## Terms and Conditions to Purchase Order (or "PO" or "Contract") – Purchase of Equipment, Materials or Supplies

**1. FREIGHT TERMS.** All prices shall be quoted F.O.B. destination, unpacked, assembled (if necessary) to the designated site(s) at the time of order. No additional freight, drayage or labor charges will be permitted. All cartons and other packaging materials to be removed from the site by the Seller or his agents.

**2. SHIPMENTS.** All line items shall be delivered to the District's warehouse, complete as requested in one shipment. Partial line item delivery shall not be accepted without prior consent. Payment for partial line items shall be delayed until the complete quantity has been received at the District's warehouse. **NOTE**: This does not mean that the District will not accept a partial purchase order delivery, as long as the total quantity requested for each line item is included in the shipment.

**3. MARKING OF PACKAGES**. Each package contained in each shipment shall be clearly marked with the District purchase order number. Failure to mark the packages may delay District acceptance and payment for the shipment. Each package shall be marked with the sequential package number of threat shipment with the first package being marked Number 1, and PACKING SLIP ENCLOSED.

**4. INSPECTION, ACCEPTANCE, AND REJECTION**.

**4.1.** Seller and its subcontractors will provide and maintain a quality assurance system acceptable to the District covering the Goods and will tender to the District only those Goods that have been inspected and found to conform to this Contract's requirements. Seller will keep records evidencing inspections and their result, and will make these records available to the District during Contract performance and for three years after final payment. Seller shall permit the District to review procedures, practices, processes and related documents to determine the acceptability of Seller's quality assurance system or other business practices related to performance of the Contract.

**4.2.** All Goods may be subject to inspection and test by the District or its authorized representatives.

**4.3.** Seller and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the District. Seller shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

**4.4.** All Goods to be delivered hereunder may be subject to final inspection, test and acceptance by the District at destination, notwithstanding any payment or inspection at source.

**4.5.** District shall give written notice of rejection of equipment, materials, or supplies delivered or services performed hereunder within a reasonable time after receipt of such equipment, materials, or supplies. Such notice of rejection will state the respects in which the equipment, materials, or supplies do not substantially conform to the specifications of the Goods. If the District does not provide such notice of rejection within thirty (30) days of delivery, such equipment, materials, or supplies will be deemed to have been accepted. Acceptance by the District will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the District might have at law or by express reservation in this Contract with respect to any nonconformity.

**5. WARRANTY/QUALITY**: Unless specified otherwise, Seller, manufacturer, or their assigned agents shall guarantee all equipment, materials, supplies, workmanship, products or Work against defects or failures for a minimum of one (1) year from acceptance of each item. All workmanship and merchandise must comply with California energy, conservation, environmental, and educational standards. The rights and remedies of the District provided in this section entitled Warranties are in addition to and do not limit any rights afforded to the District by any other clause of this Contract. Seller warrants goods furnished hereunder will conform to the requirements of this Contract. All warranties, including special warranties specified elsewhere herein, shall inure to the District, its successors, assigns, customer agencies and users of the goods.

**6. DISPUTES.** The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Seller shall submit to the District's Superintendent or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the District, on its own initiative, has already rendered such a final decision. Seller's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Seller shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Seller believes the District is liable.

**6.1.** Pending the final resolution of any dispute arising under, related to or involving this Contract, Seller agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the District's instructions. Seller's failure to diligently proceed in accordance with the District's instructions shall be considered a material breach of this Contract.

**6.2.** Any final decision of the District shall be expressly identified as such, shall be in writing, and shall be signed by the District Superintendent or designee. If the District fails to render a final decision within 90 days after receipt of Seller's demand, it shall be deemed a final decision adverse to Seller's contentions. The District's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

**7. TERMINATION.** If Seller fails to perform the Contract and Seller's duties to the satisfaction of the District, or if Seller fails to fulfill in a timely and professional manner Seller's obligations under this Contract, or if Seller violates any of the Terms or Provisions of this Contract, the District shall have the right to terminate this Contract effective immediately upon the District giving written notice thereof to the Seller. District shall also have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

**8. ASSIGNMENT OF CONTRACT.** Seller shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

**9. TIME IS OF THE ESSENCE.** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

**10. DELIVERY AND INSTALLATION CHARGES.** Seller must coordinate all deliveries with freight carriers, expedite factory ship dates and verify project status with District two weeks prior to shipment. The District is not responsible to monitor freight deliveries. Seller must provide follow-up reports, on a bi-weekly basis, regarding damage replacements, returns, credits and freight claims. Seller is responsible for all freight claim issues. The District is not responsible for any additional charges due to freight damage replacements.

**11. FORCE MAJEURE CLAUSE.** Seller shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Seller.

**12. INDEMNIFICATION / HOLD-HARMLESS.** To the furthest extent permitted by California law, Seller shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, and volunteers (the "**indemnified parties**") from any and all demands, losses, liabilities, claims, suits, and actions (the "**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, or otherwise arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Seller proposes to defend the District.

**13. PERMITS AND LICENSES.** Seller and all of its employees, agents, and subcontractors shall secure and maintain in force, at Seller's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Contract herein listed.

**14. INDEPENDENT CONTRACTOR STATUS.** While engaged in carrying out the Contract, the Seller is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Seller shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Seller shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**15. ANTI-DISCRIMINATION POLICY.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, and therefore the Seller agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Seller agrees to require like compliance by all its subcontractor(s).

**16. COMPLIANCE WITH LAWS.** Seller shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Contract as indicated or specified. If Seller observes that any of the work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Seller shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Contract shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Seller's receipt of a written termination notice from the District. If Seller performs any work of the Contract that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Seller shall bear all costs arising therefrom.

**17. ANTI-TRUST CLAIM.** Seller and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Seller, without further acknowledgment by the Parties.

**18. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a in the county in which the District's administration office is located.

**19. PROVISIONS REQUIRED BY LAW TO BE INSERTED.** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

**20. BINDING CONTRACT.** This Contract shall be binding upon the Parties hereto and upon their successors and assigns, and shall inure to the benefit of the Parties and their successors and assigns.

**21. BUYER NON-WAIVER.** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

**22. INVALID TERM.** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions.