

HAWTHORNE SCHOOL DISTRICT

PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS

This order is subject to the following terms and conditions, and accepting the Purchase Order, or any part thereof, the Seller agrees to and accepts all said terms.

GENERAL

1. DEFINITION. The term Purchaser, Buyer, district shall mean the Hawthorne School District ("District"), and the term Seller, Vendor, Supplier, or Contractor shall mean the person, firm, or corporation from whom the item or service has been ordered ("Seller"). The District and the Seller may be referred to herein individually as a "Party" and collectively as the "Parties."
2. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser.
3. The Seller shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties, or obligations without the prior written consent of the Hawthorne School District.

TERMS OF AGREEMENT

4. The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions, and other documents, whether physically attached or referenced, constitute the entire and complete agreement between the District and the Seller, as identified in the Purchase Order.
5. Any term that is different from or in addition to the terms of the purchase order by the Seller shall not be binding on the District unless accepted in writing by the Purchasing Director.
6. The acceptance of this Purchase Order shall constitute Seller's acceptance of these terms and conditions posted on the District's website and referenced on the Purchase Order.

COMPLIANCE

7. Governing Law and Venue shall be governed by the laws of the State of California for the definition of the terms used in the interpretation of this PO and the rights of all parties hereunder.
8. It shall be the duty of the Seller to comply with all state and federal procurement contract codes and regulations.
9. No waiver of a breach of any provision of this order shall constitute a waiver of any other breach of such provision or of any other provisions.
10. Purchaser may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice, or course of dealing to the contrary.
11. Specifically written terms, conditions, and instructions relating to advertised bids and written or verbal offers from District take precedence over these printed terms, conditions and instructions where conflict exists and this Purchase Order form is a part of the contract documents.
12. While providing the supplies or services ordered herein, the Seller is an independent contractor and not an officer, employee or agent of the District.

INVOICES, PACKING SLIPS, MSDS

8. Invoices must be itemized, showing quantity, unit price, labor, material, State taxes, and shipping charges, if approved.
9. Purchase Order number must appear on all invoices, packing slips, packages and correspondence.
10. Seller will send separate invoices for each Purchase Order number. Electronic Invoices shall be e-mailed to ap@hawthorne.k12.ca.us.
11. Enclose one packing slip, and mark the package in which the packing slip is enclosed.
12. All products supplied under this Purchase Order which are deemed to be toxic or otherwise hazardous must be accompanied by a Material Safety Data Sheet.
13. Payment term is Net 30 days.

SHIPPING AND DELIVERY

14. Immediately notify the Purchasing Department if there are any delays.
15. Goods must be shipped prepaid, F.O.B. destination. Where specific authorization is granted to ship goods F.O.B. shipping point, the seller shall prepay all shipping charges, route goods by the cheapest way.
16. All items shall be prepared and packed for shipment in a manner that will prevent damage in transit. The District is not liable for extra charges for packing or cartage unless specified elsewhere in this order. Supplier shall mark the purchase order number on each container.
17. Inspection and acceptance will be at destination, unless otherwise provided. Regardless of the F.O.B. point, the Seller agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which occur prior to delivery; and such loss, injury, or destruction shall not release the Seller from an obligation hereunder.
18. Purchaser will not be responsible for any item delivered without Purchase Order.

19. In the event of Seller's failure to deliver as and when specified, Purchaser reserves the right to cancel this order or any part thereof without prejudice to its other rights, and Seller agrees that Purchaser may return part or all of any shipment so made and may charge Seller with any loss or expense sustained as a result of such failure to deliver.

PRICE

20. Price deviations and substitutions in kind permitted ONLY with prior authorization from the Purchasing Department.
21. In connection with any discounts offered, the discount period shall begin on the date of delivery and acceptance at destination, and/or the date the correct invoice is received in the Accounts Payable office, and/or on the date that final approval for payment is authorized if an adjustment in payment is necessary due to damage, whichever is later. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the warrant.
22. If price is omitted on an order, except where order is given in acceptance of quoted prices, it is agreed that Seller's price will be the lowest prevailing market price, and in no event is this order to be filled at higher prices than last previously quoted or charged without Purchaser's written consent.
23. The Purchasing Director may direct in writing a change, including add-ons or deletions from the quantity or services originally ordered, or in the specification or drawings. If any such change causes a material increase or decrease in the cost of, or the performance of any public works project with the District, a Change Request must be submitted in writing and approved by the District's Board of Trustees. Failure to comply with these requirements shall be deemed a material breach of any agreement awarded by the District.

INSPECTIONS

24. All items are subject to Purchaser's inspection within a reasonable time after arrival at the ultimate destination. If upon inspection any item is found to be unsatisfactory, defective, or of inferior quality or workmanship, or fails to meet the specifications or any other requirements of this order, Purchaser may return such item to Seller at Seller's expense. Payment for item prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective item. Seller shall reimburse Purchaser for any amount paid by Purchaser on account of the purchase price of such returned item and any costs incurred by Purchaser in connection with the delivery or return of such item.

WARRANTIES

25. Seller warrants that the item will conform to its description and any applicable specifications, shall be of good merchantable quality and fit for the known purpose for which it is sold. This warranty is in addition to any expressed warranty or service guarantee given by Seller to Purchaser.
26. Seller warrants that the item is free and clear of all liens and encumbrances and that Seller has a good and marketable title to same at the time title passes to Purchaser.
27. Seller shall comply with all State, Federal, and local laws, regulations, or orders applicable to the purchase, manufacturing, processing, construction, installation, servicing and delivery of the item. In the event of failure to comply with applicable laws, regulations, or orders, the Seller shall reimburse District for any loss incurred by Seller's failure to comply.
28. In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application therefore, Seller shall indemnify and hold harmless Purchaser from any and all loss, cost, or expense on account of any and all claims, suits, or judgments on account of the use of such article in violation of rights under such patent, copyright, or application.

LIABILITY OF SELLER

29. In the event any article sold and delivered hereunder shall be defective in any respect whatsoever, Seller shall indemnify and hold harmless the Purchaser from all loss or the payment of all sums of money by reason of all accidents, injuries, or damages to persons or property that may happen or occur in connection with the use of such article and are contributed to by said defective condition.
30. The Seller shall hold harmless and indemnify the District, its officers, agents and employees from every claim, demand, or liability which may be made by reason of: A) Any injury to property or person including death, sustained by the Seller or by any person, firm or corporation employed by the Seller directly or indirectly upon or in connection with the service hereunder; however caused; and B) Any injury to property or person, including death, sustained by any firm or corporation, caused by any error, omission, neglect, or torturous act of the Seller, its officers, agents or employees, upon or in connection with the services hereunder, whether the injury or damage occurs upon

or adjacent to the premises whose services hereunder are performed; and C) the Seller, at its own expense, cost, and risk, shall defend any and all actions, suits, or other proceedings, that may be brought or instituted against the District on any such claim, demand, or liability, and pay or satisfy any judgment that may be rendered against the District, its officers, agents, or employees in any such action suit, or other proceedings as a result thereof.

30. Seller shall be responsible for any and all loss or damage to the item until delivered to Purchaser at the F.O.B. Destination specified on the face of this order.

PREVAILING WAGES AND DIR REGISTRATION

31. Contractors are recommended to periodically review the DIR's website at www.dir.ca.gov. Contractor shall be solely responsible for ensuring compliance with all Labor Codes, including section 1725.5 as well as any requirements implemented by DIR applicable to its services or its subcontractors throughout the performance of any public works project with the District. Failure to comply with the requirements shall be deemed a material breach of any agreement awarded by the District.
32. Contractors and subcontractors shall comply with the provisions of the Labor Code pertaining to payment of the generally prevailing wage rate of wages and apprenticeships or other training program

E-Rate

33. The contract is subject to receipt by the District of a Funding Commitment Decision Letter (FCDL) from the Schools and Library Division (SLD) that approved E-Rate discounts. In the event E-Rate discounts are not approved, or partially approved, the District reserves the right to cancel any or all portions of the order. Review additional clauses in RFP or Bid documents.

INSURANCE

34. If the Seller or its employee's or agents come onto the District's property in connection with this Purchase Order, the Seller agrees to carry: (i) Worker's Compensation Insurance as required by California Law; (ii) General Liability; (iii) Automobile Liability, the coverage and amounts as requested by the District.
35. In addition, and without limiting anything else, each general liability and automotive liability policy shall provide, or be endorsed to provide, that each of the District, the Governing Board and each member thereof, the Superintendent, and all other District officers, employees, agents, and volunteers (collectively, not including the District, the "District Representatives") are additional insureds for purposes of those policies.

SOFTWARE LICENSES

36. The Seller or its employees or agents, or third party providers as defined in Education Code Section 49072.1(d)(b), shall comply with Education Code Section 49073.1. Which requires that any contract for the provision of the services entered into between the District and Seller contain provisions specified in sections (b)(1) through (b)(9) of Education Code Section 49073.1.
37. Software Agreements shall adhere to and not exceed the contract duration term pursuant to Education Code 17596. No evergreen clauses shall be accepted by the district.

FORCE MAJEURE

33. Neither party shall be deemed in default or have any liability for its delays or its failure to perform or deliver product(s) due to fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbance, acts of civil or military authorities or public enemy, inability to secure raw materials, transport, transportation facilities, fuel or energy shortages, or other causes beyond its control, quarantine, pandemics, epidemics, and diseases, which includes the Novel Coronavirus Disease (COVID-19) outbreak, act by any local, state, or federal government that would cause or order any work to stop or any funding to be frozen, whether or not similar to the foregoing.

In the event, of any impact upon the ability of the affected party to fulfill its contractual obligations, as stated in the paragraph above, the following three distinct criteria must be satisfied and show that it has taken all reasonable steps to avoid or mitigate the event and its consequences and that there are no alternate means for performing under the contract:

- The event was beyond the reasonable control of the affected party;
- The affected party's ability to perform its obligation under the contract were prevented, impeded, or hindered by the event;
- The affected party has taken all reasonable steps to avoid or mitigate the event or its consequences.

A written notice must be provided within five (5) calendar days from when the affected party first became aware of the event, failure of which will result in a loss of entitlement to claim.

The contractual remedy caused by an event shall consist of either (i) an extension of time to perform those obligations or deliver product(s), (ii) suspension of the contract for the duration of the event, (iii) or if the event extends over a longer period the contract may be cancelled or terminated and shall apply to the Parties.

The remedy shall be free from and exclude escalation fees, facility and storage fees, or increase. Upon any extension of time, suspension, cancellation or termination of the contract, in the event the District's schools or any nonpublic schools serving the District students are closed or otherwise not providing student-based services and/or programs on a normal basis due to the COVID-19 emergency or for any other reason ("School Closure"), nothing in these Terms and Conditions shall be deemed or construed to constitute a commitment by the District to pay the Seller for services not rendered, work not completed, product/equipment not received by the District in accordance with these Terms and Conditions during the period the School Closure is in effect.

A disruption that merely impacts the profitability of the contract is not sufficient for a Force Majeure claim. Nor would an economic downturn or other general adverse business conditions be sufficient for a Force Majeure claim.