

# PURCHASE ORDER TERMS AND CONDITIONS

PO: 2020-00001069

The Purchase Order ("PO") constitutes the terms and conditions for the delivery of the specified goods or materials and/or performance of the specified services and/or work (collectively, "Goods and Services" and/or "G&S") by the named seller ("Seller") for the benefit of the City of Yonkers and/or the Yonkers School District ("Purchaser"). Purchaser and Seller are each a "Party" and together are the "Parties". Any questions regarding this PO must be made to the Buyer listed on the PO or to the Director of Purchasing at 914-377-6035.

1. **Acceptance of PO by Seller.** Acceptance of this PO by the Seller constitutes a valid and binding agreement between Purchaser and Seller. This PO is deemed accepted by Seller upon the earlier to occur of the following: (a) the PO is sent to Seller and Seller does not object in writing to any of its terms or provisions within two (2) business days; or (b) Seller at any time otherwise delivers or performs all or any part of the G&S. No change or alteration may be made to any term of this PO without the prior written consent of the Purchaser's Director of Purchasing.
2. **Acceptance by Purchaser.** Delivery of the G&S will be deemed to be complete only when delivered pursuant to a valid PO and when actually received by Purchaser. All G&S are subject to Purchaser's right of inspection following delivery and/or performance by Seller; payment for G&S under this PO prior to inspection by Purchaser will not constitute acceptance by Purchaser. Purchaser may, at its option, reject all or any portion of the G&S that do not, in Purchaser's discretion, comply with the terms and conditions of this PO or Purchaser's requirements. Purchaser may elect to reject all of the G&S even if only a portion is nonconforming. In any case, acceptance of all or any part of the G&S will not be deemed to be a waiver by Purchaser of its right to (a) cancel, reject or return all or any portion of the G&S, or (b) make a claim for damages, for reasons including defect, breach of warranty, late delivery, or breach or non-compliance with any of the terms or provisions of this PO.
3. **Time for Delivery.** Delivery or performance will be strictly in accordance with Purchaser's delivery or performance schedule. If Seller's delivery or performance fails to meet such schedule, Purchaser may, without limiting any of its other rights or remedies, direct expedited routing or performance by one or more third parties, and the difference between the cost of that expedited routing or performance and this PO's routing or performance costs will be paid by Seller upon Purchaser's demand. Time is of the essence with respect to Seller's delivery and/or performance under this PO. Receiving hours are 9:00 AM – 3:00 PM, Monday through Friday, excluding City of Yonkers/Yonkers Public Schools holidays, unless otherwise specified.
4. **Risk of Loss.** Until delivered to Purchaser in accordance with Section 2, Seller will bear all risk of loss or damage. Shipment of goods or materials is F.O.B. Destination unless otherwise stated on the PO.
5. **Cancellation for Breach by Seller.** Purchaser may terminate this PO, in whole or in part, for Seller's breach of this PO, including but not limited to, the failure to deliver the G&S as and when specified. If Purchaser terminates this PO for Seller's breach, in addition to all of Purchaser's other rights and remedies under law, Seller will be liable to Purchaser for all damages, including but not limited to, the cost of securing replacement G&S, shipping charges for returned G&S, and any amounts previously paid by Purchaser to Seller. Cure of any non-conforming tender by Seller may only be made with prior written consent of Purchaser. This right of termination is in addition to and not in place of any other rights or remedies that Purchaser may have at law or in equity.
6. **Cancellation for Convenience.** Purchaser, in its sole discretion and without cause, may terminate this PO, in whole or in part, at any time without incurring liability to Seller for lost profits, or any other costs or damages, other than the proportionate value of the purchase price for G&S performed or delivered. Payment due will be a percentage of the purchase price equal to the percentage of the work completed and/or any unit prices in the purchase price specified for goods delivered.
7. **Pricing.** Purchaser will pay Seller only for such G&S and at such prices as agreed upon pursuant to this PO. Prices include all amounts payable by Purchaser and no additional charges of any kind (including, without limitation, charges for transportation, delivery, boxing, packing or other extras) will be payable by Purchaser unless specifically set forth in this PO or otherwise specifically agreed to in writing by Purchaser. Seller will submit all invoice(s) to Purchaser under this PO as set forth herein or as may be designated by Purchaser.
8. **Representations and Warranties.** In addition to, and without limiting any of Seller's other representations and warranties, express or implied, Seller expressly represents and warrants to Purchaser that: (a) all G&S conform and will continue to conform to professional industry standards and to any description or other documentation made available to Purchaser; (b) all G&S will have been produced or manufactured in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and municipal laws, rules and regulations; and (c) Seller has not been excluded from participation in, nor is aware of any pending or threatened debarments or exclusions from, any federally or state-funded program.
9. **Compliance with Laws.** a. Seller will comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, all applicable laws and regulations pertaining to privacy and confidentiality, including the Family Educational Rights and Privacy Act of 1974, as well as the Fair Labor Standards Act, noting that all representations and stipulations required by the Walsh-Healy Act, 41 U.S.C. 35-45, and regulations issued thereunder are hereby incorporated by reference, such representations and stipulations being subject to all applicable ruling and interpretations if the Secretary of Labor now and hereafter in effect.
10. **Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Purchaser from and against any and all losses, claims, allegations, demands, suits, proceedings, investigations, prosecutions, actions, causes of action, liabilities, obligations, costs, expenses, assessments, settlements, judgments, interest, penalties (including legal expenses and reasonable attorneys' fees), damages or injuries of any kind or nature whatsoever (including, without limitation, damage, loss or destruction or real or personal property, personal or bodily injury or death) to Purchaser and all other persons caused by, resulting from, arising out of, or occurring in connection with Seller's: (i) breach of any term or provision of this PO including the representations and warranties; (ii) violation of applicable law; (iii) performance or non-performance by Seller in connection with this PO; (iv) infringement of any intellectual or other proprietary right of any third party; or (v) negligent acts or omissions or intentional misconduct.
11. **Insurance.** In connection with any G&S provided hereunder Seller shall maintain, or cause to be maintained, Commercial General Liability Insurance, listing the City of Yonkers/Yonkers Public Schools as an additional insured, in the minimum amount of \$2,000,000 in the aggregate, \$100,000 each incident, with a company or companies licensed in New York State with an A or better Best Rating and in a form satisfactory to Purchaser. The Seller shall provide Worker's Compensation Insurance and Employer's Liability Insurance as required under the Worker's Compensation Law (or proof of exemption). The Certificate of Insurance for the above coverage must include this PO no. and bear a notation evidencing a minimum of 30-day cancellation notice or such notice determined by NY Insurance Law to Purchaser. Seller agrees to give immediate written notice of notice from any third party that a cause of action or claim may be initiated against Purchaser.
12. **Safety.** In connection with any services provided hereunder, Seller shall provide at their own cost and expense such safety devices for the protection of its employees, subcontractor(s), the Purchaser, the public, and any other persons as may be necessary and required. The Seller shall perform all work in a safe manner and in compliance with OSHA, EPA, DEP, and all other applicable Federal, State, and local laws, rules, and regulations.
13. **Waste Removal/Clean-Up.** In connection with any services provided hereunder, Seller shall remove all waste material in connection with the Work from the property of The City of Yonkers. All waste material in connection with the Work shall become the property of the Contractor and shall be disposed of in keeping with all applicable Federal, State, and local laws, rules, and regulations. The Contractor shall, on a daily basis, thoroughly clean and keep clean the work site, all roadways, sidewalks, and other indoor and outdoor areas in connection with this Work.

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14. **Labor Law:** If provision of the Goods or Services involves the employment of laborers, workmen or mechanics under Articles 8 or 9 of the Labor Law or constitutes a building service contract covered by Article 9 thereof, neither the Seller's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days set forth therein, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, the Seller and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the Labor Law. Certified payrolls must be submitted with payment requests. The current NYS Prevailing Wage Schedule can be found at <http://wpp.labor.state.ny.us/wpp/publicViewPWChanges.do?method=showIt>. Seller is responsible to locate and comply with any updates or amendments thereto.

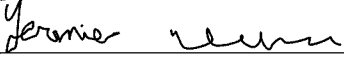
15. **Licensing:** In connection with any services provided hereunder, Seller shall be licensed in accordance with all applicable federal, state, and local laws, including without limitation, all plumbing and electrical contractors must be fully licensed by the Trades Licensing Division of the Westchester County Clerk.

16. **Governing Law.** The parties agree that in the event of any disagreement or dispute arising under this PO that New York Law shall apply and venue of any proceeding or action in relation to this contract shall be in Supreme Court, Westchester County.

17. **Purchaser Tax-Exempt** Purchaser is exempt from all sales, excise or Federal transportation taxes and the provisions of the Robinson Patman Act. Tax exemption numbers and certificates are not issued to New York State governmental entities. The governmental purchase order is sufficient for the vendor not to collect sales tax.

18. **Invoices.** All invoices, packages, shipping tickets, and correspondence must identify the PO number and be sent to the City of Yonkers/Yonkers Public Schools, Accounts Payable Department, One Larkin Center, 3rd Floor, Yonkers, New York 10701 (914-377-6120/914-377-6124).

19. **Miscellaneous.** This PO will be binding on the Parties and their respective successors and permitted assigns. Seller may not assign this PO or any of its rights and obligations hereunder without Purchaser's express prior written consent. Any attempted assignment without such consent will be void. Seller may not modify, waive or supplement this PO or any term or condition hereof. This PO may only be changed or modified by Purchaser by a written instrument signed by Purchaser's Director of Purchasing. The failure of Purchaser to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this PO, or to otherwise exercise any right or remedy under this PO or otherwise, will not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition, or of the future exercise of such right or remedy. If any provision of this PO is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof will continue in full force and effect. This PO is not for the benefit of any third parties. Nothing contained herein will create any agency, partnership, association, or joint venture between the Parties. The relationship of Seller to Purchaser is that of independent contractor solely and Seller is directly responsible for the mode, method, and manner of its activities. All provisions that logically ought to survive termination of this PO shall survive. The terms of the underlying contract between the Parties for the Goods and Services, if any, takes precedence over the terms of this PO.

By signing the Seller:  expressly agrees to the terms hereof.

By:  GSI KITCHEN SUPPLIES  Date:  08/22/19

Name:  YERMIE WEISS  Title:  VP OF SALES