



**GILBERT PUBLIC SCHOOLS
PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS**

GENERAL

1. The term **Purchaser** means Gilbert Public Schools. The term **Seller** means the persons, firm or corporation from whom the merchandise/service has been ordered. The term **Buyer** means a person who buys, or contracts to buy goods and services, on behalf of Gilbert Public Schools.
2. No terms stated by Seller in accepting or acknowledging this order shall be binding upon Purchaser unless accepted in writing by Purchaser.
3. Seller may not assign this order without Purchaser's prior written consent.
4. Time is of the essences of this order.

COMPLIANCE

1. No change(s) will be made on this order without the approval of the Purchaser.
2. Unless otherwise specified in the Purchase Order, items not received by June 30th will be considered cancelled. Any and all disputes or claims relative to the Purchase Order are subject to resolution through the mechanisms of the Arizona Education Procurement Code. All signatories agree that if a claim is made against the District and the District prevails under the Procurement Code, the contract party shall be responsible for the District's attorney fees and costs.
3. This agreement is subject to cancellation pursuant to A.R.S. 38-511.
4. No waiver of a breach of any provision or any part of any provision of this order shall constitute a waiver of any other breach of such provision or any other provision.
5. Purchaser may at any time insist upon strict compliance with these terms and conditions, notwithstanding any course of dealing or usage of trade to the contrary.
6. Specifically written terms, conditions and instructions relating to advertised requests for quotes, bids, or proposals by Buyer and written offers from Seller take precedence over these printed terms, conditions and instructions where conflict exists and this Purchase Order form is a part of the contract documents.

CONSULTANT AND PROFESSIONAL CONTRACT SERVICES

1. Sellers who are hired by the District to perform services shall agree to the following: "I certify that I am an independent contractor as defined in A.R.S. 23-902 (C) and that I do not require Worker's Compensation coverage. I hold Purchaser harmless and waive any rights or claims against the District."

TAXES, INVOICES, PACKING SLIPS

1. Purchaser is required to report and pay any Arizona Use Tax incurred or to be incurred on this purchase directly to the Arizona Department of Revenue. Identify and add such tax only if Seller pays directly to the state.
2. Purchase Order number must appear on all invoices, packing slips, packages and correspondence.
3. Invoices must clearly reference only one Purchase Order. Invoices must be itemized showing quantity, unit price, line item number, labor, material, shipping cost (freight charge) and state and/or local taxes.
4. Purchaser shall endeavor to pay all invoices no later than 30 days from date of product/service receipt. Payment for goods/services shall be made after receipt of goods/services, unless otherwise stated.
5. Per ARS 15-906, all fiscal year invoices must be received, approved and paid within 60 days after the close of the fiscal year. The District's fiscal year ends June 30. The District is prohibited by statute from paying any fiscal year invoices not received within 60 days after the end of the fiscal year.
6. Seller shall enclose on packing slip and mark the package in which the packing slip is enclosed. Packing slips must reference Purchase Order numbers. Backorders and split orders must be noted.

SHIPPING AND DELIVERY

1. All items shown on this Purchase Order shall be shipped F.O.B. destination unless otherwise noted on the Purchase Order.
2. If Seller cannot ship without delay, Seller shall immediately notify the Purchaser of that fact and of the probable date of delivery.
3. Goods must be shipped as per instructions; otherwise any extra handling charge will be deducted from invoice.
4. Purchaser will not be responsible for any goods delivered without Purchase Order.
5. 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. Seller agrees the Purchaser may return part or all of any shipment received, and may charge Seller with any loss or expense sustained as a result of such failure to deliver.
6. The "Ship To" address located on the Purchase Order must not be changed without prior approval of the Purchasing Department.
7. A Material Safety Data Sheet must be enclosed with all products containing hazardous substance and the box containing the product shall be clearly marked.



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PRICE

1. Price deviations and substitutions in kind are permitted ONLY with authorization of the Buyer.
2. No boxing, packing or cartage charges will be paid by Purchaser unless specifically authorized in writing by the Purchaser.
3. It shall be understood that the cash discount period to Purchaser will date from the receipt of the invoice or the date of the receipt of goods, whichever is the later date.
4. If price is omitted on the 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.
5. Purchases on Blanket/Open Purchase Orders shall not exceed the total dollar amount listed on the Purchase Order including tax and freight. Overages become the responsibility of the Seller.

INSPECTIONS

1. All goods are subject to Purchaser's inspection within a reasonable time after arrival at the destination of use. If upon inspection, any goods are found to be unsatisfactory, defective, or of inferior quality or workmanship, or fail to meet the specifications or any other requirements of this order, Purchaser may return such goods to Seller at Seller's expense. Payment for goods prior to inspection shall not be construed to be an acceptance of unsatisfactory, defective, or non-conforming goods. Seller shall reimburse Purchaser for any amount paid by Purchaser for such non-conforming goods and for any costs incurred by Purchaser in connection with the delivery or return of such goods.
2. Purchaser will notify Seller within a reasonable time frame of any items that Purchaser wishes to return to Seller for credit, or exchange for other goods. Seller has 30 days following notification of return or exchange to retrieve the unwanted items from Purchaser. If the items have not been picked up by Seller after 30 days, Purchaser may dispose of unwanted items at their convenience.

WARRANTIES

1. Seller warrants that the goods will conform to the description and any applicable specifications, shall be of good merchantable quality and fit for the known purpose for which they are sold. This warranty is in addition to any express warranty or service guarantee given by Seller to Purchaser.
2. Seller warrants that the goods are 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.
3. 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 goods. In the event of failure to comply with applicable laws, regulations or orders, the Seller shall reimburse the Purchaser for any loss incurred by Seller's failure to comply.
4. In the event any goods sold and delivered hereunder shall be covered by any patent, copyright or application thereof or the rightful claim of any third person, Seller shall indemnify and hold harmless Purchaser from any and all loss, cost, or expense of any and all claims, suits or judgments on account of the use of such goods in violation of rights under such patent, copyright, application or other rightful claim of any third person.

LIABILITY OF SELLER

1. In the event any goods sold or 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 goods and/or are contributed to by said defective condition.
2. Seller will hold Purchaser harmless from any or all damages or liability arising out of death or injuries to persons or damage to property proximity caused by the negligence of Seller or his agents, servants or employees.
3. Seller shall be responsible for any and all loss or damage to goods until delivered to Purchaser at F.O.B. designation point that is specified on the face of the Purchase Order.

REGISTERED SEX OFFENDER RESTRICTION

1. Seller represents and warrants that no employee, or employee of its subcontractor, who has been adjudicated to be a registered sex offender will perform work on District premises or equipment at any time. Seller further agrees by acceptance of the Purchase Order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the District's discretion.



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STATUTORY & FEDERAL REQUIREMENTS

1. This agreement is subject to cancellation pursuant to ARS 38-511.
2. By accepting the Purchase Order, Seller confirms that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or otherwise precluded from participating in any public procurement activity with any federal, state or local government entity.
3. By accepting the Purchase Order, Seller agrees to comply with all local, state and federal laws, rules and regulations applicable to the work. All work shall be accomplished in conformance with OSHA safety requirements, and any additional federal, state or local requirements. Seller shall maintain all applicable license and permit requirements.
4. By accepting the Purchase Order, Seller agrees to comply and maintain compliance with FINA, ARS 41-4401 and ARS 23-214 which require compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. By accepting the Purchase Order, Seller agrees to comply with ARS 35-592 and confirms that Seller is in compliance with the Export Administration Act.
6. By accepting the Purchase Order, Seller agrees to comply with ARS 35-391 and ARS 35-393, and therefore has no scrutinized business operation investments in Sudan or Iran.
7. By accepting the Purchase Order, Seller agrees to comply with fingerprinting requirements in accordance with ARS 15-512 unless otherwise exempted.
8. By accepting the Purchase Order, Seller agrees to maintain in current status all federal, state, and local licenses, certifications and permits required by the operation of the business conducted by Seller in accordance with ARS 32-1151.
9. By accepting the Purchase Order, Seller agrees, when working on any federally assisted projects with more than \$2,000 in labor costs, to comply with the Contract Work Hours and Safety Standards Act, the Davis-Bacon Act (Section 29, CFR Part 5), the Copeland "Anti-Kickback" Act, and the Equal Opportunity Employment requirements for Executive Order 11246 as amended by Executive Order 11375. In such projects, Seller agrees to post wage rates at the work site and submit a copy of their payroll to Purchaser for their files. In addition, to comply with the Copeland Act, Seller must submit weekly payroll records to Purchaser. Seller must keep records for three years and allow the federal grantor agency access to these records, upon demand. Seller also agrees to comply with State of Arizona Executive Order 75-5, as amended by Executive Order 99-4.

FORCE MAJEURE

1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
2. Force Majeure shall not include the following occurrences:
 - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
 - b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
 - c. Inability of either the contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.