

ROCK RIVER WATER RECLAMATION DISTRICT

GENERAL PURCHASE ORDER TERMS AND CONDITIONS

1. Applicability.

- (a) These terms and conditions of purchase (these “Terms”) are the only terms which govern the purchase of the goods (“Goods”) and services (“Services”) by the Rock River Water Reclamation District (“Buyer” or “District”) from Vendor. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of Goods and Services, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. Further, these Terms are meant to supplement but not supersede the terms and conditions of any competitive bid document, contract or agreement. In the event of a conflict or inconsistency, the terms and conditions of the competitive bid document contract or agreement will govern.
- (b) The accompanying purchase order (the “Purchase Order”) and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of the Vendor’s general terms and conditions of sale regardless of whether or when Vendor has submitted its sales confirmation or such terms. This Agreement expressly limits Vendor’s acceptance to the terms of this Agreement. Fulfillment of the Purchase Order constitutes acceptance of these Terms.

2. Delivery of Goods and Performances of Services.

- (a) Vendor shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “Delivery Date”). If no Delivery Date is specified, Vendor shall deliver the Goods within 20 days of Vendor’s receipt of Purchase Order. If Vendor fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Vendor and Vendor shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendor’s failure to deliver the Goods on the Delivery Date.
- (b) Vendor shall deliver all Goods to either the Rock River Water Reclamation District Plant, 3333 Kishwaukee Street (Delivery time is 7:00 a.m. to 3:30 p.m.), the Rock River Water Reclamation District Administration Building, 3501 Kishwaukee Street (Delivery time is 8:00 a.m. to 4:00 p.m.), or as otherwise instructed by the Buyer (the “Delivery Point”). No Saturday, Sunday or “Cash on Delivery” shipments are allowed. Vendor shall pack all goods for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Vendor must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Vendor’s risk of loss and expense.
- (c) Vendor acknowledges that time is of the essence with respect to Vendor’s obligations hereunder and the timely delivery of Goods and Services, including all performance dates, timetables, project milestones and other requirements in the Agreement.

3. Quantity. If Vendor delivers more than 20% or less than 20% of the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Vendor at Vendor’s sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. A packing list must accompany the shipment. For a period of ten days following delivery, the District may inspect merchandise and verify weights and counts. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Purchase Order. Serially numbered merchandise shall be identified by serial number on the packing slip and on the Vendor’s invoice.

5. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.
6. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to the Vendor, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Vendor shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods. If Vendor fails to timely deliver replacement Goods, Buyer may replace them with Goods from a third party and charge Vendor the cost thereof and terminate this Agreement for cause pursuant to Section 17 of these Terms and Conditions. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Vendor's obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Vendor has carried out its remedial actions.
7. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "Price"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
8. Payment Terms. Vendor shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with these Terms. If the District receives a proper invoice for conforming goods or services before the fifth day of any given month, the District shall pay such invoice by the fifth day of the succeeding month. If the invoice arrives later than the fifth day of the month, the District shall pay such invoice by the fifth day of the second succeeding month. Except for any amounts disputed by Buyer in good faith, without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Vendor against any amount payable by Buyer to Vendor under this Agreement. District shall not be liable for interest or penalties for any delay in payment caused by Vendor's failure to comply with the Agreement.
9. Vendor's Obligations Regarding Services. Vendor shall:
 - (a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;
 - (b) comply with all rules, regulations and policies of the Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by Buyer to certain areas of its premises or systems for security reasons, and health and safety practices and procedures;
 - (c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Vendor in providing the Services in such form as Buyer shall approve. During the term of this Agreement, and for a period of two years thereafter, upon Buyer's written request, Vendor shall allow Buyer to inspect and make copies of such records and interview Vendor's personnel in connection with the provision of the Services;
 - (d) obtain Buyer's written consent, which shall not be unreasonably withheld or delayed, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Vendor, other than Vendor's

employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Buyer's approval shall not relieve Vendor of its obligations under the Agreement, and Vendor shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Vendor's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Vendor subcontractor or supplier;

- (e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;
 - (f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Vendor, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;
 - (g) ensure that all of its equipment used in the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and
 - (h) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.
 - (i) if Vendor is providing Services for which the Illinois Prevailing Wage Act (820 ILCS 130) applies, Vendor shall comply with prevailing wages in accordance with the Illinois Department of Labor Standard and further, shall submit certified payroll reports via the State's Certified Transcript of Payroll Portal currently found at: <https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/certifiedtranscriptofpayroll.aspx>. Vendor is responsible for verifying current information at the State's website.
10. Change Orders. Buyer may, at any time, by written instructions and/or drawings issued to Vendor (each a "Change Order"), order changes to the Services. Vendor shall within 20 days of receipt of a Change Order, submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Vendor shall proceed with the changed services subject to the cost proposal and the Agreement. Vendor acknowledges that a Change Order may or may not entitle Vendor to an adjustment in the Vendor's compensation or the performance deadlines under this Agreement.

11. Warranties.

- (a) Vendor warrants to Buyer that for a period of 12 months from the Delivery Date, all Goods will:
 - i. be free from any defects in workmanship, material and design;
 - ii. conform to applicable specifications, drawings, samples and other requirements;
 - iii. be fit for their intended purpose and operate as intended;
 - iv. be merchantable;
 - v. be free and clear of all liens, security interests or other encumbrances; and
 - vi. not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer.

- (b) Vendor warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and
 - (c) The warranties set forth in this Section 11 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Vendor notice of noncompliance pursuant to this Section, Vendor shall, at its own cost and expense, promptly (i) replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Vendor and the delivery of repaired or replacement Goods to Buyer and, if applicable, (ii) repair or re-perform the applicable Services.
12. Taxes. The Rock River Water Reclamation District is exempt from all taxes with the exception of the Motor Vehicle Tax.
 13. Use of District's Name. Vendor shall not use District name in any advertisement or promotional material without the District Executive Director's prior written permission.
 14. OSHA and Drug-Free Workplace Act. Vendor must comply with all applicable OSHA Standards and with the Drug-Free Workplace Act.
 15. Equal Opportunity Employer. Vendor shall, as a material condition of this contract, comply with the applicable portions of Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 et. seq.) and, specifically, shall not violate the provisions of such article and shall take affirmative action to ensure that no such violations are committed.
 16. Fair Labor Standards Act. All goods and services provided in response to this purchase order shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof.
 17. Americans with Disabilities Act. Vendor complies with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA). Vendor will hold harmless and indemnify the District and the District's representatives as defined in paragraph 15 from all: (a) Suits, claims or actions; (b) Costs, either for defense (including but not limited to actual, punitive, and compensatory damages) relating in any way to or arising out of the ADA, to which said firm is exposed or which it incurs in the execution of the contract.
 18. Working Regulations. The Vendor shall conduct his operations so as to interfere as little as possible with employees on or near the work.
 19. Clean-Up. The Vendor shall, at all times, keep the premises free from an accumulation of wasted material or rubbish caused by his employees or work and, at the completion of the work, shall remove all rubbish from and about the worksite, all tools, scaffolding, and surplus material, and shall leave work "broom clean" or its equivalent, unless more exactly specified. In case of dispute, the District may remove the rubbish and charge the cost to the Vendor.
 20. Waiver of Liens. The Vendor shall procure from each subcontractor and supplier of material or labor a waiver of any claim they may have under the mechanics' lien laws of the state in which the work is located, to insure the District immunity from mechanics' liens on account of anything which is done by the Vendor or its subcontractors in carrying out the contract, and any work order for additions thereto, all as a condition of any payment by the District on account of the contract. Any payments made by the District without requiring compliance with this paragraph shall not be construed as a waiver by the District of the right to require

compliance with this paragraph as a condition of later payments. The Vendor shall furnish with his request for final payment a complete release of all liens arising out of this contract, or receipts in full in lieu thereof, and an affidavit that the release and receipts include all labor and material for which a lien could be filed.

21. Plant Security. Vendor must check-in with the guard at the front gate.
22. Legal Compliance. The Vendor awarded this contract will comply with all Federal, State, County and City laws, ordinances, rules and regulations which, in any manner, affect the product and/or services placed for bid herein. Lack of knowledge on the part of the awarded Vendor of applicable law will in no way be cause for release of this obligation. If the District becomes aware of violation of any laws, ordinances, rules and regulations on the part of the awarded Vendor, it reserves the right to reject any bid, cancel any contract, and pursue any other legal remedies deemed necessary.
23. Indemnification. Vendor shall defend, indemnify and hold harmless Buyer's, its subsidiaries, affiliates, successors or assigns and its respective trustees, directors, officers, shareholders and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and Services purchased from Vendor or Vendor's negligence, willful misconduct or breach of the Terms. Vendor shall not enter into any settlement without Buyer's prior written consent.
24. Intellectual Property Indemnification. Vendor shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Vendor enter into any settlement without Buyer's or Indemnitee's prior written consent.
25. Limitation of Liability. Nothing in this Agreement shall exclude or limit Vendor's liability for fraud, personal injury or death caused by its negligence or willful misconduct.
26. Insurance. The District reserves the right to require Vendor to provide proof of insurance that meets certain minimum standards. Required insurance includes comprehensive general liability, umbrella liability, professional services liability and, when applicable, automobile liability and worker's compensation insurance. Vendor shall bear full cost of insurance.
27. Compliance with Law. Vendor shall comply with all applicable laws regulations and ordinances. Vendor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.
28. Termination. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Agreement with immediate effect upon written notice to the Vendor, either before or after the acceptance of the Goods or the Vendor's delivery of the Services, if Vendor has not performed or complied with any of these Terms, in whole or in part. If the Vendor becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Agreement upon written notice to Vendor. If Buyer terminates the Agreement for any reason, Vendor's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination.
29. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

30. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Vendor, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer’s request, Vendor shall promptly return all documents and other material received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Vendor at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
31. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (“Force Majeure Event”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Vendor’s economic hardship or changes in market conditions are not considered Force Majeure Events. Vendor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Vendor from carrying out its obligations under this Agreement for a continuous period of more than 90 business days, Buyer may terminate this Agreement immediately by giving written notice to Vendor.
32. Assignment. Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder.
33. Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
34. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
35. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.
36. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the 17th Judicial Circuit Court of Illinois, and each party irrevocably submits to the exclusive jurisdiction of such court in any suit, action or proceeding.
37. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) must be (i) given in writing and (ii) personally delivered or mailed, by prepaid, certified mail or overnight courier, or transmitted by electronic mail transmission (including PDF), to the party at the physical addresses or email address set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. Any such notice or communication shall be deemed to have been given on (i) the day such notice or communication is personally delivered, (ii) three (3) days after such notice or communication is mailed by prepaid certified or registered mail, (iii) one (1) working day after such notice or communication is sent by overnight courier, or (iv) the day such notice or

communication is faxed or sent electronically, provided that the sender has received a confirmation of such fax or electronic transmission.

38. Severability. In any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
39. Attorneys' Fees. In the event any party shall find it necessary to retain an attorney for the enforcement or defense of any of the provisions of this Agreement, the prevailing party shall be entitled to recover all reasonable attorney's fees and court costs incurred as a result thereof, whether such attorney's costs are incurred for the purpose of investigation, negotiation, trial, appellate proceedings or other legal services.