

GASTON COUNTY SCHOOLS (GCS)
Purchase Order Standard Terms and Conditions

1. Acceptance. Seller's acknowledgment of the terms of this purchase order (this "Order"), without timely express written objection, or Seller's shipment or performance of any part of this Order, constitutes an agreement to (i) all terms and conditions set forth or referenced herein and on the face of this Order, (ii) on any attachments hereto, (iii) any applicable solicitation documentation related to this Order (including without limitation any request for proposals or invitation for bids or Seller's response thereto) that deal with the same subject matter as this Order, and (iv) any other terms and conditions of a written agreement signed by Seller and GCS that deals with the same subject matter as this Order (collectively, the "Contract Documents"). The terms and provisions set forth in the Contract Documents shall constitute the entire agreement between Seller and GCS with respect to the purchase by GCS of the (i) goods ("Goods") and/or (ii) services provided or work performed ("Services") as described in the Contract Documents. The agreements set forth in the Contract Documents are sometimes referred to herein as the "Contract." In the event of any conflict between any terms and conditions of the Contract Documents, the terms and conditions most favorable to GCS shall control. This Order constitutes an offer by GCS and expressly limits acceptance to the terms and conditions stated herein. No additional or supplemental provision or provisions in variance herewith that may appear in Seller's quotation, acknowledgment, invoice, or in any other communication from Seller to GCS shall be deemed accepted by or binding on GCS. GCS hereby expressly rejects all such provisions which supplement, modify or otherwise vary from the terms of the Contract Documents, and such provisions are superseded by the terms and conditions stated in the Contract Documents, unless and until GCS's authorized representatives expressly assent, in writing, to such provisions. Stenographic and clerical errors and omissions by GCS are subject to correction.
2. Questions. Contact the Ordering Department/School.
3. Purchase Order Number. The p.o. number must appear on all correspondence, invoices, packing slips, and bills of lading.
4. Price. This p.o. authorizes the prices shown. If prices or terms do not agree with your quotation, notify the **Ordering Department/Schools** immediately. All prices are quoted **F.O.B. Destination** unless indicated otherwise. If Seller's price or the regular market price of any of the Goods or Services covered hereunder is lower than the price stated in the Contract Documents on the date of shipment of such Goods or Services, Seller agrees to give GCS the benefit of such lower price on any such Goods or Services. In no event shall Seller's price be higher than the price last quoted or last charged to GCS unless otherwise agreed in writing. No charges for transportation, boxing, crating, etc. are allowable unless such charges are included in the Contract Documents. Invoicing at variance with this provision may subject the Contract to cancellation.
5. Invoices. Submit all invoices to P.O. Bill To address: **Ordering Department/Schools** Invoice each p.o. separately. Invoices for partial shipments will be accepted and final invoices should indicate completion of order.
6. Payment Terms. Payment terms are Net 30 days after receipt of correct invoice or acceptance of good, whichever is later. GCS does not agree to pay late charges, interest or attorney fees assessed by the Seller for any reason. Invoices are payable in U.S. funds.
7. Taxes. GCS is not Tax-Exempt. Seller shall itemize taxes on the Seller's invoice.
8. Quantity. The specific quantity ordered must be delivered in full and will not be changed without consent by the ordering Department/School. Any unauthorized quantity is subject to rejection and return at Seller's expense.
9. Freight and Packaging. Price quotations shall include freight, transportation, shipping, handling and similar charges. Collect freight shipments will be refused. Seller shall absorb any increase in rates becoming effective after the date hereof. Seller shall assume and pay all extra expense occurring on

account of improper packaging. Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

10. Delays in Shipment. Time and date of delivery are of the essence, except when delay is due to causes beyond Seller's reasonable control and without Seller's fault or negligence.
11. Services Performed. All services rendered under this p.o. will be performed at the Seller's own risk.
12. Acceptance and Inspection. All Goods and Services shall be received subject to GCS's inspection. Goods or Services that are defective in workmanship or material or otherwise not in conformity with the requirements of the Contract Documents may be rejected and returned at Seller's expense or may be accepted at a reduced price. GCS may require Seller to promptly replace or correct any rejected Goods or Services and, if Seller fails to do so, GCS may contract with a third party to replace such Goods and Services and charge Seller the additional cost. If goods are rejected, they will be returned at Seller's risk for credit or replacement at GCS's option and all handling and transportation expenses both ways shall be assumed by the Seller. When goods have been rejected, GCS shall have the right to cancel any unshipped portion of the order. Payment for supplies shall not constitute acceptance and is without prejudice to claims that GCS may have against the seller.
13. Warranty. The Seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by GCS and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance or payment by GCS. The Seller also warrants that the goods do not infringe any patent, registered trademark or copyright and agrees to hold GCS harmless in the event of any infringement or claim thereof. Additionally, Seller warrants that the goods are free and clear of all liens and encumbrances and that Seller has a good and marketable title to the same.
14. Hazardous Chemicals. Each container of a hazardous chemical shall be labeled as required by OSHA, Department of Transportation and EPA. **Material Safety Data Sheets (MSDS):** The Seller shall ensure that GCS is promptly provided appropriate current MSDS.
15. Compliance with All Laws. Seller warrants that all performance hereunder shall be in accordance with all applicable federal, state and local laws, regulations and orders.
16. Registered Sex Offenders. Seller acknowledges that GCS Policy "Registered Sex offenders Banned from property – Policy Code 5021" prohibits anyone registered or required to register as a sex offender from being present on any GCS Property for any reason, whether before, during or after school hours. Seller expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from GCS Property by GCS and/or law enforcement officials and may also be subject to criminal prosecution. "GCS Property" includes all property owned or operated by the Gaston County Board of Education, including school campuses and buildings, athletic fields, playgrounds, parking lots, bus stops, vehicles, school buses, activity buses and any other properties owned or controlled by GCS. If Seller, any of Seller's employees, or any of Seller's subcontractors or employees of subcontractors will have any direct interaction with students, then Seller or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on GCS Property.
17. E-verification. Seller shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
18. Federal Funds. If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying

Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324).

19. Indemnification. Seller shall indemnify and hold harmless GCS, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees and liability that any of them may sustain (a) arising out of Seller's failure to comply with any applicable law, ordinance, or regulation or (b) arising directly or indirectly out of Seller's performance or lack of performance of the terms and conditions of the Contract. In the event Seller, its employees, agents, subcontractors and or lower-tier subcontractors enter premises occupied by or under the control of GCS in the performance of the Contract Documents, Seller agrees that it will indemnify and hold harmless GCS, its officers, agents, employees and assigns, from any loss, costs, damage, expense or liability by reason of property damage or personal injury of whatsoever nature or kind arising out of, as a result of, or caused by the negligence or willful misconduct of such entrant. In the event that any Goods or Services sold and delivered or sold and performed shall be defective in any respect whatsoever, Seller shall indemnify and save harmless GCS, its officers, agents, employees and assigns from all loss or the payment of all sums of money by reason of all accidents, injuries or damages to persons or property that shall happen or occur in connection with the use or sale of such Goods or Services and are contributed to by said condition.
20. Insurance. The Seller certifies that it currently has and agrees to purchase and maintain during its performance under this contract the following insurance from one or more insurance companies acceptable to GCS and authorized to do business in the State of North Carolina and with an AM Best rating of A:X or better. GCS shall be named as an additional insured on the Automobile and Commercial General Liability policies.
- Worker's Compensation and Employer's Liability Insurance – Worker's Compensation insurance with limits as required by statute with Employer's Liability limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease each employee.
 - Automobile Insurance - The Seller shall purchase and maintain Automobile Liability insurance providing coverage against losses resulting in bodily injury or property damage caused by or arising out of ownership, maintenance or operations of any motor vehicle, owned or nonowned used in the performance of this contract. A minimum limit of \$1,000,000 per occurrence is required.
 - Commercial General Liability – The Seller shall purchase and maintain Commercial General Liability insurance providing coverage against losses resulting in bodily injury, personal injury and property damage caused by or arising out of the operations under this contract. Such insurance shall include coverage for premises operations, and products and completed operations. A minimum limit of \$1,000,000 per occurrence with a \$2,000,000 aggregate is required.
 - Sexual Abuse, Molestation Coverage – Limits of \$1,000,000 for each occurrence.
 - Environmental Impairment Liability and Pollution Liability – Limits of \$1,000,000 per occurrence.
 - Umbrella Excess Liability – Contractor shall carry umbrella excess liability including auto, general liability, employer's liability, and professional liability in the amount of \$1,000,000 over existing primary insurance and over self-insured hazards.

Certificates of such insurance shall be furnished by the Seller to GCS, naming GCS as additional insured as required above, and shall contain the provision that GCS be given 30 days written notice of any intent to amend, cancel or nonrenew by either the Seller or the insuring company. Failure to furnish insurance certificates or to maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this contract. Seller shall also provide any other insurance or bonding specifically recommended in writing by the DIRM or required by applicable law.

21. Termination for Convenience. In addition to all of the other rights which GCS may have to cancel this Order, GCS shall have the further right, without assigning any reason therefore, to terminate any work under the Contract Documents, in whole or in part, at any time at its complete discretion by providing thirty (30) days' notice in writing from GCS to Seller. If the Contract is terminated by GCS in accordance

with this paragraph, Seller will be paid for Services actually provided up through the date of termination at the rates provided herein.

22. Termination for Default. Either party may terminate the Contract, in whole or in part, immediately and without prior notice upon breach of the other party. In addition to any other remedies available to GCS law or equity in connection with an uncured breach of the Contract by Seller, GCS may procure upon such terms as GCS shall deem appropriate, Services substantially similar to those so terminated, in which case Seller shall be liable to GCS for any excess costs for such similar supplies or services and any expenses incurred in connection therewith.
23. Contract Funding. It is understood and agreed between Seller and GCS that GCS's obligation under the Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made. No legal liability on the part of GCS for any payment may arise until funds are made available to GCS's Finance Officer and until Seller receives notice of such availability. Should such funds not be appropriated or allocated, the Contract shall immediately be terminated. GCS shall not be liable to Seller for damages of any kind (general, special, consequential or exemplary) as a result of such termination.
24. Accounting Procedures. Seller shall comply with any accounting and fiscal management procedures prescribed by GCS to apply to the Contract and shall assure such fiscal control and accounting procedures as may be necessary for proper disbursement of and accounting for all project funds.
25. Improper Payments. Seller shall assume all risks attendant to any improper expenditure of funds under the Contract. Seller shall refund to GCS any payment made pursuant to the Contract if it is subsequently determined by audit that such payment was improper under any applicable law, regulation or procedure. Seller shall make such refunds within 30 days after GCS notifies Seller in writing that a payment has been determined to be improper.
26. Contract Transfer. Seller shall not assign, subcontract or otherwise transfer any interest in the Contract without the prior written approval of GCS.
27. Contract Personnel. Seller agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in the Contract.
28. Key Personnel. Seller shall not substitute for key personnel (defined as those individuals identified by name or title in the Contract Documents or in written communication from Seller) assigned to the performance of the Contract without prior written approval from GCS Project Coordinator (the individual at GCS responsible for administering the Contract).
29. Contract Modifications. The Contract may be amended only by written amendment duly executed by both GCS and Seller. However, minor modifications may be made by GCS Project Coordinator to take advantage of unforeseen opportunities that: (a) do not change the intent of the Contract or the scope of Seller's performance; (b) do not increase Seller's total compensation or method of payment; and (c) either improve the overall quality of the product or service to GCS without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the Contract must be recorded in writing and signed by both the Project Coordinator and Seller, and placed on file with the Contract. No price adjustments will be made unless the procedure has been included in the Contract and a maximum allowable amount stipulated.
30. Relationship of Parties. Seller is an independent contractor and not an employee of GCS. The conduct and control of the work will lie solely with Seller. The Contract shall not be construed as establishing a joint venture, partnership or any principal-agent relationship for any purpose between Seller and GCS. Employees of Seller shall remain subject to the exclusive control and supervision of Seller, which is solely responsible for their compensation.
31. Advertisement. The Contract will not be used in connection with any advertising by Seller without prior written approval by GCS.
32. Nondiscrimination. During the performance of the Contract, Seller shall not discriminate against or deny the Contract's benefits to any person on the basis of sexual orientation, national origin, race, ethnic background, color, religion, gender, age or disability.

33. Conflict of Interest. Seller represents and warrants that no member of GCS or any of its employees or officers who may obtain a direct benefit, personal gain or advantage for themselves or a relative or associate as a result of the Contract, subcontract or other agreement related to the Contract is in a position to influence or has attempted to influence the making of the Contract, has been involved in making the Contract, or will be involved in administering the Contract. Seller shall cause this paragraph to be included in all Contracts, subcontracts and other agreements related to the Contract.
34. Gratuities to GCS. The right of Seller to proceed may be terminated by written notice if GCS determines that Seller, its agent or another representative offered or gave a gratuity to an official or employee of GCS in violation of policies of GCS.
35. Kickbacks to Seller. Seller shall not permit any kickbacks or gratuities to be provided, directly or indirectly, to itself, its employees, subcontractors or subcontractor employees for the purpose of improperly obtaining or rewarding favorable treatment in connection with a GCS Contract or in connection with a subcontract relating to a GCS Contract. When Seller has grounds to believe that a violation of this clause may have occurred, Seller shall promptly report to GCS in writing the possible violation.
36. Monitoring and Evaluation. Seller shall cooperate with GCS, or with any other person or agency as directed by GCS, in monitoring, inspecting, auditing or investigating activities related to the Contract. Seller shall permit GCS to evaluate all activities conducted under the Contract. GCS has the right at its sole discretion to require that Seller remove any employee of Seller from GCS Property and from performing services under the Contract following provision of notice to Seller of the reasons for GCS's dissatisfaction with the services of Seller's employee.
37. Financial Responsibility. Seller is financially solvent and able to perform under the Contract. If requested by GCS, Seller agrees to provide a copy of its latest audited annual financial statements or other financial statements as deemed acceptable by GCS's Finance Officer. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then GCS shall be entitled, at its sole option, to cancel any unfilled part of the Contract without any liability whatsoever.
38. Governmental Restrictions. In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Seller to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. GCS reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
39. Inspection at Seller's Site. GCS reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to Contract award, and during the Contract term as necessary for GCS determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.
40. Confidential Information. Student Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to the students' official records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. The Contract shall not be construed by either party to constitute a waiver of or to in any manner diminish the provisions for confidentiality of students' records. Additionally, pursuant to N.C.G.S. 115C-401.1, it is unlawful for a person who enters into a contract with a local board of education to sell personally identifiable information that is obtained from a student as a result of that person's performance under the Contract. Employee Personnel Information: If, during the course of Seller's performance of the Contract, Seller should obtain any information pertaining to employees of GCS's personnel records, Seller agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. Other Confidential Information: (a) Seller agrees that it will at all times hold in confidence for GCS all designs, know-how, techniques, devices, drawings, specifications, patterns, technical

information, documents, business plans, item requirements, forecasts and similar data, oral, written or otherwise, conveyed by GCS to Seller in connection herewith; or procured, developed, produced, manufactured or fabricated by Seller in connection with Seller's performance hereunder (collectively, "Information"). Seller shall exercise the same degree of care to prevent disclosure of any Information to others as it takes to preserve and safeguard its own proprietary information, but in any event, no less than a reasonable degree of care. Seller shall not, without the prior written consent of GCS, reproduce any Information; nor disclose Information to any party; nor use any Information for any purpose other than performance for the benefit of Seller hereunder. (b) Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to GCS in connection with the Goods or other performance covered by the Contract shall not, unless otherwise specifically agreed upon in writing by GCS, be deemed to be confidential or proprietary information.

41. No Pre-Judgment or Post-Judgment Interest. In the event of any action by Seller for breach of contract in connection with the Contract, any amount awarded shall not bear interest either before or after any judgment, and Seller specifically waives any claim for interest.
42. Background Checks. At the request of GCS's Project Coordinator, Seller (if an individual) or any individual employees of Seller shall submit to GCS criminal background check and drug testing procedures.
43. Mediation. If a dispute arises out of or relates to the Contract, or the breach of the Contract, and if the dispute cannot be settled through negotiation, the parties agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to litigation. Such mediation shall occur at a mutually agreed upon location in Gaston County, North Carolina.
44. No Third Party Benefits. The Contract shall not be considered by Seller to create any benefits on behalf of any third party. Seller shall include in all contracts, subcontracts or other agreements relating to the Contract an acknowledgment by the contracting parties that the Contract creates no third party benefits.
45. Force Majeure. If either party is unable to perform its obligations or in the case of GCS, to accept the Services because of Force Majeure (as hereinafter defined), the time for such performance by such party or in the case of GCS, acceptance of Services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of the affected party.
46. Ownership of Documents. All documents created pursuant to the Contract shall, unless expressly provided otherwise in writing, be owned by GCS. Upon the termination or expiration of the Contract, any and all finished or unfinished documents and other materials produced by Seller pursuant to the Contract shall, at the request of GCS, be turned over to GCS. Any technical knowledge or information of Seller which Seller shall have disclosed or may hereafter disclose to GCS shall not, unless otherwise specifically agreed upon in writing by GCS, be deemed to be confidential or proprietary information.
47. Strict Compliance. GCS may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous course of dealing or course of performance between the parties to the contrary.
48. General Provisions. GCS's remedies as set forth herein are not exclusive. Any delay or omission in exercising any right hereunder, or any waiver of any single breach or default hereunder, shall not be deemed to be a waiver of such right or of any other right, breach, or default. If GCS should prevail in any action instituted by Seller hereunder, GCS shall be entitled to recover costs and reasonable attorney's fees. Seller may not assign, pledge, or in any manner encumber Seller's rights under this Order, or delegate the performance of any of its obligations hereunder, without GCS's prior, express written consent.
49. Contract Situs. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of the Contract, will be determined in Gaston County, North Carolina. North Carolina law will govern the interpretation and construction of the Contract.

50. Entire Contract. This Contract constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this Contract. This document (including exhibits, if any), any purchase order used in connection with this Contract and any other document expressly incorporated in this Contract by reference supersede all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Contract.