



Southeast New Mexico College

Southeast New Mexico College
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Carlsbad, NM 88220
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Southeast New Mexico College's General Terms and Conditions for Goods and Services

1. As used in herein, the term, "Buyer" shall mean Southeast New Mexico College (herein after referred to as "SENMC"). "Seller" shall mean you, and/or the person or entity with whom SENMC is contracting to provide a service and/or good(s), chattel, material, or other items via a purchase order or otherwise. The terms "service", "chattel," "material(s)," and "other items or services via purchase order" shall herein after jointly be referred to as "good or service."
2. Acceptance by SENMC of any good or service provided by Seller is limited to the terms stated herein, and any different terms proposed by Seller are rejected unless expressly assented to in writing by Buyer. These terms and conditions shall be included and incorporated into the purchase order, contract, and/or agreement between Buyer and Seller unless Buyer and Seller otherwise agree in writing.
3. No course of prior dealings, no usage of the trade and no course of performance will be used to modify or explain any terms the purchase order, contract, and/or agreement between Buyer and Seller.
4. Buyer may make changes within the general scope of the purchase order, contract, and/or agreement between Buyer and Seller by giving notice to Seller and later confirming such changes in writing. If such changes affect the cost of, or the time required for performance an appropriate equitable adjustment will be made. No modification of the purchase order, contract, and/or agreement between Buyer and Seller will be effective unless done in writing and with Buyer's written consent.
5. If there is no specific clause in the purchase order, contract, and/or agreement between Buyer and Seller concerning termination, then Buyer may terminate the purchase order, contract, and/or agreement between Buyer and Seller at any time with respect to undelivered goods or unperformed services by written or electronic notice or oral notice confirmed in writing.
6. Time is of the essence in this purchase order, contract, and/or agreement, if delivery of conforming goods or performance of conforming services is not completed by the time(s) promised, Buyer may, in addition to its other rights and remedies, cancel this order, reject goods or services in whole or in part and/or buy substitute goods or services elsewhere and charge Seller with any loss incurred. Any provisions herein for delivery of goods or performance of services by installments will not be construed as making the obligations of Seller severable.
7. Shipments sent C.O.D. without Buyer's written consent will not be accepted.
8. Buyer will not be billed at prices higher than stated in the purchase order, contract, and/or agreement unless authorized in writing by Buyer. Seller represents that the prices charged for the goods or services covered by this purchase order, contract, and/or agreement, are the lowest prices charged by Seller and that such prices comply with all applicable laws and government regulations in effect at time of quotations, sale, delivery and performance. Seller agrees to notify Buyer of any price reduction

made in goods or services covered by this order after the date hereof and before delivery or performance and agrees that any such reduction will be applicable to this order.

9. Seller will maintain detailed records that indicate the date, time and nature of services rendered and material or supplies delivered to Buyer, including serial numbers or other identifiers, and will retain such records for at least three years after final payment. Buyer has the right to audit billings before and after payment. Payment will not preclude Buyer from recovering excessive, erroneous or illegal payments made to Seller.
10. In addition to all warranties established by law, Seller hereby warrants and agrees that:
 - a. All goods and services covered by this order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by Buyer, and will be merchantable, fit for the purpose intended, of best quality and workmanship, and free from all defects. Buyer will have the right of inspection and approval, and may, in addition to its other rights and remedies, reject and return goods or require reperformance of services at Seller's expense if defective or not in compliance with Buyer's specifications. Defects will not be deemed waived by Buyer's failure to notify Seller upon receipt of goods or completion of services, or by payment of invoice.
 - b. Anything furnished to Seller by Buyer pursuant to this order, including without limitation samples, drawings, patterns and materials, will remain the property of Buyer, be held at Seller's risk and be returned upon completion of the work, and no disclosure or reproduction thereof will be made without Buyer's written consent.
 - c. All goods delivered pursuant to this order and manner of delivery thereof will conform to standards established for such goods and delivery in accordance with any applicable federal, state or local laws or regulations.
 - d. The use or sale of any goods delivered hereunder, or any part thereof, does not infringe any adverse valid existing patent.
 - e. These warranties will survive acceptance of goods and performance of services, including construction projects.
11. Title and risk of loss in transit will not pass to Buyer until delivery to Buyer in accordance with all applicable federal, state or local laws or regulations is completed. Buyer will not be liable for any discharge, spill or other incident, including but not limited to expenses for any clean-up costs involving any materials transported hereunder, until completion of such delivery.
12. Seller will mark each package or shipment with Buyer's name and address, contents and purchase order number. All products containing hazardous substances will be properly labeled and accompanied by a Material Safety Data Sheet.
13. Assignment of this order or of any interest herein or of any money due or to become due hereunder without prior written consent of Buyer will be void.
14. This order will be governed by the laws and regulations of the State of New Mexico. Since, among other things, Buyer is a College having a principal office in the State of New Mexico, the parties hereto agree to submit to the jurisdiction of the New Mexico District Court for Eddy County in connection with any controversy arising hereunder. Any controversy arising from the purchase order, contract, and/or agreement shall first be referred to mandatory mediation with an independent or otherwise agreed upon attorney in the Fifth Judicial District of New Mexico.

15. Seller is an independent contractor, with sole responsibility for all persons performing work hereunder, including without limitation sole liability for the payment of all unemployment and disability insurance and all Social Security and/or other taxes and contributions payable in respect of such persons. Seller agrees it has and will maintain commercial general liability insurance, including automobile coverage, with minimum limits of coverage in the amount of \$1,000,000 per occurrence or liability established by applicable statutes, whichever is greater. Seller will further indemnify, defend and hold Buyer harmless from and against any and all suits, claims, liability, losses, liens and demands, costs, criminal and civil penalties, causes of action or any other obligations arising out of or in any manner connected with incidents involving bodily injury, death, property damage or any violation or alleged violation of any federal, state or local law or regulation.
16. Cash discounts, if any, will be calculated from date of receipt of acceptable invoice on or after receipt of goods or services.
17. Seller will operate as an equal opportunity employer and will not discriminate against any employee or applicant for employment because of age, ancestry, color, disability, gender identity, genetic information, national origin, race, religion, serious medical condition, sex (including pregnancy), sexual orientation, spousal affiliation or protected veteran status. Seller agrees to conform to all related state and federal laws, executive orders and rules and regulations.
18. No federal, state, or local income, payroll or employment taxes of any kind will be withheld or paid by SENMC with respect to payments to Seller or on behalf of Seller or its agents or employees.
19. Seller warrants that it has and will maintain in effect worker's compensation insurance for its employees and agents during the term of this purchase order, contract, and/or agreement, to the extent required by law.
20. SENMC reserves the right to audit Seller's records associated with the purchase order, contract, and/or purchase order, contract, and/or agreement at any time during the Term and for a three-year period following the expiration or termination of the purchase order, contract, and/or agreement. Any audit may be conducted by SENMC personnel or a third party under contract with SENMC business hours. SENMC will give Seller 14 days' notice prior to conducting any audit. Seller agrees to fully cooperate with the auditors. Seller will also make available to SENMC all books and records relevant to the purchase order, contract, and/or agreement kept or maintained by any subcontractor or agent of Seller. Any adjustments and/or payments due to SENMC as a result of the audit will be made no longer than 30 days after presentation of the findings to the Seller. Should the audit discover findings related to inappropriate accounting (resulting in SENMC being overcharge at least 10% of the value of the goods or services, or \$10,000.00 whichever is less), non-performance, misrepresentation or fraud, the Seller agrees to pay the cost of the audit.
21. Seller will indemnify, defend and hold harmless SENMC against all losses, liabilities, lawsuits, claims, expenses (including attorneys' fees), costs, and judgments incurred through third-party claims of infringement by the Seller of any copyright, patent, trademark or other intellectual property rights.
22. Seller agrees that it will not use SENMC or any of its names or trademarks in any of Seller's advertising without obtaining prior written consent, which may be withheld in SENMC's sole discretion.
23. Seller must give notice to SENMC of any SENMC employee or member of the Board of Trustees who has a direct or indirect financial interest in the Seller or in the proposed transaction. An SENMC employee or Trustee has a direct or indirect financial interest in the Seller or in the proposed transaction if presently or in the preceding twelve months the employee or Trustee, or a close relative of either has or had an ownership interest in the Seller (other than as owner of less than 1% of the stock of a publicly traded corporation); works for the Seller, is a partner, officer, director, trustee or consultant to the Seller, or has a right to receive royalties from the Seller. Seller must file a Conflict of

Interest disclosure form with SENMC. The Seller further represents and warrants that it has complied with, and, during the term of this purchase order, contract, and/or agreement, will continue to comply with, all applicable provisions of the Governmental Conduct Act, §§10-16-1 et seq. NMSA 1978.

24. The item(s) or service(s) specified in this purchase order, contract, and/or agreement may require Seller to create, receive from or on behalf of SENMC, or have access to records or systems containing Personal Identifying Information ("PII"). Without limitation, PII may be in the form of social security numbers; driver's license numbers; other government-issued identification numbers; account numbers; credit card or debit card numbers; security codes; access codes; passwords; biometric data; Family Educational Rights and Privacy Act ("FERPA") protected data; Health Insurance Portability and Accountability Act ("HIPAA") protected data; Gramm-Leach-Bliley Act ("GLBA") protected data; data falling under the definition of Controlled Unclassified Information pursuant to state and federal law ("CUI"); data protected by the European Union (EU) General Data Protection Regulation (GDPR); and other similar personal identifying information and protected data. Any and all PII provided by SENMC to the Seller, or which the Seller acquires through its own efforts in rendering or providing any goods or services under this purchase order, contract, and/or agreement, will be considered confidential, be held in strict confidence and will be released to the Seller's own personnel, agents, sub-agents and sub-consultants only to the extent necessary to provide or perform the goods or services required by this purchase order, contract, and/or agreement, and only in compliance with the above referenced laws and the requirements below. PII will not be released by Seller to any other person or organization without the prior written consent and approval of SENMC and, if the PII is not owned by SENMC, by the information owner. Seller represents, warrants and certifies that it complies with all SENMC policies regarding protection of PII and with the New Mexico Data Breach Notification Act. ("NMDBNA").
25. At the request of SENMC, Seller must provide SENMC a written summary of the procedures Seller uses to safeguard PII and a summary of any security and privacy audits or assessments of Seller's procedures performed by Seller's consultants or other external entities. Seller further represents, warrants, and certifies that it will hold PII in the strictest confidence and will not use or disclose information except as (a) permitted or required by this purchase order, contract, and/or agreement, (b) required by law, or (c) otherwise authorized, in writing, by SENMC and the information owner, if not SENMC, in writing; and (c) continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this purchase order, contract, and/or agreement; and, (d) contractually bind and ensure that its agents, sub-agents or sub-consultants adhere to the provisions set forth in this section. (e). Upon termination of this purchase order, contract, and/or agreement or when Seller no longer reasonably requires PII to perform its obligations under this purchase order, contract, and/or agreement, whichever is sooner. Seller further agrees to, at the direction of SENMC, either to: (1) recover and return in a format approved by SENMC all PII provided by SENMC or created by Seller under this purchase order, contract, and/or agreement, including all PII that may be in the possession of Seller's subcontractors or agents; or, (2) destroy, in a manner that permanently renders the data unusable, unreadable and undecipherable, all PII provided by SENMC or created by Seller under this purchase order, contract, and/or agreement, including all PII that may be in the possession of Seller's subcontractors or agents. (f). If Seller becomes aware that PII is subject to a security or privacy breach in which PII is, or is reasonably believed to have been, accessed by an unauthorized person in any manner, Seller must immediately inform SENMC of such breach in writing, must identify to SENMC the persons whose PII was compromised, must detail to the extent possible the causes of the breach, must take all necessary measures to ensure that further PII is not compromised, and will immediately begin all actions necessary to comply with the notification obligations contained in the NMDBNA. Within seven (7) days of discovery of the breach, Seller must provide to SENMC its written plan to comply with the NMDBNA. Seller agrees that the obligations set forth in the NMDBNA are its own, and not those of SENMC; however, Seller must fully cooperate with SENMC in any mitigation or notification actions undertaken by SENMC due to the security breach. Upon completion of all actions required under the NMDBNA, Seller must certify to SENMC that such actions have been completed. Seller's actions in complying with the NMDBNA will not entitle it to further compensation.

credit rating are disclosed to, or accessed by, an unauthorized person, or if the confidentiality of such information is otherwise breached, Seller must pay for and arrange at no further cost to SENMC or the information owner a minimum of one year of credit monitoring and identity protection service offered by at least one of the three credit bureaus (Equifax, Experian, TransUnion). (g). In addition to any other indemnity provided by Seller, in the event of a security breach involving PII, Seller agrees to indemnify, defend with counsel approved by SENMC, and hold harmless SENMC from, for and against any and all: losses; liabilities; lawsuits; claims; expenses (including attorneys' fees and expenses expended in enforcing this provision); costs; civil, regulatory and administrative penalties; and judgments incurred through third-party claims of violation of the NMDBNA, HIPPA FERPA, GLBA, GDPR, or otherwise related to a security breach caused by Seller's own acts or omissions. (h). In addition to any other termination rights set forth in this purchase order, contract, and/or agreement and any other rights at law or equity, if SENMC reasonably determines that the Seller has breached any obligations set forth in this section, SENMC may immediately terminate this purchase order, contract, and/or agreement without notice or opportunity to cure.

26. Any of the work product required by this purchase order, contract, and/or agreement will be considered a work made for hire as defined in the United States Copyright Act (17 U.S.C. §101) , applicable common law and corresponding laws of other countries. SENMC will have the sole right and authority to seek statutory copyright protection and to enjoy the benefits of ownership of the work. Seller hereby assigns to SENMC all rights, title and interest in and to the work product required by this purchase order, contract, and/or agreement and will require all employees, agents, and subcontractors at any tier to agree in writing that they assign to SENMC all right, title and interest in the work product required by the purchase order, contract, and/or agreement. (b). Ownership of documents. All documents which are prepared by the Seller under this purchase order, contract, and/or agreement are the sole property of SENMC (SENMC Property). SENMC Property may not be reproduced nor distributed without the express written consent of SENMC. Within two weeks of a request by SENMC, Seller agrees to deliver all SENMC Property to SENMC. Seller will be responsible for the protection and/or replacement of any original documents in its possession. (c). Inventions. Seller agrees to report any invention arising out of the work required by this purchase order, contract, and/or agreement to SENMC. SENMC will have sole right and authority to seek statutory patent protection under United States and foreign patent laws and to enjoy the benefits of ownership of the invention, whether the invention was required of the Seller or its employees, agents, or subcontractors at any tier, as part of the performance of work required by this purchase order, contract, and/or agreement. Seller hereby assigns to SENMC all right, title and interest in and to inventions made in the course of the work required by this purchase order, contract, and/or agreement and agrees to execute and deliver all documents and do any and all things necessary and proper to effect such assignment. Seller will require employees, agents, and subcontractors at any tier to agree in writing that they will execute and deliver all documents and do all things necessary and proper to effect assignment to SENMC of inventions arising out of work required by this purchase order, contract, and/or agreement.
27. In addition to the terms and conditions stated herein, the Seller will comply with all other laws and regulations applicable to the good or service provided by Seller to SENMC. No waivers or disclaimer shall be effective as to any applicable law to Seller's goods or services provided.
28. This purchase order, contract, and/or agreement can be modified or rescinded only by written agreement of both parties.
29. The waiver of a breach of any term of this purchase order, contract, and/or agreement will in no way be construed as a waiver of any other term of this purchase order, contract, and/or agreement or as a waiver of any further breach of that term or any other term in the purchase order, contract, and/or agreement.
30. No Party will be liable or be deemed in breach of this purchase order, contract, and/or agreement for any failure or delay of performance, which results, directly or indirectly, from acts of nature, civil or

military authority, public disturbance, or any other cause beyond the reasonable control of either Party.

31. Each of the Parties waives, to the fullest extent permitted by law, any right to trial by jury of any claim, demand, action, or cause of action arising under the purchase order, contract, and/or agreement; or in any way connected with or related or incidental to the standard terms and conditions dealings of the Parties in respect of the purchase order, contract, and/or agreement or any related transactions, in each case whether now existing or hereafter arising, and whether in contract, tort, equity, or otherwise. Each of the Parties agree and consent that any such claim, demand, action, or cause of action will be decided by court trial without a jury and that the Parties may file a copy of the purchase order, contract, and/or agreement with any court as written evidence of the consent of the Parties to the waiver of their right to trial by jury. Each Party agrees that it had an opportunity to consult with legal counsel prior to signing this waiver of jury trial, has carefully ready and fully understands the effects of this waiver of jury trial, and voluntarily agrees to waive its right to a jury trial.
32. These terms and conditions shall supersede and replace any arbitration provision in any purchase order, contract, and/or agreement between Buyer and Seller. Arbitration shall be at the sole discretion of SENMC.
33. SENMC shall be entitled to all protections afforded it under the New Mexico Tort Claims Act, New Mexico Law and Regulations, and the New Mexico and U.S. Constitutions.