take necessary action to ensure that future performance conforms to this PO and (d) equitably reduce the payment due Vendor to reflect the reduced value of the goods or services performed. These remedies do not limit the remedies otherwise available in this PO, at law, or in equity. All materials, supplies and equipment furnished or services performed under the terms of this PO shall be provided in strict compliance with the terms, conditions, and requirements of the invitation to Bid or the specifications stated. Final acceptance is dependent upon completion and satisfaction of all applicable inspection procedures. Should the service rendered or goods furnished fail to meet all inspection requirements, in addition to other remedies, BVSD reserves the right to reject the goods or service, cure the defect at your expense, or otherwise terminate. All disputes concerning grades and quality of goods or service shall be determined by the Director of Supply Chain Management or authorized representative.

10. Taxes. Boulder Valley School District RE-2 is a public body corporate and generally is not required to pay state and local taxes or use tax. Therefore, no sales or use tax shall be charged. A tax exemption certificate will be made available upon Vendor's request.

11. Payment. To ensure prompt payment, Vendor shall mail original invoice for each shipment to Boulder Valley School District RE-2, Accounts Payable Department, P.O. Box 9011, Boulder, CO 80301. Email to: a-p.helpdesk@bvsd.org. Invoices not mailed as directed may delay payment or become lost. BVSD shall not pay Vendor any amount for goods or services under this PO in excess of the Document Total set forth on the Purchase Order. BVSD shall pay Vendor for all amounts due within 45 days after BVSD's receipt of goods or services and acceptance of a correct invoice of amount due. BVSD may benefit from any early payment discount offered by Vendor by making payment within the timeframes required by Vendor to be eligible for such discount. Discount periods will start from date of receipt of acceptable invoice or from date of receipt of acceptable goods at destination by authorized BVSD agent, whichever is the later. If Vendor offers an early payment discount, then the discount shall be shown on Vendor's invoices to BVSD, and if BVSD makes payment on the invoice within the time frame for the discount, Vendor shall either (a) accept the payment amount less the appropriate discount or (b) refund the discount back to BVSD. Except as specifically agreed in this PO, Vendor shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this PO.

12. Assignment and Subcontracting. No part of the Purchase Order may be assigned or subcontracted without the prior written consent of District.

13. Severability. The invalidity or unenforceability of any provision of this PO shall not affect the validity or enforceability of any other provision of this PO, which shall remain in full force and effect, provided that the parties can continue to perform their obligations in accordance with the intent of this PO.

14. Survival of Certain PO Terms. Any provision of this PO that imposes an obligation on a party after termination or expiration of this PO shall survive the termination or expiration of this PO and shall be enforceable by the other party.

15. Third Party Beneficiaries. Except for the parties' respective successors and assigns, this PO does not and is not intended to confer any rights or remedies upon any person or entity other than the parties. Enforcement of this PO and all rights and obligations hereunder is reserved solely to the parties. Any services or benefits which third parties receive as a result of this PO are incidental to this PO, and do not create any rights for such third parties.

16. Waiver. A party's failure or delay in exercising any right, power, or privilege under this PO, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

17. Indemnification. Vendor shall indemnify, save, and hold harmless BVSD, its past and current board members, employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Vendor, or its employees, agents, subcontractors, or assignees in connection with this PO. This shall include, without limitation, any and all costs, expenses, claims, damages, liabilities, court awards and other amounts incurred by the Indemnified Parties in relation to any claim that any work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right or any claim for loss or improper disclosure of any confidential information or personally identifiable information. BVSD may require that Vendor furnish Labor & Material Payment and/or Performance bonds on BVSD approved forms.

18. Notice. All notices given under this PO shall be in writing, and shall be delivered to the contacts for each party listed on the PO document. Either party may change its contact or contact information by notice submitted in writing to the other party without a formal modification to this PO.

19. Insurance. Except as otherwise specifically stated in this PO, Vendor shall procure and maintain, at their own expense, until the Contract performance is accepted by the District, insurance as hereinafter specified, and may be asked to provide copies of applicable insurance certificates to the District. Comprehensive general liability insurance with limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate. This coverage will be on an occurrence basis and not on a claims-made basis. Vendor agrees to name the District as an additional insured under its insurance policies. Workers' compensation insurance in accordance with the provisions of the laws of the State of Colorado. Comprehensive automobile liability insurance protecting the Vendor and the District from all claims for personal injury, including death, and all claims for destruction of or damage to property, with a limit of liability of not less than \$1,000,000 per occurrence. The Vendor shall require all of its subcontractors to maintain Comprehensive General Liability Insurance, Workers' Compensation Insurance, and Comprehensive Automobile Liability Insurance with the same limits and conditions as insurance maintained by the Contractor herein.

20. Termination. If Vendor has not begun performance under this PO, BVSD may cancel this PO by providing written notice to the Vendor. District may terminate the Purchase Order or any part thereof in the event of any default by Vendor, including but not limited to Vendor's failure to comply with any of these terms and conditions. District may terminate without cause by providing a minimum of ten (10) days' notice. Failure to deliver goods on time, deliveries of goods that are defective or that do not conform to the Purchase Order and failure to provide District, upon request, reasonable assurances of future performance

shall all be separate grounds for District to terminate the Purchase Order. In the event of Purchase Order termination, District shall not be liable to Vendor for any amount, and Vendor shall be liable to District for any and all loss and damages sustained by reason of the default giving rise to the termination. Termination shall not affect any rights or obligations accrued before the termination date.

21. Funds Availability. Financial obligations of BVSD payable after BVSD's current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If this PO is funded in whole or in part with federal funds, this PO is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. BVSD represents that it has set aside sufficient funds to make payment for goods delivered in a single installment, in accordance with the terms of this PO.

22. Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of BVSD, its directors, employees, and agents shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b). No term or condition of this PO shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

23. Independent Contractor. Vendor shall perform its duties under this PO as an independent contractor and not as an employee. Neither Vendor nor any agent or employee of Vendor shall be deemed to be an agent or employee of BVSD. Vendor shall not have authorization, express or implied, to bind BVSD to any agreement, liability or understanding, except as expressly set forth herein. **Vendor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through BVSD and BVSD shall not pay for or otherwise provide such coverage for Vendor or any of its agents or employees. Vendor shall pay when due all applicable employment taxes, income taxes and local head taxes incurred pursuant to this PO. Vendor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by BVSD, and (c) be solely responsible for its acts and those of its employees and agents.**

24. Compliance with Law. Vendor shall comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices. The Vendor shall become and remain familiar with all state and local laws, codes, ordinances and regulations which might in any manner affect the services to be performed; the materials to be supplied, the taxes, permits and fees to be paid, or the labor to be employed in and about the work. A plea of misunderstanding or ignorance on the part of the vendor or Vendor's subcontractor(s) will not in any way excuse the Vendor from the necessity of full compliance with every law, code ordinance or regulation. All federal, state and local laws, codes and ordinances and regulations which are applicable shall be complied with. All licensing requirements for Vendor and/or the individual(s) performing work shall be complied with and maintained

25. Governing Law and Venue. All issues regarding the formation, performance and/or legal enforcement of the Purchase Order shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the Purchase Order shall be in Boulder County, Colorado.

26. Prohibited Terms. BVSD is a public school contracting entity. Nothing in this PO shall be construed as a waiver of any provision of CRS §22-1-135.

27. Premises Access Certification. The Vendor certifies it shall not knowingly employ on Boulder Valley School District premises, for the duration of the term of this PO, any persons convicted of any felony or misdemeanor crime of unlawful behavior involving children, unlawful sexual conduct, child abuse, domestic violence or a crime of violence.