

SAN JUAN COLLEGE, FARMINGTON, NEW MEXICO
PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE OF ORDER:** This order, if indicated on the face of this document, may be accepted only by signing and returning the attached acknowledgement to Buyer. Acceptance is limited to the terms stated herein, and any additional different terms proposed by Seller are rejected unless expressly assented to in writing by Buyer or of otherwise set out herein. Delivery of materials or other goods and performance of services in conformity herewith prior to acceptance hereof and use of such goods and acceptance of such services by Buyer shall constitute acceptance of the terms stated herein for this order only. References herein to this order shall, unless the context otherwise requires, include any contract resulting herefrom.
2. **MODIFICATION:** No modification of this order shall be effective without Buyer's written consent. No course of prior dealings, no usage of the trade and no course of performance shall be used to modify, supplement or explain any terms used in this order.
3. **TERMINATION:** Buyer reserves the right to terminate this order at any time with respect to undelivered goods or unperformed services by written or telegraphic notice or oral notice confirmed in writing. The term of the Purchase Order is contingent upon the budgeting and appropriation of funds by the San Juan College Board for continuation of the services contemplated by this Purchase Order.
4. **DELIVERY:** Time is of the essence in this order and if delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, Buyer reserves the right, in addition to its other rights and remedies, to cancel this order, to reject such goods or services in whole or in part on reasonable notice to Seller and/or to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Any provisions herein for delivery of goods or performance of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.
5. **PRICE:** Buyer shall not be billed at prices higher than stated herein unless authorized in writing by Buyer. Seller represents that the prices charged for the goods or services covered by this order are the lowest prices charged by Seller and that such prices comply with all applicable laws and government regulations in effect at time of quotations, sale, delivery and performance. Seller agrees to notify Buyer of any price reduction made in goods or services covered by this order subsequent to the date hereof and prior to delivery or performance and agrees that any such reduction will be applicable to this order.
6. **CONTINGENCIES:** Failure of either party to perform hereunder, in whole or in part, occasioned by act of God or the public enemy, fire, explosion, perils of the sea, flood, drought, war, riot, sabotage, accident, embargo, government priority, requisition or allocation, or any circumstances of like or different character beyond the reasonable control of the party so failing to perform, or by interruption of or delay in transportation, labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within the affected party's power to concede, or compliance with any order or request of any governmental officer, department, agency or committee, shall not subject said party to any liability to the other party. At Buyer's option, the period specified for delivery of goods or performance of service hereunder shall be extended by the period of delay occasioned by any such circumstance, and deliveries or services omitted (or portions thereof) shall be made or performed during such extension, or the total ordered hereunder shall be reduced by that portion of the goods or services which seller is unable to deliver. The provisions of this paragraph shall be effective notwithstanding that such circumstance shall have been operative at the date of this order.
7. **WARRANTIES:** In addition to all warranties established by law, Seller hereby warrants and agrees that:
 - (a) All goods and services covered by this order shall conform to the specifications, drawings, samples or other descriptions furnished or adopted by Buyer, and shall be merchantable, fit for the purpose intended, of best quality and workmanship and free from all defects. Buyer shall have the right of inspection and approval, and may, in addition to its other rights and remedies, reject and return goods or require reperformance of services at Seller's expense if defective or not in compliance with Buyer's specifications. Defects shall not be deemed waived by Buyer's failure to notify Seller upon receipt of goods or completion of services, or by payment of invoice.
 - (b) No disclosure, description or other communication of any sort shall be made by Seller to any third person of the fact of Buyer's purchase or goods or services hereunder, or of the details and characteristics thereof, without Buyer's prior written consent. Anything furnished to Seller by Buyer pursuant to this order, including without limitation samples, drawings, patterns and materials, shall remain the property of Buyer, shall be held at Seller's risk and shall be returned upon completion of the work, and no disclosure or reproduction thereof in any form shall be made without Buyer's prior consent in writing.
 - (c) All goods delivered pursuant to this order and manner of delivery thereof shall conform to standards established for such goods and delivery in accordance with any applicable federal, state, provincial or local laws or regulations.
 - (d) The use or sale of any goods delivered hereunder, or any part thereof, except goods produced to Buyer's drawings or specifications, does not infringe any adverse valid existing patent.
 - (e) The foregoing warranties shall survive acceptance of goods and performance of services hereunder, including construction projects.
8. **LOSS IN TRANSIT AND ENVIRONMENTAL RESPONSIBILITY:** Title and risk of loss in transit shall not pass to Buyer until delivery to Buyer (or to carrier designated by Buyer in cases where shipment is made F.O.B. Seller's shipping point) in accordance with all applicable federal, state, provincial or local laws or regulations, including but not limited to U.S. Department of Transportation and U.S. Environmental Protection Agency regulations for hazardous substances, is completed. Buyer shall not be liable for any discharge, spill or other incident, including but not limited to expenses for any clean-up costs, involving any materials transported hereunder until completion of such delivery.
9. **MARKING:** Seller shall mark each package or shipment clearly with Buyer's name and address, contents and this purchase order number.
10. **ASSIGNMENT:** Assignment of this order or of any interest herein or of any money due or to become due hereunder without prior written consent of Buyer shall be void.
11. **GOVERNMENT LAW:** This order shall be governed by the laws of the State of New Mexico including the New Mexico Uniform Commercial Code. Unless otherwise indicated by the context, whenever a term used in this order in the New Mexico Commercial Code, the definition contained therein is controlling as to the meaning of the term.
12. **FORUM:** Since, among other things, Buyer is a College having a principal office in the State of New Mexico, the parties hereto agree to submit to the jurisdiction of the New Mexico District Court for San Juan County in connection with any controversy arising hereunder.
13. **EMPLOYEES, INSURANCE, INDEMNIFICATION:**
 - (a) In performing any services hereunder, Seller is, and undertakes performance thereof, as independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation exclusive liability for the payment of all Federal, State, and local Unemployment and Disability Insurance and all Social Security and/or other taxes and contributions payable in respect of such persons, from and against which liability Seller agrees to indemnify, exonerate and hold harmless Buyer.
 - (b) Seller shall provide to Buyer, prior to the commencement of any services hereunder, certificates of insurance evidence that Seller has purchased the following insurance: Seller's General Comprehensive Liability Insurance and Seller's Comprehensive Automobile Liability Insurance minimum limits of coverage shall be the greater of liability established by the New Mexico Tort Claims Act or combined single limit coverage of \$1,000,000. Seller's Workers Compensation coverage limits shall be those established by applicable statutes. Employee liability coverage shall be the greater of the limits of liability established by the New Mexico Tort Claims Act or \$1,000,000. Seller's protective liability subject to all applicable rules of such premises, including those for safety and fire protection.
 - (c) If Buyer or Seller visits others premises such shall do so at own risk.
 - (d) Seller warrants that Seller shall comply with all existing financial capability, responsibility, security or like laws, regulations and/or other requirement of local, state, provincial and federal governments with respect to oil pollution or any other pollution damage whatsoever. Seller agrees to protect, defend, indemnify, exonerate and hold Buyer harmless from and against any and all suits, claims, liability, losses, liens and demands, fines, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with, incidents involving bodily injury, death, property damage or any violation or alleged violation of any federal, state, provincial or local law or regulation.
14. **PAYMENT TERMS AND DISCOUNTS:** Payments shall be paid to Seller within 30 days contingent upon the following:
 - (a) Application of payment discounts, if considered to be in the best interest of the Buyer;
 - (b) From date of receipt by the College of properly documented invoices for payment as determined by the budgetary and fiscal guidelines of the College;
 - (c) On the condition that the Seller has received the goods and/or accomplished the services to the satisfaction of the Buyer. Any taxes (specifically including the New Mexico Gross Receipts tax), licenses, or other governmental fees and charges, are the responsibility of the Seller.
15. **COMPLIANCE WITH LAW AND BUYER'S RULES:**
 - (a) College is exempt from payment of gross receipts tax on materials but is subject to such tax on services, including construction projects defined in Sec. 7.9-1k of NMSA 1978.
 - (b) The taxable status of any sale of materials or services must be determined by the Seller's legal council or tax consultant. Invoices rendered for additional taxes after bid award will not be honored.
 - (c) Reference is hereby made to paragraph 13-1-191 NMSA that any bribes, gratuities or kickbacks of any type are expressly forbidden and such acts may be subject to civil penalty.
 - (d) If this order shall require the presence on Buyer's premises of Seller's employees, subcontractors or others under Seller's control, Seller shall comply with all applicable governmental regulations and rules of Buyer's premises, encompassing without limitation those relative to environmental quality including safety and fire prevention. Seller shall at all times provide all equipment that is used in the performance of this purchase order, except for that equipment specified in this order as being furnished by Buyer, including all equipment to ensure the safety of all employees, subcontractors or others under Seller's control.