



## Purchase Order Terms and Conditions

### DEFINITIONS:

**DISTRICT:** "DISTRICT" means West Valley-Mission Community College District.

**PURCHASE ORDER:** The term "Purchase Order", as used in these terms conditions, means the document entitled "Purchase Order" that the DISTRICT issued to the VENDOR.

**VENDOR:** The term "VENDOR," "SUPPLIER," or "CONTRACTOR", whenever appearing in this Purchase Order 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 the 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.

### IF MAINTENANCE AND/OR PUBLIC WORKS PURCHASE ORDERS, SEE TERMS AND CONDITIONS AT:

[https://www.wvm.edu/services/general/publicworks/Forms/PublicWorks\\_UCCA\\_TermsConditions.pdf](https://www.wvm.edu/services/general/publicworks/Forms/PublicWorks_UCCA_TermsConditions.pdf)

**AGREEMENT.** VENDOR accepts this Purchase Order solely on the basis of the terms and conditions on the face and back hereof. Additional or conflicting terms on VENDOR's form or any confirmation notice are rejected and shall be deemed a material alteration hereof, unless such terms are incorporated by direct reference on the face of this Purchase Order, attached hereto as applicable and approved by the appropriate District personnel in writing. VENDOR and District agree that if any terms on any VENDOR provided form or notice conflict with the terms herein, the terms of the Purchase Order will prevail.

**CHANGES.** This Purchase Order shall not be altered, amended, supplemented or cancelled without approval by the appropriate DISTRICT personnel 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.

**ASSIGNMENT OF PURCHASE.** 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.

**TERMINATION.** The DISTRICT reserves the right to terminate a 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. All blanket or standing Purchase Orders will automatically terminate at the end of the DISTRICT's fiscal year without prior notice to VENDOR, unless otherwise agreed to by the parties.

**LIMITATION OF PAYMENTS.** Prices and amounts shown in the Purchase Order are the maximum amounts authorized on this order.

**VARIATION IN QUANTITY OR QUALITY.** No variation in the quantity or quality of any item or service called for by this Purchase Order shall be accepted, unless agreed to in writing by DISTRICT and VENDOR and specified elsewhere in this order. All goods and services must be as specified in the order. No substitution or variance from the specifications shall be allowed without prior written approval from the DISTRICT's Purchasing Department. Materials or supplies, which are not in accordance and conformity with such specifications or guidelines, shall be rejected and promptly removed from the District's premise at the VENDOR's expense.

**INVOICES AND PAYMENT.** Unless otherwise specified, the VENDOR shall render invoices for goods or services provided to the DISTRICT's Accounts Payable Office at the address listed on the Purchase Order. 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 of undisputed invoices 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 for taxpayer identification. Any monies due the DISTRICT from VENDOR can be set off from any monies due VENDOR from the DISTRICT whether or not under the Purchase Order.

**TAXES.** The DISTRICT will pay only the State Sales and Use Tax as applicable. The Federal Excise Tax is not applicable to the DISTRICT. The DISTRICT will furnish the VENDOR applicable Federal Tax exemption certificates upon request. VENDOR will not include taxes in unit prices or labor rates used for billing purposes. Tax may be separately itemized.

**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 or any other discount offered.

**SHIPPING.** Unless otherwise specified in the Purchase Order, VENDOR shall be responsible for delivery and shall pay all related shipping charges, including prepaid freight charges. All goods are to be shipped prepaid, F.O.B. Destination. Time and



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manner of delivery are material factors in proper performance under the purchase. Where the DISTRICT has given specific written authorization to ship goods F.O.B. Shipping Point, the VENDOR shall prepay all shipping charges, route goods the least expensive way (unless authorized by the DISTRICT use other means) and bill the DISTRICT for the actual shipping, handling and/or delivery charges paid. Claims or invoices for shipping/handling/delivery charges which are not properly supported by either the original or a copy of the prepaid bill of lading will not be paid. The DISTRICT's Purchase Order number shall be clearly referenced on each parcel and packing slip. Failure to include this information will cause a delay in inspection and acceptance of the order, resulting in a delay of payment. All items shall be prepared and packed 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.

**INSPECTION AND ACCEPTANCE.** Inspection and acceptance will be at the receiving destination, unless otherwise provided by the DISTRICT. Regardless of the F.O.B. designation, the VENDOR 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 the VENDOR from an obligation hereunder.

**WARRANTY.** All products, materials or services furnished under a Purchase Order 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 the DISTRICT for any amount paid to VENDOR, and any shipping charges incurred by the DISTRICT, for such returned items.

**HEALTH & SAFETY.** All materials, equipment, 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.

**FORCE MAJEURE.** The VENDOR or the DISTRICT shall be excused from performance hereunder during the time and to the extent that it is prevented from performing by act of God, fire, strike, lockout or commandeering of materials or facilities by the government. VENDOR will be excused from performance when satisfactory evidence thereof is presented to the DISTRICT, provided that it is satisfactorily established that the

non-performance is not due to the fault or neglect of the party not performing.

**INDEMNITY.** To the fullest extent permitted by law, and as a material part of this Purchase Order, the VENDOR shall indemnify, defend, and hold the DISTRICT, its Board of Trustees, officers, agents, employees, and volunteers harmless against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses, including reasonable attorneys' fees, whether actual or alleged, arising from all acts or omissions to act of the VENDOR or its officers, agents, employees, volunteers, and subcontractors, unless the liability or claims arise from the DISTRICT's sole and active negligence or willful misconduct. VENDOR assumes complete liability for any goods or materials furnished by the DISTRICT to the VENDOR in connection with this Purchase Order. VENDOR agrees to pay for such tools or materials spoiled by it or not otherwise accounted for to the DISTRICT's satisfaction. The furnishing to VENDOR of any goods or materials in connection with this Purchase Order shall not be construed to vest title thereto in VENDOR.

**INSURANCE REQUIREMENTS.** The VENDOR and its officers, employees, agents, and subcontractors shall, at their expense, maintain and comply with Insurance Requirements listed below to protect VENDOR 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 Purchase Order:

- a. Commercial General Liability. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury, death, other injury, and property damage.
- b. Automobile Liability. \$1,000,000 per accident for bodily injury and property damage applicable to all owned, non-owned, and hired vehicles.
- c. Workers' Compensation. Statutory limits required by the State of California.
- d. Primary Insurance. Any insurance or self-insurance maintained by the DISTRICT shall be excess of the VENDOR's insurance and shall not contribute with it.
- e. Waiver of Subrogation. VENDOR agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, VENDOR shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of VENDOR may acquire against the DISTRICT by virtue of payments of any loss under this insurance.
- f. Additional Insured. Insurance shall name the DISTRICT and its Board of Trustees, officers, employees, agents, and volunteers as Additional Insured under its Commercial General Liability and Automobile Liability policies.
- g. Certificate of Insurance. VENDOR shall furnish the DISTRICT with original certificates of insurance and amendatory



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endorsements effecting coverage required by this Purchase Order and indicating a thirty (30) day cancellation notice or notice of reduction in coverage. VENDOR will be in material default of the Purchase Order if it fails to timely furnish these documents to the DISTRICT.

Premiums on all insurance policies shall be paid by VENDOR and shall be deemed included in this Purchase Order.

**INDEPENDENT CONTRACTOR.** In the performance of a Purchase Order, VENDOR shall act as an independent contractor. VENDOR shall perform the Services and obligations under the Purchase Order according to the VENDOR's own means and methods of work which shall be in the exclusive charge and under the control of VENDOR, and which shall not be subject to control or supervision by the District except as to the results of the work. VENDOR understands and agrees that he/she/it and all of his/her/its employees shall not be considered officers, employees or agents of the District, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR assumes the full responsibility for the acts or omissions of his/her/its employees or agents as they relate to the Services to be provided under the Purchase Order. VENDOR is not authorized to make any representation, contract or commitment on behalf of the DISTRICT.

**OWNERSHIP OF INTELLECTUAL PROPERTY.** The Services performed under the Purchase Order are work made for hire and DISTRICT shall exclusively own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under the Purchase Order. VENDOR assigns to DISTRICT any rights VENDOR could have, may have, or does have, in the work or the work product performed under the Purchase Order, and DISTRICT shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, or patent of said matters in the name of the DISTRICT. VENDOR consents to the use of VENDOR's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

**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.

**HANDICAP ACCESSIBILITY AND ELECTRONIC AND INFORMATION TECHNOLOGIES.** VENDOR hereby warrants that any goods or services, including any hardware or software

products or services, to be provided under the Agreement 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 and will designate a contact person for expediting any complaints applicable to California Government Code §11135. VENDOR further agrees to indemnify, defend, 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 these requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of the Purchase Order. VENDOR and any of their Subcontractors shall provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US Section 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

**NON-DISCRIMINATION ENDORSEMENT.** VENDOR and DISTRICT mutually agree that they will comply with all applicable Federal and California state anti-discrimination laws and regulations and agree not to unlawfully discriminate against any prospective or active employee engaged in the work, or against any other person, 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, the VENDOR agrees to require like compliance by all hired subcontractors.

**PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause applicable to this Purchase Order, or required by law to be inserted in this Purchase Order, is deemed inserted herein and the Purchase Order shall be read and enforced as though the provisions are included herein.

**AUDIT.** VENDOR agrees that the DISTRICT has the right to review, audit, and to copy any of VENDOR's or VENDOR's sub-consultants' records and supporting documentation pertaining to the performance of this Purchase Order. VENDOR agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. VENDOR agrees to allow the DISTRICT



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access to these records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. VENDOR agrees to include a similar right of the DISTRICT to audit records and interview staff in any subcontract related to performance of this Purchase Order.

**REGISTRATION FOR PUBLIC WORKS.** If this Purchase Order is for a public work, as defined by Labor Code section 1720, the VENDOR and all tiers of VENDOR's subcontractors or sub-consultants bidding for the Purchase Order must register with the Department of Industrial Relations, and maintain this registration pursuant to Labor Code section 1725.5. Information on how to register can be found at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

**DISPUTES.** VENDOR shall continue with the responsibilities under this Purchase Order during any dispute.

**ADVERTISING.** VENDOR shall not use the name of the DISTRICT, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the DISTRICT in each instance.

**SEVERABILITY.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

**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 Agreement or procurement award is made, to require an affidavit from the VENDOR to disclaim in writing any conflict of interest. Furthermore, the DISTRICT reserves the right to reject any VENDOR if any such conflict is discovered, and subsequently award to the next preferred VENDOR.

**GOVERNING LAW.** This Purchase Order shall be governed and interpreted in accordance with the laws of the State of California in accordance with its fair meaning and not strictly for or against the DISTRICT or VENDOR. Any legal proceedings brought to interpret or enforce the terms of this Purchase Order, shall be brought in Santa Clara County, California.

**MEDIATION; ARBITRATION.** Parties agree that if any dispute or controversy arises between them in any way arising out of, related to, or connected with this Agreement or its subject matter, they will participate in good faith in mediation and agree to equally share all mediator fees. If the Parties are unable to resolve the dispute or controversy through mediation, the Parties agree to submit the pending dispute or controversy to final and binding arbitration to be held in Santa Clara County, California, and to be governed by the Federal Arbitration Act ("FAA"). By agreeing to this binding arbitration provision, the Parties understand that they are waiving certain rights and protections which may otherwise be available if a claim were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding; and a right to invoke formal rules of procedure and evidence. The prevailing party shall be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, unless the laws related to the claim that the party prevailed on preclude a court from awarding attorneys' fees and costs to the prevailing party. The provisions of this section will apply during the term of this Agreement and survives after the termination or expiration of this Agreement.

[END OF SECTION]