

## GOODS TERMS AND CONDITIONS

1. **SHIPMENT**

All Goods shall be "F.O.B. DESTINATION". Contractor shall arrange and be responsible for the shipment and receipt of all Items to be furnished in the Contract. Contractor shall not charge for boxing, crating, and packaging. If premium transportation costs are incurred to enable Contractor to meet scheduled deliveries, the costs shall be paid by Contractor, unless otherwise agreed to in writing by CAWCD. Goods shall be packed to prevent damage from weather or transportation, taking into account the transportation means to be used. Shipping receipts, original bills of lading, express receipts, and air bills shall be sent to CAWCD's Purchasing Department on the date the Goods are shipped.

2. **TITLE**

2.1 Title to the Goods or any part thereof, shall pass at the actual point of acceptance by CAWCD as herein elsewhere provided. Title shall not pass for the Goods or any part thereof, that is not accepted by CAWCD.

2.2 The risk of loss and damage with respect to the value of the Goods or any part thereof, shall be and remain with the Contractor until acceptance by CAWCD.

3. **RISK OF LOSS**

Regardless of passage of title, the risk of loss to any Goods provided under this Contract shall remain with the Contractor until acceptance by CAWCD. Should any of the Goods be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to CAWCD, the Contractor shall repair or replace the same. Any bonds or insurance protection required by this Contract or otherwise provided by CAWCD or the Contractor shall in no way limit the responsibility of the Contractor under this paragraph.

4. **INSPECTION; REJECTION**

4.1 CAWCD has the right to inspect and test any Goods supplied pursuant to the Contract at any time during manufacture and prior to shipment. Final inspection will be made within a reasonable time after the later of receipt by CAWCD or installation by the Contractor. At any time prior to or within a reasonable time after final inspection CAWCD may, without limitation to its other rights under this Contract, reject any Goods which contain defective materials or workmanship or which does not conform to specifications or drawings, notwithstanding CAWCD's prior inspections or prior knowledge of the non-conformity, its substantiality, or its ease of discovery.

4.2 If CAWCD rejects any Item prior to acceptance, CAWCD shall give Contractor notice of the rejection, including instructions

relating to replacement of the Goods or a refund. Contractor shall bear the risk of loss for rejected Goods after notice is given. If requested by Contractor, rejected Goods may be returned to Contractor at Contractor's expense. If requested by CAWCD, Contractor shall a) replace the rejected Goods, or b) refund to CAWCD the amount paid by CAWCD for the rejected Goods.

5. **ACCEPTANCE**

CAWCD shall not be deemed to have accepted the Goods until sufficient tests and inspections have been made by CAWCD to determine that the Goods meet all requirements of the Contract Documents. No Goods shall be deemed accepted until successful completion of the final inspection, notwithstanding any prior inspections or tests or any payment made. Such tests and inspections shall be as specified and shall be held at a time and in the manner defined by CAWCD. If after inspection or testing, CAWCD determines in its sole discretion, that an inspection or test shows the Goods or any part thereof not to be as represented or contracted for, CAWCD may refuse to accept it, and the Contractor shall be so advised and shall have a reasonable time within which to replace the Goods at its own expense. Payment of the Contract Sum, or any part thereof, shall not be deemed to be an acceptance of the Goods by CAWCD or to release Contractor from its responsibility to fully perform its obligations under the terms of the Contract Documents. Successful completion of the agreed upon tests and inspections, as determined solely by CAWCD, shall constitute acceptance.

6. **RIGHT TO USE GOODS REQUIRING CORRECTIONS**

6.1 After the Goods have been supplied, if it is discovered that it or any part thereof may require correction, CAWCD shall nevertheless have the right to use such Goods until such time as it is convenient to CAWCD that such Goods be removed from service for correction.

6.2 CAWCD's right to use the Goods in such instance may be limited in such manner or degree as Contractor may specify in writing as being necessary to protect the Goods until such time as repairs or corrections can be made.

7. **WARRANTY**

7.1 Contractor warrants that the Goods shall conform in all respects to the Contract Documents, and shall be free from defects in design, material, workmanship, inspection, and title, and shall be of the best quality. If it appears, within the Contractor's warranty period or one (1) year from the date of acceptance, whichever is greater, that the Goods or any part thereof do not conform to these warranties, and CAWCD so notifies Contractor within a reasonable time after its discovery, Contractor shall promptly correct

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such non-conformity at its sole expense. Except as otherwise agreed to in writing between the parties, Contractor's liability hereunder shall extend to all damages proximately caused by the breach of any warranty, but such liability shall in no event include loss of profit or loss of use. All warranties provided under this Contract shall inure solely to CAWCD, shall not be deemed exclusive, and shall not limit CAWCD's rights or Contractor's obligations under any other provisions of this Contract or by operation of law. In the event there is a conflict between provisions contained in this section and any referenced specifications, standards, regulations, and codes, the more stringent requirements shall apply.

7.2 The Contractor further warrants that all Goods delivered to CAWCD required by this Contract shall be free of asbestos and lead in any form whatsoever. There shall be no exceptions for lead in any form. The Contractor may request prior written approval from CAWCD to provide a product containing asbestos when an asbestos-free product is not available. All requests shall be fully documented by the Contractor as soon as possible after the Contractor determines that an asbestos-free product is not available. Approval of a request for use of a product containing asbestos is at the sole discretion of CAWCD. CAWCD's disapproval of a request shall be final.

### 8. PATENTS

8.1 To the extent that any Goods supplied by Contractor as part of this Contract are produced or performed to designs not originated by CAWCD, Contractor guarantees that the sale and use of all such Goods will not infringe any patent, trademark or copyright. Contractor agrees to indemnify and hold harmless the United States of America and CAWCD against all claims, damages, liabilities, attorney's fees, costs, fines, and profits, including any compromise settlement, for actual or alleged infringement of any United States or foreign patent, trademark or copyright, or for rights arising from unfair competition, related to the purchase and use of the Goods purchased hereunder. The indemnity provided herein shall survive the termination of the Contract.

8.2 In the event the sale or use of all or any part of the Goods is held to constitute an infringement and the use of any or all of them is enjoined, the Contractor shall, at its own expense and at its own option, either procure for CAWCD a license for continued use of such Goods, replace them with substantially equal but non-infringing Goods, modify them such that they become non-infringing, or remove them and refund the purchase price and pay all costs to CAWCD of removal, transportation and replacement.

### 9. LIENS

In the event that a lien shall at any time be filed or threatened to be filed against the Goods by the Contractor or any subcontractor, mechanic, materialman or other person employed by the Contractor, or any subcontractor in or about the manufacture, erection, construction, alteration or repair in connection with the Goods purchased hereunder, by any person, the Contractor shall, promptly on demand of CAWCD and at its own expense, take any and all action necessary to cause any such lien to be released or discharged therefrom.