

TERMS AND CONDITIONS

1. **VENDOR:** Shall in all cases be the Seller.
2. **BUYER:** Shall in all cases be Shelby County Schools. All Inquiries regarding this order should be directed to Procurement Services, Shelby County Schools, at (901) 416-5376.
3. **ACCEPTANCE:** This order, with any attachments, constitutes the entire agreement of the Vendor and Buyer. No waiver or modification or additions to the terms of this order shall be valid unless in writing and signed by the Vendor and Buyer.
4. **PRICES:** The Buyer shall not be billed at prices higher than those stated on the front of this order. Unless otherwise specified, the price stated includes all charges for packing, hauling, storage and transportation to point of delivery. No taxes shall be included in this price except those which Vendor is required by law to collect from Buyer. If there are any of these taxes, then they shall be listed separate on the Vendor's invoice. Finance charges, interest and/or penalties for late payment will not be paid on this purchase order.
5. **PACKAGING:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name, address; (b) Buyer's name, address and purchase order number and the contract number, if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided.
6. **TITLE AND RISK:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
7. **TRANSPORTATION CHARGES:** F.O.B. destination unless delivery terms are specified otherwise in bid.
8. **DELIVERY:** Substitutions will not be accepted. Partial shipments shall be allowed; however, the shipment shall be completed by the date shown on this order or the order will be subject to cancellation by Buyer. Vendor shall not ship excess quantities without Buyer's prior approval.
9. **INVOICING:** Vendor shall invoice all shipments in duplicate. The invoice shall describe the items, reflect any applicable terms of payment, and must show the Purchase Order Number. Unless this Purchase Order Number is shown on the invoice, it may be returned to the Vendor. The invoice shall be an original or a certified copy by the Vendor and mailed to Accounts Payable, 2597 Avery Avenue, Room 130, Memphis, Tennessee 36112. For payment/billing inquiries, call (901) 416-5407.
10. **GRATUITIES:** Buyer may, by written notice to the Seller, cancel any contract and/or purchase order without liability to Seller if gifts determined by the Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officials or employee of the Buyer with a view toward securing a contract or securing favorable treatment with respect to the awarding, or the making of any determination with respect to the performing of such a contract. In the event the contract and/or purchase is cancelled by the Buyer pursuant to this provision, the Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Seller in providing such gratuities.
11. **WARRANTIES:** Seller warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings, data and samples, will be merchantable, of good material and workmanship, free from defects and will befit and sufficient for the purpose intended. These warranties shall be in addition, to all other warranties, expressed, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty.
12. **AUTHORIZATION FOR CHANGES:** Only the Director of Procurement Services or designee has the authority to change any description, price or delivery date on this Purchase Order. If the items listed hereon were purchases by the Buyer on a formal bid form, then NO change in the above will be made.
13. **DEFAULT - CANCELLATION:** Buyer reserves the right by written notice of default to cancel the order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy of Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, of the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (1) cancel this order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (2) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.
14. **INDEMNIFICATION:** Seller agrees to indemnify and hold harmless Buyer, its successors and assigns, customers and users of its products against all suits at law or in equity and from all damages, claims and demands arising out of death or injury to any person, or damages to any property, alleged to have resulted from the goods hereby ordered, and, upon the tendering of any suit or claim to Seller, to defend the same at Seller's expense as to all costs, fees and damages. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claims and whether the death, injury or property damage is caused by the sole or concurrent negligence of Seller or otherwise.
15. **PATENT INDEMNIFICATION:** Seller shall indemnify and hold harmless buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, including costs and expense, resulting from any claim that the manufacture, use, sale or resale of any goods supplied under this order infringe any patent or patent rights, and Seller shall, when notified, defend any action or claim of such infringement at its own expense.
16. **ASSIGNMENT:** Neither the contract or this purchase order, nor this order nor any rights or obligations herein may be assigned by Seller, nor may Seller delegate the performance of any of its duties hereunder without, in either case, Buyer's prior written consent. Any assignments or attempted assignment, of any nature to third parties, without consent of the Buyer, shall be cause for termination of the contract and/or purchase order at the option of the Buyer.
17. **EQUAL EMPLOYMENT:** Seller will comply fully with the equal opportunity requirements of Title VII of the Civil Rights Act of 1964, and with Title VI of the Civil Rights Act of 1964.
18. **CONFLICT OF INTEREST:** No part of the total contract and/or purchase order amount shall be paid directly or indirectly to any official or employee of the Buyer as wages, compensation, or gifts in exchange for acting as official, agent, employee, subcontractor, or consultant to the Seller in connection with any work contemplated or performed relative to this contract.
19. **HANDICAP, RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN:** No person on the grounds of handicap, race, color, religion, sex, or national origin, will be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Purchase Order and/or contract: or in the employment practices of the Seller.
20. **APPLICABLE LAW AND VENUE:** The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the state of Tennessee. By acceptance of this order, the Vendor agrees that the venue for any cause of action arising pursuant to same be the courts of the State of Tennessee and any attempt by Vendor to limit the effect of this provision shall be null and void.
21. **UNIFORM COMMERCIAL CODE:** If any provisions of this Purchase Order are in conflict with the provisions of Title 47, Chapters 1 through 9, TCA, it is the intent of this agreement to modify or vary the provisions of Title 47 of the TCA.
22. **LIABILITY:** Any attempt by Vendor to limit its liability for goods or services provided under this purchase order shall be void and of no effect.
23. **Material Safety Data Sheets (MSDS)** must accompany all shipments covered under the Tennessee Hazardous Chemical Right to Know law, Tennessee Public Chapter #417, House Bill #713.
24. **Shelby County Schools Procurement Services reserves the right to review all vendor, supplier or contractor records in order to determine whether a conflict of interest exists.**