

## PURCHASE ORDER TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT:** This Purchase Order and any documents referred to herein, supersede all prior understandings, transactions and communications, whether oral or written, with respect to the matters referred to herein and form the complete contract between the Buyer, The Akron Board of Education [hereinafter "Board"] and Seller. No modification, alteration or amendment of this order shall be binding upon Board unless made in writing and signed by authorized Board personnel.
2. **PACKING SLIPS, INVOICES:** Packing Slip bearing a complete record of the shipment including the appropriate purchase order number to which it applies, is required with each shipment. Each invoice must show the purchase order number to which invoice applies. Payments and discounts will be figured from date of receipt at Board's office.
3. **WARRANTY:** Seller warrants that all materials, goods and work furnished by it on this order shall be free from defects in material and workmanship, shall be fit and sufficient for the purpose intended, shall be of good and merchantable quality and shall conform to blueprints, specifications, samples and other descriptions furnished with this order or as subsequently changed by Board, and to quantities specified. This warranty shall run to the Board, and the user[s] of the final product and shall survive inspection and acceptance by Board. Seller agrees to defend and indemnify and save Board, its members, officers, employees, agents and representatives and the user of the final product harmless with respect to all claims, suits or other proceedings, losses, costs, expenses [including attorney fees] and damages, including consequential damages and special damages, incurred or as a consequence of any breach of this warranty.
4. **INSPECTION AND APPROVAL RETURN OF GOODS:** All materials, goods and work shall be subject to Board's inspection and approval, despite prior payment therefore. Materials other than those specified shall not be substituted without Board's written authority. Upon discovery by Board that the materials furnished contain any defect, patent or latent, or that the materials fail to conform to the foregoing warranty, Board shall have the right: [1] to reject the work or delivery of the materials, or, if they have been accepted, to return them to Seller, recover all freight, storage, handling or other expense incurred by Board and be relieved of any payment for the purchase price thereof; or, if payment has been made, to recover the Purchase price plus all freight, storage, handling or other expense incurred by Board; [2] to recover all expenses incurred in reworking the material in an attempt to make it usable; and [3] to cancel the balance of the order. Materials so returned shall not be replaced without Board's written replacement order. Board's rights as set forth in this paragraph shall not be construed to limit or affect any other rights which Board may have at law or under the terms of Seller's warranty herein.
5. **PRICE:** Price shall be as specified and only may be modified with the prior consent of the Board. If price is omitted, it is agreed that the material shall be billed at the price last quoted or paid, or the prevailing market price, whichever is lower.
6. **EXCESS QUANTITY:** Board accepts no responsibility for goods or materials shipped in excess of the quantities specified herein, and any such excess may, at Board's option, be returned to Seller at Seller's expense.
7. **DELIVERY AND CANCELLATION:** Time of delivery is of the essence of this Purchase Order, and therefore, delivery must be made in accordance with the date or dates specified in this order or as agreed upon. If materials are not delivered within one week of the specified time, Board shall have the option of purchasing elsewhere and charging Seller with any loss resulting therefrom and/or of canceling the order or any part thereof. If materials are not delivered within 90 days of the required delivery date, this order is hereby cancelled. If materials are shipped so as to arrive more than two weeks in advance of the specified delivery date Board, may at its option, either return such materials to Seller at Seller's risk and expense or charge Seller a reasonable storage charge. Should Board cancel this order or any part thereof without cause, Board's liability shall be limited to labor and material costs and expenses of Seller applicable to materials so cancelled and incurred by Seller to time of cancellation, less salvage value of such materials. This contract may not be modified or terminated orally, and no modification or termination, nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against whom such modification, termination or waiver is sought to be enforced, and by the Treasurer of the Board who shall affix a new certificate to such contract by reason of such change.
8. **NO-DAMAGES-FOR-DELAY:** The board shall not be held responsible for any loss, damage, costs or expenses sustained by Seller as a result of any project delays, disruptions, suspensions, work stoppages or interruptions of any kind, whether reasonable or unreasonable or whether occasioned by changes ordered in the work or otherwise caused by an act or omission of the Board, its agents, employees or representatives, or by any cause whatsoever beyond the control of the Seller. Seller acknowledges and agrees that it shall not be entitled to recover from the Board any damages, direct, indirect, special, or consequential, for any such delays in connection with performance/non-performance of this Purchase Order.
9. **TRANSPORTATION AND PACKING:** All materials shall be suitably packed or otherwise prepared for shipment to protect the same fully during transportation and to secure the lowest transportation costs. All materials shall be forwarded in accordance with Board's instructions, or in the absence of such instructions by the route and method of transportation taking the lowest transportation rate. Excess transportation costs otherwise incurred will be charged to Seller's account. When usual terms of tariffs do not include insurance, shipments must be forwarded properly insured pursuant to the full sales price hereunder. No charge shall be made for packing, insurance, boxing, storage or drayage unless authorized by board in writing
10. **PATENTS AND TRADE MARKS:** Seller agrees, upon receipt of notification, promptly to assume full responsibility for the defense of any claim, suit or proceedings which may be brought against Board or any of its members, officers, representatives or agents by reason of the use or sale of any materials furnished on this order for alleged patent or trademark or copyright infringement or for alleged unfair competition resulting from similarity of design, trademark or appearance of goods; and Seller further agrees to defend and indemnify Board, its members, officers, representatives or agents from and against any and all expense, loss, royalties, profits and damages, including court costs and attorney's fees, resulting from the bringing of such suit or proceedings and/or from any settlement, decree or judgment thereon. Board reserves that right to control any such suit or proceeding and may be represented by its own counsel in any such suit or proceedings, if it so desires.
11. **WORK DONE ON PREMISES OTHER THAN THOSE OF SELLER:** If in the performance of this Purchase Order the Seller or any of its agents, employees or subcontractors is required to enter upon any premises other than premises owned or occupied by any such person, than the Seller agrees: [a] to comply with all laws, rules, regulations, orders and ordinances applicable to all work done hereunder; [b] to protect such premises from all mechanic's and material men's liens; [c] to take all reasonable precautions prescribed by any person in charge of any part of such premises with respect to the protection of such premises and all property and persons thereon or in the vicinity thereof; [d] to prevent any fire hazard and comply with all safety rules; [e] to maintain proper workmen's compensation insurance covering all employee's engaged in the performance of work hereunder and public liability and property damage insurance in amounts and forms satisfactory to the Board to cover any liability incurred in connection therewith; [f] to require each of its agents, employees and subcontractors entering upon such premises to agree to and to comply with all of the foregoing; and [g] to defend and indemnify and save the Board, its officers, members, employees, agents and representatives and any other person having rights in said premises or being on or about said premises from all fines, penalties, costs, losses, expenses, damages, claims, suits or liabilities including consequential damages, resulting from injury, including death to persons or property arising from or in any manner growing out of the performance of the work provided for in this Purchase Order, whether or not such fines, penalties, costs, losses, expenses, damages, claims, suits or liabilities are based in whole or in part upon the Board's alleged negligence or participation in the wrong.
12. **INSOLVENCY OF SELLER:** If Seller ceases to conduct its operation in the normal course of business [including inability to meet its obligations as they mature] or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Board may terminate the order without liability except for deliveries previously made or for goods covered by the order then completed and subsequently delivered in accordance with the terms of the order.
13. **COMPLIANCE WITH LAWS:** Seller warrants that all work contemplated hereunder shall be performed in strict conformity with Federal, State and local laws and ordinances, and all lawful regulations of any public authority including, but not limited to the Occupational Safety and Health Act of 1970 [29 U.S.C.A. 651e78], and the Fair Labor Standards Act of 1938 [29-U.S.C.A. 201-209], as amended. Seller agrees, upon request, to furnish Board a certificate of compliance with any or all such laws in such form as Board policy may require at the time this contract is entered into. By acceptance of this order, Seller represents that to the best of its knowledge and belief, the prices charged hereunder are not in excess of the prices permitted by any or all applicable governmental price regulations, and are not in excess of the Seller's current selling prices of the same or substantially similar items, taking into account the quantities so sold, and agrees that in the event it is subsequently determined that the prices charged herein are in excess of such prices, such excess will be refunded to Board. Where Seller performs services on Board's premises, Seller agrees to furnish to Board satisfactory evidence of compliance with all laws and regulations, including specifically all taxes on payroll or contributions on account of social security, unemployment insurance and Federal or State workmen's compensation. Seller further agrees to defend and indemnify and save harmless Board and its affiliates, or either of them, against any claim, suit or demand, and all costs, damages or expenses incident thereto arising out of its failure to pay or secure such compensation, taxes or contributions or arising out of the performance of the work or in connection therewith or pertaining thereto. Material Safety Data Sheets [MSDS] are to be included with all material shipments, when & where applicable.
14. **ASSIGNMENT:** This Purchase Order shall not be assigned in whole or in part without Board's written consent and shall be binding upon and accrue to the benefit of the successors and permitted assigns of the parties hereto.
15. **CONSTRUCTION OF PURCHASE ORDER:** The construction, validity and interpretation of this order and each term used herein, the rights and obligations of the parties with respect to performance hereunder, as well as the liabilities which may arise hereunder shall be governed, defined and determined under the laws of the State of Ohio, without regard to the choice of law rules of the state of any other jurisdiction.
16. **AFFIRMATIVE ACTION AND ANTI-DISCRIMINATION:** Seller hereby agrees to comply with Affirmative Action and Anti-Discrimination provisions set forth in Ohio Revised Code Section 125.111. The Affirmative Action clauses and regulations of Title VI, Civil Rights Act of 1964 [42 U.S.C.A. 200 [d]- 2000 [d] [4"]; Title IX, Education Amendments of 1972 [20 U.S.C.A. 1681, et seq.]; Rehabilitation Act of 1973 [29 U.S.C.A. 794]; and Age Discrimination Act of 1975 [42 U.S.C.A. 6101, et seq.] are incorporated by reference and made a part hereof, as well as any other applicable federal, state and local laws prohibiting discrimination as required by Board policy and resolution at the time of this order.
17. **DISPUTES:** Any dispute, controversy or claim arising out of, in connection with or in relation to this order, its interpretation, construction, formation, performance or breach shall be submitted to and determined by the appropriate court of original jurisdiction of Summit County, State of Ohio. Defenses with respect to the adequacy of service of process by either party against the other are hereby waived by addressing it to the other at the address for each shown on the face of this order and deposited in the United States mail, postage prepaid, certified mail, return receipt requested. Pending a final decision of a dispute hereunder the Seller shall proceed diligently with performance of the Purchase Order in accordance with the instructions of the Board