



Arizona Western College Purchase Order Terms and Conditions

1. **PURCHASE ORDER DEFINED:** The term "purchase order" as used in these terms and conditions means the document titled "Purchase Order" that Arizona Western College (AWC) issues to a Contractor for payment of goods and/or services.
Contractor shall not begin work or supply equipment, goods or materials to AWC unless it has received a signed purchase order from AWC to do so.
2. **ACCEPTANCE AND REJECTION:** Regardless of any terms or conditions to the contrary in Contractor forms or documents, AWC shall have all the rights and remedies specified in this paragraph. AWC shall have a reasonable time after delivery of goods to inspect them. AWC is not obligated to pay for those goods until it has had the opportunity to inspect them, and has accepted them. AWC may reject goods if, prior to final acceptance, the goods are found to be defective or not as specified. In the case of services, AWC 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. AWC is entitled to all other remedies under applicable law, including the right to revoke acceptance of nonconforming goods. Contractor shall reimburse AWC for all direct, indirect, incidental and consequential costs related to nonconforming goods or services. Notwithstanding final acceptance and payment, Contractor 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.
3. **ASSIGNMENT AND DELEGATION:** The Contractor shall not assign any right nor delegate any duty under this purchase order without the prior written approval of an authorized AWC Contract Officer. AWC shall not unreasonably withhold approval.
4. **CHANGES:** An authorized AWC Officer may make changes within the general scope of this purchase order by giving notice to Contractor 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 Contractor shall be recognized without written approval of an authorized AWC Contract Officer. Any claim of Contractor for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Contractor of notification of such change. Nothing in this Paragraph shall excuse Contractor from proceeding with performance of the purchase order as modified.
5. **CANCELLATION FOR CONFLICT OF INTEREST:** Pursuant to *A.R.S. 38-511*, AWC 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 AWC 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 Contractor receives written notice of the cancellation unless the notice specifies a later time.
6. **NON-DISCRIMINATION:** The Contractor shall comply with State Executive Order No. 75-5 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
7. **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 AWC Department. In the event testing is required prior to acceptance, the discount time shall begin upon completion of the tests.
8. **EXCISE TAX:** AWC is exempt from Federal Excise Tax.
9. **USE TAX:** AWC pays out-of-state use tax directly to the State of Arizona.
10. **BANKRUPTCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, by, or against the Contractor, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, AWC shall be entitled to cancel the purchase order without liability.



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11. **INSPECTIONS:** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes for producing the materials, at reasonable times for inspection of the materials covered under this purchase order. AWC shall also have the right to test at its own cost the materials to be supplied under this purchase order. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If AWC determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by AWC for testing and inspection.
12. **APPLICABLE LAWS:** The laws of the State of Arizona shall apply to the performance and interpretation of this purchase order. Any provision required 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.
13. **PATENT AND COPYRIGHT INDEMNITY:** Contractor shall indemnify AWC 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.
14. **RISK OF LOSS:** The Contractor 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 Contractor regardless of receipt.
15. **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 pandemic; government restriction; 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.
16. **TITLE AND DELIVERY:** Unless stated otherwise in the purchase order, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination identified in the purchase order. Title to the materials and supplies shall pass to AWC upon acceptance at the F.O.B. point specified, subject to the right of AWC to reject. For any exception to the delivery date specified, Contractor shall give prior notification and obtain approval from AWC's Purchasing Department. Time is of the essence and the purchase order is subject to termination for failure to deliver on time.
17. **WARRANTIES:**
 - A. Liens: The Contractor 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 Contractor warrants that, for one year after acceptance by AWC of the materials, they shall be:
 1. Of a quality to pass without objection in the trade under the purchase order description;
Fit for the intended purposes for which the materials are used. Within the variations permitted by the purchase order and are of even kind, quantity, and quality within each unit and among all units;
 2. Adequately contained, packaged and marked as the purchase order may require; and
 3. Conform to the written promises or affirmations of fact made by the Contractor.



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- C. Fitness. The Contractor warrants that any material supplied to the AWC shall fully conform to all requirements of the purchase order and all representations of the Contractor, and shall be fit for all purposes and uses required by the purchase order.
 - D. Inspection/Testing. Inspection or testing of or payment for the materials does not affect the warranties set forth in subparagraphs A through C of this paragraph by AWC.
 - E. Exclusions. Except as otherwise set forth in this purchase order, there are no express or implied warranties of merchantability or fitness.
18. **PAYMENT:** To be paid, Contractor **must 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 or 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 of these Purchase Order Terms and Conditions. **Contractor 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 AWC Officer. Invoices for progress payments must specify the actual work performed. If AWC has agreed in writing to reimburse the travel expenses of the Contractor, AWC will do so **according to the same policies and rates** applicable to its employees. Contractor must submit an invoice for any travel reimbursement requested, specifying its expenses, and attach original receipts for airfare and hotel expenses. Standard payment terms for AWC are "Net 30" from the date the invoice is received. **Payments are made via ACH, electronic deposit.**
19. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless AWC, 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 Contractor, its agents, employees, or any tier of Contractor's subcontractors in the performance of this purchase order. The amount and type of insurance coverage requirements set forth in Paragraph 20 will in no way be construed as limiting the scope of indemnification in this Paragraph.
20. **INSURANCE:** Unless an authorized AWC Officer instructs the Contractor otherwise, when required the Contractor shall maintain during the term of this purchase order insurance policies described below issued by companies licensed in Arizona with a current A.M. Best rating of A or better. Before providing any services or supplying any equipment, goods or materials, Contractor shall furnish the AWC Risk Manager with certificates of insurance evidencing the required coverages, conditions, and limits required by this purchase order at the following address:
AWC Risk Manager
2411 West 14th Street
Tempe, Arizona 85281
480-731-8879
480-731-8890 (fax)
- The insurance policies, except those for Worker's Compensation or Professional Liability, shall be endorsed to name Maricopa Community Colleges, its agents, officers, officials, employees, and volunteers as 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 Contractor'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 AWC Risk Manager. Contractor's insurance must be primary, and any insurance or self-insurance maintained by AWC shall not contribute to it. If any part of this Agreement is subcontracted, these insurance requirements also apply to all subcontractors. Insurance coverage required under this purchase order, unless the authorized AWC Contract Officer instructs Contractor otherwise, is:



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- 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 Contractor'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 \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit; and
 - D. If applicable, professional liability insurance covering acts, errors, mistakes, and omissions arising out of the work or services performed by Contractor, or any person employed by Contractor, with a limit of not less than \$1,000,000 each claim.
- 21. TERMINATION:**
- A. AWC may terminate this purchase order for convenience by giving Contractor 15 days written notice of termination.
 - B. 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 10 days' written notice of the failure to comply.
- 22. PROPERTY RIGHTS:** AWC 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. Contractor agrees that the Works are "works for hire" and assigns all of the Contractor's right, title and interest to AWC.
- 23. FUNDS UNAVAILABLE:** AWC may cancel this purchase order, without recourse by contractor, if, in future fiscal years, funds become unavailable for the support of the program for which the services, equipment, goods or materials are provided.
- 24. CERTIFICATION:** Contractor certifies that it is an independent contractor; provides services to other customers; maintains insurance; sets its own priorities on time and hours of work; provides its own supplies; and determines the means of delivering services.
- 25. ADVERTISING AND PROMOTION:** The Contractor shall not advertise or publish information for commercial benefit concerning this purchase order without the prior written approval of AWC.
- 26. GRATUITIES:** AWC may, by written notice, terminate this purchase order, in whole or in part, if AWC determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of AWC for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. AWC, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 27. FERPA:** If Contractor has access to students' educational records, Contractor shall limit its employees' access to the records to those persons for whom access is essential to the performance of this contract. At all times during this contract, Contractor shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 in all respects.
- 28. Legal Worker Requirements:** As mandated by Arizona Revised Statutes § 41-4401, AWC is prohibited after September 30, 2008 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes §23-214-A. That statute requires that employers verify the employment eligibility of their employees through the federal E-verify system. An "employer" is an independent contractor, a self-employed person,



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the State of Arizona or any of its political subdivisions, or any individual or type of organization that transacts business in the State of Arizona, that has a license issued by an agency in the State and that employs one or more employees in the State. (See A.R.S. §23-211-4.) Therefore, in signing or performing any contract for AWC, the Contractor fully understands that:

- A. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214-A;
- B. Any breach of that warranty is material and is subject to penalties up to and including immediate termination of the contract; and
- C. AWC or its designee is authorized by law to randomly inspect the records relating to an employee of the Contractor or any of its subcontractors who works on the contract to ensure compliance with the warranty made in Paragraph A above.