



## **O'ROURKE PETROLUUM PURCHASE ORDER TERMS & CONDITIONS**

**1. DEFINITIONS.** "Seller" shall mean the person, partnership, limited liability company, corporation or other entity to whom any purchase order (each a "Purchase Order") is addressed, irrespective of whether the Purchase Order is for the purchase of goods or services. "Buyer" shall collectively mean O'Rourke Dist. Co., Inc. d/b/a O'Rourke Petroleum, a Texas corporation, Offsite Equipment Services, LLC, a Texas corporation, and Select Environmental, Inc., a Texas corporation, located at 223 McCarty St., Houston, Texas 77029. "Product" shall refer to the goods or services provided to Buyer or on behalf of Buyer to Buyer's customers or clients by Seller under a Purchase Order. Seller shall be deemed in acceptance of these terms upon acceptance of a Purchase Order, signature on this document or by performance.

**2. CHANGES AND TERMINATION FOR CONVENIENCE OF BUYER.** Buyer may at any time by written notice terminate a purchase order or make changes in drawings and specifications, shipping instructions, quantities and delivery schedules. Written notice for termination shall be deemed acceptable by mail, e-mail or fax. Should such termination occur or should any such change increase or decrease the cost of, or the time required for performance of a purchase order, an equitable adjustment in the price and/or delivery schedule will be made. Any claims for adjustment by Seller must be made within fifteen (15) days from the date the change is ordered, or within such additional period of time as may be approved by Buyer. There are no terms, understandings or agreements between Buyer and Seller other than those stated herein and all prior proposals and negotiations are merged herein. **NO TERMS AND CONDITIONS IN ANY WAY ALTERING OR MODIFYING ANY PROVISION HEREOF, INCLUDING, BUT NOT LIMITED TO, IN ANY PURCHASE ORDER OF SELLER, WILL BE BINDING UPON BUYER UNLESS EMBODIED IN A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED OFFICER OF BUYER.**

**3. ACCEPTANCE AND RISK OF LOSS.** Delivery shall not be deemed to be complete until the Products have been actually received and accepted by Buyer; the risk of loss or damage in transit shall be upon the Seller; acceptance or payment for all or any part of the goods or services shall not be deemed to be a waiver of Buyer's rights in the event the goods or services, or replacements thereof, fail to conform to Buyer's specifications or in the event of any breach of warranty, nor of Buyer's rights to damages, of whatever nature, suffered as a result thereof. If inspection discloses part of the goods received are not in accordance with Buyer's specifications or as warranted, Buyer shall have the right to cancel any unshipped portion of the order. Rejected items will be held or returned at Seller's risk and expense, including transportation costs both ways.

**4. WARRANTY.** In addition to any express warranties made by Seller or typed on the face of the Purchase Order

and the prevailing IMPLIED WARRANTIES set forth in the Texas Uniform Commercial Code (which shall be applicable hereto to the extent that they are not inconsistent with the terms and conditions herein), the Seller hereby WARRANTS: (a) all Products including those sold under patent or other trade name are fit for the particular purpose for which the goods are required and the conditions under which the goods will be used by Buyer (and, unless otherwise stated herein, Seller acknowledges that Seller is aware of such purposes and conditions and that Buyer is relying and entitled to rely on Seller's skill and judgment in this matter); and (b) the Products provided pursuant to any purchase order are of merchantable quality and free of any defects in material and workmanship. Without limitation to the foregoing, Seller expressly provides the foregoing warranties for a period of at least one (1) year from the date of final acceptance by the ultimate user of the items supplied hereunder, and Seller expressly extends these warranties to Buyer, its customers, and the ultimate user of these products. The foregoing warranties shall survive any inspection, delivery, acceptance or payment and any replacement goods, items or materials furnished by Seller shall also bear the same warranties. Seller hereby expressly warrants that it has marketable title to any Product sold and delivered hereunder, free and clear of any liens or encumbrances, and that Seller has full right and authority to transfer such title and effect delivery of such Product to Buyer.

**5. PRICING.** If the price is not cited in the applicable purchase order, it is agreed that any Product sold shall be billed at the price last quoted. Buyer may offset from any payments due Seller any amounts that Seller may now or hereafter owe to Buyer. Buyer shall not be obligated to make any payment to Seller if (a) Seller is in default on any of its obligations to Buyer, or (b) any part of such payment is attributable to goods that are defective, provided however, such payment shall be made on the net amount due above that attributable to said default or defect.

**6. PAYMENT.** Within (1) week of delivery of products or completion of services, Seller shall submit an invoice to Buyer. Buyer will pay Seller amounts due and owing on payment terms of Net 30, unless other payment terms are agreed upon in a separate agreement or between Buyer and Seller or the purchase order states different terms. Buyer shall not be responsible for paying any amounts relating to invoices that are submitted to Buyer by Seller more than forty-five (45) days from the date of delivery of products or completion of services.

**7. INDEMNIFICATION.** Seller shall be wholly responsible for any unforeseeable expense or damage incurred while performing a service on behalf of Buyer on Buyer's site or Buyer's customer or client's site. **IN THE EVENT SELLER, ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS ENTER PREMISES OCCUPIED BY OR UNDER THE CONTROL OF BUYER OR BUYER'S**

CUSTOMERS OR CLIENTS IN THE PERFORMANCE OF A PURCHASE ORDER, SELLER AGREES THAT IT WILL INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER, ITS AGENTS, OFFICERS, DIRECTORS, AND EMPLOYEES AGAINST ANY LOSSES, COSTS, DAMAGES, EXPENSES, OR LIABILITIES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) FOR INJURY, SICKNESS OR DEATH TO ANY PERSON, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE, OR FINES OR FEES ASSESSED OR THREATENED AGAINST BUYER OF WHATSOEVER KIND OR CHARACTER ARISING OUT OF, AS A RESULT OF, OR IN CONNECTION WITH THE PERFORMANCE OF ANY PURCHASE ORDER, INCLUDING ANY VIOLATIONS OF A FEDERAL, STATE OR LOCAL LAW, BY SELLER, ITS AGENTS, EMPLOYEES, OFFICERS, DIRECTORS OR SUBCONTRACTORS, EXCEPT TO THE EXTENT THAT ANY SUCH LOSS IS DUE TO THE NEGLIGENCE OF BUYER.

**8. DELIVERY.** Time is of the essence in the performance of all Purchase Orders. Prior to payment of any amounts due hereunder, Buyer, at its option, may require Seller to furnish satisfactory evidence of the payment of all accounts for labor and materials pertaining to Seller's performance hereunder, including, but not limited to, full and complete release of liens from all persons furnishing labor and materials toward the performance hereof.

**9. WAIVER AND REMEDIES.** No waiver by either Party of any breach by the other Party of any of the covenants or conditions of this Agreement shall be construed as a waiver of any succeeding breach of the same or of any other covenant or condition hereof. Should any court of competent jurisdiction hold any terms or condition of this Agreement invalid or unenforceable, the remaining terms and conditions shall remain in full force and effect. No remedy provided to Buyer in these terms and conditions shall be exclusive of any other remedy provided herein or at law. BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

**10. GOVERNING LAW.** The terms and conditions of any purchase order will be construed and interpreted in accordance with the laws of the State of Texas, and Seller agrees that the state and federal courts of Harris County, Texas will have exclusive jurisdiction over all disputes or other matters between the parties arising under any Purchase Order or these terms and conditions.

**11. INSURANCE: SERVICES.** Prior to commencement of any service or delivery, the Seller shall, at its sole expense, maintain the following insurance and furnish to Buyer certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

A. Buyer shall not be held liable for Seller's property or equipment and Waiver of Subrogation in favor of Buyer shall apply to the policy.

B. All policies of insurance to be placed and kept in force hereunder shall provide, that the Buyer be provided thirty (30) days written notice prior to lapse, termination or cancellation thereof, ten (10) days' notice is required if cancellation is due to non-payment of premium, and that no such matter shall be effective without such notice.

C. The minimum amounts of insurance required by this agreement shall not be construed to be a limitation of the liability on the part of the Seller.

D. Should the Seller engage a subcontractor, the same conditions will apply under this contract to each subcontractor.

E. All policies to include blanket additional insured endorsements with (primary and non-contributory) wording.

a. General Liability needs to include additional insured endorsements for both ongoing and completed operations.

b. All policies to include waiver of subrogation endorsements.

	Tier 1	Tier 2
	General Services	Services Coming onto Buyer or Buyer's Customer or Client's Site
Worker's Compensation	Statutory	Statutory
Employer's Liability	\$1,000,000 Per Occurrence	\$1,000,000 Per Occurrence
General Liability	\$1,000,000 Per Occurrence \$2,000,000 Aggregate	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Auto Liability to include CA 9948	\$1,000,000 CSL	\$1,000,000 CSL
Umbrella/Excess Liability	\$5,000,000	\$10,000,000 Per Occurrence
Contractors Pollution Liability (if applicable)		\$1,000,000 CSL
Professional Liability (if applicable)		\$1,000,000 CSL

**12. INSURANCE: PRODUCTS.** Prior to providing any product, the Seller shall, at its sole expense, maintain the following insurance and furnish to Buyer certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

A. Coverage is to be provided on an "occurrence" basis with carriers authorized to do business in the state of the work and with an A.M. Best rating of B+VIII or better.

Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 Per Occurrence
General Liability	\$1,000,000 Per Occurrence \$2,000,000 Aggregate

**13. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign or subcontract any purchase order, in whole or in part, or any moneys due or to become due under a purchase order, without the written consent of Buyer by an authorized representative. Written consent for subcontracting will be deemed acceptable if obtained by email.

**14. LIENS.** Seller agrees to promptly pay or discharge all liens, or attachments which may be filed or levied in connection a Purchase Order, and all taxes levied upon Seller, its equipment, employees, property and operations, and to indemnify, defend and hold Buyer harmless therefrom.

Company

Name: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_