

Purchasing Terms and Conditions

ELGIN COMMUNITY COLLEGE (BUYER) Terms and Conditions

Legal Entity: The “Buyer” is legally described as “The Board of Trustees of Community College District 509, counties of Kane, Cook, DuPage, McHenry and DeKalb, and State of Illinois, commonly known as Elgin Community College.”

Limitation of Liability: No purchase shall be made except as provided by Illinois law and any contract, verbal or written, made in violation is void. No officer or employee of the Legal Entity not expressly authorized under Illinois law, shall make any purchase on behalf of the Board, or enter into any contract of purchase, verbal or written, for any apparatus, equipment, suppliers, service, repairs, goods, wares or merchandise of any kind or description, or accept any of them on approval or otherwise. Vendor is directed to applicable Illinois law as contained in the Illinois Constitution and the Illinois Compiled Statutes to verify the authority of any person purportedly signing on behalf of the Legal Entity.

Governing Law: This Agreement shall be governed and construed in accordance with the Constitution and laws of the State of Illinois. It is the intent of the parties that arbitration and mediation shall not be a remedy or prerequisite required by this contract, and any reference to “arbitration” or “mediation” contained in any contract or agreement resulting from the execution of this Purchase Order is void and of no legal effect. The parties waive any right to demand a trial by Jury and agree that litigation arising from this Purchase Order of any Contract or Agreement entered into subsequent to the execution of this Purchase Order shall be heard only by a Judge sitting without a jury in Kane County, Illinois regardless of the place of business or residence of Seller. The parties agree that this venue is convenient for all of them. In the event of any litigation Buyer shall have the right to recover its reasonable attorney’s fees and costs.

Affirmative Action/Equal Opportunity: Elgin Community College is an Affirmative Action/Equal Opportunity Employer and does not discriminate against any employee or service provider because of race, sex, color, age, religion, national origin, marital status, veteran's status, physical or mental disability or any other protected status under federal or state law.

Bidding: Seller certifies that it is not barred from bidding on agreement/contract as a result of a conviction for either bid rigging or bid rotating under Article 33E of the Criminal Code of 1961, Ill. Rev. Stat. 1987, Ch.38, Section 33E et seq. Buyer reserves the right to reject any and all bids, and waive any bid irregularities.

Authorization: Buyer will not be responsible for articles delivered and/or services performed for its account without a specific written purchase order that has been authorized by the Director of Business Services.

Taxes: Elgin Community College is exempt from Federal Excise and State Sales Taxes and such taxes shall not be included in prices. Federal Excise Tax Exception Certificate will be furnished upon request.

Assignment: This purchase order may not be assigned, and no duty or right hereunder may be delegated, or monies payable hereunder, by Seller and Seller may not use any sub-contractor to perform hereunder, without the prior written consent of Buyer, which consent may be given or withheld at Buyer’s sole discretion. Any assignment made without such consent shall be null and void.

Prices: Buyer accepts Seller's quote or bid prices as recorded on Seller's proposal and on this purchase order but reserves the right to cancel the order if the prices are to be increased prior to the delivery of articles or the completion of services. The price shall not be changed without Buyer's prior written agreement. Unless otherwise provided in this purchase order, the price includes all charges for freight and insurance. No separate charges, except those clearly recorded on Seller's proposal and on this purchase order can, or will be allowed. Seller represents that the price charged for the goods and services covered by this purchase order is commercially reasonable and is the lowest price charged by Seller to buyers of a class of purchasers similar to Buyer under conditions similar to those specified in this purchase order. All prices quoted are in U.S. dollars.

Articles or Services: Articles to be delivered and/or services to be performed shall be in accordance with the terms, prices, delivery time, specifications, and conditions as recorded on Seller's proposal and as itemized on this purchase order. Stated delivery time must be adhered to. Buyer reserves the right to cancel this order if Seller does not make deliveries as specified on this order. No substitutions of articles or change of any nature shall be made without written authorization from the Buyer.

Inspection, Acceptance and Payment by Buyer: All goods shall be received subject to Buyer's right to inspection and rejection. Those rejected as a result of inspection will be held for Seller's inspection at Seller's risk and, if Seller directs, will be returned at Seller's expense. Freight to and from original destination for excess goods except for customary quantity variations recognized by trade practice, will be paid by Seller. Payment for goods on an order prior to inspection shall not constitute acceptance.

Responsibility for Goods and Risk of Loss: All shipments are to be made "F.O.B. Destination" unless otherwise specified on Seller's proposal and on this purchase order and accepted by Buyer. Seller assumes and accepts that all risk of loss of goods covered hereby shall be borne by Seller until goods have been received and accepted by Buyer or received, installed, and accepted by Buyer, whichever is applicable. When articles are sold "F.O.B. Point of Origin" and the purchase order confirms this, Seller is to prepay shipping charge and record prepaid charges on invoice and attach the original receipt, freight bill or express receipt to the invoice.

Patents and Copyrights: Seller warrants that there is no violation of patent rights or copyrights in manufacturing, producing, or selling the material or equipment covered by this order or in the use of such material or shipment by the Buyer in the usual or intended manner, and Seller agrees to hold the Buyer harmless from any and all liability, loss or expense occasioned by any such violation.

ELGIN COMMUNITY COLLEGE (BUYER)
Terms and Conditions

Instructions: A purchase order, authorized by the Director of Business Services, is required for all orders. Seller shall invoice Buyer for the goods at the time of final shipment unless otherwise provided for in this purchase order. Invoices shall show the purchase order number for each separate purchase order number issued. Failure to do so may result in a delay of payment. Packing slip shall be affixed to outside of package(s), listing contents of each package and notating an authorized purchase order number. Shipments without a purchase order will be rejected at the receiving dock.

Cancellation:

1. In addition to all other rights and remedies provided for hereunder or under law (including without limitation, damages) Buyer may cancel all or any part of this purchase order:
 - a) if Seller breaches any of the terms, warranties or provisions hereof,
 - b) upon the occurrence of any event entitling Buyer to reject the goods,
 - c) if any insolvency proceeding is instituted by or against Seller,
 - d) if Seller provides material false information to Buyer.
2. Buyer, at Buyer's sole discretion, may cancel this purchase order at any time as to the goods not then delivered.
3. Buyer shall not be deemed to have canceled this purchase order unless it notifies Seller of its intent to do so in writing. Upon receipt of such notice Seller will immediately stop work and notify any other parties performing any part of the work to stop work and will protect property in Seller's possession in which Buyer has or may acquire an interest.
4. Unless Buyer exercises its right to cancel because of the events described in paragraph (1) above or because of other event or condition caused by or under the control of Seller, Seller may claim:
 - a) Reimbursement for actual out-of-pocket cost incurred by Seller as a result of such cancellation (exclusive of costs for materials that Seller can use on other orders) and
 - b) A reasonable profit on the work performed by Seller prior to cancellation. Such claim must be made within twenty (20) days of the notice of cancellation and the total amount of such claim shall not exceed the purchase price for the completed goods.

OSHA: All equipment and material shall be in accordance with OSHA Rules and Regulations in effect at the time of order.

MSDS: Seller shall forward a material safety data sheet (MSDS) to Buyer on all products on this order if applicable.

Work at Site: When this purchase order requires installation, or work at the site:

1. All work done must pay prevailing wage to the workers. It is Seller's responsibility to determine the appropriate current wage rate.
2. Insurance satisfactory to the Buyer shall be obtained and furnished before work is started, listing Elgin Community College as an additional insured and a certificate holder.
3. Prior to payment of the purchase price, Seller shall furnish lien waivers, releases, affidavits, and other documents as Buyer requires, keeping Buyer's premises lien free.
4. Seller shall comply with all of Buyer's requirements relating to job procedures, formalities, payrolls, etc.

5. The Seller will take whatever precautions are required to protect the Buyer's property and will repair or replace any damaged items to their original condition.
6. Pursuant to 30 ILCS 580/1 et set., the Seller will agree to certify that they comply with the "Drug Free Workplace Act."

Bonds: If required by Buyer, the Seller, before commencing work, shall furnish a Performance Bond and a Labor and Material Bond. The Performance Bond shall be in an amount equal to 100% of the full amount of the Combined Contract Sums as security for the faithful performance of the obligation of the Contract documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Combined Contract Sums as security for the payment of all persons performing labor and furnishing materials in connection with the Contract Documents. Such bonds shall be on standard AIA Documents, issued by the American Institute of Architects, shall be issued by a surety company satisfactory to the Buyer, and shall name Buyer as a primary co-obligee.

Bid Security: If required by Buyer, the Seller shall furnish a Bid security in the amount of 10%.

Change Orders: Seller is entitled to 10% overhead and a 5% fee on work done by Seller's forces. The Seller can charge up to but not to exceed 5% fee on authorized sub-contractor's work. Such amounts shall be shown in the Purchase Order and payment shall not vary from the amounts contained therein without Buyer's prior written consent.

Entire Agreement: This purchase order, together with any written documents incorporated by reference, constitutes the entire agreement between Buyer and Seller with respect to this transaction and supersedes all previous communications. Any additional or different terms by the Seller or Seller's acknowledgement are rejected by the Buyer unless expressly agreed to in writing by an authorized representative of the Buyer.