



Procurement and Contract 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 County Community College District dba Yavapai College ("YC") issues to the contractor ("Contractor") (collectively, "Parties").
2. **PURCHASE ORDER REQUIRED:** Contractor is not authorized to begin work or supply goods to YC unless it has received a Purchase Order from YC to do so.

**TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF GOODS**

3. **ACCEPTANCE AND REJECTION:** Regardless of any terms or conditions to the contrary in Contractor forms or documents, YC shall have the all the rights and remedies specified in this paragraph. YC shall have a reasonable time after delivery of goods to inspect them. YC is not obligated to pay for those goods until it has had the opportunity to inspect them, and has accepted them. YC may reject goods if, prior to final acceptance, the goods are found to be defective or not as specified. In the case of services, YC is not obligated to pay for them until it has finally accepted the services and, in the case of construction, is occupying or otherwise using the facility where the construction occurred. YC is entitled to all other remedies under applicable law, including the right to revoke acceptance of nonconforming goods. Contractor shall reimburse YC for all direct, indirect, incidental and consequential costs related to nonconforming goods or services. Notwithstanding final acceptance and payment, Contractor 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, negligence, product liability, or any other act or omission covered by the indemnity provisions of these Purchase Order Terms and Conditions.
4. **INSPECTIONS:** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes for producing the goods, at reasonable times for inspection of the goods covered under this Contract. YC shall also have the right to test at its own cost the goods to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the goods. If YC determines non-compliance of the goods, the Contractor shall be responsible for the payment of all costs incurred by YC for testing and inspection.
5. **RISK OF LOSS:** The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming goods shall remain with the Contractor regardless of receipt.
6. **SUBSTITUTIONS:** Contractor may not substitute goods required under this Contract. Providing substitutions or any attempt to do so will be considered a breach of the Contract.
7. **TITLE AND DELIVERY:** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination identified in the Contract. Title to the goods shall pass to YC upon acceptance at the F.O.B. point specified, subject to the right of YC to reject. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval from YC's Procurement and Contract Services. Time is of the essence and the Contract is subject to termination for failure to deliver on time.

**8. WARRANTIES:**

- 8.1 Liens: The Contractor warrants that the goods supplied under this Contract are free of liens.
- 8.2 Quality: Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by YC of the goods, they shall be:
  - 8.2.1 Of a quality to pass without objection in the trade under the Contract description;
  - 8.2.2 Fit for the intended purposes for which the goods are used.
  - 8.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - 8.2.4 Adequately contained, packaged and marked as the Contract may require; and
  - 8.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 8.3 Fitness. The Contractor warrants that any material supplied to the YC shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 8.4 Inspection/Testing. Inspection or testing of or payment for the goods does not affect the warranties set forth in subparagraphs 6.1 through 6.3 of this paragraph by YC.

**TERMS AND CONDITIONS APPLICABLE TO CONTRACTS INVOLVING THE PURCHASE OF SERVICES**

- 9. **CONTRACTOR PERSONNEL POLICIES:** Contractor will maintain personnel policies that appropriately check the backgrounds of its employees who will be providing services to Customer on site in accordance with YC policy. Contractor will supply the appropriate YC representative with copies of those policies upon request.
- 10. **PERFORMANCE STANDARDS:** Contractor shall, at all times during this Contract, provide the services within the highest standards of its profession. Contractor certifies that it shall maintain all applicable licenses/certifications and must provide notice immediately to YC of any change in any license/certification. Contractor warrants that the services provided shall conform to the Contract.
- 11. **PROVISION OF SUPPLIES, MATERIALS AND LABOR:** The Contractor shall furnish all supplies, equipment, and all management and labor necessary for the efficient and sound provision of the services or goods it supplies under this Contract, or in subsequent extensions or amendments.

**TERMS AND CONDITIONS APPLICABLE TO ALL CONTRACTS**

- 12. **ADVERTISING AND PROMOTION:** The name or logos of YC or those of any entity under YC's jurisdiction shall not be used by Contractor except as may be required to perform this Contract and only as approved by YC.
- 13. **APPLICABLE LAWS:** The laws of the State of Arizona apply to every aspect of this Contract. 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 Contract.
- 14. **AUDITS:** Contractor shall make available during normal business hours and with advance notice from YC all records pertaining to the Contract for purposes of audit by YC staff or other public agencies having jurisdiction over or audit rights involving the expenditure of YC funds.
- 15. **BILLING:** If YC permits the Contractor to receive progress payments, Contractor may only invoice in increments of 30 days or more. The monthly billings should be submitted to the "BILL TO" address shown on the Contract.
- 16. **CERTIFICATION:** Contractor 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 its own supplies; and determines the means of delivering services.
- 17. **CHANGES:** An authorized YC representative from the Procurement and Contract Services may make changes within the general scope of this purchase order by giving notice to Contractor 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 Contractor shall be recognized without written approval of an authorized YC representative. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the purchase order as modified.

**18. COMPLIANCE WITH IMMIGRATION LAWS; LEGAL WORKER'S ACT:** The Contractor shall at all times comply with the Federal Immigration Reform and Control Act of 1986 (and by any subsequent amendments) and shall indemnify, hold harmless, and defend YC from any and all costs or expenses whatsoever arising out of Contractor's noncompliance. To the extent applicable to this Contract under A.R.S. § 41-4401, Contractor warrants on behalf of itself and its subcontractors that it verifies the employment eligibility through the E-verify program of any employee it hires and complies with federal immigration laws and regulations relating to their employees. The Contractor shall at all times comply with the Federal Immigration Reform and Control Act of 1986 (and by any subsequent amendments to it) and shall indemnify, hold harmless, and defend YC from any and all costs or expenses whatsoever arising out of Contractor's compliance or noncompliance with that law. Additionally, Contractor agrees to abide by all applicable laws that apply to it and this Contract, including executive orders of the Governor of the State of Arizona.

**19. CONTRACT ASSIGNMENT:** Contractor may not, in part or in whole, subcontract (except as otherwise specified in Contractor's proposal to the YC solicitation), delegate or assign this Contract without the prior written permission of a representative of YC authorized to sign contracts.

**20. CONTRACT TERMINATION:**

20.1. **Termination for Appropriation:** The resulting Contract shall be in force until the expiration date. However, YC is a State Agency subject to State appropriation of funds. If the Yavapai College District Governing Board determines, at its sole discretion, not to allocate sufficient funds for YC to uphold this agreement, YC has the right to terminate this agreement upon (30) thirty-days written notice.

20.2. **Termination for Bankruptcy:** YC may terminate the resulting contract immediately if the Contractor files for bankruptcy or receivership, or takes any actions relating to insolvency, such as an assignment for the benefit of creditors.

20.3. **Termination for Conflict of Interest:** Pursuant to A.R.S. 38-511, the resulting contract and/or any Purchase Order(s) issued against it is subject to cancellation by YC if any personnel significantly involved in the resulting contract are found to be in conflict of interest.

20.4. **Termination for Convenience.** YC reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of YC without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to YC. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to YC. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination.

20.5. **Termination of Default :** Either party may terminate this Agreement with cause by giving the other party at least 90 days prior written notice of termination. In the event that the Contractor breaches any of the terms and provisions of the Contract, YC reserves the right to accurately and specifically describe the unsatisfactory performance or condition in a written notice by registered or certified mail to the Contractor requiring that this be corrected within a ten (10) day period from the date said notice is received by the Contractor. If the condition is not remedied within this time period, failure to do so on the part of the Contractor may result in YC resorting to any single or combination of the following remedies:

20.5.1. Cancel any contract with a ninety (90) day written notice

20.5.2. Reserve all rights or claims to damage for breach of any covenants of the contract

20.5.3. Perform any test or analysis on materials (equipment/products) for compliance with the specifications of the contract. If the results of any test or analysis find a non-compliance with the specifications, the actual expense of testing shall be borne by the Contractor;

20.5.4. In case of default, YC reserves the right to purchase materials and/or services, or to complete the required work in accordance with the needs of YC. YC may recover any actual excess costs from the Contractor by:

a. Deduction from an unpaid balance;

b. Collection against the bid and/or performance bond, or;

c. Any combination of the above or any other remedies as provided by law.

20.6. **Termination for Gratuities:** YC may, by written notice, terminate this Contract, in whole or in part, if YC determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of YC 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. YC, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.

20.7. **Termination for Suspension or Debarment:** YC may, by written notice to the Contractor, immediately terminate this Contract if YC determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify YC.

**21. DISABILITY STANDARDS:** If applicable to the work of the Contractor under this Contract, Contractor warrants that it complies with Arizona and federal disabilities laws and regulations. Contractor warrants that the products or services to be provided under this Contract comply with the accessibility requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §12101 *et seq.*) and its implementing regulations set forth at Title 28, Code of Federal Regulations, Parts 35 and 36, 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; and maintain, if applicable, Web Content Accessibility Standards 2.0 at Level AA. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor must provide, on request, accessibility testing results and written documentation verifying accessibility. Contractor further agrees to indemnify and hold harmless YC from any claims arising out of its failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach and be grounds for termination of this Contract.

**22. ENTIRE AGREEMENT:** The resulting contract expresses the totality of the terms of the agreement between the parties. Any verbal representation shall have no force or effect whatsoever. Any amendment to this contract upon agreement by both parties shall supersede and replace any and all prior agreements between the parties with respect to the subject matter covered by the resulting contract. The parties each represent that no promises, representations or inducements have been made by the other party with respect to the subject matter of the resulting contract, except as specifically set forth herein. The resulting contract may not be changed, altered, modified or amended except by an agreement in writing signed by both parties.

**23. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT:** If Contractor has access to students' educational records, Contractor shall safeguard those records and limit its employees' and/or agents' access to the records to those persons for whom access is essential to the performance of this Contract. Contractor is prohibited from disclosing those records without the prior written authorization of the student and/or the parent of a student who is a minor permitting YC and Contractor to release the information according to the authorization. At all times during this Contract, Contractor shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 ("FERPA") in all respects and shall be responsible for ensuring that any subcontractors involved in the Contract work also comply.

**24. FORCE MAJEURE:** If the performance of a party under this Contract is interrupted or suspended due to riots, war, public emergencies or calamities, fires, earthquakes, Acts of God, government restrictions, labor disturbances or strikes, or other condition beyond any control of that party ("Force Majeure"), performance by that party will be suspended for the reasonable duration of the Force Majeure. The party claiming that its performance is interrupted or prevented must promptly deliver notice to the other party identifying the Force Majeure and use its best efforts to perform to the extent that it is able. If the Force Majeure does not abate within a reasonable amount of time, then either party may terminate this Contract by providing written notice to the other party. Alternatively, the parties may agree to extend the term of the Contract for a period of time equal to the time equal to the Force Majeure.

- 25. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless YC, 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 breach of a material term of this Contract, or from the negligent or intentional acts or omissions of the Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of the Contract. The amount and type of insurance coverage requirements set forth above will in no way be construed as limiting the scope of indemnification in this paragraph. If applicable, Contractor shall also indemnify, defend and hold harmless YC and its officers, officials, employees and agents against any claim (including but not limited to attorney fees and court costs) that their authorized use of Contractor's services or goods under this Contract violates the claimant's property rights. Contractor shall be responsible for obtaining any copyright, patent, trademark or intellectual property consents for goods or services that it provides under this Contract.
- 26. INSURANCE REQUIREMENTS:** The Contractor shall maintain during the term of the resulting contract the following insurance policies issued by companies licensed in Arizona with a current A.M. Best rating of A: VII or better. Prior to commencing work or services, Contractor shall furnish the College's Procurement and Contract Services with certificates of insurance listing Yavapai College as Additional Insured and evidencing the required coverage, conditions, and limits required by the resulting contract.
- 26.1 **Commercial General Liability** insurance with a limit of not less than \$2,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of the resulting contract.
- 26.2 **Automobile Liability** insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000.00 each occurrence with respect to the Contractor's owned, hired, and non-owned vehicles.
- 26.3 **Worker's Compensation** insurance with limits statutorily required by any Federal or State law and **Employer's Liability** insurance of not less than \$1,000,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.
- 26.4 **Professional Liability** insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by the Contractor, or any person employed by the Contractor, with a limit of not less than \$1,000,000 each claim.
- 26.5 **Certificates:** Successful bidder shall furnish annually to the College, a certificate or certificates of insurance from an insurance company licensed to do business in the State of Arizona showing that the prescribed policies are in force and effect and each certificate shall provide that the insurance company shall not change or cancel any insurance until the College has been notified, in writing, at least thirty (30) days before the date of *change* or cancellation. Additionally, the Contractor agrees to provide evidence that its management employees are bonded. Submission on the required documents shall be due before the start of each contract year.
- 26.6 **No Warranty:** YC in no way warrants that the minimum limits set forth above are sufficient to protect the Contractor from liabilities that may arise of out Contractor's services. The insurance requirements are minimum and in no way limit the indemnity covenants contained in an Agreement between YC and the Contractor.
- 27. NO WAIVER OF SOVEREIGN IMMUNITY:** Nothing in this Contract shall be interpreted or construed to waive YC's sovereign immunity under the laws of the State of Arizona.
- 28. NON-DISCRIMINATION:** Contractor will comply with all applicable state and federal law, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the Americans with Disabilities Act. If applicable, the parties will abide by the requirements of 41 CFR § 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, age, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability. YC also prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, citizenship status (including document abuse), disability, veteran status or genetic information.

**29. PAYMENT:**

- 29.1 YC will pay for services or goods under the Contract after the Contractor has supplied them and only after the Contractor submits a detailed invoice referencing a valid Purchase Order number, itemizing the services/deliverables or goods provided and specifying the dates that they were provided. The invoice must match the description and dollar amount referenced in the Purchase Order. YC may request supporting documentation for an invoice. YC will not provide any portion of the payment up front. Payments will be made via Purchase Order. Payment terms are net 30 days. Additionally, If YC has agreed in writing to reimburse the travel expenses of the Seller, YC 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.
- 29.2 Where the Contractor is to provide services or goods over a period of time, such as for a project, an authorized representative of YC may agree to pay progress payments. If approved, progress payments will be paid in arrears and require that the Contractor submit the detailed invoice specified in this clause.
- 29.3 YC reserves the right to dispute an invoice or make partial payment based on the Contractor's failure to perform the Contractor's work according to the Contract, including for lack of timeliness or failure to provide deliverables.
- 29.4 CONTRACTOR MAY NOT BEGIN WORK UNDER THE CONTRACT NOR WILL ANY PAYMENT BE MADE WITHOUT THE CONTRACTOR RECEIVING A SIGNED PURCHASE ORDER FROM YC PROCUREMENT AND CONTRACT SERVICES.
- 29.5 If prompt payment discounts apply to this purchase, any discount time will not begin until the goods or services have been received and accepted and correct invoice received by the appropriate YC department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests.
- 29.6 YC is exempt from Federal Excise Tax.
- 29.7 YC is not tax exempt and pays out-of-state use tax directly to the State of Arizona.

**30. PROPERTY RIGHTS:** Except for pre-existing works of the Contractor or works of third parties for which Contractor has the permission to supply to YC under this Contract, YC shall, at all times, retain ownership in and the rights to any creative works, research data, reports, designs, recordings, graphical representations, or works of similar nature ("Works") to be developed and delivered under this Contract. Contractor agrees that the Works are "works for hire" and assigns all of the Contractor's right, title, and interest to YC.

**31. REGISTERED SEX OFFENDER NOTIFICATION RESTRICTION:** Contractor represents and warrants that no employee, or employee of its subcontractor(s), who has been adjudicated to be a registered sex offender will perform work on YC premises or equipment at any time. Contractor further agrees by acceptance of the Purchase Order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at YC's discretion.

**32. SAFETY AND HAZARDOUS:** All equipment supplies and services sold to YC shall conform to the general safety regulations of the State of Arizona and OSHA.

**33. UNAUTHORIZED COSTS OR COSTS OUTSIDE SCOPE OF AGREEMENT:** Costs or expenses of the Contractor relating to its performance of this Contract that are not included in the Contract price or are not authorized by the Contract are the sole responsibility of the Contractor and not of or reimbursable by YC. If the Contract specifies that YC will reimburse the Contractor a specific cost, Contractor may not charge YC that cost without YC approving a prior estimate of it.

**34. WORK TO BE PERFORMED BY OTHERS:** YC reserves the right to perform any and all services in-house or to utilize the services of other firms on unrelated projects.

**Affirmative Action/Equal Opportunity College**