

## Carmel Unified School District – Terms and Conditions for Purchase Order

**1. DEFINITIONS:** “Products” = All equipment, materials, or supplies to be furnished, sold, or leased to District pursuant to this PO (also referenced as “Contract”). “Site” = the site(s) at which the Products are provided. “Parties” = District and Vendor. “Services” = Any professional, trade, technical, or other services provided by Vendor under this PO, including labor, installation, maintenance, or consulting services.

**2. STANDARD OF CARE:** Vendor represents that it has the qualifications and ability to furnish and deliver the Products as specified, without the advice, control or supervision of District in accordance with industry standards. Failure to furnish all items per the PO, in a timely manner, as specified, shall constitute unsatisfactory service. Vendor shall perform, at its own cost, any service necessary to correct Vendor’s failure to comply with the standard of care required herein. Vendor shall be responsible for any damage which may be sustained because of failure or neglect of Vendor to comply with the terms or conditions listed herein.

Vendor shall perform all Services in a timely, professional, and workmanlike manner, in accordance with industry standards, applicable laws, and District requirements. All Services shall be performed by qualified personnel. District may reject services not conforming to this standard at Vendor’s expense.

**3. DELIVERIES:** Unless otherwise indicated on the PO, the delivery of all materials, equipment, supplies, or other items shall be (1) part of the Contract Price, (2) delivered by Vendor at no additional cost to District, (3) accompanied by all necessary Material Safety Data Sheet(s) (4) include a detailed packing slip that lists the PO number.

For Services, performance shall occur at the times and locations designated by the District, unless otherwise specified in the PO.

**4. INSPECTION OF PRODUCTS FURNISHED:** All items furnished shall be subject to inspection and rejection by District for spoilage, defects or non-compliance with the specifications. Defective items shall be made good by Vendor, and unsuitable items may be rejected, notwithstanding that such defective items may have been previously overlooked by District and accepted. If a Product is rejected at time of delivery, a credit is to be issued for a Product or Vendor shall immediately remedy such defect in a manner satisfactory to District. Several notices of Products failing to meet specifications may result in contract termination.

**5. ANTI-TRUST CLAIM:** Vendor and its subcontractor(s) assign to District all rights, title, and interest to all causes of action under § 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to a contract or subcontract. This assignment shall become effective when District tenders final payment to Vendor, without further acknowledgment.

**6. SUBSTITUTIONS:** No substitutions of material or deviation in price shall be made without District’s prior written approval.

**7. INDEPENDENT CONTRACTOR STATUS:** While carrying out the PO, Vendor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of District. Vendor is solely responsible for its Workers’ Compensation insurance, taxes, and similar obligations. Vendor is liable for its actions, including negligence, gross negligence, and acts or omissions of its agents or employees.

**8. EQUIPMENT & LABOR:** Vendor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material to provide the Products at the times and places directed and approved by District.

**9. WORKERS:** Vendor shall enforce discipline and order among employees and provide competent supervision of personnel on the Site.

**10. SUBCONTRACTORS:** District reserves the right to approve any subcontractors. Vendor agrees to bind every subcontractor by the terms of the PO, including, without limitation, indemnification, insurance, and warranty requirements. If Vendor subcontracts any portion or all of the Contract, Vendor shall be fully responsible to District for its subcontractors and persons directly or indirectly employed by them. The PO shall not create any contractual relations between any subcontractor and District.

**11. SAFETY; PROTECTION OF WORK & PROPERTY:** Vendor shall ascertain from District all rules and regulations about safety, security, and driving on school grounds. Vendor shall maintain safety on the Site. In an emergency affecting life and safety of property, Vendor may act to prevent loss or injury.

**12. CLEAN UP:** Vendor shall remove debris.

**13. WARRANTY/QUALITY:** Unless specified otherwise, Vendor, manufacturer, or their assigned agents shall guarantee all Products against defects or failures for a minimum of one (1) year from acceptance by final payment or other written form. All Products must comply with California energy, conservation, environmental, and educational standards.

**14. CHANGE IN SCOPE:** District shall not accept any change in the PO, performance method, materials, price, or any other matter affecting the PO unless District approves the change in advance by a written, executed change order. Vendor shall provide District with all information to substantiate the cost. Prior to approval of a change order, Vendor shall submit any request for a time extension, and all information substantiating its claim for delay. If Vendor fails to submit a time extension request or all supporting information, it shall have waived any extension.

**15. TIME OF THE ESSENCE:** Time is of the essence in each PO provision and condition.

**16. PAYMENT:** Unless otherwise specified, Vendor shall submit an invoice for Products under the PO, referencing the PO number. District shall make payment for Products in a lump sum within thirty (30) days of delivery to and approval by authorized District agents of all invoices and evidence required by District. District may deduct from payment amounts to protect District from loss because of: (i) expenses, losses, or damages, determined and incurred by District for which Vendor is liable under the

PO; (ii) unauthorized deviations from the PO; (iii) Vendor’s failure to submit timely, sufficient documentation; and (iv) any other sums which District may recover from Vendor under the PO or state law.

**17. VENDOR’S INSURANCE:** Vendor shall maintain insurance coverage customary for its industry, but no less than: (a) Commercial General Liability Insurance (minimum \$1,000,000 per occurrence, \$2,000,000 aggregate); (b) Workers’ Compensation Insurance in accordance with statutory limits; and (c) if operating vehicles on District property, Automobile Liability Insurance.

For any Services performed under this PO, Vendor’s insurance shall be primary and any insurance or self-insurance maintained by the District shall be excess and non-contributory with respect to Vendor’s coverage.

Certificates of insurance and additional insured endorsements shall be provided to District upon request.

Insurance during shipping (F.O.B. Destination) is included in the Contract Price.

**18. INDEMNIFICATION:** To the furthest extent permitted by California law, Vendor shall defend (with counsel acceptable to District), indemnify, and hold harmless District and its Board, its agents, representatives, officers, consultants, employees, and volunteers (“Indemnified Parties”) from and against any and all demands, losses, liabilities, claims, suits, and actions (“Claims”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, any act or omission by Vendor or its employees, subcontractors, or agents.

This indemnity applies regardless of any passive negligence on the part of any Indemnified Party, but excludes Claims caused solely by the active negligence or willful misconduct of the District.

District may reject any legal representation that Vendor proposes to defend District.

**19. TERMINATION:** District may terminate all or any portion of the PO immediately upon District’s written notice to Vendor. Termination shall not affect the rights and obligations of the Parties arising prior to the effective date of termination.

**20. DISPUTES:** In the event of a dispute between the Parties as to provision of the Products, the interpretation of this PO, or payment or nonpayment, the Parties shall attempt to resolve the dispute in good faith. Disputes may be determined by mediation, if mutually agreeable, otherwise by litigation. If a claim, or any portion thereof, remains in dispute, Vendor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Vendor’s right to bring a civil action against District. Pending resolution of the dispute, Vendor agrees it will neither rescind the PO nor stop performance.

**21. GOVERNING LAW:** The PO shall be governed by and construed in accordance with California laws with venue in District’s County.

**22. PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Every provision required by law to be in the PO shall be deemed to be inserted and the PO shall be read and enforced as though included.

**23. BINDING CONTRACT:** The PO shall be binding upon the Parties and their successors and assigns, and inure to the benefit of the Parties, successors and assigns.

**24. DISTRICT WAIVER:** District’s waiver of any term or of a breach of any term shall not constitute waiver of any other term or a breach of any other term.

**25. INVALID TERM:** If a Court determined any PO term to be illegal, invalid or unenforceable (illegal), the legality of the remaining terms shall not be affected, and the illegal term will not be part of the PO.

**26. ENTIRE CONTRACT:** This PO and the documents expressly incorporated herein set forth the entire contract between the Parties and supersedes all prior agreements or understandings between the Parties concerning the subject of this PO. Any Vendor terms shall not apply unless expressly incorporated herein. Where a conflict exists between the provision(s) of this PO and an incorporated document, the provision(s) of this PO shall control.

**27. ASSIGNMENT:** Vendor shall not assign or transfer any of its rights, burdens, duties, or obligations under the PO without District’s prior written consent.

**28. COMPLIANCE WITH LAWS:** Vendor shall give all notices and comply with all laws, ordinances, rules and regulations concerning the PO (“Laws”). If Vendor performs any work that is in violation of Laws, without first notifying District, Vendor shall bear all costs.

**29. ANTI-DISCRIMINATION:** In connection with any District contracts, there shall be no discrimination against any employee because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age. Vendor agrees to comply with applicable laws including but not limited to the California Fair Employment Practice Act (Gov. Code, § 12900 et seq.) and Labor Code, § 1735. Vendor shall require like compliance by all subcontractor(s).

**30. FINGERPRINTING:** Vendor shall meet applicable fingerprinting and criminal background investigation requirements of Education Code sections 45125.1 or 45125.2. If applicable, Vendor shall execute a Fingerprinting/Criminal Background Investigation Certification. All site visits shall be arranged through District. Vendor and/or Vendor’s employees shall check in with the school office each day immediately upon arriving at the school site and shall check out with the school office each day immediately before departing the school site.

**31. LIMITATION OF DISTRICT LIABILITY:** District’s financial obligations under this PO shall be limited to the payment of the compensation provided in this PO. Notwithstanding any other provision of this PO, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, or lost bonding capacity, arising out of or in connection with this PO.