

1. **CONTROLLING TERMS AND CONDITIONS.** Until accepted by Seller or rescinded by EnviroCon Systems, Inc., a Texas corporation having a principal place of business at Houston, Texas ("EnviroCon"), this Purchase Order (the "Purchase Order") constitutes an offer by EnviroCon, to purchase from Seller the equipment, goods, labor and services set forth on the face of this Purchase Order. Any other offers or counteroffers, whether conveyed by other documents or oral negotiations with respect to the subject matter hereof are hereby withdrawn, and of no further force and effect. Either execution of this Purchase Order, or commencement of performance pursuant to this Purchase Order, constitutes acceptance hereof by Seller. The Purchase Order, including these Terms and Conditions, and all documents attached as exhibits to the Purchase Order shall constitute the contract (the "Contract") and shall be binding between EnviroCon and Seller. Any conduct which recognizes the existence of this Contract shall constitute acceptance by both EnviroCon and Seller and any additional or different terms or conditions Seller proposes are rejected, regardless of any lack of response thereto by EnviroCon. The Article headings are provided for convenience only and are not to be used in construing this Contract. No modification, change, or waiver of any of the terms, agreements and conditions of the Purchase Order and Contract shall be binding upon EnviroCon unless signed by a duly qualified officer of EnviroCon. EnviroCon shall not be liable for any extra or additional charges or expenses unless EnviroCon agrees to them in writing before they are incurred.
2. **PRICES; TAXES.** The Purchase Price includes all material, labor, services, insurance, and other costs and expenses of every type necessary to furnish and deliver the materials and/or equipment identified in the Purchase Order. All prices stated in the Purchase Order are firm prices and are not subject to escalation for any reason unless escalation is clearly permitted on the face of the Purchase Order. A Texas tax exemption certificate will be provided for any purchase that qualifies for sales tax exemption.
3. **PAYMENT.** Payment of the Contract Price shall be due only after (i) EnviroCon receives an acknowledgment or executed original of this Purchase Order; (ii) EnviroCon receives, inspects, and accepts all materials, equipment, work or goods specified in the Purchase Order; (iii) EnviroCon receives Seller's invoice; and (iv) EnviroCon receives copies of warranties, manuals, and all other documents required for the materials or equipment. Unless otherwise agreed to in writing by EnviroCon, payment will be sent 45 days from the date the requirements set forth above are satisfied. In the event of any dispute between EnviroCon and Seller, EnviroCon may, but shall not be required to, make payments directly to any subcontractor or supplier of Seller, and the Contract Price shall be reduced by the amount of such payments. Unless EnviroCon agrees to the contrary on the face of the Purchase Order, EnviroCon shall not be obligated to make advance or partial payments for any material or equipment.
4. **SHIPMENTS.** Seller shall strictly comply with all shipping instructions furnished by EnviroCon, which instructions shall be considered a part of this Purchase Order. Seller shall give EnviroCon 48 hours notice prior to delivery of any materials or equipment. Any provisions for delivery of goods by installment shall not be construed as making the obligations of the Seller severable. Shipments sent C.O.D. without EnviroCon's prior written consent may be rejected and shall be at Seller's risk.
5. **DELIVERY.** Time is of the essence. Seller shall timely furnish, in accordance with the "Delivery/Shipments Date" and the "Required on Jobsite Date" identified in the Purchase Order, the materials, goods, and equipment described in the Purchase Order. In the event Seller does not deliver and/or complete installation of all goods or equipment by the required date(s) of this Purchase Order, EnviroCon shall have the right to (i) cancel this Purchase Order, (ii) purchase the goods elsewhere, and (iii) if provided elsewhere in the Purchase Order, collect liquidated damages from Seller in the amount stipulated for each full week, or pro-rated portion thereof, after such due date(s) that the goods or equipment remains undelivered and/or uninstalled.
6. **RISK OF LOSS; TITLE.** Title shall pass to EnviroCon only upon the earlier of EnviroCon's payment of any of the Contract Price, or Seller's delivery of the materials or equipment to EnviroCon. Risk of loss shall transfer to EnviroCon upon Seller's delivery of the goods to Houston, Texas, regardless of whether freight charges are pre-paid or collect. Seller shall file any claims for goods or equipment damaged in transit. EnviroCon will promptly notify Seller of loss, damage, or shortage of which EnviroCon is aware. If goods or equipment are damaged in transit, Seller will make immediate arrangements to ship replacements, regardless of any claims or other actions pending against the carrier.
7. **INSPECTION AND CONDITION OF THE PRODUCT.** All shipments shall be subject to final inspection by EnviroCon after receipt by EnviroCon at the delivery site or designated location. EnviroCon may reject and refuse acceptance of materials, equipment, or goods, or associated work that are not in accordance with specifications, addenda, drawings or Seller's warranty. EnviroCon may deduct from any amount owed to Seller under this Purchase Order the cost of inspecting goods or services rejected. Materials, equipment or goods not accepted shall, at EnviroCon's option be (a) returned to Seller at Seller's expense; (b) held by EnviroCon at Seller's expense; (c) held by EnviroCon for an equitable reduction in price; or (d) repaired by EnviroCon at Seller's expense. EnviroCon's payment of any non-conforming materials, equipment, goods or associated work shall not constitute acceptance thereof. Acceptance by EnviroCon shall not constitute acceptance as to latent or hidden defects.
8. **WARRANTY.** (a) Seller warrants and guarantees to EnviroCon that all materials and equipment provided by or through Seller shall: (i) be free from defects in material and workmanship for 12 months after delivery and acceptance by EnviroCon; (ii) strictly conform to Seller's specifications, drawings, or samples specified or furnished; (iii) be of merchantable quality and suitable for the particular purpose intended, whether expressed or reasonably implied; (iv) not infringe upon any patent, trademark or copyright; (v) bear all warnings, labels and markings required by applicable laws and regulations; (vii) to the extent that they are subject to laws prohibiting adulteration or misbranding, not be adulterated or misbranded within the meaning of such laws as of the date of shipment or delivery to EnviroCon; (viii) be conveyed to EnviroCon with good title, free of all liens or encumbrances thereon; and (ix) have been produced, sold, delivered, or rendered to EnviroCon in compliance with all applicable laws and regulations. These warranties will survive acceptance, and EnviroCon's rights hereunder are in addition to any other rights and remedies available to EnviroCon under this Contract or applicable law. All warranties of Seller are in addition to any warranties provided by or through Seller's suppliers or subcontractors; (b) Seller agrees promptly to pay the entire cost to remove, repair (or at its option to replace), and re-install without charge any defective item or parts that Seller or its suppliers furnished or manufactured, provided that EnviroCon notifies Seller in writing of such alleged defect. Seller shall complete repair and/or replacement as soon as possible, and shall include, at EnviroCon's sole discretion, all necessary premium time. If Seller fails to commence or diligently perform repairs within a reasonable prompt time after being notified of any defect, EnviroCon may perform such repairs itself or through its own contractors, and Seller shall be responsible for all costs of such repairs, including any administrative time EnviroCon incurs related to such repairs.
9. **INDEMNITY.** To the fullest extent permitted by law, Seller shall defend, indemnify and hold harmless EnviroCon, and their respective officers, directors agents, employees, construction manager, and engineer ("Indemnified Parties") from and against all liabilities, damages or costs incurred by any of such Indemnified Parties as a result of the errors or omissions of Seller in the Performance of this Purchase Order. In addition, Seller shall indemnify, defend, and hold harmless the Indemnified Parties from any costs arising out of Seller's breach of this Purchase Order, or resulting from Seller's failure to provide timely performance in accordance with this Purchase Order. Seller acknowledges that it shall be and remain fully responsible for the acts and omissions of its employees, subcontractors and suppliers.
10. **INDEMNITY AGAINST SUBCONTRACTOR CLAIMS.** Seller shall defend and indemnify the Indemnified Parties against all liens and other claims of Seller's subcontractors, suppliers, consultants, and employees arising out of the Work. If requested by the Indemnified Parties or by EnviroCon, Seller shall execute an indemnity agreement indemnifying the Indemnified Parties and the Disbursing Agent against any mechanic's liens or other claims asserted by the subcontractor, supplier, consultant, or employee of any tier of Seller.
11. **PATENT INDEMNITY.** Seller shall defend, indemnify and hold the Indemnified Parties and Owner's Engineer harmless from all claims, liability, loss, damage, or expense, including attorney fees, for infringement or alleged infringement of any patents or other intellectual property rights, arising out of the sale or use of the goods furnished pursuant to this Purchase Order, and Seller shall, if requested by EnviroCon, assume at its own expense the defense of all suits charging any such infringement.
12. **FORCE MAJEURE.** Neither party shall not be liable for its failure to perform hereunder if performance is made impracticable due to any occurrence beyond its reasonable control, including acts of God, inclement weather, fires, floods, civil unrest or disturbance, wars or military action, sabotage, accidents, labor disputes, inability to obtain economic materials, governmental laws, ordinances, rules, regulations, standards or decrees, action of court or public authority, inability to obtain raw material, equipment or transportation, an outbreak of a pandemic or epidemic disease, and any other similar or different event or occurrence.
13. **TERMINATION FOR BREACH.** If Seller fails to deliver materials, equipment, or goods, or fails to perform work required within time provided under this Purchase Order or any mutually agreed upon extension of time, or if Seller fails to perform any of the requirements of this Purchase Order, EnviroCon may terminate this Purchase Order. The rights and remedies of EnviroCon provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.
14. **TERMINATION FOR CONVENIENCE.** EnviroCon may, upon 7 days written notice to Seller, terminate this Purchase Order for the convenience of EnviroCon. In such event, EnviroCon shall pay Seller, as Seller's entire and sole compensation, Seller's actual and reasonable costs of furnishing materials, equipment or goods through the date of termination, as determined by audit of the records, plus a reasonable markup for overhead and profit thereon, but in no event shall such amounts due hereunder exceed the total Purchase Order Price. If any cancellation of the Purchase Order under Paragraph 12 is later determined to have been improper, such cancellation shall automatically be deemed a termination for convenience, and the Seller shall be limited in its recovery strictly to the compensation provided for in this paragraph. In no event, either related to termination or otherwise, shall EnviroCon be liable to Seller for lost profit or for special or consequential damages of any type.
15. **INSURANCE.** If Seller, its employees or agents are required to come onto a Project site or other property of EnviroCon in connection with the sale of goods or the rendering of services under this Purchase Order, including delivery of materials, Seller shall, prior to entrance on the Project site, purchase and maintain Commercial General Liability Insurance and Automobile Liability Insurance, with limits of liability as directed by EnviroCon, that will protect EnviroCon, as well as Seller from claims arising out of Seller's operations under this Purchase Order. Seller shall also maintain valid Worker's Compensation Insurance. All policies, except for worker's compensation policies, shall name EnviroCon as an additional insured with primary coverage (with any other third party coverage provided for EnviroCon to be deemed as excess only) and shall indemnify, defend and protect EnviroCon from all claims, expenses and liabilities in any way connected with any act or omission of Seller, its invitees, or any person performing work directly or indirectly on behalf of Seller, regardless of whether EnviroCon is partially at fault. All insurance shall expressly provide that all rights of subrogation against the EnviroCon are waived, and that no amendment or cancellation of any policy shall be effective until 30 days' written notice to EnviroCon. Before starting the work contemplated by these terms and conditions, and at any time EnviroCon so requests, Seller shall furnish certificates satisfactory to EnviroCon evidencing the required insurance. Neither performance under these terms and conditions by Seller nor any payment by EnviroCon prior to receipt of such certificates shall abrogate Seller's duty to maintain the required insurance or to supply such certificates. EnviroCon may amend the insurance requirements in these terms and conditions from time to time with sixty (60) days' notice to Seller.
16. **PROPRIETARY INFORMATION.** All plans, drawings, specifications and the subject matter contained therein, and all other information given to Seller in connection with performance of this Purchase Order, involve valuable property rights of EnviroCon, shall be held confidential by Seller, shall remain the property of EnviroCon, and shall not be used by Seller for any purpose other than those for which they are being prepared or supplied. Seller agrees that it will keep confidential the making of this Purchase Order and the terms hereof. Seller agrees not to use for publicity purposes any information concerning this Purchase Order, or any photographs, drawings and/or materials in connection with the performance of the Purchase Order, without obtaining the prior written consent of EnviroCon.
17. **INDEPENDENT CONTRACTOR.** Neither Seller, nor any contractor, supervisor, engineer, or other employee in performing such services for Seller, shall be deemed to be the agent or employee of EnviroCon, but shall be independent contractors.
18. **NON-WAIVER.** Failure of either party to exercise any right hereunder upon one or more occasions shall not waive the right to exercise the same on another occasion. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof of the exercise of any other right, remedy, power, or privilege.
19. **COMPLIANCE.** Each party will comply with all applicable laws, regulations, rules, and ordinances involved in the transactions contemplated by this Agreement.
20. **DISPUTES.** Any dispute under or related to this Purchase Order shall be resolved by litigation in the Circuit Court of Harris County, Texas, and EnviroCon and Seller each consent to the venue and exclusive jurisdiction of such court. The prevailing party in any such dispute shall be entitled to recover from the non-prevailing party all reasonable costs of enforcing the terms in this Purchase Order (including, without limitation, attorneys' fees) as part of the award resolving the dispute. Seller shall continue to perform its obligations under this Purchase Order pending the resolution of any dispute that may arise under or relate to this Purchase Order.
21. **MISCELLANEOUS.** (a) The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. (b) This Agreement shall be binding upon and enure to the benefit of the respective successors and permitted assigns of each of the parties hereto, but, any assignment or delegation thereof by either party without the prior written consent of the other party shall be void, except where such assignment or delegation is in connection with the sale of the business of EnviroCon to which this Agreement relates. No rights or obligations of Purchaser arising out of this Agreement may be assigned without the prior express written consent of EnviroCon. (c) If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be reformed and interpreted to accomplish the objectives of the provision to the greatest extent possible and still be enforceable and the remaining provisions of this Agreement will continue in full force and effect.