

ORANGE COUNTY PUBLIC SCHOOLS
PURCHASE ORDER TERMS AND CONDITIONS NEW-PAGE

- 01 **DEFINITIONS:** The term "OCPS" means The School Board of Orange County, Florida and the term "Vendor" means the person, firm, or corporation from which the goods or services have been ordered.
- 02 **AGREEMENT:** This Purchase Order (when properly signed and bearing a Purchase Order number, including these Terms and Conditions), the applicable specifications, and the referenced solicitation document and/or executed agreement (as applicable, but in which case such terms shall prevail), constitute the sole and entire Purchase Order between the parties hereto. Vendor's acceptance of this Purchase Order is limited to the Terms and Conditions hereof, and written confirmation, commencing performance, or making deliveries hereunder constitutes such acceptance. No terms stated by Vendor in accepting or acknowledging this Purchase Order shall be binding upon OCPS unless accepted in writing by OCPS. No course of prior dealings between the parties and no usage of the trade shall be a relevant supplement or explain any of the Terms or Conditions hereof.
- 03 **MODIFICATIONS:** The Terms and Conditions of this Purchase Order, including price, delivery, method/schedule, quantity, and specifications shall not be changed, rescinded, or modified except in writing by an authorized OCPS representative. OCPS reserves the right to change specifications and delivery dates. Any difference in price required by such changes shall be equitably adjusted and this Purchase Order shall be modified in writing accordingly. In the event the quantities of goods/services as indicated on the face hereof are exceeded without prior written authorization from OCPS, excess quantities may be returned to Vendor at Vendor's expense.
- 04 **TERMINATION:** OCPS reserves the right to terminate all or part of the goods/services to be delivered or performed pursuant to this Purchase Order. In such event, OCPS shall be liable only for materials or components procured or work done or supplies partially fabricated within the authorization of this Purchase Order. In no event shall OCPS be liable for incidental or consequential damages by reasons of such termination.
- 05 **CANCELLATION:** OCPS reserves the right to cancel any Purchase Order in whole or in part without penalty due to nonappropriation of funds, issuance in error, or for failure of Vendor to comply with terms, conditions, and specifications of this Purchase Order.
- 06 **ASSIGNMENT:** No right or interest in this Purchase Order shall be assigned by Vendor without the written permission of OCPS and no delegation of any obligation owed by either OCPS or Vendor shall be made without the written permission of either party.
- 07 **TIME IS OF THE ESSENCE:** Failure to deliver goods/services of the quality and quantity and within the time(s) specified by this Purchase Order shall, at option of OCPS, relieve OCPS of any obligation to accept and pay for such goods/services as well as any undelivered shipments, if any; and upon failure to deliver as specified, OCPS may buy like goods/services elsewhere and charge Vendor with any increased cost or other loss incurred thereon pursuant to Chapter 672, Florida Statutes, unless deferred shipment is agreed to by OCPS in writing. Any failure by OCPS to exercise its option with respect to any shipment of goods/services shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision is not in lieu of, and OCPS does not waive, any remedies provided by law.
- 08 **FAILURE TO PERFORM:** Failure of the Vendor to perform as specified in this Purchase Order may be cause for termination of this Purchase Order. Vendors who default are subject to suspension and/or debarment from the approved vendors list. Failure to perform may also result in the recoupment of damages or the difference in cost for purchasing replacement goods/services by OCPS.
- 09 **FORCE MAJEURE:** Performance of any obligation under this Purchase Order may be suspended by either party without liability to the extent that an act of God, war, riot, fire, explosions, accidents, sabotage, inability to obtain fuel or power, governmental laws, regulations, orders, or any other cause beyond the reasonable control of such party, or labor trouble, strike, lockout, or injunction delays, prevents, restricts, or limits the performance of this Purchase Order. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. At OCPS's option, the Purchase Order may be terminated or modified. If OCPS fails to modify the Purchase Order, within thirty (30) days of receipt of notification from Vendor, the Purchase Order lapses with respect to any deliveries affected.
- 10 **ELECTRONIC/FACSIMILE TRANSMISSION:** If this Purchase Order is fully executed and is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Vendor.

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- 11 **PRICE PROTECTION; DISCOUNTS:** Vendor warrants that the price(s) set forth herein is/are equal to the lowest net price, and the terms and conditions of sale as favorable or better, as the price(s), terms, and conditions afforded by Vendor to any other customer for goods/services of comparable grade or quality during the term hereof. Discounts are encouraged and should be included on any invoice, when available, to reduce the price from the one indicated on the Purchase Order itself.
- 12 **DELIVERY, TITLE, AND RISK OF LOSS:** Unless expressly stated otherwise, all shipments must be made F.O.B. OCPS, at the address specified. Deliveries are to be inclusive of packing, crating, marking, excises, duties, importation fees, and all other transportation charges. Damage to any goods not packed to insure proper protection to same will be charged to Vendor. Title shall pass to OCPS on delivery of the conforming goods to the desired location. Delivery shall not be complete until the goods have been received, inspected, and accepted by OCPS. The original shipping bill must be included with the invoice, including freight, as applicable. OCPS's count will be accepted as final and conclusive on any shipment not accompanied by an itemized packing slip. Vendor assumes full responsibility and liability for loss and/or damage even if OCPS has agreed to pay freight, express, or other transportation charges.
- 13 **INSPECTION:** OCPS shall have a reasonable time after delivery within which to inspect the goods. Goods rejected will, at Vendor's expense, be returned to Vendor or otherwise disposed of as Vendor shall reasonably request. The cost of inspection of goods rightfully rejected shall be charged to Vendor. If reasonable inspection discloses that part of the goods received are defective or nonconforming, OCPS shall have the right to cancel any unshipped portion of the order. Payment for the goods on this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that OCPS may have against Vendor. The making or failure to make any inspection of, or payment for or acceptance of, the goods shall in no way impair OCPS's right to reject nonconforming goods, recover damages, or exercise any other remedy to which OCPS may be entitled, notwithstanding OCPS's knowledge of the nonconformity, its substantiality, or the ease of its discovery.
- 14 **MATERIAL SAFETY DATA SHEET (MSDS):** In accordance with Chapter 422, Florida Statutes, it is Vendor's duty to advise OCPS if a product is a toxic substance and to provide appropriate labels and a MSDS for all shipments. Send MSDS and other pertinent data to: OCPS, Environmental Compliance Department, 3909 S. Summerlin Avenue, Orlando, FL 32806 and to OCPS, Procurement Services, 445 West Amelia Street, Orlando, FL 32801.
- 15 **WARRANTY:** In addition to any warranty implied by law or fact and any other express warranties, Vendor expressly warrants that all material or services covered herein will be: (a) free of infringements of property rights of third parties, including, without limitation, any patent, trademark, trade name, copyright, or right of publicity; (b) free from defects in material and workmanship; (c) of merchantable quality; (d) fit for the intended use by OCPS and any other intended uses of such goods; (e) of a grade and performance in conformity with all specifications, blueprints, designs, drawings, samples, models, descriptions, instructions, and other data. Vendor warrants that any services to be performed by Vendor hereunder will be performed, as an independent contractor, in a good and competent manner.
- 16 **LEGAL COMPLIANCE:** Vendor guarantees that the goods to be provided and/or the services to be performed herein shall comply with all applicable federal, state, and local laws, ordinances, regulations, orders, and decrees, including, without limitation, such of the following acts as may be applicable: Federal Consumer Product Safety Act, Federal Fair Labor Standards Act, Occupational Safety and Health Act, Federal Hazardous Substances Labeling Act, Federal Flammable Fabrics Act, and any applicable environmental regulations.
- 17 **TAXES:** OCPS is a nonprofit governmental operation and is not subject to federal excise or state sales tax.
- 18 **PROMPT PAYMENT; INVOICES:** OCPS abides by Chapter 218, Florida Statutes, with respect to payments to vendors. In accordance therewith, OCPS's terms are Net 45 days from receipt of a proper invoice. Vendor should invoice OCPS upon delivery of goods/services. Invoices must contain the following: invoice number, invoice date, OCPS Purchase Order number, detail of goods/services provided, and total amount due.
- 19 **INDEMNIFICATION; HOLD HARMLESS:** Vendor agrees to protect, defend, indemnify, and hold harmless The School Board of Orange County, Florida, its agents, officers, elected officials, and employees from and against all claims, suits, actions, liabilities (including settlements entered into in good faith by OCPS), losses (including economic losses), damages, or causes of action and costs, including attorneys' fees for trial and on appeal, of any kind and nature arising from or connected with the performance of this Purchase Order whether by act or omission of Vendor, its agents, servants, employees, or others, or because of or due to the mere existence of the Purchase Order between the parties. The indemnification obligations hereunder shall not be limited to any limitation on the amount, type of damages, compensation, or benefits payable by or for Vendor or any subcontractor under workers' compensation acts, disability benefit acts, other employee benefit acts, or any statutory bar.

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- 20 **RELATIONSHIP OF THE PARTIES:** It is the parties' intention that Vendor, its employees, subcontractors, representatives, volunteers, and the like will be an independent contractor and not an employee of OCPS for all purposes, including, but not limited to, the application of the following, as amended: the Fair Labor Standards Act, minimum wage and overtime payments, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State of Florida revenue and taxation laws, the State of Florida workers' compensation laws, the State of Florida unemployment insurance laws, and the Florida Retirement System benefits. Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out its activities and responsibilities hereunder.
- 21 **DISQUALIFYING CRIMES:** Vendor certifies by acceptance of this Purchase Order that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the State of Florida or Federal Government. A person or affiliate who has been placed on the convicted contractor list following a conviction for a public entity crime may not provide any goods/services or transact business with OCPS for a period of thirty-six (36) months from the date of being placed on the convicted contractor list.
- 22 **JESSICA LUNSFORD ACT:** All individuals who are permitted access on school grounds when students are present, individuals who may have direct contact with children or any student of OCPS, or who may have access to or control of school funds must be fingerprinted and background checked. In the event Vendor has personnel who are required to have security clearance, Vendor agrees to comply with the Act at its sole cost.
- 23 **WAIVER:** No waiver by either Vendor or OCPS with respect to any breach or default of or with respect to any provisions or conditions of this Purchase Order shall be deemed to constitute a continuing waiver of any other breach or default of or with respect to the same or any other provision or condition of this Purchase Order.
- 24 **LAW; VENUE:** The validity, interpretation, and performance of this Purchase Order shall be governed and construed in accordance with the laws of the State of Florida. Venue for any legal action shall lie in Orange County, Florida.
- 25 **SEVERABILITY:** If any section, subsection, sentence, clause, phrase, or portion of this Purchase Order is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.
- 26 **EQUAL OPPORTUNITY EMPLOYER:** OCPS is an Equal Employment Opportunity (EEO) employer and, as such, encourages Vendor to voluntarily comply with EEO regulations with regards to gender, age, race, veteran status, country of origin, and creed. In addition, Vendor shall comply with all applicable rules, regulations, and promulgations thereby pertaining to the avoidance or appearance of sexual harassment or on the job discrimination. Vendor shall maintain a work environment free of discrimination or unwelcome action of a personal nature. Any subcontracts entered into shall make deference to this clause with the same degree of application being encouraged. When applicable, Vendor shall comply with all new state and federal EEO regulations.
- 27 **RIGHT TO AUDIT RECORDS:** OCPS shall be entitled to audit the fiscal books and records of Vendor to the extent that such books and records relate to the performance of this Purchase Order or supplements thereto. Such books and records shall be maintained by Vendor for a period of three (3) years from the date of final payment under the Purchase Order, unless a longer or shorter period is otherwise authorized in writing by OCPS.
- 28 **FERPA:** To the extent services provided hereunder pertain to the access to student information, Vendor shall adhere to all standards included in the Family Educational Rights and Privacy Act (FERPA) and Sections 1001.41 and 1002.22, Florida Statutes (the Protection of Pupil Privacy Acts), and other applicable laws and regulations as they relate to the release of student information.
- 29 **PUBLIC RECORDS:**

(a) IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF SECTION 119.0701, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS PURCHASE ORDER, CONTACT THE OCPS CUSTODIAN OF PUBLIC RECORDS AT 407.317.3965, RECORDS@OCPS.NET, ORANGE COUNTY PUBLIC SCHOOLS, RECORDS MANAGEMENT, P.O.BOX 271, ORLANDO, FL 32802.

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(b) This Purchase Order is subject to and governed by the laws of the State of Florida, including without limitation Chapter 119, Florida Statutes, which generally makes public all records or other writings made by or received by the Parties. Vendor acknowledges its legal obligation to comply with Section 119.0701, Florida Statutes. Vendor shall keep and maintain public records, as that phrase is defined in the Florida Public Records Act, which would be required to be kept and maintained by OCPS in order to perform the scope of services. Vendor shall comply with all requirements for retaining public records and shall transfer, at no cost to OCPS, all public records in the possession of Vendor upon a request for such public records. See Section 119.0701(2)(b)4, Florida Statutes, for additional record keeping requirements.

(c) A request to inspect or copy public records relating to OCPS's contract for services must be made directly to OCPS's Custodian of Public Records. If OCPS does not possess the requested records, OCPS's Custodian of Public Records shall immediately notify Vendor of the request. Vendor must provide a copy of the records to OCPS or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. If Vendor does not timely comply with OCPS's request for records, OCPS shall be able to sue for breach of contract and the prevailing party shall be entitled to attorney's fees.

(d) Should Vendor fail to provide the requested public records to OCPS within a reasonable time, Vendor understands and acknowledges that it may be subject to penalties under Sections 119.0701(3)(c) and 119.10, Florida Statutes.

(e) Vendor shall not disclose public records that are exempt, or confidential and exempt, from public records disclosure unless specifically authorized by law for the duration of this Purchase Order term and following the completion, expiration, or termination of same if Vendor does not transfer the records to OCPS. Upon completion, expiration, or termination of this Purchase Order, Vendor shall transfer, at no cost to OCPS, all public records in its possession or keep and maintain public records required by OCPS to perform the services. If Vendor transfers all public records to OCPS, Vendor shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If Vendor keeps and maintains public records upon completion, expiration, or termination of the Purchase Order, Vendor shall meet all applicable requirements for retaining public records and provide requested records to OCPS pursuant to the requirements of this Article. All public records stored electronically must be provided to OCPS in a format that is compatible with the information technology systems of OCPS.