

WESTERN MARICOPA EDUCATION CENTER NO. 402

PURCHASE ORDER TERMS, CONDITIONS AND INSTRUCTIONS

This order is subject to the following terms and conditions and by accepting the order, or any part thereof, the Seller agrees to accept said terms and conditions.

GENERAL

1. The term **Purchaser** means WEST-MEC NO. 402. The term **Seller** means the person, 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 WEST-MEC NO. 402.
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 Buyer's prior written consent.
4. Time is of the essence of this order.

COMPLIANCE

1. No change(s) of any kind will be made on this order without the prior approval of the Purchaser.
2. Unless otherwise specified on the Purchase Order, items not received by June 30th of the fiscal year the Purchase Order is issued will be considered cancelled.
3. 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 contracting party shall be responsible for the District's attorney fees and costs.
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 Seller as defined in A.R.S. § 23-902(C) and that I do not require Workers' 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 you pay directly to the state.
2. Invoices must clearly reference only one Purchase Order. Invoices must be itemized showing quantity, unit price, line item number, labor, material and state and/or local taxes. 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.
3. The District reserves the right to review all payments made to the Vendor by auditing at a later date. Subject to such audit, the Vendor must immediately reimburse any overpayments.
4. Per A.R.S. § 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.
5. 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 packages must list the Purchase Order number on the outside of each package. Failure to list Purchase Order number as required may cause refusal of packages. Reshipment shall be at the vendor's own expense.
2. All items shown on the Purchase Order shall be shipped F.O.B. Destination unless otherwise noted on the Purchase Order.
3. If Seller cannot ship without delay, Seller shall immediately notify Purchaser of that fact and of the probable date of delivery.
4. Goods must be shipped as per instructions; otherwise, any extra handling charges will be deducted from the invoice.
5. Purchaser will not be responsible for any goods/services delivered without a Purchase Order.
6. In the event 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 that 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.
7. The "Ship To" address located on the Purchase Order must not be changed without prior approval of the Purchasing Department.
8. A Material Safety Sheet must be enclosed with any product containing a 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, packaging 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 other 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 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 to occur in connection with the use of such goods and/or contributed to by said defective condition.
2. Seller will hold Purchaser harmless from any or all damages or liability arising out of the 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 the goods until delivered to Purchaser at the F.O.B. destination point specified on the face of the Purchase Order.

INSURANCE

1. For service contracts, Seller agrees to maintain such insurance as will fully protect Seller and the District from any and all claims under any workers' compensation statute or unemployment compensation laws, and from any and all other claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from work or other activities carried on, under, or facilitated by this Agreement, either by Seller, its employees, or by anyone directly or indirectly engaged or employed by Seller. Seller agrees to maintain such automobile liability insurance as will fully protect Seller and the District for bodily injury and property damage claims arising out of the ownership, maintenance or use of owned, hired or non-owned vehicles used by Seller or its employees, while providing services to the District.
2. For technology contracts, Seller agrees to maintain such technology or cyber liability insurance as will fully protect Seller and District from any and all claims that may arise from use of products, including cloud computing and mobile devices, protection of private or confidential information, network security and privacy, liability for system attacks, digital asset loss, denial or loss of service, unauthorized access and use, as well as introduction, implantation or spread of malicious software code.

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REGISTERED SEX OFFENDER RESTRICTION

1. Pursuant to this order, Seller agrees by acceptance of this order that no employee, or employee of its subcontractor, who is required to register as a sex offender, pursuant to A.R.S. § 13-3821, will perform work on District premises or equipment at any time when District students are, or are reasonably expected to be, present. 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.

STATUTORY & FEDERAL REQUIREMENTS

1. This agreement is subject to cancellation without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District is or becomes at any time while the Contract, or an extension of the Contract is in effect an employee of or a consultant to any party to the Contract with respect to the subject matter of the Contract, pursuant to A.R.S. § 38-511.
2. This agreement is subject to cancellation in whole or in part, if the School District determines that any person or vendor has offered, conferred or agreed to confer any personal gift or benefit on any employee of the School District who supervised or participated in the planning, recommending, selecting or contracting of the Contract, pursuant to A.R.S. § 15-213(O).
3. This agreement is subject to cancellation in whole or in part, if the School District determines that employment or a gratuity was offered or made by the Seller or a representative of the Seller to any officer or employee of the School District for the purpose of influencing the outcome of the procurement or securing the Contract, and amendment to the Contract, or favorable treatment concerning the Contract, including making of any determination or decision about contract performance.
4. By accepting the Purchase Order, Seller affirms that Seller has not given, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discounts, trips, favor, or service to any employee of the School District in connection with this order.
5. By accepting the Purchase Order, Seller confirms that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded or otherwise precluded from participating in any public procurement activity with any federal, state or local government entity.
6. 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.
7. By accepting the Purchase Order, Seller agrees to comply and maintain compliance with FINA, A.R.S. § 41-4401 and A.R.S. § 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.
8. By accepting the Purchase Order, Seller agrees to comply with A.R.S. § 35-592 and confirms that Seller is in compliance with the Export Administration Act.
9. By accepting the Purchase Order, Seller agrees to comply with A.R.S. § 35-393 and confirms that Seller is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.
10. By accepting the Purchase Order, Seller agrees to comply with fingerprinting requirements in accordance with A.R.S. § 15-512 unless otherwise exempted.
11. 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 A.R.S. § 32-1151.
12. 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 provided under 41 CFR 60-1.4(b) in accordance with Executive Order 11246 as amended by Executive Order 11375 and implementing regulations at 41 CFR Part 60. 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.
13. By accepting the Purchase Order, when working on any projects funded with Federal grant monies, Seller additionally agrees to comply with the administrative requirements for grants and cooperative agreements to state and local governments (24 CFR, Part 85, subpart 36 – procurement). This compliance includes sections regarding requirements and regulations pertaining to reporting; patent rights; copyrights; and applicable standards, orders or requirements issued under: 42 USC 7401-7671q of the Clean Air Act; 33 USC 1251-1387 of the Federal Water Pollution Control Act as amended; Executive Order 11738; EPA regulations; and standards and policies related to the Energy Policy and Conservation Act.
14. All federally assisted contracts that exceed \$10,000 may be terminated by the federal grantee for noncompliance by the Seller. In projects that are not federally funded, Seller must agree to meet any federal, state or local requirements, as necessary. In addition, if compliance with the

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federal regulations increases the contract costs beyond the agreed on costs on the Purchase Order, the additional costs may only apply to the portion of the work paid by the federal grantee.

15. By accepting the Purchase Order, Seller confirms that no Federal appropriated funds have been paid or will be paid by or on behalf of the Seller to any person 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 the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a Cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan or cooperative agreement.

16. If Federal grant monies are spent under the Purchase Order, Seller may be asked to provide additional information, disclosures and/or certification in compliance with federal regulations. This additional documentation may pertain to, but is not limited to, the following: federal lobbying (Section 319 of Public Law 101-121), international shipping, Clean Air Act, Federal Water Pollution Control Act, and debarment/suspension status.

17. If Federal grant monies are spent under the Purchase Order, Seller agrees to comply with Section 6002 of the Solid Waste Disposal Act and its implementing regulations. The requirements of Section 6002 include: (1) procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; (2) procuring solid waste management services in a manner that maximizes energy and resource recovery; and (3) establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

18. If Federal grant monies are spent under the Purchase Order, Seller agrees to comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

19. As appropriate and to the extent consistent with law, the District, to the greatest extent practicable under a Federal award, prefers the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products such as polyvinyl chloride pipe, aggregates such as concrete, glass, including optical fiber, and lumber. Seller agrees to comply to the greatest extent practicable.

20. If Federal grant monies are spent under the Purchase Order, Seller agrees to comply with the following ban on foreign telecommunications: Federal grant funds may not be used to purchase equipment, services, or systems that use "covered telecommunications" equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. "Covered telecommunications" means purchases from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), and video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

21. If Federal grant monies and/or US Department of Agriculture monies are spent under the Purchase Order, Seller agrees to comply with the applicable portions of the School Food Authority's agreement under the program. Seller agrees to conduct program operations in accordance with all applicable laws, orders and regulations, including but not limited to:

- a. 7 CFR Parts 210, 215, 220, 225 and 250;
- b. Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010;
- c. Public Law 105-336, the Buy American provision of the William F Goodling Child Nutrition Reauthorization Act of 1998: The contractor shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States, in accordance with 7 CFR 210.21(d) and 7 CFR 220.16(d). "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. Exceptions include: (1) The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality, or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 14 days in advance of delivery. The request must include: (1) the alternative substitutes that are domestic and meet the required specifications, with price of the domestic food alternative substitute and the availability of the domestic alternative substitute in relation to quantity ordered, and (2) the reason for exception, whether limited/lack of availability or price. If price, include the price of the domestic food product and the price of the non-domestic product that meets the required specifications of the domestic product;
- d. OMB Circular A-110, Byrd Anti-Lobbying Amendment 31 USC 1352;

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- e. Federal and USDA civil rights regulations and policies: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov;
 - f. Affordable Care Act: The contractor understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The contractor shall bear sole responsibility for providing health care benefits for its employees who provide services to the District as required by State or Federal Law.
 - g. Record Keeping: The books and records of the contractor pertaining to operations under this Agreement shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the US Department of Agriculture and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S §35-214, 7 CFR 210.23 and 2 CFR Part 200.318 (i)).
 - h. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330); and
 - i. The termination clause of Appendix II to 2 CFR Part 200.
22. Purchaser reserves all administrative, contractual and legal rights and privileges under the applicable laws and regulations with respect to this procurement in the event of contractor violation or breach of contract terms.
23. Purchaser may terminate the contract for cause and for convenience.
24. For all contracts that meet the definition of "funding agreement" and where Purchaser wishes to enter into a contract with a small business firm or nonprofit organization, Seller shall comply with the Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements.
25. When Federal funding is used, Purchaser shall take affirmative steps to assure minority businesses, women's business enterprises, and labor surplus area firms are notified of bidding opportunities when possible. Prime contractors are required to take the same affirmative steps if subcontractors are let.
26. The parties agree to comply with all provisions of applicable federal, state and local laws relating to non-discrimination, equal employment opportunity, the Americans with Disabilities Act, and Arizona Governor's Executive Order 2009-09 (superseding Executive Order 99-4) (dated January 29, 1999), as may be amended from time to time.
27. Certificate of Independent Price Determination: The contractor admits that all prices in this order have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.

NON-APPROPRIATION

1. All parties acknowledge that the Client is a government entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of either's obligations under this contract, then this contract shall automatically expire without penalty to either party after written notice of the unavailability and non-appropriation of public funds. It is expressly agreed that neither party shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure.

FORCE MAJEURE

1. 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; epidemic; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; government regulations or restrictions; 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:

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- 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.

INDEMNIFICATION

1. Notwithstanding all other provisions, Purchaser does not agree to accept responsibility, waive liability, or indemnify Seller, in whole or in part, for the errors, negligence, hazards, liabilities, contract breach and/or omissions of Seller, its employees and/or agents.

GOVERNING LAW

1. This agreement shall be governed in accordance with the laws of Arizona without regard to conflict of law provisions. In the event that any action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.