

EnviroCon Systems General Terms and Conditions of Sale

1. **APPLICABILITY:** These General Terms and Conditions of Sale (“**Terms**”) apply to the sale of products and ancillary services (collectively the “**Products**”) by EnviroCon Systems, Inc. (“**EnviroCon**”) to the **Purchaser**, each of which is identified in the accompanying quotations, credit application, proposal, order acknowledgement, or invoice (collectively “**Order Acknowledgement**”). These Terms and the Order Acknowledgement comprise the entire agreement between the parties (collectively the “**Agreement**”) and supersede all prior oral and written communications and understandings. The sale of any Products is conditioned upon these Terms and no course of dealing or additional or different terms, or any agreement or understanding, oral or written, in any way purporting to modify these Terms, whether contained in Purchaser’s purchase order, release, or otherwise, shall be binding on EnviroCon unless hereafter made in writing and signed by EnviroCon’s authorized representative. EnviroCon expressly rejects any terms inconsistent with this Agreement. Neither EnviroCon’s subsequent lack of objection to any terms, nor the delivery of the Products or services shall constitute an agreement by EnviroCon to any different terms. Purchaser accepts these Terms by signing and returning EnviroCon’s quotation or proposal, by sending a purchase order in response to the quotation or proposal, by instructing EnviroCon to deliver the Products, or by accepting delivery of the Products.

2. **PRICES; TAXES:** The prices quoted are exclusive of any taxes, fees, charges, duties, or levies, however designated or imposed (collectively “**Taxes**”) and do not include shipping, delivery, payment processing, or insurance costs. All Taxes related to the Products purchased hereunder are the responsibility of Purchaser. Price quotes shall automatically expire thirty (30) days from the day issued unless otherwise set forth in the quote.

3. **PAYMENT:** Except as otherwise set forth in this Agreement, payment shall be due thirty (30) days after the date of EnviroCon’s shipment. Unpaid amounts shall bear interest at the lesser of the rate of 18% per annum or the highest rate allowed by law, from the original due date until paid in full. EnviroCon shall have all the rights of a seller under the Uniform Commercial Code (“**UCC**”) for any failure to pay or other breach of this Agreement by Purchaser and shall have the ability to suspend the delivery of any Products if Purchaser fails to pay any amounts due and such failure continues for five days after notice thereof to Purchaser. Purchaser may not withhold payment of any amounts due and payable in set-off of any claim or dispute with EnviroCon. In the event of default by Purchaser, EnviroCon will be entitled to costs, fees, and expenses, including but not limited to recovery of attorneys’ fees, costs and fees of arbitration or court, and collection costs.

4. **PAYMENT BY CREDIT CARD:** Purchaser agrees that all payments made by credit card are subject to a three percent (3%) processing fee. Total payment amount due on an invoice shall not include this fee. The fee shall be assessed at the time of payment by credit card.

5. **SHIPMENTS:** Each order shall identify the Products ordered and shall include the quantity of Products, shipping instructions, and the desired delivery date. Any time stated for delivery by EnviroCon is an estimate only and shall not form part of the contract. Where delivery of Product is delayed for any reason outside of the reasonable control of EnviroCon or under the control of Purchaser, EnviroCon reserves the right to amend the prices for the Product to those current at the date when delivery is made. If after giving release for shipment, Purchaser fails to take delivery at the job site, Purchaser shall be liable to EnviroCon for any carrier imposed standby freight or storage charges. EnviroCon may, in its sole discretion, without liability or penalty, make partial shipments of Products to Purchaser. Each shipment shall constitute a separate sale, and Purchaser will pay for the Products shipped whether the shipment is whole or partial fulfillment of Purchaser’s order. The quantity of any Products shipped as set forth on EnviroCon’s dispatch is conclusive evidence of the quantity received by Purchaser unless Purchaser provides conclusive evidence to the contrary. EnviroCon’s liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered. Purchaser’s rejection of Products will not shift the risk of loss to EnviroCon until such time as the Products are returned to EnviroCon freight prepaid pursuant to EnviroCon’s written authorization. Purchaser expressly agrees that Section 2.510 of the Uniform Commercial Code will not apply.

6. **RISK OF LOSS; TITLE:** Title shall pass to Purchaser only upon payment in full for the Products. Risk of Loss shall pass to Purchaser at the point of loading if Purchaser is purchasing the Products FOB Factory or Ex-works. If EnviroCon is providing the carrier then Risk of Loss shall pass under the INCOTERMS specified in the EnviroCon Order Acknowledgment. If Purchaser fails to accept delivery of any of the Products on the date that EnviroCon has delivered the Products to the delivery location, or EnviroCon is unable to deliver the Products to the delivery location because the Purchaser has failed to provide all necessary instructions, documents, or authorizations, then (i) risk of loss to the Products will pass to Purchaser; (ii) the Products will be deemed to have been delivered to Purchaser; and (iii) EnviroCon, at its option, may store the Products until Purchaser takes possession of them and Purchaser shall be liable for all resulting costs and expenses (including, but not limited to, storage and insurance).

7. **INSPECTION AND CONDITION OF THE PRODUCT:** The Purchaser shall carefully examine the Products on receipt of same. If Purchaser receives goods that it considers damaged, nonconforming, not within specifications, or otherwise unacceptable, Purchaser must so notify EnviroCon in writing no later than two (2) business days from the date Purchaser learns of the nonconformity, but in no event no later than 90 days after the date of sale. Failure to timely send such notice and provide EnviroCon with written evidence or other documentation of such nonconformity shall be deemed acceptance of goods as received. Upon proper and timely rejection of nonconforming Products by Purchaser, EnviroCon, in its sole discretion may (i) replace the nonconforming Products with conforming Products or credit or refund the difference between the purchase price and the value as delivered. EnviroCon’s liability to Purchaser shall in no event exceed the difference between the purchase price and the value as delivered. Purchaser acknowledges and agrees that the remedies set forth in this Section are Purchaser’s exclusive remedies for the delivery of nonconforming Products. Products may be returned only upon EnviroCon’s written consent after rejection by Purchaser in accordance herewith.

8. **LIMITED MATERIAL WARRANTY:** EnviroCon warrants to Purchaser that the Products delivered meet the written specifications stated in the EnviroCon Order Acknowledgment and to be free from material manufacturing defects at the time of sale for a period of 90 days from date of shipment. **THIS LIMITED WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, QUALITY AND/OR FITNESS FOR A PARTICULAR USE OR PURPOSE, ALL OF WHICH ARE HEREBY DISCLAIMED. NO WARRANTY IS MADE WITH RESPECT TO ANY PRODUCTS WHICH HAVE BEEN SUBJECT TO ACCIDENT, NEGLIGENCE, ALTERATION, IMPROPER CARE, IMPROPER STORAGE, IMPROPER MAINTENANCE, ABUSE, OR MISUSE.**

If, Purchaser informs EnviroCon in writing of a breach of this limited warranty prior to the expiration of the warranty period, EnviroCon may repair or replace the defective Products, or in EnviroCon’s sole and exclusive discretion, refund the amounts paid for defective Products. Purchaser will bear the cost of de-installation, re-installation, and transportation of the Products to EnviroCon and back to Purchaser. Any repair or replacement pursuant to this limited warranty will not extend the warranty period. This limited warranty and remedy are expressly conditioned upon: (i) Purchaser’s payment of the purchase price in full; (ii) Purchaser giving EnviroCon written notice of the defect within the warranty period and within ten (10) days of the discovery of the defect; (iii) the storage, installation, and use of the Products in compliance with EnviroCon’s

written guidelines; Purchaser providing EnviroCon with a reasonable opportunity to examine the Products; and (v) the absence of any unauthorized modification or repair of the Products.

Any resale of Products by Purchaser to third parties shall be made subject to the terms and conditions stated in the EnviroCon Limited Material Warranty for each Product. The effective date of the Limited Material Warranty will be the date the Products are shipped from any EnviroCon facility. Purchaser shall indemnify and hold harmless EnviroCon from any claims, demands, judgments, damages, or causes of action asserted against EnviroCon by a third-party purchaser for breach of any express or implied warranty of fitness for a particular purpose or merchantability that would have been excluded except for the failure of Purchaser to incorporate the EnviroCon Limited Material Warranty terms and conditions into Purchaser’s contract with said third-party.

The foregoing limited warranties do not apply to Products not manufactured by EnviroCon or to Products manufactured according to Purchaser’s specifications.

9. **LIMITATION OF DAMAGES; THE REMEDIES SET FORTH IN SECTIONS 6 AND 7 ARE PURCHASER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF ENVIROCON TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT AND ARE AN AGREED ALLOCATION OF RISK. IN NO EVENT SHALL ENVIROCON BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF REVENUE OR ANTICIPATED PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF ENVIROCON HAS BEEN INFORMED OF THE DAMAGES. ENVIROCON’S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PRODUCTS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE PRODUCTS GIVING RISE TO THE CLAIM.**

10. **FORCE MAJEURE:** (a) EnviroCon 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.

11. **TERMINATION:** In addition to any other remedy that EnviroCon may have, EnviroCon may terminate this Agreement immediately upon written notice to Purchaser, if Purchaser: (i) fails to pay any amount when due under this Agreement and the failure continues for ten (10) days after written notice of nonpayment is sent by EnviroCon; or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. **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.

13. **COMPLIANCE:** Each party will comply with all applicable laws, regulations, rules, and ordinances involved in the transactions contemplated by this Agreement.

14. **CHANGES:** EnviroCon reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Purchaser.

15. **SAFETY:** If the performance by EnviroCon under this Order requires entrance on or into premises of Purchaser, EnviroCon shall comply with all safety rules and regulations of Purchaser. Purchaser shall provide any safety rules and regulations prior to EnviroCon entering on or into Purchaser’s premises.

16. **CANCELLATIONS; RETURNS:** Cancellation or modification of all or part of an order is subject to EnviroCon’s prior written consent in each instance. If cancellation or modification is allowed, Purchaser agrees to pay to EnviroCon all expenses incurred and damage sustained by EnviroCon because of the cancellation or modification, plus a reasonable profit. Products may, under exceptional circumstances, be returned only upon EnviroCon’s written consent. A restocking charge of 25% plus any freight costs incurred by EnviroCon will be applied to offset any credits allowed for materials returned in acceptable re-saleable condition. All Products must be returned with manufacturer’s roll numbers or Product numbers.

17. **ARBITRATION:** Any dispute, controversy, or claim arising in the connection with this Agreement shall be settled by binding arbitration before a single arbitrator as the sole remedy of the parties hereto, conducted in accordance with the American Arbitration Association Arbitration Rules for Commercial Disputes and shall be concluded and an award rendered within ninety (90) days following selection. No award shall be made for punitive, incidental, special, exemplary, or consequential damages, including loss of profits or loss of business opportunity. The parties agree that any arbitration commenced under this provision shall take place in the city of Houston, Harris County, State of Texas. The decision of the Arbitrator pursuant hereto shall be final and binding upon the parties and the decision, save the enforcement of the same, shall not be subject to any action or proceeding in any court.

18. **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. Venue and jurisdiction of any dispute arising under or related to this Agreement (subject to Section 15 above) is agreed to be proper and exclusive in any court of competent jurisdiction located in Harris County, Texas or the United States District Courts for the Southern District of Texas, Houston Division.

b) This Agreement shall be binding upon and inure 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 there is a conflict between the terms of these Terms and the Order Acknowledgment, the terms of the Order Acknowledgment will govern and control.

d) The section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision.

e) 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.

19. **EXCISE TAX:** Effective July 1, 2022, certain Products sold by EnviroCon may be subject to the Superfund excise taxes in the Infrastructure Investment and Jobs Act. EnviroCon reserves the right to pass along this excise tax to Purchaser as a separate line item on EnviroCon’s quote and/or invoice(s) for products containing taxable chemicals.