



PURCHASE ORDER TERMS AND CONDITIONS

As used herein, "Seller" includes Seller, its subsidiaries and affiliates; "CFU" includes the Municipal Electric, Gas, Water and Communications Utilities of the City of Cedar Falls Iowa. **Seller and CFU hereby agree as follows:**

1. SERVICES AND DELIVERABLES. Seller agrees to perform the services ("Services") and/or provide the goods or Service deliverables (collectively referred to as "Goods"), in accordance with the CFU purchase order and scope of work and with these Terms and Conditions all of which are the agreement ("Agreement").

This writing does not constitute a firm offer within the meaning of the Iowa Code Section 554.2205, and may be revoked at any time prior to acceptance. This Agreement may not be modified, except in writing signed by an authorized representative of Cedar Falls Utilities. Any other terms or conditions are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof. Shipment of the Goods or beginning performance of any Services by Seller shall constitute such assent.

2. DELIVERY AND INSPECTION. Time is of the essence. Delivery of Goods shall be made pursuant to the schedule, via the carrier and to the place specified on the face of the applicable purchase order. CFU shall have a reasonable time to inspect goods after receipt and shall have the right to reject non-conforming goods.

3. IDENTIFICATION, RISK OF LOSS AND DESTRUCTION OF GOODS. Identification of the Goods shall occur in accordance with Iowa Code Section 554.2501. Seller assumes all risk of loss until actual receipt by CFU. Title to the Goods shall pass to CFU upon actual receipt.

4. WARRANTIES. 4.1 Services: Seller represents and warrants that all Services shall be completed in a skilled and workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures in accordance with applicable specifications. **4.2 Goods:** Seller warrants that all Goods provided will be new and will not be used or refurbished, unless CFU expressly authorizes in writing such used or refurbished items. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents, and to all warranties provided for by Iowa Code Chapter 554.

5. INDEPENDENT CONTRACTOR. Seller is an independent contractor for all purposes, without express or implied authority to bind CFU by contract or otherwise. Seller shall perform all duties in accordance with applicable Federal, State and local laws and regulations.

6. INSURANCE. If this purchase order applies to services, Seller shall maintain all insurance coverages required by law and general liability insurance coverage of not less than one million dollars per incident designating CFU as an additional named insured, on a primary and noncontributory basis. Seller shall provide insurance certificate and endorsements for governmental immunity and waiver of subrogation as to workers' compensation and general liability policies. Seller shall furnish such Certificates of Insurance for coverages as CFU may request in insurers approved by CFU prior to commencement of performance under this agreement.

7. INDEMNITY. Seller shall indemnify, hold harmless, and at CFU's request, defend CFU, its Trustees, officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods or Services provided under this Agreement. Seller shall not settle any such suit or claim without CFU's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by CFU in enforcing this indemnity, including attorneys' fees.

8. REMEDIES. If Seller breaches this Agreement, CFU shall have all remedies available by law and at equity. Seller's sole remedy shall be the right to recover the purchase price specified in the Agreement minus any amount or value recoverable through mitigation. Force Majeure shall apply when circumstances beyond the control of the parties make performance commercially impractical.

9. SEVERABILITY. If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

10. LIMITATION OF LIABILITY. IN NO EVENT SHALL CFU BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT CFU WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11. ASSIGNMENT; WAIVER. Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of CFU which may be withheld for any reason.

12. SURVIVAL OF OBLIGATIONS. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

13. GOVERNING LAW JURISDICTION. This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Iowa, excluding its conflict of law rules. The parties hereto agree that exclusive jurisdiction and venue shall be in the Iowa District Court in Black Hawk County and in no other jurisdiction or location. The parties agree to waive jury trial and submit disputes to trial by judge.