



Definitions: For this document, the following definitions apply:

- **Legal Entity:** Waubonsee Community College District 516, commonly known as Waubonsee Community College, is described herein as “Buyer” or “WCC”.
- **Seller:** The “Seller” means any person, business or entity designated on this Purchase Order or Agreement or contracted to provide “Deliverables.”
- **Deliverables:** “Deliverables” means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, apparatus, equipment, supplies, repairs, or other goods delivered pursuant to this Purchase Order or Agreement, including items incident to the provision of services.
- **Agreement:** “Agreement” means any agreement to which these Terms and Conditions are made apart and incorporated within.
- **Purchase Order:** “Purchase Order” means any purchase order to which these Terms and Conditions are made apart and incorporated within.

Limitation of Authority: All purchases shall be made in accordance with Illinois law. No officer or employee of WCC not expressly authorized under Illinois law, shall make any purchase on its behalf, or enter into any contract of purchase, verbal or written, for any Deliverable of any kind or description, or accept any of them on approval or otherwise. Seller is directed to applicable Illinois law to verify the authority of any person purportedly signing on behalf of the Legal Entity. The Buyer will not be responsible for articles delivered and/or services performed for its account without a specific written purchase order that has been authorized by the Purchasing Manager.

Governing Law and Limitation of Liability: This Agreement shall be governed and construed in accordance with the law of Illinois without reference to its conflict of laws and/or provisions. It is the intent of the parties that arbitration and mediation shall not be a remedy or prerequisite required by this contract, and any reference to “arbitration” or “mediation” contained in any contract or agreement resulting from the execution of this Purchase Order or Agreement is void and of no legal effect. The parties waive any right to demand a trial by Jury and agree that the venue for litigation arising from this Purchase Order or any Contract or Agreement entered into subsequent to the execution of this Purchase Order or Agreement shall be in the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois regardless of the place of business or residence of Seller. The parties agree that this venue is convenient for all of them and each consents to the personal jurisdiction of such court. In the event of any litigation the prevailing party shall have the right to recover its reasonable attorney’s fees and costs. WCC shall not be liable to the Seller, or to any subcontractor, regardless of the form of action, for any consequential, incidental, indirect, or special damages, or for any claim or demand based on a release of information, or patent, copyright, or other intellectual property right infringement.

Indemnification: The Seller agrees to hold harmless and indemnify WCC, its officers, agents, trustees and employees, and defend each of them, against any losses, damages, judgments, claims, expenses, costs and liabilities imposed upon or incurred by or asserted against WCC, its officers, agents, trustees or employees, including reasonable attorneys’ fees and expenses, arising out of the acts or omissions of Seller, its officers, agents or employees, resulting from or connected with Seller’s performance hereunder or failure to comply with any applicable law or regulation.

Bidding: Seller certifies that it is not barred from bidding on agreement/contract as a result of a conviction for either bid rigging or bid rotating under Illinois law. WCC reserves the right to reject any and all bids, and waive any bid irregularities.

Purchases: A purchase order is required for all orders. Seller shall invoice Buyer for the goods at the time of final shipment unless otherwise provided for in this Purchase Order. Invoices shall show the purchase order number for each separate purchase order number issued. Failure to do so may result in a delay of payment. Packing slip shall be affixed to outside of package(s), listing contents of each package and notating an authorized purchase order number. Shipments without a Purchase Order will be rejected at the receiving dock.

Regulatory Requirements: Seller shall comply with all laws, rules and regulations applicable to any installation of the work, as applicable, performance of any service or providing any products. Except where expressly required by applicable laws and regulations, WCC shall not be responsible for monitoring the Seller’s compliance with any laws or regulations. When Seller observes conflicting regulatory requirements, it shall notify WCC in writing immediately. If Seller performs any work knowing or having reason to know that the work is contrary to such laws, rules and regulations and fails to provide such notice, the Seller shall pay all costs arising therefrom.



Statutory Requirements: All applicable federal and state laws and the rules and regulations of all authorities having jurisdiction over this Agreement shall apply throughout, and they will be deemed to be included in the Agreement the same as though written therein in full.

Warranty:

1. Seller warrants that all Deliverables furnished hereunder will be free from defects in design, material, and workmanship, and will conform strictly to applicable specifications, drawings, samples, descriptions, and plans; no deviation or substitution will be permitted without the express agreement of Buyer with any sample provided by Seller suitable for the purpose intended, of merchantable quality and free of defects in material, workmanship and design for a period of one (1) year after being placed in service by Buyer or two (2) years from delivery to Buyer, whichever is shorter. This warranty is in addition to any warranties available under law, from the manufacturer, or any standard warranty of Seller.
2. At the time of delivery, no software shall contain any virus, timer, counter or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed.
3. No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind.
4. Seller warrants that it has full title to the Deliverables and has the right to grant to WCC the rights and licenses contemplated herein without the consent of any third party.

Non-Waiver: Any waiver of strict compliance with the terms of this Purchase Order or Agreement shall not be deemed a waiver of any subsequent deficiency whether of a like nature or not.

Assignment: This Purchase Order or Agreement may not be assigned, and no duty or right hereunder may be delegated, or monies payable hereunder, by Seller and Seller may not use any sub-contractor to perform hereunder, without the prior written consent of Buyer, which consent may be given or withheld at Buyer's sole discretion. Any assignment made without such consent shall be null and void.

Prices: Buyer accepts Seller's quote or bid prices as recorded on Seller's proposal and on this Purchase Order which shall not be changed prior to delivery or completion of services without Buyer's prior written agreement. Unless otherwise provided in this Purchase Order, the price includes all charges for freight and insurance. No separate charges, except those clearly recorded on Seller's proposal and on this Purchase Order can, or will be allowed. Seller represents that the price charged for the goods and services covered by this Purchase Order is commercially reasonable and is the lowest price charged by Seller to buyers of a class of purchasers similar to Buyer under conditions similar to those specified in this Purchase Order. All prices quoted are in U.S. dollars.

Cancellation:

For Purchase Orders:

1. In addition to all other rights and remedies provided for hereunder or under law (including without limitation, damages) Buyer may cancel all or any part of this Purchase Order:
 - a. if Seller breaches any of the terms, warranties or provisions hereof
 - b. upon the occurrence of any event entitling Buyer to reject the goods
 - c. if any insolvency proceeding is instituted by or against Seller
 - d. if Seller provides material false information to Buyer
2. Buyer, at Buyer's sole discretion, may cancel this Purchase Order at any time as to the goods not then delivered.
3. Buyer shall not be deemed to have canceled this Purchase Order unless it notifies Seller of its intent to do so in writing. Upon receipt of such notice Seller will immediately stop work and notify any other parties performing any part of the work to stop work and will protect property in Seller's possession in which Buyer has or may acquire an interest.
4. Unless Buyer exercises its right to cancel because of the events described in paragraph (1) above or because of other event or condition caused by or under the control of Seller, Seller may claim:
 - a. Reimbursement for actual out-of-pocket cost incurred by Seller as a result of such cancellation (exclusive of costs for materials that Seller can use on other orders) and
 - b. A reasonable profit on the work performed by Seller prior to cancellation. Such claim must be made within twenty (20) days of the notice of cancellation and the total amount of such claim shall not exceed the purchase price for the completed goods. In the event of cancellation Seller shall deliver to WCC all material and information as may have been involved in the provision of services or Deliverables to the date of termination.



For all other Agreements:

1. Either party may terminate the Agreement effective immediately upon written notice to the other party, if the other party has committed a breach of a material provision of the Agreement and has failed to cure the breach within thirty (30) days after the receipt of written notice of the breach given by the non-breaching party.
2. WCC may terminate this Agreement for convenience upon thirty (30) days written notice to the other party. Upon termination, if applicable, Seller shall submit a final invoice for services rendered to the effective date of termination.

Taxes: Waubonsee Community College is exempt from Federal Excise and State Sales Taxes and such taxes shall not be included in prices. Federal Excise Tax Exception Certificate will be furnished upon request.

Articles or Services: Deliverables to be delivered or performed shall be in accordance with the terms, prices, delivery time, specifications, and conditions as recorded on Seller's proposal and as itemized on this Purchase Order. Stated delivery time must be adhered to. Buyer reserves the right to cancel this order if Seller does not make deliveries as specified on this order. No substitutions of articles or change of any nature shall be made without written authorization from the Buyer.

Inspection, Acceptance and Payment by Buyer: All Deliverables shall be received subject to Buyer's right to inspection and rejection. Final inspection shall be made by Buyer after delivery at destination. Any items not in strict compliance with the terms hereof may be rejected by Buyer and at Buyer's option (i) returned to Seller at Seller's sole risk and expense for a full credit of the purchase price; (ii) Buyer may require Seller to replace such nonconforming goods with conforming goods without adjustment to the purchase price; or (iii) Buyer may correct any deficiency at Seller's sole expense or use such nonconforming goods at an equitable reduction in the purchase price. Freight to and from original destination for excess goods except for customary quantity variations recognized by trade practice, will be paid by Seller. Payment for Deliverables on an order prior to inspection shall not constitute acceptance.

Responsibility for Deliverables and Risk of Loss: All shipments are to be made "F.O.B. Destination" unless otherwise specified on Seller's proposal and on this Purchase Order and accepted by Buyer. Seller assumes and accepts that all risk of loss of goods covered hereby shall be borne by Seller until goods have been received and accepted by Buyer or received, installed, and accepted by Buyer, whichever is applicable. When articles are sold "F.O.B. Point of Origin" and the Purchase Order confirms this, Seller is to prepay shipping charge and record prepaid charges on invoice and attach the original receipt, freight bill or express receipt to the invoice.

Payment Terms: Buyer payment terms are net 30 days after both of the following:

1. Invoice is received.
2. Deliverables are received and accepted.

Shipping Instructions: No charges shall be allowed for boxing, packing, or cartage unless stated on the face hereof or otherwise approved by Buyer in writing. Any damages incurred as a result of insufficient protection shall be against Seller's account.

OSHA: All equipment and material shall be in accordance with applicable Occupational Safety and Health Administration (OSHA) Rules and Regulations in effect at the time of order.

MSDS: Seller shall forward any required Material Safety Data Sheet (MSDS) to Buyer on all products subject to this order.

Prevailing Wage: When a contract/order requires construction of Public Works as defined in the Illinois Prevailing Wage Act (820 ILCS 130/1 et seq.), including new structures, renovation, remodeling and expansion of existing structures, maintenance and repair of equipment on a construction site, transportation of equipment or materials to or from a construction site:

1. Seller and its subcontractors must pay prevailing wage to any laborers or workers working on the project. It is Seller's responsibility to determine the appropriate current prevailing wage rate.
2. Seller shall maintain a certified payroll which will be required prior to payment, and shall be required to submit a Wage Certification Form and maintain records in accordance with the Prevailing Wage Act.
3. Prior to payment of the purchase price, Seller shall furnish lien waivers, releases, affidavits, and other documents as Buyer requires, keeping Buyer's premises lien free.



Bonds: For Public Works projects over \$50,000, the Seller shall furnish a Performance Bond and a Labor and Material Bond in an amount equal to the contract before commencing work. The surety on the bond shall be a company that is licensed by the Department of Insurance authorizing it to execute surety bonds and the company shall have a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investor Service, Standard & Poor's Corporation, or a similar rating agency.

Confidential Data: Seller shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all confidential data, whether in hard copy or electronically maintained or transmitted, received from, or on behalf of WCC or its students. These measures will be extended by contract to all subcontractors used by the Seller. Unless authorized by WCC, Seller may not copy, store, or transmit unencrypted confidential and sensitive data on non-WCC-owned/leased computing devices, or other portable storage or computing devices. Seller shall destroy such data when they are no longer needed for the purpose for which they were released.

Non-Disclosure: Seller shall not announce this Agreement and relationship in any press releases or other publications, or use WCC's name or logos in any marketing materials without prior written consent of WCC.

1. All information that is obtained and work performed under this Agreement and the Seller's WCC contract/order is considered sensitive, may or may not require use of sensitive and personal data and information and falls under one or more categories of information that is subject to protection from disclosure and misuse, including but not limited to: personal information and highly restricted personal information in connection with law enforcement sensitive data and information, the Privacy Act of 1974, 5 U.S.C. § 552a et. seq., the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g et seq. (FERPA), and personal information as defined under and governed by the Personal Information Protection Act (815 ILCS 530/1 et seq.).
2. Seller agrees to comply with all federal and state statutes, rules and regulations as identified in the Waubonsee Acceptable Usage Agreement (located at <https://www.waubonsee.edu/student-experience/technical-support/information-technology-acceptable-usage-agreement>), understands that disclosure of any information, by any means, for a purpose or to an extent unauthorized herein, shall be grounds for immediate termination of the contract/order and this agreement, and may subject the offender to criminal and civil sanctions.
3. All source materials/data/information and resultant work products compiled or created and any information or portion of information derived therefrom are the property of the WCC and must not be used by Seller for any purpose other than the purpose outlined by the contract/order and this agreement.
4. Neither Seller, nor its officers, directors, agents, or employees shall divulge, sell, or distribute any information obtained from WCC or derived therefrom at any point in time to a third party, even after termination or expiration of a contract/order, except as may otherwise be required by law.
5. Seller shall notify each of its officers, directors, agents, and employees having access to the WCC information that such information may be used only for the purpose and to the extent authorized in this contract.

Insurance: During the term of this agreement, upon Buyer's request, Seller shall maintain, and require its subcontractors to maintain, insurance policies with limits acceptable to Buyer, to protect against claims that may arise from this Purchase Order or Agreement. In addition, Seller and its subcontractors shall maintain Worker's Compensation insurance and Comprehensive Automobile Liability insurance coverage in amounts as required by Illinois law. Seller may be required to provide additional insurance as noted in the BID/RFP documents including but not limited to professional liability, E & O (Errors and Omissions), environmental liability and umbrella coverage. WCC, its officers, agents, employees and assigns as will be named as Additional Insured thereunder on a primary and noncontributory basis and certificate holder for all work performed on Buyer's property.

Independent Contractor: Seller shall perform its obligations as an independent contractor of WCC and nothing herein shall be deemed to constitute Seller and WCC as partners, joint venturers, or principal and agent. Seller has no authority to represent WCC and shall not represent that it or any of its subcontractors are in any manner agents or employees of WCC.

License: Upon payment in full for software, Seller grants to WCC a perpetual, non-exclusive, worldwide, irrevocable, fully paid right and license to install and use the software on all computing devices used by or for the benefit of WCC. This license is subject to the limitation on the maximum number of end users or other limitations listed on Seller's proposal, but if none, this license shall be deemed to be enterprise-wide and the software may be used by all WCC end users without any maximum number. Any Deliverable under this purchase order that may be subject to a copyright shall be considered a "work for hire" as defined by the U.S. Copyright Act (17 U.S.C. § 101) and shall be owned by WCC and WCC shall be considered the author of such item. If a Deliverable shall not be considered a "work for hire" under the



U.S. Copyright laws, Seller hereby irrevocably assigns all right, title, and interest in the Deliverable, including all intellectual property rights effective from the moment of creation of the Deliverable.

Smoke Free Campus: The policy of the WCC Board of Trustees is to have a smoke free college environment. Smoking on college grounds and inside college facilities and college vehicles is prohibited. Smoking is only permitted inside private vehicles.

Video Surveillance Consent: Seller hereby gives WCC, its officers, agents, employees, successors, clients/vendors, agents and assigns, full and irrevocable permission to use, publish and/or copyright, without restriction, videos, photos or reproductions made of them, including voice/statements, property, or any part thereof, either with or without using Seller's name, and to make changes, additions and/or alterations thereto for the purpose of publication, publicity, promotion, illustration, advertising or commercial/trade in any manner or in any medium including, but not limited to print, broadcast, online or at <https://www.waubonsee.edu/>. Seller waives right to any compensation.

Affirmative Action/Equal Opportunity: Waubonsee Community College is an Affirmative Action/Equal Opportunity Employer and does not discriminate against any employee or service provider because of race, sex, color, age, religion, national origin, marital status, veteran's status, physical or mental disability or any other protected status under federal or state law.

Acceptance and Integration: Any Purchase Order or Agreement may be accepted only by the addressee and such acceptance must be indicated by Seller's signature on a receipt of the acknowledgment copy hereof, or by shipment of the goods or performance of the services specified on the face hereof. These Terms and Conditions are complementary as if repeated in full on the face of the Purchase Order or Agreement and may not be altered, amended, or supplemented in any way as a result of any course of dealing, usage of trade, written or oral agreement unless such alteration, amendment or supplement shall be set forth in writing and signed by Buyer's duly authorized representative. BUYER SPECIFICALLY OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS IN SELLER'S ACCEPTANCE OF THIS PURCHASE ORDER.

Subject to Change: These Standard Terms & Conditions are valid for Purchase Orders and Agreements entered into starting on the effective date below. Buyer reserves the right to make changes to these terms in the future, which will be valid from that point forward.

Entire Agreement: This Purchase Order or Agreement, together with any written documents incorporated by reference, constitutes the entire agreement between Buyer and Seller with respect to this transaction and supersedes all previous communications. Any additional or different terms by the Seller or Seller's acknowledgement are rejected by the Buyer unless expressly agreed to in writing by an authorized representative of the Buyer. This agreement shall be binding upon and inure to the benefit of all heirs, personal representative, successors and assigns of the Seller.