

LCRA Standard Terms and Conditions

1. Acceptance. Acceptance of this purchase order is limited to the terms and conditions on its face and back. Additional terms on Seller's forms are a material alteration of this Purchase Order and rejected. In case of any conflicts between the terms of this Purchase Order and the terms of Seller's forms, the terms of this Purchase Order shall control.

2. Payments. Anything in this agreement to the contrary notwithstanding, all payments to be made by the LCRA hereunder are subject to Ch. 2251 of the Texas Government Code, popularly known as the Prompt Payment Act. Payment in full for invoices shall be due within thirty (30) days from date the invoice is received by LCRA. Invoices paid more than thirty (30) days after the invoice is received are subject to a late charge of 1% per month (12% APR) on the amount of the undisputed past due balance. Invoices shall be mailed to:

Lower Colorado River Authority
ATTN: Accounts Payable
PO Box 679000
Austin, TX 78767

3. Termination for Convenience of LCRA. LCRA reserves the right to terminate this order, or any part of it, for LCRA's sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately terminate all suppliers and subcontractors contracts for performance hereunder. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable, actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. In performing this purchase order, Seller shall not act unreasonably in anticipation of a notice of termination.

4. Termination for Cause. LCRA may also terminate this order, or any part of it, for cause in the event of any default by Seller. Without limiting the generality of the foregoing, Seller's material failure to comply with any of the terms and conditions of this order, late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide LCRA, upon request, with adequate assurances of future performance shall all be defaults allowing LCRA to terminate this order for cause. In the event of termination for cause, LCRA shall not be liable to Seller for any amount (except for products already received and accepted by the LCRA as satisfactory), and Seller shall be liable to LCRA for any and all damages sustained by reason of the default giving rise to the termination. If it should be determined that LCRA has improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

5. Warranty on Goods. Seller expressly warrants that all goods furnished under this agreement shall conform to all specifications and appropriate industry standards, will be new, will be free of security interests or other encumbrances, and will be free from defects in title, material and workmanship. Seller warrants that all such goods will conform to any statements or representations made to LCRA, or appearing on the containers or labels or advertisements for such goods, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which LCRA intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. Seller warrants that goods furnished will conform in all respect to samples. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to LCRA, its successors, and assigns. Seller agrees to replace or correct defects of any goods not conforming to the foregoing warranty promptly, without expense

to LCRA, when notified to such nonconformity by LCRA. If Seller fails to correct defects in or replace nonconforming goods promptly, LCRA, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by LCRA in doing so. Seller recognizes that LCRA's production requirements may require immediate repairs or reworking of defective goods, without notice to the Seller. In such event, Seller shall reimburse LCRA for the costs, delays, or other damages which LCRA has incurred.

6. Warranty on Services. Seller expressly warrants that all services furnished under this agreement shall conform to LCRA's stated performance requirements, appropriate industry standards, and will be performed in a good and workmanlike manner. Seller warrants that all services shall conform to any representations made to LCRA about the services. Seller's warranty shall run to LCRA, its successors, and assigns. Seller agrees to re-perform the services without expense to LCRA or promptly refund the cost of any services not conforming to the foregoing warranty, at LCRA's discretion.

7. Force Majeure. LCRA may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the LCRA and shall deliver them when the cause of the delay has been removed. LCRA shall be responsible only for Seller's direct additional costs in holding the goods or delaying the performance of this agreement at LCRA's request.

Seller shall also be excused if delivery is delayed by the occurrence of unforeseen and unforeseeable events, provided Seller notifies LCRA of such events as soon as they occur, and gives LCRA its best estimate of revised delivery dates. If Seller's delay exceeds 30 days from the original delivery date, LCRA may cancel this order without any liability. If Seller's production is only partially restricted or delayed, it shall use its best efforts to accommodate LCRA's requirements, including giving this order preference and priority over those of other customers which were placed after this order.

8. Patents/Copyrights/Trade Secrets. Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any claim, demand, suit, or proceeding which may be brought against LCRA or its directors, officers, agents, or employees for alleged infringement of any U.S. patent, copyright, trade secret, or other intellectual property right, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder, and Seller further agrees to indemnify LCRA, its directors, officers, agents, and employees against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. If any good, service, or intellectual property furnished or used under this order is adjudged infringing and its use enjoined, Seller shall, at its own expense, secure for LCRA the right to continue using it, or replace it with a non-infringing equivalent, or modify it so it becomes non-infringing.

9. Indemnification. SELLER SHALL TAKE ALL NECESSARY PRECAUTIONS TO PREVENT THE OCCURRENCE OF ANY INJURY (INCLUDING DEATH) TO ANY PERSONS, OR OF ANY DAMAGE TO ANY PROPERTY, ARISING OUT OF ACTS OR OMISSIONS OF SELLER, ITS AGENTS, SERVANTS, EMPLOYEES, OR SUBCONTRACTORS. TO THE EXTENT ALLOWED BY LAW, SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS LCRA, ITS DIRECTORS, OFFICERS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, ATTORNEYS' FEES AND EXPENSES ARISING FROM:

9.1 THE NEGLIGENT ACT OR OMISSION OR WILFULL MISCONDUCT OF SELLER RELATED TO THIS AGREEMENT WHICH CAUSES THE DEATH OF, INJURY TO, OR DAMAGE TO THE PROPERTY OF, ANY PERSON;

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- 9.2 THE FAILURE OF SELLER TO PAY WHEN DUE ANY SUBCONTRACTOR, SUPPLIER, MATERIALMAN, EMPLOYEE OR OTHER PERSON FOR WORK PERFORMED IN CONNECTION WITH THIS AGREEMENT; OR**
- 9.3 THE FAILURE OF SELLER TO SECURE THE TIMELY RELEASE OF ANY LIEN OR ENCUMBRANCE ON THE PROPERTY TO BE CONVEYED HEREUNDER.**

IF THE PARTIES ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, NEITHER PARTY SHALL BE LIABLE TO INDEMNIFY THE OTHER FOR THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER.

10. Insurance. SELLER SHALL MAINTAIN AND REQUIRE ITS SUBCONTRACTORS TO MAINTAIN (1) PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE INCLUDING CONTRACTUAL LIABILITY (BOTH GENERAL AND VEHICLE) IN AMOUNTS SUFFICIENT TO COVER OBLIGATIONS SET FORTH ABOVE, AND (2) WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE COVERING ALL EMPLOYEES ENGAGED IN THE PERFORMANCE OF THIS ORDER FOR CLAIMS ARISING UNDER APPLICABLE WORKERS' COMPENSATION AND OCCUPATION DISEASE ACTS. SELLER SHALL FURNISH CERTIFICATES EVIDENCING SUCH INSURANCE THAT EXPRESSLY PROVIDE THAT NO EXPIRATION, TERMINATION OR MODIFICATION WILL TAKE PLACE WITHOUT THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO PURCHASER.

11. Waste Transportation and Disposal. Goods, materials, and chemicals supplied hereunder shall be accompanied by a Material Safety Data Sheet (MSDS) if required by applicable federal, state or local law, regulation, rule or ordinance. **Class 1 Solid Wastes and Hazardous Wastes.** When work is completed, Seller shall segregate all Class 1 solid wastes and/or hazardous wastes resulting from Seller's performance of the work described on the face of this Purchase Order and store the wastes in containers supplied by LCRA. LCRA shall arrange for and bear the cost of transportation and disposal of Class 1 and hazardous wastes. **Class 2 & Class 3 Solid Wastes.** Seller shall store, transport and dispose of all Class 2 and Class 3 solid waste resulting from performance of the work described on the face of this Purchase Order and Seller represents and warrants that the price on the face of this Purchase Order includes the cost of storing, transporting and disposing of such wastes by properly permitted transporters and disposal facilities. Seller hereby agrees to defend, indemnify and hold LCRA harmless from any and all liabilities, claims, demands, judgments, causes of action, administrative rulings, fines, penalties or costs associated therewith (including reasonable attorneys' fees) resulting from or in any way arising out of Seller's failure to fully comply with the cleanup and disposal provisions of this paragraph.

12. Changes. LCRA shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, Seller shall send, prior to delivery, a written claim for any adjustment in price due to the change. If a claim for adjustment is not received prior to delivery Seller waives any such claim.

13. Inspection/Testing. Payment for the goods delivered hereunder shall not constitute acceptance thereof. LCRA shall have the right to inspect the goods and to reject any or all goods that are in LCRA's reasonable judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for may be returned to Seller at Seller's expense and in addition to

LCRA's other rights. LCRA may charge Seller all expenses of unpacking, examining, repacking and reshipping defective, non-conforming or excess goods. Nothing contained in this purchase order shall in any way relieve Seller from the obligation of testing, inspection and quality control.

14. Shipment. All goods shall be shipped FOB destination. If, in order to comply with LCRA's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by LCRA. Seller shall bear all risk of loss of all merchandise covered by this order until such merchandise has been delivered to the designated location.

15. Delivery. Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, LCRA reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped not yet rendered and to purchase substitute items elsewhere and charge Seller with any loss incurred.

16. Limitation on LCRA's Liability - Statute of Limitations. In no event shall LCRA be liable for anticipated profits or for incidental, indirect, exemplary or consequential damages. LCRA's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or unit thereof which gives rise to the claim. LCRA shall not be liable for penalties of any description. Any action resulting from any breach on the part of LCRA as to the goods delivered hereunder must be commenced within one year after the date of scheduled delivery.

17. Waiver. LCRA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or LCRA's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

18. Sales Tax. Pursuant to Section 151.309 of the Texas Tax Code, LCRA is exempt from Texas sales and use tax.

19. Setoff. LCRA may deduct or setoff any claims for payment against any amounts due Seller by the LCRA arising out of this or any other transaction with Seller.

20. Assignments and Subcontracting. No part of this order may be assigned or subcontracted by Seller without the prior written approval of LCRA.

21. Governing Law. The purchase order shall be governed in its interpretation and enforcement by the laws of the state of Texas, without regard to its conflicts of laws provisions. Exclusive venue of any lawsuit shall be in a court of competent jurisdiction in Travis County, Texas.

b. The Seller/Contractor and LCRA both agree in writing to use electronic purchase orders/task orders/delivery orders only in transacting business during the term of this Contract. Chapter 43 of the Texas Business and Commerce Code applies specifically to these electronic purchase orders/task orders/delivery orders.

22. Entire Agreement. This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.