

Purchase Order General Terms and Conditions

This Purchase Order is subject to all terms and conditions set forth herein. This Purchase Order sets forth the complete agreement between the parties with respect to the matters described herein, and supersedes all other agreements of the parties, written or oral, and may not be modified hereafter except by our written agreement in respect thereof.

1. **Definitions** - "Purchaser" means "Elsinore Valley Municipal Water District" defined in the Purchase Order. "Seller" means the person, firm, corporation or entity to which this Purchase Order is addressed. "Goods" means those articles, materials, supplies, equipment, hardware, software, drawings and data, including any part thereof, or otherwise, to be furnished under this Purchase Order, as well as all services, including design, delivery, installation, inspection, programming, testing, and expediting, as specified or required to be rendered in connection therewith. Unless otherwise provided herein, the definitions of all other terms shall have the meaning ascribed to them in the Uniform Commercial Code in effect in the State of California date of this Purchase Order.
2. **Acknowledgement & Acceptance**- The Purchase Order acknowledgement must be returned within seven days from the date hereof to the Purchaser. If this Order is not accepted as exactly written, it must be returned within two business days to Purchaser with explanation. Commencement of performance pursuant to this Purchase Order shall constitute acceptance hereof by Seller without reservation. Purchaser shall not be bound by the terms of any confirmation form, acceptance invoice, bill of lading or other document that purports to vary any of the terms or conditions of this Purchase Order.
3. **Changes** - Purchaser shall have the right to make changes as to packing, testing, shipping, destinations, specifications, designs, and postponements of delivery schedules. Seller shall immediately notify Purchaser of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be provided by written amendment to this Purchase Order and acknowledged accordingly.
4. **Termination & Force Majeure** -
 - (A) Purchaser may terminate this Purchase Order at any time, with or without cause, upon three (3) days written notice in which event it shall pay to Seller the proportionate part of the purchase price representing the Goods delivered. Purchaser shall not be liable for any claims for anticipated profits on the unfinished or unshipped portion of the Goods, except as hereinafter provided. If this Purchase Order covers Goods manufactured or fabricated to Purchaser's specifications and Purchaser terminates this Purchase Order for reasons other than Seller's default, upon notice of termination Seller shall stop all performance hereunder and Purchaser shall pay to Seller the costs incurred prior to the date of termination related to the fabrication of any unfinished or unshipped Goods. Purchaser shall have no other obligation to Seller. Purchaser may cancel any unfilled part of this Purchase Order without any liability to Seller if any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency, is instituted by or against Seller, or if an assignee for the benefit of creditors or a receiver is appointed for Seller..
 - (B) Purchaser may defer or cancel this Purchase Order, in whole or in part, without liability to Seller, upon the occurrence of any event that requires Purchaser, in its sole discretion, to suspend or discontinue Purchaser's normal operations. Such event shall include, but not be limited to, any labor dispute, strike, war, terrorist act, riot, insurrection, civil disorder, flood, earthquake, storm or other act of God or act of public authority. Purchaser's exercise of its rights hereunder shall not be deemed a breach of contract nor entitle Seller to make claim for any damages on account thereof.
5. **Adherence to Schedule** - Time of delivery of the Goods is of the essence. At any time Seller believes that its deliveries will not be made as scheduled, Seller shall give prompt written notice to Purchaser of the length of and reason for such anticipated delay. Within three (3) days following receipt of such notice, Purchaser may, without prejudice to any other rights or remedies, cancel all or any portion of the undelivered Purchase Order, unless the delay is caused by Purchaser. Purchaser may accept Goods without waiving any rights by law or in equity to recover damages from Seller for late delivery.
6. **Title and Risk of Loss** - Title to the Goods shall pass to Purchaser only when Purchaser accepts the Goods. Seller bears the risk of loss for the Goods prior to delivery and acceptance at the designated delivery point, and, if applicable, after non-conforming Goods are rejected by Purchaser as provided in Paragraph 7 below.
7. **Rejection of Non-conforming Goods** - Purchaser may reject any Goods if they do not comply with the specification or terms and conditions hereof. Purchaser's acceptance of any non-conforming Goods shall not constitute a waiver of its right to reject future deliveries. Purchaser may elect to remedy any defect in the Goods delivered and Seller shall reimburse Purchaser for all reasonable costs and expenses thereof. Seller may not substitute returned or rejected Goods without Purchaser's written instructions and agreement. Purchaser may reject any Goods that do not comply with the specifications for materials and warranties of the Seller and manufacturers, and the Purchaser may reject any

defective Goods, either before or after incorporation of them into any project; within eighteen (18) months of the date of delivery. Purchaser may return the rejected Goods at Seller's expense; F.O.B. Purchaser's designated delivery location. At Purchaser's option, Seller must replace the rejected Goods with Goods complying with the specifications and warranties for the Goods; F.O.B. Purchaser's designated delivery location. If Seller fails to so replace rejected Goods, Purchaser may replace them at Seller's sole cost and expense. Purchaser reserves all other rights and remedies to which it may be entitled against Seller for non-conforming Goods.

8. **Use, Application or Installation** - The Goods will be used, applied or installed by Purchaser, unless otherwise specified. Seller shall furnish technical direction and instructions to Purchaser or its agent(s) regarding the use of the Goods. If any portion of the Goods shall prove unfit for use within twelve (12) months from date of initial use, as a result of faulty or inadequate technical direction or instruction by Seller, Seller shall replace such portion of the Goods at no expense to Purchaser.
9. **Inspection, Acceptance and Rejection** - Final inspection shall be on Purchaser's premises unless otherwise directed by Purchaser. Upon acceptance, Seller warrants that Purchaser shall have free and clear title to the Goods, unencumbered by any lien, claim or security interest arising, by operation of law or otherwise, by reason of Seller's acts or omission, of this sale. Goods rejected as not conforming to this Purchase Order or specifications shall be returned at Seller's expense, including transportation and handling costs. During the performance of an order, Purchaser or its designated representative shall have access to any manufacturers or distributor's facility, records and documents pertaining to this Order for inspection and audit.
10. **Warranty** - In addition to any and all other warranties from the Seller, the manufacturer or otherwise, Seller warrants that the Goods delivered hereunder will conform strictly to the specifications, drawings, or sample(s) specified or furnished, will be new unless otherwise indicated, and will be fit and sufficient for the purpose intended, of merchantable quality, of good material and workmanship free from defect for a period of eighteen (18) months from date of delivery, or twelve (12) months from date of commercial operation, whichever is earlier, and shall be in conformity with all applicable federal, state and local laws respecting the Goods. The Goods furnished hereunder shall conform to the Purchaser's specifications for such materials in effect at the time of acceptance of this Purchase Order by the Seller and shall become the property of the Purchaser when accepted. All manufacturer's warranties and guaranties relating to the Goods are transferred and assigned to the Purchaser upon delivery of the Goods and before payment is made for such Goods. This warranty shall survive any inspection, delivery or acceptance of, or payment for, the Goods by Purchaser.
11. **Remedies** - Purchaser's remedies hereunder shall be cumulative and in addition to all other remedies at law or in equity. Without prejudice to Purchaser's rights and remedies expressed herein or elsewhere, any breach by Seller may be deemed a total breach and Purchaser may hold Seller accountable for all damages, whether direct, indirect or consequential, and for all losses of every type resulting from such breach. In addition and as a limitation or alternative to the foregoing, Purchaser may elect to rescind this Purchase Order, in whole or in part, refuse to accept further delivery of any Goods ordered hereunder and hold Seller accountable for all damages arising or resulting there from.
12. **Confidentiality** - Seller acknowledges that all specifications, technical information and data furnished to Seller in connection with this Purchase Order are submitted confidentially and solely for Seller's use in performing its obligations and may not be transmitted to any other person, firm, corporation or entity, or used in connection with the manufacture or sale of any materials or products other than the Goods without the specific written authorization from Purchaser unless otherwise required by law.
13. **Indemnity** - Seller shall immediately indemnify, defend, and hold harmless Purchaser and Purchaser's directors, officials, officers, employees, volunteers and agents (the "Indemnified parties") against, any and all demands, claims, lawsuits, judgments, awards, liabilities, costs and expenses of any kind or nature (including attorney's fees and experts' fees) arising out of or related to the Goods or any related services, or from any act or omission of Seller, its agents, employees, or suppliers, including, but not limited to the failure to comply with the terms and conditions of this Purchase Order. Seller shall also indemnify and defend Purchaser and the Indemnified Parties against, any and all demands, claims, lawsuits, judgments, awards, liabilities, costs and expenses arising out of or related to any claim that the Goods, or any part thereof, infringe any patent(s), copyright(s) or other intellectual property rights. If the Goods, or any part thereof, is enjoined, Seller shall, at its own expense, either procure for Purchaser the right to continue to use the Goods or shall replace the Goods, with non-infringing Goods. These indemnity provisions of this Purchase Order shall survive any termination of the agreement.
14. **Purchaser's Property** - All materials, including tools, furnished or specifically paid for by Purchaser are the property of Purchaser, are subject to removal by Purchaser at any time without additional cost to Purchaser, must be used only in filling orders from Purchaser, must be kept separate from other materials or tools, and must be clearly identified by Seller as the property of Purchaser. Seller assumes all liability for loss or damage to the materials or tools, except for normal wear and tear, and agrees to supply detailed statements of inventory as agreed upon. Upon request, and prior to the performance of any work, Seller shall provide any Certificates of Insurance satisfactory to Purchaser required to perform installation or other work at Purchaser's premises.

15. Invoicing and Set-Off -

- (A) Seller must submit separate invoices for each Purchase Order to the billing address on page 1 on or after the date of shipment. Goods, Shipping, Installation Costs, or Sales Tax shall be itemized separately.
- (B) Purchaser may set-off any amount owed to Seller, or its affiliates, by Purchaser, or its affiliates, against any amount owed or payable to Purchaser under this Purchase Order.
- (C) The Purchase order provided by the buyer must be included on seller's invoice.

16. Assignment -Seller shall not assign any right, obligation or interest in this Purchase Order without the prior written consent of Purchaser. Any attempted assignment without Purchaser's consent is void and has no effect.

17. Non-Waiver - Failure of Purchaser to insist upon strict performance of any of these terms and conditions, or failure or delay to exercise any rights or remedies provided herein by law or equity, or to properly notify Seller in the event of breach, or the acceptance of, or payment for, any Goods hereunder, or approved of design, shall not release Seller from any of the warranties or obligations of this Purchase Order and shall not be deemed a waiver of any right of Purchaser to insist upon strict performance of these terms and conditions, regardless when shipped, received or accepted, nor shall any purported oral modification or rescission of this Purchase Order waive any of these terms and conditions. If any provision of this Purchase Order is declared Invalid by an authority with jurisdiction, the remaining provisions of this Purchase Order shall remain in full force and effect.

18. Packaging and Shipping - All packaging must be clearly marked on the outside with purchaser's purchase order. Seller must ensure that all Goods are suitably packed, marked, insured and shipped in accordance with Purchaser's written specifications and with the customs of the common carriers used by Seller, so as to ensure delivery in an undamaged state and to secure the lowest transportation costs for the Goods. Unless otherwise indicated on page 1 of this Purchase Order, all shipments shall be made F.O.B. Purchaser's designated delivery location and all shipping charges shall be prepaid. No charge for packing, shipping, carting or insurance shall be payable by Purchaser except as agreed in writing. Seller shall affix to each package bill of lading or delivery a receipt for the Goods and each such shipment shall be accompanied by an itemized packing slip, in the absence of which Purchaser's count shall be conclusive.

19. Regulatory Compliance & Governing Law - Seller shall comply with all applicable federal, state and local laws, regulations and ordinances. Seller warrants that any Goods supplied shall comply with all such applicable laws and all specifications of Purchaser. This Purchase Order shall be governed in all respects by the laws of the State of California.

20. Equal Opportunity - Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

Seller shall, in all solicitations or advertisements for employees placed by or on behalf of Seller; state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

Seller shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of Seller's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Seller shall comply with all provisions of Executive Order 11246 of September 24,1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

Seller shall furnish all information and reports required by Executive Order 11246 of September 24,1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of Seller's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this purchase order may be canceled, terminated or suspended in whole or in part and Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of

Labor, or as otherwise provided by law.

Seller shall include the provisions above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Seller shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, Seller may request the United States to enter into such litigation to protect the interests of the United States.

21. **Complete Agreement** - This Purchase Order, including all applicable terms, conditions and specifications, and any attached reference agreement shall constitute the sole and exclusive agreement between the parties. Purchaser will not be responsible for goods delivered or services rendered without a Purchase Order properly signed by the Purchaser's authorized agent. When this Purchase Order covers a continuing service rendered over a stated period of time, Seller must obtain a new Purchase Order upon expiration of the time period to authorize the continuance of the service for an additional period of time.
22. **Provisions Required By Law Deemed Inserted** - Each and every provision of law and clause required by law to be inserted in this Purchase Order shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provisions is not inserted, or is not correctly inserted then upon application of either party the contract shall forthwith be physically amended to make such insertion or correct
23. **Right To Audit** - Purchaser reserves the right to access and audit the Seller's records related to the Purchase Order for a period of four (4) years after payment of any invoice
24. **Insurance**
 - (A) Time for Compliance. Seller shall not commence Work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this section. In addition, Seller shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the District that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the District to terminate this Agreement for cause.
 - (B) Minimum Requirements. Seller shall, at its expense, procure and maintain for the duration of the Agreement Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Seller, its agents, representatives, employees or subcontractors. Seller shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:
 - (1) Commercial General Liability. Coverage for commercial general liability insurance shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001). Seller shall maintain limits no less than the stated insurance requirement on the page one of the Purchase Order per occurrence, or the full per occurrence limits of the policies available, whichever is greater, for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit or product-completed operations aggregate limit is used, including but not limited to form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Seller, including materials, parts or equipment furnished in connection with such work using as broad a form as CG 20 10 11 85 or the latest versions of both CG 20 10 and CG 20 37; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers using as broad a form as CG 20 01 04 13, or if excess, shall stand in an unbroken chain of coverage excess of the Seller's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Seller's insurance and shall not be called upon to contribute with it in any way.
 - (2) Automobile Liability. Coverage shall be at least as broad as the latest version of the Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto). Seller shall maintain limits no less than the stated insurance requirement on the page one of the Purchase Order per accident for bodily injury and property damage. The automobile liability policy shall include or be

endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Seller or for which the Seller is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Seller's scheduled underlying coverage. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Seller's insurance and shall not be called upon to contribute with it in any way. The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

- (3) Workers' Compensation and Employer's Liability Insurance. Seller shall maintain Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance in an amount no less than the stated insurance requirement on the page one of the Purchase Order per accident for bodily injury or disease. The insurer shall agree to waive all rights of subrogation against the District, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Seller.
 - (4) Contractors Pollution Liability. Seller shall procure and maintain, and require its subcontractors to procure and maintain, Contractors Pollution Liability with a limit no less than the stated insurance requirement on the page one of the Purchase Order, if applicable, per policy period of one year. If Seller maintains higher limits than the minimums above, District is entitled to coverage for the higher limits maintained by the Seller. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.
 - (5) Watercraft Liability Coverage. The watercraft liability policy shall include or be endorsed (amended) to state that: (1) the District, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any watercraft owned, leased, hired or borrowed by the Seller or for which the Seller is responsible; and (2) the insurance coverage shall be primary insurance as respects the District, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Seller's scheduled underlying coverage (3) limit no less than the stated insurance requirement on page one of the Purchase Order, if applicable, per claim or occurrence and aggregate per policy period of one year. Any insurance or self-insurance maintained by the District, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Seller's insurance and shall not be called upon to contribute with it in any way.
- (C) Excess Liability (if necessary). The limits of Insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess coverage shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the District (if agreed to in a written contract or agreement) before the District's own primary or self-insurance shall be called upon to protect it as a named insured.
- (D) All Coverages. The Seller is required by this Agreement to state that: (i) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District; If any of the required coverages expire or cancel during the term of this agreement, the Seller shall deliver the renewal certificate(s) including the general liability additional insured endorsement to District at least ten (10) days prior to the cancellation or expiration date. and (ii) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the District, its directors, officials, officers, employees, agents, and volunteers.
- (E) Separation of Insureds: No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the District, its directors, officials, officers, employees, agents, and volunteers.
- (F) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. Seller shall guarantee that, at the option of the District, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its directors, officials, officers, employees, agents, and volunteers; and insurer shall provide or be endorsed to provide that the deductibles or SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured or (ii) the Seller shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.
- (G) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:-VII or equivalent, or as otherwise approved by the District.

- (H) Verification of Coverage. Seller shall furnish the District with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the District. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the District if requested. All certificates and endorsements must be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, at any time. In the event that the Seller employs other vendors (sub-contractors) as part of the services covered by this agreement, it shall be the Seller's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.
- (I) Reporting of Claims. Seller shall report to the District, in addition to Seller's insurer, any and all insurance claims submitted by Seller in connection with the Goods or any services under this Agreement.

25. Prevailing Wages/DIR Registration - Seller acknowledges that if the Goods or services contemplated by this Purchase Order involve any public works as defined by Labor Code section 1720 et seq., then Seller shall comply with all applicable prevailing wage/labor laws. This includes compliance with all the Department of Industrial Relations' (DIR) contractor registration requirements set forth in Labor Code Section 1725.5. Seller shall also ensure compliance with these requirements by all of its subcontractors. All such public work shall also be subject to prevailing wage compliance monitoring and enforcement by the DIR, including but not limited to submission of certified payrolls as required by the Labor Code and DIR.

I have read, understand and agree to the Terms and Conditions set-forth by EVMWD.

Name

Signature

Date