



Purchase Order Terms and Conditions (2 Pages)

- Purchase Order (“Order”) Force and Effect.** Placer County Water Agency (“Agency”) is not responsible for goods or services (collectively, referred to as “Services”) rendered without the authority of an order. This Order shall supersede and control over all inconsistent provisions in any proposal. The provisions of this Order (and all attachments hereto, and associated bid solicitation terms and conditions issued by Agency, if applicable) constitute the entire agreement between the Vendor and Agency regarding the Services. No representation, term or covenant not expressly specified in this Order shall, whether oral or written, be a part of this agreement. This Order shall supersede all other prior purchase orders and agreements between Vendor and Agency with respect to the Services. This Order may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Vendor and Agency.
- Performance of Services.** Time is of the essence in the performance of the Services. Vendor represents that it is skilled in the discipline necessary to perform the Services. Vendor shall perform its Services in a skillful manner, comply fully with criteria established by Agency, and with all applicable laws, codes, and professional standards. Vendor shall comply with all local, State and Federal laws, ordinances, rules and regulations applicable to the Services and give all notices required thereby. Vendor shall execute and maintain its work so as to avoid injury or damage to any person or property and shall comply with all required specifications for safety measures applicable to the Services.
- No Assignment.** Vendor shall not contract any portion of the Services or otherwise transfer or assign this Order, in whole or in part, without the prior written approval of Agency. Any such attempted transfer or assignment without the written consent of Agency shall be null and void. Vendor’s authorized representative is the individual authorized to enter into contracts unless Vendor otherwise informs Agency in writing. The granting of any payment, and any inspections, reviews, approvals or oral statements by any Agency representative, or certification by any governmental entity, shall in no way limit Vendor’s obligations under this Order.
- Records and Payment Requests.** Vendor shall submit billings with all necessary invoices or other appropriate evidence of performance. The standard payment terms are net thirty (30) days after receipt of invoice. Discounts for early payment will be considered. No other payment terms shall be allowed without the prior written consent of Agency’s Purchasing Agent. Agency shall have the right to audit the Vendor’s work records. Vendor shall make available to Agency, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursement charged to Agency, for examination. Vendor shall furnish to Agency, its authorized agents, officers, or employees, such other evidence or information as Agency may require with regard to any such expenditure or disbursement charged by Vendor. Vendor shall maintain all documents and records prepared by or furnished to Vendor during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under this Order, and invoices, payrolls, records and all other data related to matters covered by this Order. Vendor shall permit Agency to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of this Order shall have the same rights conferred to Agency by this section. Such rights shall be specifically enforceable.
- F.O.B. Point.** All shipments under this Order shall be made F.O.B. destination, requiring Vendor be solely responsible for shipment until it is tendered to Agency, even if Agency agrees to pay for shipping and handling. Agency may allow freight charges but only if expressly stated on this Order. Freight charges shall be shown separately on the lines provided on this Order.
- Independent Contractor.** Vendor is an independent contractor and does not act as Agency’s agent in any capacity whatsoever. Vendor is not entitled to any benefits that Agency provides to Agency employees, including, without limitation, worker’s compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within this Order regarding direction apply to and concern the result of the Vendor’s provision of Services not the means, methods, or scheduling of the Vendor’s work. Vendor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Services under this Order. Vendor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in this Order as Agency’s responsibility.
- Indemnity/Liability.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Vendor shall defend (with legal counsel reasonably acceptable to Agency), indemnify and hold harmless Agency and its officers, agents, departments, officials, representatives and employees (collectively “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Vendor), expense and liability of every kind, nature and description (including, without limitation, court costs, attorneys’ fees, litigation expenses and fees of expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, any activity of Vendor, or its employees, representatives, agents, suppliers or subconsultants, under this Order (but only to the extent that any of the above are actually caused by any negligent act or omission or intentional misconduct of Vendor, any of its suppliers or sub-consultants, anyone directly or indirectly employed by them, or anyone that they control) (collectively “Liabilities”). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of any Indemnitee.
- Shipments.** Shipments shall be made in accordance with Agency’s shipping instructions, which are subject to revision with respect to undelivered quantities.
- Packing and Delivery Charges.** Unless this Order states otherwise, no charge shall be made packing, crating, drayage or other similar costs. Items shall be packed in accordance with prudent commercial practices to insure against damage from weather and/or transportation.
- Inspection and Acceptance.** Items purchased hereunder are subject to final inspection and approval, notwithstanding any other inspection, unless otherwise specifically stated on this Order. Neither compliance by Vendor with instructions or suggestions by any employee of the Agency nor the Agency’s payment of Vendor’s invoice for any item prior to final inspection shall be deemed an acceptance of the item, or a waiver of the right of inspection, or any other right herein reserved, or relieve Vendor of any obligation or liability under the terms and conditions of this Order. Defective products will be rejected by the Agency, and the unit prices thereof will be debited against the invoice covering the shipment in which such products were included. Items rejected will be held at Vendor’s risk and subject to Vendor’s disposal for a reasonable time, and, if not disposed of by the Vendor, will be sold or otherwise disposed of by the Agency for the Vendor’s account.
- Federal, State and Local Taxes.** All prices, except fuel, tires and certain chemicals stated herein shall include, unless otherwise specified, all Federal, State or local taxes that may be levied or assessed as a result of this Order, or are otherwise applicable to this Order.

12. Warranty. Whether or not Vendor is a merchant of the Services provided by it, Vendor warrants that all goods and services furnished under this Order shall be of merchantable quality and free from any defects in material or workmanship. Vendor shall indemnify and hold Agency harmless from and against any and all liability, damages and expenses arising from any such breach of warranty. This warranty is in addition to all warranties contained under the law.
13. Changes. Agency reserves the right to make changes in this Order at any time, which changes shall be made in writing signed by Agency. When such changes result in greater or lesser costs an equitable adjustment in the purchase price will be negotiated between Agency and Vendor.
14. Acceptance of Goods. Payment for goods delivered under this Order shall not be deemed acceptance of such goods. Goods shall only be accepted after they have been counted, inspected and tested as needed by Agency.
15. MSDS. – Material Safety Data Sheets must be supplied to Agency at or prior to delivery of all substances that require such sheets. Delivery of any chemicals items shall not be complete until such sheets are furnished to Agency.
16. Conflict of Interest. Vendor represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services required under this Order. If the Vendor is aware of a potential conflict of interest, the Agency's Purchase Agent shall be informed immediately.
17. Confidentiality. Any information, whether proprietary or not, made known to or discovered by Vendor during the performance of or in connection with this Order for Agency, will be kept confidential and not be disclosed to any other person. Vendor will immediately notify Agency in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Order.
18. Insolvency and Bankruptcy: In the event Vendor shall become insolvent or makes a general assignment for the benefit of creditors, or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any law relating to the relief of debtors, or in the event a receiver be appointed of Vendor's property or business, the Agency may, at its option, cancel this Order, in accordance with paragraph twelve (12) above.
19. Termination and Suspension. Agency may direct Vendor to terminate, suspend, delay or interrupt Services, in whole or in part, for such periods of time as Agency may determine in its sole discretion. Agency may issue such directives without cause. Agency will issue such directives in writing, and compensate Vendor for services satisfactorily rendered, subject to Agency's reasonable approval, through the date of termination. Vendor may recover no other cost, damage, or expense. Suspension of Services shall be treated as an excusable delay. Agency may terminate performance of the Services under this Order in whole, or from time to time in part, for default, should Vendor commit a material breach of the Order, or part thereof, and not cure such breach within ten (10) calendar days of the date of Agency's written notice to Vendor demanding such cure. In the event Agency terminates the Order for default, Vendor shall be liable to Agency for all loss, cost, expense, damage and liability resulting from such breach and termination. Vendor shall continue its work throughout the course of any dispute, and Vendor's failure to continue work during a dispute shall be a material breach of this Order. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Order, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof.
20. Public Records Act. Both parties understand and agree that Agency must comply with the California Public Records Act ("Act"). If Vendor believes that any document or information furnished to Agency in connection with Vendor's performance of Services is exempt from public disclosure under the Act, it shall so advise Agency in writing at the time the document or information is furnished.
21. Survival. Without limiting any of the parties' other rights or obligations arising from this Order, and in addition to all other provisions indicated as surviving the termination or expiration of this Order, the following provisions will survive any termination or expiration hereunder: 4, 7, 12, 17, 21, 22 and 23.
22. Execution; Venue; Limitations; Miscellaneous. This Order shall be deemed to have been executed in the City of Auburn, County of Placer, California. Enforcement of this Order shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all litigation arising from or relating to this Order shall be in the County of Placer. Except as expressly provided in this Order, nothing in this Order shall operate to confer rights or benefits on persons or entities not party to this Order. As between the parties to this Order, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Agency's issuance of final payment to Vendor, or termination of this Order, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause. Captions to sections and subsections are for the convenience of the parties, and are not to be considered when construing this Order. The agreements contained herein shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Order.
23. Attorneys' Fees. If either party institutes or is required to defend any legal proceeding, action or motion to enforce or interpret the terms of this Order, the prevailing party shall be entitled to recover all costs and expenses, specifically including, but not limited to, reasonable attorneys' fees.
24. Force Majeure. Either party's failure to perform any term or condition of this Order as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, acts of God, or governmental restrictions shall not be deemed a breach of this Order.