

Twin Rivers Unified School District

Purchase Order General Terms and Conditions

1. Definitions

- a. "Contract" means the terms and conditions set forth in this purchase order, together with the terms appearing on the cover page hereof.
- b. "District" means the Twin Rivers Unified School District.
- c. "Deliverables" means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, and other items to be delivered pursuant to this purchase order, including any such items furnished that are incidental to the provision of services.
- d. "Seller" means the business entity designated on the cover page of this purchase order that is supplying Deliverables to the District. "Seller" shall be synonymous with "supplier," "vendor," or other similar term.

2. Acceptance of Order

The bid or quotation that the Seller provides to the District in response to a solicitation to perform a contract to supply goods or perform services at a specified price is deemed a firm offer. Issuance of this Contract evidences the District's acceptance of that offer. Orders made by the District shall not be valid unless the District provides a Purchase Order that includes a Purchase Order number and that is signed by an authorized agent of the District. Acceptance is strictly limited to the terms and conditions set forth herein. Seller's commencement of performance or acceptance of this Contract in any manner shall conclusively evidence agreement to this Contract as written.

3. Packaging, Delivery, and Acceptance

- a. Packaging. Seller shall package all items to protect them from damage during transit. Seller will include the following information on all packing slips: District Purchase Order number, contents, quantity, quality, and description. To the extent applicable, Seller shall include Material Safety Data Sheets pursuant to Section 13 herein. No charges will be allowed for the transportation, packaging, packing, or returnable containers agreed to in this Contract. Damage to any Deliverables resulting from improper packaging will be charged to Seller.
- b. Delivery. Seller is responsible for delivery on a free-on-board ("FOB") destination basis and shall incur all costs associated with the delivery. All deliveries must be received at the District warehouse, located at 3222 Winona Way, North Highlands, CA 95660, unless an alternate location is noted on the Purchase Order.
- c. Acceptance. If items are not properly packaged or identified as required herein, or if the District determines that items are defective or non-conforming, the District may reject all or part of any deliveries and Seller shall bear all costs, including costs for return and re-delivery of Deliverables. All

goods to be delivered pursuant to this Contract may be subject to final inspection, testing, and acceptance by the District at the destination. The District shall give written notice of the rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Acceptance shall not be construed to waive any warranty rights the District may have under applicable law or by express reservation in this Contract with respect to conformity. Title to and risk of loss of Deliverables shall vest in the District upon the District's acceptance of the Deliverables.

4. Performance Requirements

- a. Quality Level. Seller shall maintain a quality level of zero defects on all Deliverables shipped to the District.
- b. On-Time Delivery. Seller shall maintain an on-time delivery level of 100%. Delivery is considered to be on-time with the agreed-upon schedule date when shipments are received no more than three (3) days ahead or zero (0) days after the scheduled delivery date.
- c. Delivery Performance Measurements. The Parties agree that Seller's On-time Delivery performance is subject to monitoring by the District and the Parties agree that failure to maintain the agreed upon delivery performance results in a waiver of any obligation by District to fulfill any commitment under this Contract and may result in termination.

5. Changes

The District may, at any time, by written notice, make changes to the specifications, design or drawings, samples or other description(s) to which the Deliverables are to conform, in methods of shipment and packaging, or place or delivery. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, an equitable adjustment must be made within thirty (30) days of the receipt of such notice. The equitable adjustment shall be made based on good faith negotiations between the District and Seller. Nothing in this Section 5 shall excuse Seller from proceeding without delay to perform its obligations under this Contract as changed. Seller shall make no substitutions or changes to the form, fit, or function of the Deliverables furnished to the District hereunder without prior written notice and written approval from District.

6. Substitutions

The District shall not accept product substitutions unless the Seller first obtains express written authorization from District.

7. License

Upon the District's payment in full for software, Contractor grants the District a perpetual, non-exclusive, worldwide, irrevocable, fully paid right and license, to install and use the software on all computing devices used by or for the benefit of the District. Such license is subject to the limitation on the maximum number of end users or

other scope limitations listed herein and, if none are listed, such license shall be deemed to be enterprise-wide and the software may be used by all District end users without any maximum number of users. The license shall extend to permit District-contractors to use the software in the performance of their duties for the District.

8. Payment

Net 30 terms apply. All invoices for Deliverables delivered and service(s) performed shall be mailed in duplicate to Twin Rivers Unified School District, 3222 Winona Way, North Highlands, CA 95660. Any invoices for repairs must be itemized as to material, time, and hourly or daily labor rates in order for the District to timely remit payment.

9. Sales Tax

The District shall pay California sales tax and use tax as applicable. Contractor shall separately list all applicable taxes on any invoices. The District is exempt from payment of Federal Excise Tax.

10. Warranty

- a. Condition of Deliverables. Seller warrants that Deliverables supplied by Seller are new unless specifically approved by District in writing. Items shall not be surplus, reconditioned, recovered, or remanufactured unless approved by the District in writing.
- b. Deliverables Free from Defect. Seller further warrants that all Deliverables furnished hereunder will be free from defects in design, material, and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions. All warranties shall be in addition to any warranties available under law and any standard Seller warranty.
- c. No Violation of Third-Party Rights. No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind. Seller warrants that Seller has no basis to believe there is an action, suit, proceeding, or material claim or investigation pending or threatened against Seller that, if adversely determined, might affect any Deliverable or restrict the District's right to use any Deliverable.
- d. Title. Seller warrants that it has full title to the Deliverables and has the lawful right to grant the District the rights and licenses contemplated herein without first obtaining consent from any third party.

11. Limitation of Liability/Disclaimer of Damages

The District's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the Deliverables scheduled for delivery per the Contract issued. IN NO EVENT SHALL THE DISTRICT BE LIABLE FOR PUNITIVE, DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ITS ACTS OR OMISSIONS HEREUNDER.

12. Indemnification

Seller shall defend, hold harmless, and indemnify the District, its Board members, administrators, employees, agents, attorneys, and volunteers ("District Indemnified Parties") from and against all claims, injuries, damages,

losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the District.

13. CAL-OSHA Requirements

Seller certifies, by shipment, that all equipment furnished pursuant to this Contract either meets or exceeds applicable California Division of Occupational Safety and Health ("Cal/OSHA") codes. Seller shall ensure that Material Safety Data Sheets ("MSDS") accompany any applicable chemicals furnished by Seller to the District pursuant to this Contract.

14. Assignment

Seller may not assign this Contract, in whole or in part, without the prior written consent of the District. Subject to the foregoing, this Contract shall be binding upon the Parties and their respective successors and assigns.

15. Audit

District shall have the right to examine and audit Seller's records related to this Contract. Seller shall maintain and preserve all such records for a period of at least three (3) years after the District provides final payment to Seller or after final Contract closeout, as determined by the District.

16. Use of District Name in News or Advertising

Seller shall not, without the prior written consent of the District: (a) make any news release or public announcement of all or any part of the subject matter of this Contract, or (b) in any manner advertise or publish the fact that the District has ordered the Deliverables from Seller.

17. Independent Contractor

Seller shall perform its obligations under this Contract as an independent contractor of the District. Nothing herein shall be deemed to constitute Contractor and District as partners, joint venturers, or principal and agent. Seller has no authority to represent the District. Seller shall not at any time or in any manner represent that it or any of its contractors or agents are in any manner agents or employees of the District.

18. Insurance

Upon the District's request, Seller shall provide, and shall require its subcontractors to maintain, insurance policy/policies and limits of coverage acceptable to the District to protect against claims that may arise from this Contract.

19. Non-Discrimination

Seller shall comply with all laws prohibiting discrimination in employment and shall require all subcontractors that perform work under this Contract to abide by this non-discrimination requirement.

20. Waiver

The failure of either Party to exercise any right under this Contract shall not be deemed a waiver of such right, and shall not affect the right to enforce each and every right hereof. The waiver of any breach of any term, provision, covenant or condition contained herein shall not be deemed a waiver of any: (a) subsequent breach of such term, provision, covenant or condition; or (b) other term, provision, covenant, or condition.

21. Severability

If any term or condition of this Contract is held invalid or unenforceable for any reason, to the extent permitted by law, the remaining provisions of this Contract shall continue in full force and effect.

22. Applicable Law; Compliance with Laws

This Contract shall be governed by, construed, and enforced in accordance with the laws of the State of California. Seller warrants that it will comply with all applicable federal, state, and local laws, including, but not limited to, any statute, rule, regulation, judgment, decree, order, or permit applicable to its performance under this Contract, including any employment, health, or safety agency regulations as well as District policies and procedures.

23. Termination

The District shall have the right to terminate this Contract following thirty (30) days' written notice under the following circumstances:

- a. For Convenience. In the case of termination by the District for convenience, Seller shall submit all invoices for amounts due from the District within thirty (30) days after the effective date of termination. Seller shall maintain complete and accurate records supporting Seller's claimed costs and shall make such records available to the District upon request. If the District terminates this Contract pursuant to this Section 24(a), in no event shall Seller be entitled to any amount beyond monies paid and/or owed for work performed by Seller up to the date of the termination notice. Seller shall have no claim for damages, or loss of profit, arising out of any termination for convenience.
- b. For Default. The District may terminate this Contract for any of the following circumstances:

- i. If Seller has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or
- ii. If Seller fails to perform the work, provide the services, or deliver the Deliverables in accordance with the statement of work, scope, and performance requirements or delivery schedules specified herein; or
- iii. Fails to perform any of the other terms of this Purchase Order and does not cure such failure within a period of ten (10) days following receipt of notice from the District specifying such failure of performance.

If the District terminates this Contract pursuant to this Section 24(b), the District may procure, upon such terms and in such manner as it may deem appropriate, in its sole discretion, supplies or services similar to those so terminated. In such a case, Seller shall be liable to the District for any excess costs reasonably incurred by the District for such similar supplies or services.

24. Entire Agreement

This Contract constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement and any contrary provisions on packing slips, invoices, or other documents submitted by the Seller. Any conflict or inconsistency among the components of this Contract shall be resolved by giving precedence in the following order: (1) these Contract Terms and Conditions; (2) all other attachments incorporated into the Contract by reference; and (3) Contractor's offer made in response to the District's solicitation to supply Deliverables to the District.

25. Modification of Contract

No term or condition of this Contract may be terminated, modified, rescinded, or waived except through a writing signed by both Parties.