

**MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51  
PURCHASE ORDER  
TERMS AND CONDITIONS FOR SUPPLIES AND EQUIPMENT**

**ENTIRE AGREEMENT**

This Purchase Order embodies the entire agreement between DISTRICT 51 and SELLER and supersedes all other writings. The parties shall not be bound by, or be liable for, any statement, representation, promise, inducement or understanding not set forth herein.

**PRICE**

Unless otherwise specified in the Purchase Order, any price stated in the Purchase Order for the purchase of Goods is a firm fixed-price.

**PACKING, MARKING AND SHIPPING**

SELLER shall pack, mark and ship all goods and supplies in accordance with the requirements of this Purchase Order so as to be in compliance with transportation regulations and good commercial practice for protection and shipment. SELLER shall secure the most advantageous transportation service and rates consistent therewith. No separate or additional charge is payable by DISTRICT 51 for containers, crating, boxing, bundling, dunnage, drayage or storage unless specifically stated in the Purchase Order.

**TITLE**

Title to all goods furnished hereunder shall pass directly from the SELLER to DISTRICT 51 at the F.O.B. destination as specified on the Purchase Order Form.

**QUALITY STANDARDS**

SELLER shall ensure that the Products shall comply with the standards of quality specified by this Purchase Order or those customary in the industry if no requirement is specified. DISTRICT 51's right to inspect, examine, and test the Products shall extend through the time of shipment and a reasonable time after arrival at the final destination. SELLER's failure to adhere to the standards of quality required under this Purchase Order shall be deemed to be reasonable grounds for termination. DISTRICT 51 may demand in writing, that SELLER provide adequate assurances and documentation of SELLER's ability to meet said standards.

The Products shall not be deemed accepted until finally inspected and accepted by DISTRICT 51's representative. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of the Products shall in no way relieve the SELLER from its obligation to conform to all of the requirements of this Purchase Order and shall in no way impair DISTRICT 51's right to reject or revoke acceptance of nonconforming Products, or to avail itself of any other remedies to which DISTRICT 51 may be entitled, notwithstanding DISTRICT 51's knowledge of the nonconformity, its substantiality or the ease of its discovery.

**WARRANTIES - GUARANTEES**

SELLER warrants that the goods shall be free from liens and defects in design, material, workmanship and title, and shall conform in all respects to the terms of this Purchase Order, and shall be new and of the best quality, if no quality is specified. Unless otherwise provided in this Purchase Order, the following warranties shall apply. If, anytime prior to one (1) year from the date of first use, or eighteen (18) months from the date of final delivery whichever comes first, it appears that the goods, or any part thereof, do not conform to these warranties or the specifications, and DISTRICT 51 so notifies SELLER within a reasonable time after its discovery, SELLER shall promptly correct such nonconformity to the satisfaction of DISTRICT 51, at SELLER's sole expense, failing which DISTRICT 51 may reject or revoke acceptance and cover by purchasing substitute goods, or DISTRICT 51 may proceed to make corrections or accomplish SELLER's work by the most expeditious means available, the costs of cover or correction shall be for SELLER's account. SELLER's liability hereunder shall extend to all damages caused by the breach of any of the foregoing warranties, including incidental damages such as removal, inspection, costs of return, or warehousing. SELLER shall not be liable for consequential damages, such as loss of profit, loss of use or production, or costs of capital.

**WAIVER**

The failure of either party to insist on performance of any provision of this Purchase Order shall not be construed as a waiver of that provision in any later instance.

**APPLICABLE LAW**

Any suit filed relative to this Purchase Order must be filed in a court of competent jurisdiction in Mesa County, Colorado.

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**RELEASE AGAINST LIENS AND CLAIMS**

SELLER shall promptly pay all claims of persons or firms furnishing labor, equipment or materials used providing the Products. DISTRICT 51 may require SELLER to submit satisfactory evidence of payment and releases of all such claims. If there is any evidence of any such unpaid claim, DISTRICT 51 may withhold any payment until SELLER has furnished such evidence of payment and release and shall indemnify and defend DISTRICT 51 against any liability or loss arising from any such claim.

In order to assure DISTRICT 51 of the prompt and unrestricted use of the Use for which the Products under this Purchase Order are procured, SELLER agrees to waive any and all liens, which it might otherwise assert in the resolution of disputes arising out of the performance of this Purchase Order. This waiver is not intended to be, nor will it be construed to be, a limitation of any of SELLER's other rights under this Purchase Order or its other legal remedies.

**INDEMNITY AND HOLD HARMLESS**

SELLER hereby indemnifies and shall defend and hold harmless DISTRICT 51 and their employees or authorized representatives of the foregoing from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature, including those arising out of injury to or death of SELLER's employees, whether arising before or after completion of the work using the products hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of SELLER, or of its lower-tier contractors or lower-tier suppliers or of anyone acting under its direction or control or on its behalf, in connection with or incidental to the performance of this Purchase Order.

SELLER's aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, of the party indemnified to the fullest extent permitted by law but in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

**COMPLIANCE**

SELLER warrants that all Products shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which the Products are subject. SELLER shall execute and deliver to DISTRICT 51 any documents as may be required to effect or to evidence such compliance. All laws and regulations required to be incorporated in agreements such as this one are hereby incorporated herein by reference.

SELLER hereby agrees to indemnify, defend and hold DISTRICT 51 and its respective affiliates harmless from and against any and all claims, legal actions, final judgments, reasonable attorneys' fees, civil fines and any other losses which any of them may incur as a result of the sale or delivery to DISTRICT 51 hereunder of Products which do not meet all requirements of such laws and regulations.

**CONFLICTS, DISCREPANCIES, ERRORS AND OMISSIONS**

The Supply Purchase Order Form and all documents listed therein are essential parts of the Purchase Order and a requirement occurring in one is binding as though occurring in all.

**AVAILABILITY OF FUNDS**

In accordance with Article X, Section 20(4)(b) of the Colorado Constitution, this Purchase Order shall neither create nor be construed to create any multiple-fiscal year direct or indirect DISTRICT 51 debt or other financial obligation whatsoever. The parties recognize that the purchase is dependent upon the continuing availability and appropriation of funds (including per pupil funding for Program students from the State of Colorado) beyond the terms of DISTRICT 51's current fiscal period ending upon the next succeeding June 30, and that financial obligations of DISTRICT 51 payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

**DEBARMENT**

The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the DISTRICT.