

## **PURCHASE ORDER TERMS AND CONDITIONS**

### **1. PURCHASE ORDER**

This Purchase Order is a contractual agreement between Arlington School Board, operating as Arlington Public Schools ("APS") and the Vendor and is subject to these Purchase Order Terms and Conditions, the Arlington Public Schools Procurement Resolution ("Procurement Resolution"), and the Code of Virginia. All references herein incorporating any provision of the Code of Virginia shall also incorporate related provisions of the Procurement Resolution. The Term "Deliverables" as used herein shall mean the goods, services, professional services, construction, or insurance which is the subject of this Purchase Order.

### **2. DELIVERY**

Time is of the essence for any orders placed as a result of this Purchase Order. APS reserves the right to cancel such orders, or any part thereof, without obligation if delivery is not made at the time(s) specified in the Purchase Order. Delivery costs will be included in the price. All items shall be delivered F.O.B. destination and Vendor will pay transportation charges both ways on materials rejected for failure to meet specifications or for wrong or defective material. The Vendor assumes all liability and responsibility for the delivery of goods in good condition to the specified delivery location(s).

### **3. FORCE MAJEURE**

Neither Party shall be held responsible for failure to perform the duties and responsibilities imposed upon it by this Purchase Order to the extent such failure is due to causes beyond the control of the Party, such as but not limited to fires, riots, rebellions, natural disasters, wars, epidemic, pandemic, governmental action or an act of God, that makes performance impossible or illegal, unless otherwise specified in this Purchase Order.

### **4. ACCEPTANCE OF MATERIAL**

Any goods delivered under this Purchase Order shall remain the property of the Vendor, who bears all risk of loss, until a physical inspection or actual usage of the goods is made and thereafter accepted to the satisfaction of APS. All Deliverables must comply with the specifications/scope of services and terms and conditions of the Purchase Order and be of the highest quality. In the event any Deliverables supplied to APS are found to be defective or not to conform to specifications, APS reserves the right to cancel the order upon written notice to the Vendor and return products to the Vendor at the Vendor's expense.

### **5. OVER SHIPMENTS**

APS shall not be responsible for payment of over shipments even in the event of inadvertent use of over shipped goods. Quantities ordered must not be exceeded unless authority for deviations is specified in this Purchase Order or an appropriate change order is issued.

### **6. PACKING LIST AND/OR DELIVERY TICKET**

A Packing List and/or Delivery Ticket must be furnished with each shipment indicating the Purchase Order number as well as the following information:

- a. Name of the Article and Stock Number (Vendor's)
- b. Quantity Ordered
- c. Quantity Shipped
- d. Quantity Back Ordered
- e. Name of Vendor

### **7. DROP SHIPMENTS**

"Drop Shipments" of materials by Vendor from manufacturers shall comply with the Packing List and/or Delivery Ticket information requirements as outlined in Paragraph 6 above, and with the Markings information requirements set forth in Paragraph 8 below. Vendor must ensure manufacturer compliance with these instructions.

### **8. MARKINGS**

The Purchase Order number must appear on all cartons, boxes, packages, shipping cases, invoices, shipping documents and correspondence.

### **9. PAYMENT TERMS**

Payments will be made within thirty (30) calendar days after receipt of an approved invoice by APS. Any prompt payment discounts offered will be taken if payment is made within the discount period offered. In connection with any discount offered for prompt payment, time shall be computed from the date the invoice is received. For the purpose of earning the discount, in those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made.

### **10. PAYMENTS TO SUBCONTRACTORS**

The Vendor agrees to make payments to subcontractors in accordance with Virginia Code Section 2.2-4354.

### **11. PRICES**

This order is accepted only at prices stated in the Purchase Order. No tax shall be included except as provided for in Paragraph 13, Taxes.

### **12. INVOICES**

Invoices, unless otherwise specified in the Purchase Order, will not be submitted until after acceptance by APS of the performance being invoiced and no more often than every thirty (30) days and in compliance with the requirements of paragraph 25 below. If shipment is made by freight or

express, the original Bill of Lading properly receipted, must be attached to the invoice. Each Purchase Order must be invoiced separately. Deliverables furnished on two (2) or more Purchase Orders must not be included on one (1) invoice, but more than one (1) invoice may be issued under a Purchase Order. All funds not paid by APS when due as provided in this Purchase Order shall bear interest at the rate of 0.5% per month. Submit invoices, as applicable, by:

a) By U.S. Mail to:

Arlington Public Schools  
Finance Office  
2110 Washington Blvd.  
Arlington, VA 22204  
Or

b) By email to:

As noted on the Purchase Order Header.

### **13. TAXES**

APS is exempt from the payment of any federal excise or any Virginia Sales Tax. The price must be net, exclusive of taxes. However, when under established trade prices, any federal excise tax is included in the list price, the Vendor may quote the list price and show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by APS. The APS Federal Tax I.D. is 54 6001128. Vendors located outside of the Commonwealth of Virginia are advised that when materials are picked up by APS employees at Vendor's place of business, Vendor may charge and collect its own local/state tax.

### **14. PURCHASE ORDER REQUIREMENT**

A Vendor shall not commence performance of any Deliverable (hereinafter "Work") until an approved Purchase Order or Change Order has been issued by the Procurement Agent, except where permitted either by the Procurement Resolution or the underlying Public Contract to which the Purchase Order or Change Order is the approval to commence Work or modify it. A Public Contract is not considered to be fully executed unless it has been signed by the APS Procurement Agent, or his designee, and the Vendor.

In situations where Work has commenced prior to a Purchase Order or Change Order being approved, and it is determined the commencement of Work without a Purchase Order or Change Order is not permitted by the Procurement Resolution or the underlying Public Contract, requests for payment received from the Vendor for Work performed prior to the date of a Purchase Order or Change Order being approved, shall be rejected by the Procurement Agent and considered an Unauthorized Purchase.

The Vendor's sole recourse shall be as provided by the underlying contract and the applicable provisions of the Virginia Public Procurement Act or of the Procurement Resolution.

APS will not be liable for payment of any purchases made by its employees without appropriate procurement authorization issued by APS Procurement Agent, whether by Purchase Order, Change Order or otherwise. It shall be the responsibility of Vendor to determine whether appropriate procurement authorization has been issued before commencing any Work.

### **15. CHANGES TO PURCHASE ORDERS**

No change may be made to this Purchase Order without an APS Change Order to this Purchase Order issued in advance of the changed Work by an authorized APS employee. APS has no payment obligation or responsibility for any changes made without issuance of a written Change Order signed by an authorized APS employee.

### **16. APPROPRIATION OF FUNDS**

All funds for payments by APS under this Purchase Order are subject to the availability of an annual appropriation for this purpose by the Arlington School Board. In the event of non-appropriation of funds by the Arlington School Board for the Deliverables provided under this Purchase Order or changes thereto this Purchase Order will terminate on thirty (30) calendar days prior written notice, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the purchase covered by this Purchase Order is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Purchase Order, cancellation will be accepted by the Vendor on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Purchase Order beyond the date of termination other than to make payment for performance of Work prior to notice of termination.

### **17. GUARANTEES & WARRANTIES**

Vendor warrants to APS that all Deliverables furnished under this Purchase Order will be new unless otherwise specified in writing by APS, and that all Work will be of first class quality, free from faults and defects. All Deliverables provided not conforming to these requirements shall be considered defective. All manufacturer warranties shall be assigned to APS. Nothing stated herein shall in any way limit any applicable implied warranties. The warranty shall be for a period of minimum of one-(1) year from acceptance by APS of the Work, or the manufacturer's standard warranty, whichever is longer. The warranty shall include all parts, labor, transportation, and any other costs (except general supply items) necessary to keep the product in good operating condition. The cost of this one (1)-year warranty shall be included in the price quoted.

**18. VENDOR RESPONSIBILITY FOR DAMAGE TO PROPERTY**

The Vendor shall be responsible for damages to property caused by performance under this Purchase Order. The Vendor shall repair to proper working order or replace, to the satisfaction of APS, any property damaged either directly or indirectly by Vendor's actions.

**19. TERMINATION FOR CONVENIENCE**

Unless otherwise stated, this Purchase Order may be terminated by APS, in whole or in part, whenever APS determines that such a termination is in its best interests. Any such termination shall become effective on the date stated in a written notice of termination mailed or delivered to the Vendor at least five (5) business days prior to the stated termination date. The notice of termination shall state the extent to which performance shall be terminated. The Vendor shall be paid for all accepted Work provided prior to the termination date. Purchase Order termination pursuant to this section shall not be considered a Purchase Order default, and APS shall not be liable for future payments, damages of any type, or for cancellation or termination charges.

**20. TERMINATION FOR CAUSE**

If, through any cause, the Vendor shall fail to fulfill in a timely and proper manner its obligations under this Purchase Order, or if the Vendor violates any of the covenants, agreements, or stipulations of this Purchase Order, APS thereupon has the right to declare the Vendor in default in whole or in part. In the event APS elects to declare the vendor in default, APS will give the Vendor written notice describing the nature of the default and providing the Vendor a right to cure such default within ten (10) business days after the date of the notice, or within such longer period as APS, in its sole and absolute discretion, may prescribe. In the event the default is not cured within the time period, APS has the right to take necessary actions to correct or complete the Work. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Vendor and all goods on site under the Purchase Order shall, at the option of APS, become the property of APS and the Vendor shall be entitled to be paid at the contract rate or price for the portion of the work satisfactorily completed, less any credits or backcharges to which APS is entitled under the terms of this Purchase Order provided through the date of termination. A termination for cause subsequently determined to have been without adequate justification shall be deemed to have been a termination for convenience.

Notwithstanding the above, the Vendor shall not be relieved of liability for damages sustained by APS by virtue of any breach of this Purchase Order by the Vendor until such time as the exact amount of damages due to APS from the Vendor can be determined.

**21. CONTRACTUAL DISPUTE**

Contractual disputes shall be handled in accordance with Article 7-107 of the Arlington Public Schools Procurement Resolution and Paragraph 28 below.

**22. ARBITRATION**

It is expressly agreed that nothing under this Purchase Order shall be subject to arbitration.

**23. SEVERABILITY**

The sections, paragraphs, sentences, clauses and phrases of this Purchase Order are severable, and if any phrase, clause, sentence, paragraph or section of this Purchase Order shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Purchase Order.

**24. VENDOR LICENSING/REGISTRATION/CERTIFICATION**

The Vendor certifies it has in effect all licenses, certifications and classification(s) required to perform the work included in this Purchase Order, in accordance with Title 54.1 of the Code of Virginia and in accordance with the laws, rules and regulations of the Commonwealth of Virginia, Department for Professional and Occupational Regulation, or such other regulatory authority as may be applicable. If this certification is not correct, this Purchase Order is invalid and APS shall be responsible for no payment regardless of degree of performance by Vendor.

**25. AUTHORITY TO TRANSACT BUSINESS**

The Vendor must be in compliance with all applicable Arlington County business license requirements. Any Vendor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law. The proper legal name of the firm or entity and the identification number issued to the Vendor by the State Corporation Commission must be included in all invoices. Any Vendor that is not a properly registered domestic business entity or is a foreign business entity not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law, or not required to have an Arlington County business license, shall include in its first invoice a statement describing why the Vendor is not required to be so authorized and licensed. APS may require documentation which clearly supports any of the forgoing representations of the Vendor. Failure to provide such documentation within the time requested shall be grounds for cancellation of this Purchase Order with no responsibility of APS to make payment of any kind, regardless of performance provided. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: [www.scc.virginia.gov](http://www.scc.virginia.gov).

**26. COMPLIANCE WITH ALL REQUIREMENTS**

The Vendor shall comply with all applicable Federal, State and Local laws, codes and regulations and shall give all notices and obtain all permits required thereby.

**27. INDEMNIFICATION**

The Vendor covenants to save, defend, hold harmless, and indemnify APS, Arlington School Board, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions (collectively the "Indemnified Parties ") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Vendor's performance or nonperformance of the scope of this Purchase Order except for those caused by the negligence or willful misconduct of an Indemnified Party. This indemnification shall survive the completion of this Purchase Order.

**28. GOVERNING LAW**

This Purchase Order and performance hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles, and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court.

**29. ARLINGTON PUBLIC SCHOOLS EMPLOYEES**

No employee of APS shall be admitted to any share or part of this Purchase Order or to any benefit that may arise from this Purchase Order which is not available to the general public.

**30. ETHICS IN PUBLIC CONTRACTING**

The provisions contained in Article 9 of the Procurement Resolution apply to all APS Purchase Orders. The provisions of Article 9 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Title 2.2, Chapter 31 of the Virginia Code), the Virginia Governmental Frauds Act (Title 18.2, Chapter 12, Article 1.1 of the Virginia Code) and prohibitions against bribery and related offenses (Title 18.2, Chapter 10, Articles 2 and 3 of the Virginia Code). The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

**31. FAITH BASED ORGANIZATIONS**

APS does not discriminate against faith-based organizations.

**32. IMMIGRATION REFORM AND CONTROL ACT**

In accordance with § 2.2-4311.1 of the Code of Virginia, the Vendor certifies that it has not, and will not during the performance of this Purchase Order, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**33. HIPAA COMPLIANCE**

The Vendor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**34. VENDOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS**

The Vendor agrees to comply with Virginia Code 22.1-296.1 by providing written certification that neither the Vendor, its employees, its subcontractors and employees thereof, who will have direct contact with students on school property during regular school hours or during school-sponsored activities, have been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Vendor certification shall also cover its employees, its subcontractors and employees thereof, assigned to the performance of this Purchase Order and the Purchase Order was approved. The Vendor, upon demand from APS, shall provide all information which allowed for the Vendor's certification.

**35. ASSIGNMENT**

The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of APS which consent APS shall be under no obligation to provide.

**36. GENERAL INSURANCE REQUIREMENTS**

If requested, the Vendor shall provide a Certificate of Insurance indicating that the Vendor has in force general commercial liability and comprehensive insurance coverage levels acceptable to APS, and workers' compensation insurance in compliance with Virginia law, prior to the start of any work under this Purchase Order and agrees to maintain such insurance until the completion of the Work. All required insurance coverage must be acquired from insurers authorized to do business in the Commonwealth of Virginia and acceptable to APS. APS requires notification of cancellation of any of the aforementioned insurance policies sixty (60) days prior to the cancellation date.

**37. EMPLOYER DISCRIMINATION BY VENDOR PROHIBITED**

During the performance of this Purchase Order, the Vendor agrees as follows:

- A. The Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Vendor. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Vendor, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, will state that such Vendor 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. The Vendor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Vendor will include the provisions of the foregoing sections in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- F. In seeking subcontractors, suppliers and vendors necessary to perform work, the Vendor shall encourage the participation of small businesses, women-owned businesses, minority-owned businesses, service disabled veteran-owned businesses and employment services organizations. At a minimum, for any portion of the work the Vendor is not going to perform with its own forces, the Vendor shall contact the Commonwealth of Virginia Department of Minority Business Enterprise to obtain a list of certified businesses in these categories available to perform such work or provide such materials or equipment. The Vendor shall directly solicit bids from at least one certified business in each category to perform such work or provide such materials or equipment, but shall not be obligated to give any preference to any such business in the award of subcontracts or materials/equipment supply subcontracts. Identification and direct solicitation of other such businesses by other means is strongly encouraged.

### **38. DRUG-FREE WORKPLACE TO BE MAINTAINED BY VENDOR**

During the performance of this Purchase Order, the Vendor agrees to:

- A. Provide a drug-free workplace for the Vendor's employees;
- B. 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 Vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Vendor that the Vendor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or Purchase Order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Vendor in accordance with the Procurement Resolution, 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.

### **39. SMOKING PROHIBITED**

Any building or open area owned by APS wherein or whereon a Vendor is performing Work is either an educational facility or a public place as defined by Va. Code Ann. §15.2-2820. There shall be no smoking as defined by Va. Code Ann. §15.2-2820 and including e-cigarettes or similar apparatus at any time in any educational facility, building or open area owned by APS. It is the responsibility of the Vendor to enforce this prohibition.

### **40. CONFIDENTIAL INFORMATION**

The Vendor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Purchase Order. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Vendor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

### **41. VENDOR TERMS AND CONDITIONS**

Any Vendor terms and conditions included or referenced in any Vendor documentation, including but not limited to Vendor invoices, Vendor proposals, or Vendor website shall not be considered to be and will not be considered to be a part of this Purchase Order and shall have no binding effect on APS.

### **42. VENDOR PROHIBITED IN ASSISTING PERSON FOR NEW JOB IF ENGAGED IN MISCONDUCT WITH MINOR**

As a condition of being awarded a Contract, or Contract Renewal, the Vendor acknowledges it is prohibited from assisting the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, in obtaining a new job if the Vendor knows or has probable cause to believe that the elected and appointed officials of APS, its officers, current and former employees, agents, departments, agencies, boards, and commissions employee, and contractors, including all levels of subcontractors, engaged in sexual misconduct regarding a minor or student in violation of law.

### **43. MATERIAL SAFETY DATA SHEETS**

The Vendor shall ensure that APS has received the latest version of any Material Safety Data (MSDS) required by 29 C.F.R. Section 1910.1200 or any other Federal law when any hazardous materials are involved in the Work.

### **44. COOPERATIVE PROCUREMENT**

Should this Purchase Order be for Work purchased from the contract of another public body's contract in accordance with Virginia Code § 2.2-4304,

the terms and conditions of this Purchase Order shall supplement the terms and conditions of the other public body's contract. Should the terms and conditions of this Purchase Order conflict with the terms and conditions of the other public body's contract, the terms and conditions of this Purchase Order shall take precedence.

#### **45. ORDER OF PRECEDENCE**

Should the terms and conditions of this Purchase Order conflict with the terms and conditions of a contract the Vendor has with APS under which this Purchase Order is issued, the terms and conditions of the pre-existing APS contract shall take precedence.

Section 46 is included in Purchase Orders and Change Orders for the purchase of textbooks:

#### **46. PURCHASE OF TEXTBOOKS**

The publisher shall, for each textbook ordered, furnish an electronic file in the National Instructional Materials Accessibility Standards (NIMAS) format that will be deposited in the National Instructional Materials Access Center (NIMAC) from which accessible versions of the particular textbook may be produced for students with print disabilities. The publisher shall deliver the NIMAS file of the textbook on or before the date of delivery of the regular text version.

The publisher certifies that the textbook unit price appearing in the contract or Purchase Order is the lowest wholesale price at which the book or books are currently bid under contract anywhere in the United States or that the price to be charged has been reduced and is the same price as sold anywhere outside of Virginia. In the event the reduced price is permanent the publisher further agrees to notify the Virginia Department of Education to update its website with the new unit price.

The publisher shall, when applicable, offer the Arlington School Board the option of using any special or other edition of a textbook named in the contract or Purchase Order and adapted for use in Virginia and available at a lower price as sold elsewhere in the United States.

Section 47 is included in Purchase Orders and Change Orders where the Vendor will have access to student data:

#### **47. STUDENT DATA USAGE AND PRIVACY AGREEMENT**

The Vendor understands and agrees that where the provision of Work requires the Vendor to have access to student data the Student Data Usage and Privacy Agreement (SDUPA) is included in the Purchase Order and Change Order by reference. A link to the SDUPA is provided.

<https://www.apsva.us/wp-content/uploads/2018/08/STUDENT-DATA-USAGE-and-PRIVACY-AGREEMENT-Revised-August-2018.pdf>

Amended July 06, 2023