

PURCHASE ORDER TERMS AND CONDITIONS
(Goods, Materials and Equipment)

The San Luis Obispo County Community College District ("District") utilizes Purchase Orders for all purchases of goods, materials, equipment and similar items/products (collectively "Goods"). Phone orders are not valid and may be subject to non-payment.

1. **DISTRICT:** The San Luis Obispo County Community College District.
2. **VENDOR:** "Vendor," "Supplier," or "Contractor" shall mean the Seller or Supplier of the Goods named in the Purchase Order and all individuals, officers, directors, employees, agents, contractors, or subcontractors of such Seller or Supplier. The Vendor is an independent contractor, and not an officer, employee or agent of the District.
3. **NON-ASSIGNMENT:** The Vendor shall not assign or transfer by operation of law or otherwise any rights or obligations of the Vendor without the prior written consent of the District, which may be granted, conditioned or denied in the sole and exclusive discretion of the District.
4. **VENDOR ACCEPTANCE OF PURCHASE ORDER & PURCHASE ORDER TERMS AND CONDITIONS:** Vendor must accept this Purchase Order and the Purchase Order Terms and Conditions in writing. The foregoing notwithstanding, if for any reason Vendor does not accept the Purchase Order and Purchase Order Terms and Conditions in writing, any conduct of Vendor reflecting acknowledgement of this Purchase Order and the Purchase Order Terms and Conditions, including without limitation, Vendor's commencement of performance of Vendor's obligations under the Purchase Order or Vendor's acceptance of payment shall be deemed Vendor's acceptance of the Purchase Order and Purchase Order Terms and Conditions. Whether Vendor's acceptance of the Purchase Order and Purchase Order Terms and Conditions is by writing or by conduct, any additional or different terms or conditions proposed by Vendor or incorporated into Vendor's acceptance of the Purchase Order and Purchase Order Terms and Conditions are deemed material alterations to these Purchase Order Terms and Conditions, and such additional or different terms are expressly rejected unless such terms are incorporated by direct reference in the Purchase Order.
5. **PRICE AND PAYMENT**
 - 5.1. **Pricing of Goods:** Vendor shall furnish and deliver the Goods at prices specified in the Purchase Order.
 - 5.2. **Discounts:** All cash discounts to the District shall be from the date from receipt of the invoices and not from the date of the invoice.
 - 5.3. **Vendor Invoices:** No payment will be made by the District for Goods furnished and delivered hereunder until the Vendor has submitted an invoice therefor to the District. Vendor invoices shall be in such form, format and detail as required by the District and submitted to the District within thirty (30) days from delivery of all Goods subject to the Purchase Order. Unless otherwise specifically indicated in the Purchase Order, Vendor may invoice for payment only after furnishing and delivery of ALL Goods subject to the Purchase Order and Vendor's full performance of all other obligations of the Vendor under the Purchase Order. Vendor's invoice for payment shall: (i) be submitted to the District's Fiscal Services Department; (ii) incorporate pricing for Goods in accordance with the Purchase Order; (iii) incorporate the Purchase Order Number assigned to the Purchase Order by the District; and (iv) be accompanied by other documents and materials required by the District for processing and disbursing payment, including without limitation, IRS Form W-9 or other Federal Taxpayer Identification information.
 - 5.4. **District Payment:** Provided that Vendor's invoice fully conforms to the requirements set forth in Paragraph 5.3, the District will make payment of the undisputed amount due the Vendor on the invoice within thirty (30) days of the District's receipt thereof. The District is not obligated to process an invoice for payment and the Vendor is not entitled to payment until Vendor submits an invoice conforming to the requirements established in Paragraph 5.3.
 - 5.5. **Taxes:** The District is generally exempt from excise and sales taxes. If any Goods subject to the Purchase Order are subject to excise or sales taxes, Vendor confirms and agrees that pricing for Goods set forth in the Purchase Order is inclusive of all such applicable excise or sales taxes. Invoices for payment shall separately identify applicable taxes included in the payment requested by an invoice.
 - 5.6. **District Right to Offset:** Any payment due or to become due from the District to the Vendor under the Purchase Order is subject to deduction by the District for any set-off, counterclaim or payment due from the Vendor to the District under the Purchase Order or any other transaction between the Vendor and the District.
6. **DELIVERY**
 - 6.1. **Vendor Responsibilities:** Vendor shall prepay all packing, transportation, shipping and related costs; pricing for Goods subject to the Purchase Order include all packing, transportation, shipping and related costs.
 - 6.2. **Packing:** Vendor shall be responsible for packing and packaging Goods in accordance with current acceptable trade practices or as required by the Purchase Order. All packages, crates or other containers of Goods shall: (i) identify the Vendor and the Purchase Order Number; and (ii) be accompanied by a detailed packing list. Vendor shall deliver Goods in

accordance with requirements of the Purchase Order. The District shall not be responsible for any packaging costs or expenses.

- 6.3. **Quantities:** The Vendor is solely responsible for delivery of the quantity of Goods indicated in the Purchase Order. If delivery of Goods is less than the quantity indicated in the Purchase Order, Vendor shall, at Vendor's sole cost and expense, expedite delivery of the remaining required quantity of Goods as directed by the District. Notwithstanding Vendor's delivery of the remaining required quantity of Goods pursuant to the foregoing, Vendor shall remain liable to the District for damages, losses, costs or expenses arising out of or relating in any manner to failure of the Vendor to deliver the required quantity of Goods. The District is not responsible for Goods delivered in excess of the quantity indicated in the Purchase Order, no payment will be made by the District for any such excess quantity of Goods. Vendor is solely responsible for all costs or expenses for return of excess quantity of Goods. If Vendor does not make arrangements and pay for return of excess quantity of Goods within five (5) days of the District's notice to the Vendor of the delivery of excess quantities of Goods, the District is deemed to be the owner of such Goods and the District may thereupon use, sell or otherwise dispose of such excess quantity of Goods without further payment or liability to the Vendor.
 - 6.4. **FOB Delivery:** All shipments of Goods shall be F.O.B. Destination to the District's Shipping and Receiving at San Luis Obispo County Community College, Building 7400, Highway 1, San Luis Obispo, CA 93405-8106, unless otherwise specified in the "Ship To" location indicated on the Purchase Order. The Vendor shall bear the risk of loss, damage or destruction of the Goods or any portion thereof until actual delivery to District is completed. Replacement of Goods lost, damaged or destroyed before delivery to the District shall be the Vendor's responsibility at the sole cost and expense of Vendor.
 - 6.5. **Delayed Delivery:** In the event of Vendor's failure to deliver Goods or Services within thirty (30) days from receipt of the Purchase Order, or such other time(s) designated in the Purchase Order or by the District, 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.
 - 6.6. **Delivery of Goods During Fiscal Year:** All Goods subject to the Purchase Order must be received by the District during the Fiscal Year in which the Purchase Order is issued unless otherwise expressly provided in the Purchase Order. The District's fiscal year starts on July 1 and ends June 30.
 - 6.7. **MSDS Sheets:** All shipments of Goods that are, or incorporate into the Goods, hazardous and toxic materials must include the Material Safety Data Sheets (MSDS) pursuant to OSHA's Hazard Communication Rule 29 CFR 1919.1200, with copies sent to the District's Purchasing Department referencing the Purchase Order number.
7. **CHANGES:** Without invalidating the Purchase Order, the District may, by written notice to Vendor, direct Changes to the quantity of Goods and/or delivery dates/locations of Goods within in the general scope of the subject matter of the Purchase Order ("Change Notice"). Within ten (10) days of the District's issuance of a Change Notice, Vendor shall provide the District with: (i) written confirmation of Vendor's receipt of the Change Notice; (ii) written acknowledgement of Vendor's compliance with the Change Notice; and (iii) proposed adjustment to pricing for the Goods as a result of the District directed Changes.
8. **WARRANTIES**
 - 8.1. **Vendor Warranties:** Vendor warrants to the District that all Goods: (i) comply with and conform to the requirements set forth in the Purchase Order; (ii) are new, unless otherwise specified in the Purchase Order; (iii) are free of defects in materials or workmanship; (iv) are merchantable and fit for intended purposes; (v) 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; and (vi) are free and clear of any security interest, lien, encumbrance or other claim of third parties.
 - 8.2. **Additional Warranties:** Vendor warranties set forth in Paragraph 8 are in addition to and not in lieu of: (i) warranties/guarantees of the fabricator/manufacturer of the Goods; and (ii) warranties arising by operation of law.
 - 8.3. **Manufacturer Warranties.** Contractor shall, prior to the release of retention, provide to District a hard copy of any and all manufacturer warranties for all equipment installed by or under the direction of Contractor pursuant to this Agreement.
 - 8.4. **District Remedies:** If any Goods fail to comply with warranty requirements set forth herein, the District shall notify the Vendor of the failure of the Goods to comply with required warranties within a reasonable time after discovery of the condition(s) rendering the Goods not to be in compliance with required warranties. Vendor shall, at its sole cost and expense, replace Goods not conforming to required warranties with conforming Goods and if requested by the District remove the non-conforming Goods from District property. Notwithstanding Vendor's replacement of non-conforming Goods with conforming Goods, Vendor shall remain liable to the District for damages, costs, expenses and/or other losses resulting

from Vendor's delivery of non-conforming Goods. Payment for any Goods prior to discovery of non-compliance with warranty requirements shall not be construed as acceptance of Goods not in compliance with warranty requirements.

9. VENDOR COMPLIANCE WITH LAWS

9.1. Licenses and Permits: The Vendor and all of its employees or agents shall secure and maintain in force such licenses and permits required by law in connection the Purchase Order and the Goods subject to the Purchase Order. Pricing for Goods is not subject to adjustment for any licenses or permits Vendor is required to obtain to fully perform Vendor's obligations under the Purchase Order.

9.2. Non-Discriminatory Employment Practices: Vendor shall not engage in any discriminatory employment practices and shall comply with all laws pertaining to and prohibiting discriminatory employment practices.

9.3. Prevailing Wage Rates; DIR Contractor Registration: If the subject matter of the Purchase Order is deemed a "public work" or a "public contract" under the California Labor Code, Vendor shall comply with: (i) all applicable prevailing wage rate requirements without adjustment of the pricing set forth in the Purchase Order for the Goods; and (ii) Vendor shall be a Department of Industrial Relations ("DIR") registered contractor prior to the date of issuance of the Purchase Order. If Vendor is required to be a DIR Contractor, no payment will be made until the District has verified that Vendor is a DIR Registered Contractor.

9.4. District Policies: Employees, agents or representatives of Vendor shall comply with District policies while on District Property.

10. TERMINATION

10.1. Termination For District Convenience: The District reserves the right to terminate the Purchase Order, in whole or in part, for its own convenience by written notice to Vendor. In such event, the District's payment liability is limited to payment for the Goods delivered prior the District's issuance of the termination notice.

10.2. Termination for Vendor Default: If Vendor fails to fully and timely perform Vendor obligations under the Purchase Order or otherwise defaults in the performance of Vendor obligations hereunder, the District may terminate the Purchase Order in whole or in part by written notice of default to the Vendor. In such event, Vendor shall be liable to the District for all costs, expenses, damages and other losses arising out of or related to Vendor's default, including without limitation the costs to re-procure the Goods subject to the Purchase Order.

11. VENDOR INDEMNIFICATION: Unless arising solely out of the active negligence, gross negligence or willful misconduct the Indemnified Parties, Vendor shall indemnify, defend and hold harmless the Indemnified Parties who are the District and its Board of Trustees, officers, employees, agents and representatives. The Vendor's obligations hereunder include indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands, liabilities, actions or causes of action whether for damages or other relief, including, without limitation attorneys' fees and costs which arise, in whole or in part, from the negligent, grossly negligent, reckless or willful acts, omissions or other conduct of the Vendor or its employees, agents and representatives. Vendor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage, loss or destruction of property; (iii) other losses, liabilities, damages or costs; and (iv) the unauthorized use or sale of copyrighted or patented Goods. The Vendor's obligations hereunder shall survive notwithstanding Vendor's completion of Vendor obligations under the Purchase Order or the termination of the Purchase Order.

12. VENDOR INSURANCE

12.1. Workers Compensation: Vendor shall maintain Workers' Compensation insurance with coverage limits in accordance with applicable law.

12.2. Commercial General Liability: Vendor shall maintain Commercial General Liability insurance covering claims due to personal injury, including death, damage to property, and the operation of motor vehicles which may arise from Vendor's performance of obligations under the Purchase Order. The District shall be an Additional Insured under the Vendor's Commercial General Liability insurance policy. The minimum coverage limits under the Vendor's Commercial General Liability Insurance policy shall be:

Per Occurrence	One Million Dollars (\$1,000,000)
Aggregate	Two Million Dollars (\$2,000,000)
Automobile Liability	Two Million Dollars (\$2,000,000) combined single limit

12.3. Certificates of Insurance: The Vendor may be required to file with the District certificates of insurance evidencing the insurance policies and minimum coverage limits required hereunder. Failure to deliver certificates of insurance, if required, is a material default of the Vendor.

13. MISCELLANEOUS

13.1. Certification Regarding Debarment, Suspension or Ineligibility for Public Contracts: The Vendor acknowledges that District is prohibited from contracting with parties that are suspended, debarred, ineligible, or excluded from securing public contracts or whose principals are suspended, debarred, ineligible, or excluded from securing public

contracts. Vendor certifies that neither it nor any of its owners, officers partners, directors or other principals is currently suspended, debarred, ineligible, or any excluded from securing public contracts.

13.2. Time: Time is of the essence in performance and completion of obligations under the Purchase Order.

13.3. Severability: If any provision of the Purchase Order or Purchase Order Terms and Conditions is determined by a court of competent jurisdiction to be illegal, such provision is deemed severed, but all other provisions shall continue in full force and enforceable.

13.4. Vendor Books, Records; Audit: Vendor shall maintain books, records, documents and other materials relating to this Purchase Order for at least three (3) years after full payment by the District. The District shall have the right to audit Vendor's books, records, documents and other materials relating to this Purchase for a period of three (3) years after the District's full payment to the Vendor. Vendor shall permit the District and its employees, agents or representatives access to Vendor's books, records, documents and other materials relating to the Purchase Order for purposes of conducting such audit.

13.5. Confidential Information: Vendor shall not use or disclose any information or data deemed by the District to be confidential or proprietary, except in performing Vendor's obligations under the Purchase Order.

13.6. Governing Law: The Purchase Order and Purchase Order Terms and Conditions are: (i) governed by California law; and (ii) interpreted as a whole and not strictly for or against the District or Vendor.

13.7. Claims

13.7.1. Claims Within Small Claims Court Limit. Notwithstanding section 13.7.2, below, all claims, disputes, disagreements or other matters in controversy between District and Vendor, excepting therefrom claims for indemnity, of \$10,000 or that fall within the current limitation for Small Claims Court shall be resolved informally or filed in the San Luis Obispo County Small Claims Court in San Luis Obispo, California

13.7.2. Venue: Venue for any legal proceeding relating to the Purchase Order shall be exclusively in the San Luis Obispo County Superior Court.

13.8. Disputes: Notwithstanding any dispute between the District and Vendor arising out of related to the Purchase Order, Vendor shall continue performance in accordance with the Purchase Order and Purchase Order Terms and Conditions pending subsequent resolution of such disputes.

13.9. Entire Agreement; No Modification Without Written Instrument: The Purchase Order and the Purchase Order Terms and Conditions constitute the entire agreement and understanding of the Vendor and District relating to the subject matter hereof, superseding and replacing all prior negotiations, understandings or agreements. Except for District directed Changes pursuant to Paragraph 7, no modification to the Purchase Order or Purchase Order Terms and Conditions shall be effective or enforceable unless such modification is in a written instrument duly executed by authorized employees of Vendor and the District.

[END OF SECTION]