

#### PURCHASE ORDER TERMS AND CONDITIONS

1. This purchase order ("Order") issued by San Jacinto Community College District ("Buyer") and Vendor ("Seller") constitutes a binding contract between the parties for Seller to furnish goods and/or services specifically on the face of the Order in accordance with the terms and conditions herein.
2. This Order is valid only when an order number and a written or stamped signature of Buyer appear in the spaces provided. The Order number must appear on all invoices, bills of lading, packages, and correspondence. To the extent that terms and conditions appearing on the face of this Order conflict with those set forth herein, the terms on the face shall govern.
3. Seller is an independent contractor and under no circumstances will Seller be considered or construed to be an employee, agent or representative of Buyer. Seller agrees that it is an equal opportunity employer and will comply with all applicable federal, state, and local laws and regulations regarding contracting and employment practices.
4. Buyer hereby certifies it is exempt from the payment of property, sales, use, franchise, excise or other taxes. Seller shall not include taxes on the invoice. In the event it is determined that Buyer is legally liable for payment of taxes, Buyer will remit such taxes to the applicable taxing authority.
5. No substitution of goods, change of services, delivery dates, price increases, cancellation, waiver, or exception to any terms or specifications of any nature shall be made without the prior written approval of an authorized representative of Buyer.
6. Goods to be provided and/or services to be performed shall be in accordance with the terms, prices, delivery time, quantities, and specifications as required by this Order. Unless shown otherwise on this Order, the price(s) shown includes the cost for: (a) freight, delivery, unloading, and placement of the goods in the designated location within a building; and, (b) for equipment and furniture, uncrating, complete assembly, adjustment, testing and removal of all debris. The obligation of Seller to meet the delivery dates, specifications, and quantities set forth in the Order is of the essence of this Order. If, at any time, Seller believes it may be unable to comply with the delivery or completion schedules, then Seller must immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it. In the event of such notification or of an actual failure by Seller to comply with the delivery or completion schedules, Buyer may, in addition to all other remedies, require Seller, at Seller's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay.
7. Unless otherwise stated on this Order, all shipments are to be made "F.O.B. destination" and risk of loss and/or title to the goods will not pass to Buyer until the goods are accepted at the delivery destination. Notwithstanding the F.O.B. point specified in this Order, Seller shall be liable for handling claims for, and the replacement of goods, lost or damaged prior to acceptance by Buyer. Unless specified otherwise on this Order, deliveries shall be made to the Buyer's central receiving dock on regular business days between the hours of 8:00 am. and 4:30 p.m. No C.O.D. shipments or deliveries on Buyer's holidays will be accepted.
8. In addition to the warranties provided by law, Seller expressly warrants that it has the right to sell the goods and/or services provided under this Order and they: (a) will be in full conformity with the specifications, plans and samples approved by Buyer; will be new; of good quality, material and workmanship; merchantable; fit for the use and purpose for which they were intended; and free from defects; (b) will be manufactured, sold, delivered and installed in compliance with the provisions of all applicable federal, state and local laws, ordinances rules and regulations; and (c) will not infringe on any valid intellectual property right, including any patent, trademark, trade name, or copyright. Any and all warranties provided by the manufacturer or supplier of goods delivered by Seller are hereby assigned to Buyer, and nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of Buyer. Seller will bear the cost of inspecting, testing, and/or replacement of rejected goods and/or services. Warranties granted herein shall survive inspection, testing, acceptance, and payment and shall accrue to Buyer. Seller shall notify Buyer immediately if a product recall is instituted on any good and/or service Seller has delivered or if Seller discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.
9. In addition to other rights provided for herein and by law, Buyer reserves the right to: (a) inspect goods delivered and reject/return those which are damaged, incomplete, do not meet specifications or reasonable standards of quality, (b) reject goods shipped contrary to instructions or in containers which do not meet recognized standards; and (c) cancel the order if not filled within the time specified. Buyer may return rejected goods or excess shipments on this Order, or may hold goods subject to Seller's directions, at Seller's sole risk and expense, and may in either event charge Seller with the cost of shipping, unpacking, inspecting, reshipping, and other like expense, or offset such costs against amounts otherwise payable by Buyer to Seller. If the product, or any part thereof, is held to constitute an infringement and the use of the product, or any part thereof, is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using the product or replace same with an equivalent non-infringing product or modify the product so that it becomes non-infringing, or, if the foregoing options are not possible, refund to Buyer the sums paid to Seller for the purchase, or right to use said product.
10. Where Seller or its agent(s) have personnel making deliveries to or performing services at Buyer's premises, Seller or its agent(s) must carry public liability, property damage and workers' compensation insurance with carriers authorized to provide such insurance under the laws of the State of Texas. Unless otherwise specified, minimum requirements are: (a) Commercial General Liability - \$1,000,000 applicable to bodily injury and property damage per occurrence; and (b) Automobile Liability - \$1,000,000 per occurrence combined single limit. Seller shall maintain all necessary coverage, including Commercial General Liability and Workers' Compensation insurance. Seller shall indemnify, defend and hold harmless Buyer from any and all claims or liabilities arising out of this Order. Buyer, its board of trustees, officers, employees and agents shall be named as an additional insured on all applicable policies (excluding Workers Compensation).
11. Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this Order at Buyer's request.
12. Invoices are to be submitted only for the goods that have been shipped or services that have been performed. Invoices will not be paid and will be returned to the Seller for correction if they: (a) do not reference this Order number; (b) are for a higher cost than shown on this Order, (c) list goods or services other than those shown on this Order; or (d) are damaged or incomplete. Invoices must show the quantity, description and unit cost of items. Neither this Order nor payments to be made may be assigned without the express written consent of Buyer. Any assignment or delegation in violation of this clause shall be void and ineffective for all purposes. Email all invoices to [Accounts.payable@sjcd.edu](mailto:Accounts.payable@sjcd.edu) or mail them to Accounts Payable, 4620 Fairmont Parkway, A2.213 Pasadena, TX, 77504-3398.
13. Any discounts will be calculated from the date of receipt of the invoice or receipt of the goods or services, whichever is later. In accordance with Tex. Gov't Code §2251.021, payments are due to Seller within thirty (30) days after the later of the following: (1) the date Buyer receives the goods; (2) the date the performance of the service is completed; or (3) the date Buyer receives an invoice for the goods and/or services. Payment for any goods or services does not constitute final acceptance.
14. This Order is a commitment by Buyer of funds in its current fiscal year's budget. In the event Buyer is unable to secure sufficient funds in subsequent budget periods to fulfill all of Buyer's obligations hereunder, this Order will automatically terminate at the end of the applicable budget period.
15. **To the fullest extent permitted by law, Seller agrees to indemnify, defend, and hold harmless Buyer, its trustees, officers, employees and agents from and against all claims, demands, causes of action, losses, costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense, arising out of or incident to (a) Seller's performance hereunder, (b) the presence of Seller, its employees, agents or invitees on Buyer's premises, (c) any breach of this Order, including any warranty contained herein, and (d) any claim of patent, trademark, copyright, franchise or other intellectual property infringement by goods and/or services provided by Seller hereunder.**
16. Failure of Buyer to insist upon strict compliance to the terms, conditions, and provisions of this Order, failure or delay to exercise any rights or remedies provided herein or by law, or the acceptance of or payment for goods or services shall not release Seller from any of the warranties or obligations hereunder and shall not be deemed to waive any right of Buyer to insist upon strict performance hereunder.
17. Certifications: 17.1. Seller hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. 17.2. If (a) Seller is not a sole proprietorship; (b) Seller has ten (10) or more full-time employees; and (c) this Order has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required. Pursuant to Tex. Gov't Code Chapter 2270, Seller hereby certifies and verifies that neither Seller, nor any affiliate, subsidiary, or parent company of Seller, if any (the "Seller Companies"), boycotts Israel, and Seller agrees that Seller and Seller Companies will not boycott Israel during the term of this Order. For purposes of this Order, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. 17.3. If Seller is not a governmental body and (a) this Order has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by Buyer; or (b) this Order results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by Buyer in a fiscal year of Buyer, the following certification shall apply; otherwise, this certification is not required. As required by Tex. Gov't Code §552.374(b), the following statement is included in the procurement solicitation and Order (unless the Order is (1) related to the purchase or underwriting of a public security; (2) is or may be used as collateral on a loan; or (3) proceeds from which are used to pay debt service of a public security of loan): "The requirements of Tex. Gov't Code, Chapter 552, Subchapter J may apply to this procurement solicitation and Order and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter." Pursuant to Tex. Gov't Code, Chapter 552, Subchapter J, Seller hereby certifies and agrees to (1) preserve all contracting information related to this Order as provided by the records retention requirements applicable to Buyer for the duration of the Order; (2) promptly provide to Buyer any contracting information related to the Order that is in the custody or possession of Seller on request of Buyer; and (3) on completion of the Order, either (a) provide at no cost to Buyer all contracting information related to the Order that is in the custody or possession of Seller, or (b) preserve the contracting information related to the Order as provided by the records retention requirements applicable to Buyer.
18. This Order, the terms and conditions specified in Buyer's procurement solicitation and any contract entered into between Buyer and Seller as a consequence of the procurement solicitation, and Seller's completed Vendor Packet (including all certifications therein) represent the basis for Seller to deliver the required goods and/or services; represent the entire agreement of the parties; and supersede all prior offers, negotiations, exceptions and understandings, whether oral or in writing. In the event of a conflict among this Order, the procurement solicitation, or the contract, the contract shall control. In the event of a conflict between this Order and the procurement solicitation, the procurement solicitation shall control.
19. Buyer and Seller shall attempt to resolve any claim for breach of contract made by Seller in the ordinary course of business. The appropriate leader of Buyer shall examine Seller's claim and any counterclaim and negotiate with the Seller in an effort to resolve such claims. The parties hereto specifically agree that (1) neither the issuance of this Order by the Buyer nor any other conduct, action or inaction of any representative of the Buyer relating to this Order constitutes or is intended to constitute a waiver of the Buyer's immunities provided under Texas and federal law; and (2) Buyer has not waived its right to seek redress in the courts. This Order shall be governed by, and any disputes shall be settled pursuant to, the laws of the State of Texas, with exclusive and mandatory venue in Harris County, Texas.