

**FAIRFAX COUNTY WATER AUTHORITY
PURCHASE ORDER TERMS AND CONDITIONS**

THESE PURCHASE ORDER TERMS AND CONDITIONS and any attachments hereto (collectively, the "Purchase Order"), set forth the terms and conditions pursuant to which the Fairfax County Water Authority, doing business as Fairfax Water ("FW"), agrees to procure from the Contractor, and the Contractor agrees to furnish and provide, the goods and/or services described herein. FW and the Contractor hereby agree as follows:

1. Goods and/or Services: The goods and/or services to be furnished hereunder are described on the face of the Purchase Order and incorporated by reference herein, together with the required date(s) for delivery and/or performance and the purchase price and/or fees payable with respect to such goods and/or services. The prices and/or fees set forth therein are firm and fixed unless otherwise agreed in writing by FW.

2. Exact Quantities: The Contractor shall provide the exact quantities specified therein. FW will not pay for overages and if delivered, FW will, at its sole option and discretion, either return the additional quantities to the Contractor at the Contractor's risk and expense, or accept the additional quantities at no additional cost to FW.

3. Packing and Risk of Loss: The Contractor shall bear all risk of loss with respect to, and shall be solely responsible for, the goods until delivery at the facility or other location designated in writing by FW. An itemized packing list must be furnished by the Contractor with each shipment indicating the Purchase Order number, name of the goods with the applicable stock number, quantity ordered, quantity shipped, quantity back-ordered (if applicable), and the name of the Contractor or other supplier. All "drop shipments" will be subject to the same requirements. No fees for packaging, packing, crating, freight or other costs will be paid by FW unless expressly stated in the Purchase Order. The Contractor shall be solely liable for damaged goods resulting from improper packing or marking.

4. FOB Delivery and Freight Claims:

A. Unless otherwise specified in writing by FW, all prices are F.O.B. Destination (as designated in writing by FW), Freight Prepaid and Allowed. Shipment shall be by the most direct method; and, where applicable, at the most economical cost to FW. FW shall not accept responsibility for the processing and/or filing of freight or other shipping claims, and shall not accept any charges relating thereto.

B. Time is of the essence with respect to the delivery of all goods and the performance of all services procured pursuant to the Purchase Order. The Contractor shall prepare the goods sold hereunder for delivery to the destination specified and will cause delivery within the time period specified herein. If the Contractor does not prepare the goods within the applicable time period, FW may require the Contractor to deliver the goods by the most expeditious means available and the Contractor shall pay for that portion of the transportation charge which exceeds the cost of the method which would have otherwise been used.

5. Inspection: FW shall have the right (but not the obligation) to inspect and test the goods at the Contractor's plant anytime prior to shipment and to conduct additional inspections at any time after delivery. The making or failure to make any inspection of, or payment for or acceptance of, the goods shall in no event impair FW's right to later reject nonconforming materials, or to avail itself of any other remedy to which FW may be entitled, notwithstanding FW's knowledge of the nonconformity, its substantiality, or the ease of its discovery. The Contractor shall be liable for all inspection, reshipment and return costs with respect to nonconforming goods. Goods and services may be rejected by FW if they fail to meet the terms of the Purchase Order, and any such nonconforming goods shall be returned to the Contractor at the Contractor's sole cost and expense.

6. Invoices and Payment:

A. To Contractor:

1. The Contractor shall submit a separate invoice for each separate shipment, in the case of goods, and no more frequently than monthly, in the case of services. All such invoices shall be submitted to FW's Finance Department at 8570 Executive Park Avenue, Fairfax, VA 22031.

2. Each invoice shall include the Purchase Order number, the Contractor's federal employer identification number (or social security number, if the Contractor is an individual), a reasonably detailed description of the goods and/or services covered by the invoice, and the amount due. If shipping charges are included in an invoice, the original bill of lading shall accompany the invoice.

3. If a discount for prompt payment is allowed, the discount period will commence on the last to occur of: (i) the date of receipt of proper invoice; or (ii) delivery of the goods or service for which the discount applies. FW shall receive the benefit of any general reductions or discounts with respect to the Contractor's prices and/or fees which are in effect prior to delivery or performance, as the case may be.

4. Unless otherwise expressly agreed upon in writing, approved invoices shall be paid on or before the date that is 30 days after the date on which FW either received the invoice or accepted delivery of the invoiced goods or services, whichever is later. Any amount due under an approved invoice which is not paid when due shall bear interest at a rate of .5% per month until paid in full.

5. Payment of amounts due hereunder shall in no event constitute acceptance of any defective or non-conforming goods or services.

B. To Subcontractors:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by FW work performed by the subcontractor under the Purchase Order: (i) pay the subcontractor for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under the purchase Order; or (ii) notify FW and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. The Contractor shall pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the Purchase Order, except for amounts withheld as allowed in Section 7(B)(1).

3. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of .5% per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

4. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this Section 7(B) shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

7. General Warranty: The Contractor hereby represents and warrants to FW that each good and/or service supplied hereunder shall: (A) conform strictly to the requirements of the Purchase Order and to the specifications furnished by FW; (B) conform to the terms of any and all written affirmations of fact, promises, or descriptions made or furnished to FW by Contractor, if and to the extent that such affirmations, promises, or descriptions are not in conflict with, or are otherwise not less stringent than, FW's specifications; (C) meet or exceed standard industry practices and procedures; (D) be manufactured, produced, furnished and/or performed in accordance with Applicable Law (as defined below); (E) be new and of good workmanship and materials; (F) be free from defects in design, workmanship and materials; (G) be merchantable and fit for the particular purpose or purposes intended by FW; and (H) be delivered and conveyed to FW free and clear of any liens, claims or encumbrances of any nature whatsoever. The Contractor, at its own cost and expense, has obtained, or will obtain, prior to the delivery of any goods or performance of any services, hereunder, all approvals required by Applicable Law in connection with the transactions contemplated hereby, and the Contractor will furnish FW, upon request, with copies or other satisfactory evidence of all such approvals. As employed herein, the term "Applicable Law" shall mean all federal, state, and local laws, rules, orders, codes and regulations, including but not limited to those governing labor, wages, improper or illegal payments, or public health and safety, applicable to the transactions contemplated by the Purchase Order.

8. Warranty of Non-Infringement: The Contractor hereby represents and warrants that FW's purchase, possession, and/or intended use of the goods and services furnished under the purchase Order will not infringe upon, or contribute to the infringement of, any United States or foreign patent, copyright, trademark, trade secret, or other intellectual property rights of any nature. If the use of all or any portion of such goods or services is enjoined, then the Contractor covenants and agrees that it shall, at its sole expense and subject to FW's sole discretion, procure the right to continued use by FW of such goods and/or services, modify such goods and/or services to render them non-infringing, replace such goods and/or services with non-infringing goods or services, or remove that portion of the goods and/or services completely and refund all amounts paid by FW therefor, plus all related transportation, installation and dismantling costs related to such goods and/or services. The Contractor shall defend FW against all claims and suits alleging infringement and shall pay all related costs.

9. Non-Conforming Goods and Services: If any goods or services furnished hereunder do not conform in all material respects to the representations and warranties set forth in the Purchase Order, then the Contractor shall promptly repair, replace, or re-perform all such goods and services upon written notice by FW which is delivered to the Contractor within twelve (12) months after the date of delivery, in the case of non-conforming goods, or the date of performance, in the case of non-conforming services, at no additional cost to FW. At FW's option, non-conforming goods may be repaired or replaced by the Contractor at FW's facility or wherever the goods are located, or may be returned to the Contractor's facility or to an authorized repair center, all at the Contractor's expense. In the event of the Contractor's failure to repair, replace, or re-perform any non-conforming goods or services or diligently initiate the correction, replacement or re-performance thereof within five (5) business days after the date of FW's notice to the Contractor, FW shall have the right to correct or replace such goods and services and to charge the Contractor all costs thereof. The cost of correction shall be deducted from any amounts then or thereafter due the Contractor hereunder and, if such amounts are insufficient to cover the cost of correction, the Contractor shall pay such deficiency to FW promptly following written demand therefor. Notwithstanding the foregoing, if any non-conformity with a warranty materially affects the operation or use of any of the goods or presents an imminent threat to the safety or health of any person or entity and FW knows of such non-conformity, FW may, at its option, correct or replace such goods or services without giving the Contractor notice of such non-conformity, and the Contractor shall be responsible and liable to FW for all costs incurred by FW.

10. Indemnification: The Contractor hereby assumes all risks associated with furnishing the goods and materials specified herein and shall indemnify and hold harmless FW and FW's members, officers, authorized representatives and employees

(collectively, the "FW Indemnitees") from and against any and all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) (collectively, the "Losses") arising out of or in connection with: (1) any material breach of the representations, warranties, agreements and covenants of the Contractor contained in the Purchase Order; (2) any injuries to persons or property caused by any negligent or wrongful act or omission of the Contractor or its subcontractors, vendors, employees, or other authorized representatives; (3) any claims filed by the Contractor which are adjudicated or otherwise determined in favor of FW; (4) any claims filed against FW by a subcontractor or employee of the Contractor; or (5) any claims or suits for infringement of United States or foreign patents, copyrights, trademarks, trade secrets, or other intellectual property rights or claims of unfair competition arising out of or resulting from FW's purchase, use, and/or possession of any goods and/or services furnished under the Purchase Order.

11. Default and Termination: Each of the following events shall constitute a default by the Contractor for purpose of the Purchase Order (each of which shall entitle FW to terminate for default in accordance with this Section): (a) any bankruptcy proceeding by or against the Contractor or the appointment of a trustee for the benefit of creditors; (b) a refusal or failure of the Contractor to deliver the goods, or to perform the services, in accordance with any of the agreed scheduled delivery date(s); (c) if, based upon the current progress of the goods and services and information provided by the Contractor, the Contractor is projected to deliver any portion of the goods or perform any portion of the services after the scheduled delivery date(s) for such goods and/or services; (d) assignment or subcontracting of all or any part of the purchase Order without FW's prior written consent; or (e) failure to perform any other material provision of the purchase Order. In the event the Contractor does not cure any such default within a period of three (3) business days after receipt of written notice thereof from FW, or such longer period as FW may authorize in writing, then FW may give written notice to the Contractor to terminate the Purchase Order or any part thereof. In the event of termination for default, FW shall not be liable to the Contractor for payment of any amount beyond the value of any conforming goods and services shipped or received and accepted by FW, less damages suffered by FW. In such case, the Contractor shall be liable to FW for any and all losses, costs and damages incurred by FW arising out of or resulting from such default, including any and all liquidated damages which shall be based on the date(s) that a reasonable substitute supplier, exercising proper due diligence, achieved such respective scheduled deliveries. Upon request by FW, the Contractor will deliver or assign to FW any goods and services in progress at the time of termination.

12. Termination for Convenience: At any time, FW may terminate for its convenience all or any separable part of the Purchase Order by giving written notice of termination to the Contractor. On the date that notice of such termination is received by the Contractor, the Contractor shall: (a) discontinue all work relating to the goods and/or services so terminated except for work performed in compliance with the instructions set forth in the termination notice; and (b) refrain from placing any additional orders in connection with the terminated portion(s) of the purchase Order. The Contractor shall not be entitled to any other payment from FW with respect to any terminated portion(s) of the purchase Order including, but not limited to, any anticipated or future profits or damages in connection therewith.

13. Waiver: Any waiver by FW of any breach by the Contractor of any term or condition of the purchase Order shall not constitute a waiver of any subsequent breach of the same or any other term or condition hereof. The rights and remedies of FW set forth herein are not exclusive, but are in addition to all other rights and remedies of FW under applicable law.

14. Survival of Representations and Warranties: Each of the representations, warranties, and covenants set forth in the purchase Order shall survive the execution, delivery, performance and termination hereunder.

15. Reservation of Rights: Any action by FW with respect to inspection of or payment for the goods and/or services covered by the purchase Order shall not prejudice FW's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by FW of the goods or services, or affect in any way the Contractor's obligations under the purchase Order notwithstanding FW's opportunity to inspect the goods and/or services, FW's knowledge of the nonconformity or defect, the importance or critical nature of, or the ease of discovery of the nonconformity or defect, nor FW's earlier failure to reject the goods or services. No action or failure to act by FW or its officers, agents or representatives shall be construed at any time to bar or otherwise preclude FW from: (a) showing the true and correct classification, amount, quality, or character of the goods and/or services delivered or performed hereunder, as the case may be, or that any determination, decision, acceptance, or payment is incorrect or was improperly made in any respect, or that the goods and/or services (or any part thereof) do not in fact conform to the requirements of the purchase Order; and/or (b) demanding and recovering from the Contractor any overpayment made to him or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the purchase Order.

16. Governing Law; Venue; Waiver of Jury Trial: The purchase Order shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of VA, without reference to conflict of laws principles. Any action or proceeding arising out of or related to the purchase Order shall be brought only in the courts of competent jurisdiction in the Commonwealth of VA. The parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves. The parties waive any right to a jury trial in connection with any such litigation.

17. Non-Discrimination:

- A. Fairfax Water Authority does not discriminate against faith-based organizations.
- B. During the performance of the Purchase Order, Contractor agrees as follows:
 - (i) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - (ii) Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
 - (iii) Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section 17(B).

Contractor will include the provisions of the foregoing Sections 17(B)(i), (ii) and (iii) in every subcontract, subconsulting agreement and purchase order over \$10,000, in order that the provisions above will be binding upon each subcontractor, subconsultant and vendor.

18. Tax Exempt: FW is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by these Purchase Order Documents, including without limitation any Federal Excise Tax, Transportation Tax or VA Sales and Use Tax. FW's federal tax exempt identification number is: 546025290.

19. Drug-Free Workplace: During the performance of the purchase Order, the Contractor agrees to: (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the contract contemplated by the purchase Order. The Contractor acknowledges and agrees that: (a) alcoholic beverages, firearms and illegal drugs are prohibited in all FW facilities and on all FW property; and (b) its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract contemplated by the purchase Order.

20. No Employment of Unauthorized Aliens. The Contractor hereby covenants and agrees that it does not, and shall not during the performance of the purchase Order, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).

21. No Assignment, Substitutions or Modifications: The Contractor shall not assign or subcontract any right or obligation under the purchase Order without FW's prior written consent. No substitution, change, modification, or deviation from the terms of the purchase Order shall be made without prior written authorization from FW.

22. Relationship of the Parties; No Third Party Beneficiaries: The relationship of the Contractor and FW shall be that of an independent contractor and not that of an agent of FW. Neither the Contractor, nor any subcontractor, supplier, or employee of the Contractor, shall be deemed to be an employee or agent of FW for any purpose whatsoever. No third party is entitled to rely for any purpose on any of the representations, warranties and agreements of FW and the Contractor set forth herein. Neither FW nor the Contractor shall be liable to any third party because of any reliance on the representations, warranties and agreements of FW and the Contractor contained in the purchase Order.

23. Notices: All communications, notices, invoices, and disclosures required or permitted hereunder shall be in writing and shall be hand delivered, sent by fax (with a duplicate copy transmitted by another means of delivery authorized hereunder), sent by first class U.S. Mail, postage prepaid, or sent prepaid by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by fax with a hard copy sent by overnight express courier, five (5) days after mailing if sent by mail, and one (1) day after dispatch if sent by overnight express courier, to the following addresses and/or fax numbers: (a) if to the Contractor, to the address and/or fax number set forth on the first page of the purchase Order; and (b) if to FW, to: Fairfax Water, 8570 Executive Park Avenue, Fairfax, VA 22031, Attention: _____. Either party may change its address for notices by sending written notice of such change to the other party in the manner prescribed herein.

24. Effective Date: The purchase Order shall be deemed to have been accepted by the Contractor and shall become a binding and enforceable contract in accordance with its terms as of the date which is: (a) the date of FW's receipt of written acknowledgement of the Contractor's acceptance, which may include issuance of an invoice in accordance with the purchase Order; (b) 7 days after the Contractor's receipt of the purchase Order from FW, unless the Contractor notifies FW in writing within such time period of its rejection or proposed modification of any provision hereof; or (c) the date when the Contractor ships the first lot of goods or commences performance of the services ordered hereunder, whichever occurs first.

25. Entire Agreement: The purchase Order, together with all exhibits and attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written between the parties with respect to the subject matter hereof.

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