

TERMS AND CONDITIONS OF PURCHASE

The following terms and conditions apply to all PCC purchases in addition to any terms set forth on the face of an individual purchase order (“PO”) or in any plans, specifications or other documents incorporated by reference (collectively, “Order”).

SECTION 1. GENERALLY

1. PARTIES. The term “Vendor” refers to the addressee set forth on the face of the PO, and the term “PCC” refers to the Pima County Community College District, a political subdivision of the State of Arizona.

2. SCOPE.

Acceptance by PCC of any offer from Vendor (including Vendor’s quotations, responses, and bids to PCC’s requests for proposals or bids) is expressly limited to the terms and conditions of this Order, and PCC hereby objects to and shall not be bound by any additional, different or conflicting terms, printed or otherwise, in any other communication between the parties (including on any of Vendor’s forms, letter, or papers), it being understood that the terms and conditions of this Order shall prevail notwithstanding any such additional, different or conflicting terms:

2.1. If this Order is issued in furtherance of an existing written, duly executed agreement between PCC and Vendor (“Agreement”) with respect to the goods and/or services (including construction) described on the face of the PO, the terms and conditions of this Order are intended by PCC and Vendor to supplement the terms of that Agreement, and in the event of a conflict, the terms of the Agreement shall control over the terms of this Order.

2.2. If no underlying written, duly executed Agreement exists between PCC and Vendor, it is understood and agreed that this Order is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms of their agreement with respect to the subject matter.

2.3. If this Order is for purchases made under a cooperative arrangement, of which PCC is a member, under the terms of the contract awarded to the Vendor by a cooperative member-entity (“Cooperative Contract”), and no subsequent formal agreement has been signed between PCC and Vendor, the terms and conditions of this Order apply insofar they are not inconsistent with the terms of Cooperative Contract. Notwithstanding the above, all PCC-specific terms as well as mandatory PCC provisions stated in this Order apply to any such purchase.

3. ACCEPTANCE. The Order shall be deemed accepted by Vendor on the earlier of (a) shipment of goods or rendering of services ordered, in total or in part; or (b) within 15 days of this Order's issuance by PCC, absent Vendor’s written notification to PCC of non-acceptance.

4. CHANGES. PCC may make changes to the Order at any time and Vendor shall accept such changes. If a change by PCC causes an increase or decrease in the cost or time required for Vendor’s performance, as soon as practicable, the parties shall agree to an equitable adjustment of the purchase price and/or delivery schedule, as applicable, and incorporate such changes as a revision change to the Order. No other form of notification or verbal agreement shall be binding on PCC.

5. PAYMENTS; INVOICES. Vendor shall submit an itemized invoice (“Invoice”) showing the PO number and a valid Vendor ID number. Unless otherwise specified on the face of the PO, all payments will be made within 30 days of receiving the Vendor’s invoice.

6. TAXES. PCC is exempt from Federal Excise Tax. Tax Exemption Certificate is available upon request.

SECTION 2. TERMS FOR ORDERS INVOLVING GOODS

The following terms apply to any Vendor supplying goods to PCC, and are in addition to all other terms stated in this Order:

1. PRICE; DISCOUNTS. If no price is specified on the face of the PO, charges shall not exceed the Vendor’s standard price for goods of like quality and quantity. Discount terms must be stated on the Invoice. Discounts will be calculated from the date the goods or the Vendor’s Invoice is received, whichever is later.

2. SHIPPING. Unless expressly provided for to the contrary on the face of the PO, all shipments shall be made F.O.B. destination, and Vendor shall bear all cost for packing, boxing or containers, as required.

3. TITLE; RISK OF LOSS. Vendor shall bear the risk of loss for all goods purchased pursuant to this Order until they are received by PCC.

4. DELIVERY. If not addressed on the face of the PO, delivery shall be made within ten (10) days of PCC’s issuance of this Order. PCC reserves the right to cancel this Order in whole or in part if any shipment of goods covered hereby is not received by the time specified. PCC is not required to accept partial or incomplete delivery. Acceptance of any part of the Order shall not bind PCC to accept any future shipments.



5. **INSPECTION.** PCC reserves the right to inspect the goods at the time and place of delivery before accepting them.
6. **IDENTIFICATION.** PCC's Order number must be shown on all Invoices, packing lists, and bills of lading.
7. **LIENS.** Vendor warrants that PCC shall have good and marketable title to all goods (including all components thereof) purchased by PCC pursuant to the Order, free of all liens and encumbrances and that no licenses are required for PCC to use such goods.
8. **REMEDIES.** PCC and Vendor shall have remedies afforded by the Uniform Commercial Code, codified in Title 47 of the Arizona Revised Statutes, as amended.

SECTION 3. WARRANTIES; COMPLIANCE

1. **GENERALLY.** Vendor warrants that, in the production and sale of goods to be delivered pursuant to this Order, and in the provision of services hereunder, Vendor has complied with all applicable federal, state, and municipal laws and regulations, including, without limitation, (a) all such laws and regulations pertaining to health, safety, and environmental standards; (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such goods; and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity.

2. **GOVERNMENT FEES; LICENSES.** Vendor shall be solely responsible for complying with all laws and regulations regarding taxes, permits, fees, and professional licenses, as they may apply to any matter under this Order.

3. WARRANTIES

3.1. **With respect to goods, Vendor warrants that all goods supplied under this Order (a) shall strictly conform to all specifications, drawings, samples, or other descriptions furnished to and approved by PCC; (b) shall be of good quality and free from defects in materials and workmanship; (c) shall be new and not refurbished or reconditioned, unless expressly agreed in writing by PCC; and (d) shall not infringe any patent, copyright, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party.**

3.2. **With respect to services, Vendor warrants that all services provided under this Order will be performed in a professional and workmanlike manner and in conformity with the industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform.**

3.3. **With respect to electronic and information technology ("EIT"), Vendor warrants that any web-based EIT products conform to WCAG 2.0 AA, and (ii) non-web-based EIT meets or exceeds the applicable accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations.**

3.4. **If a breach of warranty occurs, PCC may, in its sole discretion, and without waiving any other rights, return for credit or require prompt correction or replacement of the nonconforming goods or services.**

4. **CONFIDENTIALITY; FERPA.** Any confidential information, including personnel records, health and safety reports, student educational records or any other documentation of a private or confidential nature ("Confidential Information") provided to another party in connection with this Order shall only be used for purposes related to performance under this Order and may not be disclosed except as provided by law, including the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).

5. **CONDUCT ON PCC'S PROPERTY.** While on PCC property, Vendor shall comply, and shall ensure that its employees and agents comply, with the PCC's policies and procedures governing security and privacy, the Drug-Free Environment, Smoking, Weapons, and Anti-Harassment (including Sexual Harassment). Vendor's personnel, agents, and subcontractors shall comply with all reasonable requests of PCC communicated to Vendor regarding personal and professional conduct, and shall otherwise conduct themselves in a businesslike manner.

6. **MISUSE OF PUBLIC FUNDS.** Vendor warrants that Vendor or its officers or employees has not been convicted of, or pleaded guilty to, a crime involving expenditure, acquisition or use any Federal, State, or local government funds, or judicially or administrative determined to have committed fraud involving such funds.

7. **FEDERALLY-FUNDED ORDERS.** For Orders made with funds obtained by PCC directly or indirectly from a Federal grant or contract, Vendor shall comply with all applicable provisions of [Attachment II](#).

8. **LEGAL WORKER CERTIFICATION.** Pursuant to A.R.S. §§ 41-4401 and 23-214A, Vendor warrants that it complies fully with all applicable federal immigration laws that relate to its employees, including the employment eligibility verification through the federal e-verify program.

9. **BOYCOTT OF ISRAEL.** Pursuant to A.R.S. § 35-393.01, Vendor warrants that it is not currently engaged in boycott of Israel, and will not for the duration of the performance under this Order engage in a boycott of Israel.



SECTION 4. STANDARD PROVISIONS

1. **INSURANCE.** To the extent applicable, Vendor shall maintain, at a minimum, insurance in the amounts and coverage described on [Attachment I](#) and shall otherwise comply with the requirements of [Attachment I](#).
2. **INTELLECTUAL PROPERTY**
 - 2.1. Vendor agrees that all work created by Vendor solely or in collaboration with others in the course of performing services under this Order, including all intermediate and partial versions (“Work Product”) is considered a work for hire under the U.S. copyright laws and as such, the Pima County Community College District will own the copyright and any other proprietary rights, title and interest.
 - 2.2. Vendor will retain ownership of its pre-existing intellectual property. Vendor shall inform PCC in writing before incorporating any of Vendor-owned intellectual property into the IP under this Order, and hereby grants to PCC a royalty-free, non-exclusive, perpetual license to use and reproduce such pre-existing intellectual property as it may be incorporated into the IP under this Order.
3. **USE OF NAMES; TRADEMARKS.** Neither party shall use the other party’s trade name, trademark, service mark, logo, domain name, or any other distinctive brand feature, or the names of the party’s employees in any sales, promotional, advertising or other publication without the express prior written permission by the other party.
4. **INDEMNIFICATION.** Vendor shall indemnify, defend, and hold harmless PCC, its employees and agents, from any claim arising in connection with the Vendor’s conduct or omissions related to performance under this Order, and against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the goods or services provided under the Order.
5. **ASSIGNMENT.** Vendor may not assign or subcontract its rights and obligations under this Order without PCC’s prior written approval.
6. **WAIVER.** Delay or failure of PCC to insist on strict performance of any provision of this Order or to exercise any rights or remedies hereunder shall not be deemed a waiver.
7. **TERMINATION FOR CONVENIENCE.** PCC may, by written notice, terminate this Order for convenience in whole or in part, at any time. PCC will pay Vendor as full compensation the pro rata Order Price for goods and services accepted as of the notice of termination.
8. **TERMINATION FOR CAUSE.** PCC may cancel or terminate this Order at any time for Vendor’s failure to comply with any term of this Order without further obligation of PCC. Vendor shall be solely responsible for any losses resulting from such cancellation or termination.
9. **APPLICABLE LAW.** This Order shall be governed by the laws of the State of Arizona, without regards to its conflict of law rules.

ATTACHMENT I
To TERMS AND CONDITIONS OF PURCHASE

INSURANCE REQUIREMENTS

1. GENERAL INSURANCE REQUIREMENTS:

A. **Certificates of Insurance:** Contractor shall, upon request, submit to the College Purchasing Representative certificates of insurance evidencing the coverage required in this Attachment as proof that the policies providing the required coverages are in full force and effect.

B. **Self-Insurance:** Any deductibles and self-insured retentions contained in any insurance coverage required by this Attachment shall be declared to College, and are subject to approval by College. Contractor shall be solely responsible for any such deductible and/or self-insured retention.

C. **Scope of Insurance Coverage:** All policies, except for Workers' Compensation, shall contain a waiver of subrogation in favor of the Pima County Community College District, its Board of Governors, employees, and students. Contractor's insurance coverages shall be primary as to any other insurance or source, and shall include a severability of interest clause. Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the agreement with College.

D. **Additional Insureds:** For policies shown in Sections 2(B), 2(C), and 2(E) below, the insurance certificates shall name Pima County Community College District, its Board of Governors, employees, and students as an additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

E. **Notice of Cancellations, Changes to Coverage:** Coverage afforded under the policies may not be cancelled, terminated, or materially altered until at least thirty (30) days' prior written notice has been provided by Contractor to the College's Purchasing Representative.

F. **Contractor's Personnel, Agents, and Subcontractors:** Contractor shall cause its subcontractors to provide and maintain appropriate types and amounts of insurance coverage and limits of liability, as determined by Contractor and agreed to by College, proportionate to the type of work to be performed and exposure to risk. Contractor shall not permit all persons or entities retained by, through, or under Contractor, from entering upon College's premises or continuing the performance of the work unless such person or entity is and continues to be insured in accordance with requirements stated in this Attachment.

G. **Failure to Maintain Insurance:** In the event Contractor and/or any person or entity retained by, through, or under Contractor fail to maintain required insurance coverage, College may, at its discretion, procure or renew such missing insurance coverage and charge the cost of such insurance premiums to Contractor.

2. INSURANCE COVERAGE REQUIRED:

A. **Workers' Compensation Insurance** – Contractor shall procure and maintain Workers' Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor, its employees, or both, engaged in the performance of the Agreement, as follows:

Per Occurrence	Statutory
Employer's Liability	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

B. **Commercial (Business) Automobile Liability Insurance** – Contractor shall procure and maintain Commercial Automobile Liability Insurance with respect to Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services under this Agreement, with the minimum coverage for each occurrence for bodily injury and property damage below. Insurance shall be endorsed for "any auto."

Combined Single Limit	\$1,000,000 (CA 0001)
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C. **Commercial General Liability Insurance** – Contractor shall procure and maintain Commercial General Liability Insurance which shall be an occurrence form policy and shall include coverage for bodily injury, broad form property damage (including completed operation), personal injury (including coverage for contractual and employee acts), and blanket contractual products, with the minimum coverage limits below. Contractors with excavation and underground risks shall have coverage for and exclusions removed for “x, c, and u.”

Each Occurrence	\$1,000,000 (CG 0001)
General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$ 50,000
Fire Legal Liability	\$1,000,000

And, if applicable (in addition to the required coverages listed above), Contractor shall procure and maintain the following policies:

- D. **Professional Errors and Omissions** (including Environmental Impairment Liability) \$1,000,000 per occurrence
- E. **Hangar Keepers’ Liability** \$50,000,000 per occurrence
- F. **Garage Keepers’ Liability** \$50,000,000 per occurrence
- G. **Aviation Liability** (including Aircraft Products and Completed Operations), War, Hijacking and Other Perils (AVN 52D) \$50,000,000 per occurrence
- H. **All Risk Property/Builder’s Risk Coverage** (including Contractor’s Equipment, Business Interruption, and Terrorism Coverage) \$50,000,000 per occurrence and aggregate
- I. **All Risk Property/Builder’s Risk Coverage** (including Contractor’s Equipment, Business Interruption, and Terrorism Coverage) Replacement cost value at 100%

ATTACHMENT II
To TERMS AND CONDITIONS OF PURCHASE

SUPPLEMENTAL FEDERAL FLOWDOWN PROVISIONS
FOR PURCHASES IN SUPPORT OF FEDERALLY-FUNDED CONTRACTS

PCC has entered into an agreement with either the U.S. Government, or another entity which has itself entered into an agreement with the U.S. Government (“Federal Contract”). That Federal Contract requires that certain federal contract provisions be made a part of any subsequent Purchase Order issued by PCC related to furthering the performance or deliverables required under that Federal Contract. Accordingly, the following additional Federal Acquisition Regulations (“FAR”) terms apply to any Vendor supplying goods, services, or both to the College under this Purchase Order. The FAR terms are hereby incorporated into the Order by reference. Any references below to “Subcontracts” refer to this Order.

1. These FAR clauses apply regardless of amount of the Order:

52.222-26, Equal Opportunity (Apr 2015)
52.222-21, Prohibition of Segregated Facilities (Apr 2015)
52.222-4, Contract Work Hours and Safety Standards -Overtime Compensation (May 2014) (for subcontracts that involve the employment of laborers and mechanics)
52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (for subcontracts that may involve international transportation)
52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008)
52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (for subcontracts funded under the Recovery Act only)
52.227-9, Refund of Royalties (Apr 1984) (for subcontracts in which the amount of royalties reported during negotiation of the subcontract exceeds \$250).

2. These FAR clauses apply to the Orders in excess of \$3,500:

52.222-54 Employment Eligibility Verification (Oct 2015) (for subcontracts for services only)

3. These FAR clauses apply to the Orders in excess of \$10,000

52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010)

4. These FAR clauses apply to the Orders in excess of \$15,000

52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014)

5. These FAR clauses apply to the Orders in excess of \$35,000

52.209-6, Federal Debarment and Suspension (for all subcontracts except for commercially available off-the-shelf items)

**SUPPLEMENTAL FEDERAL FLOWDOWN PROVISIONS
FOR PURCHASES UNDER FEDERAL GRANTS**

PCC is either a recipient of a federal grant pursuant to an agreement with the U.S. Government, or has entered in an agreement with another entity that has itself entered into a grant agreement with the U.S. Government (“Grant”). That Grant requires that certain federal provisions be made a part of any subsequent Purchase Order issued by PCC related to furthering the performance or deliverables required under that Grant. Accordingly, the following terms provided in the Federal Regulation (2 CFR, Part 200, which superseded and replaced the OMB Circulars, effective July 1, 2015) apply to any Vendor supplying goods, services, or both to PCC under this Purchase Order. The term “contract” shall mean this Order; the term “Items” or “item” shall mean goods purchased under this Order:

1. This clause applies to any Order regardless of the amount:

Record Keeping – Vendor shall maintain all records related to the performance under this Order for three (3) years after the completion of the performance or after the termination or cancellation of the Order, whichever is later.

2. This clause applies to the Order in excess of \$2,000 AND involving construction or building repairs:

Copeland “Anti-Kickback” Act (40 U.S.C. 3145; 29 CFR, Part 3) – Vendor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. PCC is required to report all suspected or reported violations to the Federal awarding agency.

3. This clause applies to the Order where the purchase price of any one item exceeds \$10,000 (or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000):

Solid Waste Disposal Act (Section 6002, as amended by the Resource Conservation and Recovery Act), Procurement of Recovered Materials – any items supplied must contain the highest percentage of recovered materials practicable, as designated in the guidelines of the Environmental Protection Agency (“EPA”) at 40 CFR part 247.

4. This clause applies to the Order exceeding \$25,000:

Federal Debarment and Suspension (OMB at 2 CFR 180) - for all contracts except for commercially available off-the-shelf items, Vendor shall submit Certification, found [here](#).