

Kyrene Elementary School District #28 Purchase Order Terms and Conditions

1. PURCHASE ORDER NUMBER MUST BE MARKED ON ALL PACKAGES AND PACKING LISTS.
2. RENDER INVOICES TO: ACCOUNTS PAYABLE, 8700 S. KYRENE RD, TEMPE, ARIZONA 85284.
3. PRICE INCREASES MUST RECEIVE PRIOR SCHOOL DISTRICT APPROVAL.
4. ALL MERCHANDISE TO BE SHIPPED PREPAID. ANY FREIGHT CHARGES THAT ARE APPLICABLE MUST BE ADDED TO INVOICE.
5. FEDERAL AND STATE INCOME TAX AND EXCISE TAX SHALL BE EXCLUDED. ANY TRANSACTION PRIVILEGE ("SALES") OR USE TAX TO BE PAID BY PURCHASER MUST BE SET FORTH ON SELLER'S INVOICE OR COLLECTION OF THAT TAX FROM PURCHASER IS WAIVED.
6. **WARRANTY:** Seller warrants that all goods or services furnished hereunder shall be merchantable, and free from any defects in workmanship or material. If Seller has been informed of the use of the products, Seller also warrants that the items furnished hereunder are suited and appropriate for such use. Seller shall defend, indemnify and hold the Purchaser harmless from any breach of this warranty, and no limitations on Purchaser's remedy in Seller's documents shall operate to reduce this indemnification. Seller shall extend all warranties it receives from its vendors to Purchaser. This warranty is in addition to all warranties contained under the law.
7. **DELIVERY:** Purchaser may delay delivery or acceptance of goods in the event of any unforeseen event. Seller shall hold the goods pending Purchaser's direction, and Purchaser shall be liable only for direct increased costs incurred by the Seller by reason of Purchaser's instructions.
8. **CHANGES:** Purchaser shall have the right to make changes in this order at any time and Seller agrees to accept such changes. In the event such changes result in additional costs, Purchaser shall make an equitable adjustment in the purchase price provided such additional costs are itemized for Purchaser by Seller within (30) days of the change.
9. **PATENT INFRINGEMENT:** Seller agrees to defend, indemnify and hold Purchaser harmless from any patent infringement or similar proceedings which are based on products sold or services provided by the Seller hereunder. Seller shall defend any such suits at its own expense, and Purchaser shall have the right to have such litigation monitored by its own counsel.
10. **ACCEPTANCE:** Payment for the goods delivered and services provided under this order shall not constitute acceptance of such goods or services. Goods and services are deemed accepted only when goods have actually been counted, inspected, and tested by the Purchaser or services completed and found to be in conformance with this order. However, failure to inspect or test by Purchaser shall not relieve the Seller of any responsibilities hereunder.
11. **MODIFICATION/ASSIGNMENT:** This purchase order and any documents referred to on the face hereof constitute the entire agreement between the parties and can only be modified by a writing signed by both parties. No part of this order may be assigned or subcontracted without the prior written approval of Purchaser.
12. **INDEMNIFICATION:** If this order includes work to be performed on Purchaser's premises, Seller agrees to defend, indemnify and hold harmless Purchaser from all loss or damage arising out of such work, to observe the highest safety standards, to maintain adequate insurance which shall be primary and shall pay before any insurance Purchaser may carry, and to furnish evidence of such insurance and name Purchaser as an additional insured at Purchaser's request. Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, and from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller and shall survive the termination of this order.
13. **SEVERABILITY:** Purchaser's failure to insist on performance of any of the terms or conditions herein, to exercise any right or privilege, or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
14. **ARIZONA LAW AND DISTRICT POLICIES:** This order and all rights and obligations hereunder shall in all respects be governed by and construed in accordance with the laws of the State of Arizona. Any lawsuit to construe or enforce the provisions hereof shall be brought in the Superior Court for Maricopa County, Arizona. By accepting this purchase order, seller agrees to comply with all applicable District policies and regulations, including, but not limited to those policies concerning the public's conduct on school property.
15. **CONTRACTOR'S EMPLOYMENT ELIGIBILITY:** By accepting this purchase order, seller agrees to comply and maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and 23-214 which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
16. **TERRORISM COUNTRY DIVESTMENTS:** Seller certifies compliance with A.R.S. § 35-392, the Export Administration Act.
17. **FINGERPRINT & BACKGROUND CHECKS:** By accepting this purchase order, seller agrees to comply with fingerprinting requirement in accordance with A.R.S. § 15-512 unless otherwise exempted.
18. **REGISTERED SEX OFFENDER RESTRICTION:** Pursuant to this order, the Seller agrees by acceptance of this order that no employee of the Seller or a subcontractor of the Seller, who has been adjudicated to be a registered sex offender, will perform work on Purchaser's premises or equipment at any time when Purchaser School District's students are, or are reasonably expected to be present. The Seller agrees by acceptance of this order that a violation of this condition shall be considered a material breach and may result in a cancellation of the order at the Purchaser's discretion.
19. **F.O.B.:** Unless otherwise noted herein, the F.O.B. point shall be Purchaser's location. Seller will bear all risk of loss for all merchandise covered by this order until such merchandise has been delivered to the designated location.
20. **CANCELLATION FOR CONFLICT OF INTEREST:** This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

Kyrene Elementary School District #28
Federal Funding Purchase Order Terms and Conditions

1. **Affordable Care Act:** The Offeror understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The Offeror shall bear sole responsibility for providing health care benefits for its employees who provide services to the District as required by State or Federal law.
2. **Buy American Provision (only applies to Food & Nutrition food purchases):** The Offeror will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7CFR§210.21(d) and 7CFR§220.16(d). The Offeror shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.
3. **Disclosure of Lobbying Activities:** Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the Offeror must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7CFR§3018.100 (Only applies to contracts over \$100,000)
4. **Certification Regarding Lobbying:** Pursuant to 31 USC 1352, the Offeror must submit a certification regarding lobbying which conforms in substance with the language provided in 2CFR Part 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions.
5. **Certificate of Independent Price Determination:** The Offeror admits that all prices in this Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.
6. **Civil Rights Compliance (only applies to Food & Nutrition contracts):** In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.
 - a. Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.
 - b. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found on line at www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

- 7. Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation:** The Offeror will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA List of Violating Facilities.
- 8. Contract Work Hours and Safety Standard Act:** The Offeror shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Only applies to contracts over \$100,000)
- 9. Debarment, Suspension, Ineligibility and Voluntary Exclusion:** By signing the Offer & Acceptance form, the Offeror certifies that they have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under executive order 12549 and 12689. The Offeror shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and Suspension codified at 2 CFR Part 180 and 2 CFR Part 417. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (Only applies to contracts over \$25,000)
- 10. Energy Policy and Conservation Act:** The Offeror shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94–163, 89 Stat.871.)
- 11. Equal Employment Opportunity:** The Offeror shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60).
- 12. Record Keeping:** The books and records of the Offeror pertaining to operations under this Agreement shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the US Department of Agriculture (for food/nutrition only), and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S § 35-214). 7CFR§210.23 and 2 CFR Part 200.318(i).
- 13. Invoicing (only applies to Food & Nutrition contracts):** The Offeror fully discloses all discounts, rebates, allowances and incentives received by the Offeror from its suppliers. If the Offeror receives a discount, rebate, allowance, or incentive from any supplier, the Offeror must disclose and return to the District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the District. The Offeror must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. 7CFR§210.21(f)(1)(iv). No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR§210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in the Offeror receiving payments in excess of the Offeror’s actual, net allowable costs. 7CFR§210.21 (f)(2)
The return of purchase incentives, discounts, rebates, and credits will be to the Sponsor’s non-profit Child Nutrition account.
- 14. Termination Clause:** The District may terminate for cause and for convenience the contract. Appendix II to 2 CFR Part 200. (Only applies to contracts over \$10,000)
- 15. E-Verify Requirement:** The Offeror warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection

A. (That subsection reads: After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

16. Description of process for enabling vendors to receive or pick up orders upon contract award. Once the District has made the decision to order from a vendor of an awarded contract, price will be confirmed/verified and purchase orders issued and sent to the vendor, based upon the needs of the District. No volume is implied or guaranteed.
17. **Solid Waste Disposal Act:** The Offeror shall comply with Section 6002 of the Solid Waste Act and its implementing regulations.
18. **Minority & Woman Businesses:** When federal funding may be used, the District shall take affirmative steps to ensure minority businesses, women's business enterprises, and labor surplus area firms are notified of solicitation opportunities when possible. Prime contractors are required to take the same affirmative steps let 2 CFR Part 200.321
19. **Program Regulation (only applies to Food & Nutrition contracts):** Offeror shall be in conformance with applicable portions of the School Food Authority's (SFA) agreement under the program. Offeror will conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, and 250. Offeror shall provide products that meet Public Law 111-296, the Healthy Hunger-Free Kids Act of 2010 (HHFKA). Offeror's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements.
20. **Copeland Anti-Kickback Act and Davis-Bacon Act (for building projects in excess of \$2000):**
 - a. **Copeland "Anti-Kickback" Act** - All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act.
 - b. **Davis-Bacon Act** - The OFFEROR shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
21. **Contract Violations or Breach of Contract:** The District reserves all administrative, contractual and legal rights and privileges under applicable laws and regulations with respect to this procurement in the event of contractor violation or breach of contract.
22. **Rights to Inventions:** For all contracts that meet the definition of "funding agreement" and where the District wishes to enter into a contract with a small business firm or non-profit organization, the offeror shall comply with the Rights to Inventions made by non-profit organizations and small business firms under Government Grants, Contracts, and Cooperative Agreements.