

**ELK GROVE UNIFIED SCHOOL DISTRICT
PURCHASE ORDER/CONTRACT
GENERAL CONDITIONS**

1. **BID/QUOTE/PROPOSAL/GENERAL CONDITIONS:** All of the terms and conditions of the bid, quote, or proposal against which this purchase document is applied, are hereby incorporated.

2. **SALES TAX NOT INCLUDED:** Unless otherwise definitely specified, the unit prices do not include California sales and use tax or Sacramento County sales and use tax.

3. **CASH DISCOUNTS:** In connection with any cash discount specified on this quote, time will be computed from the date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received in Accounting if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the District warrant or check.

4. **HOLD HARMLESS:** Provider and its agents, officers and employees shall defend, indemnify, and hold harmless EGUSD, its elected and appointed officers, agents, employees, volunteers, Providers and representatives from and against any and all claims, demands, losses, defense costs, expenses, attorney fees, litigation expenses, or liability which EGUSD, its elected and appointed officers, agents, employees, volunteers, Providers and representatives may sustain or incur, or which may be imposed upon them by law for any and all damages whatsoever, to the extent caused as a result of or arising out of the operations, negligent acts, wrongful acts, errors or omissions, caused in whole or in part by the agents, officers and employees of Provider in the performance of and in accordance with the terms of the Contract entered into between Provider and EGUSD.

Provider shall indemnify and hold the EGUSD, its officers, agents, and employees, harmless from and against any and all loss, liability and expense (including attorney's fees) of any nature or kind whatsoever, on account of use by the publisher or author, manufacturer of agent of any copyrighted or un-copyrighted composition, secret process, trademark, patented or un-patented, article or appliance furnished or used under this contract or purchase order.

5. **DISAGGREGATED PRICING:** If, in connection with the provision of materials, goods, or services pursuant to this agreement, Provider will provide any installation, construction, alteration, demolition, installation, or repair services, and such services represent ten percent (10%) or less of the agreement price, Provider shall provide to the EGUSD disaggregated pricing identifying individual service costs. If such services represent eleven percent (11%) or greater of the agreement price, Provider shall provide disaggregated pricing upon request of the EGUSD.

6. **RIGHT TO AUDIT:** EGUSD reserves the right to verify, by examination of Provider's records, all invoiced amounts when firm prices are not set forth in the purchase agreement.

7. **DEFAULT BY PROVIDER:** In case of default by Provider, the District may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the Provider, the difference between the price named in the contract or purchase order and actual cost thereof to the EGUSD. Prices paid by the EGUSD shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing and Warehouse Director.

8. **ASSIGNMENT:** The Provider shall not assign or subcontract the work or any part thereof, without the previous written consent of EGUSD, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of EGUSD has been obtained. No right under this contract, or claim for any money due or to become due hereunder shall be assessed against EGUSD or persons acting for EGUSD, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the EGUSD. In case the Provider is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of materials supplied for the performance of the work.

In submitting a quote to a public purchasing body, the quote offers and agrees that if the quote is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) & the Cartwright Act (Chapter 2 [commencing with Section 16700] of part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, materials, or services by the quoter for sale to the purchasing body pursuant to the quote. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the quoter.

9. **APPLICABILITY TO HEIRS:** Time is of the essence of each and all the provisions of this agreement, and, subject to the limitation of Paragraph 7, the provisions of this agreement shall extend to and be binding upon and inure to the benefits of the heirs, executors, administrators, successors, and assigns of the respective parties thereto.

10. **F.E.T. EXEMPTION:** EGUSD is exempted from payment of Federal Excise Tax. No federal tax shall be included in price. EGUSD will pay California Sales Tax and Use Tax, if applicable, but the amount of this tax will be paid separately.

11. **CHARGES NOT INCLUDED ON FACE NOT ACCEPTABLE:** No charge will be accepted for packing, boxing, or cartage, except as specified in the Notice of Award.

12. **DELIVERY AND TITLE:** Provider must quote prices F.O.B. Destination, to the delivery location designated by EGUSD and/or Purchasing and Warehouse Department for all transactions against this agreement. All transportation charges shall be prepaid to the address indicated on the purchase order unless a different address is specified in writing by the EGUSD, Purchasing and Warehouse Department. EGUSD will not pay shipping and handling charges, nor shall EGUSD pay for any fuel surcharges that are not indicated herein. If the material is not received within the time specified for delivery, it will be received at the discretion of EGUSD. Should it be necessary for EGUSD to refuse delivery of any material contained in the contract, the Provider shall be responsible for the cost of retrieving the merchandise in question.

Except as otherwise expressly provided herein, title to and risk of loss on all items shipped by seller to buyer shall pass to the buyer upon buyer's inspection and acceptance of such items at buyer's building.

A packing slip must accompany each delivery which must include the purchase order, catalog number, serial number, description, and EGUSD stock number, if applicable.

EGUSD shall not issue payment if a shipment is made to any address other than the designated "Ship To" address, unless the "Ship To" address is changed by a "Purchase Order Change Notice" issued by the Elk Grove Unified School District Purchasing and Warehouse Department.

13. **CHANGES WITHOUT NOTICE PROHIBITED:** No changes in price, quantity or merchandise will be recognized by EGUSD without written notice of acceptance thereof prior to shipment.

14. **ALL UNDERSTANDINGS IN WRITING:** It is mutually understood and agreed that no alteration or variation of terms of this contract or purchase order shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or contracts not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

15. **FORCE MAJEURE:** Neither party shall be held liable for failure or delay in the fulfillment of conditions of purchase order/contract if hindered or prevented by fire, strikes, Acts of God, rules or regulation of any governmental agencies or other matters or conditions beyond the control of either EGUSD or the Provider.

16. **SPECIAL CONDITIONS:** EGUSD's standard terms and conditions shall govern any contract awarded. If, after award of contract, Provider provides additional terms or conditions, they shall be considered void. To the extent not otherwise stated in the contract, the California Commercial Code shall apply.

17. **COMPLIANCE:** The Provider shall comply with all federal, state and local laws, regulations and requirements necessary for the provision of contracted services. Furthermore, the Provider shall comply with all laws applicable to wages and hours of employment, occupational safety, fire safety, health and sanitation. The Provider shall maintain current throughout the life of this agreement, all permits, licenses, certificates and insurances that are necessary for the provisions of contracted services.

18. **TERMINATION:** This purchase order may be terminated in whole or in any part at any time by written notice by EGUSD to the Provider. EGUSD shall be liable at the stipulated price only for such materials and/or services as have been delivered and/or rendered and accepted. EGUSD shall not be liable for any excess costs arising out of such termination and failure of the Provider to cease delivery and/or work upon receipt of termination notice shall not occasion a claim for extra costs.

19. **CODE REQUIREMENTS:** All materials or products supplied are to be in conformance with all federal, state and local code including, but not limited to, OSHA and CAL OSHA.

20. **WARRANTY:** In addition to any warranties otherwise required, the Provider shall warranty his work free from defects and material and workmanship for a period of one year from the date of acceptance by EGUSD and shall agree to replace at his own expense any said defect that may occur within that time. Such warranty is in addition to, and not in lieu of EGUSD's rights to enforce this agreement in all respects, and EGUSD's right on all other warranties that may be required by the by this agreement or the request for bids, quotes, or proposals.

By accepting the warranties required herein, EGUSD shall not be deemed to have waived any warranty or buyer protection implied, required and/or provided by law, not to have altered any applicable statute of limitations regarding enforcement of any right of EGUSD created by this agreement or otherwise.

Materials, articles and equipment furnished by the Provider as requested by EGUSD, shall be new and of the quality and kind indicated in the specifications, free of defective installation including, but not limited to the local codes and manufacturer's installation instructions up to full four (4) years acceptance by EGUSD. Pursuant to Public Contract Code Section 3400, the Provider is authorized to request substitutions of equal materials, in which case EGUSD shall be the sole judge as to such substitutions.

21. **GOVERNING LAW AND VENUE:** The laws of the State of California shall govern this agreement. Venue shall be in the County of Sacramento. The provision of this paragraph shall survive expiration or other termination of this agreement regardless of the cause of such termination.

22. **PURCHASE ORDER:** The Purchase Order Number must appear on all invoices, shipping papers and correspondence.

23. **INVOICING:** Send all invoices to:
Elk Grove Unified School District
Attn: Accounts Payable
9510 Elk Grove-Florin Road
Elk Grove, CA 95624

Payment Terms: Net 60 Days.
Terms of less than 60 Days are not considered when determining award.

24. **SAFETY DATA SHEETS (S.D.S.):**
Send S.D.S. with order to:
Purchasing and Warehouse
Elk Grove Unified School District
8431 Gerber Road
Sacramento, CA 95828