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Purchase Order Terms and Conditions (AISDP 0013)

Acceptance of Agreement This Purchase Order constitutes a binding contract between the Amarillo Independent School District ("AISD" or the "District") and Contractor to furnish the goods and/or services specified on the face of the Purchase Order. By acceptance of this Purchase Order, Contractor agrees to furnish all goods and/or services in accordance with the terms and conditions specified herein. Unless otherwise specified in this Purchase Order, Contractor shall not deliver substitutes or inferior materials without prior, written authorization from AISD. Acceptance of Contractor's goods and/or services does not constitute acceptance of any terms and conditions stated in Contractor's documentation or agreements. Contractor's commencement of work on the goods subject to this Purchase Order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this Purchase Order. This Purchase Order and the terms and conditions specified in the Solicitation, the General Provisions, and Contract Documents (as defined in the Solicitation) and any contract entered into between AISD and Contractor as a consequence of the Solicitation ("Contract") represent the basis for Contractor to deliver the required goods and/or services, and supersede all prior offers, negotiations, exceptions and understandings, whether oral or in writing. In the event of a conflict between a Purchase Order and the Solicitation or the Contract, the Contract shall control. In the event of a conflict between a Purchase Order and the Solicitation, the Solicitation shall control.

Confidentiality and Safeguarding of District Records: Contractor must maintain confidentiality and security compliance requirements with respect to District Records subject to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"), Health Insurance Portability and Accountability Act ("HIPAA", Public Law No. 104-191) and the Gramm-Leach-Bliley Act ("GLB", Public Law No. 106-102), on any records (1) created, (2) obtained, (3) stored, (4) used (5) received from or on behalf of District, or (6) have access to, records or record systems (collectively, "District Records"). Among other things, District Records may contain names, addresses, social security numbers, credit card numbers, or data protected or made confidential or sensitive by Applicable Federal or Texas Laws.

Termination for Convenience of the District AISD reserves the right to terminate, in its sole discretion and without penalty, any Purchase Order or any part of a Purchase Order for its sole convenience at any time upon thirty (30) days prior written Notice of Termination. Upon receipt of such Notice of Termination, Contractor shall immediately stop all work, and shall immediately cause any of its suppliers or subcontractors to cease such work. Contractor shall be paid, to the extent of funds appropriated or otherwise legally available for such purpose, a reasonable termination charge consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the Notice of Termination. Contractor shall not be paid for any work done after receipt of the Notice of Termination, or for any costs incurred by Contractor's suppliers or subcontractors which Contractor could reasonably have avoided.

Termination for Cause AISD may, in its sole discretion and without penalty, also terminate any Purchase Order or any part of a Purchase Order at any time, by written Notice of Termination (effective in ten (10) days, unless otherwise specified, after the date of such notice, unless Contractor, within such ten (10) day period, cures such default) for cause in the event of any default by Contractor or if Contractor fails to comply with any of the terms and conditions of a Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to an issued Purchase Order, and failure to provide AISD, upon request, of reasonable assurances of future performance shall all be causes allowing AISD to



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terminate a Purchase Order. In the event of termination for cause, or due to Contractor's default, AISD shall not be liable to Contractor for any amount, and Contractor shall be liable to AISD for any and all damages sustained by reason of the default (including, without limitation, the difference between Contractor's price and the actual purchase price of the good and/or service on the open market), which gave rise to the termination.

Changes AISD reserves the right to make changes to issued Purchase Orders (e.g., increase/decrease quantities, change delivery address). Any changes to the Purchase Order shall be communicated to Contractor by the issuance of a written Change Order.

Warranty Contractor expressly warrants that all goods or services furnished under an issued Purchase Order shall conform to all specifications and appropriate standards, shall be new and shall be free from defects in material, design or workmanship. Contractor warrants that all such goods or services shall conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished to AISD will be merchantable and will be safe, appropriate, and suitable for their ordinary purpose, as well as any special purposes specified by AISD, for a period of one (1) year from the date of AISD's acceptance of the goods and/or services or payment of the applicable invoice, whichever is later. Contractor warrants that goods or services furnished will conform in all respects to samples, inspections and tests. Acceptance, payment, or use of the goods or services not conforming to the requirements of any Purchase Order shall not affect Contractor's obligations under any warranty, and shall not constitute a waiver or modification of any of Contractor's warranties, or the rights of AISD. Such warranties shall survive inspection, tests, acceptance, payment and use. Contractor agrees to replace or correct defects of any goods, or services not conforming to the foregoing warranties promptly without expense to AISD when notified of such nonconformity by AISD provided AISD elects to provide Contractor with the opportunity to do so. In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, AISD, after reasonable notice to Contractor, may, at Contractor's expense, make such corrections or replace such goods and services. Contractor warrants and represents that all services performed by it or its permitted subcontractors and all material used on AISD's behalf, will be completely paid for and that there are no materialman's or other liens attached to the goods, products, merchandise, materials, or services which are provided to AISD.

Price Warranty Contractor warrants that the prices for the articles and services sold to AISD are not less favorable than those currently extended to any other customer, for the same or similar articles or services in similar quantities. In the event Contractor reduces its price for such article during the term of an issued Purchase Order, Contractor agrees to reduce the prices charged to AISD correspondingly. Contractor warrants that prices shown on the Purchase Order shall be complete and no additional charges of any type shall be added without AISD's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, storage, insurance, boxing, crating.

Insurance In the event that the Purchase Order requires or contemplates performance of services by Contractor's employees or person under contract to Contractor to be done on AISD's property, Contractor agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of AISD. Contractor shall maintain all necessary insurance



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coverage, including public liability and Workmen's Compensation insurance sufficient to meet all liabilities mentioned herein. **CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS AND DEFEND AISD FROM ANY AND ALL CLAIMS OR LIABILITIES ARISING OUT OF THE WORK COVERED BY THIS PARAGRAPH.**

Indemnification CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT (INCLUDING, WITHOUT LIMITATION, THE DISTRICT'S BOARD OF TRUSTEES, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY ALL DAMAGES, CLAIMS, SUITS IN LAW OR IN EQUITY, COSTS (INCLUDING ATTORNEY'S FEES), FINES, PENALTIES, LIABILITIES AND EXPENSES (INCLUDING BUT NOT LIMITED TO THE INJURY OR DEATH OF PERSONS, OR THE LOSS OR DAMAGE TO PROPERTY) ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT IN THE GOODS OR SERVICES PURCHASED BY AISD , OR FROM ANY ACT OR OMISSION OF CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS, INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT, OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY PART OF THE GOODS AND/OR SERVICES THE CONTRACTOR IS REQUIRED TO DELIVER AND/OR PERFORM.

THIS INDEMNIFICATION SHALL BE IN ADDITION TO THE WARRANTY OBLIGATIONS OF CONTRACTOR AND SHALL SURVIVE ACCEPTANCE AND PAYMENT OF THE GOODS AND/OR SERVICES BY AISD.

Inspection/Testing Payment for the goods delivered to AISD shall not constitute acceptance thereof. Prior to acceptance of any goods and/or services and continuing for a period of thirty (30) days after AISD's first use of the goods and/or services, the District shall have the right to inspect and test such goods and to reject, in whole or in part, said goods or services which in AISD's judgment, are defective or nonconforming. Nothing contained in any Purchase Order shall relieve in any way Contractor from the obligation of testing, inspection and quality control. In the event that AISD does not accept any goods and/or services which have been submitted to AISD, AISD is entitled to any and all remedies provided in law or in equity. In addition, when products tested fail to meet or exceed all applicable specifications, the cost of the sample used and the cost of any testing shall be borne by Contractor. Goods, which have been delivered and rejected in whole or in part, may be, at AISD's option, returned to Contractor at Contractor's risk and expense or disposed of in accordance with AISD's policies. Contractor may request that rejected goods be held by AISD at Contractor's risk for a reasonable period of time for later disposition at the Contractor's expense.

Assignments and Subcontracting No part of any Purchase Order may be assigned, subcontracted, transferred, mortgaged, pledged or otherwise disposed of or encumbered in any way by Contractor without the prior written approval of AISD. Any such attempted assignment by Contractor shall be null and void.

Product Recall Contractor shall notify AISD's Director of Purchasing immediately if a product recall is instituted on any good and/or service Contractor has delivered or if Contractor discovers or becomes aware of any quality or other deficiency in the delivered goods and/or services. This requirement shall survive payment and acceptance of the goods and/or services.

Quantities The quantities specified for delivery in a Purchase Order are the only quantities required by AISD. If Contractor delivers quantities in excess of those specified on the Purchase Order, AISD is not



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required to make any payment for the excess goods and, at AISD's election, AISD may keep or return the excess goods. All risk and expense for the return of the quantities of goods in excess of those specified on the face of the Purchase Order shall be borne by Contractor unless prior written authorization is issued by AISD. AISD is not responsible for products delivered or work performed without a written Purchase Order.

Quality In the event no quality is specified on the face of the Purchase Order, in the Solicitation, or the Contract, the goods delivered and/or services rendered by Contractor shall be of the best quality. Contractor shall ensure that all goods delivered to AISD are new (i.e., previously unused and in their original packaging) and have not been reconditioned, repackaged, returned, remanufactured, refurbished, or damaged. Contractor also warrants that all services will conform to the standard(s) established in the issued Purchase Order, the Solicitation, and/or Contract.

Safety If applicable, Contractor shall deliver Material Safety Data Sheets ("MSDS") with the requested goods. Contractor shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, policies, and regulations in the performance of services and/or the delivery of goods, including, without limitation, those promulgated by AISD and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Contractor agrees to perform services(s) rendered safely, diligently, efficiently, and in a professional manner.

Setoff AISD reserves the right to offset subsequent payments due under any Purchase Order, the Solicitation, or Contract by any amount due and owing by Contractor to AISD, including, without limitation, amounts owed for breach/default of the Purchase Order, the Solicitation, or Contract. AISD is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it.

Waiver AISD's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or AISD's waiver of any breach hereunder shall not thereafter waive any of AISD's other terms, conditions, or privileges, whether of the same or similar type.

Delivery The obligation of Contractor to meet the delivery dates, specifications, and quantities set forth in the Purchase Order is of the essence to the Purchase Order. If, at any time, Contractor believes it may be unable to comply with the delivery or completion schedules, Contractor must immediately notify AISD's Director of Purchasing in writing of the probable length of any anticipated delay, the reasons for the delay, and the estimated delivery/completion date(s). In the event of such notification or of an actual failure by Contractor to comply with the delivery or completion schedules, AISD may, in its sole discretion, in addition to all other remedies, and without liability, (i) require Contractor, at Contractor's expense, to ship the goods via airfreight or expedited routing to avoid or minimize delay; or (ii) cancel the Purchase Order as to items not yet shipped or services not yet rendered and purchase substitute items or services elsewhere and charge Contractor with any loss incurred. All deliveries shall be made to the location(s) identified in the issued Purchase Order, Freight Prepaid, Free on Board (F.O.B.) Destination, Full Freight Allowed, Inside Delivery, unless otherwise specified on the Purchase Order. Delivery hours are 8:00am to



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3:00pm, M-F, except for certain holidays and summer hours. AISD's officially adopted calendar is available online at www.amaisd.org; AISD may close from time to time for inclement weather.

Invoices & Payments Contractor shall submit an invoice upon completion of each Pay Item, and reference the Agreement / Purchase Order Number, ONLY one number per invoice. The work to be paid for under any Pay Item is fixed in this Agreement and shall be the amount due and payable in accordance with Section B and the applicable measurement for payment provisions of the Agreement. No invoice shall be processed and paid which is not completed as stated.

Invoices shall be sent to the following address:

Amarillo Independent School District
Attn: Accounts Payable
7200 I-40 West
Amarillo, Texas 79106

Or by email address to the following: accountspayable@amaisd.org

Upon proof of satisfactory performance, AISD will approve Contractor's invoice. AISD will pay Contractor Net 30 Days after a proper invoice is submitted and approved. AISD's obligation is payable only and solely from funds available for the purpose of the purchase reflected on the Purchase Order issued to Contractor. There shall be no interest on any delayed, disputed or delinquent payment.

Taxes AISD is tax-exempt and shall not pay or be liable for taxes for goods and/or services. Contractor shall not include taxes on the invoices. District will furnish a tax exemption certificate upon request.

Title The title and risk of loss to any and all goods, products, merchandise, materials, and/or services that are provided to AISD shall pass to AISD upon acceptance of the item or payment of the applicable invoice, whichever is later.

Certifications Contractor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Contractor further certifies and verifies that neither Contractor, nor any affiliate, subsidiary, or parent company of Contractor, if any (the "Contractor Companies"), boycotts Israel, and if applicable to Contractor by applicable law, Contractor agrees that Contractor and Contractor Companies will not boycott Israel during the term of this PO. For purposes of this PO, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

Fingerprinting In accordance with the Texas Education Code (TEC) 22.0834, a Contractor shall certify to the District that it is in compliance with the fingerprinting laws. The District may review the background check results for contracted employees in the DPS FACT Clearinghouse as provided by Section 411.0845, of the Texas Government Code. Additionally, a subcontractor must certify to the District and Contractor



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that the subcontractor has fingerprinted all individuals providing services to the District under the terms of the contract. The District may request additional information from a Contractor in order to verify that the fingerprinting has been completed.

Governing Law and Venue The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern any issued Purchase Order. Any dispute under a Purchase Order may be brought in the state and federal courts located in Potter County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

Severability In the event that any one or more of the provisions contained in a Purchase Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Purchase Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Federal Funds In the event AISD is spending federal funds, the Contractor agrees to the Additional Federal Terms and Conditions document (AISDP0014). Federal funds, if not specifically noted on the Purchase Order, will be designated with the following first three numbers (Fund Number) of the account code listed on the purchase order: Range from 200 through 340.