

## SOLANA BEACH SCHOOL DISTRICT PURCHASE ORDER TERMS AND CONDITIONS

CONDITIONS: The following mandatory terms and conditions are always applicable.

**A. Law:** This contract is governed by the laws of the state of California. The provisions of the Uniform Commercial Code shall apply except as otherwise set forth in this contract.

**B. Contract:** This contract, when accepted, by the contractor either in writing or by the shipment of any article or other commencement of performance hereunder, constitutes the entire contract between contractor and the District; no exceptions, alternatives, substitutes or revisions are valid or binding on the District unless authorized by the District in writing.

**C. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

**D. Delivery:** Time of delivery is of the essence in this contract. The District reserves the right to refuse any goods and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description. Acceptance of any part of the order shall not bind District to accept future shipments, nor deprive it the right to return goods already accepted, at contractor's expense. Over shipments and under shipments shall be only as agreed to by the District. Delivery shall not be deemed to be complete until goods/services have been actually received and accepted by District.

**E. Acceptance/Payment:** Unless otherwise agreed to in writing by the District 1) acceptance shall not be deemed complete until goods/services have actually been received, inspected, and tested to the satisfaction of District and 2) payment shall be made in arrears after satisfactory acceptance.

**F. Warranty:** Contractor expressly warrants that the goods covered by this contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of order shall constitute an agreement upon contractor's part to indemnify, defend and hold harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by District by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

**G. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this contract, contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this contract. Contractor warrants that any software as modified through the services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. In the event of any claim by any third party against District, District shall promptly notify contractor and contractor shall defend such claim, in District's name, but at contractor's expense or liability, including, but not limited to, attorney's fees and disbursements arising out of such claim. Contractor shall indemnify, defend, and hold harmless District, at Contractor's expense, any patent, copyright or trademark, resulting from or arising in connection with the manufacture, sale, normal use, or other normal disposition of any article or material furnished hereunder.

**H. Assignment or Sub-contracting:** No performance of this contract or any portion thereof may be assigned by the contractor without the express written consent of the District. Any attempt by the contractor to assign or sub-contract any performance of this contract without the express written consent of the District shall be invalid and shall constitute a breach of this contract.

**I. Non-Discrimination:** In the performance of this contract, contractor agrees that it will not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, color, sex, national origin or ancestry, or religion of such persons.

**J. Termination:** In addition to any other remedies or rights it may have by law, the District has the right to terminate this contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of contract, and misrepresentation or fraud on the part of the contractor. Exercise by District of its right to terminate the contract shall relieve District of all further obligations.

**K. Consent to Breach Not Waiver:** No term or provision of this contract shall be deemed waived and no breach excused, unless such waiver of consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different subsequent breach.

**L. Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.

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**M. Independent Contractor:** Contractor shall be considered an independent contractor and not an agent or employee of the Solana Beach School District. The contractor does not qualify for workers' compensation or other fringe benefits of any kind.

**N. Performance:** Contractor shall perform all work under this contract, taking necessary steps and precautions to perform the work to the District's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the contractor under this contract. Contractor shall perform all work diligently, carefully, and in a good workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall obtain and maintain all permits and licenses required by public authorities in connection with the performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

**O. Indemnification:** Contractor agrees to defend, indemnify and hold harmless the District, its officers, employees and agents from any claims, demands or liability for injury to any persons arising out of or resulting from contractor's performance under this contract, unless such injury is caused by the sole negligence or concurrent active negligence of the District, its officers, employees or agents. If seller's negligence combines with the District's active negligence to cause injury, the parties agree that the liability will be apportioned as determined by a court of competent jurisdiction. Neither party shall request a jury apportionment.

**P. Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. To the extent possible, contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, contractor shall promptly procure its release and indemnify District against all damages and expense incident thereto.

**Q. Changes:** Contractor shall make no changes to the work or perform any additional work without the District's specific written approval.

**R. Conflict of Interest:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the District.

**S. Change of Ownership:** Contractor agrees that if there is a change in ownership prior to completion of this contract, the new owners will be required under terms of sale to assume this contract document and complete it to the satisfaction of the District.

**T. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this contract by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided the contractor gives written notice of the cause of the delay to the District within ten (10) days of the start of the delay and the contractor avails himself of any available remedies.

**U. Confidentiality:** Contractor agrees to maintain the confidentiality of all District and District related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of the contract. All such records and information shall be considered confidential and kept confidential by contractor and contractor's staff, agents, and employees.

**V. Compliance with Laws:** The contractor represents and warrants that the services to be provided under this contract shall fully comply, at contractor's cost, with all present and future government standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively ("laws")), and including, but not limited to laws applicable to the services at the time services are provided to and accepted by the District. The contractor acknowledges that the District is relying on the contractor to ensure such compliance. Contractor shall comply with the lawful requirements of the District, the State of California, and all applicable municipalities and local agencies regarding discharges to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. Public works are subject to compliance monitoring and enforcement by the Department of Industrial Relations. See Department of Industrial Relations Website at <http://www.dir.ca.gov/disr/pwd/index.htm>

**W. Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportations scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this contract.

**X. Pricing:** The contract bid price shall include full compensation for providing all required goods/services as specified in the scope of work and no additional compensation will be allowed therefore, unless otherwise provided for in this contract.

**Y. Waiver of jury Trial:** Each party acknowledges that it is aware of and has had the advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this contract and/or any claim of

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**Z. Governing Law and Venue:** This contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in San Diego County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

**AA. Terms and Conditions:** The only terms and conditions that will be applicable to this contract are those issued by Solana Beach School District. The Contractor acknowledges that it has read and agrees to all terms and conditions included.

**AB.** Any price increase over 10% will need prior approval by Business Department.

**AC.** California Sales or Use Tax, when applicable, will be considered and addition to the total.

**AD.** In accepting this order it is understood that the usual discounts will be considered as applying up to 60 days.

**AE.** All Invoices must be itemized and SUBMITTED IN DUPLICATE. Listing therein every item on this Purchase Order, indicating on unshipped items whether Back Ordered (B.O.) or Cancelled (C). Separate totals shall be shown for different types of materials, supplies or labor.

**AF.** Enclose Packing List with each shipment.

**AG.** This order is valid for current fiscal year only. (July 1 – June 30) no automatic renewals.