

## SAINT MARY'S COLLEGE OF CALIFORNIA PURCHASE ORDER TERMS AND CONDITIONS

Purchase Orders made between you, the "Seller," and Saint Mary's College of California ("Saint Mary's") are subject to these Saint Mary's College of California Purchase Order Terms and Conditions. All purchases made by Saint Mary's and all sales by you to Saint Mary's shall be governed by the Saint Mary's College of California Purchase Order Terms and Conditions. **The top (white) copy of the actual Purchase Order contains only a partial listing of these terms and conditions applicable to this order. The full set of terms and conditions (appearing below) is available to you on the Saint Mary's web site, and can be provided to you in hard copy upon your request.**

1. These are Saint Mary's standard terms and conditions for purchase orders, which shall apply to all purchase orders between you and Saint Mary's. However, in the event that you have entered a separate written agreement with Saint Mary's using one of Saint Mary's standard agreement forms, then the terms and conditions of that Agreement shall take precedence over these terms and conditions.
2. NO COMMITMENTS ARE RECOGNIZED WITHOUT A PURCHASE ORDER UNLESS SUBJECT TO A SAINT MARY'S STANDARD FORM AGREEMENT.
3. Packing slips must accompany all shipments.
4. Orders must not be filled at higher prices than last quoted or invoiced, without written authority from Saint Mary's. Terms shall be as agreed upon as indicated in this order.
5. All merchandise purchased by Saint Mary's must be delivered only at the Service Center freight receiving door between the hours of 8:00 AM to 3:00 PM.
6. All shipments shall be F.O.B. Saint Mary's Warehouse freight receiving door/Service Center, in Moraga California, unless otherwise indicated to you in writing by Saint Mary's. Unless routing is specified, Seller shall choose appropriate transportation and that which is most advantageous to Saint Mary's.
7. Saint Mary's reserves the right to cancel any undelivered portion of this order if not delivered by the date agreed upon for delivery. Seller must not vary quantities without Saint Mary's prior written consent.
8. No charge is allowed for packing or cartage unless specifically designated and agreed upon in advance by Saint Mary's as indicated in this order. Allowable transportation charges shall be prepaid by Seller, unless otherwise agreed upon in this order.
9. All items must be as specified and are subject to Saint Mary's inspection after delivery. Saint Mary's reserves the right to reject and return, at the risk and expense of Seller, any item (or items) which may fail to comply with the order specifications without invalidating the remainder of the order.
10. Seller expressly warrants all (i) goods delivered under this order to be free from defects in material and workmanship and to be of the quality, size and dimensions ordered and (ii) work performed under this order to be in conformity with all plans, specifications and other data incorporated as part of this order.
11. The Seller agrees to comply with all applicable federal, state, and local laws and regulations ("Laws"). In the event that this order puts Saint Mary's in violation of any Law, or in the event that Seller fails to comply with applicable Laws, Saint Mary's may terminate this order immediately without any liability to Seller whatsoever.
12. The Seller agrees to indemnify, defend and hold harmless Saint Mary's from any and all claims, losses and damages, including but not limited to reasonable attorneys' fees and costs, ("Claim(s)") regardless of by whom such Claim or Claims may be asserted, for personal injury or property damage or otherwise that may result directly or indirectly from the use, possession or ownership of the goods or from the services provided by Seller pursuant to this order. In particular, but without limitation, the Seller shall indemnify and defend Saint Mary's against all Claims resulting from any patent infringement or other Claim made against Saint Mary's relating to the goods provided pursuant to this order. This obligation shall be effective whether such Claims are addressed in litigation, arbitration mediation or in any other alternative dispute resolution forum.
13. In the event that the order by Saint Mary's is construed as an offer, this offer expressly limits acceptance to the terms contained herein. Seller accepts this term as notice of Saint Mary's objection to any different or additional terms in any response to the terms of this order.
14. If this order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon Seller's agreement that these terms and conditions contained herein shall supersede and control this order, whether new or different from those that may be present in Seller's offer.
15. If this order is construed as a confirmation of an existing contract (except an existing Saint Mary's standard form Agreement), Seller agrees that this confirmation states the exclusive terms between it and Saint Mary's with respect to the subject matter hereof. Furthermore, this order shall be deemed to have been accepted by Seller upon receipt by Saint Mary's of any writing, including a writing transmitted by electronic transmission, indicating acceptance, or by any of the following: (i) shipment of the goods or any portion thereof, (ii) commencement of any installation or work on site, or (iii) performance of any delivery or services related hereto.
16. Except as otherwise provided in the order, the price includes all applicable Federal, State and local taxes and duties. Seller assigns to Saint Mary's all rights to refunds of sales and use taxes paid in connection with this order and agrees to cooperate with Saint Mary's in the processing of any refund claims.
17. If any item is not received or service completed by the date specified, Saint Mary's may, without prior notice to Seller, either approve a revised date or cancel the order and obtain such goods or services elsewhere. In any event, Seller shall be liable to Saint Mary's for any resulting loss incurred. Seller's sole remedy for a delay caused by Saint Mary's shall be an extension in the time, equal to the duration of Saint Mary's delay. Timing of the delivery of goods and/or completion of related services is of the essence of this order.
18. If services are performed as part of the purchase and delivery of goods, any work site shall be kept free of waste and, on completion, left "broom clean." In case of dispute Saint Mary's may remove waste at Seller's expense.
19. The Seller, for Seller and for all subcontractors and materials men, agrees that no mechanic's lien or other claim shall be filed or maintained by the Seller or by any subcontractor, materials-men, laborer or any other person, whatsoever, for or on account of any work done or materials furnished under this order. This order is an independent contract and the Seller shall execute and deliver to Saint Mary's a separate Waiver of Liens (in form and substance satisfactory to Saint Mary's). No work shall be performed until the Waiver of Liens has been filed in Contra Costa County, California, Office of the County Recorder.
20. In every subcontract entered into by the Seller after the execution and delivery of this order or in connection herewith, the Seller shall incorporate a provision, similar to the foregoing paragraph, to the effect that neither the subcontractor nor any party acting through or under him shall file or maintain any mechanic's lien or other claim against Saint Mary's in connection with the work to be performed hereunder.
21. Saint Mary's may terminate this order at any time without incurring liability to Seller for lost profits or any other costs other than the value of conforming work completed on site or goods delivered.
22. Seller shall invoice Saint Mary's for all goods and services provided under this order in a manner consistent with the information provided in the order. In the absence of specific information from Seller, Saint Mary's will expect an invoice upon delivery and completion of all goods and services to be provided. Any invoice not sufficiently describing the goods and/or services being invoiced, in Saint Mary's sole discretion, shall be returned to Seller with a request for additional information prior to payment.
23. Seller agrees to fulfill its obligations hereunder by exercising the highest standard of care and responsibility that a high quality Seller in the San Francisco Bay Area in Seller's field of work would ordinarily exercise in performing the same or similar services as this Seller under this order.
24. Seller understands and agrees that Seller is an independent contractor and is solely responsible for payment of income, social security, and other taxes that may be due to the proper taxing

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- authorities as a result of any fees or reimbursement received under this order, and that Saint Mary's will not deduct taxes from any such payments to Seller hereunder.\*
25. It is expressly understood that Seller is an independent contractor and not the agent, partner, or employee of Saint Mary's. Seller and any volunteers or employees that Seller retains or hires in connection with the Services are not employees of Saint Mary's and are not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise through Saint Mary's. Seller shall at all times be solely responsible for the supervision and control of Seller's employees and shall take all appropriate or necessary steps, including but not limited to the removal or dismissal of an employee from the Saint Mary's project upon Saint Mary's request, to assure Saint Mary's that none of Seller's employees engage in harassment or intimidation of anyone on Saint Mary's premises. Seller further agrees that if requested by Saint Mary's, only employees of contractor who have successfully undergone a criminal background check, including the checking of sex offender registries, will be permitted to perform services at Saint Mary's. Seller shall not have the authority to enter into any contract or agreement to bind Saint Mary's and shall not represent to anyone that Seller has such authority. Seller represents and warrants that in fulfilling its obligations in this order, Seller will not be in breach of any agreement with a third party.
26. Seller agrees to keep confidential and not to disclose to third parties any information provided by Saint Mary's pursuant to this order unless Seller has received prior written consent of Saint Mary's to make such disclosure. This obligation of confidentiality does not extend to any information that a) was in the possession of Seller at the time of disclosure by Saint Mary's directly or indirectly; b) is or shall become, through no fault of Seller, available to the general public; or c) is independently developed and hereafter supplied to Seller by a third party without restriction. This provision shall survive expiration and termination of this order.
27. Seller agrees that any documentation or other copyrightable work, including but not limited to work in electronic format, developed by Seller solely, or with others, resulting from Seller's fulfillment of its obligations of this order, are the property of Saint Mary's as Works Made for Hire as defined in 17 U.S.C. § 101, et. seq. Accordingly, Saint Mary's shall be considered the sole and exclusive owner of all rights existing therein. To the extent that Seller might be deemed to hold any such rights in the work, Seller hereby assigns all rights, including but not limited to copyrights, to Saint Mary's. This provision shall survive expiration and termination of this order.
28. Seller represents that he/she has either personal or commercial general liability insurance against bodily injury and against property damage in the sum of not less than two million dollars (\$2,000,000), products and completed operations coverage in the amount of one million dollars (\$1,000,000), and to the extent applicable, advertising injury liability in the amount of one million dollars (\$1,000,000), to cover any and all liability, caused by, or arising out of, activities of Seller and his/her agents and employees while providing goods and/or services. In addition, If Seller is an Architect, Engineer or other licensed professional, Seller shall maintain Professional Liability and/or Errors and Omissions insurance in the amount of not less than one million dollars (\$1,000,000) each incident. Seller shall maintain workers' compensation insurance coverage for its employees in an amount not less than the limits required by state law and Seller shall maintain any other insurance as may be specified by Saint Mary's. Seller shall furnish to Saint Mary's evidence that all such required insurance has been procured prior to delivery or performance under this order. Insurance held or obtained under this paragraph shall be the sole responsibility of Seller and will not be reimbursed by Saint Mary's. Seller shall name "Saint Mary's College of California" as an additional insured on Seller's general liability policy, and Seller shall provide Saint Mary's a certified additional insured endorsement (ISO 2010 11 85 (Form B) or its equivalent), as well as providing certificates of insurance for all other required policies. This insurance obligation is separate and distinct from any other obligation in this order.
29. Seller agrees that any personal injury to Seller or third parties or any property damage incurred in the course of Seller's performance shall be the responsibility of Seller. Seller agrees to, and shall, indemnify, defend, protect, and hold Saint Mary's, its trustees, regents, officers, employees, agents, representatives, successors in interest, and assigns, free and harmless from and against any and all loss, claims, damages, or liability, including without limitation reasonable attorneys' fees and costs, arising from or alleged to have arisen from, Seller's performance or failure to perform under this order, including but not limited to any negligent act, error or omission by Seller. This indemnification does not indemnify Saint Mary's for willful or malicious acts by Saint Mary's or acts whereby Saint Mary's is found solely negligent.
30. This order constitutes the entire understanding between the parties with respect to the subject matter hereof and may not be amended except by an agreement signed by Seller and Saint Mary's. Hand written or typed changes added to the face of this order in an attempt to alter the preprinted terms and conditions shall be of no effect unless specifically acknowledged, in writing, by the individual signing this order on behalf of Saint Mary's.
31. The terms of this order are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.
32. This order shall be governed by and construed under the laws of the State of California, and venue for any lawsuit or claim arising from this order shall be in Superior Court of Contra Costa County, California.
33. Any paragraph headings or numbers in this order are inserted for convenience only and shall not be construed to limit or modify the scope of any provision of this order.
34. The delay or failure of either party to exercise any of its rights under this order for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.
35. Seller may not assign the rights or obligations under this order without Saint Mary's prior written consent.
36. If either party believes that the other has not fully performed its obligations as set forth in this order, the aggrieved party shall inform the other of the dispute in writing. Should a dispute arise during the course of this order, Seller agrees to continue to perform its obligations under the order terms while the parties attempt to meet and resolve the disputed issue. If the issue is not resolved and either party has to take legal action, the prevailing party in such an action shall have its reasonable attorneys' fees and costs, excluding interest, paid by the other party. In the event Saint Mary's exercises one of its other rights, as set forth elsewhere in these terms and conditions, where the exercise of such right may be different from or inconsistent with the procedure set forth in this paragraph, the obligation contained in this paragraph shall not apply to Saint Mary's.
37. Seller must have a current W9 on file with Saint Mary's or provide one prior to being paid.

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\*Nonresident Sellers performing services within California that do not provide a California Form 590 Withholding Exemption Certificate may have a percentage of the fees under this order withheld by Saint Mary's in compliance with California Revenue and Tax Code §18662. Contact the Saint Mary's College of California Business Office for more information if necessary.