

SMC#17FE05 PURCHASE ORDER TERMS AND CONDITIONS

1. GENERAL

- a) As used herein, the term "Buyer" means Santa Monica Community College and its representative who is authorized to issue this Purchase Order ("Order") and the term "Seller" means the vendor on the face of this Purchase Order ("Order").
- b) This Order, when properly signed by buyer's authorized representative and bearing an order number, is the only authorization which will be recognized by Buyer for charges to its account.
- c) This Order, together with any written documents which may be incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written.

2. PACKING AND SHIPPING - Each container, and accompanying packing lists, must show this Order number. Seller shall be responsible for items ordered until all items are received by buyer.

3. INSPECTION - All materials or articles ordered and or services performed are subject to final inspection and acceptance. Buyer may reject and return at Seller's expense all materials and articles not conforming to this order. Seller shall bear all risks as to rejected services, supplies, materials, and equipment after notice of rejection. For services performed, Buyer will rely upon Seller to correct, at no additional cost, those services which are determined by Buyer not to have met industry standards.

4. PAYMENTS - The Seller shall be paid, upon submission of proper and acceptable invoices containing the prices stipulated, for items delivered or work rendered which references the PO number herein on the seller's invoice. Seller is to provide a separate invoice for each shipment. No invoice shall be issued prior to receipt of goods of services performed. SMC does not authorize and shall not pay any interest charges.

5. CHANGES - Buyer may at any time, by written notice to Seller, make changes within the general scope of this Order in the following:

- a) drawings, designs, specifications of scope of work;
- b) method of shipping or packing;
- c) place of delivery or location of work;
- d) performance or delivery schedule;
- e) Quantity or type of deliverables.

Should any such change increase or decrease the price of, or the time required for performance of this Order, proper adjustments shall be made in price or delivery schedule or both, as the case may be. No claim by Seller or such adjustment will be valid unless received by Buyer within 5 days from date of such change, or such longer period as may be authorized by Buyer in writing. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of this Order as changed. Seller shall be excused from performance of this order by events, which include natural disasters, wars, riots, civil disorders, sabotage, strikes, labor disputes, freight embargos and severe weather conditions.

6. WARRANTY - Seller warrants that all articles, materials, tools, and equipment used hereunder will be free from defects. Work and services furnished will conform to applicable specification, drawings, samples, descriptions, and be in conformity with applicable professional standards of practice. Warranties shall be in addition to any warranties available under law and any standard warranty and guarantee of Seller and Manufacturer.

7. INSOLVENCY - In the event of bankruptcy or insolvency by Seller or an assignment occurs for the benefit of creditors, the Buyer may terminate this Order.

8. TERMINATION - Buyer may terminate work under this Order, in whole or in part, at any time by written notice. Such notice shall state the extent and effective date of such termination. Upon receipt thereof, Seller shall, to the extent directed by Buyer, stop work under this Order. If this Order is so terminated for convenience of the Buyer, the Seller shall be paid in accordance with the terms of the Order for only those materials or supplies delivered and accepted.

9. LABOR COMPLIANCE/DISPUTES - Seller is held financially responsible for assuring that all State of California and

federal labor code regulations are met in the performance of services required by this Order. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, the Seller will immediately give notice thereof to Buyer.

- 10. TAX** - Except as otherwise expressly provided herein, the contract price is deemed to include all federal, out of state, and local sales/use tax (including fees and charges) which would be payable in respect to this Order. The Buyer is a school district and under Section 170(a) of the Internal Revenue Code retains the rights and privileges of a federal tax- exempt organization. Also, this Buyer under Section 202(a) of the California Revenue and Taxation Code is exempt from property tax.
- 11. DELIVERY/PERFORMANCE** - The Seller shall be responsible for delivery and or performance and all related costs. Delivery will be F.O.B. at the SMC receiving department or to other points in the Santa Monica College District as may be specified. All deliveries and performance shall be made by Seller within the time specified in this Order. Unforeseeable delays beyond the Seller's reasonable control must be approved by Buyer. Buyer reserves the right to cancel Order if not completed within the time and in accordance with the terms specified. Failure by SMC to insist on strict performance of this Order, including terms and conditions, shall not be construed as a waiver of rights at any time hereafter.
- 12. NONDISCRIMINATION** -In connection with the performance of this Order, Seller agrees not to discriminate against any employees or application for employment because of race, religion, sex, age, color, national origin, or disability. Seller shall be in compliance with SECTION 508 OF THE REHABILITATION ACT OF 1973 which states that all electronic and information technology purchased, used, and being supplied must be accessible for use by persons with disabilities. Seller agrees to insert the foregoing provision in all subcontracts hereunder. Seller is allowed to make substitution(s) of DVDs and videos which are not captioned, provided that the Buyer of record is notified and that no one item substituted exceeds a 3% increase to prices called out in the Order.
- 13. RECORDS AND AUDITS** -If the amount of this Purchase Order is \$5,000 or more, Seller agrees that Buyer or any duly authorized representative of Buyer shall, until the expiration or three years after final payment of this Purchase Order, have the right to examine any documents and records of Seller involving transactions related to this Order. Seller further agrees to include a like provision in all subcontracts issued hereunder.
- 14. CODE OF CONDUCT** – Both parties agree that to their knowledge no Board member, officer, or employee of SMC has any financial interest in this transaction, or in the business of the contracting party, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the Buyer.
- 15. INDEPENDENT CONTRACTOR/ASSIGNMENT** -In the performance of this Order, Sellers relationship to SMC shall be that of an Independent Contractor and not an employee, agent, or other representative of Buyer. This order and any duties or obligations under this order may not be assigned by Seller without the prior written consent of SMC.
- 16. SAFETY/INDEMNIFICATION**- The minimum standards required of the Seller are to place the highest priority on safety, and shall maintain a safe working environment during performance of the services. In addition, Seller shall indemnify and render Buyer and its respective officers and employees free and harmless from and against any and all claims, damages, costs, fines, penalties, liabilities, obligations, or violations of law of whatsoever kind, including but not limited to damage or destruction of property and injury or death, resulting from or connected with Seller's performance hereunder or any default by Seller or breach of its obligations hereunder.
- 17. GOVERNING LAW/DISPUTES** - Both parties agree to consent to the laws of the State of California regarding performance of this Order. Disputes shall be decided by binding arbitration with the American Arbitration Association in Los Angeles County, California. The non-prevailing party shall bear all costs and the arbitrator's award.
- 18. ACCEPTANCE OF TERMS AND CONDITIONS** - Delivery of item/product and/or performance by Seller requested by this Order is interpreted by both parties to mean that Seller has accepted all terms and conditions indicated herein.
- 19. INSURANCE REQUIREMENTS** -Seller, at its expense, will carry and maintain, during the period of performance and the Warranty period, State required Worker Compensation Insurance and Employer's Liability Insurance for its employees with limits of \$1,000,000 per occurrence. SMC will be "additional insured" on the Comprehensive

General Liability Policy covering bodily injuries and property damage with limits of \$1,000,000 per occurrence, and Comprehensive Automobile liability Insurance covering bodily injuries and property damage with limits of \$1,000,000 per occurrence. In addition, Seller will provide, prior to performance, insurance certificates including endorsements that SMC will be an "additional insured" and that SMC will be notified within 30 days of a "notice of cancellation" or reduction in coverage. CERTIFICATES OF INSURANCE MUST BE RECEIVED BY SMC BEFORE ANY PAYMENTS ARE MADE TO SELLER. PLEASE FORWARD BY FAX TO SMC RISK MANAGEMENT AT 310-434-3602. SMC reserves the sole right to insist on strict compliance stated and/or reduce the requirements stated and/or waive the requirements in its entirety.

20. ENTIRE SERVICE ORDER -In the event any specific term and condition of this Order are held to be illegal, void, or unenforceable by any court of competent jurisdiction, the remaining terms and conditions shall be in full force and effect.