

# Yavapai Community College District Purchasing and Contracting Services

## PURCHASE ORDER TERMS AND CONDITIONS

1. **PURCHASE ORDER DEFINED:** The term "Purchase Order" as used in these terms and conditions means the document entitled "Purchase Order" that the Yavapai Community College District (YCCD) issues to the Seller. Seller shall not supply equipment, goods or materials for any purchase over \$1,000.00 to YCCD unless it has received an authorized purchase order from YCCD's Purchasing and Contracting Department. Acceptance of the Purchase Order and shipment of product or performance of service by Seller affirms that Supplier agrees with all prices, terms and conditions contained therein.
2. **ACCEPTANCE AND REJECTION:** If prior to final acceptance, any goods or services are found to be defective or not as specified, or, if YCCD is entitled to revoke acceptance of them, YCCD may reject or revoke acceptance, require delivery at an equitable reduction in price, at YCCD's option. Seller shall reimburse YCCD for all incidental and consequential costs related to unaccepted goods or services. Notwithstanding final acceptance and payment, Seller shall be liable for latent, defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach. If contract cannot be filled, please notify the Purchasing Department immediately.
3. **ASSIGNMENT AND DELEGATION:** The Seller shall not assign any right nor delegate any duty under this purchase order without the prior written approval of an authorized YCCD Contract Officer. YCCD shall not unreasonably withhold approval.
4. **CHANGES:** An authorized YCCD Contract Officer may make changes within the general scope of this purchase order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this purchase order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of an authorized YCCD Contract Officer. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the purchase order as modified.
5. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to A.R.S. 38-511, YCCD may cancel this purchase order without penalty or further obligation if any person significantly involved in the initiating, negotiating, securing, drafting or creating the purchase order on behalf of YCCD is or becomes at any time while the purchase order or an extension of the purchase order is in effect an employee of or a consultant to any other party to this purchase order with respect to the subject matter of the purchase order. The cancellation shall be effective when the Seller receives written notice of the cancellation unless the notice specifies a later time.
6. **DISCOUNTS:** if prompt payment discounts apply to this purchase, any discount time will not begin until the materials, supplies, or services have been received and accepted and correct invoice received by the appropriate YCCD Department. In the event testing is required to prior acceptance, the discount time shall begin upon completion of the tests.
7. **TAXES:** YCCD is NOT a tax exempt agency
8. **USE TAX:** YCCD pays out-of-state use tax directly to the State of Arizona.
9. **BANKRUPTCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by, or against the Seller, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, YCCD shall be entitled to cancel the purchase order without liability.
10. **INSPECTIONS:** The Seller agrees to permit access to its facilities, subcontractor facilities and Sellers processes for producing the materials, at reasonable times for inspection of the materials covered under this purchase order. YCCD shall also have the right to test at its own cost the materials to be supplied under this purchase order. Neither inspection at the Sellers facilities nor testing shall constitute final acceptance of the materials. If YCCD determines non-compliance of the materials, the Seller shall be responsible for the payment of all costs incurred by YCCD for testing and inspection.
11. **APPLICABLE LAWS:** The laws of the State of Arizona shall apply to the performance and interpretation of this purchase order. Any provision required to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated into this purchase order.
12. **PATENT AND COPYRIGHT INDEMNITY:** Seller shall indemnify YCCD against all losses, liabilities, lawsuits, claims, expenses (including attorney's fees), costs, and judgments incurred through third parties claims of infringement of any copyright, patent, trademark or other intellectual property rights.
13. **RISK OF LOSS:** The Seller shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Seller regardless of receipt.
14. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
15. **TITLE AND DELIVERY:** Unless stated otherwise in the purchase order, all prices shall be F.O.B. Destination and shall include delivery and unloading at the destination identified in the purchase order. Title to the materials and supplies shall

pass to YCCD upon acceptance at the F.O.B. point specified, subject to the right of YCCD to reject For any exception to the delivery date specified, Seller shall give prior notification and obtain approval from YCCD's Purchasing Department. Time is of the essence and the purchase order is subject to termination for failure to deliver on time.

**16. WARRANTIES:**

- A. Liens: The Seller warrants that the materials supplied under this purchase order are free of liens.
- B. Quality: Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by YCCD of the materials, they shall be:
  - 1. Of a quality to pass without objection in the trade under the purchase order description;
  - 2. Fit for the intended purposes for which the materials are used.
  - 3. Within the variations permitted by the purchase order and are of even kind, quantity, and
  - 4. Adequately contained, packaged and marked as the purchase order may require; and
  - 5. Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material supplied to the YCCD shall fully conform to all requirements of the purchase order and all representations of the Contractor, and shall be fit for all purposes and uses required by the purchase order.
- D. Inspection/Testing. Inspection or testing of or payment for the materials does not affect the warranties set forth in subparagraphs A through C of this paragraph by YCCD.
- E. Exclusions. Except as otherwise set forth in this purchase order, there are no express or implied warranties of merchantability or fitness.

17. **PAYMENT:** To be paid, Seller must submit an itemized invoice referencing a valid purchase order number. The invoice must specify the services, equipment, goods or materials provided, which must match the description and dollar amount referenced in the purchase order; the dates of and work performed or the equipment, goods, or materials were provided; and the specific dollar amount owed. Seller shall be paid at the end of the Contract unless a schedule of progress payments for work performed is agreed to in writing with the YCCD Contract officer. Invoices for progress payments must specify the actual work performed. If YCCD has agreed in writing to reimburse the travel expenses of the Seller, YCCD will do so according to its policies and rates applicable to its employees. Seller must submit an invoice for any travel reimbursement requested, specifying its expenses, and attach original receipts for airfare and hotel expenses. The college reserve the right to withhold payment until the purchase order is complete

18. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless YCCD, its agents, officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses (including but not limited to attorney fees and court costs) arising from the acts, errors, mistakes, omissions, work or service of Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this purchase order.

**19. TERMINATIONS:**

- A. College may, by written notice stating the extent and effective date, terminate this order for convenience, in whole or in part, at any time, College shall pay Seller as full compensation for performance until such termination.
  - (1) The unit or pro-rata order price for the delivered and accepted portion and
  - (2) A reasonable amount, not otherwise recoverable from other sources by Seller as approved by College, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.
- B. The College may with a written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the service within the time specified or any written extension thereof. In such an event, College may purchase or otherwise secure materials, supplies or services and except as otherwise provided herein, Seller shall be liable to College for any excess costs incurred by the College. If, after notice of termination for default, College determines that the failure to perform this order is due to causes beyond the control without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of college, acts of Government, termination shall be deemed for the convenience of College, unless College shall determine that the materials, supplies or services covered by this order were obtainable from the other sources in sufficient time to meet the required delivery schedule.
- C. If College determines that Seller has been delayed in the work in the opinion of College due to causes beyond the control and without the fault or negligence of Seller, College may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller, and if such delay due to failure of College, not caused or contributed to by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change.

20. **PROPERTY RIGHTS:** YCCD shall, at all times, retain ownership in and the rights to any creative works, research data, reports, designs, recordings, graphical representations, negatives, plates, dies or works of similar nature (Works) to be delivered under this purchase order. Seller agrees that the Works are "works for hire" and assigns all of the Sellers right, title and interest to YCCD.

21. **FUNDS UNAVAILABLE:** This contract shall be in force until the expiration date. However, YCCD is a State Agency subject to State appropriation of funds. If The Yavapai College Board of Directors determines, at its sole discretion, not to allocate

sufficient funds for The College to uphold this agreement, The College has the right to terminate this agreement upon thirty (30) days written notice.

22. **CERTIFICATION:** Seller certifies that it is an independent contractor; provides services to other customers; maintains insurance; sets its own priorities on time and hours of work; provides own supplies; and determines the means of delivering services.
23. **ADVERTISING AND PROMOTION:** The Seller shall not advertise or publish information for commercial benefit concerning this purchase order without the prior written approval of YCCD.
24. **GRATUITIES:** YCCD may, by written notice, terminate this purchase order, in whole or in part, if YCCD determines that employment or a gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of YCCD for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. YCCD in addition to any other rights or remedies shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
25. **NON-DISCRIMINATION:** During the performance of this contract, the Seller agrees to the following:
  - A. The Seller will comply with all provisions of the Civil Rights Act of 1964, Executive Order No. 11246 of September 24, 1965, as amended, and relevant orders of the Secretary of Labor and all applicable Municipal, State and Federal laws.
  - B. The Seller will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, physical handicap not related to job performance, and Vietnam era veterans.College may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice or course of dealing to the contrary.
26. **SAFETY AND HAZARDOUS:** All equipment, supplies and services sold to the college shall conform to the general safety regulations of the State of Arizona and OSHA. Two copies of the MSDS must be sent to the buyer before product is received.

#### **Affirmative Action/Equal Opportunity College**