

# ALACHUA COUNTY LIBRARY DISTRICT

## TERMS AND CONDITIONS

Effective November 2013

### 1. INSPECTION:

Alachua County Library District, its officers, employees, or other agents (collectively, Buyer) shall have the right to inspect all materials or services delivered from the Vendor, its officers, employees, subcontractors, or other agents (collectively, Seller) in accordance with this purchase order (order). Buyer shall have the right to reject materials or services and to require correction of materials or services delivered that do not pass inspection by Buyer. At Buyer's option and at Seller's risk and expense, Buyer may return materials or services that are rejected or that require correction, or Buyer may hold such materials or services to wait for Seller's instruction. Buyer's payment to Seller for any materials or services prior to inspection shall not constitute Buyer's acceptance.

### 2. ACCEPTANCE:

Buyer's acceptance is limited to the provisions in this order, including these terms and conditions or other provisions incorporated by reference. Seller's delivery of materials or services, without having received Buyer's express written modification of this order, shall constitute Seller's acceptance of this order and all the terms and conditions herein. Seller's delivery of materials or services shall constitute waiver of any communication made by Seller that is in conflict with the terms and conditions herein. Buyer's silence or acceptance of any materials or services delivered shall not constitute Buyer's acceptance of any communication made by Seller to Buyer which are different from or in addition to the provisions in this order, including these terms and conditions.

### 3. DELIVERY:

Seller shall plainly mark delivered materials or services with Buyer's name and "Ship To" address, Seller's name and address, and purchase order number located on the front of this order. Seller shall deliver the materials or services F.O.B. to the "Ship To" address

on this order unless Buyer states otherwise orally or in writing. Seller shall not delay delivery of materials or services. Seller shall notify Buyer at once of any anticipated delay in delivery. An anticipated delay in delivery extends beyond an agreed to delivery date between the Buyer and Seller either orally or in writing or beyond the usual timing of delivery which Seller has performed in the past and which Buyer has traditionally accepted as sufficient timing of delivery. Upon notification of anticipated delay in delivery by Seller, Buyer may authorize orally or in writing an extension in delivery or may terminate the order in accordance with paragraph 11 infra. Seller shall pay for any excessive or unusual costs caused by Seller's delay or inability to deliver in accordance with the terms of this order, including these terms and conditions.

#### **4. COMPLIANCE WITH LAWS AND REGULATIONS:**

Seller shall comply with all federal, state and local laws, regulations, and ordinances applicable to the production, sale and delivery of the goods or the furnishing of any labor or services to Buyer under this order. Any provisions required by federal, state, or local law, regulation or ordinance shall be incorporated herein by reference. In accordance with Chapter 442, Florida Statutes, Seller shall furnish Buyer with a current material safety data sheet (MSDS) on or before delivery of each and every toxic substance.

#### **5. INSURANCE:**

Seller shall maintain insurance acceptable to Buyer in full force and in effect throughout the term of this order.

## **6. WARRANTY:**

In addition to any warranty implied by law or fact, and any other express warranties, Seller expressly warrants all items to be free from defects in design, workmanship and materials or services. Seller expressly warrants to conform strictly to applicable specifications, drawings, approved samples, if any; and to be fit and sufficient for the purpose intended and to be merchantable. Such warranties, together with all other service warranties of Seller, shall run to Buyer. All warranties shall survive inspection and payment by Buyer.

## **7. WARRANTY - PRICE:**

Seller warrants that Buyer shall not be billed at prices higher than stated on this order unless authorized by Buyer in writing. Seller represents that the prices charged for the goods and services covered by this order are the lowest price charged by the Seller to members of a class similar to Buyer under conditions similar to those specified in this order. Seller represents that the prices in this order comply with the applicable law in effect at the time of quotation, sale or delivery. Seller shall apply to this order any price reduction applicable to materials or services ordered subsequent to the placement of this order.

## **8. INDEMNIFICATION:**

Seller (excluding the State of Florida or its agencies) shall indemnify, defend and hold harmless Buyer against all consequences of this order, including but not limited to liability, claims, damages, fines, fees, expenses, penalties, suits, proceedings, causes of action and costs, including attorney's fees for trial and on appeal, of any kind and nature arising out of or in any way connected with the performance of this order whether by act or omission of the Seller, its officers, agents, employees or others. Seller shall pay all royalties and assume all costs arising from the use of any invention design, process, materials or services, equipment, product, or other device which is the subject of patent rights or copyrights. Seller shall, at its own expense, hold harmless and defend Buyer against any claim, suit, or proceeding brought against Buyer which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished

under this purchase order, constitute an infringement of any patent or copyright of the United states. Seller shall pay all damages and costs awarded against Buyer.

## **9. ADDITIONAL RIGHTS OF PURCHASER:**

Buyer retains all rights, including copyright and trademark rights, for any custom art, writing or design produced as a direct result of performance under this purchase order. Seller owns all materials or services created or conveyed as a direct result of this purchase order upon completion, unless specifically agreed to prior to acceptance including, but not limited to, any custom art, design, or writing produced, or any custom die, mold, photomechanical or digital masters or other such item used in the performance of this order.

## **10. MISCELLANEOUS:**

This order constitutes the entire agreement and supercedes all prior written or oral agreements, understandings, or representations. Any and all special conditions attached hereto which vary from these general terms and conditions shall have precedence. Neither Seller nor Buyer may assign any portion of this agreement without prior consent of the other. Seller warrants that all subcontractors, involved in the performance of duties for this order, will comply with the terms herein. Seller shall retain all records relating to this agreement for three years after final payment and make them available to Buyer. This agreement does not create any relationship with, or any rights in favor of, any third party. Seller is acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer, or associate of Buyer. If any provision of this agreement is declared void by a court of law, all other provisions will remain in full force and effect. The failure of any party to exercise any right in this agreement shall not be considered a waiver of such right. This agreement is governed in accordance with the laws of the State of Florida. Venue shall be in Alachua County.

## **11. TERMINATION:**

Buyer may terminate this order for convenience at any time and for any reason. If Buyer terminates this order for convenience, Buyer shall pay to Seller an amount sufficient to

cover costs incurred by Seller and arising from this order on or before the date of signing this order until on or before the date of termination by Buyer. Buyer may terminate this order at any time if Seller breaches this order, including the terms and conditions, without payment to Seller for any costs. If Buyer terminates this order for breach by Seller, Seller shall be liable to Buyer for excess costs incurred in connection with Seller's breach. If Buyer terminates this order either for convenience or because Seller has breached this order, Buyer may procure similar materials or services elsewhere.

## **12. PAYMENT:**

A copy of Alachua County's Prompt Payment Procedures can be obtained at our website, <http://www.alachuacounty.us/Depts/AdminSvcs/Documents/purchasing/promptpayment.pdf> or by calling (352) 374-3605.

## **13. ASSIGNMENT OF INTEREST:**

The vendor and county recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the county. Therefore, the vendor hereby assigns to the county any and all claims for such overcharges as to goods, materials or services purchased in connection with the agreement. However, for all other assignments, neither party will assign, convey, pledge, sublet, transfer or otherwise dispose any interest in this agreement and shall not transfer any interest in same without prior written consent of the other party