

Rev Date: April 24, 2023

1. Definitions

These terms and conditions govern this purchase order and together these documents form the basis of the parties' agreement (this "Agreement"). Throughout these terms and conditions, "Seller" means the entity furnishing and/or installing goods and "Buyer" means the Great Lakes Water Authority, including its officers, directors, employees, and agents.

2. Conflicts and Ambiguities

(a) In any conflict between the specifications, drawings, samples, or designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples, whether approved by Buyer or not, and samples over designated type, part number, or catalog description.

(b) In cases of ambiguity in any requirements of the Contract, Seller must, before proceeding, consult Buyer for its written clarification of the ambiguity, which determination shall be final.

3. Acceptance of Contract

Whether construed as an offer, acceptance or confirmation, this Contract includes all documents and exhibits attached hereto and all other terms incorporated by reference herein. This Contract shall constitute the final, complete, and exclusive statement of this contract and may not be modified or rescinded except by a writing issued by Buyer. If this Contract constitutes an offer by Buyer to purchase and/or install the goods specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified herein, Seller shall indicate its acceptance of this Contract by verbal acceptance communicated to Buyer, by written acceptance on the face of this purchase order received by Buyer, by other written confirmation received by Buyer, by commencing work on this Contract in any manner, expressly conditioned on notice of such commencement of work received by Buyer, or by the delivery and/or installation of the goods within the time for such delivery and/or installation as stated in this Contract. Regardless of the manner or medium of acceptance, time is of the essence. **As an offer, this Contract expressly limits acceptance to its terms and conditions, and notification of objection to any different or additional terms in any response to this offer from Buyer is hereby given.** If this Contract is construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the Buyer's assent to any additional or different terms contained in this Contract. If this Contract is construed as a confirmation of an existing contract, the parties agree that this Contract constitutes the final, complete, and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the use of this Contract to place orders for goods and/or the installation of goods pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the terms and conditions of this Contract are not inconsistent with such written contract. **Regardless of its construction as an offer, acceptance, confirmation, or use to place orders for goods and/or the installation of goods pursuant to an earlier contract, this Contract incorporates by reference all terms of the Uniform Commercial Code providing any protection for Buyer, including, without limitation, all express and implied warranty protection, and all Buyer's remedies as a buyer under Michigan's Uniform Commercial Code, MCL 440.11.01, et seq ("UCC").** No modifications to this Contract shall be effective unless made in writing signed by the parties.

4. Shipping Instructions

(a) Seller shall be responsible for the proper packaging of the goods to ensure that goods are delivered in an undamaged condition. Unless otherwise specified, delivery shall be made F.O.B. to the Buyer's delivery location specified on the purchase

order. Seller shall comply with Buyer's written shipping instructions. Seller shall submit all shipping documentation, including the commercial invoice, packing slip, bill of materials and/or any other documents as required by Buyer prior to invoicing by Seller. The purchase order number shall appear on all correspondence, shipping labels and shipping documents, including all packing sheets, bills of lading and air bills. Any goods supplied to Buyer which are covered by the OSHA Hazard Communication Standard shall be accompanied by the applicable Material Safety Data Sheet (MSDS) at the time of delivery.

(b) For goods purchased F.O.B. origin, Seller shall not insure nor declare a value except when transportation rates are based on "released value," in which instance Seller shall annotate on the bill of lading the lowest released value provided in applicable tariffs.

5. Delivery; Notice of Delay

(a) Goods shall be delivered during normal business hours, in a manner and at such locations as specified on the purchase order, and as otherwise instructed by Buyer. Buyer reserves the right to refuse or return at Seller's risk and expense shipments made in error, in excess of Buyer's order or in advance of Buyer's required schedules, and no restocking fees shall apply unless otherwise agreed upon. Buyer may defer payment on advance deliveries until scheduled delivery dates.

(b) Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Contract. The notice shall include a revised schedule of performance and shall not constitute a waiver of Buyer's rights and remedies under this Contract.

6. Inspection

Buyer shall have to right to inspect and test the goods on or after the delivery date. Buyer, at its sole option, may inspect and test all or a sample of the goods, and may reject all or any portion of the goods if it determines the goods are nonconforming or defective. If Buyer rejects any portion of the goods, Buyer shall have the right, upon written notice to Seller, to: (i) terminate this Contract in its entirety; (ii) require reimbursement of the full purchase price for the rejected portion of the goods; (iii) accept the goods at a reasonably reduced price or (iv) require prompt repair or replacement of the rejected goods at Seller's sole expense including, but not limited to, transportation charges for the return of the rejected goods and delivery of replacement goods. Buyer shall have the right to conduct further inspections and tests after Seller has carried out its remedial actions. Buyer's inspection or test, failure to inspect or test, approval of, and/or payment for any goods shall not reduce or otherwise affect Seller's obligations under this Contract and shall not be construed to waive any rights of Buyer under this Contract. Restocking fees, if any, shall not be permitted under this Section.

7. Invoices

All invoices shall be emailed to accountspayable@glwater.org and contain:

(a) Seller Information: full name of business, federal identification number, invoice number, date of invoice, and purchase order number; and

(b) Itemized Quantity and Pricing Information: description of goods, part or item number, quantity delivered, unit price, installation cost, and any discount terms; and

(c) Delivery/Installation Information: location and date of delivery and/or installation.

8. Warranty

(a) Seller warrants to Buyer that all goods shall (i) be free from any defects in workmanship, material, and design; (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer; (iii) be fit for their intended

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purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's intellectual property rights. These warranties shall be cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section 8, Seller shall, at its sole cost and expense, promptly replace or repair the defective or nonconforming goods and pay for all related expenses including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement goods to Buyer. If the notice of noncompliance is related to the infringement or misappropriation of any third-party intellectual property rights, Seller shall, at Buyer's option, replace infringing goods with comparable goods acceptable to Buyer of substantially same form, fit and function or modify infringing goods to remove the source of infringement. If the use, sale or incorporation into any manufactured product of any goods is enjoined as a result of such claim, Seller, at no expense to Buyer, shall use commercially reasonable efforts to obtain for Buyer the right to purchase and use the affected goods. Seller shall be liable for and hold harmless Buyer and Buyer's directors, officers, employees, representatives, and agents (collectively, the "Indemnitees") from any loss, damage, or expense whatsoever that Buyer may suffer from the breach of any warranty.

(b) Seller's warranty shall be for a minimum of (i) one (1) year from the date of acceptance by Buyer, or (ii) one (1) year from the installation date, or (iii) such time as is specified in the technical specifications, whichever is longer (the "Warranty Period"). Upon Seller's cure of any warranty claim, the Warranty Period shall restart.

9. Proprietary Rights

(a) All specifications, information, data, drawings, software, and other items (collectively, "Information") supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction. Seller shall not relinquish any proprietary rights in its intellectual property or trade secrets as a result of the goods provided under this Contract.

(b) All Information (i) supplied to Seller by Buyer or (ii) obtained by Seller and paid for by Buyer in the performance of this Contract shall be maintained as proprietary to Buyer by Seller, shall be used only for purposes of providing and/or installing the goods pursuant to this Contract, and shall not be disclosed to any third party without Buyer's written consent. All Information shall be promptly returned to Buyer upon request or upon completion of this Contract.

10. Buyer's Property

(a) All information and drawings, tools, jigs, dies, fixtures, materials, and other items supplied or paid for by Buyer (collectively, "Buyer's Property") shall be and remain the property of Buyer. Seller shall immediately return all Buyer's Property to Buyer upon Buyer's request.

(b) Buyer's Property shall be used only in the performance of this Contract unless Buyer consents otherwise in writing.

(c) Seller shall have the obligation to maintain all Buyer's Property furnished to Seller and shall be responsible for all loss or damage to said property except for normal wear and tear.

(d) Goods made in accordance with Buyer's specifications and drawings shall not be furnished or quoted by Seller to any other person or entity without Buyer's prior written consent.

11. Publication; Use of Buyer's Name/Logo

(a) Seller shall not publish any information developed under this Contract nor distribute it nor make any news release about the existence or subject matter of this Contract without prior written consent of Buyer.

(b) Seller shall not use Buyer's name or logo on Seller's website, at Seller's place of business or in any written or electronic promotional materials without the prior written consent of Buyer.

12. Termination

Buyer may terminate this Contract, in whole or in part, at any time, with or without cause, on five (5) business days' prior written notice to Seller, for any undelivered goods. In addition to any other remedies that may be provided under this Contract, Buyer may terminate this Contract with immediate effect upon written notice to Seller, either before or after the acceptance of the goods, if Seller has not performed or complied with, in whole or in part, any of the terms and conditions of this Contract. If Buyer terminates this Contract for any reason, Seller's sole and exclusive remedy shall be payment for the goods received and accepted by Buyer. However, if the Contract contains made-to-order goods, and (i) the made-to-order goods are in possession of Seller and (ii) the termination is without cause, then Seller shall be entitled to be paid a restocking fee for those made-to-order goods if such fee is specified in this Contract.

13. Amendment

This Contract shall not be modified except by written amendment, signed, and acknowledged by duly authorized representatives of both parties and approved by Buyer in accordance with Buyer's Procurement Policy, as may be amended from time to time. Buyer's Procurement Policy is located at www.glwater.org.

14. Insurance

(a) When installations are performed on Buyer's premises or goods are delivered by Seller to Buyer's premises, Seller agrees to maintain the following insurance until the Warranty Period expires:

Insurance Type	Amount Not Less Than
Workers' Compensation	Statutory limits mandated by law
Employers' Liability	\$1,000,000 each disease \$1,000,000 each person \$1,000,000 each accident
Commercial General Liability Insurance	\$1,000,000 each occurrence \$1,000,000 personal / advertising injury \$2,000,000 general aggregate \$2,000,000 products / completed ops aggregate
Automobile Liability Insurance (covering Any Auto owned, hired and non-owned vehicles)	\$1,000,000 combined single limit
Umbrella/Excess Liability Insurance	\$2,000,000 each occurrence \$2,000,000 aggregate

(b) The commercial general liability insurance policy shall include an endorsement naming the "Great Lakes Water Authority" as an additional insured.

(c) The commercial general liability policy and the umbrella/excess liability policy shall be endorsed to provide that Seller's insurance is primary and non-contributory to any insurance already carried by Buyer.

(d) The commercial general liability, automobile liability and workers' compensation policies shall be endorsed with a waiver of subrogation on either a blanket basis or in favor of Buyer.

(e) Seller or its insurer shall provide notice to Buyer of the cancellation of any insurance policy required by this Contract.

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(f) All insurance policies shall name Seller as the insured, be written on an occurrence-based policy form, be affected at Seller's expense, under valid and enforceable policies, and issued by insurers either licensed to conduct business in Michigan or which have an A.M. Best's rating of A-/VIII.

(g) Certificates of insurance evidencing the coverage required by this Section 14 shall be provided to Buyer upon request.

15. Indemnity

Seller shall, to the extent of its negligence, indemnify and hold harmless Indemnitees from all third-party claims, suits, actions, liabilities, expenses, losses, or damages whatsoever including reasonable attorney and professional fees and costs, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, "Claims") arising out of or occurring in connection with (i) the goods purchased from Seller, (ii) Seller's or Seller's personnel, employees, subcontractors and agents (collectively, "Associates") negligence or willful misconduct in the performance or breach of this Contract, and (iii) any bodily injury or property damage in the performance of this Contract. It is Seller's responsibility and not the responsibility of the Indemnitees to safeguard the property that Seller or its Associates use while performing this Contract and Seller shall hold harmless the Indemnitees for any loss of or damage to such property.

16. Intellectual Property

(a) Seller warrants that the sale, use, or incorporation into manufactured products of all goods, machines, parts, components, services, devices, material, and rights furnished or licensed under this Contract (collectively, "Parts") which are not of Buyer's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark, or other proprietary rights. Seller shall indemnify and hold harmless the Indemnitees from all Claims alleging such infringement. Seller may, at Buyer's option, replace or modify infringing Parts with comparable Parts acceptable to Buyer of substantially same form, fit, and function to remove the source of infringement, and shall extend this provision thereto. If the use or sale of any Parts is enjoined as a result of such Claim, Seller, at no expense to Buyer, shall use all reasonable efforts to obtain for Buyer the right to use and sell the affected Parts.

(b) Any invention or intellectual property first made or conceived by Seller in the performance of Contract or which is derived from or based on the use of information supplied by Buyer shall be the property of Buyer and Seller shall execute such documents necessary to perfect Buyer's title thereto.

17. Limitation of Liability

Neither party shall be liable, regardless of the form of action, for any Claim related to or arising under this Contract, for consequential, incidental, indirect or special damages, including without limitation lost profits and lost business opportunities. Other than its payment obligations, Buyer's aggregate liability to Seller under this Contract, regardless of the form of action, for any Claim related to or arising under this Contract shall not exceed the total amount of payments paid by Buyer to Seller during the twelve (12) months preceding the applicable Claim. Seller's aggregate liability to Buyer under this Contract, regardless of the form of action, for any Claim related to or arising under this Contract shall not exceed the total amount of payments paid to Seller by Buyer during the twelve (12) months preceding the applicable Claim provided, however, that the limitation in this sentence shall not apply to (i) Seller's indemnification obligations under this Contract; and (ii) Seller's or its Associate's acts of fraud, gross negligence or willful misconduct; and (iii) Seller's or its

Associate's violation of law; and (iv) Claims for bodily injury including death; and (v) Claims alleging Seller's infringement of a third party's intellectual property rights. The terms of this Section 17 shall not and shall not be construed to eliminate, modify, reduce, restrict, or otherwise limit the statutory immunity granted to Buyer by Michigan law.

18. Assignment

Seller may not assign any rights or obligations due or to become due under this Contract without the prior written consent of Buyer. Any purported assignment by Seller without such consent shall be void.

19. Compliance with Laws

Seller shall comply with all applicable international, federal, state, and local laws and shall hold harmless Indemnitees with respect to any damages arising from any violation of law by Seller or its Associates.

20. Conflict of Interest

Seller warrants that it has no interest and shall not acquire any interest that would conflict in any manner with the performance of this Contract and no Associate having any such interest shall be employed by it.

21. Health, Safety and Security Policies

Seller shall comply with and require its Associates to comply with all health, safety and security policies and procedures in effect at any Buyer-owned or operated facility. Associates assigned to furnish and/or install goods under this Contract may be subject to a background check and Buyer's security clearance requirements.

22. Force Majeure

A failure by either party to perform due to causes beyond the control of and without the fault or negligence of such party is deemed excusable during the period in which the cause of the failure to perform continues. Such causes may include acts of God, acts of government, epidemics and pandemics, fire, flood, strike, lockout, war, terrorism, riots, explosions, sabotage, breakage or accident to equipment, and freight embargo. When Seller becomes aware of any actual or potential force majeure condition, Seller shall immediately notify Buyer of the condition and the expected time required to rectify the condition. Buyer may cancel this Contract, in whole or in part, if a force majeure condition continues for seven (7) days.

23. Insolvency

If Seller becomes insolvent, files a petition in bankruptcy, or makes an assignment for the benefit of creditors, or if a receiver or trustee is appointed of or for any of Seller's property or business, this Contract may be cancelled at Buyer's sole option without liability to Seller.

24. Law and Jurisdiction

This Contract and all actions arising under it shall be governed by the laws of the State of Michigan, without regard to its conflict of laws principles. Seller consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, and any action arising out of this Contract shall be filed in any state or federal court of competent jurisdiction in Wayne County, Michigan.

25. Non-exclusive Contract

This Contract a non-exclusive contract and Buyer reserves the right to purchase same or like goods from other sources.

26. Remedies

The rights of each party to this Contract shall be in addition to their respective rights and remedies at law or in equity.

27. Set-off

Buyer shall have the right to recover by set-off from any payment owed to Seller any amounts owed to Buyer by Seller under this Contract or any other contract between Buyer and Seller.

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28. Severability

If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

29. Surviving Terms

Seller's obligations under the Warranty (Section 8), Proprietary Rights (Section 9), Buyer's Property (Section 10), Publication; Use of Buyer's Name/Logo (Section 11), Indemnity (Section 15), Intellectual Property (Section 16), Limitation of Liability (Section 17), and Law and Jurisdiction (Section 24) provisions of this Contract and/or the UCC shall survive any termination or expiration of this Contract.

30. Taxes

Buyer is a tax-exempt Michigan municipal authority. Seller shall pay all local, state, and federal excise, sales, and use taxes when applicable. All such taxes shall be listed separately on Seller's invoice.

31. Waiver

No party shall be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a waiver of any right on any future occasion. No failure by a party to insist upon the strict performance of any covenant, agreement, term, or condition of this Contract or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

32. Vendor Performance Assessment

Seller shall be subject to Buyer's "Vendor Performance Assessment", and the results thereof may impact its future engagements with Buyer.

(End Purchase Order Terms and Conditions)