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 either party unless expressly contained in this order or in 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 in 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 within a reasonable time, and then at the option of the District to reject the entire order at the price in which the District is entitled to accept 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 work specified in the order, to the extent not otherwise provided for, the price, delivery schedule, or both, shall be subject to the following: Supplier shall pay all costs, 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. All other terms and conditions of this order shall remain in full force and effect.

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 item, quantities, 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: The District is authorized to deduct all city, county, state, federal and other taxes and premiums payable under federal, state and local laws measured upon the payroll of workers, other charges and expenses of the District, in connection with 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.

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 available and allocated 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. Supplier shall indemnify the District against all costs and expenses including reasonable attorneys’ fees and costs of suit 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 at the option of the District 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 at its option and the excess 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 expressly 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, return or credit as the District may direct. Any items corrected or furnished in replacement shall, from the date of delivery of such corrected items for replacement, 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 this order.

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 covering suppliers’ and subcontractors’ employees and volunteers from and against any and all liability 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 brought and be heard in the courts of the State of California.

18. ATTORNEYS’ FEES AND COSTS: In any action by a party to enforce its rights hereunder, the prevailing 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.