

# THE DISTRICT BOARD OF TRUSTEES OF ST JOHNS RIVER STATE COLLEGE, FLORIDA

## PURCHASE ORDER TERMS AND CONDITIONS

**ENTIRE AGREEMENT:** The following terms and conditions govern the purchase between the Seller (seller, vendor or provider of the goods or services) and the Buyer (St Johns River State College, SJRState). Any Seller terms and conditions included with the Seller's quote, invoice or any other document provided by Seller shall be of no effect. Buyer's acceptance of Seller's goods shall not be deemed as acceptance of such terms. Whether construed as an offer, acceptance, or confirmation, these terms and conditions of purchase include all documents and exhibits attached hereto and all other terms incorporated by reference herein. Any changes to terms or conditions shall be coordinated through the Purchasing Department of St Johns River State College.

**WEBSITE EXCLUSION:** The Buyer Expressly states that it will not be bound by any content on the Seller's website, even if the Seller's documentation specifically references that content and attempts to incorporate it into any other communications, unless the Buyer has actual knowledge of such content and has expressly agreed to be bound by it in writing that has been manually signed by an authorized representative of the Buyer.

**ACCEPTANCE:** This PO constitutes acceptance of your offer to sell the goods/services as quoted. If Seller refuses to accept this order exactly as written, they shall return it immediately with a written explanation. Delivery of goods shall indicate acknowledgement and acceptance of this order.

**CONTRACT/ITB/RFP/RFQ/ITN:** When a formal contract has been entered into by SJRState and Supplier, the terms and conditions included in the contract shall have preference, and this Purchase Order is used solely to encumber funds and for payment purposes. In the event of any conflict or inconsistency between this Purchase Order and a formal contract and/or an invitation to bid/request for proposal, the order of priority of controlling terms shall be: (i) formal contract; (ii) invitation to bid/request for proposal; (iii) this Purchase Order.

**GOVERNING LAW:** This order shall be governed by the laws of the State of Florida. Venue and jurisdiction for any action based on this order shall rest in Putnam County, Florida. The Buyer is entitled to sovereign immunity except as waived in accordance with Section 768.28, Florida Statutes, and nothing contained herein or otherwise associated with this purchase shall constitute any waiver of the protections afforded by Section 768.28, Florida Statute.

**LAWS AND REGULATIONS:** Seller shall comply with all applicable Federal, State and Local laws, statutes and ordinances including, but in no way limited to rules, regulations and standards of the Occupational Safety and Health Act of 1970, and the Federal Contract Work Hours and Safety Standards Act, and the rules and regulations promulgated under these acts. Seller agrees, in connection with performance of this order, not to discriminate against any employee or applicant because of race, ethnicity, religion, color, age, gender, sexual orientation, genetic information, national origin, disability, veteran status or marital status.

**LICENSES:** The Seller, its employees, subcontractors or assigns shall obtain, at its own expense, all licenses, permits, and other authorizations necessary to comply with all applicable federal, state, and local laws and regulations relating to the performance of this purchase order. The Buyer undertakes no duty to ensure such compliance.

**F.O.B.:** All shipments are F.O.B. Destination, unless otherwise stated on the PO. Transportation charges are included in the purchase price, unless otherwise specified. C.O.D. shipments will not be accepted.

**INVOICES:** Seller will submit invoices within thirty (30) days after Seller's performance of the Services or receipt of goods. The Purchase Order number shall appear on all invoices, freight tickets, and correspondence relating to this P.O. The prices paid by the Buyer will be those prices listed in this Purchase Order, unless Buyer offers a prompt payment discount within its Proposal or on its invoice. The Buyer has the right to adjust or return any invoice reflecting incorrect pricing.

Invoices must be mailed to the address stated on the PO. No extra charges will be allowed for packaging, handling, boxing, insurance, delivery, transportation, assembling, in-place installation, etc., unless otherwise specified.

**PAYMENT:** Payment terms are Net Thirty (30) Days after receipt of a valid invoice. On any discount, time will be computed from date of satisfactory delivery of goods, or from date correct invoice received, whichever is the later date.

**TAX EXEMPT STATUS:** Seller acknowledges that Buyer is a tax-exempt institution and does not pay Federal Excise or Florida Sales taxes on the direct purchases of tangible personal property.

**DELIVERY:** Note PO number on all shipments and documents. Buyer will not be responsible for any goods delivered without reference to the PO number. Buyer assumes no liability for goods shipped to destinations other than those shown on the PO. Partial deliveries/payments shall not be made, per FS 672.307, unless otherwise specified on the PO or prior oral or written agreement has been made with the SJRState Purchasing Department.

**RECEIVING:** Central Receiving is open to receive shipments from 8:00 a.m. to 5:00 p.m., Monday through Friday. Deliveries will not be accepted on holidays or other college closures.

**INSPECTION AND APPROVAL:** Buyer reserves the right to expedite, inspect and test any of the goods or work covered by this purchase order prior to shipment. All goods are also subject to Buyer's inspection and approval upon arrival. If rejected, pickup/return of the goods will be at Seller's expense. When services are rendered to the Buyer, the Buyer shall have thirty (30) days after delivery of the services to determine whether the services conform to the standards specified in the solicitation and this Purchase Order. If Seller delivers nonconforming Services, the College may, at its option and at Vendor's expense: (i) return the product for a full refund; (ii) require Vendor to promptly correct or re-perform the nonconforming Services/work product; or (iii) obtain replacement Services from another source at Seller's expense.

**REVISIONS:** Revisions to this order are not authorized unless a written Revision is issued by the SJRState Purchasing Department.

**PRICING:** If unit price is omitted on the order, except where the PO is given in acceptance of quoted prices, it is agreed that Seller's price will be the lowest prevailing market price, and in no event is this order to be filled at higher prices than previously quoted or charged, without Buyer's written consent.

**SAFETY:** A Material Safety Data Sheet (MSDS) must accompany all chemical items delivered against this PO.

**STOP WORK ORDER:** Buyer may, at any time, by written notice to Seller, stop all or any part of the work. Upon receipt of such notice, Seller shall take all reasonable steps to minimize the incurrence of costs during the period of work stoppage. Buyer may subsequently either cancel the stop work order resulting in an equitable adjustment in the delivery schedule and/or the price or terminate the work in accordance with the provisions of the order.

**FAILURE TO PERFORM:** Failure to make delivery by or before the required delivery date stated on the PO shall constitute cause for cancellation of the order, or any part thereof, without prejudice to its other rights. Seller's failure to adhere to any term or condition of this order may result in cancellation with 48 hours' notice. Seller agrees that Buyer may return part or all of any shipment made and may charge Seller for any loss or expense sustained as a result of such failure to deliver.

**E-VERIFY:** Seller warrants and certifies it has registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees and agrees to abide by Sections 448.09 and 448.095, Fla. Stat. Seller shall not subcontract as to the labor, supplies, or services described herein (if any) without prior approval from Buyer. Seller shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has verified the work eligibility status of subcontractor's employees.

**WARRANTY:** By accepting this order, Seller warrants that the goods furnished hereunder shall be free from latent and patent defects and in full conformity with the specifications, drawings and/or samples. Seller also warrants that the goods are fit for Buyer's purpose if indicated hereon or in any documents attached or made a part hereof by reference or if known to Seller. These warranties shall survive acceptance of and payment for goods received. Failure of Buyer to reject said goods shall not constitute a waiver of any of these warranties. Seller shall hold harmless Buyer, its customers and any users, from any loss, damage and expense whatsoever, including attorney's fees and court costs which may be suffered by breach of any of these warranties.

**VIOLATION:** Seller represents and warrants that no Federal or State Statute or regulation or municipal ordinance has been or will be violated in the manufacturing, sale, and/or delivery of any good or service sold and delivered hereunder. If such violation has or does occur, Seller will indemnify and render harmless Buyer from all loss, penalties, or the payment of all sums of money on account of such violation.

**PATENTS, TRADEMARK, COPYRIGHT:** Seller agrees to indemnify and hold harmless Buyer, its officers, employees, agents or representatives using the goods specified herein from any loss, damage or injury arising out of claim or suit at law or equity for actual or alleged infringement of letters patent, copyright, trademark, or other intellectual property right by reason of buying, selling or using the goods supplied under this order, and will assume the defense of any and all suits and will pay all costs and expenses incidental thereto.

**OWNERSHIP OF INTELLECTUAL PROPERTY:** The Buyer and Seller agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless agreed upon by the parties in writing. All deliverables, documents, records, programs, data, articles, memoranda, and other materials specifically created or manufactured under this Purchase Order, shall be considered work made for hire, and Seller shall transfer any ownership claim to the Buyer.

**ASSIGNABILITY:** This PO is not transferable or assignable by the Seller to third parties, unless acknowledged and accepted by the Buyer in writing.

**INSURANCE AND INDEMNIFICATION:** Seller agrees to indemnify and hold harmless Buyer, its officers, agents and employees from and against any and all claims and liabilities (including expenses) for injury or death of persons or damage to any property which may result, in whole or in part, from any act or omission on the part of Seller, its agents, employees or representatives, or arising from any Seller-

furnished goods or services, except to the extent that such damage is due solely and directly to the negligence of Buyer. Seller shall carry comprehensive general liability insurance, including contractual and product liability coverage, with minimum limits acceptable to Buyer. Seller shall, at the request of Buyer, supply certificates evidencing such coverage.

**PUBLIC RECORDS LAW:** If and to the extent Seller meets the definition of the term "contractor" as set forth in Chapter 119, Fla.Stat., the terms of this section apply:

## **IF SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BUYER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**Public Records**

**5001 ST. JOHNS AVE**

**PALATKA, FL 32177**

**PublicRecords@sjrstate.edu**

**www.sjrstate.edu/public\_records**

(A) Seller acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this PO are public records subject to the public records disclosure requirements of s. 119.07(1), Fla. Stat., and Article I, s. 24 of the Florida Constitution. Pursuant to s. 119.0701, Fla. Stat., any contractor entering a contract for services with SJRState is required to comply with all relevant public records laws of the State, including to:

(i) Keep and maintain public records required by SJRState to perform the service.

(ii) Upon request from SJRState's custodian of public records, provide SJRState with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Seller does not transfer the records to SJRState.

(iv) Upon completion of the contract, transfer, at no cost, to SJRState all public records in possession of Seller or keep and maintain public records required by SJRState to perform the service. If Seller transfers all public records to SJRState upon completion of the contract, Seller shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Seller keeps and maintains public records upon completion of the contract, Seller shall meet all applicable requirements for retaining public records.

(B) A request to inspect or copy public records relating to SJRState or this contract must be made directly to SJRState. If SJRState does not possess the requested records, SJRState shall immediately notify Seller of the request, and Seller must provide the records to

SJRState or allow the records to be inspected or copied within a reasonable time.

(C) Seller acknowledges that failure to provide the public records to SJRState within a reasonable time may be subject to penalties under s. 119.10, Fla. Stat. Seller further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from SJRState. Seller shall indemnify, defend, and hold harmless SJRState for and against any and all claims, damage awards and causes of action (including, but not limited to, any third-party claims or awards for attorney's fees and costs arising therefrom) arising from Seller's failure to comply with the public records disclosure requirements of s. 119.07(1), Fla. Stat., or by Seller's failure to maintain as confidential or exempt public records that are exempt or confidential and exempt from the public records disclosure requirements.

**BREACH AND REMEDIES:** Any of the following events will constitute cause for SJRState to declare Seller in breach of this Purchase Order:

- (i) Vendor's non-performance of its obligations under this Purchase Order; or
- (ii) Vendor's material breach of any term or condition of this Purchase Order.

Upon Seller's breach the College may:

- (i) exercise any remedy provided by law or equity;
- (ii) terminate this Purchase Order;
- (iii) impose liquidated damages, if liquidated damages are listed in this Purchase Order;
- (iv) debar/suspend Seller from receiving future contracts from the College or the College;
- (v) demand a full refund of any payment that the College has made to Vendor under this Purchase Order for Services that do not conform to this Purchase Order.

**FORCE MAJEURE:** Neither party to this Purchase Order will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The Buyer may terminate this Purchase Order after determining such delay will prevent successful performance of this Purchase Order.

**TIME IS OF THE ESSENCE:** The Services shall be completed within the time stated on the P.O. Seller shall be liable for all reasonable damages to the Buyer as a result of Seller's failure to timely complete the Services required under this Purchase Order.

**STANDARD OF CARE:** The Services of Vendor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services, including the type, magnitude, and complexity of the Services. Vendor shall be liable to the College for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Vendor's claim against the College), to the extent caused by negligent or wrongful acts, errors, or omissions that do not meet this standard of care.

**NONDISCRIMINATION:** The nondiscrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, regarding equal employment opportunity for all persons without regard to race, color, religion, gender or national origin, and the implementing rules and regulations prescribed by the Secretary of Labor, are incorporated herein.

**CONFLICT OF INTEREST:** The purchase hereunder is subject to the provisions of Chapter 112, Fla. Stat. All sellers must disclose the name of any director or agent who is an employee of St Johns River State College.

**CORRECTIONS:** Clerical errors are subject to correction by SJRState Purchasing Department, but the purchase order may not otherwise be modified or rescinded without SJRState Purchasing Department's consent.

**AMERICAN MADE IRON OR STEEL:** If and to the extent this PO is for a "public works project" or supplies for same, as that term is defined in s. 255.0993, Fla. Stat., Seller warrants the goods comply with the aforementioned statute and any iron or steel in the goods is produced in the United States.

**HUMAN TRAFFICKING:** In accordance with s. 787.06, Fla. Stat., each time requested by Buyer, Seller will promptly provide to Buyer an affidavit (in a form acceptable to Buyer) duly executed by Seller's authorized officer or a representative attesting under penalty of perjury Seller does not use coercion for labor or services as those terms are defined in the aforesaid statute.

**FLOW-THROUGH REQUIREMENTS FOR PURCHASES USING FEDERAL FUNDS:** For goods and services procured using federal funds, SJRState may require compliance with additional contractual provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), U.S. Code of Federal Regulations, Title 2 CFR Part 200, the Byrd Anti-Lobbying Amendment, Buy American Act, Clean Air and Federal Water Act, Debarment and Suspension listed on the System for Award Management (SAM), Equal Employment Opportunity, Procurement of Recovered Materials, Prohibition on certain telecommunications and video surveillance services or equipment, and other applicable laws and regulations.

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