

SUEZ Treatment Solutions Inc. - Purchasing Terms and Conditions

1. **ACCEPTANCE.** The purchase order (“Purchase Order”) issued by SUEZ Treatment Solutions Inc. (“Purchaser”) to the supplier identified on the face of the Purchase Order (“Supplier”) for the purchase of the equipment, goods, material, or services (“Work”) identified on the face of the Purchase Order is subject to the following terms and conditions (“Terms”). Notwithstanding any prior proposal, quotation or other documentation furnished by Supplier to Purchaser (“Proposal”), the Purchase Order is an offer to purchase Work. The Purchase Order may be accepted by (i) Supplier’s signature on the Purchase Order whereby Supplier agrees to these Terms, (ii) Supplier’s shipment of the Work or (iii) Supplier’s issuance of some form of an acknowledgement. Purchaser objects to and rejects any additional, different or inconsistent terms in Supplier’s terms and conditions of sale or other documents of Supplier, and acceptance of shipment including Supplier’s terms and conditions of sale containing additional, different or inconsistent terms does not constitute acceptance of such terms. No conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless hereafter made in writing and signed by an authorized representative of Purchaser. The parties agree that the specifications, plans and drawings, both general and detailed, if any, attached to the Purchase Order or referenced in any other agreement between the parties are incorporated herein as an integral part of this agreement between the parties.

2. **DELIVERY.** Time is of the essence for delivery of Work in strict accordance with the timeline, if any, and the delivery date identified on the face of the Purchase Order, or any rescheduled dates provided by Purchaser. Work shall arrive at the ship to address or location specified on the face of the Purchase Order. Unless otherwise provided on the face of the Purchase Order, delivery shall be D.D.P. INCOTerms 2010. Purchaser reserves the right to arrange freight, shipping, and transportation of the Work as specified in the Purchase Order. Risk of loss shall remain with Supplier until delivery and acceptance of the Work by Purchaser. In the event of Supplier’s failure to timely deliver Work in accordance with the timeline or delivery date, or if Supplier notifies or reports to Purchaser that such dates may not be achieved, Purchaser, at its option, may (1) cancel the order or (2) elect to accept late delivery of Work. Should Supplier fail to deliver the Work, or any portion thereof, as specified by the timeline, Supplier agrees to be fully liable for any and all liquidated damages that may be assessed against Purchaser for Purchaser’s failure to deliver the Work, or any portion thereof, pursuant to the scheduling requirements set forth in the written agreement (or purchase order) between Purchaser and a third party. The foregoing remedies are in addition to all other remedies afforded Purchaser hereunder or under applicable law. Payment before or after inspection of the Work shall not constitute acceptance by Purchaser. Any inspections or tests shall not relieve the Supplier from any obligation or responsibility under the Purchase Order. Purchaser may, but need not, inspect the Work at all reasonable times and places during its manufacture, and before and after delivery, installation or completion, the Work shall be subject to final inspection and acceptance by Purchaser. The Supplier shall submit all reports and certificates in connection with the tests and inspections required by Purchaser. The Purchaser shall be entitled to refuse the Work if a complete set of test certificates, internal inspection reports, and certificates of material origin are not provided by the Supplier. Supplier shall pack all shipments in accordance with best commercial practices, and Supplier shall use best efforts to safeguard against damage from weather and transportation. Each shipment must contain a packing list indicating Purchase Order number, item numbers and other identifying information which may be designated by Purchaser.

3. **INVOICES.** Except as otherwise stated in these Terms or the Purchase Order, Supplier shall submit invoices upon Supplier’s delivery of the Work. Each such invoice shall be submitted by Supplier to the location shown in the Purchase Order, and shall include: (i) the Purchase Order number, (ii) an itemization of the Work; (iii) the applicable Delivery Date for all such Work; (iv) an itemization of the respective unit prices, if applicable, for which payment or partial payment is invoiced; (v) the total invoice amount; (vi) a Bill of Lading; and (vii) Purchaser’s location to which the Work was delivered. Failure to submit the above information may result in delayed payment to Supplier. Supplier shall supply any additional information with respect to the Work or shipment of the Work as may be reasonably requested by Purchaser, including, but not limited to, providing such shipment information to a third party designated by Purchaser.

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4. **PAYMENT.** The purchase price as indicated on the face of the Purchase Order (“Purchase Price”) is firm and includes the entire price of the Work and all costs incurred by Supplier in connection with the Purchase Order, including, without limitation, all freight carriage, sales, use, property, excise and value-added taxes. Supplier shall not be entitled to charge any escalation costs. Unless superseded by the payment terms in the Purchase Order, payment shall be made within forty-five (45) days from receipt of an appropriate and accurate invoice. Notwithstanding anything herein to the contrary, Purchaser shall have the additional right to set-off against payments made to Supplier hereunder for amounts owed by Supplier to Purchaser, whether or not pursuant to the Purchase Order.

5. **WARRANTIES.** Supplier warrants and represents to Purchaser that each item of Work provided to Purchaser shall: (i) strictly conform to the requirements of these Terms and the Purchase Order, (ii) be free from defects in workmanship, materials and design, (iii) be merchantable, (iv) be fit for its intended use, and (v) be new. Unless superseded by the warranty period in the Purchase Order, the warranty period shall be one (1) year from the date Work is initially placed in operation or two (2) years from the date Work is shipped, whichever occurs last. Unless otherwise stated in the Purchase Order, no surplus, rebuilt, reconditioned, or used Work shall be provided. Furthermore, Supplier warrants and represents to Purchaser that it owns all right, title and interest in and to the Work, or if not the owner, Supplier has full authority to sell the Work to Purchaser on behalf of owner. Supplier further warrants and represents to Purchaser that the Work is free from any and all security interests, claims, demands, liens, or other encumbrances. Upon receipt of oral or written notice from Purchaser of a warranty claim, Supplier shall, if required by Purchaser, at Supplier’s sole expense, provide on-site commissioning services to investigate the problem noticed by Purchaser, promptly take down, remove, and at its sole expense, promptly repair or replace, as determined by Purchaser, all portions of the Work that fail to conform to the warranties herein. The expense of all work incidental to such correction, re-performance, repair, replacement, or testing shall be borne solely by Supplier. In the event of replacement or repair of any portion of the Work, the warranty period for the renewed or replaced portion shall be an additional twelve months, or the length of the original warranty period, whichever is longer, from the date of such repair or replacement. If Supplier fails within a reasonable time or refuses to repair, replace, correct or re-perform any work as required by Purchaser, Purchaser may, at its sole discretion, and at no cost to Purchaser, repair, replace, correct or re-perform any work or take other remedial action. Supplier shall bear all costs associated with any such repair or replacements performed by Purchaser. Supplier hereby expressly assumes all the risk of loss or damage to Work returned while in transit to or from Supplier and prior to acceptance by Purchaser at the delivery location. If during the warranty period, the Work is defective, the Supplier shall, at its own expense, intervene on site within five (5) days of Purchaser’s notification, in order to remedy the defect, failing which the Purchaser shall be entitled to remedy such defect itself or to have such defect remedied by a third party, at the Supplier’s costs and risks. In the event of doubt as to the origin of the defect, the Supplier will be deemed responsible for such defect and the burden of proof shall be with the Supplier. Purchaser shall also have the right to recover all direct, incidental and consequential damages, including, without limitation, costs of contractual liability of Purchaser to its customers, loss of profit or revenue, loss of anticipated savings, loss of use of the Work or any associated Work, cost of capital, cost of substitute goods, facilities, services or replacement power, downtime costs, labor and yield losses and claims of Purchaser’s customers or other third parties for such damages. Any attempt by Supplier to limit, disclaim or restrict the foregoing warranties or any remedies of Purchaser in the Proposal or Supplier’s acknowledgement, confirmation, invoice or other Supplier documentation are hereby objected to and shall be null and void. All warranties shall survive payment and acceptance by Purchaser.

6. **INDEMNITY.** To the fullest extent permitted by law, Supplier shall defend, indemnify, and hold harmless Purchaser, its subsidiaries and affiliates, and each of their officers, directors, employees, agents, contractors, successors, assigns, customers and users of the Work from and against all claims, losses, liabilities, damages and expenses (including, but not limited to, reasonable attorneys’ fees) arising out of or in connection with Supplier’s performance under the Purchase Order or caused by or connected with

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the Purchase Order or any of the Work, including, but not limited to: (i) Supplier's breach of any of the terms of the Purchase Order, (ii) personal injury or death, (iii) property damage, (iv) alleged infringement of any patent, copyright, trade secret or other intellectual property right, (v) violation of federal, state, provincial, or local law, regulation, rule or ordinance pertaining to the Purchase Order, or (vi) any claims or liens asserted by subcontractors or vendors of supplier. The indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for supplier under worker's compensation acts, disability benefit acts, or other employee benefit acts.

7. PROPRIETARY RIGHTS. All technical information in the nature of designs, blueprints, specifications, samples, tools, patterns, engineering data for production or product know how, and all confidential business information and data, which is supplied to Supplier by Purchaser, or which is prepared by Supplier for Purchaser in connection with the performance of the Purchase Order (collectively, "Information"), shall, unless otherwise specifically agreed in writing by Purchaser, be considered proprietary information of Purchaser and the Intellectual Property Rights and ownership of Intellectual Property Rights shall transfer to Purchaser, and shall be kept confidential by Supplier and used by Supplier solely for the purpose of performing Purchaser's obligations under the Purchase Order. "Intellectual Property Rights" mean inventions, trademarks, patents, copyrights, trade secrets, technology, designs, know-how and other intellectual property rights. Without limiting the generality of the foregoing, Supplier shall not disclose, or allow its employees or agents to disclose, such Information, either directly or by incorporation of such Information in products, or using such Information in manufacturing products, for persons or entities other than Purchaser. Supplier shall promptly return all such Information to Purchaser upon Purchaser's demand or upon completion or termination of the Purchase Order. The Supplier grants the Purchaser a non-exclusive, unlimited, worldwide, irrevocable, transferable and royalty-free license on those Intellectual Property Rights owned by the Supplier for the purposes of owning, distributing, operating, repairing, changing, maintaining, reproducing and representing the Work. If Purchaser is enjoined from the operation, use, or sale of the Work, Supplier shall procure the right to operate, use, or sell the Work. If Supplier cannot so procure such right within a reasonable time, Supplier shall promptly, at Purchaser's option and expense, (i) modify the Work so as to avoid infringement of any such third party Intellectual Property Rights, or (ii) replace said Work that does not infringe or violate any such third party Intellectual Property Rights. Supplier will immediately notify Purchaser of any data breach or theft involving information pertinent to a Purchase Order or any of Purchaser's Confidential Information.

8. TERMINATION. Purchaser may, with or without cause, terminate the Purchase Order at any time, in whole or in part, by providing written notice of termination to Supplier. Such termination is to be effective as specified in Purchaser's notice but not earlier than one (1) day after Supplier's receipt of such notice. Upon receipt of such notice, Supplier shall terminate all existing orders. Upon termination, Supplier shall deliver to Purchaser all Work for which Purchaser has made payment, including all Work in manufacture, but not yet completed. The Purchaser shall be entitled to terminate the Purchase Order for cause: (i) in the event of a breach by the Supplier of its obligations under the Purchase Order, which is not remedied within five (5) days of a notice thereof by the Purchaser, or (ii) in the event that the Supplier becomes insolvent or bankrupt or if reorganization proceedings, or other proceedings analogous in nature or effect, are instituted by or against the Supplier or if the Supplier makes an assignment for the benefit of creditors. In this event, the Purchaser shall be entitled to have the Work completed by a third party of its choice, it being specified that the Purchaser and/or such third party shall be entitled to make use of the Supplier's Work (or any part thereof) completed as at the date of termination; and the Supplier shall compensate the Purchaser for any cost incurred for the purposes of completing the Goods or Services.

9. FORCE MAJEURE. Neither party to the Purchase Order shall be responsible to the other party for nonperformance or delay in performance of any terms or conditions hereof (except for payments due and owing under the Purchase Order) due to unforeseeable events, including, but not limited to, acts of God, acts of government, wars, acts of terrorism, riots, strikes, accidents in transportation, or other causes

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beyond the reasonable control of the parties. The party claiming force majeure shall promptly notify the other party by written notice providing the reason for the delay, the length of time that the Work may be delayed and alternate proposals, if any, which the claiming party wishes to make to alleviate any difficulties or hardships which may be suffered as a result of the delay. Neither party to the Purchase Order shall be deemed to be in default by reason of delay or failure due to force majeure. Force majeure shall only excuse performance if the party claiming force majeure is exercising its reasonable best efforts to eliminate the force majeure condition. Once the force majeure condition is alleviated, the party claiming force majeure shall immediately resume its obligations under the Purchase Order. If the force majeure event lasts for more than three (3) months, either Party shall be entitled to terminate the Purchase Order.

10. COMPLIANCE WITH LAWS. Supplier shall comply with all applicable international, federal, state, provincial, or local laws, regulations, codes and orders in providing all Work under the Purchase Order, including, without limitation, all customs, environmental, social security, income tax, sales tax, workers' compensation insurance, unemployment compensation insurance, environmental, transportation and occupational safety and health laws, and shall obtain (without additional compensation by Purchaser) all required licenses and permits with respect to full performance of the Purchase Order. Supplier will comply with any provisions, representations, agreements or contractual clauses required thereby to be included or incorporated by reference or operation of law into the Purchase Order. If any Work or any components, parts or materials used in the production of the Work are obtained from sources outside the United States or Canada, Supplier shall comply with all laws, regulations and codes and shall bear all costs, taxes, risk and liability with respect to the importation of such items. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Purchase Order. Nothing in this Agreement shall be construed as creating or granting any rights to third parties.

The Supplier hereby warrants and represents that they are not debarred, suspended, proposed for debarment or otherwise ineligible for participation in U.S. or Canadian federal government contracts and subcontracts and/or participation in federal non procurement covered transactions, and hereby agrees to notify Purchaser if the foregoing statement is no longer accurate at any time during the term of this Agreement.

The Supplier shall inform Purchaser immediately if anyone proposes to Supplier in connection with the services rendered hereunder any conduct that would be in violation of such laws and regulations, and of any investigations of which he is a subject with respect to any violation of such laws and regulations. The Supplier is prohibited from and will not offer, pay, give or promise to pay or give anything of value to any official of any governmental entity, any political party, party official or candidate for the purposes of: (i) influencing such person to perform or omit to perform any act or to make or omit to make any decision in violation of the lawful duty of such person; or (ii) inducing such person to use their influence with any government or instrumentality thereof to affect or influence any act or decision of such government. The Supplier shall not offer, pay, give, or promise to pay or give anything of value to a third person knowing that such thing will be used by such person for a purpose that is not permitted under the preceding sentence.

11. ASSIGNMENT & SUBCONTRACTING. Supplier shall not assign any rights or delegate any duties or obligations hereunder or transfer or otherwise dispose of the Purchase Order or any part hereof or its rights, title and interest herein, nor assign any monies due or to become due hereunder without the prior written consent of Purchaser; provided, however, that Supplier may assign the Purchase Order to an affiliate pursuant to a corporate reorganization but must provide prior written notice to Purchaser before such an assignment is effective. Any assignment or delegation, other than pursuant to a corporate reorganization, made without the express written approval of Purchaser shall be null and void. Any assignment of the Purchase Order shall not, however, relieve Supplier of any responsibility for the due and full performance hereof. Supplier shall be liable to Purchaser for all acts and omissions of its assignees or other transferees. The Purchase Order, and any portion hereof, shall at all times, be assignable by Purchaser. The Purchase Order shall be binding on the parties hereto and their

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successors and assigns.

12. **WAIVER OF LIENS.** Supplier waives any and all liens and claims, and the right to file and enforce or otherwise assert any such liens and claims, against Purchaser, Purchaser's property or facilities, the owner of the site where the Work will be installed or that owner's property or facilities. Additionally, Supplier shall require any subcontractor that has been approved in writing by Purchaser to expressly waive all such rights to file and enforce or otherwise assert any such liens and claims.

13. **GOVERNING LAW AND JURISDICTION.** This contract shall be governed by, interpreted and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles. The parties hereby agree and consent that any and all causes of action arising under the Purchase Order shall have exclusive jurisdiction and venue in the United States District Court for the Eastern District of Virginia, Richmond Division and/or the Circuit Court for the City of Richmond, Commonwealth of Virginia. The parties consent to the jurisdiction and venue of either court for the resolution of all causes of action arising under the Purchase Order upon proper service of process, and hereby waive any objections to the jurisdiction and venue thereof. **SUPPLIER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.** Notwithstanding the above, in the event of a third party dispute or a dispute between Purchaser and its customer, Supplier agrees to join Purchaser in said dispute at the request of Purchaser and Supplier waives any objection to venue, governing law, or jurisdiction.

14. **NON-WAIVER OF RIGHTS.** The failure of Purchaser to demand strict performance of the terms of, or to exercise any right conferred in, the Purchase Order shall not be construed as a waiver or relinquishment of its right to assert or rely upon any such term or right in the future, or consent to any continuing or subsequent failure or breach.

15. **SEVERABILITY.** In the event any provision, or any part or portion of any provision of these Terms shall become or be declared unlawful, invalid, void or otherwise unenforceable, the rights and obligations of the parties shall be reduced only as much as is required to remove the unenforceability. The balance of these Terms shall remain of full force and effect.

16. **SURVIVAL.** Neither completion of the work nor any termination or cancellation of the Purchase Order shall be deemed to relieve Supplier of any obligations hereunder that by their nature survive completion of the work, including but not limited to all warranties, guarantees, promises of indemnity, and confidentiality obligations.

17. **ETHICS.** The Supplier undertakes to act in compliance with the principles described in the Ethics Charter of Purchaser, including those of its parent company, SUEZ. In particular the Supplier shall (i) refrain from utilizing child or any other form of forced or compulsory labour in compliance with applicable national or international standards, (ii) refrain from any form of discrimination within its company or towards its subcontractors, (iii) ensure safe working conditions and healthy work environment for all its employees, (iv) act with respect for the environment in product design, manufacture, use and disposal or recycling and minimize adverse impact on the environment in compliance with all relevant national and international applicable environmental and public health legislation, and (v) refrain from engaging in any form of corrupt business practices. The Supplier may bring any ethical concerns to the Purchaser's attention by contacting the Purchaser's ethics hot line at 877-472-2110 (or as may be changed from time-to-time – contact Purchase Order's project manager for more information). The Supplier undertakes to implement appropriate and effective policies to ensure compliance by its organization with the obligations defined in this clause, and to make regular assessments of said compliance.

18. **NOTICES.** Unless otherwise provided, any notices to be given hereunder shall be given in writing at the address and to the representatives mentioned in the Purchase Order and shall be deemed effectively given (i) upon personal delivery to the party to be notified, (ii) on confirmation of receipt by e-mail by the party to be notified, (iii) one business day after deposit with a reputable overnight courier, prepaid for

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overnight delivery and addressed as set forth herein, or (iv) three days after deposit with the U.S or Canadian Post Office, postage prepaid, registered or certified, with return receipt requested.

19. **CHANGES.** Any request by the Purchaser for amendment of the specifications must be made in writing. The Supplier shall assess the technical and financial consequences of the contemplated amendment, and its impact on the schedule for delivery, within 10 days of receipt of the aforementioned request. In the absence of a written response from the Supplier within such 10-day period, the amendment shall be deemed accepted by the Supplier, it being specified that all other provisions of the Purchase Order shall remain unchanged.

20. **EMPLOYMENT AND SAFETY.** The Supplier shall at all times comply with all applicable, federal, state, provincial, or local Health, Safety and Environment (HSE) requirements and any jobsite safety regulations. Supplier understands and agrees that its status is that of an independent contractor and not as an employee of Purchaser. Purchaser shall have no liability or responsibility with respect to any income or other taxes or withholding in connection with payments made to Supplier hereunder. Purchaser shall not be obligated to maintain any insurance for Supplier or its employees including, without limitation, medical, dental, life or disability insurance. The Supplier shall be exclusively responsible for the safety of its personnel. In particular, the Supplier shall be exclusively responsible for the full and punctual payment of legal or contractual remuneration of its personnel. The Supplier retains authority and control over all of its employees and representatives including when they are on the Purchaser's (or its client's) site. The Supplier shall comply with all guidelines for occupational health and safety, whether general or applicable specifically to a particular work area or site as specified in a prevention plan and/or safety protocol relating to execution of the Purchase Order. In the event that the Supplier does not comply with guidelines, the Purchaser shall under no circumstances incur any liability whatsoever for any potential consequences thereof. The Supplier shall provide due advice (including as regards safety) to the Purchaser. In this respect, the Supplier is expected to provide advice as to any questions raised by the Purchaser, within its scope of expertise or in relation to the safety of persons. The Supplier shall notify the Purchaser and take all emergency measures it deems appropriate to prevent the occurrence of damage or harm relating to or caused by the scope of the Purchase Order. The Supplier shall ensure that its suppliers and subcontractors also comply with the obligations referred to in this Article.

21. **PURCHASER'S INSURANCE REQUIREMENTS.** Supplier shall, at its sole cost and expense, provide and maintain, and require its sub suppliers and subcontractors to provide and maintain, the following insurance during the term of this Purchase Order, including the time of Supplier's furnishing of goods and services, and during the period of Supplier's warranty obligations herein:

- A. Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the provisions of the applicable laws of the state, territory or province having jurisdiction over the work to be performed hereunder, and with Employer's Liability Insurance having a limit of liability of at least \$1,000,000 per occurrence.
- B. Commercial General Liability Insurance, including coverage for Contractual Liability, Products Liability and Completed Operations, and XCU coverages if applicable, having combined single limits of liability for bodily injury, illness, or disease to any person, damage to any property, and/or personal injury of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate per Project.
- C. Business Automobile Insurance covering the use of all owned, non-owned, leased or hired vehicles having combined single limit of liability for bodily injury and/or damage to property of not less than \$1,000,000 per occurrence.
- D. If professional services are to be provided by Supplier under this Purchase Order, Professional Liability Insurance having combined single limit of liability for damages, including bodily injury, property damage and/or other economic or financial loss, of not less than \$2,000,000 per occurrence and aggregate.

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- E. Such other insurance as Purchaser may deem necessary to cover the work as expressly set forth elsewhere in this Purchase Order.
- F. General Requirements:
1. All insurance policies above (except Workers' Compensation and Professional Liability) shall include the Purchaser, Purchaser's customer, Owner of the Project, and Owner's Engineer, and their respective directors, officers, representatives, employees and agents, as additional insureds.
 2. All insurance policies above provided by Supplier covering the additional insureds shall be considered primary and all insurance coverage provided by Purchaser shall be considered excess and non-contributory to claims covered under Supplier's insurance.
 3. All insurance policies above shall contain a waiver of subrogation against all additional insureds.
 4. All insurance policies above shall be issued by insurance companies licensed to conduct business in the jurisdiction of the Project Site and with an A.M. Best rating of "A-" or higher.
 5. All liability insurance policies above shall contain a cross liability or severability of interest provision.
 6. All policies shall be of an occurrence type except that Professional Liability Insurance is acceptable on a claims-made basis.
 7. Products and Completed Operations Liability Insurance and Professional Liability Insurance (if issued on a claims-made basis) shall remain in effect for a period of at least two (2) years after date of final payment to Supplier under the Purchase Order.
 8. Supplier shall provide a certificate of insurance to the Purchaser (and to other additional insureds as directed by Purchaser) in a form acceptable to Purchaser evidencing such insurance policies and requirements as stated above are in force prior to commencing work under the Purchase Order and remain in force during the life of this Purchase Order including the warranty period. Such certificate of insurance shall provide that Supplier's insurance companies shall provide the certificate holder(s) with at least thirty (30) days written notice of any cancellation, non-renewal or material change of the above policies.