

DECLARATION. This document sets forth the general terms and conditions that are *part and parcel* of every Purchase Order issued by Southwestern Community College District, hereinafter referred to as “District”. A District purchase order along with the terms and conditions herein constitute a legally binding contract between the District and any vendor/reseller/contractor/consultant that conducts business with the District. A vendor/reseller/contractor/consultant shall be hereinafter referred to as “Supplier”. Throughout this document, the term “Supplier” shall include employees and/or agents of Supplier, and the terms “contract” and “agreement” will be used interchangeably. District contracts, bids, and procurement transactions are executed in compliance with all applicable Government, Labor, Education, Civil, State/Municipal codes, many of which are referenced at the end of this document and as stated in District *Purchasing and Contracting Policy* BP6330.

1. **CONTRACTS.** All contracts entered into with the District must be approved by the District Governing Board in order to be an enforceable obligation. Each Governing Board-approved contract is intended to work in concert with a corresponding District issued purchase order; such Governing Board-approved contract takes precedence over the purchase order in the procurement action but is still subject to the general Terms and Conditions herein. In cases where conflict exists between the general Terms and Conditions herein and the Governing Board approved contract, the language in this document must be interpreted in favor of and complimentary to the Governing Board approved contract.
2. **PURCHASE ORDERS.** The District’s Procurement department is the only authorized office that can issue a purchase order (PO) or otherwise commit and authorize District funds for the procurement of merchandise or services. Accordingly, a Supplier must be in possession of a properly authorized, hard-copy or electronic PO prior to providing merchandise or rendering services. The District will not be responsible for items delivered without a PO and reserve the right to reject or return such items, at Supplier’s expense, without payment.
3. **PURCHASE ORDER PRICE.** Prices and amounts shown on the purchase order are the maximum amounts authorized on the order. If price is omitted or incorrect on order, except where order is given in acceptance of quoted prices, it is agreed that Supplier’s price will be the lower of the prevailing market price and the last quote given to the District by Supplier for the same item or service.
4. **VARIATION IN QUANTITY OR QUALITY.** All goods and services must be as specified on the purchase order. No variation in specifications, quality or quantity of any item or service called for by this order shall be allowed without prior written consent from the District’s Procurement department.
5. **PREPARATION AND PACKAGING.** All items shall be prepared and packaged for shipment in a manner that will prevent damage in transit. The District reserves the right to reject any shipment which appears to have suffered damage in transit.
6. **SHIPPING.** Unless otherwise specified in the purchase order, all goods are to be shipped *FOB Destination*. Where the District has given specific written authorization to ship goods *FOB Shipping Point*, the supplier shall prepay all shipping charges, route goods the most cost-efficient manner consistent with District’s need date, and add the actual shipping charges to the invoice. The District, at its own discretion, may require proof of actual shipping charges. The District’s purchase order number must be clearly referenced on each parcel and packing slip. Failure to include this information may cause a delay in inspection and acceptance of the order, resulting in a delay of payment. Regardless of the FOB designation, Supplier agrees to bear all risks of loss, injury, delay, or destruction of goods and materials ordered herein which occur prior to delivery, and such loss, injury, delay or destruction shall not release Supplier from an obligation hereunder.
7. **INSPECTION AND ACCEPTANCE.** All articles shall be subject to inspection and acceptance *or* rejection by the District. Inspection and acceptance will be at the receiving destination.
8. **INVOICES.** Separate invoices are required for each purchase order. Invoices shall be submitted by email to swcap@swccd.edu or by U.S. Mail to the District’s Accounts Payable department and shall contain the following information: Purchase order number, item number and description, quantity, unit price and extended totals for items delivered. Sales tax, where applicable, shall be shown separately. Cost associated with shipping, handling, packaging, crating, delivery, fuel surcharges, etc. shall also be shown separately, where possible. Failure to send invoice to the Accounts Payable department with the above information in a timely manner may cause a delay in payment. Supplier shall make every effort to consolidate invoices when partial shipments are made against a

single purchase order.

9. **PAYMENT DISCOUNTS.** In connection with any discount offered, the payment discount period shall begin on the date of delivery and acceptance at destination. The District shall be entitled to the maximum educational discount or any other discount offered.
10. **PAYMENT OF INVOICES.** District payment terms shall be Net 30 unless otherwise specified on the purchase order. Payment will be made by the District's Accounts Payable office within 30 days after proper receipt of goods/services has been verified provided that an invoice for such goods or services has been received by District's Accounts Payable office. Payment by the District shall constitute full and final payment, unless Supplier files a claim for error or omission within ninety (90) days of the date of invoice.
11. **HEALTH AND SAFETY.** The Supplier certifies, by shipment, that all goods and equipment furnished under this order meets or exceeds all applicable Federal and State health and safety regulations, including CAL-OSHA codes. All shipments of chemicals, hazardous and toxic material must include Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Standard (29 CFR 1910-1200)
12. **WARRANTY.** Supplier warrants that all goods or services furnished under this order shall be in accordance with District specifications. All goods shall be new, merchantable, fit for their intended purposes, free from all defects in materials and workmanship, free from defects in design, in good working order and shall perform in accordance with the manufacturer's standard specifications. All work and services shall be done and completed in a thorough, workmanlike manner. All goods furnished and all work performed shall be subject to the District's inspection and acceptance. Goods and services which are not in accordance and conformity with the specifications shall be rejected and, in the case of goods, promptly removed from the District premises at Supplier's expense. The District shall determine the acceptability of the goods and services and its decision shall be final and binding upon the parties. Supplier warrants that all items are free and clear of all liens and encumbrances and that Supplier has a good and marketable title to same at the time title passes to the District.

Manufacturer' and/or Supplier's stated period of warranty shall commence upon District's acceptance of goods or completion of services. Supplier agrees that all supplies, equipment or services furnished under this order shall be covered by the most favorable commercial warranties the Supplier provides any customer for such goods or services, and that the rights and remedies provided therein are in addition to and do not limit any rights afforded to the District by any other provisions of this order.

13. **ELECTRONIC AND INFORMATION TECHNOLOGIES (IT).** Electronic and IT products in this order shall 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. Product covered under this provision includes but is not limited to the following: Software applications; operating systems; web-based intranet and internet information and applications; telecommunications products; video or multimedia products; self-contained closed products such as copiers; and desktop and portable computers. Supplier agrees to respond promptly and resolve any complaints regarding accessibility of its products or services that are brought to its attention. Supplier further agrees to indemnify and hold harmless the District from and against any claim arising out of Supplier's failure to comply with these requirements. Supplier acknowledges that failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement or cancellation of the order.
14. **ELECTRICAL, RADIO, AND ELECTRONIC EQUIPMENT.** All electrical, radio and electronic equipment materials, supplies, and accessories called for in the specifications must bear the seal of approval of the Underwriters Lab, Inc. Where seals of approval are not visibly identifiable, a signed statement of such approval shall be furnished to the District if so requested.
15. **DEFAULT BY SUPPLIER.** The District shall hold Supplier liable and responsible for all damages sustained due to failure or neglect of the Supplier to comply with any term and/or condition herein. It is understood that time is of the essence in the delivery of the purchased goods or services, unless stipulated otherwise by the District. If Supplier fails or neglects to furnish or deliver any of the goods or services at the prices named and at the times and places herein stated or otherwise fails or neglects to comply with the terms of the purchase, the District may cancel the purchase in its entirety, and may place the order elsewhere upon written notice of cancellation to Supplier in default. Additionally, the District shall retain all other rights and remedies under the law.

16. **NON-WAIVER.** District waiver of a breach or default by Supplier under this agreement shall not be deemed a waiver of any subsequent breach or default. Failure of the District to enforce compliance with any term or condition of this agreement shall not constitute a waiver of such term or condition.
17. **FORCE MAJEURE.** The Supplier shall be excused from performance hereunder during the time and to the extent that Supplier is prevented from performing because of an act of God, fire, strike, lockout or commandeering of materials or facilities by the government, when satisfactory evidence thereof is presented to the District and provided that it is satisfactorily established that non-performance is not due to fault or neglect of Supplier.
18. **INDEMNIFICATION/LIMITATION OF LIABILITY.** To the fullest extent permitted by law and as a material part of this agreement, Supplier shall indemnify, hold harmless, and defend the District, its Board of Trustees, officers, employees, agents, volunteers, and representatives from and against all claims, liability, loss, cost, damages, expenses and obligations, including reasonable attorney fees, arising from the acts or omissions of Supplier or of persons acting on behalf of Supplier, however caused, in the performance of the services specified herein excluding, however, such liability claims, losses, damages, or expenses arising from the District's sole and active negligence or willful acts. In the event any article sold and delivered hereunder is covered by any patent, copyright, or application thereof, Supplier shall indemnify, hold harmless, and defend the District from any and all loss, cost or expense resulting from claims, suits or judgments rendered for violation of rights under such patents, copyright, or application. In no event shall the District be liable for any loss of Supplier's business, revenues or profits, or special, consequential, incidental, indirect or punitive damages of any nature, even if the District has been advised in advance of the possibility of such damages.
19. **INDEPENDENT CONTRACTOR.** While engaged in carrying out and complying with the terms of this agreement, Supplier is an independent contractor and not an officer, employee, partner, joint venture, or agent of the District.
20. **COMPLIANCE WITH LAW/PERMITS AND LICENSES.** Supplier and all of its employees or agents shall comply with all applicable laws, ordinances, rules and regulations, including but not limited to all applicable laws and regulations governing the bidding process, and shall secure and maintain in force such licenses and permits as are required by law, in connection with furnishing of goods, services, or installation hereunder.
21. **EQUAL OPPORTUNITY EMPLOYER.** Supplier, in the execution of this agreement certifies that is it an equal employment opportunity employer.
22. **NON-DISCRIMINATION ENDORSEMENT.** Supplier agrees to comply with all applicable Federal, State of California, and local anti-discrimination laws and regulations and agrees not to unlawfully discriminate against any prospective or active employee engaged in the work herein on the basis of race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, or sexual orientation or any other category protected by law, including but not limited to, the California Fair Employment Practice Act, beginning with Labor Code Section 1410, and Labor Code Section 1735. In addition, Supplier agrees to require compliance with this non-discrimination policy by all subcontractors employed in connection with this agreement.
23. **PREVAILING WAGE.** For Public Works projects, as defined by the Labor Code, greater than \$1000, the Supplier shall pay the general prevailing rate of per diem wages to all workers employed on contracted project as established by the California Department of Industrial Relations (Labor Code 1771).
24. **DIR Regulations Regarding Public Works Projects.** The Department of Industrial Relations (DIR) requires all contractors, subcontractors and service providers who perform work on a Public Works project to be registered with the DIR in accordance with Labor Code Section 1725.5. The District's Procurement department will verify every purchase order and request proof of DIR registration from contractors and or request the contractor to be registered. It is the responsibility of the Contractor performing public works projects at the District to be registered with the DIR **prior** to performing any public work (public works as defined by Labor Code section 1720 -1771). If the contractor/vendor cannot obtain the appropriate DIR registration number, the District cannot do business with this company. This DIR registration requirement applies to subcontractors who perform public works as well. It shall be the Supplier's obligation to provide the District with written evidence of compliance with these requirements by all of its subcontractors. All such public works shall also be subject to prevailing wage compliance monitoring and enforcement by the DIR, including but not limited to submission of certified payrolls as required by DIR.

25. **CANRA.** In accordance with the Child Abuse and Neglect Report Act (CANRA) and California Penal Code 11166, parties shall ensure that all employees, volunteers, consultants, subcontractors or agents performing services under this Agreement will report any known or suspected child abuse or neglect to a child protective agency, by telephone and within 36 hours of the suspected abuse or neglect.
26. **TERMINATION FOR NON-APPROPRIATION OF FUNDS.** If the term of this agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the agreement is contingent upon the appropriation and availability of funds for such purpose, as determined in good faith by the District. If funds to effect such continued purpose are not appropriated or available as determined in good faith by the District, this agreement shall automatically terminate and the District shall be relieved of any further obligation.
27. **TERMINATION FOR CONVENIENCE:** District shall have the right to terminate this purchase order in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by Supplier of such notice, without cause even though Supplier is not in breach of any obligation hereunder. Upon receipt of notice of termination, Supplier shall immediately discontinue performance and shall comply with Supplier's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to this purchase order. Upon termination, Supplier shall be compensated only for those services or goods which have been adequately rendered and delivered to the District through the effective date of such termination. Supplier shall be entitled to no further compensation. However, said payment shall not exceed the price specified herein for such items. Supplier shall advise the District, in writing, of Supplier's claim, if any, for termination costs within five (5) days after receipt of the notice of termination. Termination in accordance with this article shall not affect District's obligation to pay for items accepted by District prior to such termination.
28. **INSURANCE REQUIREMENTS.** The Supplier shall, at their expense, maintain and comply with Insurance Requirements "a-f" below to protect Supplier and District from any and all claims for personal injury, bodily injury and property damage arising from, pertaining to or relating to the scope of work under this agreement. Premiums on all insurance policies shall be paid by Supplier and shall be deemed included in this contract.
- a. Commercial General Liability. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage including products and completed operations.
 - b. Automobile Liability. \$1,000,000 per accident for bodily injury and property damage under Business Automobile Liability Coverage Form Number CA 00 01, (any auto).
 - c. Any insurance or self-insurance maintained by the District shall be excess of the Supplier's insurance and shall not contribute with it.
 - d. Waiver of Subrogation. Supplier agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Supplier shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Supplier may acquire against the District by virtue of payments of any loss under this insurance.
 - e. Certificate of Insurance. Supplier shall furnish the District with original certificates of insurance and amendatory endorsements effecting coverage required by this Agreement and indicating a thirty (30) day cancellation notice or notice of reduction in coverage.
 - f. Additional Insured. Insurance shall name the District and its Board of Trustees, officers, employees, agents and volunteers as Additional Insured under said policy and provide additional Insured endorsement.
29. **TAXES:** Unless required by law, Supplier shall pay and has included in the prices of this purchase order any federal, state or local tax, transportation tax, or other tax which is required to be imposed upon the items ordered hereunder, or by reason of their sale or delivery.
30. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY.** (applicable to all orders or agreements funded in part or in whole with federal funds) – Supplier agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98). Supplier certifies to the best of its knowledge and belief that it and its principals:
- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - b. Have not, within a three-year period preceding the receipt of this purchase order, been convicted of, or had

a civil judgment rendered against them, for: (1) Commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private transaction or contract; (2) Violation of Federal or State antitrust statutes; (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Supplier's present responsibility;

- c. Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any of the offenses enumerated above;
- d. Have not, within a three-year period preceding the receipt of this purchase order or agreement, had one or more public transactions (federal, state or local) terminated for cause or default;
- e. Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
- f. Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

31. **CONFLICT OF INTEREST AND PROHIBITED INTERESTS.** No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District. Additionally, no officer, employee, or any other agent of the District similarly authorized, shall be allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof. The District reserves the right, before any contract or procurement award is made, to require an affidavit from the prospective bidder or Supplier to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject any bidder or Supplier if any such conflict is discovered, and subsequently award to the next preferred supplier.

32. **STORM WATER MANAGEMENT.** The District has adopted a Storm Water Management Plan (SWMP). The SWMP was prepared in accordance with waste discharge requirements for storm water discharges from small municipal separate storm sewer systems (General NPDES Permit No. CAS000004) adopted by the State Water Resources Control Board. Supplier shall comply with the District's SWMP requirements and include all costs for compliance in the contract amount. The Supplier shall also comply with the lawful requirements of other agencies regarding discharges to the storm drain system or other watercourses, including all applicable City, County, State and Federal storm water requirements.

33. **GOVERNING LAW.** This agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder, and any action arising from or relating to this agreement, shall be construed and enforced in accordance with, and governed by, the laws of the State of California, without giving effect to conflict of laws principles. Any action or proceeding arising out of or relating to this agreement shall be brought and settled in the County of San Diego, State of California, and each party hereto irrevocably consents to such jurisdiction and venue, and waives any claim of inconvenient forum.

34. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein and the agreement shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

35. **SEVERABILITY.** The District and Supplier agree that if any part, term or provision of this agreement is found to be invalid, illegal, or, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other parts, terms or provisions of this agreement, which shall be given effect without the portion held invalid, illegal, or unenforceable, and to that extent the parts, terms, and provisions of this agreement are severable.

36. **ATTORNEYS' FEES AND COSTS.** If either party shall bring any action or proceeding against the other party arising from or relating to this agreement, each party shall bear its own attorneys' fees and costs, regardless of which party prevails.

37. **ASSIGNMENT OF AGREEMENT.** This agreement may not be assigned or otherwise transferred, in whole or in part, by either the District or Supplier without prior written consent of the other.
38. **RIGHT TO AUDIT:** District reserves the right to access and audit the Supplier's records related to this agreement for a period of four (4) years after payment of any invoice.

References:

1. *Education Code Section 76060, 81190, 81450, 81526, 81641, et seq., 81550, et seq., 81655, 81656, 84674, 85420;*
2. *Public Contract Code Section 3400, 20100, et seq., 20112, 20113, 20118, 20650, 20651, 20652, et seq.;*
3. *Government Code Section 12940; Labor Code Section 1775, et seq.;*
4. *Civil Code 3248*