

# Purchase Order Terms and Conditions

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**ACCEPTANCE.** This document sets forth the general terms and conditions that apply to every Purchase Order issued by the San Joaquin Delta Community College District (“**District**”). The term “**Purchase Order**” means the document entitled “Purchase Order” that the District issued to the Vendor. The term “**Vendor**” means the seller or supplier of goods or services named in the Purchase Order and all individuals, officers, directors, employees, agents, contractors or subcontractors of the Vendor. Performance under this Purchase Order by Vendor constitutes acceptance of the Purchase Order by Vendor. A Purchase Order, along with the terms and conditions stated herein, constitute a legally binding contract between the District and Vendor. Any additional or conflicting terms and conditions proposed by Vendor are rejected and deemed a material alteration of this Purchase Order. However, if the goods or services named in the Purchase Order are also governed by a separate written agreement signed by the District and Vendor, the terms of that agreement will govern over any inconsistent or conflicting provision in this Purchase Order Terms and Conditions.

**ADVERTISING.** Vendor will not use the name of the District, its officers, directors, employees, or agents, in advertising, social marketing campaigns, publicity releases or otherwise without securing the prior written consent of the District in each instance.

**ASSIGNMENT.** Any subletting or assignment of the Purchase Order, by operation of law or otherwise, without the prior written consent of the District, will be void.

**AUDIT.** District has the right to review, audit, and to copy any of Vendor’s or Vendor’s subcontractors’ records and supporting documentation pertaining to the performance of this Purchase Order. Vendor will maintain such records for a minimum of four years after final payment, unless a longer period of records retention is specified by the District. Vendor will allow the District access to these records during normal business hours and will allow interviews of any employees who might reasonably have information related to such records. Vendor must include the District’s right to audit records and interview staff in all subcontracts.

**CHANGES.** District may direct changes to this Purchase Order in writing, including additions or deletions to the quantities ordered, or in the specifications or drawings. If any such change causes an increase or decrease in the cost of, or time required for, Vendor’s performance hereunder, an equitable adjustment will be made in the price or schedule. If Vendor believes it is entitled to any such equitable adjustment as a result of any change directed by the District, Vendor must submit a written request for such adjustment to District no later than ten days from the date of Vendor’s receipt of any such changes directed by District. Equitable adjustments for any claims or changes under this Purchase Order will be made by written change order or amendment to this Purchase Order. Nothing contained herein will excuse Vendor from proceeding with the change prior to negotiation of the terms of any requested adjustment. Changes to this Purchase Order will not be binding on the District, except when confirmed in writing by the authorized District representative.

**CONFLICT OF INTEREST.** No officer, employee, or any other agent of the District is allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract, bid or other procurement activity of the District in violation of applicable Laws, as that term is defined below. Additionally, no officer, employee, or any other agent of the District is allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof. The District reserves the right to require an affidavit from the Vendor to disclaim in writing any conflict of interest. Furthermore, the District reserves the right to reject any Vendor if any such conflict is discovered, and subsequently procure the goods or services from another vendor.

**DISPUTES.** Vendor must continue its duties and obligations under this Purchase Order without delay during any dispute. If any dispute or controversy arises between the parties in connection with this Purchase Order or its subject matter, the parties may participate in good faith in mediation and agree to equally share all mediator fees. If the parties are unable to resolve the dispute or controversy through mediation, the Parties will submit the pending dispute or controversy to final and binding arbitration to be held in San Joaquin County, California. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Purchase Order, the arbitrator’s award must be supported by law and substantial evidence. By agreeing to this binding arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available, if a claim were determined by litigation in court,

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including, without limitation, the right to seek or obtain certain types of damages precluded by this arbitration provision, the right to a jury trial, certain rights of appeal, the right bring a claim as a class member in any purported class or representative proceeding, and a right to invoke formal rules of procedure and evidence. The prevailing party will be awarded all reasonable attorneys' fees, expert witness fees, and other litigation expenses, expended or incurred in such arbitration or litigation, unless the laws related to the claim that the party prevailed on preclude a court from awarding attorneys' fees and costs to the prevailing party. The provisions of this paragraph will apply during the term of this Purchase Order and survives after the termination or expiration of this Purchase Order.

**ELECTRONIC AND INFORMATION TECHNOLOGIES ACCESSIBILITY.** Vendor hereby warrants that any goods or services, including any hardware or software products or services, to be provided under the Purchase Order comply with the accessibility requirements of § 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. Vendor will promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention and will designate a contact person for expediting any complaints under California Government Code § 11135. Vendor further agrees to indemnify, defend, and hold harmless the District, the Chancellor's Office of the California Community Colleges, and any California Community College using the Vendor's products or services from any claim arising out of its failure to comply with these requirements. Failure to comply with these requirements will constitute a breach and be grounds for termination of the Purchase Order. Vendor and any of its subcontractors will provide credible, third-party verification demonstrating compliance of product accessibility per current requirements of the revised US § 508 Standards or Web Content Accessibility Guidelines 2.0, Level AA (WCAG 2.0, AA) upon initial deployment and with each major subsequent release prior to production use by faculty, staff, or students. Appropriate documentation detailing the testing, including evaluation results, will be current and maintained.

**FORCE MAJEURE.** Vendor will not be liable for delays in performing its obligations under this Purchase Order to the extent the delay is caused by an unforeseeable condition which is beyond Vendor's reasonable control and without Vendor's fault or negligence. Natural disasters, such as earthquakes or floods, as well as government actions, acts of civil or military authorities, fires, strikes, epidemics, war or riot are examples of events which will be excusable for being beyond Vendor's reasonable control, provided that Vendor provides the District with satisfactory evidence of the cause and extent of the delay.

**GOODS FURNISHED BY DISTRICT.** Vendor assumes all liability for any goods furnished by the District to the Vendor in connection with this Purchase Order. Vendor must pay for damage or loss of goods in Vendor's custody. By furnishing goods to Vendor, the District's title to such goods does not vest in Vendor.

**GOVERNING LAW.** This Purchase Order will be governed under and construed pursuant to California law, and venue for any legal action arising from or relating to this Purchase Order will be in the San Joaquin County Superior Court, and no other place. By accepting this Purchase Order, Vendor agrees to waive any right to transfer an action to a venue outside San Joaquin County pursuant to Code of Civil Procedure § 394.

**HEALTH & SAFETY.** All goods must comply with all Laws, as defined below, regarding health and safety, including, but not limited to, OSHA. All shipments of hazardous and toxic material must include Safety Data Sheets (SDS) pursuant to OSHA's Hazard Communication Rule 29 CFR § 1919.1200 and 8 CCR § 5194.

**INDEMNITY.** To the fullest extent permitted by law and subject to any applicable limitations in Civil Code §§ 2782 and 2782.8, Vendor will hold harmless, defend, and indemnify District, its Board of Trustees, officers, agents, employees, volunteers, and subcontractors, from and against any and all liability, claims, suits, demands, causes of action, damages, losses, injuries, and expenses, including reasonable attorneys' fees, whether actual or alleged, caused in whole or in part by any act or omission of the Vendor, any of its agents, employees, volunteers, and subcontractors, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of the District. Vendor assumes full responsibility for the acts or

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omissions of its employees, subcontractors, or agents as they relate to the services to be provided under the Purchase Order.

**INDEPENDENT CONTRACTOR.** In the performance of a Purchase Order, Vendor is an independent contractor, and not an officer, employee, or agent of the District. By accepting this Purchase Order, Vendor agrees that it is free from the control and direction of the District in the performance of the services under this Purchase Order; it performs work that is outside the usual course of the District's business; and it is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the performance of this Purchase Order. Vendor will perform the services and obligations under the Purchase Order according to the Vendor's own means and methods of work which shall be in the exclusive charge and under the control of Vendor, and which will not be subject to control or supervision by the District except as to the results of the work. All persons employed by Vendor in connection with this Purchase Order will be Vendor's employees and not employees of District in any respect. Neither Vendor, nor its employees, are entitled to participate in any health, retirement, or similar employee benefits from the District. Vendor is not authorized to make any representation, contract or commitment on behalf of the District.

**INSPECTION AND ACCEPTANCE.** Inspection and acceptance will be at the receiving destination, unless otherwise provided by the District. Regardless of the Free On Board ("F.O.B.") designation, the Vendor will bear all risk of loss, injury, delay or destruction of goods ordered herein which occur prior to delivery and such loss, injury, delay or destruction will not release the Vendor from an obligation hereunder.

**INSURANCE REQUIREMENTS.** The Vendor and its officers, employees, agents, and subcontractors will, at their expense, maintain and comply with Insurance Requirements listed on the District's website at: <https://www.deltacollege.edu/campus-offices/administrative-services/purchasing/purchasing-resources>.

**INTELLECTUAL PROPERTY.** Any work product generated under the Purchase Order is work made for hire ("**Work Product**") and District will exclusively own, in perpetuity and worldwide, all rights to and flowing from the Work Product. Vendor assigns to District any present or future rights in the Work Product, and District will have all right, title, and interest in the matters, including the right to secure and maintain the copyright, trademark, or patent of the matters in the name of the District. Vendor consents to the use of Vendor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

**INVOICES AND PAYMENT.** Unless otherwise specified, Vendor will render invoices for goods or services provided to the District's Accounts Payable department at [accountspayable@deltacollege.edu](mailto:accountspayable@deltacollege.edu). All invoices must indicate the assigned Purchase Order number. Invoices must also conform to the line items and unit prices stated in the Purchase Order. Unless otherwise noted, the District will make payments of undisputed invoices after Vendor has completed its obligations under the Purchase Order and the authorized District representative grants payment approval. The District will not be responsible for late payment charges. The District requires a one-time submittal of an IRS Form W-9 for taxpayer identification. Any monies due the District from Vendor can be set off from any monies due Vendor from the District whether or not under the Purchase Order.

**LAWS.** Vendor must comply with all applicable federal, state, and local laws, regulations, and rules, including District regulations (collectively, "**Laws**"), such conformity includes compliance with federal sanctions, and Vendor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities in providing the goods or services required by the Purchase Order.

**LICENSES AND PERMITS.** Vendor and all of its employees or agents will secure and maintain in force such licenses and permits as are required by law, in connection with furnishing of goods and services listed in the Purchase Order.

**LIMITATION OF PAYMENTS.** The District will not be liable for goods or services furnished without an authorized Purchase Order. Prices and amounts shown in the Purchase Order are the maximum amounts authorized under the Purchase Order, unless amended by the District as set forth in CHANGES, above.

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**NON-DISCRIMINATION.** It is the policy of the District that in connection with this Purchase Order, there be no discrimination against any prospective or active employee engaged in the work, or against any other person, on the basis of race, color, age, ancestry, national origin, sex, religious creed, marital status, or physical or mental disability, or sexual orientation or any other category protected by Laws, and therefore Vendor and Vendor's subcontractors agree to comply with all applicable anti-discrimination Laws.

**PAYMENT DISCOUNTS.** In connection with any discount offered, the payment discount period will begin on the date of delivery and acceptance at destination. The District will be entitled to the maximum educational discount or any other discount offered.

**PREVAILING WAGE.** If the Purchase Order requires services that are subject to prevailing wage requirements pursuant to California Labor Code § 1720 et seq., Vendor must comply with the requirements set forth in this paragraph. Vendor and Vendor's subcontractors must pay no less than the latest prevailing wage rates to all workers. These prevailing wage rates are on file with the District and are available online at <http://www.dir.ca.gov/DLSR>. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. Additionally, the District may not enter into a contract with a Vendor, without proof that the Vendor is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions. The work will be subject to compliance monitoring and enforcement by the DIR, pursuant to Labor Code § 1771.4.

**PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Every provision of law required to be inserted in this Purchase Order is deemed to be inserted, and the Purchase Order will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Purchase Order will be deemed amended accordingly.

**SEVERABILITY.** If any provision of this Purchase Order, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

**SHIPPING.** Unless otherwise specified in the Purchase Order, Vendor will be responsible for delivery and will pay all related shipping charges, including prepaid freight charges. All goods are to be shipped prepaid, F.O.B. destination. Time and manner of delivery are material factors in proper performance under the Purchase Order. If the District has given specific written authorization to ship goods F.O.B. shipping point, the Vendor will prepay all shipping charges, route goods the least expensive way (unless authorized by the District to use other means) and bill the District for the actual shipping, handling, and/or delivery charges paid. Claims or invoices for shipping, handling, and/or delivery charges that are not properly supported by either the original or a copy of the prepaid bill of lading will not be paid. The Purchase Order number must be clearly referenced on each parcel and packing slip. Failure to include the Purchase Order number will cause a delay in inspection and acceptance of the order, resulting in a delay of payment. All items must be prepared and packed for shipment in a manner that will prevent damage in transit. The District reserves the right to reject any shipment, which appears to have suffered damage in transit.

**TERMINATION FOR CAUSE.** District may terminate this Purchase Order, in whole or in part, based on Vendor's material default under the terms of this Order, including (1) failure to make delivery or perform within the time specified herein or any extension thereof; or (2) delivery of nonconforming goods; or (3) failure to perform in accordance with the provisions of this Purchase Order or any written agreement executed in relation to this Purchase Order, or for any other material default by Vendor. In the event of any such default, District will provide Vendor with ten calendar days written notice of its intent to terminate for cause. Vendor will be entitled to payment for all goods or services satisfactorily provided up to the effective date of termination, except that the District may deduct from that payment the amount of costs the District incurred, if any, because of Vendor's breach of the Purchase Order. The rights and remedies of District provided in this clause are not exclusive, and are in addition to any other rights and remedies provided by law or under this Purchase Order.

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**TERMINATION FOR CONVENIENCE.** District may terminate this Purchase Order, in whole or in part, at any time, by providing ten calendar days written notice to Vendor. If District elects to terminate the Purchase Order for convenience, it will pay Vendor for goods or services satisfactorily provided up to that date.

**VARIATION IN QUANTITY OR QUALITY.** The District will not accept variations in the quantity or quality of any item or service required by a Purchase Order. All goods and services must be as specified in the Purchase Order. No substitution or variance from the specifications will be allowed. Goods, which are not provided in accordance and conformity with the specifications or guidelines, will be rejected and promptly removed from the District's premise at the Vendor's expense.

**WAIVERS.** District's waiver of any breach of any term, covenant, or condition in this Purchase Order will not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, regardless of the character of any such breach. No waiver is effective unless in writing signed by the party waiving the obligation or breach.

**WARRANTY.** Vendor warrants that all goods furnished and/or services performed under a Purchase Order will be provided in accordance with District specifications, free from defects, for a period of one year following final payment under the Purchase Order. Vendor guarantees that all goods provided under a Purchase Order are new and free from faulty design or workmanship. If upon inspection of the goods or services performed, any item or work is found defective or of inferior quality, Vendor will be responsible, at its sole expense, for replacing or correcting the defective or inferior quality item or work. Payment for any item or work prior to inspection will not be construed to be an acceptance of unsatisfactory or defective items or work. Vendor will reimburse the District for any amount paid to Vendor, including shipping charges, if any, incurred by the District for defective or inferior quality items or work.

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