

**Chabot-Las Positas Community College District**  
**Purchase Order Terms & Conditions**  
**For Purchase Order # \_\_\_\_\_**

This Agreement is made by and between \_\_\_\_\_ (“Seller”) and the Chabot-Las Positas Community College District (District) as of \_\_\_\_\_, 20\_\_ for the purchase of \_\_\_\_\_ as follows:

1. **Entire Agreement:** The following terms and conditions, together with such terms are set forth in this Purchase Order ("Order"), such plans, specifications or other documents as are incorporated by reference in the Purchase Order, and any amendments in any subsequent authorized writing from District, shall constitute the entire contract between the District and Seller and shall supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. If performance specifications, technical product descriptions or other similar descriptive materials submitted by Seller in connection with the Order have been incorporated by reference in the Purchase Order these shall not be deemed to supersede any contrary requirements of District, but to the extent that such materials are not inconsistent with District's requirements, they shall constitute a part of the basis of this agreement.
2. **Payment:** Payment terms are as set forth in the Purchase Order. If no terms are specified, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of goods or other performance conforming to the terms of this Order or (ii) invoicing. Except as otherwise provided in the Purchase Order the price includes all applicable Federal, State and local taxes and duties. All Federal, State and local taxes and duties shall be separately itemized on any invoices. Seller assigns to District all rights to refunds of sales and use taxes paid in connection with this Order and agrees to cooperate with District in the processing of any refund claims.
3. **Changes:** District may make changes to this Order, including drawings and specifications for specially manufactured goods and place of delivery, by giving written notice to Seller. If such changes affect the cost of or the time required for performance of this Order, an equitable adjustment in the price or date of delivery or both shall be made. No change by Seller is allowed without written approval of District. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Article excuses Seller from delivering the goods and services described in this Order. Except as otherwise provided herein, no other supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.
4. **Time:** If delivery or completion dates can not be met, Seller shall inform District immediately. Such notice shall not, however, constitute a change to the delivery or completion terms of this Order unless District modifies this Order in writing. If any item is not received or if any element of the work is not completed by the date specified, the District, at District's option and without prior notice to Seller may either approve a revised date or may cancel this Order and may obtain such goods or work elsewhere and in either event the Seller shall be liable to the District for any resulting loss incurred by the District. Seller's sole remedy for a delay caused by District shall be an extension in the time for Seller's performance equal to the duration of District's delay. Seller shall not be liable for damages resulting from Seller's failure to deliver or complete, or for delays in delivery or completion occasioned by strikes, lock-outs, fires, war or acts of God. **TIMING OF DELIVERY AND/OR PERFORMANCE OF THE WORK IS OF THE ESSENCE OF THIS ORDER.**
5. **Improper Performance:** In addition to other remedies provided by law, District reserves the right to reject any goods or to revoke any previous acceptance and to cancel any or all part of the Order if Seller fails to deliver any or all part of the goods or perform any of the work in accordance with the terms and conditions of this Order. Acceptance of any part of the Order shall not bind the District to accept any future shipments or work nor deprive it of the right to return goods already accepted. At District's option, all disputes arising in connection with this Order shall be resolved by arbitration in accordance with the rules of the American Arbitration Association, except that each party shall have the discovery rights established by the California Code of Civil Procedure.

6. **Cancellations:** The District may cancel this Order in whole or in part, for no cause, upon written or fax notice to the Seller, effective when sent, provided such notice is sent at least fourteen (14) days prior to the delivery date specified on the face of this Order.

In addition, the District may cancel this Order in whole or in part at any time for cause by written or fax notice to the Seller, effective when sent, in the event that Seller: (a) fails to comply with any term or condition of this Order including, but not limited to, delivery terms; or (b) appoints a receiver, liquidator or trustee in bankruptcy or other similar officer over any or all of its property or assets; or (c) files a voluntary petition in bankruptcy; or (d) has had filed against it an involuntary petition in bankruptcy which remains in effect for thirty (30) days; or (e) voluntarily ceases trading; or (f) merges with or is acquired by a third party; or (g) assigns any of its rights or obligations under the Order to a third party without the District's advance written consent.

Upon the occasion of any one of the aforesaid and in addition to any remedies, which the District may have in law or in equity, the District may also cancel this order or any outstanding deliveries hereunder by notifying Seller in writing of such cancellation. Seller shall thereupon transfer title and deliver to the District such work in progress or completed material as may be requested by the District. The District shall have no liability to Seller beyond payment of any balance owing for materials purchased hereunder and delivered to and accepted by the District prior to the Seller's receipt of the notice of termination, and for work in progress requested for delivery to the District.

7. **Rescheduling:** The District may without liability at least fourteen (14) days prior to the scheduled delivery date appearing on the Order defer delivery on any or every item under said Order by giving oral notice to the Seller (confirmed in writing within ten (10) working days) of any necessary rescheduling.
8. **Warranty:** The goods and services furnished shall be exactly as specified in the Order, and shall be free from all defects in design, workmanship and materials. The goods and services are subject to inspection and test by the District at any time and place. If the goods and services furnished are found to be defective, the District may reject them, or require Seller to correct them without charge, or require a reduction in price, which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by the District, the District may terminate this Order in whole or in part. Seller bears all risks as to rejected goods and services. Seller shall reimburse the District for all transportation costs, other related costs incurred, and overpayments in respect of the neglected goods and services. These express warranties shall not be waived by reason of acceptance or payment by the District. This Order incorporates by reference all terms of the Uniform Commercial Code as adopted in the State of California providing any protection to the District, including but not limited to all warranty protection (express or implied) and all of the District's remedies under the UCC. All goods and work shall also be subject to any stricter warranties specified in the Data Sheet or in other materials incorporated by reference.
9. **Risk of Loss:** Unless the Order expressly states otherwise, all goods shall be shipped FOB the "Ship to" location designated in the Purchase Order. Risk of loss shall not pass to District until goods called for in this Order actually have been received and accepted by the District at the destination specified herein. Seller assumes full responsibility for packing, crating, marking, transportation and liability for loss and/or damage even if District has agreed to pay freight, express or other transportation changes.
10. **Electronic/Facsimile Transmission:** If this Order is transmitted by facsimile or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to the Seller, but only if the Transmit Terminal Identification on the Purchase Order correctly includes the notation "Chabot-Las Positas Community College District"; "Chabot Community College" or "Las Positas Community College".
11. **Hold Harmless and Indemnification:** From and after the date of this Order, the Seller agrees to indemnify, defend and hold harmless the District from any and all claims, regardless of by whom such claim or claims may be asserted, for personal injury or property damage or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Seller pursuant to this Order.

12. **Assignment/Subcontracting**: Neither party shall have any right to assign this Order or any benefits arising from this Order without prior written consent of the other and, unless otherwise agreed upon in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Seller shall not, except in the case of raw materials (including castings, forgings, and rough welded structures) or standard commercial goods or except as otherwise agreed in writing by the District, delegate or subcontract the work on any item of material or service to be delivered or performed under this Order.
13. **Shipping, Packaging and Labeling**: All Material purchased hereunder must be packed and packaged to ensure its safe delivery in accordance with good commercial practice and where incorporated, the District's packaging specification. The Seller shall mark on all containers, handling and loading instructions, shipping information, part number, purchase order number and item number, quantity in box, shipment date, and names and addresses of the Seller and the District. An itemized packing list must accompany each shipment. Each packing slip shall include; this Order number, quantity, item description, order date, shipping date and delivery address, but shall not include pricing information.
14. **Notification of Hazardous Products**: The Seller hereby agrees to notify the District of any inherent hazard related to any materials or goods being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall be sent to the District's Purchasing Manager and shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by the District or others and any additional information that the District should reasonably expect to know to protect its interest.

All shipments of hazardous materials under this Order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910.1200 for the transporting and labeling of hazardous materials. Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made.

15. **Work On-Site**: The following additional conditions will apply if work is to be performed by the Seller at any of District's locations:
  - a. All persons furnished by Seller shall be deemed Seller's employees or agents and Seller shall comply with all applicable statutes regarding worker's compensation, employer's liability, unemployment compensation, and/or old age benefits and all other applicable laws relating to or affecting the employment of labor.
  - b. Seller shall indemnify, hold harmless and defend District from any and all claims and liabilities for injuries or death and also for any and all claims and liabilities arising out of loss or damage to property, caused by or resulting from the performance of the work covered hereby.
  - c. Seller shall at all times during the term of this Agreement, or any extension thereof, maintain comprehensive general liability insurance coverage in the amount of \$1,000,000 per occurrence and in the aggregate for all claims made during any one policy year. Seller shall, upon request of the District, provide proof that the services provided are covered under its policy and that the District is named or fully covered as an additional insured.
  - d. Seller agrees to comply fully with all provisions of all applicable workers' compensation insurance laws, and shall procure and maintain in full force and effect worker's compensation insurance covering its partners, employees and agents while said persons are performing services pursuant to this Agreement. In the event that an employee of Seller performing this Agreement files a worker's compensation claim against the District, Seller agrees to defend and hold the District harmless from such claim.
  - e. The work shall be performed in a first class and workmanlike manner by qualified and efficient workers who shall not cause labor conflicts with any workers employed by the

District or others working at District's facilities. The work shall be performed in strict conformity with the strictest quality standards mandated and/or recommended by all generally recognized organizations establishing quality standards for work of the type to be performed hereunder. Seller shall be solely responsible for controlling the manner and means by which it and its employees perform labor and services and it shall observe, abide by and perform all of its obligations in accordance with all legal requirements. Without limiting the foregoing, Seller shall control the manner and means of the labor and services so as to perform the work in a reasonably safe manner and comply fully with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association, for work of the type to be performed hereunder. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Order shall govern.

- f. Seller is responsible for securing all applicable licenses and permits and compliance therewith and the price shall be deemed to include the cost of these items.
  - g. The site shall be kept free of waste and, on completion, left "broom clean." In case of dispute District may remove waste at Seller's expense.
  - h. If requested, Seller shall furnish satisfactory evidence of the kind, quality and quantity of labor and materials used or to be used.
  - i. The Seller, for itself and for all subcontractors and material men, agrees that no mechanic's lien or other claim shall be filed or maintained by the Contractor or by any subcontractor, material man, laborer or any other person, whatsoever, for or on account of any work done or materials furnished under this Order. This agreement shall be an independent contract and the Seller shall execute and deliver to District a separate Waiver of Liens (in form and substance satisfactory to the District).
  - j. In every subcontract entered into by the Seller after the execution and delivery of this Order or in connection herewith, the Seller shall incorporate a provision, similar to the foregoing paragraph, to the effect that neither the subcontractor nor any party acting through or under him shall file or maintain any mechanic's lien or other claim against the District in connection with the work to be performed hereunder.
  - k. Public Works Contractor Registration Certificate: Pursuant to California Senate Bill 854, the qualified Contractor shall be registered with the California's Department of Industrial Relations (DIR) and its subcontractors who intend to bid or perform work on any public works project, as defined under Labor Code §1720, 1771, 1774-1776, 1777.5, 1813 and 1815. The qualified Contractor shall sign and deliver to the District the form of Public Works Contractor Registration Certification included with the Agreement Documents.
16. **Non-Discrimination in Employment**: In connection with the performance of work under this Order, the Seller agrees that it will not unlawfully discriminate on the basis of race, color, religion, gender, national origin, age or medical condition, sexual orientation or marital status or any other characteristic protected by law in the delivery of programs or services set forth herein. In the event of the Seller's non-compliance with the non-discrimination clauses of this Order or with any of the said rules, regulations, or orders, this Order may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further District contracts as provided by law.
17. **Compliance with Laws and Regulations**: The Seller represents and warrants to District that Seller and its employees, agents, and any subcontractors have filed all certifications and have obtained all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required in connection with this Order.

18. **DAVIS-BACON ACT:** Contractor and any subcontractors working on the site of public works projects in excess of \$1,000 shall comply with the Davis-Bacon Act which establishes that paid wages are in accordance with the Prevailing Wage Rates as determined by the Department of Industrial Relations (DIR). In addition, submission of the Certified Payroll Records shall be in compliance with Senate Bill 854.
19. **Waiver:** A waiver of any breach or any of the covenants, terms or provisions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other covenant, term or provision.
20. **Termination for Convenience:** District may terminate this Order at any time without incurring liability to Seller for lost profits or any other costs other than the value of conforming work completed on site or goods delivered.
21. **Conflicts of Interest:** To avoid any potential conflict of interest problems, Contractor represents that it does not employ or retain the services of any spouse or family member of any District employees, nor has it furnished any financial compensation for the pursuit of business with the District.
22. **Debarment, Suspension, and Other Representation:** Contractor certifies as required by Executive Order 12549, that Contractor and its principles are not presently debarred, suspended, proposed for debarment, declared intelligible, or voluntarily excluded from covered transactions by any federal department or agency, are not presently indicted, criminally or civilly charged by a governmental entity, and have not, within a three (3) year period preceding this Agreement, been convicted or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining or performing a public transaction or contract, or had one or more public transactions terminated for cause or default, nor have any appropriated funds been paid by or on behalf of the Contractor to any person for influencing or attempting to influence any employee or officer of the federal government or in connection with making of any federal grant or cooperative agreement.
23. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
24. **Venue:** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
25. **No Third Party Beneficiaries:** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to anyone other than the Parties to this Agreement. No one is an intended third-party beneficiary of this Agreement.
26. **Attorney's Fees:** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
27. **Captions:** The captions used herein as headings of the various paragraphs and subparagraphs hereof are for convenience only, and the parties agree that such captions are not to be construed as a part of the Agreement or to be used in determining or construing the intent or context of this Agreement.
28. **Counterparts:** This Agreement may be executed in any number of counterpart copies, all of which shall constitute one and the same Agreement and each of which shall constitute an original.
29. **Severability:** If any of the provisions or portions thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions thereof shall not be affected thereby.