

OTAY WATER DISTRICT

TERMS AND CONDITIONS OF PURCHASE

ARTICLE I-ACCEPTANCE. The materials, supplies or services covered by this order shall be furnished by Seller subject to all the terms and conditions set forth in this order including the following, which Seller in accepting this order agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by this order shall constitute unqualified acceptance of all its terms and conditions. The terms of any proposal referred to in this order are included and made a part of the order only to the extent of specifying the nature of the materials, supplies, or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

ARTICLE II-INSPECTION. The materials, supplies or services furnished shall be exactly as specified in the order, free from all defects in Seller's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by Otay at all times and places. If, prior to final acceptance, any materials, supplies, or services are found to be defective or not as specified, Otay may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such items within a time deemed reasonable by Otay, Otay may terminate the order in whole or in part. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any costs for which Seller may become liable to Otay under other provisions of this order, shall reimburse Otay for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE III-CHANGES. Otay may make changes within the general scope of this order in drawings and specifications for specially manufactured supplies, place of deliver, method of shipment or packing of the order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an equitable adjustment in the price or delivery or both shall be made. No change by Seller shall be recognized without written approval of the Otay Purchasing Department. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless Otay waives this condition. Nothing in the Article shall excuse Seller from proceeding with performance of the order as changed hereunder.

ARTICLE IV-TERMINATION.

A. Otay may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. Otay shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion: and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by Otay, with respect to the undelivered or unaccepted portion of this order, provided compensation hereunder shall in no event exceed the total order price.

B. Otay may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provision of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or supplies or perform the services within the time specified or any written extension thereof. In such event, Otay may purchase or otherwise secure materials, supplies or services and, except as otherwise provided herein, Seller shall be liable to Otay for any excess costs occasioned Otay thereby.

If, after notice of termination for default, Otay determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of Otay, unless Otay shall determine that the materials, supplies, or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

C. If Otay determines that Seller has been delayed in the work due to causes beyond the control and without the fault or negligence of Seller, Otay may extend the time for completion of the work called for by this order, when promptly applied for in writing by Seller; and if such delay is due to failure of Otay, not caused or contributed to by Seller, to perform services or deliver property in accordance with terms of the order, the time and price of the order shall be subject to change under the Changes Article. Sole remedy of Seller in event of delay by failure of Otay to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of the delay. No allowance will be made for anticipated profits.

D. The rights and remedies of Otay provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

E. As used in this Article, the word "Seller" includes Seller and his sub-suppliers at any tier.

ARTICLE V-TITLE. Title to the material and supplies purchased hereunder shall pass directly from Seller to Otay at the f.o.b. point shown, subject to the right of Otay to reject upon inspection.

ARTICLE VI-PAYMENT, EXTRA CHARGES, DRAFTS. Seller shall to be paid, upon submission of acceptable invoices, for materials and supplies delivered and accepted or services rendered and accepted. Otay will not pay cartage, shipping, packaging or boxing expenses, unless specified in this order. Drafts will not be honored, invoices, must be accompanied by transportation receipts, or facsimile, if transportation is payable and charged as a separate item.

ARTICLE VII-WARRANTIES. Seller warrants that all articles, materials, work or services furnished hereunder shall be free from defects in material and workmanship and that all items furnished will conform to applicable specification, drawings, samples and/or other descriptions and will be produced in compliance with all applicable Federal, State statutes, laws, orders and regulations. Unless manufactured pursuant to detailed design furnished by Otay, Seller assumes design responsibility and warrants the items to be suitable for the purpose intended. The warranties of Seller together with its service warranties and guaranties shall run to Otay and its assigns. In addition, Seller agrees to pass any warranty benefits to Otay that Seller receives from its suppliers of any item ordered hereunder.

ARTICLE VIII-PATENT INDEMNITY. Seller agrees to indemnify Otay, its officers, directors, agents, servants, and employees against liability of any kind including costs and expenses incurred for the use of any invention or discovery and for the infringement of any Letters Patent [not including liability arising pursuant to Section 183 U.S. Code, Title 35 (1952) prior to issuance of Letters Patent] occurring in the performance of this order or arising by reason of the use or disposal by or for the account of Otay of items manufactured or supplied under this order.

ARTICLE IX-DECLARED VALUATION OF SHIPMENTS. Except as otherwise provided on the face of this order, all shipments by Seller under this order for Otay's account shall be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading shall so note.

ARTICLE X-ASSIGNMENT. This order is assignable by Otay. Except as to any payment due hereunder, this order; is not assignable by Seller without written approval of Otay.

ARTICLE XI-OSHA REQUIREMENTS. As applicable, all items furnished under this order shall meet or exceed the standards established by the California, Occupational Safety and Health Act of 1973 and current amendments thereto, provided the end use of the item is for the purpose for which the item is intended.

ARTICLE XII-LABOR DISPUTES. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof to Otay. Such notice shall include all relevant information with respect to such dispute. Nothing contained herein shall be deemed a waiver of Otay's rights or remedies.

ARTICLE XIII-WAIVER. Any action or inaction by Otay shall not constitute a waiver of any right or remedy herein. The failure of Otay to enforce at any time any of the provisions of this order or to exercise any option herein provided, or to require at any time performance of any of the provisions hereof, shall in no way be construed to be a present or future waiver of such provisions, nor in any way to affect the validity of this order or any part thereof, or the right thereafter to enforce each and every such provision. The express waiver [whether one (1) or more times] of any provision, condition or requirement of this order shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

ARTICLE XIV - INDEMNITY. To the fullest extent permitted by law, Seller shall indemnify, protect, defend (with attorneys approved by Otay) and hold harmless Otay and any and all of its officials, elected board members, employees, volunteers, attorneys and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), arising out of or in any way attributable to the performance of this Order by Seller, or by any individual or entity for which Seller is legally liable, including but not limited to officers, agents, employees or sub-suppliers of Seller. However, the provisions of this Article do not apply to claims occurring as a result of Otay's sole negligence or willful acts or omissions.

ARTICLE XV - INSURANCE. ☐ If checked and before commencing performance under this Order, and at all other times this Order is effective, Seller will procure and maintain the types of insurance and with coverage limits complying, at a minimum, with the limits set forth in the attached INSURANCE REQUIREMENTS.