

PURCHASE ORDER TERMS & CONDITIONS

1. **Authorization to do Business in Virginia:** Each contractor that is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the term of this Agreement.
2. **Point of Destination** - All materials shipped to the Prince William County Service Authority d/b/a Prince William Water must be shipped FOB destination unless otherwise specified with transportation charges prepaid and added to invoice. Prince William Water will not accept collect shipments.
3. **Goods and/or Services:** The goods and/or services to be furnished hereunder are described on the face of the Purchase Order and incorporated by reference herein, together with the required date(s) for delivery and/or performance and the purchase price and/or fees payable with respect to such goods and/or services. The prices and/or fees set forth therein are firm and fixed unless otherwise agreed in writing by Prince William Water.
4. **Exact Quantities:** The Contractor shall provide the exact quantities specified therein. Prince William Water will not pay for overages. If delivered, Prince William Water will at its sole option and discretion, either return the additional quantities to the Contractor at the Contractor's risk and expense or accept the additional quantities at no additional cost to Prince William Water.
5. **Packing and Risk of Loss:** The Contractor shall bear all risk of loss with respect to, and shall be solely responsible for, the goods until delivery at the facility or other location designated in writing by Prince William Water. An itemized packing list must be furnished by the Contractor with each shipment indicating the Purchase Order number, name of the goods with the applicable stock number, quantity ordered, quantity shipped, quantity back-ordered (if applicable), and the name of the Contractor or other supplier. All "drop shipments" will be subject to the same requirements. No fees for packaging, packing, crating, freight or other costs will be paid by Prince William Water unless expressly stated in the Purchase Order. The Contractor shall be solely liable for damaged goods resulting from improper packing or marking.
6. **General Warranty:** The Contractor hereby represents and warrants to Prince William Water that each good and/or service supplied hereunder shall: (A) conform strictly to the requirements of the Purchase Order and to the specifications furnished by Prince William Water; (B) conform to the terms of any and all written affirmations of fact, promises, or descriptions made or furnished to Prince William Water by Contractor, if and to the extent that such affirmations, promises, or descriptions are not in conflict with, or are otherwise not less stringent than, Prince William Water's specifications; (C) meet or exceed standard industry practices and procedures; (D) be manufactured, produced, furnished and/or performed in accordance with Applicable Law (as defined below); (E) be new and of good workmanship and materials; (F) be free from defects in design, workmanship and materials; (G) be merchantable and fit for the particular purpose or purposes intended by Prince William Water; and (H) be delivered and conveyed to Prince William Water free and clear of any liens, claims or encumbrances of any nature whatsoever. The Contractor, at its own cost and expense, has obtained, or will obtain, prior to the delivery of any goods or performance of any services, hereunder, all approvals required by Applicable Law in connection with the transactions contemplated hereby, and the Contractor will furnish Prince William Water, upon request, with copies or other satisfactory evidence of all such approvals. As employed herein, the term "Applicable Law" shall mean all federal, state, and local laws, rules, regulations, orders, codes, ordinances, and regulations applicable to the transactions contemplated by the Purchase Order and to the goods and/or services supplied hereunder.
7. **Warranty of Non-Infringement:** The Contractor hereby represents and warrants that Prince William Water's purchase, possession, and/or intended use of the goods and/or services furnished under this

Purchase Order will not infringe upon, or contribute to the infringement of, any United States or foreign patent, copyright, trademark, trade secret, or other intellectual property rights of any nature. If the use of all or any portion of such goods or services is enjoined, then the Contractor covenants and agrees that it shall, at its sole expense and subject to Prince William Water's sole discretion, procure the right to continued use by Prince William Water of such goods and/or services, modify such goods and/or services to render them non-infringing, replace such goods and/or services with non-infringing goods or services, or remove that portion of the goods and/or services completely and refund all amounts paid by Prince William Water therefor, plus all related transportation, installation and dismantling costs related to such goods and/or services.

8. **Non-Conforming Goods and Services:** If any goods or services furnished hereunder do not conform in all material respects to the representations and warranties set forth in the Purchase Order, then the Contractor shall promptly repair, replace, or re-perform all such goods and services upon written notice by Prince William Water which is delivered to the Contractor within twelve (12) months after the date of delivery, in the case of non-conforming goods, or the date of performance, in the case of non-conforming services, at no additional cost to Prince William Water. At Prince William Water's option, non-conforming goods may be repaired or replaced by the Contractor at Prince William Water's facility or wherever the goods are located, or may be returned to the Contractor's facility or to an authorized repair center, all at the Contractor's expense. In the event of the Contractor's failure to repair, replace, or re-perform any non-conforming goods or services or diligently initiate the correction, replacement or re-performance thereof within five (5) business days after the date of Prince William Water's notice to the Contractor, Prince William Water shall have the right to correct or replace such goods and services and to charge the Contractor all costs thereof. The cost of correction shall be deducted from any amounts then or thereafter due the Contractor hereunder and, if such amounts are insufficient to cover the cost of correction, the Contractor shall pay such deficiency to Prince William Water promptly following written demand therefor. Notwithstanding the foregoing, if any non-conformity with a warranty materially affects the operation or use of any of the goods or presents an imminent threat to the safety or health of any person or entity and Prince William Water knows of such non-conformity, Prince William Water may, at its option, correct or replace such goods or services without giving the Contractor notice of such non-conformity, and the Contractor shall be responsible and liable to Prince William Water for all costs incurred by Prince William Water.
9. **Packing Slips or Delivery Tickets** - All shipments shall be accompanied by packing slips or delivery tickets and shall contain the following information for each item delivered.
 - a. Purchase Order Number
 - b. Name of the Articles and Stock Number (the Suppliers)
 - c. Quantity ordered
 - d. Quantity shipped
 - e. Quantity Back Ordered
 - f. Name of the Contractor
10. **Inspection and Acceptance** – Equipment, materials and/or supplies delivered on this order shall be subject to inspection upon receipt and if rejected shall remain the property of the vendor.
11. **Payment** – Payment shall be made after satisfactory delivery and acceptance of supplies and/or services and upon receipt of the properly completed invoice.

*** All invoices must reference the purchase order number. ***
12. **Waiver:** Any waiver by Prince William Water of any breach by the Contractor of any term or condition of the Purchase Order shall not constitute a waiver of any subsequent breach of the same or any other term or condition hereof. The rights and remedies of Prince William Water set forth herein are not exclusive, but are in addition to all other rights and remedies of Prince William Water under applicable law.
13. **Survival of Representations and Warranties:** Each of the representations, warranties, and covenants set forth in the Purchase Order shall survive the execution, delivery, performance and termination hereunder.

- 14. Reservation of Rights:** Any action by Prince William Water with respect to inspection of or payment for the goods and/or services covered by the Purchase Order shall not prejudice Prince William Water's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Prince William Water of the goods or services, or affect in any way the Contractor's obligations under the Purchase Order notwithstanding Prince William Water's opportunity to inspect the goods and/or services, Prince William Water's knowledge of the nonconformity or defect, the importance or critical nature of, or the ease of discovery of the nonconformity or defect, nor Prince William Water's earlier failure to reject the goods or services. No action or failure to act by Prince William Water or its officers, agents or representatives shall be construed at any time to bar or otherwise preclude Prince William Water from: (a) showing the true and correct classification, amount, quality, or character of the goods and/or services delivered or performed hereunder, as the case may be, or that any determination, decision, acceptance, or payment is incorrect or was improperly made in any respect, or that the goods and/or services (or any part thereof) do not in fact conform to the requirements of the Purchase Order; and/or (b) demanding and recovering from the Contractor any overpayment made to him or such damages as Prince William Water may sustain by reason of the Contractor's failure to comply with the requirements of the Purchase Order.
- 15. Tax Exempt:** Prince William Water is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by this Purchase Order, including without limitation any Federal Excise Tax, Transportation Tax or VA Sales and Use Tax.
- 16. Governing Law; Venue; Waiver of Jury Trial:** The Purchase Order (and the transactions contemplated hereby) shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia, without reference to conflict of laws principles. Any action or proceeding arising out of or related to the Purchase Order shall be brought only in the courts of competent jurisdiction in the Commonwealth of Virginia. The parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves. The parties waive any right to a jury trial in connection with any such litigation.
- 17. Warranties** - The contractor warrants that (1) the supplies to be provided to Prince William Water pursuant to this agreement are fit and sufficient for the purpose intended; (2) supplies are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) that supplies sold to Prince William Water conform to the standards required by this purchase order. Unless otherwise stated, manufacturer standard warranty applies.
- 18. Time of Essence** – Time shall be of the essence to this Purchase order, except where it is herein specifically provided by Prince William Water. In case of default, or failure to deliver the supplies or services ordered by the time specified, Prince William Water after due notice (oral or in writing), may procure them from other sources and hold Vendor responsible for any excess occasioned thereby.
- 19. Termination For Convenience of Prince William Water** – The parties agree that Prince William Water may terminate this purchase order or any work or delivery required hereunder from time to time in whole or in part, whenever the General Manager of Prince William Water or his designee shall determine that such termination is in the best interest of Prince William Water. Termination, in whole or in part shall be affected by delivery of a Notice of Termination signed by the General Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination. An equitable adjustment in the price shall be made for completed services, but no amount shall be allowed for anticipated profit or unperformed services.
- 20. Termination for Default** – Either party may terminate this purchase order, without further obligation, for the default of the other party or its' agents or employees with respect to any agreement or provision contained herein.
- 21. Termination for Non-Appropriation of Funds** – If funds are not appropriated for any succeeding fiscal year subsequent to the one in which this purchase order is entered into, then Prince William Water may terminate this purchase order upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this section, Prince William Water shall be liable only for payments due through the date of termination.

- 22. No Employment of Unauthorized Aliens.** The Contractor hereby covenants and agrees that it does not, and shall not during the performance of the Purchase Order, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).
- 23. No Assignment, Substitutions or Modifications:** The Contractor shall not assign or subcontract any right or obligation under the Purchase Order without Prince William Water's prior written consent. No substitution, change, modification, or deviation from the terms of the Purchase Order shall be made without prior written authorization from Prince William Water.
- 24. Relationship of the Parties; No Third Party Beneficiaries:** The relationship of the Contractor and Prince William Water shall be that of an independent contractor and not that of an agent of Prince William Water. Neither the Contractor, nor any subcontractor, supplier, nor employee of the Contractor, shall be deemed to be an employee or agent of Prince William Water for any purpose whatsoever. No third party is entitled to rely for any purpose on any of the representations, warranties and agreements of Prince William Water and the Contractor set forth herein. Neither Prince William Water nor the Contractor shall be liable to any third party because of any reliance on the representations, warranties and agreements of Prince William Water and the Contractor contained in the Purchase Order.
- 25. Disputes** – Disputes with respect to this purchase order shall be decided in the first instance by Prince William Water's Purchasing Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof a copy thereof to the Contractor. This decision shall be final and binding unless within thirty (30) days from the date of such decision the Contractor mails otherwise furnishes the Purchasing Manager appeal addressed to the General Manager in accordance with section of 115.1-550. Et seq of the Code of Virginia (1950). The decision of the Board of Directors shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith or not be supported by any evidence. Pending a final determination of a properly appealed decision of the Purchasing Manager, the Contractor shall proceed diligently with the performance of the purchase order in accordance with that decision.
- 26. Employment Discrimination for Purchase Orders over \$10,000.00** – During the execution of this purchase order the Contractor agrees to the following:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin except where religion, sex, or national origin is a bona fide occupational reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations places in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase orders over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.
- 27. Drug-Free Workplace:** During the performance of this contract, the contractor agrees to (1) provide a drug-free workplace for the contractor's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, and distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition, (3) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

- 28. Insurance** – The contractor shall maintain insurance acceptable to Prince William Water in full force and in effect throughout the term of the purchase order.
- 29. Indemnification** – The Contractor hereby agrees to indemnify and hold harmless Prince William Water, its' officers, agents and all employees and volunteers, from any and all claims for bodily injuries to the public, including cost of investigation, all expenses of litigation, including reasonable attorneys fees and the cost of appeals arising out of any such claims or suits because of any and all acts of omission or commission or any person by the contractor, including his agents, servants, employees, volunteers or through the mere existence of the project under contract. It is understood and agreed that the Contractor is at all times herein acting as an independent contractor.
- 30. Effective Date:** The Purchase Order shall be deemed to have been accepted by the Contractor and shall become a binding and enforceable contract in accordance with its terms as of the date which is: (a) the date of Prince William Water's receipt of written acknowledgement of the Contractor's acceptance, which may include issuance of an invoice in accordance with the Purchase Order; (b) 7 days after the Contractor's receipt of the Purchase Order from Prince William Water, unless the Contractor notifies Prince William Water in writing within such time period of its rejection or proposed modification of any provision hereof; or (c) the date when the Contractor ships the first lot of goods or commences performance of the services ordered hereunder, whichever occurs first.
- 31. Entire Agreement:** The Purchase Order, together with all exhibits and attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written between the parties with respect to the subject matter hereof.