

# DELTA DIABLO SANITATION DISTRICT PURCHASE ORDER TERMS AND CONDITIONS

**1. GENERAL:** The materials, equipment, supplies or services covered by this order shall be furnished by Seller/Contractor (Supplier) subject to all the terms and conditions set forth in this order including the following, which Supplier, 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. Supplier's written acceptance or shipment of all or any portion of the materials or supplies, or the Supplier's 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 it specifies the materials, supplies, or services ordered, the price therefore, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this order.

**2. DELIVERY:** Supplier shall deliver the items and/or services stated herein free from any and all claims, debts, or demands whatsoever. Deliveries shall be made as set forth in this order and any additional specifications incorporated. Delivery is defined as complete delivery in good order, at place designated in the Specifications/Purchase Order.

**3. PACKING:** No charges for transportation, containers, drayage, packing, etc. will be allowed unless so specified in this order.

**4. FREIGHT CHARGES:** All shipments are F.O.B. - Destination, Supplier pays charges, unless specified otherwise in the body of this order. If an order is agreed upon as F.O.B. - Origin, freight is to be prepaid and added to the invoice. In that case a copy of the paid express or freight bill must be attached to the invoice.

**5. INSPECTION AND ACCEPTANCE:** Inspection and acceptance shall be at destination, unless otherwise provided. The services, materials and supplies furnished shall be exactly as specified in this order free from all defects in Supplier's performance, design, workmanship and materials. If, prior to final acceptance, any services and any materials and supplies furnished therewith are found to be incomplete, or not as specified, the District may reject them, require Supplier 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 Supplier is unable or refuses to correct such items within a time deemed reasonable by the District, the District may terminate the order in whole or in part. Supplier shall bear all risks as to rejected services and, in addition to any costs for which Supplier may become liable to the District under other provisions of this order, shall reimburse the District for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of this order for unaccepted services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

**6. CHANGE ORDERS:** The District may at any time make written changes within the general scope of the order. If any such changes cause an increase or decrease in the cost of, or in the time required for the performance of the order, an equitable adjustment shall be made in the order price, delivery schedule, or both. Any claim by Supplier for adjustment in this case must be approved by the District's authorized representative(s) in writing (formal change order, amendment, or revision) before Supplier proceeds with such change.

**7. INVOICES:** Invoices shall contain the following information: Supplier's Federal Tax I.D. number, purchase order number, invoice number and date, item number, description of supplies/services, quantities and units of measure, unit prices and extended totals. Sales tax must be shown on the invoice as a separate item.

**8. EXCISE TAX:** If federal excise tax is applicable to the transaction, it must be clearly stated so and excluded from the price of the article. Delta Diablo Sanitation District, as a government agency, is exempt from the payment of said tax and will issue an exemption certificate.

**9. TAXES:** Seller shall pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in the performance of work under this order, and all applicable sales, use, excise, transportation, privilege, occupational and other taxes applicable to materials and supplies furnished or work performed hereunder and shall hold the District harmless from, and indemnify District for any and all liability for any such payment or failure to pay contributions, premiums, and taxes.

**10. PAYMENTS:** Payment terms are Net 30 unless otherwise agreed to by both parties. All payments and cash discounts shall be computed from the date of delivery or completion and acceptance of the material, or from the date of receipt of invoice, whichever is latest. Each payment obligation of the District is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by the Supplier, the product or service directly or

indirectly involved in the performance of that function may be terminated by the District at the end of the period for which funds are available.

**11. INDEMNITY:** Supplier agrees to protect, release, defend, indemnify and hold harmless, District, its officers, elected and appointed officials, employees, agents and volunteers from and against any and all liability, actions, claims, damages, costs or expenses including attorney's fees and costs and expenses of suit, which may be asserted by any person, including Supplier, from any cause whatsoever, directly or indirectly, arising out of or in connection with the activities of Supplier, its agents, employees and subcontractors, provided for herein whether or not there is concurrent passive negligence on the part of the District. District shall be reimbursed for all costs and attorneys' fees incurred by the District in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of the indemnification to be provided by Supplier. This indemnification shall survive termination of this agreement.

**12. PATENT RIGHTS:** Any equipment or service to be furnished hereunder shall not, either in construction, manufacture, use, sale or other particular, infringe any letters patent, copyright or registered trademark heretofore granted, and the Supplier shall defend and pay the entire cost of defending any claim or suit whenever or wherever made or brought against the District based upon an infringement or alleged infringement of such letters patent, copyright or registered trademark and shall indemnify, defend and save harmless the District from and against any and all liability, damage, loss or injury adjudged or sustained in any such claim or suit.

**13. DEFAULT BY SUPPLIER:** In case of default by Supplier, the District reserves the right to procure the goods or services from other sources and to hold the Supplier responsible for any excess costs occasioned to the District thereby. Supplier must notify the District immediately upon knowing that non-performance or delay will apply to this order. When delay is ascertained, Supplier is to submit in writing a Recovery Plan for this order. If the Recovery Plan is not acceptable to the District or not received within 10 calendar days of the necessary notification, then the District may cancel this order in its entirety at no cost to the District, owing only for goods and services completed to that point.

**14. WARRANTY:** In addition to all other express or implied warranties, Supplier warrants that the items furnished under this order shall be free from any defects in material or workmanship and shall perform in accordance with all written proposals, descriptions, specifications and samples furnished by the District or furnished by Supplier and approved by District. These warranties and all other warranties express or implied, shall survive delivery, inspection, acceptance and payment. In addition to any other right the District may have, if items are found not to be as warranted within one (1) year after acceptance, the District may return such items to Supplier, at Supplier's expense, for correction, replacement, or credit as the District may direct. Any items corrected or furnished in replacement shall, from the date of delivery of such corrected or replacement items, be subject to the above warranty provisions of this Article for the same period and to the same extent as items initially furnished pursuant to this order.

**15. TERMINATION:** The District may, by giving ten (10) calendar days written notice to the Supplier, terminate this order prior to the designated completion date FOR DUE CAUSE. Due cause for termination shall be, but not limited to, the best interests of the District, failure of the product to meet specifications, and/or for reasons of unsatisfactory service. The District may, upon giving thirty (30) calendar days written notice to Supplier, terminate the order with or without cause.

**16. COMPLIANCE WITH LAWS:** It is understood that all materials and/or services provided by Supplier shall conform to the applicable requirements of District Ordinances, and all applicable State and Federal Laws. Supplier will comply with all applicable laws, rules & regulations including, but not limited to, the requirements of Labor Code Section 3800 regarding Workers' Compensation insurance. Supplier will procure & maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with products, materials and services supplied to the District.

**17. GOVERNING LAW:** All questions of validity, interpretation or performance of any of the terms or of any rights or obligations of the parties to this agreement shall be governed by California law; and any action brought by either party to enforce any of the terms of the agreement shall be filed with the Superior Court of Contra Costa County, California.

**18. ATTORNEYS' FEES AND COSTS:** In any action by a party to enforce its rights hereunder, the nonprevailing party shall pay the prevailing party's legal costs and expenses (including reasonable attorneys' fees and reasonable costs of arbitration).

**19. INTEGRATION CLAUSE:** This purchase order is limited to the terms and conditions contained herein. Any additional or different terms in the Supplier's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given.