

Gallup McKinley County Public Schools (GMCS)
Purchase Order Terms and Conditions

1. **ACCEPTANCE AND REJECTIONS:** The material, supplies, or services furnished shall be as specified in this order, free from defects in Seller's design, workmanship, and materials and except as otherwise noted or provided in this order, subject to inspection by GMCS. If prior to final acceptance, any goods or services are found to be defective or not as specified, GMCS may reject or revoke acceptance and require Seller to correct without charge and within a reasonable time or require delivery at an equitable reduction in price at GMCS option. Acceptance of delivery shall not be considered acceptance of the goods and/or services furnished. Final inspection shall be made at the destination upon completion of delivery of goods and services and acceptability is solely the judgment of GMCS. Seller shall be liable for latent defects, fraud, or such gross mistakes amount to fraud. Acceptance of Performance shall not waive the right to claim for damages for breach.
2. **CONTRACT:** This purchase order is normally the sole contract between the parties. Any documents incorporated into this contract are listed explicitly on the purchase order or the purchase order will be specifically mentioned in any applicable contract. As used in this document, the word Seller includes Seller and its sub-suppliers.
3. **ASSIGNMENT:** Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Seller except as authorized in writing by GMCS. No assignment or transfer shall relieve the Seller from its obligations and liabilities.
4. **PAYMENT:** Payment shall be in accordance with §13-1-158 NMSA 1978, as amended.
5. **CHANGES:** GMCS may make changes within the general scope of this order by giving written notice to Seller and subsequently confirming such changes in writing with a revised copy of the Purchase Order. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of GMCS.
6. **WARRANTIES:** Seller warrants the goods and/or services furnished to be exactly as specified in this order, free from defects in seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by the Seller. All applicable UCC warranties, express and implied, are incorporated herein.
7. **F.O.B:** Unless stated otherwise, the price for goods is F.O.B. GMCS Receiving and Delivery Warehouse.
8. **TAX STATUS:** GMCS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of tax on the purchase of tangible personal property. This certificate will be issued upon request, it is not valid for the purchase of services including construction or materials that become part of a construction project or for the lease of property. Seller is responsible for the payment of all applicable taxes which will be added to invoices as a separate item at the current rate.
9. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION:** Seller shall be an equal opportunity employer and shall conform to all Affirmative Action and other applicable requirements accordingly. Seller shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the basis of race, age, religion, color, national origin, ancestry, sex, age, physical or medical conditions, or prior military involvement, in any manner prohibited by law.
10. **INDEMNIFICATION AND INSURANCE:** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any actual or alleged personal injury including death and/or connection with or arising out of any goods delivery by Seller or performance of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of negligent performance of the work by or willful misconduct of GMCS. Seller shall indemnify and hold harmless GMCS, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorney's fees in connection with or resulting from such suit or action.
11. **PATENT AND COPYRIGHT INDEMNITY:** Seller shall pay all royalty and license fees related to deliverables and other items covered within. Seller shall indemnify GMCS against all losses, liabilities, lawsuits, claims, expenses (including attorney's fees), costs, or judgments incurred through third party claims of infringement of any copyright, patent, trademark, or other intellectual property rights.
12. **TERMINATION AND DELAYS:** GMCS may, by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. GMCS shall pay Seller full compensation for performance until such termination at order price for delivered and accepted portions of orders only. GMCS shall not be liable for incidental and consequential damages.
13. **TITLE AND DELIVERY:** Title to the materials and supplies passed hereunder shall pass to GMCS upon acceptance at the F.O.B. point specified subject to the right of GMCS to reject. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval from GMCS Procurement Department. GMCS shall not be liable for incidental and consequential damage.
14. **OTHER APPLICABLE LAWS:** Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state, or local law, ordinance, rule or regulation shall be deemed to be incorporated herein.
15. **HARASSMENT POLICY:** All firms, their employees and agents agree to comply with the Gallup-McKinley County Public Schools "Policy for Prohibition of Harassment, Discrimination, or Violence based on Race, Religion, Sex, Disability or Age.