

Laramie County Community College

Purchase Order Terms and Conditions

1. **PURCHASE ORDER DEFINED:** The term "purchase order" as used in these Terms and Conditions means the document entitled "Purchase Order" that Laramie County Community College (*hereinafter LCCC*) issues to the Vendor. Where applicable, it also means the following:
 - A. Any written solicitation that LCCC issued to the Vendor to which the entity provided a quote, bid or proposal (*including specifications or scopes of services*), and amendments to that solicitation;
 - B. The quote, bid or proposal submitted by the entity in response to the solicitation;
 - C. Any written contract entered into between the Vendor and LCCC.

If there are any inconsistencies among the documents listed above, the inconsistencies shall be resolved in the order of importance listed above, with the document entitled "Purchase Order" being last in order of importance. The terms and conditions set forth in this Paragraph take precedence over any conflicting terms and conditions in documents that the Vendor provides. **Vendors shall not begin work or supply equipment, goods or materials to LCCC unless it has received a purchase order from LCCC to do so.**

2. **BASIS OF PURCHASE:** The Purchase Order and these Terms and Conditions together constitute the entire agreement between the parties relating to the subject matter of the agreement. Any variation shall be in writing and signed by authorized agents for both parties. Modifications to the order shall not be binding upon LCCC unless approved via written instrument in advance of same.
3. **FACTORY NEW:** Unless otherwise specified via written instrument, all Purchase Order Items (*materials, goods, equipment and supplies*) shall be "factory new". The term "factory new" shall mean items that are not: refurbished, reconditioned, surplus, grey-market, after-market or otherwise not original items manufactured direct from the original equipment manufacturer (OEM) and which when applicable, have unique never been assigned serial numbers and a factory new warranty.
4. **DELIVERY AND FREIGHT TERMS:** Delivery terms shall be: F.O.B. Destination, Freight Prepaid and added, unless otherwise designated in writing. Delivery shall be to the address stated in the Purchase Order and time of delivery is of the essence of the Order. The Purchase Order number shall appear on all packing labels, packing lists, freight bills, and invoices.
5. **ACCEPTANCE AND REJECTION:** Regardless of any terms or conditions to the contrary in Vendor forms or documents, LCCC shall have the all the rights and remedies specified in this paragraph. LCCC shall have a reasonable time after delivery of goods to inspect them. LCCC is not obligated to pay for those goods until it has had the opportunity to inspect them, and has accepted them. LCCC may reject goods if, prior to final acceptance, the goods are found to be defective or not as specified. In the case of services, LCCC is not obligated to pay for them until it has finally accepted the services and, in the case of construction, is occupying or otherwise using the facility where the construction occurred. LCCC is entitled to all other remedies under applicable law, including the right to revoke acceptance of nonconforming goods. Vendor shall reimburse LCCC for all direct, indirect, incidental and consequential costs related to nonconforming goods or services. Notwithstanding final acceptance and payment, said entity shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. Acceptance of performance shall not waive the right to claim damages for breach, negligence, product liability, or any other act or omission covered by the indemnity provisions of these Purchase Order Terms and Conditions.
6. **ASSIGNMENT AND DELEGATION:** The Vendor shall not assign any right nor delegate any duty under this purchase order without the prior written approval of the LCCC Director of Contracting and Procurement. LCCC shall not unreasonably withhold approval.
7. **CHANGES:** The LCCC Purchasing Office may make changes within the general scope of this Purchase Order by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this Purchase Order, an appropriate equitable adjustment shall be made. No change by Vendor shall be recognized without written approval by LCCC. Any claim by Vendor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Vendor of notification of such

change. Nothing in this Paragraph shall excuse Vendor from proceeding with performance of the Purchase Order as modified.

8. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to *Wyo. Stat. Ann §9-13-101 through 109, and applicable LCCC Policies and Procedures*, LCCC may cancel this Purchase Order without penalty or further obligation if any person significantly involved in the initiating, negotiating, securing, drafting or creating the Purchase Order on behalf of LCCC is or becomes at any time while the Purchase Order or an extension of the Purchase Order is in effect an employee of or a consultant to any other party to this Purchase Order with respect to the subject matter of the Purchase Order. The cancellation shall be effective when the Vendor receives written notice of the cancellation unless the notice specifies a later time.
9. **NON-DISCRIMINATION:** The Vendor shall comply with all applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
10. **DISCOUNTS:** If prompt payment discounts apply to this purchase, any discount time will not begin until the materials, supplies, or services have been received and accepted and correct invoice received by the appropriate LCCC Department and/or Division. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests.
11. **SALES-USE TAX:** LCCC is exempt from sales and use tax in accordance with the federal Certificate of Exemption Tax ID number 83-6009473.
12. **BANKRUPTCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by, or against the Vendor, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, LCCC shall be entitled to cancel the Purchase Order without liability.
13. **INSPECTIONS:** The Vendor agrees to permit access to its facilities and the Vendor's processes for producing the materials, at reasonable times for inspection of the materials covered under this Purchase Order. LCCC shall also have the right to test at its own cost the materials to be supplied under this Purchase Order. Neither inspection at the Vendor's facilities nor testing shall constitute final acceptance of the materials. If LCCC determines non-compliance of the materials, the Vendor shall be responsible for the payment of all costs incurred by LCCC for testing and inspection.
14. **APPLICABLE LAW and VENUE:** The laws of the State of Wyoming shall apply to the performance and interpretation of this Purchase Order. Any provision required and to be included in a contract of this type by any applicable and valid Executive order, federal, state or local law, ordinance, rule or regulation shall be deemed to be incorporated into this Purchase Order.
15. **PATENT AND COPYRIGHT INDEMNITY:** Vendor shall indemnify LCCC against all losses, liabilities, lawsuits, claims, expenses (*including attorney's fees*), costs, and judgments incurred through third parties claims of infringement of any copyright, patent, trademark or other intellectual property rights.
16. **RISK OF LOSS:** The Vendor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Vendor regardless of receipt.
17. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
18. **TITLE:** Unless stated otherwise in the Purchase Order, all prices shall be F.O.B. Destination (*Cheyenne WY, 82007 or otherwise designated*) and shall include all delivery and unloading at the destination. Title to the materials and supplies shall pass to LCCC upon acceptance at the F.O.B. point specified, subject to the right of LCCC to reject and/or

terminate for any exception to the delivery date specified.

19. WARRANTIES:

- A. Liens: The Vendor warrants that the materials supplied under this purchase order are free of liens.
- B. Quality: Unless otherwise modified elsewhere in these terms and conditions, the Vendor warrants that, for one year after acceptance by LCCC of the materials, they shall be:
 - 1. Of a quality to pass without objection in the trade under the purchase order description;
 - 2. Fit for the intended purposes for which the materials are used;
 - 3. Are of even kind, quantity, and quality;
 - 4. Adequately contained, packaged and marked as the Purchase Order may require; and
 - 5. Conform to the written promises or affirmations of fact made by the Vendor.
- C. Fitness. The Vendor warrants that any material supplied to the LCCC shall fully conform to all requirements of the purchase order and all representations of the Vendor, and shall be fit for all purposes and uses required by the Purchase Order.
- D. Exclusions. Except as otherwise set forth in this Purchase Order, there are no express or implied warranties of merchantability or fitness.

20. **PAYMENT:** To be paid, Vendor shall submit an itemized invoice referencing a valid Purchase Order number. The invoice must specify the services, equipment, goods or materials provided, which must match the description in the purchase order; the dates of and work performed on the equipment, goods, or materials were provided; and the specific dollar amount owed. Payment shall be subject to the provisions of the Acceptance and Rejection clause (*Paragraph 5*) of these Purchase Order Terms and Conditions. Vendor shall be paid at the end of the Contract unless a schedule of progress payments for work performed is agreed to in writing with the LCCC Purchasing Office. Invoices for progress payments must specify the actual work performed. If LCCC has agreed in writing to reimburse the travel expenses of the Vendor, LCCC will do so according to its *policies and rates* applicable to its employees. Vendor must submit an invoice for any travel reimbursement requested, specifying its expenses, and attach original receipts for airfare, meals, rentals, hotel and other approved reimbursable expenses.

21. **INDEMNIFICATION:** To the fullest extent permitted by law, Vendor shall defend, indemnify, and hold harmless LCCC, its agents, officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses (*including but not limited to attorney fees and court costs*) arising from the acts, errors, mistakes, omissions, work or service of Vendor, its agents, employees, or any tier of Vendor's sub-vendors in the performance of this Purchase Order. The amount and type of insurance coverage requirements set forth in Paragraph 22 will in no way be construed as limiting the scope of indemnification in this Paragraph.

22. **INSURANCE:** Vendor shall maintain during the term of this Purchase Order insurance policies described below issued by companies licensed with a current A.M. Best rating of A or better. Before providing any services or supplying any equipment, goods or materials, Vendor shall furnish LCCC with certificates of insurance evidencing the required coverage, conditions, and limits required by this Purchase Order at the following address:

LCCC, Director of Contracting and Procurement
1400 East College Drive
Cheyenne, WY 82007
procurement@lccc.wy.edu

The insurance policies, except those for Worker's Compensation or Professional Liability, shall be endorsed to name Laramie County Community College as the "Certificate Holder" or additional insured. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Vendor's work, services, equipment, goods or materials, and must be evidenced by annual certificates of insurance. The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without 30 days written notice by certified mail to the LCCC Director of Contracting and Procurement. Vendor's insurance must be primary, and any insurance or self-insurance maintained by LCCC shall not contribute to it. If any part of this Agreement is subcontracted, these insurance requirements also apply to all sub-vendors. Insurance coverage required under this Purchase Order, unless the Director of Contracting and Procurement instructs Vendor otherwise, is:

- A. Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence for bodily injury, property damage, personal injury, products and completed operations, and blanket contractual coverage, including but not limited to, the liability assumed under the indemnification provisions of this purchase order;
 - B. Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Vendor's owned, hired, and non-owned vehicles;
 - C. Workers' Compensation insurance with limits statutorily required by any Federal or state law and Employer's Liability insurance of not less than \$1,000,000 for each accident,
- 23. **IRS FORM W-9.** All College transactions for services, whether they are contracts, agreements, MOA's, purchase orders, or limited purchase orders require IRS Form W-9 information (*Request for Taxpayer Identification Number*) as part of the respective obligation. This W-9 Form is both a Federal IRS and College requirement; is the responsibility of the Contractor to submit and keep current; shall be on file prior to initiation of any obligation; and shall be kept on file in the Accounting Office of the College. Processing of invoices and or payment claims will NOT be completed if this form is missing or not current.
- 24. **TERMINATION:**
 - A. LCCC may terminate this purchase order for convenience by giving Vendor fifteen (15) days written notice of termination. A non-breaching party may terminate this Purchase Order for the failure of the other party to comply with this Purchase Order by giving that other party ten (10) days' written notice of the failure to comply.
 - B. In the event this PO is terminated by either party, it is agreed that the compensation due the Vendor shall only be that approved amount incurred by the Vendor pursuant to this PO up to and including the termination date of this PO.
- 25. **PROPERTY RIGHTS:** LCCC shall, at all times, retain ownership in and the rights to any creative works, research data, reports, designs, recordings, graphical representations or works of similar nature (Works) to be delivered under this purchase order. Vendor agrees that the Works are "works for hire" and assigns all of the Vendor's right, title and interest to LCCC.
- 26. **FUNDS UNAVAILABLE:** LCCC may cancel this Purchase Order if, in future fiscal years, funds become unavailable for the support of the program for which the services, equipment, goods or materials are provided.
- 27. **ADVERTISING AND PROMOTION:** The Vendor shall not advertise or publish information for commercial benefit concerning this Purchase Order without the prior written approval of LCCC.
- 28. **GRATUITIES:** LCCC may, by written notice, terminate this Purchase Order, in whole or in part, if LCCC determines that employment or a Gratuity was offered or made by the Vendor or a representative of the Vendor to any officer or employee of LCCC for the purpose of influencing the outcome of the procurement or securing the Purchase Order, an amendment to the Purchase Order, or favorable treatment concerning the transaction, including the making of any determination or decision about contract performance.
- 29. **FERPA:** If Vendor has access to students' educational records, Vendor shall limit its employees' access to the records to those persons for whom access is essential to the performance of this Purchase Order. At all times during this transaction, Vendor shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 in all respects.
- 30. **SOVEREIGN/GOVERNMENTAL IMMUNITY:** LCCC does not waive its Governmental/Sovereign Immunity by entering into this Agreement and specifically retains all immunities and defenses available to it as a governmental entity pursuant to WYO. STAT. ANN. § 1-39-101 (2011), *et seq.*, and all other applicable laws. LCCC fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Contract. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

31. **DEBARMENT/SUSPENSION:** A Vendor certifies, by submission of the respective Quote/Bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of State or Federal benefits by State or Federal court, or voluntarily excluded from participation in this transaction by any State or Federal department or agency. Submission is also agreement that LCCC will be notified of any change in this status. Additional certification includes:
- a) Have not within a three-year period preceding this transaction been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (*Federal, State, or Local*) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and,
 - b) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (*Federal, State, or Local*) with commission of any of the offenses enumerated in Paragraph "a" above; and have not within a three-year period preceding this transaction had one or more public transactions (Federal, State, or Local) terminated for cause or default.