



DOUGLAS PUD

MATERIAL TERMS & CONDITIONS

The following terms and conditions are part of the contract between Buyer and Seller for Purchase Order(s) issued by the Public Utility District No 1 of Douglas County (Buyer).

1. SALE OF GOODS

Seller shall sell, transfer and deliver the goods described in Buyer's Purchase Order to Buyer on or before the date shown on Buyer's Purchase Order.

2. ACCEPTANCE INSPECTION PAYMENT

After acceptance of the goods, Buyer shall be obligated to pay Seller for each item included in Buyer's Purchase Order. The Buyer shall not be deemed to have accepted any goods prior to the completion of inspection and testing. At the Buyer's option, such test may be made either at the factory before shipment or after receipt, or both. If inspection and/or testing show the goods to be not as represented or contracted for, the Buyer may refuse to accept the same if the Seller is unable to remedy the fault after having been given reasonable opportunity in which to do so under the circumstances. The Buyer shall make a reasonable effort to assure that such inspection and/or testing is conducted as soon as practical following delivery, but in no event later than 30 days following delivery.

No payment made under the Purchase Order shall be evidence of completion and/or satisfactory performance of this contract, either wholly or in part, nor shall any such payment relieve the Seller of any of its obligations hereunder.

Should the item(s) be found unacceptable to the Buyer, it shall be the Seller's responsibility to, at its own cost, arrange the return of the item(s). The Buyer will take the necessary steps to prepare the items for return but the Buyer's responsibility for the items shall end when the item(s) leave the Buyer's dock. Should payment have been made on the item(s) returned, the seller shall promptly refund the full purchase price, including shipping in the form of a check referencing the Purchase Order number. A credit memo/invoice is not an acceptable form of refund.

3. WARRANTY

The Seller agrees that all goods furnished pursuant to this contract shall be new and free from all defects in design, workmanship and material and shall replace, repair or make good, without cost to the Buyer, any defects or faults arising within one year after date of acceptance of goods furnished hereunder. The Seller shall bear all expenses reasonably necessary under the circumstances in order for the Seller to perform under this contract, including but not limited to transportation, removal and reinstallation costs. The warranties set forth in this paragraph constitute express warranties of future compliance. Seller agrees to obtain for the Buyer any and all warranties for the goods to be provided, and to insure that such warranties will inure to the benefit of the Buyer. It is agreed that the Seller will execute such documents as may be necessary to effectuate such an assignment.

The Buyer, at its option, may undertake necessary repairs or remedy defects in the goods covered under these warranties if the Seller does not make such repairs or remedy such defects within a reasonable time after demand by the Buyer and all costs of such repairs and/or remedies shall be payable by the Seller. The reasonable time for repairs/remedies shall be determined by the Buyer.

4. **INDEMNITY**

It is understood that in accepting the Purchase Order(s), Seller (unless otherwise agreed to and specifically incorporated into this contract in writing) agrees to indemnify, defend, and hold Buyer harmless from any and all loss, expense and liability caused in whole or in part by any negligent or willful act or omission of Seller or anyone directly or indirectly employed by Seller; this indemnity obligation shall specifically include action brought by Seller's employees or anyone directly or indirectly employed by the Seller. This indemnity obligation specifically includes liability or alleged liability that may arise from injury or loss suffered by any employee of the Seller or any subcontractor of the Seller regardless of any immunity provided by the Washington Industrial Insurance Act, RCW Title 51, or any other applicable law. **THE TERMS OF THIS SECTION, SPECIFICALLY INCLUDING THE PRECEDING WAIVER OF IMMUNITY, SHALL BE DEEMED MUTUALLY NEGOTIATED TO THE FULLEST EXTENT ALLOWED BY THE LAWS OF WASHINGTON APPLICABLE TO THE BUYER.**

5. **PURCHASE ORDER NUMBER / PAYMENT**

A Purchase Order number will be assigned by the Buyer to identify all goods purchased under this contract. All correspondence and invoices should be plainly marked with the Purchase Order number for identification purposes.

Unless otherwise agreed to in the Purchase Order, all invoices shall be paid net/30 upon receipt of a properly completed invoice and the item(s) ordered. All invoices shall be sent to the attention of the Buyer's Accounts Payable Department and may be sent via email to: accountspayable@dcpud.org

The making of any payment to the Seller under the contract shall not relieve the Seller of any of its obligations thereunder. The Seller is obligated to complete the contract in its entirety and to deliver to the Buyer such completed work as is specified.

6. **ASSIGNMENT**

The Seller shall not assign this contract or any part thereof without the advanced written approval of the Buyer.

7. **PLACE OF DELIVERY**

Unless an alternate location is specified on Buyer's Purchase Order, the Seller shall deliver all goods to the Buyer F.O.B. Destination to the address specified on the Purchase Order on or before the date specified on the Purchase Order. Unless otherwise agreed to in the Purchase Order, Seller shall pay all shipping costs.

8. **TITLE AND RISK OF LOSS**

The title and risk of loss of the goods shall not pass to Buyer until Buyer accepts conforming goods, as set forth in Section 2.

9. **PATENT**

The Seller, at its own expense, shall defend all suits or proceedings instituted against the Buyer and pay any award of damages and/or costs assessed against the Buyer in such suits or proceedings, insofar as the same are based on any claim that any goods, materials or equipment, or any part thereof, furnished pursuant to this contract constitutes an infringement of any patent or copyright. In case such goods, materials or equipment are in any such suit held to constitute an infringement and the use enjoined, the Seller shall, within a reasonable time, either secure for the Buyer, at the Seller's own expense, the right to continue using said goods, materials and/or equipment by suspension of the injunction, by producing for the Buyer the license, or otherwise, or will at the Seller's own expense and as the Buyer may elect, replace the infringing goods with noninfringing goods or modify the same so that they become noninfringing.

10. APPLICABLE LAW

Seller shall comply with all applicable federal, state and local laws and regulations, all of which are deemed to be incorporated into this contract as if fully set forth. This contract shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington and the rights and obligations of Buyer and Seller shall be governed by the laws of the State of Washington. Venue for any action filed to enforce or interpret the provisions of this contract shall be in Douglas County Superior Court, Douglas County, Washington. In the event of litigation to enforce the provisions of this contract, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief allowed.

11. FINAL EXPRESSION

This writing is the final expression of this contract and is the complete and exclusive statement of the terms thereof between Buyer and Seller.

12. MEANING OF TERMS

Except as otherwise expressly agreed, all terms herein employed shall have the same definition as set forth in the Uniform Commercial Code in effect in the State of Washington under RCW 62A on the date of execution of this contract.

13. SAFETY DATA SHEETS

Seller agrees to deliver to Buyer, with the goods, Safety Data Sheets applicable for hazardous or potentially hazardous products.

14. CONFLICT AND PRECEDENCE

In the event of a conflict between these Terms and Conditions, the specifications supplied by the Buyer, and/or terms on Buyer's Purchase Order (including attachments and revisions to the Purchase Order), the following order of precedence shall apply:

- Purchase Order (including attachments and revisions)
- The specifications supplied by Buyer
- The Buyer's Material Terms & Conditions

15. GENERAL

The Seller, by accepting the Buyer's Purchase Order, agrees to these terms and conditions and that paragraph 4 was directly negotiated.