

**ALAMOGORDO PUBLIC SCHOOLS (APS)
PURCHASE ORDER TERMS AND CONDITIONS**

ACCEPTANCE OF CONTRACT - This Purchase Order is APS's offer to purchase from the Vendor the goods and/or services described in this Purchase Order, and any referenced or related contract/agreement. The placement of this order is expressly conditioned upon Vendor's acceptance of all the terms and conditions of purchase contained on, or attached or referenced by, this Purchase Order. Any terms inconsistent with or in addition to this Purchase Order proposed by Vendor are deemed rejected unless agreed to in writing by an authorized APS employee.

INSPECTION - The materials, supplies or services furnished shall be exactly as specified in this order, free from defects in Vendor's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by APS at all times and places. If, prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, APS may reject them, require Vendor to correct them without undue delay and without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Vendor is unable or refuses to correct such defects within a time deemed reasonable by APS, APS may terminate the order in whole or in part. Vendor shall bear all risks as to rejected materials, supplies and services and, in addition to any other costs for which Vendor may become liable to APS under other provisions of this order, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Vendor in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Vendor shall be liable for latent defects, fraud or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to, and do not limit APS's rights provided in this Paragraph. Rejected goods not reclaimed by the Vendor within 60 days of notification by APS shall be considered to be abandoned and may be disposed of in compliance with established NPS policies, regulations, or guidelines for such property.

WARRANTIES - Vendor warrants to APS that all goods, materials, supplies or services furnished to be exactly as specified in this order, free from defects in Vendor's design, labor, workmanship, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Vendor. All applicable UCC warranties, express or implied, are incorporated herein. In addition, Vendor expressly warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

ASSIGNMENT - Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Vendor except as authorized in writing by APS. No assignment or transfer shall relieve the Vendor from its obligations and liabilities.

CHANGES - APS may make changes within the general scope of this order by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change, substitution, alteration or additions by Vendor to this order are authorized without prior written approval of APS. Any claim of Vendor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Vendor of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Vendor from proceeding with performance of the order as changed hereunder.

RISK OF LOSS - Regardless of F.O.B. point, Vendor agrees to bear all risk of loss, injury, or destruction of goods and materials ordered herein which may for any reason occur prior to acceptance by APS. No such loss, injury or destruction shall release Vendor from any obligations hereunder.

LABOR DISPUTES - Vendor shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this order.

TERMINATION AND DELAYS - APS may, by written notice stating the extent and effective date, terminate this Purchase Order for convenience in whole or in part, at any time. APS shall pay Vendor as full compensation for performance until such termination:(1) the unit or pro rata order price for the delivered and accepted portion: and (2) incidental damages, not otherwise recoverable from other sources by Vendor, as approved by APS, with respect to the undelivered or unaccepted portion of this Purchase Order provided compensation hereunder shall in no event exceed the total Purchase Order price. Such amount will be limited to Vendor's actual cost, and may not include anticipated profits. APS shall not be liable for consequential damages. APS may by written notice terminate this Purchase Order in whole or in part for Vendor's default if Vendor refuses or fails to comply with the provisions of this Purchase Order or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, APS may otherwise secure the materials, supplies or services ordered, and Vendor shall be liable for damages suffered by APS thereby, including incidental

and consequential damages. If after notice of termination, APS determines Vendor was not in default, or if Vendor's default is due to failure of APS, termination shall be deemed for the convenience of APS. The rights and remedies of APS provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order as used in this paragraph. The rights and remedies of APS provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this Paragraph, the word "Vendor" includes Vendor and its subsuppliers/subVendors at any tier.

INDEMNIFICATION AND INSURANCE - Vendor assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged bodily or personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by Vendor, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of APS. Vendor shall indemnify and hold harmless APS, its board of education, officers, agents, and employees, from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged bodily or personal injury or property damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Vendor agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of APS.

RELEASE - Vendor hereby accepts the District premises and adjoining areas as is and releases and discharges the District, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from any and all bodily injuries, deaths and damage to property arising directly or indirectly out of this Contract, including but not limited to Vendor' use of the premises and the adjoining areas, including parking areas. Vendor shall be solely and exclusively liable for all damages caused by Vendor's performance of or the failure to perform under this Contract. The District assumes no responsibility whatsoever for any property placed on any District premises by Vendor or its officers, agents, employees, or servants and Vendor hereby releases and discharges the District, its board of education, agents, employees, representatives and insurers from any and all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from all liability, claims, judgments or demands, including reasonable attorneys' fees and costs, which may arise from Vendor's placement of property upon District premises.

NO THIRD PARTY BENEFICIARIES - District and Vendor are the only parties to this Purchase Order and are the only parties entitled to enforce its terms. Nothing in this Purchase Order provides any benefit or right, directly or indirectly, to third parties.

PATENT AND COPYRIGHT INDEMNITY - Vendor shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Vendor shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.

PENALTIES - The New Mexico Procurement Code (§§ 13-1-1 et seq. NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.

TITLE AND DELIVERY - Title to the materials and supplies passed hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. Time is of the essence and all prices are F.O.B. Destination (inside delivery) with transportation charges prepaid. For any exception to the delivery date specified, Vendor shall give prior notification and obtain approval thereto from APS's Purchasing Department. This Purchase Order is subject to termination for failure to make timely delivery. APS reserves the right to cancel or purchase elsewhere and hold vendor accountable for deliveries not completed by the delivery date specified. This remedy shall be in addition to any other remedies that APS may have.

NON-DISCRIMINATION CLAUSE – Vendor agrees that no person shall be subject to unlawful discrimination based on race, color, gender, age, religion, national origin, sexual orientation, disability, U.S. Military Veteran Status, marital status, source of income, or political affiliation in programs, activities, services, benefits or employment in connection with this purchase order.

APPLICABLE LAWS - Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. The Vendor certifies that in performing this contract Vendor will comply with all applicable federal, state, and local laws, regulations, rules and orders. This contract shall be governed by and construed according to the laws of the State of New Mexico. Venue for any action related to this agreement shall be in Otero County, New Mexico.