
GENERAL TERMS AND CONDITIONS OF THE PURCHASE ORDER

1. **ACCEPTANCE OF ORDER:** California Pacific Charter School (hereinafter “Buyer”) offers to Contractor, Seller or Supplier (hereinafter “Seller”) this purchase order (hereinafter “Order”). Acceptance by Buyer is strictly limited to its terms. Buyer shall not be bound by any term or condition whatsoever that is different from or in addition to the terms and conditions of this Order, whether or not such term or condition will materially alter this Order. Seller's commencement of performance or acceptance of this Order in any manner shall be considered acceptance of this Order as written.
2. **DATE/TERM:** The effective date of this Order is the requested date of the order and the term shall be the month(s) listed on the Order and shall be between August 28, 2020 and June 4, 2021 unless terminated earlier per terms and conditions below.
3. **NO EMPLOYMENT RELATIONSHIP:** Notwithstanding any language in these Terms and Conditions to the contrary, the parties intend that their relationship will be only as set forth in this Order. Neither party nor any employee, agent, officer, or independent contractor of or retained by either party shall be considered an agent or employee of the other party for any purpose or entitled to any of the benefits that the other party provides for any of the other party’s employees. Furthermore, each party acknowledges that it shall be responsible for all federal, state and local taxes for it and its employees and reports relative to fees under this Order and each party will indemnify and hold the other party harmless from any failure to file necessary reports or pay such taxes.
4. **SPECIFICATIONS:** All Item(s) ordered to specifications shall comply with such specifications current as of the date of this Order unless otherwise specified by Buyer.
5. **PERFORMANCE REQUIREMENTS:** Quality Level - Seller shall maintain a quality level of zero defects on all Item(s) shipped to Buyer (hereinafter “Items”).
6. **CHANGES:**
 - 6.1 Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, samples or other description to which the Item(s) are to conform, in methods of shipment and packaging, or place of delivery. If such change causes an increase or decrease in the cost of, or the time required for, the performance of any

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part of the work under this Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and this Order modified accordingly. Any claim for an equitable adjustment must be made within thirty (30) days of the receipt of such notice. The equitable adjustment shall be made based on negotiations between Buyer and Seller. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this Order as changed. Seller shall make no substitutions or changes to the form, fit, or function of the Item(s) furnished to Buyer by Seller hereunder without prior written notice and approval in writing from Buyer.

- 6.2** The review or approval by Buyer of any work hereunder or of any designs, drawings, specifications or other documents prepared hereunder shall not relieve Seller of any of its obligations under this Order, nor excuse or constitute a waiver of any defects or nonconformity in any Item(s) furnished under this Order, nor change, modify or otherwise affect any of the provisions of this Order, including, but not limited to, the prices and delivery schedules contained herein.

7. INVOICES, TERMS, AND PAYMENT:

- 7.1** All invoices for Item delivered and Service performed shall be sent to Buyer by one of the following methods of the Sellers choosing not longer than 5 days after shipment of item(s) or delivery of service(s):
- a. Emailed to California Pacific Charter School, Accounts Payable Department at epdservices@cal-pacs.org.
 - b. Submitted via OPS vendor login on Seller's account (Service vendors only)..
- 7.2** Seller agrees to cancel any item listed as backordered or out of stock at the time order is submitted, and will remove said items from invoice prior to sending to Buyer.
- 7.3** Seller agrees that if it has failed to send invoice as outlined in section 7.1, Buyer may generate an invoice on Sellers behalf corresponding to the item(s) and/or service(s) on the Order.
- 7.4** Seller shall provide not less than 30 days for Buyer to provide payment of Order.
- 7.5** Seller shall be paid by ACH and agrees to complete Sellers profile in order to execute ACH payments. Buyer may mail payment to Seller. Seller agrees that a \$35 fee will be charged for any request to void and reissue lost, stolen, or misplaced checks.

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8.1 Seller shall warrant that Items supplied by Seller are new unless specifically approved in advance by Buyer in writing. Items shall not be surplus, reconditioned, recovered or remanufactured unless approved by Buyer in writing in advance.

8.2 Seller shall reimburse Buyer for all expenses associated with correcting any defect, failure, authenticity and conformance of the Item(s) including repair, refurbishment, exchange and any other costs associated with correcting the defect, failure, authenticity and conformance at either the Buyer's location or at the Buyer's Customer location.

8.3 Any other specific product or service warranty shall be expressly included in the manufacturer's standard publications, proposal or quotations.

9. TERMINATION: Buyer shall have the right to terminate this Order following a written notice to Seller as follows:

9.1 For Convenience – Buyer may terminate this Order for convenience at any time with written notice to Seller. In case of such termination for convenience Seller shall submit all invoices for amounts due within five (5) days after the date of such termination notice. Seller shall maintain complete and accurate records to support Seller's claimed costs. Such records shall be available for verification through audit and analysis by the Buyer. The Buyer's maximum liability shall be limited to the following:

- a. In no event shall Seller be entitled to any amount above monies paid and/or owed for Services performed up to the date of such termination notice.
- b. Seller shall have no claim for any consequential damages, including but not limited to loss of profit, arising out of any such termination for convenience.

9.2 For Cause — The Buyer may, terminate this Order for cause immediately upon written notice to Seller, for any of the following circumstances:

- a. If Seller fails to perform the Services competently or commits acts or omissions which could, in Buyer's sole and unfettered discretion, expose Buyer to potential legal or administrative exposure;
- b. If Seller fails to deliver the Item in accordance with the statement of work, scope, performance requirements or delivery schedules specified herein or any extension thereof, or which, in Buyer's sole and unfettered discretion, are

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otherwise defective or could expose Buyer to potential legal or administrative exposure; or

- c. If Seller fails to perform any of the material terms of this Order. In the event of any of the above and subject to Buyer's sole and unfettered discretion, if Seller's failure is subject to cure, Seller shall have ten (10) calendar days (or such longer period as the Buyer may authorize in writing) to cure such failure.

10. LIMITATION OF LIABILITY/DISCLAIMER OF DAMAGES: Buyer's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the Item (or Services) per the Order issued. FURTHER, IN NO EVENT SHALL BUYER BE LIABLE FOR PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ITS ACTS OR OMISSIONS HEREUNDER.

11. RELEASE OF NEWS INFORMATION AND ADVERTISING: Seller shall not, without the prior written consent of Buyer in advance:

- a. make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this Order, or
- b. in any manner advertise or publish the fact that Buyer has placed this Order.

12. SELLER'S DATA:

12.1 Seller agrees that all data or information, regardless of form and including but not limited to tapes, photo prints and other graphic information, furnished with Item(s) or required to be furnished by this Order, together with any information furnished orally, shall be free from proprietary restriction. Data for which a restrictive use marking is authorized herein or by special agreement, may be duplicated and used by Buyer as required.

12.2 To the extent that Seller establishes a claim to statutory copyright in any data first produced and furnished in the performance of this Order, Seller grants the Buyer a royalty-free, perpetual, nonexclusive, irrevocable, worldwide license to publish, distribute, translate, duplicate, exhibit, or perform any such data copyrighted by the Seller with the right to grant sublicenses.

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12.3 Seller agrees to grant a license for the benefit of Buyer of the same scope set forth in Section 12.2 to any technical data delivered under this Order that are copyrighted by Seller.

12.4 Seller further agrees not to knowingly include any material copyrighted by others in technical data delivered under this Order without first obtaining, at no additional cost and for the benefit of Buyer, a license therein.

13. LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE (AS APPLICABLE):

Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment or Item(s) shall remain the sole and exclusive property of Seller. Seller grants the Buyer a royalty-free, perpetual, worldwide, irrevocable, nonexclusive license to use such software only in or with the equipment or Item(s). Upon such transfer of software and equipment or Item(s), Buyer may make and distribute archival copies of the software.

14. FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA):

If Seller requires access to student data for the performance of Services, Seller agrees to comply with the Family Educational Rights and Privacy Act of 1974 (FERPA), and all requirements imposed by or pursuant to applicable regulations of the Department of Education and the Buyer to the end that the rights and privacy of the students enrolled in the Buyers schools are not violated, as follows. No student data will be provided to the Vendor other than student name and grade data that are included on the Order. Any additional information must be collected directly from the student's parent/guardian. Seller recognizes and agrees that such access will be extended in reliance on representations made in this assurance, and that the Buyer shall have the right to revoke such access (including return of all physical forms of such data and destruction of all such electronic data) immediately upon learning of noncompliance by Seller. This assurance is binding Seller on and such persons as may be employed by Seller to assist in any phase of the contractual obligation to the Buyer, including independent contractors. The individual student data will be destroyed when no longer needed for the purpose(s) for which they were obtained.

15. INDEMNIFICATION: Seller shall defend, hold harmless and indemnify the Buyer, its Board members, administrators, employees, agents, attorneys and volunteers ("Buyer") from and against all claims, injuries, damages, lossessuits, or demands, including for attorney's fees, arising out of or in connection with the performance of this Order except for injuries and

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damages caused by the willful misconduct or sole gross negligence of Buyer. The indemnity requirements provided herein shall survive the termination or expiration of the contract.

16. INSURANCE:

16.1 General: Seller shall procure and maintain for the duration of the Order, at its sole expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with Items supplied and/or Services delivered to Buyer.

16.2 Minimum Scope of Insurance: Seller shall obtain insurance of the type described below:

- a. Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) and include products coverage with limits of at least \$100,000 per occurrence, \$100,000 general aggregate and a \$1,000,000 products liability aggregate limit.
- b. For Sellers categorized by Buyer in its sole and unfettered discretion as providing high risk services, Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) and include products coverage with limits of at least \$1,000,000 per occurrence, \$1,000,000 general aggregate.
- c. Buyer shall be named as an additional insured under Seller's Commercial General Liability insurance policy using ISO Additional Insured-Sellers Endorsement CG 20-15 or a substitute endorsement providing equivalent coverage.

16.3 Other Insurance Provisions:

- a. Seller's coverage shall be primary insurance as respects Buyer. Any insurance, self-insurance or insurance pool coverage maintained by Buyer shall be excess of Seller's insurance and shall not contribute with it.
- b. Seller's insurance shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior written notice provided to Buyer.

16.4 Acceptability of Insurers: Insurance is to be placed with insurers authorized to do business in California with a current A.M. Best's rating of no less than A-, VII, unless otherwise acceptable to Buyer.

16.5 Verification of Coverage: Seller shall furnish Buyer with original certificates and endorsements, including but not limited to the additional insured endorsement,

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evidencing compliance with the insurance requirements above before Items or Services will be accepted by Buyer.

16.6 Special Risks or Circumstances: Buyer reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

17. FORCE MAJEURE: The Seller shall be excused from late and non-delivery of goods hereunder during the time and to the extent that it is prevented from obtaining, delivering or performing in the customary manner by act of God, fire, strike, partial or total interruption of, loss or shortage of transportation facilities, lockout, commandeering of raw materials, products, or facilities by the government, when satisfactory evidence thereof has been presented to the Buyer providing it is satisfactorily established that the late or non-delivery is not due to the fault or negligence of the party not performing.

18. ASSIGNMENT: Buyer may assign in whole or in part any of its rights and obligations under this Order without the prior consent of the other party. Seller shall not assign any part of its rights or obligations under this Order without the advance express written consent of Buyer. The terms and conditions of this Order shall bind any permitted successors and assigns of either party.

19. COMPLIANCE WITH LAWS: Seller warrants that it will comply with all 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 Order including any employment, health or safety agency regulations.

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- 20. REMEDIES, NON-WAIVER AND INVALIDITY:** Any and all failures, delays, or forbearances of either Party in insisting upon or enforcing at any time or times any of the terms and conditions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment of any such terms and conditions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. The invalidity in whole or in part of any term and condition contained herein shall not affect the validity of any other term and condition. The rights and remedies provided Buyer pursuant to these terms and conditions shall be cumulative and in addition to any other rights and remedies provided by law or equity. A waiver of a breach of any term and condition hereof shall not constitute a waiver of any other breach.
- 21. APPLICABLE LAW:** This Order shall be governed by, construed and enforced in accordance with the laws of the State of California.
- 22. WAIVER:** This Order shall not be amended or modified, nor shall any waiver of any right hereunder be effective unless set forth in a document executed by duly authorized representatives of the parties. The failure to exercise any right under this Order shall not be deemed to be 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 herein contained shall not be deemed to be a waiver of any: a) subsequent breach of such term, provision, covenant or condition; or b) other term, provision, covenant, or condition.
- 23. SEVERABILITY:** If any term or condition of this Order is held invalid or unenforceable for any reason, the remaining provisions of this Order shall continue in full force and effect as if this Order had been executed with the invalid portion eliminated, provided the effectiveness of the remaining portions of this Order will not defeat the overall intent of the parties. In such a situation, the parties agree, to the extent legal and possible, to incorporate a replacement provision to accomplish the originally intended effect.

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24. ENTIRE AGREEMENT: This Order is intended by the Buyer and Seller as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No Amendment or change of any kind shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer.

THE FOLLOWING PROVISIONS ARE REQUIRED IN PURCHASE ORDERS FOR SERVICES THAT ARE RENDERED IN A LIVE IN-PERSON OR LIVE VIRTUAL SESSION, CLASS, LAB, OR OTHER APPOINTMENT WHERE STUDENTS AND INSTRUCTORS, TEACHERS, STAFF, OR OTHER VENDOR PERSONNEL ARE TOGETHER.

25. FINGERPRINT CLEARANCE: Under Education Code Section 45125.1, Seller including all employees, agents, independent contractors, and subcontractors performing Services under this Order shall obtain and provide fingerprint background clearance through the California Department of Justice (DOJ) screening process to Buyer prior to performing any Services under this Order, Seller will ensure that it and its employees, agents, independent contractors, and subcontractors performing Services under this Order will not allow any person to provide services or otherwise interact with students whom, per the Buyer, may be deemed to compromise student safety or the integrity of the school. Sellers using their own Originating Agency Identification (ORI) number to provide screening service shall forward all reports received from the DOJ for individuals in contact with the schools students.