

## *Additional Purchase Order Terms and Conditions*

The terms Bidder, Contractor, Offeror, Supplier, and/or Vendor are synonymous in this document and refer to the person, entity, or firm that receives a Cobb County School District (CCSD) Purchase Order (P.O.).

**Compliance:** Vendor shall abide by all applicable federal, state, local laws, regulations, requirements, policies, and rules, etc. in the provision of these goods/services, including, if any, requirements for contracts involving federal funds. Vendor shall also comply with the CCSD's policies, procedures, regulations, directives, etc., as modified from time to time. To locate the **Compliance with Federal Laws** section, go to [www.cobbk12.org](http://www.cobbk12.org). From this screen, select "**Menu**", select "**Departments**", select "**Procurement Services**", and find the link to "**General Terms and Conditions**" located in the center of the page.

**Independent Contractor:** Neither Contractor nor any of its employees or agents shall be deemed to be employees or agents of the CCSD. Contractor is an independent contractor for all purposes and at all times. Contractor shall have no right, power, or authority to act or create any obligation, whether express or implied, on behalf of the CCSD. Contractor shall, at its own and sole expense, comply with all federal, state, and local laws, rules, and regulations that are now or may in the future become applicable to Contractor, Contractor's business or Contractor's personnel engaged in the services covered by this Agreement. Contractor shall provide all tools, materials, equipment, and other business items necessary to perform the services. Contractor shall be solely responsible for paying, and shall pay, all of its own expenses, debts, accounts, obligations, liabilities, employees, taxes, and fees incurred by it in the performance of the services hereunder.

**Contracts and Assignment** – A written, signed P.O. or Notice of Award furnished to a vendor results in a binding contract/agreement without further action by either party. Contracts are not assignable in whole or in part without the express written consent of the Director of Procurement Services.

**Governing Law; Jurisdiction:** This Agreement shall be governed in all respects by the laws of the State of Georgia without regard to its conflict of laws and provisions, and the parties hereto irrevocably consent to the exclusive jurisdiction and venue of the Superior Court of Cobb County, Georgia with respect to any state law claims and the United States District Court for the Northern District of Georgia with respect to any federal claims for any dispute arising between the parties out of this Agreement or related to the services provided hereunder.

**Non-Assignment:** Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by vendor without the prior written consent of the CCSD, and any purported assignment shall be null and void.

**Termination:** The CCSD may terminate the Agreement at any time and for any reason (or no reason), without penalty, upon thirty (30) days' written notice to vendor. Further, and pursuant to O.C.G.A. § 20-2-506, in the event appropriated funds are determined no longer to exist or to be insufficient for purposes of fulfilling the CCSD's obligations hereunder, the CCSD may terminate this Agreement, without penalty, upon thirty (30) days' written notice to vendor. The CCSD and vendor may terminate this Agreement at any time upon their mutual consent.

NOTE: For Multi-Calendar Year Agreements Only: Pursuant to O.C.G.A. § 20-2-506, this Agreement will terminate absolutely and without further obligation of CCSD at the end of the calendar year in which it is entered, and shall automatically renew under the same terms and conditions at the start of the next calendar year, UNLESS, CCSD provides notice of its intent to terminate the Agreement at least thirty (30) days prior to the end of the calendar year.

**Taxes:** The CCSD is a tax-exempt entity and shall not, under any circumstances, be liable for the payment of any taxes.

**Hold Harmless:** To the fullest extent permitted by law, vendor shall indemnify, defend (at vendor's sole expense) and hold the CCSD, the Cobb County Board of Education, its board members, officers, and employees harmless from and against any and all claims for bodily injury or death, damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations, and any liabilities, costs, and expenses (including, but not limited to, attorneys' fees and costs), due to any act or omission on the part of vendor, its agents, employees, subcontractors, or others working at the direction of vendor or on its behalf; or due to any breach of this Agreement by vendor; or due to the application or violation of any pertinent Federal, State, or local law, rule, or regulation by vendor, its agents, employees, subcontractors, or others working at the direction of vendor or on its behalf. This provision shall survive termination of this Agreement.

NOTE: Exception to above - for Law Enforcement personnel and Georgia public entities only, the Hold Harmless provision in this Agreement does not apply.

**Attorneys' Fees:** Should the CCSD be the prevailing party in any legal action with the vendor arising out of this Agreement or the services performed hereunder, then in such event, the CCSD shall be entitled to recover its reasonable attorneys' fees and costs from vendor. The CCSD shall be considered a prevailing party if: (i) any lawsuit filed against it results in a dismissal, judgment, jury verdict, or appellate decision in its favor, or (ii) it substantially prevails on any claims brought by it against the vendor.

NOTE: Exception to above - This provision does not apply to Georgia public entities.

**Changes and Alterations:** No changes in materials, conditions, prices, quantities, or deliveries will be made without specific authorization agreed to by the CCSD.

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**Delivery:** If not otherwise specified in this order, prices are F.O.B. destination. The CCSD reserves the right to cancel this order or any unfilled portion of the order at no expense to CCSD if delivery is not made within the required number of days specified by CCSD. IF UNABLE TO DELIVER IN THE NUMBER OF DAYS SPECIFIED, NOTIFY THE REPRESENTATIVE OF THE RECEIVING AGENCY IMMEDIATELY. Delivery to a common carrier does not constitute delivery to CCSD, and the risk of loss will remain with the vendor until all materials are delivered to the appropriate CCSD designated site. Any claim for loss or damage incurred during the delivery shall be made by the vendor directly to the carrier. The CCSD will notify the vendor of any damage incurred in transit. The vendor shall make an immediate replacement of the damaged materials. Failure to deliver in accordance with the contract could result in the vendor being declared in default.

**Instructional Materials:**

All presentations, PowerPoint slides, and/or instructional materials for District students and staff must be reviewed by the requesting school/department at least five business days prior to the presentation date. Failure to do so may result in cancellation of the Agreement. Vendor agrees to follow all current School District policies and District Administrative Rules. Further, vendor acknowledges that District employees are required to follow District Administrative Rule IKB-R Controversial Issues and IFAA-R Instructional Resources Selection and Acquisition. As a vendor of supplemental curriculum products, vendor acknowledges and agrees that it has reviewed the current version of IKB-R and IFAA-R, and nothing in its products will impede or prevent District employees from full compliance with IKB-R and IFAA-R in their classrooms. If the presentation or materials violate a District policy or regulation, the District representative will request modifications to bring the presentation and materials into compliance or cancel the Agreement.

**Receipt:** Quantities, units, and prices on all shipping documents must match those on the P.O. If industry standards or practices require grading certificates, USDA stamps, or other proof of quality, such proof must accompany the shipment.

**Inspection, Acceptance of Goods:** Delivery does not constitute acceptance. Material is subject to CCSD inspection and approval for a reasonable time after delivery. All supplies, materials, and equipment delivered to CCSD shall be subject to inspection and testing. Items that do not meet specifications will be rejected. Failure on the part of CCSD to reject upon receipt, however, does not relieve the vendor of its liability. If inspection/testing, after delivery, reveals a failure to meet specifications, the vendor may be deemed to have breached this contract.

**Invoices:** Itemized invoices shall be rendered to the CCSD address and must contain the CCSD P.O. number and the place to which material has been shipped. The CCSD shall not be invoiced until goods have been received by and accepted by the "ship to" location.

**Payment:** Payment will be made when orders have been delivered completely and in satisfactory condition.

**Payment Withheld:** Payment for any item delivered under an order may be withheld by CCSD until all requirements of the contract or order have been fully complied with.

**Non-Discrimination:** The CCSD does not discriminate based on race, sex, religion, color, national origin, age, disability, or any other basis prohibited by law in any educational programs or activities or in its employment practices and policies. Vendor warrants that it will not discriminate against any employee or applicant for employment on any basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of vendor. Vendor shall not engage in any unlawful discrimination or harassment, including sexual harassment, while on CCSD premises.

**Remedies for Non-conforming Supplies or Services:** A. If the inspection or later testing of goods reveals that they are not in conformance with CCSD specifications, CCSD may apply one or more of the following remedies to correct the problem: (1) Return material to the vendor at vendor's expense and risk. (2) Charge the vendor for re-inspection of goods (originally found to be defective) that are offered for acceptance. (3) Require correction of defective goods at no increase in price or fees. (4) Obtain correction through a third party and charge the cost to the vendor. (5) Accept nonconforming goods in return for monetary or other consideration to CCSD. B. If inspection of services reveals that the offered services are not in conformance with CCSD specifications, CCSD may apply one or more of the following remedies to correct the problem. (1) Require performance of conforming services at no increase in price or fee. (2) Reduce the contract price to reflect the reduced value of nonconforming services that cannot be re-performed or to reduce the fee (3) Obtain performance by a third party or CCSD and charge the cost to the vendor.

**Warranty and Support Requirements:** The CCSD is not waiving, amending, or abridging any warranty rights/contractual rights provided to the CCSD under state or federal law. The CCSD is not bound by any terms or conditions in any vendor's contract, packaging, invoices, service catalogue, brochure, technical datasheet, or any other document that attempts to impose any conditions that waive, amend, abridge, abrogate, are in conflict with or are in addition to CCSD's contractual rights as provided under state or federal law. In addition to the foregoing warranty and contractual rights of the CCSD, the vendor further warrants and agrees as follows:

- Any good(s) purchased under this contract will be defect-free in materials and workmanship and be of the quality, size, and dimensions ordered. This express warranty shall not be waived because of acceptance of the goods or payment thereof by CCSD.
- For Goods: Upon request by CCSD, the vendor further agrees to immediately correct, without charge to CCSD, any defects in the goods, that develop during the life of the warranty after acceptance and payment by CCSD. Any goods or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as goods initially delivered. Vendor is fully aware of CCSD's business requirements and intended uses of the product(s) and warrants that the product(s) shall be fit for such intended uses.
- CCSD shall give written notice to the vendor of any breach of warranties in this section, and such notice shall contain information concerning the deficiencies found, the location of the nonconforming good(s), and the quantity involved, including CCSD's notification of the remedy for the nonconforming or defective good(s).

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**Data Protection:** Vendor acknowledges that it may have access to CCSD's computer and communications systems and networks for the purposes set forth in this Agreement. If any data is made available or accessible to vendor, its employees, agents, or contractors pertaining to CCSD business or financial affairs or to CCSD projects, transactions, personnel, students, or contractors, Vendor will not store, copy, analyze, monitor, or otherwise use that data except for the purposes specifically agreed to by CCSD and permitted by law. Vendor will comply with all applicable laws, regulations, and government orders related to personally identifiable information ("PII") and data privacy with respect to any such data that vendor receives or has access to in connection with the performance of any services for CCSD. Vendor will protect PII and will not use, disclose, or transfer across borders such PII except as necessary to perform the services for CCSD and in accordance with applicable law.

**Fees:** The CCSD shall not be obligated to pay or agree to anything that (a) violates the prohibition against a pledge of credit by the CCSD, or (b) requires the CCSD to expend funds for purposes other than educational purposes, or (c) constitutes a waiver of the CCSD's sovereign immunity or other statutory rights, or (d) requires the CCSD to pay interest, collection fees, penalties or liquidated damages; or (e) constitutes an illegal gratuity or (f) requires CCSD indemnification of vendor, or (g) requires the CCSD to agree to any form of alternative dispute resolution, including mediation and arbitration.

**Termination for Cause:** The occurrence of any one or more of the following events shall constitute cause for CCSD to declare the vendor in default of its obligations under the contract:

- The vendor fails to deliver or has delivered nonconforming goods or services, inclusive of trial period goods or services that result in a contract, or fails to perform, to CCSD's satisfaction, any material requirement of the contract, including, but without limitation, the express warranties made by the vendor;
- CCSD determines that satisfactory performance of the contract is substantially endangered or that a default is likely to occur;
- The vendor fails to make substantial and timely progress toward performance of the contract;
- The vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the vendor terminates or suspends its business, or CCSD reasonably believes that the vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- The vendor has failed to comply with applicable federal, state, and local laws, rules, ordinances, regulations, and orders when performing within the scope of the contract;
- The vendor has engaged in conduct that has or may expose the CCSD to liability, as determined in the CCSD's sole discretion; or
- The vendor has infringed on a patent, trademark, copyright, trade dress, or any other intellectual property rights of a third party.

**Notice of Default:** If there is a default event caused by the vendor, CCSD shall provide written notice to the vendor requesting that the breach or non-compliance be remedied within the period of time specified in CCSD's written notice to the vendor. If the breach or non-compliance is not remedied within the period of time specified in the written notice, then CCSD may:

- Immediately terminate the contract/order without additional written notice; and/or
- Enforce the terms and conditions of the contract and seek any legal or equitable remedies.

**Termination upon Assignment or Change in Control:** In the event, vendor attempts to assign this contract to a third party, or in the event, vendor changes control, CCSD shall have the right, in its sole discretion, to terminate the contract immediately upon written notice.

**Force Majeure:** Neither party shall be liable or responsible to the other party, nor deemed to have defaulted under or breached the contract awarded pursuant to this contract, for any failure or delay in fulfilling or performing any term of such contract, when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control including, without limitation, Acts of God, flood, earthquake, fire, explosion, global pandemic, war, invasion, hostilities, terrorist threats or acts, riots or other civil unrest, governmental order or law, actions, embargoes or blockades, strikes, labor stoppages, or slowdowns. The impacted party shall promptly give notice within five (5) days of the occurrence of any such event to the other party, which shall identify the period of time the occurrence is expected to continue. The impacted party shall use diligent efforts to end the failure or delay and ensure the effects of such event are minimized and shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause, unless the CCSD, in its sole discretion, grants a vendor's request to cancel an order and release a vendor from its contract due to the effects of the force majeure event. The CCSD may revise/stop services and/or deliveries while school(s) are closed and will not be held responsible for any payment for services not provided or items not delivered.

**Contractor Employees on School District Property:** 1) All employees, agents and subcontractors of contractor/vendor working on CCSD property must wear ID (preferably photo ID), be neat and clean in appearance, and must comply with all of the policies and procedures related to on-campus work that are in effect at the school or administrative site, as the case may be. All of vendor's employees shall conduct themselves in a professional manner and should not give the appearance of fraternizing with staff or students. Vendor shall provide and institute necessary security measures to prevent unauthorized access to any and all computer networks and Proprietary Information, trade secrets, or Student Information of the CCSD by any of its employees or agents, and vendor shall be liable and responsible to CCSD for any and all security breaches by its employees or agents. 2) THE CCSD IS A DRUG-FREE WORKPLACE - By entering into this Agreement, vendor agrees that its employees, agents, and subcontractors will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of controlled substances or drugs on CCSD property at any time. 3) THE CCSD IS A SMOKE-FREE WORKPLACE - By entering into this Agreement, Vendor agrees that its employees, agents, and subcontractors will not use tobacco products or electronic nicotine delivery systems on school property at any time. The use of electronic nicotine delivery systems (e.g., e-cigarettes, e-cigars, e-hookahs, e-pipes and other forms of what is commonly referred to as "vaping") shall be prohibited at all times. 4) The CCSD reserves the right to request the removal of any of vendor's employees, agents, or subcontractors from the CCSD property.

**Additional Terms** – The CCSD shall not be bound by any terms and conditions included in any vendor's packaging, invoice, catalog, brochure, technical data sheet, or other documents which attempts to impose any condition at variance with or in addition to the terms and conditions contained in any contract or purchase order executed or issued by the CCSD or by such user agency.