

Education Management Corporation
Purchase Order Terms and Conditions

1. **CONTRACT:** This purchase order constitutes an offer to contract for sale between Education Management Corporation, Buyer ("EMC") and Seller (designated on the face hereof) which upon acceptance shall be a contract made in and governed by the laws of the Commonwealth of New Jersey. Seller agrees that this Purchase Order shall constitute the entire contract between EMC and Seller and that any delivery of the goods ordered hereunder and other performance with respect hereto indicating an intent to accept shall be conclusively deemed to constitute an acceptance of this offer in strict accordance with the terms, hereof: notwithstanding any prior course of dealing, custom or usage of trade or course of performance, and notwithstanding that for its own convenience or otherwise Seller may utilize its own forms and in connection with sale of goods hereunder. No provision in any such form of any Seller which purports to add, to modify, conflict with, or contradict any provisions of this Purchase Order shall be given any effect in construing the agreement between the parties or Seller's obligations with respect to any goods ordered hereunder. The term "good" as used herein shall mean that which EMC is offering to purchase from Seller pursuant hereto, whether it be materials and products to be manufactured and/or delivered, or services to be rendered, or both. This Purchase Order is revocable, in whole or in part, by EMC, anytime prior to acceptance.
2. **DELIVERY, QUALITY, QUANTITY, RISK OF LOSS:** Seller agrees to notify EMC immediately if at any time it appears that Seller may not meet the delivery schedule. Such notification shall include the reasons for the delay, actual or potential, the steps being taken to remedy the constraint and the schedule Seller believes it will be able to meet. Such notification shall not be deemed to be acquiescent in or approval of the delay, proposed revised delivery schedule or a waiver of the delivery schedule of this Purchase Order. Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Seller's expense. EMC may any time postpone delivery of any of the goods for a reasonable time as to any particular scheduled shipment. Identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment Seller accepts this Purchase Order. Seller shall not be excused from performing his obligations hereunder if the goods identified are destroyed. Substituted goods of equal quantity and quality shall be tendered by Seller. Delivery shall not be deemed complete until the goods have been actually received by EMC or at the destination it directs, notwithstanding any agreement to pay freight or other charges for transportation or insurance, the risk of loss in transit shall be upon Seller and shall not pass to EMC until EMC actually takes physical possession of the goods. EMC shall not be responsible for failure to receive goods, if the cause was not within EMC's control.
3. **WARRANTIES, PATENT PROTECTION, INDEMNITY:** All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference and shall include, and be hereby supplemented by, the following express warranties of Seller (a) The goods shall comply with any and all specifications, drawings, samples, or other descriptions furnished or adopted by EMC and attached hereto and made a part hereof (b) the goods shall be merchantable, of good material and workmanship, free from defect, and suitable for their intended purpose and (c) except in the case of goods for which EMC furnishes complete specifications, the manufacture and sale by Seller of the goods, the use, resale installation and intended use of the goods by EMC, and disclosures by Seller to EMC in any manner hereunder shall not infringe upon or violate the legal or equitable rights to any person, corporation or partnership arising out of any license or franchise, or out of any patent, trademark, or other proprietary right now or hereafter in effect. All obligations of Seller hereunder shall survive acceptance of and payment for the goods in addition, while at Seller's facilities. Seller shall provide, without additional cost, all reasonable accommodations and assistance for the safety and convenience of EMC, and in those instances where the face of the Purchase Order bears a Government contract number the above rights and privileges shall be afforded Government representatives.
4. **INSPECTION:** EMC reserves the right to inspect all goods prior to shipment by Seller, and in furtherance thereof, Seller shall permit employees or representatives of EMC to have access to Seller's facilities at all reasonable hours. All goods shall nevertheless be received subject to inspection and approval by EMC after delivery and prior to payment and may be rejected if they are or become nonconforming, if EMC in the reasonable exercise of its judgment determines that additional work, design, rework, or redesign, is necessary to cause any goods to come within the warranties hereinabove created. EMC may perform such work or design and supply such materials as may be necessary or appropriate therefore all at the expense of Seller, and performance of such work by EMC shall in no way invalidate, waive, or affect any warranty, express implied of Seller, nor of itself cause EMC to waive by election any other remedy at law or in equity whatsoever.
5. **PACKING AND SHIPPING:** a) Ship only as specified herein, or as subsequently directed in writing and in strict conformity with the governing tariff rules and regulations, b) Seller shall pack or otherwise prepare all goods to meet carrier requirements and safeguard against damage from weather and transportation: c) No charges shall be allowed for packing or cartage unless noted herein d) Unless otherwise agreed

upon in writing by EMC goods must be shipped prepaid at Seller's expense: e) Mark each package to show Purchase Order number and include a packing sheet in each package, f) The expense of returning all goods, for whatever reason returned shall be borne by Seller with title and risk of loss passing to Seller at EMC's facility.

6. **PRICE:** If, at the time of shipment Seller's current market price of the goods shall be lower than the price stated herein, Seller agrees to give EMC the benefit of such lower price on each unshipped item. Except as otherwise specifies herein, or as prohibited by law, Seller shall pay all sales, use, excise or other taxes, federal, state and local, that may be imposed upon any of the goods, or the parties hereto by reason of the sale, delivery or use of the goods. If any tax or portion thereof which is included or added to the price paid to Seller for the goods is subsequently refunded to Seller. Seller shall then immediately pay to EMC the amount of such refund. Seller warrants that the price charged for the goods is no higher than that charged other purchasers for commodities of like grade and quality.
7. **PAYMENTS:** Payments shall be made upon the submission of proper invoices for goods delivered and accepted. With respect to any discount offered, time shall be computed from the date of delivery or from the date of the correct invoice is received by EMC, whichever last occurs. Payment is deemed to be made, for the purpose of earning the discount on the date EMC's check is mailed.
8. **INFORMATION DISCLOSED:** No information or knowledge, heretofore or hereafter disclosed to EMC and the performance of or in connection with this Purchase Order, shall be deemed to be confidential or propriety unless otherwise expressly agreed to in writing in EMC and any such information or knowledge shall be free from any restrictions, other than a claim for patent infringement, as part of the consideration for this purchase Order. Seller shall not, without first obtaining consent of EMC, in any manner advertise, publish, or disclose the existence or acceptance of this Purchase Order nor any details connected herewith, or the content of any information or knowledge transmitted by EMC hereunder to any third party.
9. **DRAWING, MANUALS:** Seller, if required as part of its performance hereunder, shall on or before delivery of any goods supply any and all printed materials, such as catalog, drawings, cuts, certified prints characteristics curves, parts list, service and technical manuals, and diagrams relating to such goods. The failure of the Seller to deliver the foregoing printed material required shall constitute a basis for nonpayment of the price of the goods until delivery is made. All such printed materials supplied by, or specifically manufactured, made or produced at the request of EMC shall at all times be and remain the property of EMC and shall be delivered to EMC on demand.

10. **INDEMNIFICATION:** To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of EMC, or any of its customers or suppliers in the course of performance hereunder, Seller shall take all necessary precautions to prevent the occurrence of any injury, including death, to any person or any damage to any property, arising out of any acts or omission of such agents employees or subcontractors except to the extent that any such injury or damage is due solely and directly to EMC negligence. Seller shall indemnify and hold EMC harmless against all liabilities, losses, damages and expenses including EMC's reasonable attorney's fees arising out of any act or omission by any Seller, its agent, employees or subcontractors, and Seller shall maintain such Public Liability. Property Damage and Employee's Liability and Compensation Insurance will provide coverage to EMC for any claims under applicable Workman's Compensation and Occupational Disease Acts. Seller further agrees to maintain primary and non-contributing Products Liability insurance of not less than \$100,000/\$300,000 for Bodily injury and \$50,000 for property damage and blanket Broad Form Vendor's coverage designating EMC as additional named insured with provision at least ten (10) days prior written notice to EMC in the event of cancellation or reduction of coverage, and upon request to promptly submit satisfactory evidence of such insurance.

11. **ASSIGNMENT:** Seller shall not delegate any duties, nor assign any rights or claims hereunder without prior written consent of EMC and any such attempted delegation or assignment shall be void. All claims for monies due or to become due from EMC shall be subject to deduction by EMC for any setoff or counterclaim and arising out of this or any of EMC Purchase Orders with Seller whether such setoff or counterclaim and arises before or after any such assignment by Seller.

12. **TERMINATION:** EMC may modify the terms or conditions hereof or terminate work, hereunder in whole or in part at any time by written or electronic notice. Upon the receipt thereof, Seller shall, to the extent directed by EMC, stop both work and the placement of further orders or subcontracts, terminate work under orders and subcontracts outstanding and take any necessary action to protect property in Seller's possession in which EMC has or may acquire an interest. Modification or termination shall be without prejudice to any claims which Seller may have against EMC. EMC shall pay Seller's reasonable costs in making settlement hereunder, and in protecting property in which EMC has or may acquire an interest, provided that total payments hereunder shall not exceed the aggregate price specified herein, and provided that such claims for payment must be asserted within thirty (30) days from the date of receipt of notice of such modifications or termination. Nothing contained herein shall relieve Seller from proceeding without delay in the performance of this Purchase Order as modified notwithstanding anything to the contrary herein, and with respect to modifications hereof, in those instances where the face hereof

bears a Government contract number. EMC may modify only the drawings and specifications, packing and packaging, place of delivery, quantities and delivery schedule. EMC may cancel and terminate this Purchase Order without any liability or obligation in the event of a) the commencing of any proceeding under the Bankruptcy Act, federal or state as amended, by or against Seller b) Seller becoming insolvent c) Seller making any assignment for the benefit of creditors d) a writ of attachment or execution being levied on any property of Seller and not being released or satisfied within ten (10) days therefrom, e) a receiver being appointed in any proceeding or action to which Seller is a party f) the failure by Seller to produce and deliver acceptable goods, or comply with any other instructions, terms, conditions or warranties applicable hereto; g) any other event occurring which under the Uniform Commercial Code or other applicable law would entitle EMC to cancel and terminate this Purchase Order in the event of termination for cause (a through g above), EMC may produce or purchase or otherwise acquire goods elsewhere on such terms or in such manner as EMC may deem appropriate, and Seller shall be liable to EMC for any excess cost or other expenses incurred by EMC. In the event Seller is entitled to recover damages hereunder such damages shall not include any incidental damages as defined in Section 2-710 of the Uniform Commercial Code.

13. **CONSIGNMENT:** Unless otherwise provided herein all supplies materials, drawing, manuals, facilities, tools, jigs, dies, fixtures, patterns, or equipment furnished to Seller by EMC shall remain the property of EMC. Seller shall bear all risk of loss and damage thereto normal wear and tear excepted while such property is in Seller's actual or constructive possession. Such property shall at all times be properly housed and maintained by Seller, shall not be commingled with the property of Seller or others shall not be moved from Seller's premises without prior written authority from EMC, and shall upon request by EMC be immediately returned to EMC.
14. **NON-WAIVER, REMEDIES: COST AND ATTORNEY'S FEES:** The remedies herein reserved or created shall be cumulative and additional to any other or further remedies provided at law or in equity. EMC may remedy any breach of the terms or conditions hereof and may waive any breach of the terms of conditions hereof without waving the breach remedied or without waving any other prior or subsequent breach. Seller shall indemnify and hold EMC harmless from and against all liabilities, losses and incidental damages and expenses including EMC's reasonable attorney's fees, resulting from a claim based upon either strict liability or from the breach of any of the terms and conditions hereof, whether negligent or otherwise specifically including, but not limited to the breach of any of Seller's warranties. Any action for breach hereof must be commenced within two years after the cause of action has occurred. For purposes hereof, a breach warranty shall be

deemed to commence, not when the goods are tendered, but when the actual breach is discovered.

15. **INVOICES: STATEMENT: AUDIT OF BOOKS:** Unless otherwise provided in this Purchase Order, no invoice shall be issued prior to physical delivery of goods, or completion of the rendering of services. No payment will be made prior to EMC's receipt of an individual invoice, in triplicate, showing this Purchase Order number, description of goods as shown herein, number of cartons shipped, carrier and weight. One copy of each individual invoice must be plainly marked "ORIGINAL." Shipping charges and all applicable taxes, or charges for which EMC has agreed to pay, and has not furnished an exemption certificate, shall be itemized separately on Seller's invoices unless such charges are itemized. EMC may take the applicable discount on the full amount of each invoice. Seller agrees that its books and records, or such parts thereof as may relate to the performance hereunder, shall at all reasonable times be subject to inspection and audit by duly authorized representatives of EMC.
16. **HEADINGS:** The headings used herein are for reference purposes only and shall not affect the meaning or interpretation of his Purchase Order.
17. **SEVERABILITY:** Any provisions of the Purchase Order prohibited by law shall be ineffective to the extent of such prohibition does not invalidate the remaining provisions hereof.
18. **FAIR LABOR STANDARDS ACT:** All invoices from Seller shall bear the following certifications: "The supplier herein represents that the goods and/or services covered hereby were produced in accordance with the requirements of the Fair Labor Standards Act of 1936 as amended."
19. **OCCUPATIONAL SAFETY AND HEALTH ACT:** Seller hereby warrants that all goods shall conform with the Occupational Safety and Health Act (OSHA) in the event that the goods do not conform with OSHA and EMC is penalized for such nonconformance, Seller shall indemnify EMC for all penalties, costs and expenses, including interest levied against EMC.
20. **ADDITIONAL CLAUSES WHERE FEDERAL GOVERNMENT IS INTERESTED PARTY:** Where the face of this purchase order bears a government contract number, the following clauses shall a) supplement the foregoing and b) to the extent of any inconsistency with the foregoing be controlling.
- a. **Termination**
- (i) EMC shall have the right at any time and for any reason to terminate the Purchase Order in its entirety or in part in accordance with the provisions of 52 249-02, entitled "Termination" of the Federal Acquisition Regulations, which is

specifically incorporated herein by reference

- (ii) In addition to the rights conferred in sub-paragraph (a). EMC may terminate this Purchase Order for default if Seller fails to make any delivery in accordance with the schedule set forth herein or for failure to comply with any of the other requirements or terms and conditions of this Purchase Order or for failure to make progress under this Purchase Order so as to endanger performance of this Purchase Order, and does not cure such failure within a period of ten (10) days after notice from EMC. In the event of termination for Sellers default, EMC may procure commodities or services similar to those terminated and Seller shall be liable for excess re-procurement cost. Further, Seller shall be liable to EMC for any other remedies prescribed by law or equity.

b. FEDERAL GOVERNMENT PROCUREMENT REGULATIONS

- (i) This purchase order is subject to the following clauses of the Federal Acquisitions Regulations (FAR) all of which are hereby incorporated herein by reference FAR 52.219-08 – Utilization of Small Business Concerns and Small Disadvantaged Business concerns. FAR 52.219-09. Small Business and Small Disadvantaged Business Subcontracting Plan: FAR 52.220-04 – Labor Surplus Area Subcontracting Program, FAR 52.225-03- Buy American Act Supplies FAR 52.229-03 – Federal, State, and Local Taxes. FAR 52.203-01- Officials Not to benefit FAR 52.222-35 Covenant Against Contingent Fees FAR 55. 222-35- Affirmative Action for Special Disabled and Vietnam ERA Veterans. FAR 52.215-01- Examination of Records by Comptroller General: FAR 52.203-03- Gratuities: FAR 52.210-05 New material, FAR 52.210-07- Used for Reconditioned Material. Residual Inventory and Former Government Surplus Property. FAR 52-215-02- Audit Negotiation. FAR 52.222-01- Notice to the Government of Labor Disputes: FAR 52.222-03-

- Convict labor: FAR 52.222-04- Contract Work Hours and Safety Standards Act- Overtime Compensation-General, FAR 52.222-20 – Walsh-Healy Public Contracts Act: FAR 52.222-26 Equal Opportunity; FAR 52.222-36- Affirmative Action for Handicapped Workers FAR 52.223-06- Clean Air and Water, FAR 52.223-05- Certificate Regarding a Drug Free Workplace: FAR 52.224-02- Privacy Act, FAR 52.226-06 - Drug Free Workplace: FAR 52.227-03- Patent Indemnity FAR 52.243-01 – Changes – Fixed Price. FAR 52.246-23 – Limitation of Liability: FAR 52.246-25 – Limitation of Liability Service, FAR 52.249-02 – Termination for Convenience of the Government (Fixed Price); FAR 52.249-08 – Default (Fixed Price Supply and Service): FAR 52.222-11 – Subcontracts (Labor Standards): FAR 52.222-41 – Service Contract Act of 1965: FAR 52.230-03 – Cost Accounting Standards FAR 52232-18 - Availability of Funds: FAR 52.245-02 – Government Property: FAR 52.232-20 – Limitation of Cost; FAR 52.215-22 – Price Reduction for Defective Cost or Pricing Data: FAR 52.215-24 – Subcontractor Cost or Pricing Data: FAR 52-21607 – Allowable Cost and Payment: FAR 52.214-07 – Late Submissions, Modifications and Withdrawals of Bids, FAR 52.222-02 – Payment for Overtime Premiums FAR 52.232-22 – Limitation of Funds: FAR 52. 244-05 – Competition in Subcontracting: FAR 52.249-14 – Excusable Delays.
- (ii) Where necessary to make the clauses in 20 (B) (i) above consistent with this Purchase order, the words “Government,” “contracting officer,” and similar words as used therein shall mean EMC and the word “contractor” shall mean Seller.
- (iii) References to “Disputes” in the forgoing clauses are deleted.
- (iv) The Seller covenants and agrees that if Buyer’s contract price or a cost allowance is reduced by reason of Seller’s failure to comply with an

applicable Cost Accounting Standard or to follow any practice disclosed in its Disclosure Statements, Buyer should be entitled to.

- a. Reduce the prices of this purchase order by an amount commensurate with the reduction in Buyer's contract price or cost allowance together with interest computed with a rate of 7 percent per annum or,
- b. In the event Seller shall already have been paid the full Purchase Order price or essentially the full Purchase price, Seller shall reimburse and indemnify Buyer in an amount commensurate with the reduction in Buyer's contract price

or cost allowance together with interest computed at a rate of 7 percent per annum

c. Stabilization of Prices, Rents, Wages and Salaries

- (i) Seller represents that to the best of its knowledge and belief it is in complete compliance with Executive Order 11640 or any amendments thereof; further, Seller warrants that the amounts invoiced hereunder shall not exceed the lower of (1) the contract price, or (2) the maximum levels established with the order.
- (ii) Seller agrees to insert the substance of this clause, including this subparagraph (ii) in all subcontracts issued by it under this purchase order.

