

DEL MAR UNION SCHOOL DISTRICT
PURCHASE ORDER TERMS AND CONDITIONS

These Purchase Order Terms and Conditions, and the Purchase Order (with any and all appendices, and/or exhibits attached hereto or otherwise issued by Del Mar Union School District "District" in connection herewith, collectively, the "Purchase Order") by and between Del Mar Union School District and Vendor (as defined in the Purchase Order) (District and Vendor, collectively, the "Parties," each a "Party"), constitute the entire agreement and supersede and replace any and all prior discussions and agreements between the Parties. If any discrepancy, difference or conflict exists between the various provisions of the Purchase Order and these Terms and Conditions, these Terms and Conditions shall govern. Capitalized terms used but not defined herein shall have the meanings ascribed in the Purchase Order. Del Mar Union School District hereby gives notice of its objection to any different or additional terms other than those terms and conditions set forth herein.

1. **Changes.** Del Mar Union School District may make changes to the Purchase Order at any time, and Vendor shall accept such changes. Any changes to the Goods (as defined hereafter) shall be negotiated in advance by the Parties and agreed to in writing. If a change causes an increase or decrease in cost and/or time required for performance of the services, an equitable adjustment shall be made and the Purchase Order shall be modified accordingly. If price, terms, shipping date or any other expressed condition of the Purchase Order cannot be achieved or met by Vendor, Del Mar Union School District must be notified and must accept in writing any variation prior to shipment or delivery.
2. **Prices.** Prices or fees amounts for conforming goods, items or services specified in the Purchase Order (collectively, the "Goods") are the maximum amounts authorized for payment under this order. No additional charges, including shipping/handling/delivery charges shall be allowed unless specified on this order.
3. **Terms of Payment and Invoices.** Upon Acceptance (as defined hereafter) of the Goods pursuant to Section 7 herein, Del Mar Union School District agrees to pay all amounts due within thirty (30) days of receipt of Vendor's invoice (less any deposits paid to Vendor (if any) unless otherwise agreed to by the Parties in the Purchase Order; provided, however, Vendor shall invoice Del Mar Union School District and Del Mar Union School District shall only be obligated to pay such invoice if issued to Del Mar Union School District subsequent to delivery, receipt and Acceptance of all Goods ordered under the Purchase Order. Separate invoices are required for each Purchase Order. Invoices shall contain the following information: purchase order number, item number and description, quantity, unit price, and extended total for items delivered. Sales tax shall be shown separately. Shipping/handling/delivery charges shall also be shown separately and shall include the original or a copy of the prepaid bill or landing. Failure to enter the above information on the invoice shall cause a delay in payment.
4. **Shipping.** Vendor shall substantially pack, mark and ship all deliverables in a manner to secure the lowest, reasonable transportation cost and in accordance with the shipping instructions contained in the Purchase Order and the requirements of common carriers. Vendor shall be liable for any difference in shipping charges arising from its failure to follow the shipping instructions contained herein or properly describe the shipment.
5. **Inspection.** Payment for the Goods provided under the Purchase Order shall not constitute Acceptance thereof. Del Mar Union School District may inspect and test such Goods and reject any or all items that are, in Del Mar Union School District's sole judgment, non-conforming. Goods rejected or supplies in excess of quantities ordered may be returned to Vendor at its expense. Failure by Del Mar Union School District to inspect and/or test the Goods shall not be deemed Acceptance by Del Mar Union School District.
6. **Delivery of Goods.** Vendor hereby agrees to on-time delivery based upon the timeline set forth in the Purchase Order. If the Purchase Order does not specify a delivery date (the "Delivery Date") or timeline, Vendor shall provide the Goods as if time is of the essence. Changes, modifications or any delay resulting from Del Mar Union School District that prevents Vendor from achieving the Delivery Date shall not constitute a breach of this Purchase Order by Vendor. If Vendor anticipates a delay in the delivery of the Goods, Vendor shall immediately notify Del Mar Union School District. In the event that Vendor fails to deliver the Goods by the Delivery Date, or Vendor fails to deliver conforming Goods, Del Mar Union School District may purchase substitute Goods elsewhere and charge Vendor for any additional expense incurred relating to the purchase of such substitute Goods. Vendor shall deliver all Goods in accordance with the terms of the Purchase Order. If delivery of the Goods is not complete by the Delivery Date, Del Mar Union School District may, without liability, and in addition to its other rights and remedies, terminate the Purchase Order, by notice effective when received by Vendor, as to Goods not yet delivered or rendered. Acceptance of any part of the Purchase Order shall not bind Del Mar Union School District to Accept (as defined hereafter) any future shipments nor deprive it of the right to return goods already Accepted (as defined hereafter).
7. **Acceptance of Goods.** As a condition precedent to payment for the Goods by Del Mar Union School District to Vendor, Del Mar Union School District shall Accept those Goods (in whole or in part thereof) on the Delivery Date or as otherwise set forth in the Purchase Order. For purposes of these Terms and Conditions, "Acceptance" means the point at which Del Mar Union School District accepts or is deemed to accept the Goods in accordance with the terms set forth in the Purchase Order. Acceptance shall include the terms "Accept" and "Accepted". The Goods shall be deemed to have been Accepted (i) in the absence of written notification of non-Acceptance by Del Mar Union School District to Vendor within a reasonable period of time, or (ii) upon timely delivery of the Goods identified herein to the shipping address specified on the face of the Purchase Order. By way of clarification, Del Mar Union School District hereby retains the right to reject any non-conforming Goods and shall not be obligated to Accept any non-conforming Goods.
8. **Material Safety Data Sheets.** With the invoice or with delivery, the Vendor must provide Del Mar Union School District with a Material Safety Data Sheet for each product which contains any substance of "The list of 800 Hazardous Substances" published by the State Director of Industrial Relations. (see Hazardous Substances Information and Training Act, California State Code, Sections 6360 through 6399.7)
9. **Cancellation.** Del Mar Union School District may for any reason and at any time, at its option cancel any unshipped Goods. To the extent the Purchase Order covers stock Goods, Del Mar Union School District's only obligation is to pay for Accepted Products prior to such cancellation. To the extent the Purchase Order covers Goods manufactured or fabricated to Del Mar Union School District's specifications, Vendor shall immediately cease all performance hereunder upon receipt of notice of cancellation, and, if Vendor is not in default, Del Mar Union School District shall reimburse Vendor for the actual, direct cost to Vendor of such Goods which have, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such Goods shall pass to Del Mar Union School District.
10. **Warranty.** In addition to Vendor's standard warranty relating to the Goods, Vendor warrants that the Goods to be delivered pursuant to the Purchase Order (i) are of merchantable quality and free from defects in material or workmanship, (ii) shall conform to all specifications or other descriptions furnished to and approved by the Parties, (iii) comply with all applicable international, federal, state and local laws, rules and regulations (including, without limitation, those concerning health, safety, and environmental standards) which bear upon Vendor's performance, (iv) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by Del Mar Union School District, and (v) are not restricted in any way by any patents, copyrights, mask work, trademark, trade secrets, or intellectual property, proprietary or contractual right of any third party. Vendor warrants that Del Mar Union School District shall have good and marketable title to all Goods (including components thereof) purchased pursuant to transactions contemplated under the Purchase Order, free of all liens and encumbrances and that no licenses are required for Del Mar Union School District to use such Goods. The terms of this Section shall not be waived by reason of Acceptance of the Goods or payment therefore by Del Mar Union School District.
11. **Risk of Loss.** Vendor assumes all risk of loss of or damage to all Goods ordered and all work in progress, materials, and other items related to the Purchase Order until the same are finally Accepted by Del Mar Union School District. Vendor assumes all risk of loss of or damage relating to any Goods, work in progress, materials, and other items rejected by Del Mar Union School District until the same are received by Vendor or Accepted by Del Mar Union School District.
12. **Hold Harmless.** To the fullest extent permitted by law, Vendor shall indemnify, defend, protect, and hold harmless Del Mar Union School District, its departments, partners, officers, directors, shareholders, board members, representatives, agents, consultants, employees, affiliates, subsidiaries, and their respective successors and assigns (each an "Indemnitee" and collectively, the "Indemnitees") from and against all claims, losses, liabilities, damages, lawsuits, actions, proceedings, arbitrations, taxes, penalties, or interest, associated auditing and legal expenses, and other costs incurred by Indemnitee(s) (including reasonable attorneys' fees and costs of suit) ("Indemnified Claims") arising from Vendor's: (a) performance of its obligations under the Purchase Order and (b) misrepresentation or breach of any representation, warranty, obligation, or covenant of the Purchase Order. Such Indemnified Claims shall include, without

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limitation, all direct, actual, general, special, and consequential damages. This Section shall survive termination, cancellation, or expiration of the Purchase Order.

13. Insurance. Vendor shall procure and maintain for the duration of the Purchase Order, at its sole expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with products and materials supplied to District. Vendor's maintenance of insurance, as required by the Purchase Order, shall not be construed to limit the liability of Vendor to the coverage provided by such insurance, or otherwise limit District's recourse to any remedy available at law or in equity.

• Minimum Scope of Insurance: Vendor shall obtain insurance of the type described below:

- a) Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) and include products coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate and a \$2,000,000 products liability aggregate limit. District shall be named as an additional insured under Vendor's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20-15 or a substitute endorsement providing equivalent coverage.
- b) Automobile Liability coverage, with coverage for owned, non-owned or hired ("any" auto) used in the performance of this Agreement with combined single limits of at least \$1,000,000 per accident.*
- c) Workers Compensation coverage as required to satisfy California statutory requirements.*
- d) Acceptability of Insurers: Insurance is to be placed with insurers authorized to do business in California with a current A.M. Best's rating of no less than A-, VII, unless otherwise acceptable to Buyer. Exception may be made for the California State Compensation Insurance Fund when not specifically rated.
- e) Verification of Coverage: Seller shall furnish Buyer with original certificates and amendatory endorsements, including but not limited to the additional insured endorsement, evidencing compliance with the insurance requirements above before goods, materials or supplies will be accepted by Buyer. Buyer reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.
- f) Special Risks or Circumstances: Buyer reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

Verification of Coverage: Vendor shall furnish District with original certificates and amendatory endorsements, including but not limited to the additional insured endorsement, evidencing compliance with the insurance requirements above before goods, materials or supplies will be accepted by District. District reserves the right to require complete, certified copies of all required insurance policies, including endorsements, at any time.

14. Independent Contractor. Vendor, in the performance of its duties hereunder, shall be an independent contractor only, and not an agent, employee, partner, or joint venturer of, or with Del Mar Union School District, and nothing herein shall be deemed to create or imply any relationship other than that of independent contractor.

15. Non-Waiver. Except as otherwise provided in the Purchase Order, failure by Del Mar Union School District to insist on strict performance of any provision of the Purchase Order, complain of any action, non- action, or default of the other Party, or to exercise any right or privilege, shall not constitute a waiver of any aggrieved Party's rights hereunder.

16. Successors and Assigns; Assignment. Del Mar Union School District and Vendor, respectively, bind themselves and their successors, assigns, and legal representatives to the other Party to the Purchase Order and to the successors and assigns of such other Party with respect to all covenants of the Purchase Order. Notwithstanding the foregoing, Vendor shall not subcontract the work or assign the Purchase Order without the written consent of Del Mar Union School District, and any assignment in violation of this Section shall be void and of no effect.

17. Governing Law. The Purchase Order shall be governed by and construed in

accordance with the laws of the State of California.

18. Excusable Delays. The Vendor shall be excused from performance hereunder during the time and to the extent that he is prevented from obtaining, delivering or performing by strike or other labor trouble, fire or similar catastrophe, and severe weather or other acts of God, when satisfactory evidence thereof is presented to the District, provided that it is satisfactory established that the non-performance is not due to the fault or neglect of the party not performing.

19. Remedies, Non-Waiver and Invalidity. Any and all failures, delays, or forbearances of either Party in insisting upon or enforcing at any time or times any of the terms and conditions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment of any such terms and conditions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. The invalidity in whole or in part of any term and condition contained herein shall not affect the validity of any other term and condition. The rights and remedies provided Buyer pursuant to this Agreement shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any term and condition hereof shall not constitute a waiver of any other breach

20. License for Equipment Specific Software (As Applicable). Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment or Item(s) shall remain the sole and exclusive property of Seller. Seller grants the Buyer a royalty-free, perpetual, worldwide, irrevocable, nonexclusive license to use such software only in or with the equipment or Item(s). Upon such transfer of software and equipment or Item(s), Buyer may make and distribute archival copies of the software.

21. Compliance with Laws. Vendor warrants that it will comply with all federal, state, and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order or permit applicable to its performance under this Order including any building, employment, health or safety agency regulations.

22. FERPA (AS APPLICABLE). If Vendor will have access to student records, Vendor agrees to comply with the Family Educational Rights and Privacy Act of 1974, and all requirements imposed by or pursuant to regulation of the Department of Education and the District (including but not limited to Administrative Regulation and Procedures No. 6525 and 6527) to the end that the rights and privacy of the students enrolled in the District and of their parents are not violated or invaded. This assurance is given to obtain access to individual student data for the purpose of using said data to fulfill contractual obligations with the District. The provisions of the Family Educational Rights and Privacy Act of 1974 include, but are not limited to, ensuring that:

No identification of students or their parent/guardians by persons other than representatives of Vendor is permitted;

- The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained;
- No access to individual student data shall be granted by Consultant/Professional to any other person, persons, agency or organization without the written consent of the pupil's parent/guardian, except for sharing with other persons within the District or representatives of Vendor so long as those persons have a legitimate interest in the information.

Vendor recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the District shall have the right to enforcement of this assurance, or revocation of such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon evidence of noncompliance by Vendor. This assurance is binding Vendor on and such persons as may be employed by Consultant/Professional to assist in any phase of the contractual obligation to the District.

23. Entire Agreement. This Order is intended by the District and Vendor as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No Amendment of change of any kind shall be binding upon District unless in writing and signed by an authorized representative of the District.

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THE FOLLOWING PROVISIONS ARE REQUIRED IN PURCHASE ORDERS FOR CONTRACTING THAT WILL BE PERFORMED ON SCHOOL SITES AND/OR AROUND CHILDREN:

FINGERPRINTING AND CRIMINAL RECORDS CHECK: Vendor shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice. The District will determine if Vendor will be required to undergo fingerprinting and certification. Contractor will ensure that subcontractors will not place any person at a school whom has a conviction of a serious or violent felony as defined in Education Code Section 44830.1 (c)(1), or sex offense as defined in Education Code Section 44010 or controlled substance offense as defined by Education Code Section 44011.

THE FOLLOWING PROVISIONS ARE REQUIRED IN PURCHASE ORDERS FOR PUBLIC WORKS CONTRACTING:

PREVAILING WAGE REQUIREMENT

- a) Attention is called to the fact that State of California prevailing wage requirements apply to this project.
- b) Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" (as that term is defined in the (statutes), there shall be paid to each Worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such Worker. For purpose of compliance with prevailing wage law, the Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.
- c) Copies of the prevailing rate of per diem wages applicable to this Project are on file at the District's office, and shall be made available to any interested party on request; or may be found on the Internet at: <http://www.dir.ca.gov/DLSR/PWD>. The Contractor shall post at appropriate conspicuous weatherproof points on the site of the Project a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Project.
- d) Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts for activities for the Project.
- e) Contractor shall certify to the District on each Payment Request Form/Invoice, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor complied with prevailing wage laws. Prior to the release of any retained funds under this Agreement, the Contractor shall submit to the District a certificate signed by the Contractor performing public works activities stating that prevailing wages were paid as required by law.
- f) Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject Contractor and/or its Subcontractors to penalties, including forfeitures and debarment under Labor Code Sections 1775; 1776; 1777.1; 1777.7 and 1813.
- g) Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders or regulations.

24. Employee Fingerprint Verification; Barriers; Employee Surveillance. At all times when a Site is used or occupied for academic purposes or for other school related functions, no employee or independent contractor to the Contractor or any Subcontractor shall be permitted access to the Site or to perform any Work at the Site unless: (a) such person has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code §45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code §45122.1 and has no criminal felony proceedings (as defined in Education Code §45122.1) pending against her/him; (c) the Contractor or Subcontractor engaging the individual for the Work has received written or electronic verification from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) the Contractor or Subcontractor engaging such individual as an employee or independent contractor has submitted a Fingerprint Certification to the District specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having pending criminal felony proceeding pending against her/him.

The provisions of Education Code §45125.2(a) notwithstanding, erection and maintenance of physical barriers and/or continuous supervision and monitoring are insufficient measures to comply with the requirements of this paragraph when a Site is being used or occupied for academic purposes or other school related functions. At all other times during the Work, as appropriate, or as directed by the District, to limit contact between workers performing the Work and students and for the safety of students, the Contractor shall: (i) erect a physical barrier around the Work to limit contact between students and the individuals performing Work; or (ii) designate an employee of the Contractor and require each Subcontractor to designate an employee who shall be responsible for the continuous monitoring and supervision of the other employees of the Contractor and Subcontractors, provided that the employees designated for such monitoring and supervision has submitted her/his fingerprints to the Department of Justice under Education Code §45125.1 for verification that she/he has not been convicted of a felony and does not have any criminal proceeding pending against her/him and the Contractor/Subcontractor employee has submitted a Fingerprint Certification attesting to such Department of Justice fingerprint verification and the absence of criminal convictions or pending criminal proceedings. The responsibility for complying with the requirements of Education Code §45125.2 rests solely with the Contractor; the District will not designate any District personnel for surveillance of the Contractor's employees under Education Code §45125.2(a)(3).