



Purchase Order Terms & Conditions

1. **ACCEPTANCE** - Commencement of performance of this Order shall constitute acceptance hereof by Seller. This order may be unilaterally canceled at no cost to Underground Solutions until the receipt of an unqualified, unconditional acceptance by the Seller. Acceptance of this purchase order shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions hereof. Underground Solutions shall not be bound by any provisions additional to or at variance with the terms hereof that may appear in Seller's quotation, acknowledgment, confirmation, invoice or in any other communication from Seller to Underground Solutions unless such provision is expressly agreed to in a writing signed by an authorized agent of Underground Solutions. Underground Solutions acceptance of or agreement for the goods described on the reverse side of this document (the "Goods") shall constitute acceptance of such material subject to the provisions hereof only, and shall not constitute acceptance of any counterproposal submitted by Seller not otherwise accepted in a writing signed by an authorized agent of Underground Solutions. Upon acceptance, this order shall constitute the entire agreement between Underground Solutions and Seller, supersede all prior negotiations, discussions and dealings and may not be modified or rescinded except by a writing signed by both Seller and Underground Solutions.
2. **ATTORNEY FEES** - If either party commences or is made a party to an action or proceeding to enforce or interpret this order, the prevailing party in such action or proceeding shall be entitled to recover from the other party all attorneys fees, costs and expenses incurred in connection with such action or proceeding or any appeal or enforcement of any judgment obtained in any such action or proceeding.
3. **CANCELLATION** - Underground Solutions may cancel this Order at any time upon written notice and, if Seller is not in breach of its obligations hereunder, shall thereafter pay reasonable and proper cancellation charges which may include a reasonable and customary profit only on Goods and services accepted to date of receipt of the notice of cancellation. In addition, in the event that (i) any materials, work or Goods fail to conform to any applicable warranties, (ii) Seller fails to make any required deliveries, (iii) Seller breaches any terms or conditions of this order, (iv) Seller becomes insolvent, (v) an involuntary petition in bankruptcy is filed by Seller, (vi) an involuntary petition to have Seller declared bankrupt is filed, (vii) a receiver or trustee for Seller is appointed, or (viii) an assignment for the benefit of creditors is executed by Seller, Underground Solutions shall have the right to immediately cancel this purchase order without any liability whatsoever to Seller or any other person or entity. In the event of such cancellation, Underground Solutions, without prejudice to any other rights available to Underground Solutions for breach of contract, shall have the right to: (a) refuse to accept delivery of the Goods or performance of work, (b) return to Seller any materials already accepted and recover from Seller all payments made therefor and for freight, storage, handling and other expenses incurred by Underground Solutions and be relieved from liability for any future payments to Seller, (c) recover any advance payments to Seller for undelivered or returned Goods or work to be performed, and (d) purchase Goods elsewhere and require Seller to immediately reimburse Underground Solutions for any resulting losses.
4. **COMPLIANCE WITH LAWS** - Seller warrants that Goods manufactured or Services performed pursuant to this Order are performed or manufactured and shipped in compliance with all applicable federal, state, local laws, rules and regulations, including but not limited to the Toxic Substance Control Act, the Occupational Safety and Health Act, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, Fair Labor Standards Act of 1938 and the Hazardous Goods and Services Transportation Act.
5. **CONFIDENTIAL** - Seller shall neither disclose, advertise, nor publish the fact that Seller has contracted to furnish Underground Solutions the items described herein, nor disclose any details connected with the purchase order to a third party.
6. **COUNTERPARTS** - This order may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.
7. **DELAYS IN DELIVERY** - Time is of the essence, but Seller will not be liable for damages for delays in delivery due to causes beyond its reasonable control and without its fault or negligence. If Seller does not comply with Underground Solutions delivery schedule, Underground Solutions in addition to remedies provided by law, at its option, may either approve a revised delivery schedule or may terminate this order and hold Seller accountable for all losses and damages arising therefrom. Underground Solutions has the right, at any time, to change the place and/or time of delivery. Any claim by Seller for adjustment because of a change in place and/or time of delivery will be deemed waived unless asserted in writing within 10 days after receipt by Seller of the request for change.
8. **DELIVERY SCHEDULE** - Seller understands and agrees that if Seller makes any commitments or production arrangements in excess of the amounts set forth herein or in advance of the time necessary to meet Underground Solutions delivery schedule, it does so at its own risk, and Underground Solutions shall have no liability to Seller or any other party relating to same. Goods shipped in advance of the time required in the Order may, at Underground Solutions option, be returned to Seller at Seller's expense. Underground Solutions reserves the right to delay shipment of the Goods for up to 30 days at no additional costs.
9. **DRAWINGS** - Underground Solutions review and approval of drawings submitted by Seller will be for and cover only general conformity to the specifications. Such approval will not constitute approval of any dimensions, quantities or details of the Goods shown by such drawings, and shall not relieve the Seller of its responsibility for meeting all specifications of this Order. Underground Solutions retains rights of final approval for all finished products.
10. **FAIR LABOR STANDARDS ACT** - In accepting this order, Seller warrants that the goods or services to be furnished hereunder were or will be produced in compliance with the requirements (on date of shipment or performing) of the Fair Labor Standards Act of 1938 as amended and unless otherwise agreed in writing Seller shall insert a certificate on all invoices submitted in connection with this purchase order stating that the goods or services covered by the invoice were produced in compliance with the requirements of such Act, including without limitation, Sections 12(a) and (15a) thereof.
11. **GOVERNING LAW** - The contract resulting from acceptance of this order by Seller shall be governed by and construed under the laws of the State of California, and shall not be governed by or construed under the U.N. Convention On Contracts For International Sale Of Goods ("CIGS"), the parties agreeing that CIGS shall not apply to this Purchase Order or the enforcement or interpretation hereof.
12. **INDEMNIFICATION** - Seller shall indemnify Underground Solutions and its customers and hold them harmless from and against any and all claims, actions, proceedings, costs, expenses, losses and liability, including all attorneys' fees and costs, arising out of or in connection with or relating to any Goods or services performed by Seller pursuant to this order, including without limitation all product liability claims and any claims involving personal injury, death or property damage. The obligations set forth in this Section shall survive the termination or fulfillment of this purchase order.
13. **INFRINGEMENT OF PATENTS, TRADEMARKS OR COPYRIGHTS** - The following terms apply to any infringement, or claim of infringement, on any patent, trademark or copyright based on the manufacture, normal use or sale of any material or equipment furnished to Underground Solutions hereunder or in contemplation hereof. Seller shall indemnify Underground Solutions and its customers for any loss, damage, expense or liability that may result by reason of such infringement or claim (including without limitation attorney's fees and expenses), except where such infringement or claim arises solely from Seller's adherence to Underground Solutions written instructions or directions which relate to material or equipment other than (1) commercial material or equipment, or (2) items of Seller's origin, design or selection, and Underground Solutions shall indemnify Seller in such excepted cases. Each party shall defend or settle, at its own expense, any action or suit against the other for which it is responsible hereunder. Each party shall notify the other promptly of any claim of infringement for which the other is or may be responsible hereunder, and shall cooperate with the other in every reasonable way to facilitate the defense of any such claim.
14. **INSIGNIA** - Goods rejected or not purchased by Underground Solutions which utilizes or carries any Underground Solutions names, trade names, trademarks, insignia, symbols, decorative designs or evidences of Underground Solutions inspection (all hereinafter designated ("Insignia") shall have all such insignia

removed prior to any sale, use or disposition thereof. Seller agrees to indemnify and hold Underground Solutions harmless from any claim, loss or damage arising out of Seller's failure so to do. This clause shall in no way modify the provisions hereof relating to the use of information.

15. **INSPECTION** - Underground Solutions and its Client reserves the right to expedite, inspect or witness the test of the Goods at any time and place including the Seller's and its sub-contractor's facilities with prior notice.
16. **INSURANCE** - Seller shall maintain, and cause its subcontractors to maintain, the following minimum insurance coverage during the term of this order with insurance companies acceptable to Underground Solutions and shall submit insurance certificates, as requested by Underground Solutions, to Underground Solutions in writing prior to commencement any work relating to the Goods: Comprehensive General Liability Insurance for bodily injury, property damage and personal injury, including contractual liability insurance, with combined limits of not less than \$5,000,000 per occurrence; and Automobile Liability Insurance for bodily injury and property damage, with combined limits of not less than \$1,000,000 per occurrence. Seller shall further maintain and require its subcontractors to maintain Worker's Compensation insurance in amounts required by applicable law and Employers Liability Insurance with limits of not less than \$1,000,000 per occurrence covering all employees engaged in the performance of work relating to the Goods or services performed hereunder. Seller shall cause all insurance companies providing such insurance to waive all rights of subrogation against Underground Solutions and its customers; all insurance policies shall provide that no expiration, termination or modification of such coverage shall take place without the insurance company giving 30 days' prior written notice thereof to Underground Solutions. Underground Solutions shall be named as an additional insured on all policies described herein, except Worker's Compensation and Employers Liability.
17. **NON-DISCRIMINATION IN EMPLOYMENT** - The Seller in performing the work required by this order, shall not discriminate against any person in the employment process because of race, creed, color, sex, age, religion, national origin or veteran or handicapped status. The employment process includes but is not limited to, employment advertising, job posting, interviews, testing, recruiting, pay, promotion, transfer, demotion, hiring, educational opportunities, lay-off and recall. Seller agrees to make every good faith effort to provide equal opportunity to all individuals.
18. **NONWAIVER** - The failure by Underground Solutions to enforce at any time, or for any period of time, any of the provisions hereof shall not be a waiver of such provisions nor the right of Underground Solutions thereafter to enforce each and every such provision.
19. **PAYMENT TERMS** - The payment terms are net forty-five (45) days after receipt of the Goods including all documents required in the Order, verification that the quality of Goods received meet Underground Solutions specifications and the receipt of a correct invoice. If the Seller fails to ship the Goods in accordance with the times stipulated in the Order, Underground Solutions may delay payment equal to the number of days the Goods were delayed by the Seller as an equitable adjustment. Underground Solutions shall be entitled at all times to set off any amount owing at any time from Seller or any of its affiliates to Underground Solutions or any of its affiliated companies.
20. **PRICES** - All prices are firm, fixed and not subject to escalation. The price includes all applicable federal, state and local taxes or charges (for which Seller shall be solely responsible) except State Sales tax may be invoiced if applicable. All costs and expenses relating to boxing, packing, loading, bracing, cartage or extra insurance are included in the price, and no charges of any kind will be allowed relating to same.
21. **REMEDIES** - Remedies herein reserved to Underground Solutions shall be cumulative, and in addition to any other or further remedies provided in law or equity.
22. **REJECTIONS** - If any of the goods are found by Underground Solutions within a reasonable time after delivery to Underground Solutions destination to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order. Underground Solutions, in addition to any other rights which it may have under warranties or otherwise, shall have the right to reject and return such goods at Seller's expense, which goods shall not be replaced by Seller, without written authorization from an authorized agent of Underground Solutions.
23. **SEVERABILITY** - Nothing contained herein shall be construed so as to require the commission of any acts contrary to law, and wherever there is a conflict between any provisions of this order and any present or future statute, law, ordinance or regulation, the former shall be curtailed and limited only to the extent necessary to make it comply with such statute, law, ordinance or regulation.
24. **SPECIFICATIONS** - Seller expressly warrants that all Goods and services covered by this Order will conform to the specifications, drawings, samples or other description(s) furnished or adopted by Underground Solutions and will be of good quality and workmanship and free from defects. Goods furnished to Underground Solutions patterns, specifications, drawings, or fabricated with its tools shall not be furnished or quoted to any other person or concern.
25. **SUBCONTRACTING & ASSIGNMENT** - Except as to raw material purchases or standard commercial articles or parts, the Seller may not subcontract any portion of the work without written consent of Underground Solutions. Assignment of this order or any interest herein or any payment due or to become due thereunder without the written consent of Underground Solutions shall be void and of no effect and may, at the option of Underground Solutions, render this order void.
26. **TRANSPORTATION** - Unless otherwise specified, all deliveries to Underground Solutions by Seller shall be F.O.B. destination, freight collect. The Seller shall make no provision for transportation insurance when Underground Solutions is in control of the shipment and responsible for the freight charges unless specifically authorized to do so in writing. No insurance charges will be allowed unless authorized in writing by Underground Solutions. Irrespective of F.O.B. point, during the period that the Goods are in possession of Seller all risk of loss or damage to the Goods shall be on Seller.
27. **UNDERGROUND SOLUTIONS'S PROPERTY** - Unless otherwise agreed in writing, all tools, equipment or goods and services of every description furnished to Seller by Underground Solutions or specifically paid for by Underground Solutions and any replacement thereof or modification thereto, or any goods affixed or attached thereto, shall be and remain the sole property of Underground Solutions. Such property (a) shall be clearly marked "Property of Underground Solutions"; (b) shall not be used except in filling Underground Solutions orders; (c) shall be held at Seller's risk; and (d) shall be delivered without costs to Underground Solutions promptly at its written request. Seller shall supply Underground Solutions with an inventory of such property quarterly. Any specifications, drawings, sketches, models, samples, tools, technical information or data, and any other confidential or proprietary information, written, oral or otherwise (all hereinafter designated "information") furnished to Seller thereunder or in contemplation hereof shall remain Underground Solutions property. All copies of such information in written, graphic or other tangible form shall be immediately returned to Underground Solutions without cost upon its request. The information shall be kept confidential by Seller, shall be used only in the filling of Underground Solutions orders, or in performing obligations thereunder and may be disclosed or used for other purposes only upon such terms as may be agreed upon between Underground Solutions and Seller in writing. No information furnished by Seller to Underground Solutions or in contemplation hereof shall be considered by Seller to be confidential or proprietary except as specifically agreed to in writing by an authorized agent of Underground Solutions.
28. **WARRANTY** - Seller warrants to Underground Solutions and its Customers that the Goods and Services furnished will be of good quality, free from defects in material, design and workmanship, will conform to the specifications, drawings, or samples and are suitable for their intended purpose(s) as represented to Underground Solutions. All warranties shall succeed to Underground Solutions, its successors, assigns, and all persons and entities, including affiliates of Underground Solutions, to whom the Goods may be resold or leased.
29. **WORK ON PREMISES** - If Seller's performance under this order involves operations by Seller on the premises of Underground Solutions or one of its Customers, Seller shall comply with all applicable provisions of federal, state and local laws and regulations including rules, safety requirements and regulations established for such plant site. Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such performance. Seller shall indemnify Underground Solutions and its Customers against all loss which may result from any act or omission of Seller, its agents, employees, or subcontractors.