

PURCHASE ORDER TERMS AND CONDITIONS

1. Offer/Acceptance. If the Purchase Order refers to Vendor's bid, then the Purchase Order is an acceptance of Vendor's offer to sell. If no bid is referenced, the Purchase Order is an offer to buy subject to Vendor's acceptance, which may be demonstrated by Vendor's performance of the Purchase Order or by a formal acknowledgement. Any counteroffer by Vendor with respect to the Purchase Order, including but not limited to these terms and conditions, shall be construed as a cancellation of the Purchase Order unless Pueblo School District No. 60 ("District") issues a written Change Order accepting the counteroffer. Final acceptance of the goods or services is dependent upon completion and satisfaction of all applicable inspection procedures. Should the merchandise furnished fail to meet all inspection requirements, in addition to the other remedies, the District reserves the right to reject the goods or services, cure the defect at Vendor's expense, or otherwise terminate this Purchase Order.

2. Changes. In order to be effective, any change in the goods, services, quantity, price, time of delivery, or any other specification in the Purchase Order must be reflected in a written District Change Order. All goods received and services performed under the Purchase Order are subject to these terms and conditions notwithstanding any terms and conditions that may be contained in any invoice, bill of sale or other document from Vendor, to which District objects unless otherwise agreed in writing.

3. Delivery. Unless otherwise agreed in writing by District, delivery shall be F.O.B. destination with all transportation and handling charges paid by Vendor. District's acceptance of any offer is made in reliance on Vendor's promised delivery date, as material and basic to the acceptance. Time is of the essence in Vendor's performance under the Purchase Order. If Vendor fails to deliver as and when promised District may, without liability and in addition to its other rights and remedies at law or in equity, cancel the Purchase Order by notice effective when received by Vendor as to goods not yet delivered, and purchase substitute goods or services elsewhere and charge Vendor with any loss incurred. Shipment must be made to the address shown on the Purchase Order. Failure to do so may cause delay in payment until receipt and inspection can be confirmed.

4. Inspection. Payment for the goods furnished under the Purchase Order shall not constitute acceptance thereof. District shall have the right to inspect such goods and the product of such services, and to reject any or all of which are in District's judgment defective or nonconforming. In addition to District's other rights, goods rejected and goods supplied in excess of quantities specified in the Purchase Order may be returned to Vendor at Vendor's expense. District may charge Vendor all expenses of unpacking, examining, repacking and reshipping such goods. In the event District receives goods whose defects or nonconformity is not apparent upon examination, District may require replacement and/or payment of damages upon discovery of the defects or nonconformity. Nothing contained herein shall relieve, in any way, Vendor from the obligation of testing, inspection, and quality control.

5. Warranties. Vendor warrants that all goods furnished under the Purchase Order shall conform to District specifications and to industry standards, and shall be free from defects in material and workmanship. Vendor warrants that all goods furnished under the Purchase Order shall be merchantable, and shall be safe and appropriate for the purpose for which goods of like kind are normally used. If Vendor knows or has reason to know the particular purpose for which District intends to use the goods, Vendor warrants that such goods shall be fit for that particular purpose. Vendor warrants that all goods furnished under the Purchase Order shall be new unless otherwise specified by District, and that the title conveyed regarding such goods shall be good and its transfer rightful.

6. Termination. District may terminate the Purchase Order or any part thereof in the event of any default by Vendor, including but not limited to Vendor's failure to comply with any of these terms and conditions.

Failure to deliver goods on time, deliveries of goods that are defective or that do not conform to the Purchase Order and failure to provide District, upon request, reasonable assurances of future performance shall all be separate grounds for District to terminate the Purchase Order. In the event of Purchase Order termination, District shall not be liable to Vendor for any amount, and Vendor shall be liable to District for any and all loss and damages sustained by reason of the default giving rise to the termination.

7. Cash Discount. The cash discount period, if applicable, will start from the date of District's receipt of an acceptable invoice or from the date of its receipt of acceptable merchandise at destination, whichever occurs later.

8. Tax Exemption. District is exempt from state, county, and local sales and use taxes under Colorado Tax Exempt Number 98-0277, and no sales or use taxes shall be charged.

9. Prices. Vendor agrees to furnish the goods covered by the Purchase Order in strict accordance with District's specifications and at the price noted for each item. In case of error in extension, the unit price shall prevail. If the price is omitted on the Purchase Order, Vendor's price shall be the lowest prevailing market price.

10. Assignment and Subcontracting. No part of the Purchase Order may be assigned or subcontracted without the prior written consent of District.

11. Safety. All chemicals, equipment and materials proposed and/or used by Vendor in satisfaction of the terms of the Purchase Order shall conform to the standards required by the U.S. Department of Labor Occupational Safety and Health Administration (OSHA). Material safety data sheets (MSDS) shall accompany each shipment, when applicable. Failure to provide this information may result in delay of payment.

12. Indemnification. Vendor shall indemnify and hold harmless District, its board members, employees, contractors, and agents against any and all claims, suits, actions, damages, loss, liability and court awards (including costs, expenses and attorney fees) caused in whole or in part by or from any act or omission by Vendor, its employees, agents, subcontractors or assignees arising out of or in connection with the Purchase Order. Vendor agrees to furnish adequate public liability and property damage insurance, the amount of which will be determined by the School whenever such insurance is deemed necessary by the District. In the event any goods sold or delivered or services provided under the Purchase Order are covered by any patent, copyright or trademark, or application therefor, Vendor shall indemnify and hold harmless District, its board members, employees and agents from any and all claims, suits, actions, damages, loss, liability and court awards (including costs, expenses and attorney fees) incurred as a result of any claims, legal actions, damages or judgments based on the actual or alleged manufacture, sale or use of such goods or services in violation, infringement or the like of rights under such patent, copyright or trademark, or application therefor.

13. Governing Law and Venue. All issues regarding the formation, performance and/or legal enforcement of the Purchase Order shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for the resolution of any disputes arising out of or relating to the Purchase Order shall be in Pueblo County, Colorado.

14. Non-Waiver of Rights. No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, no custom or practice of the parties at variance with the terms hereof, and no payment under the Purchase Order, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.