

## TERMS OF PURCHASE

1. Seller may accept this order only on the terms herein set forth, unless prior written consent is otherwise obtained from Buyer. When any machinery, apparatus, equipment, materials or supplies (hereafter sometimes collectively referred to as "Materials") are shipped or delivered to Buyer in response hereto, this is deemed an unqualified acceptance of each of these terms submitted by Buyer. However, materials must be shipped and/or written acceptance signed and returned to Buyer's office prior to time allotted on acceptance copy of this purchase order. Deviations in quantity, quality or specifications cannot be made without prior written permission of Buyer. At no time, without Buyer's written consent, is this order to be filled at higher prices than last previously quoted or charged.

2. Buyer reserves the right to inspect all shipments and to reject any Materials that may be defective or not in accordance with specifications. Rejected or misshipped Materials will be returned at Seller's expense.

3. Buyer has the right to cancel the order or any part of the order without penalty if delivery is not made on time(s) specified. Seller must notify Buyer if delivery date cannot be met. Penalties or additional costs incurred by Buyer because of Seller's delay or nonperformance shall be charged to Seller.

4. In the event of any breach by Seller of any part of this contract, or in the event of any lien, demand, claim or other liability asserted for which Seller is obligated to indemnify Buyer hereunder, Buyer shall have the right to deduct and retain out of any payments due or to become due to Seller, an amount sufficient to fully protect Buyer until the situation has been completely eliminated or adjusted by the Seller.

5. Cash discount period will begin after receipt of goods and properly completed invoice.

6. Seller shall pay for all work, labor and materials furnished to Seller in connection with Materials in turn sold to Buyer hereunder. Buyer shall have the right to require Seller to execute documents deemed appropriate by Buyer to preclude the possibility of a claim under the mechanics' lien laws.

7. Seller agrees to indemnify and save harmless Buyer from and against any and all demands, claims, lawsuits, losses, liabilities and expenses, including reasonable attorneys' fees, arising by reason of the manufacture, sale and/or use of the Materials covered hereby. Such obligation to indemnify and hold harmless shall include, without limitation: (a) claims of infringement or violation of any copyrights, patent rights or similar rights; (b) claims of injuries and damage to property and persons, including death; (c) claims on account of actions or omissions by Seller, or any of Seller's officers, agents, employees or servants; (d) claims due to defects, actual or alleged, in Materials prior to release of Buyer from legal responsibility to others therefor; (e) attachments, executions and liens by creditors of Seller or others claiming to have acquired rights of or against Seller; (f) any liens, notices, or bond claims under the mechanics' lien laws due to persons claiming right to payment for work, labor, equipment or materials supplied to or at the request of Seller.

The obligation to indemnify shall include, to the extent applicable, for any construction project in which Buyer is involved, the owner, the construction lender, and any surety on any bond(s) posted for the project. This obligation shall not include, however, a surety on any bond posted by a subcontractor to Buyer; nor shall it include claims by Seller under the mechanics' lien laws where Seller claims the right to payment for Materials delivered under this contract.

8. In addition to any warranty implied by fact or law, Seller expressly warrants all items to be free from defects in design, workmanship and materials; to conform strictly to applicable specifications, drawings and approved samples, if any; and to be fit and sufficient for the purpose intended. Such warranties, together with all other service warranties of Seller, shall run to Buyer, its successors, assignees and customers.

9. Payment on account in and of itself does not constitute an approval and acceptance of Materials furnished, or any part thereof. No payment made by Buyer under this contract shall be construed to be an acceptance by Buyer of defective or improper Materials.

10. Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by Seller to Buyer shall pass to Buyer upon inspection by Buyer and acceptance of such items at Buyer's locations.

11. All Materials shipped against this order must have been produced in compliance with the Fair Labor Standards Act.

12. Seller shall not assign or sublet all or any part of this contract, or any proceeds payable hereunder, without the advance written consent of Buyer.

13. "Any dispute hereunder shall be resolved through binding arbitration pursuant to California Code of Civil Procedure section 1280 et seq., with non-prevailing party to pay the arbitrators fees, but with each side otherwise to bear its own costs and fees."

14. If any provisions of this contract shall be declared illegal, void or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

15. This contract shall be governed by, and construed according to, the laws of the State of California. Any legal action commenced to enforce, or arising out of, this contract shall be brought only in an appropriate court, State or Federal, located within Sacramento County, State of California.

16. Any riders or special conditions attached hereto are also a part of this contract.

17. Federal or State Safety Regulations: Any articles listed in this order must conform with the safety orders of the State of California, Division of Industrial Safety or the regulations of the Federal Occupational Safety and Health Administration as set forth in the Federal Register, whichever is the more restrictive.

Vendor hereby warrants that the products or services to be provided under this 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. Vendor further agrees to indemnify and hold harmless the San Jose/Evergreen Community College 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 the aforesaid requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.

18. New Equipment: All new equipment specified must be of new manufacture, no used or rebuilt equipment is to be considered unless otherwise specified. The Seller warrants that any and all equipment furnished shall be new.

19. Warranty: All Materials furnished under this specification shall be guaranteed in writing for a period of one (1) year free labor and parts (excluding expendable parts) from the date of the final acceptance against defective material, design, and workmanship and all apparatus shall perform in accordance with their individual specifications.

20. Service: The equipment manufacturer or Seller must have maintenance service capabilities available to service the specified equipment. Such service to be on call by the College District during and after the warranty period.

21. Assembly: All furniture and equipment items must be delivered to the San Jose Community College District in assembled condition and complete as to parts.

22. Instruction and Training: All equipment furnished must have complete and detailed written operating instruction manuals. In addition, the College District personnel must receive operating instructions on the equipment from qualified personnel of the Seller.