

**ALAMEDA COUNTY WATER DISTRICT
PURCHASE ORDER TERMS AND CONDITIONS**

1. ENTIRE AGREEMENT

This Purchase Order (Order) together with any attached drawing or specifications constitutes the entire agreement between the parties, and no other terms shall be binding on DISTRICT unless accepted in writing by the person who signed this Order on behalf of DISTRICT. These TERMS AND CONDITIONS shall govern this Order. In the event of any conflict between the printed provisions of this Order and those of VENDOR's offer or acceptance, the provisions of this Order shall prevail.

2. ACKNOWLEDGMENT OF PURCHASE ORDER

If an Order that DISTRICT sends to VENDOR is not returned within seven (7) working days of VENDOR's receipt of it, the DISTRICT will deem the Order to have been accepted by VENDOR and thereby a CONTRACT entered by both parties.

3. CHANGES

DISTRICT may make changes in any terms and conditions governing this Order at any time. If VENDOR believes any change causes a change in the price of this Order or in the time required for its performance, VENDOR shall promptly submit its claim for adjustment in writing to DISTRICT. All changes shall be confirmed by written amendment issued by DISTRICT. Nothing in this clause excuses VENDOR from proceeding immediately with this Order as changed.

4. CANCELLATION, DEFAULT AND EXCESS RE-PROCUREMENT LIABILITY

DISTRICT reserves the right to cancel this Order at any time prior to acceptance and for any reason, upon written notice to the VENDOR. If VENDOR fails, after reasonable notice by DISTRICT, to cure a deficiency in performance or lack of progress, DISTRICT shall have such additional remedies as may be available, whether or not it terminates this Order, including, but not limited to, the payment by VENDOR to DISTRICT of all expenses incurred by DISTRICT in re-procuring from another source the same or similar goods or services that VENDOR failed to furnish satisfactorily.

5. INSPECTION AND ACCEPTANCE

All items are subject to final inspection and acceptance by DISTRICT at the destination, notwithstanding the fact the DISTRICT may have made a prior payment. VENDOR is to pay transportation charges to remove rejected materials or products.

6. DELIVERY CHARGES

If price quoted on this Order includes an additional charge for delivery from point of origin, VENDOR shall show such delivery charge on the invoice as a separate item and such charge shall not be subject to California State Sales/Use Tax. No additional charge for transportation, containers, packing, etc., will be allowed unless so specified in this Order.

7. PAYMENT

Each Order and shipment shall be invoiced separately. Payment shall be made within thirty (30) days of DISTRICT's acceptance of the invoice or the goods/services, whichever is later. All invoices and packing slips/bills of lading shall reflect the DISTRICT's Order number.

8. WARRANTY

VENDOR warrants that all materials furnished (1) shall meet all requirements and conditions of the DISTRICT's Order and manufacturer's warranty, if any, (2) shall be free from defects in design, material and workmanship, and (3) shall be fit for the purposes intended. VENDOR agrees that by acceptance of this warranty and acceptance of the materials or supplies provided by VENDOR, the DISTRICT does not waive any warranty, either expressed or implied, in California Commercial Code Sections 2312-2317, inclusive.

9. TITLE AND RISK OF LOSS

Unless otherwise provided in this Order, VENDOR shall have title to and bear the risk of any loss or damage to the goods ordered until they are delivered in conformity with this Order at the specified F.O.B. point. Upon such delivery, title shall pass from VENDOR to DISTRICT and VENDOR's responsibility for loss or damage shall cease, except for loss or damage occurring prior to or upon delivery, or loss or damage resulting from VENDOR's negligence. Passing of title upon such delivery shall not constitute acceptance of the goods and services by DISTRICT.

10. OWNERSHIP OF WORK/RECORDS

All materials to which VENDOR has access or prepares under this Order shall be the property of DISTRICT; shall be held in confidence by VENDOR; shall not be released without permission of DISTRICT; and shall be returned to DISTRICT upon termination of Order. VENDOR shall maintain all data and records relating to its performance of this Order for three (3) years after DISTRICT makes final payment under this Order and shall permit DISTRICT to inspect, audit and copy these records.

11. ASSIGNMENT AND SUBCONTRACTING

Neither this Order nor any interest herein nor any claim hereunder may be assigned or subcontracted by VENDOR either voluntarily or by operation of law, without the prior written consent of DISTRICT. No such consent shall relieve VENDOR of its obligations to comply fully with the requirements hereof.

12. INDEMNIFICATION/INFRINGEMENT OF PATENTS/INSURANCE

VENDOR shall indemnify, keep and save harmless DISTRICT and its directors, officers, employees and agents against all suits, claims or losses that may be based on any injury or damage to, or death of any person or any damage to

property that may occur, or that may be alleged to have occurred, arising from the performance of this Order by VENDOR, whether or not it shall be claimed that the injury was caused through a negligent act or omission of VENDOR or its employees or other agents. VENDOR shall, at its own expense, pay all charges of attorneys and all costs and other expenses arising or incurred in connection with such suits, claims or losses. If any judgment shall be rendered against DISTRICT in connection with any such suit, claim or loss, VENDOR shall at its own expense satisfy and discharge it. Without limiting the generality of the foregoing, VENDOR agrees that it will, at its own expense, defend all suits and all proceedings instituted against DISTRICT and pay any award of damages assessed against DISTRICT based on any claim that the materials or equipment provided under this Order, or any part thereof, or any tool, article or process used in the manufacture thereof constitutes an infringement of any patent issued by the United States. VENDOR shall maintain public liability insurance policies covering personal injury and property damage and products liability insurance policies with terms and limits and in companies satisfactory to DISTRICT and shall maintain proper worker's compensation and employer's liability insurance covering all of its employees engaged in the performance of the work under this Order.

13. INSURANCE

If required, VENDOR shall obtain and keep in full force and effect during the performance of any work to be performed hereunder the following insurance coverage. Policy(ies) shall be issued by an insurance company authorized to do business in the State of California with a minimum "Best's" rating of A- VII, or equivalent, or as otherwise approved by the DISTRICT:

- A) Commercial General Liability Insurance, to include bodily injury, property damage and death, and products liability; VENDOR shall have insurance covering VENDOR for liability arising out of the operations of VENDOR and any subcontractors. The policy(ies) shall be for \$1,000,000 per occurrence at a minimum
- B) Automotive liability, policy(ies) coverage shall be for \$1,000,000 per accident at a minimum
- C) Worker's Compensation, policy(ies) shall be in conformance with the laws of the State of California, and federal laws when applicable
- D) Professional Liability Insurance, policy(ies) shall be for \$1,000,000 per occurrence at a minimum

Aggregate values for all the aforementioned policies shall be \$5,000,000. In the event a claim is made, the DISTRICT reserves the right to request certified duplicate copies of all insurance policies required under this Section. DISTRICT will inform VENDOR which insurance policies set forth above, if any, will be required under this Order.

14. COMPLIANCE WITH LAWS

VENDOR's acceptance of this Order certifies that goods and services sold and furnished to DISTRICT by VENDOR are produced and sold in conformity with all applicable federal, state and local laws, rules, ordinances and regulations.

15. ENVIRONMENTAL COMPLIANCE

VENDOR shall comply with applicable environmental statutes, regulations and guidelines in performing the work under this Order, including laws on the disposal of hazardous wastes. VENDOR shall bear full and exclusive responsibility for any release of hazardous or nonhazardous substances or disposal of hazardous wastes during the course of performance of this Order. VENDOR shall be solely responsible for all claims and expenses associated with the disposal of hazardous wastes or with the response to or removal of any release, including without limit, payment of any fines or penalties levied against DISTRICT by any agency as result of such release. VENDOR shall hold harmless, indemnify and defend DISTRICT from any claims, suits, actions, costs or expenses arising from such disposal or release.

16. INDEPENDENT CONTRACTOR

VENDOR, and any agents and employees of VENDOR, in the performance of this Order, shall act in an independent capacity and not as officers, employees or agents of DISTRICT.

17. TIME OF ESSENCE/BINDING ON SUCCESSORS

Time is of the essence of each and all provisions of this Order. The provisions of this Order shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

18. NO WAIVER

Failure of DISTRICT to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies or to properly notify VENDOR in the event of breach, or the acceptance of or payment for any goods hereunder, shall not release VENDOR of any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of DISTRICT to insist upon strict performance hereof.

19. GENERAL

The definition of terms used, interpretation of this Order and the rights of all parties hereunder shall be construed under and governed by the laws of the State of California, including but not limited to the California Commercial Code. DISTRICT means the Alameda County Water District. VENDOR means the person, firm or corporation to which this Order is addressed.