

HI-Q Environmental Products Company
Commercial Terms and Conditions for Supplies and Services Orders

1. DEFINITIONS: As used throughout these Terms and Conditions, the following terms shall have the meanings set forth below:

- 1.1 "Order" means the purchase order or subcontract issued by Buyer to Seller to which these terms and conditions are incorporated.
- 1.2 "Buyer" means the person, firm, or corporation purchasing the product (s), work or services as defined in the Order.
- 1.3 "Seller" means HI-Q Environmental Products Company, Inc. (HI-Q).

2. WARRANTY:

- 2.1 HI-Q warrants the products to be supplied hereunder to be free from defects in material and workmanship under normal use and service for a period of one year after delivery to the Buyer. In the event of a defect Seller's obligation shall be limited to supplying replacement parts free of charge EXW San Diego, California, or making repairs on defective parts, whichever in its discretion it deems the more expedient. This obligation shall be conditioned upon the Buyer's giving Seller written notice of a defect within ten (10) days after the discovery thereof. If defective parts are returned to Seller by the Buyer, transportation charges shall be prepaid by the Buyer. In any event, Seller shall have the sole right to decide whether in fact a defect exists.
- 2.2 HI-Q further warrants that all services called for herein shall comply with the requirements of the Order and shall conform to the highest commercial standards applicable to them for a period of ninety (90) days after acceptance of the services by the Buyer. If a nonconformity is found during this time, Buyer shall notify Seller in writing and Seller shall perform the nonconforming portion of the services at no cost to the Buyer.

3. BUYER-FURNISHED PROPERTY AND/OR MATERIAL: Buyer shall specifically identify in the Order any property and/or material to be furnished to Seller for use in performance of the Order, including the time period it will be furnished. Seller will protect such property and/or materials and will be responsible for any damage while in its possession.

4. CHANGES: Seller shall provide a price and delivery proposal for any changes to the Order desired by the Buyer. Seller shall start work when a Change Order is negotiated and issued by the Buyer.

5. WRITINGS REQUIRED:

- 5.1 No notice, order, direction, determination, requirement, consent, approval, or ratification under the Order shall be of any effect unless in writing and signed by an authorized representative of each affected party.
- 5.2 No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of the Order.

6. INVOICING AND PAYMENT TERMS: Seller will submit their invoice for payment processing via email to the accounts payable email address provided by buyer. Payment terms are determined **BEFORE** an order is accepted by Seller. Payment terms are strictly enforced. A late payment penalty of 1.5% per (30) thirty days late will be added to accounts when payments are past due. Any payments received will be applied to the late charges first and then to the original invoice. Buyers who are continually late with payments will be required to prepay future orders.

7. STOP WORK ORDER: The Buyer may, at any time, by written order to Seller, require Seller to stop all or part of the work called for by the Order for a period of ninety (90) days after such written order is delivered to Seller. Within ninety (90) days after a "Stop Work Order" is delivered to Seller, or within any

extension of the period to which the parties have agreed, Buyer shall either: (1) cancel the "Stop Work Order" and direct Seller to resume work, in which event Seller shall receive an equitable adjustment, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or (2) terminate the work and the Order or part thereof in accordance with Paragraph 13, Termination for Convenience.

8. FORCE MAJEURE: Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, due to: (1) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, epidemics, or unusually severe weather affecting either party; (2) causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.

9. PROPRIETARY INFORMATION: Neither the Buyer nor the Seller ("Party"; or "the Parties") shall, without prior written consent, during the term of the Order, and for a period of five (5) years thereafter, divulge to anyone other than the Parties (or such other persons as the Parties designate in writing), or, except in the performance of the Order, make use of information or knowledge relating to details of the Parties' business or that of their subsidiaries, suppliers, or customers, of any other confidential or proprietary information of the Parties or their subsidiaries, suppliers, or customers which the Parties shall have obtained because of the Order. Each Party shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which each Party protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by either Party under the Order are reserved to the Parties and their use is restricted to the work to be performed hereunder. The receiving Party agrees to retain in confidence and return to the disclosing Party on completion of the Order all designs, drawings, specifications, and technical information of every kind belonging to the disclosing Party and furnished to the receiving Party in connection with the Order. Notwithstanding the foregoing, the receiving Party shall have no obligation with respect to any confidential or proprietary information which (1) was written record in the receiving Party's files prior to its first receipt from the disclosing Party (2) is at the date hereof, or at any time hereafter becomes a matter of public knowledge or literature by means other than the act, omission, or fault of the receiving Party (3) is at any time lawfully received by the receiving Party from a third person under circumstances permitting its disclosure to others by the receiving Party.

10. LIMITATION OF LIABILITY; WAIVER OF CONSEQUENTIAL DAMAGES

10.1 THE SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER CLAUSE 2) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE IN THE PURCHASE ORDER. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING ANY CONFLICTING OR INCONSISTENT PROVISION CONTAINED IN ANY ORDER OR OTHER DOCUMENT FOR PRODUCTS OR SERVICES, AND TO THE FULL EXTENT PROVIDED BY LAW AND REGARDLESS OF FAULT. Notwithstanding anything to the contrary herein, Seller's total liability in the aggregate under the Order, including but not limited to Clause 2, shall never exceed the Order price actually received by Seller for the Products or Services.

10.2 In no event shall Seller or its subcontractors or sub-suppliers be liable to the Buyer for any special, indirect, incidental, or consequential damages including, but not limited to, actual or anticipated loss of profit or revenue, loss or damage to property or equipment, business interruption, loss of equipment, cost of purchased power, substitute equipment, and other costs incurred, reputation and data, facilities or services, or claims of customers of Buyer for such damages.

10.3 If Buyer is furnishing Seller's Products or Services to a third party by contract or otherwise, Buyer must obtain from such third party a provision affording Seller and its subcontractors or sub-suppliers the protections set forth in this Clause 9.

11. ASSIGNMENT: Seller will not assign or transfer the Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of the Buyer. The Order may not be assigned by Buyer without Seller's prior written consent.

12. ON-SITE INSURANCE: In the event Seller performs work at Buyer's installation site, Seller will procure and carry the following insurance:

- 12.1 Automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage.
- 12.2 A broad form comprehensive general liability insurance policy which includes property damage, product cannot combine with coverage with contractual liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form.
- 12.3 Such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance which may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer. For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverages. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order.

13. TERMINATION FOR CONVENIENCE:

- 13.1 Should Buyer terminate the Purchase Agreement for Buyer's convenience, it shall provide written notice to the Seller. Upon receipt of written notice of Termination for Convenience, Seller shall:
 - (i) cease operations as directed by Buyer in the notice;
 - (ii) take actions necessary, or that Buyer may direct, for the protection and preservation of the Work; and
 - (iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts or purchase orders.
- 13.2 In the event of Termination for Convenience, Supplier shall be entitled to receive payment for the aggregate of: (i) the amount that is due and owing for Work completed by Supplier prior to the date of notice of termination, including profit on such amount; and (ii) the direct and indirect costs incurred by Supplier, plus profit, to bring the Work to an orderly conclusion, including the costs to demobilize and cancel Equipment or material orders placed, and including but not limited to cancellation charges paid by Supplier to Subcontractors and other third parties.

14. TERMINATION FOR DEFAULT:

- 14.1 Buyer may terminate all or any part of the Order if Seller breaches any of the terms hereof, other than Force Majeure events as provided in Paragraph 7, or fails to make progress as to endanger performance of the Order in accordance with its terms. Buyer shall notify Seller in writing of such breach or failure and allow 10 days from the date of the notice to cure the breach or failure.
- 14.2 If, after notice of termination of the Order under the provisions of this clause, it is determined

for any reason that Seller was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 13, Termination for Convenience.

15. EXPORT CONTROL: The parties acknowledge that the Products and/or Services and their related technology are subject to U.S. export controls, which may include the U.S. Export Administration Regulations (“EAR”) and other regulations as deemed applicable (the “U.S. Export Regulations”).

- 15.1 The parties agree to comply with all applicable U.S. Export Regulations and any specific limitations and provisos imposed by U.S. export agencies on licenses, agreements or other authorizations particular to any transaction between the parties. In addition, the parties agree to comply with the U.S. Export Regulations’ prohibitions against persons denied export privileges, prohibited end-uses and end-users, countries subject to a comprehensive embargo (e.g., Cuba, Iran, North Korea and Syria), prohibited activities of U.S. persons in support of proliferation of weapons of mass destruction, prohibited unloading of shipments, compliance with orders, terms and conditions, and activities when a violation has occurred or is about to occur.
- 15.2 The parties acknowledge that any product, non public domain technical data or services exported by each to the other remains subject to the U.S. Export Regulations after such export. Each party agrees that it will not authorize further disclosure, export, re-export or retransfer of any such product, non public domain technical data or services to a third country, to any national (regardless of whether such national is an employee, consultant or independent contractor of either of the parties, as the case may be) of a third country, or to any entity, including any PRC entity, not specifically authorized by applicable U.S. export agencies pursuant to an export license, agreement or other export control document.
- 15.3 In the event that any required approvals, clearances, and/or export or import authorizations cannot be obtained or maintained (or there is an extraordinary or significant delay in obtaining them), such event will be deemed an excusable delay and the responsible party will be excused from its obligation to provide those goods or services set forth in any Order for which such approvals, clearances and/or export or import authorizations are required.

16. ADVERTISING: Neither Party shall, without first obtaining the written consent of the other Party, in any manner advertise or publish the fact that either Party has furnished or contracted to furnish to the other Party the articles herein mentioned.

17. ASSIGNMENT OF PERSONNEL: If the Order contains a key personnel clause and the designated employee of Seller becomes temporarily unavailable to perform services under the Order, a replacement for that individual with comparable abilities and qualifications shall be promptly assigned. Within five (5) days after such an assignment, Seller shall furnish Buyer with a resume for the replacement personnel.

18. DISPUTES: The parties shall attempt to resolve any dispute with good faith negotiation between their functional representatives. If resolution is not achieved, negotiation of the dispute will be elevated to the next higher level of management of the parties.

19. APPLICABLE LAW: The Order and any dispute arising hereunder shall be governed by the substantive and procedural laws of the State of California, except, however, that California's Choice of Law provisions shall not apply.

20. ATTORNEY FEES: If it is necessary for either party to obtain legal representation to enforce any part of the Order, the non-prevailing party agrees to bear the court costs and the attorney fees of the prevailing party.

21. PRECEDENCE: Conflicting provisions hereof, if any, shall prevail in the following descending order

of precedence: (1) typed provisions on the face of the Order, (2) Buyer's Order attachments, including these Terms and Conditions, (3) other specifications or documents incorporated by reference, (4) Seller's proposal or other documents only when specifically referenced on the Order. In the event of any conflicting provisions, the Seller shall promptly notify Buyer thereof.

22. ENTIRE AGREEMENT: These terms and those on the face of the Order to which this form is attached and any specifications or drawings incorporated constitute the entire agreement of the parties and supersede all previous oral or written representations, agreements, and commitments.