

## EPISD TERMS, CONDITIONS & INSTRUCTIONS TO SELLER

1. **ACCEPTANCE AND TERMS AND CONDITIONS.** In the absence of a written agreement duly executed by both Parties which addresses the areas covered herein, these Terms and Conditions shall control, and provide the person or entity designated as "Vendor" on the face of this Purchase Order ("Vendor") with the guidelines and legal stipulations of Vendor's Purchase Order with the El Paso Independent School District ("the District") for the Goods and/or Services described in this Purchase Order. Vendor agrees to be bound by, and to comply with all these Terms and Conditions. If a bid, proposal or contract number, appears on the face of this Purchase Order, the Terms and Conditions and specifications applicable to such bid, proposal, quote or contract shall apply to this Purchase Order, and are incorporated herein by reference. In case of conflict, the Terms and Conditions applicable to such bid, proposal, quote or contract shall control.

2. **TERMINATION AND REMEDIES.** Time is of the essence in connection with this Purchase Order. The District has the right to terminate this Purchase Order with or without cause, for convenience. In the event of early termination of the Purchase Order for any reason, the total compensation which may be claimed by Vendor under this Purchase Order shall be limited to the payment for the conforming Goods and/or Services timely provided by the date of termination.

3. **PRICE:** This Purchase Order must not be filled at a price higher than shown on the face of the Purchase Order. If no price is set forth on the front of the Purchase Order, the Goods and/or Services will be billed at the price shown in any bid, proposal or final quote, whichever is lower; and, in any event, Goods and/or Services ordered under this Purchase Order will not be billed at a higher price than last quoted or charged without the District's specific written authorization.

4. **INVOICES AND PAYMENT.** Invoices shall be rendered on completion of Services or delivery of Goods and shall contain the Purchase Order Number, item number, description of Goods and/or Services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to only one purchase order. Payment will be made and interest will accrue on unpaid balances only in accordance with the Prompt Payment Act, Chapter 2251, Texas Government Code.

5. **PACKAGING.** Goods will be packed in accordance with good commercial practice and in a manner, which will facilitate securing the lowest transportation costs consistent with Vendor's obligation to meet the delivery schedule set forth in this Purchase Order, will avoid damage in transit, will conform to requirements of common carriers and any applicable specifications. Vendor shall bear cost of packaging unless otherwise provided. The District's count or weight determination shall be final and conclusive on shipments not accompanied by packing slips/lists.

6. **INSPECTION AND ACCEPTANCE.** All Goods will be subject to inspection and test by the prior to final acceptance. Final acceptance or rejection of the Goods will be made as promptly as practical after delivery except as otherwise provided in this Purchase Order, but failure to inspect and accept or reject Goods and/or Services or failure to detect defects by inspection, will neither relieve Vendor from responsibility for such Goods not delivered in accordance with this Purchase Order, nor impose liabilities on the District for them. The District's payment for the Goods shall not constitute its acceptance of the Goods. Goods rejected and Goods supplied in excess of quantities ordered may be returned to the Vendor at Vendor's expense. Payment, if any, made for any Goods rejected hereunder shall be promptly refunded by Vendor.

7. **WARRANTIES:** Vendor represents and warrants that (a) Vendor will devote its good faith, best efforts in provision of the Goods and/or Services; (b) Vendor has and will retain sufficient financial condition, working capital, experience, expertise, personnel, licenses, certifications, and authority to provide the Goods and/or Services; (c) all Goods furnished conform with the specifications, drawings, descriptions, are free from all defects, and are fit for the particular purposes for which they are acquired; (d) the Services promised will adequately address the Scope of Services required by the District and meet any performance requirements; (e) the Goods and/or Services will be delivered new and in compliance with applicable state, federal, local laws, rules, regulations, procedures and the quality will be consistent with industry standards; (e) all goods and services are free of any claim by a third party and Vendor can convey clear title to the District. The District's inspection, test, acceptance, or use of the Goods shall not affect Vendor's obligations under these warranties.

8. **INDEMNIFICATION.** Vendor agrees to INDEMNIFY, DEFEND, AND HOLD HARMLESS the District and its Trustees, officers, agents, representatives and employees from and against, any and all claims, causes of action, liability, lawsuits, judgements, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), including personal injury or death, property damage, or other harm (collectively "Losses") that may arise out of or be caused by in whole or in part by the negligent act, error, or omission of, Vendor or any agent, officer, representative, employee, or consultant of Vendor while in the exercise of performance of the rights or duties under this Purchase Order. This indemnification shall not apply to Losses caused solely by the negligent act, error, or omission of the District. The provisions of this Section are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9. **CONFIDENTIAL AND PUBLIC INFORMATION:** In connection with its provision of Services, Vendor may have access to confidential information belonging to or designated by the District or not information generally known by non-District personnel ("Confidential Information"). During the term of the Purchase Order and at all times thereafter, Vendor shall not, without the prior written consent of District, directly or indirectly: (a) use any of the Confidential Information for Vendor's own purposes or for the purposes of any person or entity other than District; and/or (b) disclose any of the Confidential Information to any third party, except as reasonably required in connection with performance of the Services. Vendor shall take all steps necessary to prevent disclosure of Confidential Information by any other person or entity, while providing the Services under this Purchase Order and

at all times thereafter, without the prior written consent of District. Information, documents and other records provided to Vendor shall remain the sole and exclusive property of District, and shall be returned to the District or permanently destroyed (at the District's option) upon termination of this engagement. If Vendor receives information or records concerning any student, in the course of providing the Services, Vendor agrees not to disclose the information, except as permitted by the Family Educational Rights and Privacy Act. Records relating to the Goods and/or Services covered by this Purchase Order may be subject to disclosure pursuant to the Texas Public Information Act. Vendor shall make any such information, not otherwise exempted from disclosure under the Act, available to the District, as requested.

10. **RECORDS AND RETENTION.** The District or its authorized representative shall be afforded unrestricted access to and be permitted to inspect and copy all of the Vendor's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Purchase Order. The Vendor shall preserve all such records for a period of five (5) years, after the District makes final payment and all other pending matters are closed, or for such longer period as may be required by law, after final payment under this Purchase Order, including any extension thereof.

11. **CRIMINAL BACKGROUND CHECKS AND PROHIBITIONS.** Vendor shall comply, if applicable, at its sole expense with the requirements of Section 22.0834 of the Texas Education Code, "Criminal History Record Information ("CHRI") Review of Certain Contract Employees," any applicable rule(s) adopted by the Texas Commissioner of Education, and other policies and administrative requirements relating to or arising from such statute and rule(s). The Vendor recognizes that the site is a public-school campus, and will not use, and will prohibit its employees and contractors, if any, from possessing or using alcohol, controlled substances, tobacco, and any prohibited weapons on the Districts' property and shall require adequate dress of the Vendor's forces consistent with the nature of the work being performed.

12. **INSURANCE:** Vendor will maintain Commercial General Liability, Automobile Liability and Employers' Liability insurance with limits as reasonably required by the District, as well as appropriate Workers' Compensation insurance as will protect Vendor from all claims under any applicable workers' compensation and occupational disease acts. At the District's request, Vendor will furnish to the District a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverage is in effect, with waiver of subrogation, naming the District as an additional insured, and containing a covenant that such coverage and will not be canceled or materially changed until thirty (30) days after prior written notice has been delivered to the District. Vendors providing Services shall also provide Professional Liability Insurance/Errors and Omissions Insurance in such amounts reasonably required by the District.

13. **MISCELLANEOUS:** Without the prior written consent of the other party, no party shall have right or power to assign the Purchase Order in whole or in part, or to delegate or sub-contract any duties hereunder in whole or part. **THE PURCHASE ORDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND IS PERFORMABLE IN EL PASO COUNTY, TEXAS.** The Purchase Order, including these Terms and Conditions, shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Wherever the context shall require, the singular shall include the plural, and the male gender shall include the female gender and the neuter, and vice versa. In the event that either party brings an action to enforce or interpret any provision of the Purchase Order, the prevailing party, will be entitled to recover reasonable attorney's fees, costs, and necessary disbursements, as determined by the trier of fact in such dispute. No consent or waiver, express or implied, by a party to or for any breach of any provision hereunder by the other party shall be deemed a consent or waiver to or for any other breach of the same provision or any other provision hereunder. Any provision, or part thereof, of the Purchase Order (or these Terms and Conditions) held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of the Purchase Order (including these Terms and Conditions), and the effect thereof shall be confined to the provision, or part thereof, so held to be invalid or unenforceable. Time is of the essence with respect to Vendor's obligations hereunder. All notices to a party under the Purchase Order shall be provided by certified mail, return receipt requested, to the address set forth for the respective party on the Purchase Order, or such other address as later provided by a party through written notice to the other party. The District reserves, and does not waive, its rights of sovereign immunity and similar rights, immunities and rights of its officials and employees, and its and its employees/officials' rights under the Texas Tort Claims Act. Nothing herein shall be a consent to suit. No term or provision of this Purchase Order shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Purchase Order. **THE PURCHASE ORDER (INCLUDING THESE TERMS AND CONDITIONS) IS THE FINAL, COMPLETE, AND ENTIRE PURCHASE ORDER BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO MATTERS HEREIN. THIS PURCHASE ORDER (AND TERMS AND CONDITIONS) MAY BE MODIFIED OR RESCINDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES BY AND THROUGH THEIR DULY AUTHORIZED AGENTS**

14. Vendor certifies by execution of this document, that it does not and will not refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, unless the action taken for ordinary business purposes