

PURCHASE ORDER TERMS AND CONDITIONS

1. INTRODUCTION. The Newark Board of Education Purchasing Department ("NBOEPD") utilizes an electronic tool to support various purchasing functions, such as registration of bidders and suppliers, advertisement of contract opportunities, electronic bidding, dispatching of purchase orders, and contract management. Access to and/or use of these systems is governed by these Terms & Conditions. NBOEPD reserves the right to change the Terms & Conditions at any time with or without notice by posting revisions. You are responsible for reviewing these Terms & Conditions as well as any subsequent changes to the Terms & Conditions. Unless otherwise specified, any changes will be effective when posted. RENDERING SERVICES AND OR DELIVERING GOODS AND OR ACCESSING E-SUPPLIER CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THESE TERMS & CONDITIONS, INCLUDING ANY CHANGES THAT EXIST AS REVISED. IF YOU DO NOT AGREE WITH THESE TERMS & CONDITIONS, DO NOT USE THE E-SUPPLIER SYSTEM NOR PROVIDE GOODS AND SERVICES TO THE NEWARK BOARD OF EDUCATION.

2. DEFINITIONS. "You" and "your" refer to the individual vendors or bidders as well as the legal entity the individual is representing. "System" shall mean NBOEPD' e-supplier system and the eSource system, including but not limited to the PeopleSoft® Supplier Relationship Management, Purchasing and other Financial modules. "NBOEPD", "we", "us" and "our" refer to the Newark Board of Education Purchasing Department.

3. ACCEPTANCE OF THE TERMS. By doing business with the Newark Board of Education and/or accessing the System, you agree that (1) you have read and understood these Terms & Conditions and (2) you are bound by the Terms & Conditions.

4. REGISTRATION. By registering and establishing certain account and password information, you will gain access to certain information, services and/or materials maintained on this System. YOU ARE SOLELY RESPONSIBLE FOR MAINTAINING THE MOST CURRENT AND ACCURATE INFORMATION FOR YOUR BUSINESS. FAILURE TO PROPERLY MAINTAIN YOUR ACCOUNT MAY LEAD TO YOUR INABILITY TO FULLY UTILIZE THE SYSTEM, INCLUDING BUT NOT LIMITED TO YOUR ABILITY TO RECEIVE CERTAIN EMAIL NOTICES OF BUSINESS OPPORTUNITIES. As part of properly maintaining your account, you must immediately deactivate registered representatives of your company who are no longer authorized to represent your company (e.g. terminated employees, etc.). NBOEPD reserves the right to assign expiration dates to registrations, classify registrations as inactive, or remove registrations when to do so is in our best interests. Please note the System's acceptance of your registration is not an indication that you are eligible for contract award. In addition, NBOEPD reserves the right to charge a fee for the provision of certain services, including, but not limited to, the provision of certain notification emails.

5. USE OF THE SYSTEM. You are responsible for all content that you post, e-mail, transmit, upload or otherwise make available through the System. You agree not to use the System to make available any content that: (1) is unlawful, harmful to adults or minors, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or otherwise objectionable; (2) infringes any patent, trademark, trade secret, copyright or other proprietary rights of any person; (3) contains unauthorized advertising or solicitations; (4) is intended by you to interrupt, destroy or limit the functionality or integrity of any computer software, hardware or materials on the System; or (5) is misleading, false, fraudulent or criminal. You are responsible for maintaining the confidentiality of your password and any membership account information. You agree to immediately notify us of any unauthorized use of your password or other membership account information and further agree to indemnify and hold us harmless for any improper or illegal use of your password.

6. NO GUARANTEE OF PRIVACY. Your access to and/or use of the System may be subject to monitoring or tracking. Any and all materials entered into the System shall be considered "public records" and shall be subject to public disclosure in accordance with the New Jersey Open Records Act.

7. RIGHT TO RESTRICT OR PROHIBIT ACCESS. You acknowledge and agree that NBOEPD may change, modify, amend, suspend or discontinue any aspect of the services or the System, at any time, without notice and without liability to you or to any third party. NBOEPD may impose limitations on the use of the System, including, but not limited to, limiting the time in which the System may be accessed and/or limiting the type or volume of materials which may be uploaded to the System. You are strongly cautioned to maintain your own records as any and all information contained on the System may be removed at NBOEPD' discretion at any time. NBOEPD may, at its sole and absolute discretion, refuse to accept your registration and may, at any time after accepting registration, refuse to permit your continued use of the System for any reason. In addition, in the event you violate the Terms & Conditions, we reserve the right to seek other appropriate remedies against you, including, but not limited to voiding contract award(s), suspension, debarment, criminal proceedings and any other remedies permitted by law.

8. DISCLAIMER OF WARRANTIES. NBOEPD does not represent or warrant that the System will operate uninterrupted or error-free. The System and any information or material contained on the System is provided to you on an "as is" and "as available" basis. Any material downloaded or otherwise obtained through the use of the System is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material. All conditions, representations and warranties, whether express, implied, statutory, or otherwise, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed. No advice or information, whether oral or written, obtained by you from the service shall create any warranty. NBOEPD is not liable and shall have no responsibility of any kind to you for any loss or damage that you incur in the event of (i) any failure or interruption of the System; (ii) any act or omission of any third party involved in making this System or the data contained herein available to you; (iii) any other cause relating to your access or use, or inability to access or use, any portion of this System or materials on this System, whether or not the circumstances giving rise to such cause may have been within the control of NBOEPD or of any vendor providing software, services or support. In no event will NBOEPD be liable to you for any direct, special, indirect, consequential, or incidental damages or any other loss or damages of any kind even if NBOEPD has been advised of the possibility thereof.

9. SOFTWARE & THIRD PARTY CONTENT. Information presented on the System is collected, maintained, and provided by NBOEPD, its partners, and other government entities. While every effort is made to keep such information accurate and up-to-date, NBOEPD does not certify the authenticity of any information that is provided on this System. Under no circumstances will NBOEPD be liable for any actions taken or omissions made from reliance on any information contained herein from whatever sources nor will NBOEPD be liable for any other consequences from any such reliance. Further, certain information and content available on the System may be provided by one or more third parties under license to NBOEPD ("Third Party Content"). The Third Party Content is, in each case, the copyrighted work of the creator/licensor. Without the consent of the applicable third party licensor, you shall only have the right to display the Third Party Content on your personal computer and to view such content for your personal use. Any use of the software other than as required to navigate the System and utilize the functionality offered through the System is expressly prohibited. No right to copy, distribute (in any manner through any means including without limitation rent, sales, lease, loan, or transfer), publicly display, publicly perform or modify the software accessible on the System is granted, or may be implied by these Terms & Conditions. You may not decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code to the software without the express written permission of the creator/licensor.

10. LINKS TO THIRD PARTY WEB SITES. The System may contain links to other websites that are not under the control of or maintained by NBOEPD. You acknowledge that NBOEPD is providing these links to you only as a convenience and such provision of these links does not imply endorsement by NBOEPD of the websites or any part of its contents. You further agree that NBOEPD is not responsible for the content or links displayed on such websites.

11. INDEMNIFICATION. You hereby waive, release, discharge and agree to indemnify, protect and save harmless the Newark Board of Education Purchasing Department ("NBOEPD"), Newark Board of Education, the State of New Jersey, its agencies, departments, authorities and instrumentalities, and the officers, directors and employees of each (hereinafter collectively referred to as "Indemnittees"), of and from any and all claims, demands, liabilities, losses, penalties, fines, fees, interest, awards, judgments, settlement payments, costs or expenses caused by, growing out of, or otherwise happening in connection with: (a) any breach of these Terms & Conditions hereof; (b) the violation of any applicable law, rule or regulation; or (c) damage to or destruction of tangible or intangible property (including data and software); (d) your misuse or modification of the System; in whole or in part caused by or resulting from any act or omission by you. This indemnification applies notwithstanding the fact that third parties or any of the indemnittees may be partially responsible for the events giving rise to the claim; or the claim results in a monetary obligation that exceeds any contractual commitment. However, if any of the indemnittees or third parties are partially responsible for the events giving rise to the claim, your indemnification obligation hereunder shall apply only to the extent that you contributed to the events. The foregoing indemnity is conditioned upon prompt written notice of any claim, action or demand for which indemnity is claimed.

12. RELATIONSHIP OF PARTIES. Independent Contractors -None of the provisions of this Agreement is intended to create nor shall be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other solely for the purposes of effecting the provisions of this Agreement. Neither of the parties, hereto, nor any of their respective officers, directors or employees, shall be construed to be the agent, employee or the representative of the other.

13. GOVERNANCE OF LAW. Each party agrees to comply with all applicable laws, statutes, ordinances and regulations regarding use of the System including any transactions entered into as a result of use of the System. If any provision of these Terms & Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of these Terms & Conditions. Further, if any provision of these Terms & Conditions is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. The failure of NBOEPD to enforce any right or provision in these Terms & Conditions shall not constitute a waiver of such right or provision. The Terms & Conditions comprise the entire agreement between you and NBOEPD and supersede all prior or contemporaneous negotiations, discussions or agreements, if any, between the parties regarding the subject matter contained herein. The laws of the State of New Jersey shall govern and determine all

matters arising out of or in connection with these Terms & Conditions and/or the use of this System without regard to the choice of law provisions of state law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with these Terms & Conditions and/or the use of this System, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Essex County, New Jersey. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to NBOEPD.

14. EFFECTIVE DATE. The terms are effective as of 1/1/2019 and supersede any previous versions of online agreements with us. In the event that you are currently under contract with the Newark Board of Education, the terms contained therein shall be incorporated by reference.

15. GENERAL. The Vendor agrees to protect, defend and save harmless the Newark Board of Education (hereinafter referred to as "District") against any demand for payment for the use of any patented material, process, device or article that may enter into the manufacture, construction or form any part of the material or services covered by this order and the vendor agrees further to indemnify and save harmless the Newark Board of Education, its officers, agents and employees from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by any party or parties by, or from any of the acts of the vendor, his servants or agents. In case of default by the vendor, the Newark Board of Education may procure the articles or all local, state and federal law, rules and regulations applicable to this contract and the work to be done hereunder.

16. TERMS. Time, in connection with discount offered, will be computed on the following basis: date of delivery of the supplies to the user, date correct, District Voucher Form properly certified by the vendor and vendor's invoices is received, date properly executed contract (whereupon required) is received or date materials are approved in the event laboratory or other tests are required, whichever is the latest.

17. QUALITY. All materials or services furnished on this order form must be specified, and subject to our inspections and approval within a reasonable time after delivery at destination. Materials rejected will be returned at the vendor's risk and expense.

18. QUANTITY. The quantity of material ordered must not be exceeded without authority being from the Purchasing Department.

19. PACKING. Damage to any material not packed to insure proper protection to the same will be charged by the vendor. Packages must be marked plainly with shipper's name and District's purchase order number. No charges are allowed for boxing or crating unless previously agreed on. All invoices, packages, shipping notices, instruction manuals and other written documents delivered under this Contract shall contain the applicable Contract /purchase order number. Packing lists shall be enclosed in each box or package delivered pursuant to this Contract /purchase order and shall indicate the contents therein. Invoices will not be processed for payment until all items invoiced are received.

20. CHANGES. The conditions of this order must not be changed by vendor. If the vendor cannot satisfy all the terms and conditions, the vendor should contact, or return the order to the Department of Purchasing. Only those changes mutually agreed to and authorized in writing by the Director of Purchasing will be binding on the District.

21. DELIVERY. All material should be shipped F.O.B. Destination, unless otherwise provided for on the face of this document. The District will not be liable for any freight charges over and above those expressly stated. If freight charges are authorized THE VENDOR IS TO PREPAY AND ADD TO INVOICE. Delivery must actually be effected within the times stated on the purchase order, failing in which we reserve the right to cancel the undelivered part of this order for default and purchase elsewhere. Deliveries shall be made between 8 AM & 3 PM Monday to Friday inclusive, unless otherwise stated F.O.B. Destination does not cover "spotting" but INSIDE DELIVERY IS REQUIRED, SIDE WALK DELIVERY WILL NOT BE ACCEPTED.

22. RESPONSIBLE VENDOR. Failure of a VENDOR to comply with any of the terms and conditions therein may disqualify him from receiving future orders.

23. PAYMENT. Claims are payable ONLY on District's standard voucher form. Partial payment for orders under \$500.00 may not be made. A standard Voucher form accompanies each purchase order. Vendor is to complete the standard District Voucher and mail or email the completed STANDARD DISTRICT VOUCHER along with their invoice to the ACCOUNTS PAYABLE DEPARTMENT, 765 BROAD STREET, NEWARK, NJ 07102. All invoices representing final billing must indicate 'FINAL INVOICE' on the face of the invoice.

24. INVOICING. Contractor is required to submit all invoices to the District's Accounts Payable Department in order for payment to be processed. Contractor acknowledges that invoices submitted to any other department will be rejected and that the time to process payment will not begin to run until Contractor delivers a "Properly Executed Invoice" to the Accounts Payable Department. A Properly Executed Invoice must include all of the following information in order to be considered complete for purposes of processing payment: vendor name and address, invoice number, invoice date, valid purchase order number, description of goods and/or services, accurate delivery date and/or dates of service, and delivery location of goods and/or services. Contractor acknowledges and understands that any incomplete invoices submitted for payment will be rejected by the District and that no payment will be due until a Properly Executed Invoice is received by the District. After Contractor submits a Properly Executed Invoice, Contractor agrees to provide the District with an additional thirty (30) day extension beyond the time required under the law, without penalty, in order to process payment. Contractor agrees that any claims for late fees or interest due to late payment must be made within one (1) calendar year from the date that the goods/services were received by or rendered to the District and that any claims for such fees or monies made after this time period will be void.

25. CONTRACT. Termination of the Contract at any time after the execution of the Contract between the District and the Contractor, the District may terminate the service provided by Contractor without penalty. The Contractor shall be notified by the District in writing via certified or registered mail, return receipt requested, of any partial or complete termination of the Contract. Accordingly, the Contractor's services shall be halted ten (10) days after actual receipt of notice and the Contract will be terminated in accordance with the District's notice. In such event, all documents prepared by the Contractor under the Contract, finished or unfinished, shall become the property of the District, and the Contractor shall be entitled to be paid for the work done up until the date of termination.

26. DELIVERY AND DAMAGES. If circumstances beyond the control of the Contractor result in a late delivery, it is the responsibility and obligation of the Contractor to make the details immediately known to the Purchasing Department, 765 Broad Street, Newark, NJ and the Project Manager. If the Contractor cannot meet the delivery date(s) as specified in his/her proposal, he/she shall be liable to the District to the sum of \$500.00 per normal workday that such delivery is late. Ten percent (10%) of the Contract cost is the maximum amount of liability. These said sums should be treated as liquidated damages and not a penalty.

27. COST LIABILITY. Contractor agrees that the Newark Board of Education Schools assumes no responsibility and has no liability for any costs incurred by bidders prior to issuance of an agreement, contract, or purchase order. Contractor also agrees that the Newark Board of Education is not responsible for services performed without an authorized purchase order and that only the issuance of a duly issued purchase order from the Newark Board of Education authorizes the performance of services and or delivery of goods. Further, the Newark Board of Education is under no obligation to pay for any services that exceed the amount of funds authorized on its purchase order, or the total amount specified in the Contract, without written approval from the District's Director of Support Services and/or the School Business Administrator. It is expressly understood by the Contractor that any services performed without a duly issued purchase order authorized by the Newark Board of Education Schools will be considered gratis and the services will be considered to have been performed free of charge for the District.

28. DATA CONFIDENTIALITY. All financial, statistical, personnel and/or technical data supplied by the NBOE to the Contractor are confidential. The Contractor is required to use reasonable care to protect the confidentiality of such data. Any use, sale or offering of this data in any form by the Contractor, or any individual or entity in the Contractor's charge or employ, will be considered a violation of this contract and may result in contract termination and the Contractor's suspension or debarment from NBOE contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution. The following are also to be considered a breach of confidentiality (1) News Releases: The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this contract without the prior written consent of NBOE. (2) Advertising: The Contractor shall not use the name, logos, images, or any data and/or results arising from this contract as part of any commercial advertising without first obtaining the prior written consent of NBOE.

29. STATE COMPTROLLER. Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request

30. NON-WAIVER OF RIGHTS. Neither the issuance of any respective certificate of approval nor acceptance by the District and/or the making of any payment applicable to any article, work or services furnished by the Contract shall constitute a waiver of the District's rights under the Contract or shall any such certificate of acceptance or payment relieve the Contractor from any of the obligations with respect to such articles, work or services.

31. CHEMICALS. Chemicals must be labeled according to the RIGHT TO KNOW N.J.S.A 34:5a-1 et seq.

32. QUESTIONS. Any questions regarding the purchase order should be directed to the Department of Purchasing. Any questions regarding payment on completed orders, including obtaining additional copies of standard Voucher forms, should be directed to the VENDOR ASSISTANCE GROUP, ACCOUNTS PAYABLE DEPARTMENT AT (973)733-6966. These terms and conditions are also located on the district website. www.nps.k12.nj.us