



Peralta Community College District

PURCHASE ORDER TERMS AND CONDITIONS

The Peralta Community College District utilizes Purchase Orders for **all** purchases. Phone orders are not valid and may be subject to non-payment. The Purchase Order and the below Terms and Conditions constitute the entire agreement between the **VENDOR** and the Peralta Community College District. **VENDORS** are to acknowledge receipt of all purchase orders. Any objection to these Terms and Conditions must be submitted in writing to the Buyer listed on the Purchase Order. Failure to object in writing constitutes agreement to these Terms and Conditions and to the Purchase Order.

- 1. DISTRICT:** The Peralta Community College District consists of four community colleges: Laney College and Merritt College (located in Oakland, CA), College of Alameda (located in Alameda, CA), and Berkeley City College (located in Berkeley, CA). The **DISTRICT** issues Purchase Orders for these colleges under the District name of the Peralta Community College District, hereinafter referred to as the “**DISTRICT**”.
- 2. VENDOR:** The term “**VENDOR**,” “**SUPPLIER**,” or “**CONTRACTOR**” whenever appearing on Purchase Orders or any attachments shall mean the Seller or Supplier of goods or services named on the face of the Purchase Order and all individuals, officers, directors, employees, agents, contractors, or subcontractors of such Seller or Supplier. While engaged in carrying out the Terms and Conditions of the purchase, the **VENDOR** is an independent contractor, and not an officer, employee or agent of the District.
- 3. ASSIGNMENT:** The **VENDOR** shall not assign or transfer by operation of law or otherwise any of all of its rights, burdens, duties or obligations without the prior written consent of the **DISTRICT**.
- 4. ACCEPTANCE:** **VENDOR** accepts this Purchase Order solely on the basis of these Terms and Conditions and on the conditions listed on the face of the Purchase Order. Additional terms on **VENDOR**'s forms are rejected and shall be deemed a material alteration hereof, unless such terms are incorporated by direct reference on the face of the Purchase Order.
- 5. PRICE:** The Purchase Order shall not be filled at prices higher than specified in the Purchase Order.
- 6. DELIVERY/FREIGHT CHARGES AND F.O.B. POINT:** **VENDOR** shall be responsible for delivery and shall prepay all related shipping costs and add to invoice. All shipments shall be F.O.B. Destination to the District's Warehouse at: Peralta Community College District, 501-5th Avenue, Oakland, CA 94606, unless otherwise specified in the “Ship To” location indicated on the Purchase Order. In the event of **VENDOR**'S failure to deliver Goods or Services within thirty (30) days from receipt of the Purchase Order, (or as specified in a bid or contract document), the **DISTRICT** reserves the right, and **VENDOR** agrees that the purchase may be returned in part or all of any shipment so made, and may charge **VENDOR** with any loss or expense sustained as a result of such failure.
- 7. SHIPMENT OF PRODUCT:** All Goods or Services purchased via a Purchase Order must be delivered in the Fiscal Year the Purchase Order was issued. The **DISTRICT**'S fiscal year starts in July 1, 20XX and ends June 30, 20XX. All Goods and Services must be received by June 30, unless otherwise specified on the Purchase Order.
- 8. DISCOUNTS:** All cash discounts to the **DISTRICT** shall be from the date form receipt of the invoices and not from the date of the invoice.
- 9. CHANGES:** The Purchase Orders shall not be altered, amended, supplemented or cancelled without **DISTRICT** approval in writing. The **DISTRICT** shall have the right to make changes hereunder any time and **VENDOR** agrees to accept such changes. In the event such changes result in additional costs, the **DISTRICT** shall make an equitable adjustment in the purchase price provided such additional costs are itemized and justified in writing, and submitted to the **DISTRICT** within 10 days of receipt of the change notification.
- 10. HANDICAP ACCESSIBILITY:** **VENDOR** hereby warrants that any hardware or software products or services to be provided under this Purchase Order comply with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. **VENDOR** agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention. **VENDOR** further agrees to indemnify and hold harmless the **DISTRICT**, the Chancellor's Office of the California Community Colleges, and any California community college using the **VENDOR**'s products or services from any claim arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Purchase Order.
- 11. TERMINATION:** The **DISTRICT** reserves the right to terminate any Purchase Order for its own convenience with liability limited to the services or products delivered prior to the **VENDOR**'s receipt of the **DISTRICT**'S termination notice.

12. TAXES: The DISTRICT will pay only the State Sales and Use Tax and/or the Alameda County Uniform Local Sales and Use Tax, as applicable. VENDOR will not include taxes in unit prices or labor rates used for billing purposes. Taxes must be separately itemized.

13. WARRANTY: All products, materials or services furnished under the purchase shall be in accordance with DISTRICT specifications and guaranteed to be new and free from faulty design or workmanship. If upon inspection any item is found defective or of inferior quality, the DISTRICT may return such item to VENDOR at VENDOR'S expense. Payment for any item prior to inspection shall not be construed to be an acceptance of an unsatisfactory or defective item. VENDOR shall reimburse DISTRICT for any amount paid to VENDOR for such returned items.

14. REMEDIES: In the event of VENDOR'S breach of this contract, the DISTRICT may take any of the following actions without prejudice to any other rights or remedies available to the DISTRICT by law: (i) require VENDOR to repair or replace such Goods or Services, and upon VENDOR'S failure or refusal to do so, repair or replace the same at VENDOR'S expense; (ii) reject any shipment or delivery containing defective or nonconforming Goods and Services and return for credit or replacement at VENDOR'S option; said return to be made at VENDOR'S cost and risk; (iii) cancel any outstanding deliveries and treat such breach by VENDOR as VENDOR'S repudiation of this contract. In the event of DISTRICT'S breach hereunder, VENDOR'S exclusive remedy shall be VENDOR'S recovery of the Goods or the purchase price payable for Goods shipped prior to such breach.

15. HEALTH & SAFETY: All materials, equipment, and supplies must meet all Federal, State, and local requirements regarding Health and Safety. All shipments of hazardous and toxic material must include Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Rule 29 CFR 1919.1200, with copies sent to the Purchasing Department referencing the Purchase Order number.

16. INDEMNIFICATION AND HOLD HARMLESS: VENDOR shall indemnify and hold DISTRICT, its officers, employees, volunteers and agents, including the property of DISTRICT, free and harmless from any and all claims, suits, demands, causes of action, losses, damages, injuries, and expenses, whether actual or alleged, including, but not limited to, reasonable attorneys' fees, and liability arising from (i) the death or injury of any person or persons, or from the loss, damage or destruction of any property or properties caused by or connected with the actions, negligence, errors, or omissions of VENDOR or VENDOR'S agents and employees, (ii) the use of any copyrighted materials or patented inventions, and (iii) VENDOR'S breach of its obligations under the Purchase Order.

17. VENUE: The Purchase Orders shall be governed by the laws of the State of California with venue in Alameda County.

18. INSURANCE: VENDOR shall maintain Workers' Compensation insurance as required by statute and Commercial General Liability insurance adequate to protect VENDOR and VENDOR's obligations hereunder to protect the DISTRICT from claims due to personal injury, including death, and damage to property, which may arise from operations under the Purchase Order. The VENDOR may be required to file with the DISTRICT certificates of such insurance. Failure to furnish such evidence, if required, may be considered a material default of the VENDOR.

19. INVOICES AND PAYMENT: Unless otherwise specified, the VENDOR shall render invoices in duplicate for Goods or Services provided to the Accounts Payable Office at the address listed on the Purchase Order. VENDOR shall send separate invoices for each Purchase Order number. All invoices must indicate the assigned Purchase Order number. Invoices must also conform to the line items and unit prices in the Purchase Order. Unless otherwise noted, the DISTRICT shall make payments on a net-30 day basis or within a reasonable time after VENDOR has completed its obligations hereunder and payment approval is granted by the authorized DISTRICT representative. The DISTRICT may also require the submittal of an IRS Form W-9 or similar taxpayer identification. Any monies due the DISTRICT from VENDOR may be off-set from any monies due VENDOR from the DISTRICT whether or not under the Purchase Order.

20. LICENSES AND PERMITS: The VENDOR and all of its employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with furnishing of materials, articles or services herein listed. All operations and materials shall be in accordance with the law.

21. PATENTS: In the event any article sold and delivered hereunder shall be covered by any patent, copyright, or application thereof, VENDOR will indemnify and hold harmless the DISTRICT from any and all loss, cost or expense on account of any and all claims, suits, or judgments on account of the use or sale of such article in violation of rights under such patent, copyright, or application.

22. ANTI-DISCRIMINATION: VENDOR agrees to adhere to all applicable laws that prohibit discrimination because of race, age, religion, sex, national origin, handicap, political affiliation or belief.

End of Section.