

TERMS AND CONDITIONS OF GOODS AND MATERIALS ATTACHMENT (ARIBA)

1. **ACCEPTANCE OF TERMS:** These Terms and Conditions ("Terms and Conditions"), Purchase Order constitute the agreement between Sacramento Municipal Utility District ("SMUD") and Seller ("Seller") with respect to the purchase of the goods and/or materials described in the Order ("Agreement"). By acknowledging the Order in writing, or by delivering goods or materials pursuant to the Order, Seller acknowledges and agrees to these Terms and Conditions.
2. **PACKING SLIPS:** Packing Slips must be included in all shipments. Purchase, Release Number, Change Order Number and SMUD stock code, if applicable, must appear on all packing slips whether covering partial or complete shipments.
3. **DELIVERY:** Delivery shall be made only under the terms, conditions and prices set forth in the Order and in these Terms and Conditions. All materials furnished must conform to SMUD's specifications and are subject to SMUD's final inspection and approval.
4. **NON-CONFORMING GOODS:** Goods that do not conform strictly to the Order will be rejected. Seller shall not send nonconforming goods for accommodation.
5. **TITLE TO MATERIAL:** Unless expressed otherwise in the Order, title to the material will pass to SMUD upon SMUD's receipt of such material. C.O.D. Shipments will not be accepted unless arrangements are made when the order is placed.
6. **SAFETY DATA SHEET (SDS)** (formerly Material Safety Data Sheet or MSDS) is required with shipment for all hazardous substances as defined by California Code of Regulations, Title 8, section 5194 or shipment will be subject to rejection.
7. **APPLICABLE LAW:** This Agreement shall be governed, construed and interpreted solely by and under the laws of the State of California without regard to conflict of laws provisions. In the event of any litigation arising hereunder, Seller shall submit to the jurisdiction of any court of competent jurisdiction within the State of California and will comply with all requirements necessary to give such court jurisdiction, and that all matters arising hereunder shall be determined in accordance with the law and practice of such court. It is further agreed that service of process in any such litigation may be made in the manner provided for in Section 415.4 of the California Code of Civil Procedure or in any other manner provided for in said code for service upon a person outside the State of California.
8. **ASSIGNMENT:** Each of the parties, with cognizance of California Commercial Code 2210(4), agrees that it will neither assign its rights nor delegate its duties under this agreement without the express written consent of the non-assigning party.
9. **ORAL MODIFICATION, WAIVER:** This Agreement may not be modified, amended, or rescinded except by a writing signed by all parties to this Agreement or their duly authorized agents. No waiver of any claim or right arising under this agreement will be effective unless the waiver is in writing and signed by the waiving party.
10. **ADDITIONAL TERMS:** Any terms or conditions in Seller's acceptance or other documents that are in addition to or not identical with the terms of this Agreement will not become part of the contract between SMUD and Seller.
11. **INDEMNITY:** Seller shall indemnify, defend (with counsel reasonably acceptable to SMUD), and hold harmless SMUD, its directors, officers, agents, and employees against all claims, loss, damage, expense, and liability asserted or incurred by other parties, including, but not limited to, SMUD's employees and Seller's employees, arising out of or in any way connected with the performance of this Agreement and excepting only such loss, damage, or liability as may be caused by the intentional acts or the sole negligence of SMUD.
12. **INVOICES:** Make separate invoice for each order and shipment.
 - * Include Purchase Order, Release and Change Order Numbers (if applicable) on all invoices, Bills of Lading, Packages, Acknowledgements and Correspondence.
 - * Show any Sales or Use Tax as separate items, giving permit number authorizing collection of taxes.
 - * If subject to 1099 reporting, include tax payer identification number on the invoice for any service related charges.
 - * **All invoice will come thorough the Ariba Network:**
 - ~ Attach any supporting documents.
 - ~ SMUD's contract or purchase order number must be clearly displayed on the electronic invoice.
 - * **CONTAINER CHARGES:** Charges for reels, drums, and other containers must be shown separately on invoice.
 - * **PACKING OR DRAYAGE EXPENSE:** Packing or drayage expense must be authorized in advance.
 - * **FREIGHT CHARGES:** If transportation and/or freight charges from Point of Shipment to Destination are prepaid and for the account of SMUD, they must be shown separately on the invoice and must be substantiated by a copy of the freight bill.
13. **INVOICE PROCESSING:** Seller may submit invoices to SMUD immediately upon shipment of materials. However, in no event will payment be made until proper receipt and acceptance of the material and freight documentation by SMUD.
14. **DISCOUNTS:** Any discounts offered will be taken at the time of payment, whether indicated on the invoice or not. Cash discount periods will be computed from the date of delivery and acceptance of the goods ordered, or from the date of receipt of correct and proper invoices, prepared in accordance with the terms of the Order, whichever date is later.

15. TAXES:

- * FEDERAL MANUFACTURER'S EXCISE TAX: SMUD is exempt from any Federal Manufacturer's Excise Tax. Exemption Certification furnished upon request.
- * SALES AND USE TAX: SMUD is subject to Sales and Use Tax.

16. FORCE MAJEURE: Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligations is prevented or delayed by any cause, existing or future, which is beyond reasonable control of the affected party.

17. TERMINATION: SMUD may terminate this Agreement with respect to any outstanding orders for goods or materials, in whole or in part upon written notice of such termination but only to the extent such goods or materials have not been accepted by SMUD (and for which acceptance has not been revoked). In the event of such termination, SMUD shall pay Seller all reasonable costs incurred as a result of such termination; provided however, Seller agrees to waive any claim for damage, including loss of anticipated profit, resulting from Termination of this Agreement or any part hereof.

18. EQUAL OPPORTUNITY: Seller shall not discriminate against any employee or applicant for employment contrary to the provisions of applicable state and /or federal antidiscrimination laws. Seller shall ensure that this requirement is applied to applicants and employees in actions including, but not limited to recruiting, hiring, working conditions, benefits, training programs, promotions, layoffs or terminations, use of SMUD or Seller facilities, and all other terms and conditions of employment.

19. ENTIRE AGREEMENT: The parties agree that the terms set forth in this writing are intended to be the final expression of their agreement on the terms included in the agreement.

20. ATTORNEYS' FEES: If any legal action or any mediation, arbitration or other proceeding is brought for the enforcement of this Agreement or because of any dispute, or alleged breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs, including, without limitation, expert witness fees and costs, incurred in that action or proceeding, in addition to any other relief to which the prevailing party or parties may be entitled.