

## TERMS AND CONDITIONS FOR PURCHASE ORDER

Rev: 08-05-19

Purchase Orders issued by the Central Purchasing office of County of York, Virginia shall by reference include and be bound by Terms and Conditions as posted on the Central Purchasing website on the day of Purchase Order issuance. Future revisions to the Terms and Conditions when posted to the website shall only apply to Purchase Orders issued by the Central Purchasing office having an issue date of on or after the date of posting the revision. The current Terms and Conditions are as follows.

### SECTION A

#### GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASES

1. **APPLICABLE POLICY:** This Purchase Order is subject to the provisions of the County of York, Virginia, Procurement Policy (Ordinance No. 18-12-effective June 5, 2018), and any revisions thereto.
2. **DEFINITIONS:**

**Owner:** Any entity for whom the Central Purchasing office of the County of York, Virginia has served as the Purchasing Agent, and may include, without limitation, the County of York, Virginia, its officers, agents and employees and the County School Board of York County, Virginia, its officers, agents and employees.

**Contractor:** As used herein, the term "Contractor" shall be the individual or organization named on the front of a Purchase Order issued by Central Purchasing, whether identified on the Purchasing Order as "Contractor", "Vendor", or any similar term.

**Central Purchasing:** The office of the Division of Purchasing, Department of Finance, County of York, Virginia.
3. **INVOICES AND PAYMENT TERMS:** The Purchase Order or Contract number shall be included on each invoice. Failure to include this information will delay payment. Invoices shall be sent to the address specified on the Purchase Order. Payment will be authorized following receipt of a valid invoice and delivery of goods or completion of services according to the Purchase Order. The following are the payment terms applicable to the Purchase Order:
  - a. Payment terms shall be "Net 30 Days" unless otherwise stated on the face of the Purchase Order.
  - b. The payment terms stated herein must appear on the Contractor's invoice. Failure to comply with this requirement may result in the invoice being returned to the Contractor for correction.
  - c. Late payment charges shall not exceed 1% per month of the invoice amount due.
  - d. If offered by the Contractor, a payment discount period shall be computed from the date of proper receipt of a valid invoice, or from the date of acceptable receipt of the goods and/or services, whichever is latest.
  - e. Invoices for goods or services ordered, delivered and accepted shall be submitted directly to the "Invoice To" address shown on the purchase order. All invoices shall show the Purchase Order. Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. However, this shall not affect offers or discounts for payment in less than thirty (30) days.
4. **ANTI-DISCRIMINATION:** If this Purchase Order is for an amount over \$10,000, the Contractor agrees as follows:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. Contractor, in all solicitations for advertisements for employees placed on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  - d. During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace.
  - e. For the purposes of this subsection, a "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this subsection, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.
  - f. Contractor will include the provisions of this section in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
5. **FAITH BASED ORGANIZATIONS:** In accordance with §2.2-4343.1 of the Code of Virginia, et. seq., the Owner shall not (i) discriminate against a faith-based organization as defined in Code of Virginia section 2.2-4343.1(B) on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F of section 2.2-4343.1 the Code of Virginia, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
6. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By signing the proposal, the Contractor certifies that it does not and will not during the performance of this Contract for goods and/or services knowingly violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of unauthorized aliens as defined in the Federal Immigration Reform and Control Act of 1986, as amended.
7. **AMERICANS WITH DISABILITIES ACT (ADA):** The Contractor warrants that it complies with Virginia and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). Contractor hereby warrants that the products or services it will provide under any resulting Contract complies with the accessibility requirements of Section 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. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services at no additional cost to the Owner. Contractor further agrees to indemnify and hold harmless the Owner from any and all claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of any resulting Contract and shall be grounds for termination of that Contract by the Owner.
8. **INDEMNITY AGREEMENT:** Contractor, its employees, servants or agents (including subcontractors) shall bear all loss, expense (including reasonable attorney's fees) and damage from any cause whatsoever arising out of, incidental to, or in connection with the performance of the Contract and shall indemnify the Owner, its officers, agents and employees against and save the Owner, its officers, agents and employees harmless from all claims, demands, and judgments made or recovered against the Owner because of bodily injuries, including death, at any time resulting therefrom and/or because of damage to property, from any cause whatsoever; all such arising out of, incidental to, or in connection with the performance of the Contract whether or not due to any act of Contractor, its employees, servants or agents (including subcontractors) and whether or not due to any act of omission or commission, including negligence, but excluding gross negligence of the Owner. Compliance by the Contractor with the insurance provision hereof shall not relieve Contractor from liability under this provision.

Should Contractor, its employees, servants or agents (including subcontractors) use any of the Owner's equipment, tools, employees, or facilities, such will be gratuitous and Contractor shall release the Owner, its agents, officers and employees, from and indemnify and save harmless the Owner, its agents, officers and employees, from and against any claims for bodily injury, personal injury, including death, and property damage, from

any cause whatsoever; all such arising out of the use of any such equipment, tools, employees, or facilities, whether or not based upon the condition thereof or any alleged negligence of the Owner in permitting the use thereof.

Contractor, its employees, servants and/or agents (including subcontractors) guarantee to save the Owner, its officers, agents and employees, harmless from liability of any nature or kind for use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of the work under the Purchase Order, or of which the Contractor is not the patentee, assignee or licensee.

9. **AVAILABILITY OF FUNDS:** It is understood and agreed between the Contractor and the Owner that the Owner shall be bound hereunder only to the extent of the funds available and lawfully appropriated or which may hereafter become available and lawfully appropriated for the purpose of this Purchase Order.

10. **CERTIFICATIONS:** In accordance with Virginia Code Section 22.1-296.1, if the performance of the purchase order will require the Contractor or Contractor's employees, servants, agents or subcontractors to have direct contact with students of the York County School Division on school property during regular school hours or during school-sponsored activities, then the Contractor shall certify by submission of a signed Certification Form that they or any of their employees, servants, agents or subcontractors who will provide such services: *"Have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child."*

Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor and, upon conviction, the fact of such conviction shall be grounds for the revocation of the Contract to provide such services and, when relevant, the revocation of any license required to provide such services.

The Company signed Certification should be completed in its entirety as provided in Attachment F. Any person, employee, subcontractor, agent, officer, owner or shareholder of the corporation, firm or partnership who will provide services under this Purchase Order and who will be in direct contact with the Board's students shall meet the certification requirements. This certification shall be binding throughout the contracted period and the Contractor shall provide the Board with immediate notice of any event which renders their certifications untrue.

Those persons required to register as a sex offender in any U.S. state, the District of Columbia, any U.S. territory or Indian Country shall not meet the requirements of this section. Such persons shall not be permitted on School Property except in compliance with School Board Policies KN and KNA.

The County School Board of York County, Virginia has enacted a 100% ID check at all schools. All persons entering upon the Board's property shall be required to scan their valid driver's license in order to print a visitor's badge which includes the person's photo, name, and time of arrival. All visitors are required to wear their badge while on school property and sign out at the front office as they are leaving the building. As an added security feature, the scanning process now includes a cross reference to the national and state sex offender registry. If a visitor does not have a valid driver's license, staff may request an alternate government issued ID and manually check the visitor in through the system.

11. **PERMITS, LICENSES AND REGULATIONS:** All work shall comply with all applicable federal, state and local regulations, codes and ordinances, as well as any other authorities that may have lawful jurisdiction pertaining to the work specified (collectively the "codes"). None of the terms or provisions of this specification shall be construed as waiving any other rules, regulations or requirements of these authorities. The Contractor and/or subcontractor shall be responsible for obtaining all necessary building permits (no charge to Contractor for Owner projects). Further, the Contractor shall keep himself fully informed of and comply with any local regulation and all state and federal laws which in any manner effect the work herein specified.

In any instance where these specifications or scope of work call for materials for construction of a better quality or larger size than required by the codes, the provisions of the specifications and scope of work shall take precedence. Conversely, should the codes call for better quality or larger size, the codes shall govern.

12. **CLAIMS:** Disputes and claims arising under this Purchase Order shall be processed pursuant to Virginia Code Sections 15.2-1245 through 15.2-1248 and 22.1-122, or if the Owner is the County School Board then as applied to the Owner *mutatis mutandis*. The Owner shall give its final decision on any claim

of the Contractor within sixty (60) days of the date the claim is submitted to the Clerk of the governing Board.

13. **TERMINATION FOR CONVENIENCE:** The Owner may terminate the Purchase Order without default when funds are not appropriated for the specified goods or services or when it is determined to be in the Owner's best interest without providing specific cause. The Owner will provide as much notice as it deems to be practical.

Either party may terminate the Contract without penalty or financial obligation as of the conclusion of the initial contract term, or as of the completion of any renewal term, except that the parties remain liable for performance of all terms, conditions, and obligations through the date of termination. Written notice of termination shall be given to the other party a minimum of thirty (30) days prior to its effective date.

In the event the Contract shall be terminated for any reason, the Owner shall be obligated to pay the Contractor only for those services which have actually been rendered by the Contractor, through the date of termination.

14. **TERMINATION FOR CAUSE:** In the event that the Contractor shall for any reason or through any cause be in default of the terms, conditions, or obligations of the Purchase Order, the Owner may give the Contractor written notice of such default and terminate the Purchase Order. All terms, conditions, and obligations of the Purchase Order are considered material. The Owner may, in its discretion, provide the Contractor an opportunity to cure the default, if curable, prior to termination. If such an opportunity to cure is provided, the unless a different duration is provided in the notice of default, or agreed upon by the parties in writing, the Contractor shall have ten (10) calendar days to cure the default from the date such notice is mailed to the Contractor, unless notification is by electronic transmission or personal delivery, in which case the opportunity to cure shall commence upon delivery of the notice. Upon failure of the Contractor to cure the default, or in the event Owner does not provide an opportunity to cure, the Owner may immediately terminate the Purchase Order effective as of the mailing or delivery of the default notice. If the Owner terminates the Purchase Order, the Contractor shall remain liable for performance of all terms, conditions, and obligations through the date of termination. Termination by the Owner shall not constitute a waiver by the Owner of any other rights or remedies available to the Owner by law or contract. In the event the Purchase Order shall be terminated for cause, the Owner shall be obligated to pay the Contractor only for those services which have actually been rendered by the Contractor, through the date of termination.

In the event of a default by Contractor, the Owner reserves the right to procure the products or services from other sources, and hold the Contractor liable for any excess cost occasioned thereby. If, however, public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a proper reduction in price.

In addition, failure of the Contractor to perform the obligations of the Purchase Order may result in debarment of the Contractor from further consideration for award of a contract or purchase order for a period of up to three years. Termination and/or debarment of the Contractor shall not constitute a waiver by the Owner of any other rights or remedies available to the Owner by law or contract.

15. **AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA:** All Contractors must be duly authorized or licensed to conduct business in the Commonwealth of Virginia and if required by applicable law, have a York County Business License. If Contractor is organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, Contractor shall provide the identification number issued to it by the State Corporation Commission.

Contractor shall not allow its existence to lapse or its Certificate of Authority or Registration to Transact Business in the Commonwealth, if so required under Title 13.1 or Title 50, as amended, to be revoked or cancelled at any time during the term of the Purchase Order. Such lapse, cancellation or revocation shall constitute a material default by Contractor, and Owner may void any Purchase Order with a business entity if the business entity fails to remain in compliance with the provisions of this section. Visit <https://www.scc.virginia.gov/> for more information.

16. **INDEPENDENT CONTRACTOR:** The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of the Owner. The Contractor shall not represent that Contractor is an employee or agent of the Owner in any way.

17. **GOVERNING LAW AND VENUE:** This Purchase Order is subject to the laws of the Commonwealth of Virginia and the ordinances and regulations

established by the County of York, Virginia. Any litigation with respect thereto shall be brought in the courts of the County of York, Virginia, or the United States District Court for the Eastern District of Virginia.

18. **RIGHTS UNDER ANTITRUST LAWS:** The Contractor assigns to the Owner any and all rights that it may have under the antitrust laws of the United States and the Commonwealth of Virginia in any way arising from or pertaining to the Purchase Order. This provision is remedial in nature and is to be liberally construed by any court in favor of the Owner.
19. **ASSIGNMENT OF CONTRACT:** A Purchase Order shall not be assignable by the Contractor in whole or in part without the written consent of the Owner.
20. **RIGHTS AND REMEDIES NOT WAIVED:** In no event shall a payment by the Owner to the Contractor, or the waiver by the Owner of any provision under the Purchase Order, including the Terms and Conditions, including any obligation of the Contractor, constitute or be construed as a waiver by the Owner of any other provision, obligation, breach of covenant, or any default which may exist under the Purchase Order on the part of the Contractor, and the making of any such payment by the Owner while any such breach or default exists shall not impair or prejudice any rights or remedies available to the Owner.
21. **SEVERABILITY:** If any provision of the Purchase Order, including the Terms and Conditions, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of the Purchase Order, or the application of such provision to persons or circumstances other than those which it is invalid or unenforceable, shall not be affected, and each provision of this contract shall be valid and enforced to the full extent permitted by law.
22. **RECORDS AND INSPECTION:** The Contractor shall maintain full and accurate records with respect to all matters covered under the Purchase Order, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this Contract. The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Owner and its employees, agents or authorized representatives after giving at least three (3) Owner business days' notice to the Contractor by the Owner. The Owner shall have access to such records from the effective date of the Purchase Order, for the duration of the Purchase Order, and for five (5) years after the date of final payment by the Owner to the Contractor pursuant to the Purchase Order or any renewal or extension of the Purchase Order. The Owner's employees, agents or authorized representatives shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits.
23. **ENTIRE AGREEMENT:** The Purchase Order including the Terms and Conditions herein, any change orders, any Owner approved written exceptions noted by Contractor on the face of the Purchase Order, any Owner Contract and Contractor's Proposal constitute the entire agreement between the Owner and the Contractor. The Terms and Conditions set forth herein may not be superseded, altered, deleted or added to without the express written consent of the Owner.

In case of conflict, the following order of precedence shall prevail:

1. Change Orders
2. Owner Contract, if issued
3. Expressly approved written exceptions as noted on the face of the Purchase Order
4. Purchase Order Terms and Conditions, this document
5. Contractor Proposal.

Commencement of performance by Contractor constitutes agreement to these Terms and Conditions. The Owner shall have no responsibility or liability for products or services delivered or performed prior to Contractor's receipt of Owner issued documents. Each shipment received by the Owner from Contractor shall be solely upon the Terms and Conditions contained herein and within the Purchase Order and any signed contract between the parties.

24. **MODIFICATIONS:** The Purchase Order can be modified or rescinded only in writing signed by the Purchasing Agent or his/her duly authorized representative. Contractor may not transfer the Purchase Order to a third party nor in any way amend the Purchase Order without prior written consent of the Owner.
25. **NO IMPLIED REPRESENTATIONS:** No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in the Purchase Order.

26. **REMEDIES:** The Owner shall have rights and remedies afforded by the Commonwealth of Virginia's Uniform Commercial Code and other applicable laws.
27. **BLANKET OR "AS NEEDED" PURCHASE ORDERS:** The Owner is obligated only to the extent of purchases actually made and received under a Blanket or "As Needed" Purchase Order. A Blanket or "As Needed" Purchase Order is intended to authorize the purchase of goods or services from the Contractor as needed for a fiscal year, and is not a guarantee of quantities or actual work required.

## SECTION B

### ADDITIONAL TERMS AND CONDITIONS FOR ACQUISITION OF GOODS

1. **DELIVERY OF GOODS:** Contractor shall transfer and deliver goods to the Owner's place of business as stated on the Purchase Order, FOB destination. Title to the goods shall remain with the Contractor until the Owner receives the goods or by prior agreement of freight terms. A packing list must accompany each shipment.
2. **WARRANTIES:** Contractor warrants that the goods are merchantable and as described in the Purchase Order or in any quote tendered to Owner. All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made part of the Purchase Order
3. **RIGHT OF INSPECTION:** The Owner shall have the right to inspect the goods at the time and place of delivery before accepting them. Damaged or substituted merchandise other than goods on the Purchase Order shall be refused and returned at Contractor's expense. Additional charges for packing or restocking will not be accepted.
4. **SALES TAX:** No sales tax or use tax shall be included or added to prices of materials on the order. The Owner is tax exempt from state and local taxes.
5. **QUALITY:** The Owner will be the sole judge in determining "equals", if allowed, with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.
6. **SAFETY INFORMATION:** All chemicals, equipment and materials proposed and/or used in the performance of the Purchase Order must conform to the standards required by the Occupational Safety and Health Act of 1970. Contractors must furnish Safety Data Sheets (SDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

## SECTION C

### ADDITIONAL TERMS AND CONDITIONS FOR ACQUISITION OF SERVICES

1. **STATION OF WORK:** The Contractor shall provide and furnish at its own proper cost and expense all materials, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to provide services in strict accordance with the conditions and prices stated in the Purchase Order and applicable documents.
2. **INSURANCE:** Unless waived by Owner, the Contractor shall maintain adequate liability insurance, which shall protect and save harmless the Owner, its officers, agents and employees from all suits and actions of every kind and description arising from injury or damage to persons and property in the prosecution of said work or in failure to properly safeguard same, and from all claims arising under the workers' compensation laws. Contractor shall furnish proof of said insurance and the proper endorsements prior to commencement of services. The Contractor shall carry insurance in the amounts specified below, including the Broad Form Contractual Liability assumed by the Contractor and shall deliver certificates of insurance from carriers acceptable to the Owner specifying such limits, along with a proper endorsements naming the Owner, its Officers, Agents and Employees, as Additional Insured, with primary status, without participation from the Owner's insurers" (Form No. CG 2010 1985 version or its equivalent or CG 2010 and CG 2037 or their equivalent). Further, the successful Contractor agrees they shall

immediately notify, in writing, the Owner of any changes, modifications, and/or termination of any insurance coverages and/or policies required by the resulting Contract.

a. Worker's Compensation and Employer's Liability

Coverage A - Statutory Requirement

Coverage B - \$100,000; \$100,000; \$500,000

b. Comprehensive Automobile Liability, including Owned, Non-Owned and Hired Car Coverage.

Limits of Liability - \$500,000 Per Occurrence Bodily Injury or Property Damage.

c. Commercial General Liability

Limits of Liability - \$500,000 Per Occurrence Bodily Injury or Property Damage.

Broad Form Contractual Liability includes the Contractual liability assumed hereunder.

Completed Operations Insurance, to remain in full effect until the date of acceptance of the project by the Owner.

d. Umbrella Liability

Excess Liability over Employers Liability, Comprehensive Automobile Liability and Commercial Liability policies.

Limits of Liability - \$1,000,000. Each Occurrence

\$1,000,000. Aggregate

e. Professional Liability Insurance

Unless waived by the Owner, the limit shall be a minimum of \$1,000,000 per claim.

A 3 year extended reporting period endorsement shall be required on all claims based policies.

3. REPLACEMENT OF DAMAGED GOODS OR OWNER'S PROPERTY: Any damages to products or to Owner's property, including but not limited to finished surface, existing structures, fences, trees, plants, grass, walks, drives and building surfaces, without limitation, resulting from delivery of

the products or resulting from Contractor's services shall be replaced/repared to the Owner's satisfaction and at the Contractor's sole expense.

**END OF PURCHASE ORDER TERMS AND CONDITIONS**