

PURCHASE ORDER TERMS AND CONDITIONS

By this reference the following terms and conditions are hereby made a part of each Purchase Order (PO) issued by the Moulton Niguel Water District (MNWD). In accepting a MNWD PO, Seller agrees that he/she has read, acknowledged, and accepted these terms and conditions:

1. Acceptance. Commencement of performance pursuant to this PO constitutes acceptance hereof by Seller. If delivery dates cannot be met, Seller shall inform MNWD in writing by return mail of Seller's best possible delivery.

2. Deliveries. MNWD's work plans are based upon the agreement that materials will be delivered to MNWD by the date specified on the face of this PO. Time is therefore of the essence of this PO. If deliveries are not made at the time agreed upon, MNWD reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefore.

3. Packing. Unless this PO states otherwise, no charge shall be made for packing, crating, drayage or other similar costs. Items shall be packed in accordance with good commercial practice to insure against damage from weather and/or transportation.

4. Prices. Seller's price shall not be higher than last quoted or last charged to MNWD unless otherwise agreed in writing.

5. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed by MNWD.

6. Payment. Payment will be made within forty-five (45) days of receipt of Seller's invoice or upon receipt of the goods, whichever is later. All shipping documents and invoices must reference the MNWD PO number in order to be processed. Orders delivered directly to job sites may require proof of delivery prior to payment. Acceptable proof is a signed packing slip acknowledging delivery. Payment will be made within forty-five (45) days.

7. Warranty. Seller warrants all materials and/or services delivered hereunder to be free from defect of materials or workmanship and to conform strictly to the specifications, drawings, or sample specified or furnished. This warranty shall survive any inspection, delivery, acceptance, or payment by MNWD of the materials or services. If, in MNWD's opinion, any article, material or work fails to conform to specifications or is otherwise defective, Seller shall promptly replace same at its expense within a period of one (1) year from the date of delivery. No acceptance or payment by MNWD shall constitute a waiver of the foregoing, and nothing herein shall exclude or limit any warranties implied by law or rights and remedies available to District, including, but not limited to, Code of Civil Procedure § 337.15.

8. Title. Seller warrants that any article, material or work is free and clear of all liens and encumbrances whatsoever, and that Seller has a good and marketable title to same, and Seller agrees to hold MNWD free and harmless against any and all claimants to said article, material or work. Title to the materials and supplies purchased hereunder shall pass to MNWD at the F.O.B. point designated on the face hereof, subject to the right of the MNWD to reject upon inspection.

9. Inspection and rejection. Final inspection will be at MNWD's premises unless otherwise agreed in writing. Materials rejected as not conforming to this PO or as otherwise defective shall be returned at Seller's expense, including but not limited to transportation and handling costs.

10. Safety. All equipment and materials shall comply with all Federal, State and local safety rules and regulations, including OSHA.

11. Indemnification. To the fullest extent permitted by law, Seller shall defend, indemnify and hold MNWD, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Seller, its officials, officers, employees, subcontractors, consultants or agents in connection with Seller's services or this PO, including without limitation payment of all damages, expert witness fees, attorney's fees and other related costs and expenses. Seller's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Seller, MNWD, its officials, officers, employees, agents, or volunteers.

To the extent required by Civil Code § 2782.8, which is fully incorporated herein, Seller's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Seller, but shall not otherwise be reduced. If Seller's obligations to defend, indemnify, and/or hold harmless arise out of Seller's performance of "design professional services" (as defined under Civil Code § 2782.8), then upon Seller obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of District, Seller's obligations shall be reduced in proportion to the established comparative liability of District and shall not exceed Seller's proportionate percentage of fault.

12. Patent Protection. To the extent the subject articles are not manufactured pursuant to design originated by MNWD, Seller agrees it will indemnify and hold MNWD and its officers, agents, and employees harmless from any loss, damage or liability which may be incurred on account of any alleged infringement of any United States patent with respect to such articles or materials, and that it will, at its own expense, defend any action, suit or claim in which such infringement is alleged. MNWD agrees to notify Seller promptly of any suit or claim against MNWD for any alleged infringement of patent.

13. California Labor Code Requirements. (Only applicable if part of a public works project.) MNWD has obtained from the Director of Department of Industrial Relations (DIR), the general rate for per diem wages and wages for holiday and overtime in the locality in which this public work is to be performed, for each craft, classification, or type of worker needed to execute the PO. Unless otherwise stated, it shall be mandatory upon the Seller to whom the PO is issued, and upon any subcontractors/vendors under him/her, to pay not less than the said specified rates in the performance of the PO work for any PO over \$1,000. Seller is also required to comply with all other California Labor Codes or federal requirements which include but are not limited to, the employment of apprentices, hours of labor, retention of payroll records and debarment of contractors and

subcontractors, to the extent applicable. If performance of this PO is part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code §§ 1725.5 and 1771.1, Seller must be registered with the DIR, unless this PO is exempt pursuant to Labor Code §1725.5(f). Seller shall maintain registration for the duration of the PO and require the same of any subcontractors/vendors. Performance of this PO may also be subject to DIR compliance monitoring and enforcement. It shall be Seller's sole responsibility to comply with all applicable registration and labor compliance requirements, including submission of payroll records directly to the DIR.

14. Insurance. (Only applies to services.) Seller shall take out and maintain, during the performance of all work under this PO, Commercial General, Automobile and Employer's Liability/ Worker's Compensation Insurance at policy limits and with insurance companies acceptable to MNWD. Evidence of insurance shall be provided to MNWD before work commences. MNWD, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds

15. Federal, State, and Local Taxes. All prices stated herein include unless otherwise specified, all Federal, State or local taxes that may be levied or assessed as a result of this PO, or are otherwise applicable to this PO.

16. Assignment. Seller shall not delegate any duties, nor assign any rights or claims under this PO, or for breach thereof without prior written consent of MNWD, and any such attempted delegation or assignment shall be void.

17. Setoffs and counterclaims. All claims for moneys due or to become due to Seller shall be subject to deduction by MNWD for any setoff or counterclaim arising out of this or any other of MNWD's POs with Seller.

18. Changes. MNWD shall have the right to make changes as to packing, testing, destinations, specifications, designs, and delivery schedules (postponements only). Seller shall immediately notify MNWD of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this PO.

19. Bankruptcy. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then MNWD shall be entitled, at its sole option, to cancel any unfilled part of this PO without any liability whatsoever.

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21. Governing law. This PO and the acceptance of it shall be a contract made in the State of California and shall be governed by the laws thereof.

22. Title to drawings and specifications. (When applicable.) MNWD shall at all times have title to all drawings and specifications furnished by MNWD to Seller and intended for use in connection with this PO. Seller shall use such drawings and specifications only in connection with this PO, and shall not disclose such drawings and specifications to any person, firm, or corporation other than MNWD's or Seller's employees, subcontractors, or government inspectors. Upon MNWD's request or upon completion of this PO, Seller shall promptly return all drawings and specifications to MNWD.

23. Termination. (a) MNWD may terminate or cancel this PO in whole or in part without liability to Seller, if deliveries are not made at the time and in the quantities specified, or in the event of a substantial breach of any of the other terms or conditions hereof; (b) MNWD may also terminate this PO in whole or in part, even though Seller is not in default hereunder and no breach hereof has occurred by notice in writing at any time, such notice shall state the extent and effective date of termination and upon the receipt by Seller of such notice, Seller will as, and to the extent prescribed by MNWD, stop work under the order and placement of further orders or subcontracts hereunder, terminate work under order and subcontracts outstanding hereunder, and take any necessary action to protect property in the Seller's possession in which MNWD has or may acquire an interest.

24. Compliance with laws. To the extent applicable hereto, Seller shall in the performance of this PO comply with all Federal, State, and local laws and regulations and orders issued under any applicable law.

25. General. No waiver of a breach or of any provision of this PO shall constitute a waiver of any other breach or of such provision. No modification or change in or departure from the provision of this PO shall be valid or binding on MNWD unless approved in writing by MNWD.

26. Integration clause. This PO is limited to the terms and conditions contained here on and on the face of the order. Any additional or different terms in the Seller's forms are hereby deemed to be void.

27. Document conflicts. In the event of any conflict between the Purchase Order Terms and Conditions herein, and the terms and conditions of a duly signed fully executed agreement, the terms and conditions of the agreement shall control.