

TERMS & CONDITIONS

These terms and conditions apply to all goods and services purchased by Synagro on a purchase order form. No other terms, including any seller-issued purchase order or terms and conditions accompanying the products or services purchased, shall apply. By delivering such goods and/or services, the Seller acknowledges and agrees that modifications to these terms and conditions may only be made by Synagro on the face of the Synagro-issued purchase order or in a separate document executed by both Seller and Synagro. References to Synagro in these terms and conditions shall refer solely to the purchaser identified on the face of the purchase order to which these terms and conditions apply.

1. SCOPE.

Seller agrees to provide the services (**Services**), sell the products (**Products**), or both, to Synagro under each purchase order issued by Synagro and accepted by Seller. Each Purchase Order is governed by these terms and conditions.

2. FEES AND EXPENSES.

(a) **Details on Fees and Expenses.** The fees payable to Seller for the Services are detailed in the Purchase Order. Seller will submit invoices to Synagro for such fees, and any incurred expenses (if pre-approved in writing by Synagro), upon acceptance of the Product or Service by Synagro.

(b) **Payment Terms.** Synagro will pay amounts owed under a Purchase Order within 60 days following receipt of a detailed invoice.

- i. **Timely Invoices.** No invoice will be paid if submitted to Synagro more than 90 days after the Services or Product were provided, or pre-approved expense incurred; or if the invoice backup documentation is not provided along with the invoice or upon request.
- ii. **No Overtime or Premium Rates.** Synagro is not liable for any overtime or premium rates, unless Synagro has expressly approved such rates in advance and in writing.
- iii. **Payments Subject to Claims/Defenses.** All amounts payable to Seller are subject to all claims and defenses of Synagro. Synagro has the right to withhold and/or set off and deduct against any such amounts all present and future indebtedness of Seller to Synagro (which includes all of its affiliates).

3. TERMS AND TERMINATION. These terms and conditions will continue in effect until the earlier of delivery of, and payment for, all Products and/or Services set forth in the applicable Purchase Order. Either party may terminate a Purchase Order if the other party materially breaches these terms and conditions and does not cure the breach after 10 days' notice; *provided, however*, that for any violations of any health, safety, environmental or other laws, or violations of a site's processes or procedures, there is no cure period or notice required before termination by Synagro, and termination may be immediate by oral notice.

4. WARRANTIES and TITLE TRANSFER.

(a) **Service Warranty.** Seller represents and warrants that it is experienced in the Services and possesses the skills to complete the Services; that the Services will be performed in a good and workmanlike manner by qualified workers; and that the Services shall meet or exceed the quality and standard of performance typical for the industry and location in which such Services are performed. Seller shall, at its sole cost expense, promptly reperform any Service which fail any warranty.

(b) Product Warranties.

- i. **Quality.** Seller represents and warrants that the Products are new, of merchantable quality and of good material and workmanship, are free from contamination or impurity and defects in design, and are fit for the particular purpose of Synagro.
- ii. **Specifications.** Seller represents and warrants that the Products conform to the applicable specifications, instructions, drawings, data, samples and descriptions.
- iii. **Assignment of Warranties.** Seller hereby assigns and transfers to Synagro all third party warranties of the original manufacturer of the Product.
- iv. **Survival of Warranties.** These representations and warranties survive Synagro's payment, acceptance, inspection or failure to inspect the Product. Unless otherwise set forth on the Purchase Order issued by Synagro, such survival shall be for twelve months following receipt by Seller of the final payment under the Purchase Order.

Seller shall, at its sole cost expense, promptly replace (with new) any Product which fail any warranty. Such replacement shall include all costs to remove the defective Product, shipping of the defective and replacement Products, and cost of installing the replacement Product.

(c) **Compliance Warranty.** Seller represents and warrants that when onsite at a Synagro location including any and all of Synagro's affiliates and subsidiaries and their facilities and any other party's property or facility if Synagro is not the owner of the location ("Synagro Location"), it will perform all Services and other activities in compliance with applicable health and safety (OSHA, HAZMAT, among others), environmental and other laws, and Synagro's (and those of any other party if Synagro is not the owner of the location) health and safety, environmental and work rules and policies. Seller acknowledges that it has received a copy of Synagro's health and safety, environmental and work rules and policies.

(d) **Title and Risk Shipment.** Seller has the unencumbered right to sell the Product to Synagro and convey good and merchantable title. Title and risk of loss to the Products will remain with Seller until the Products have been delivered to and accepted by Synagro (or an agent or consignee duly designated by Synagro). If a shipment is to a consignee or agent of Synagro, a copy of the packing slip must be forwarded at the same time to Synagro. If no packing slip is sent, the count or weight reported by Synagro or its agent or consignee will be final and binding upon Seller for that shipment. Shipping shall be at Seller's cost unless otherwise stated in a Purchase Order.

(e) No Lien Warranty.

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- i. **On Invoice Submission.** By submitting each invoice, Seller is making a representation and warranty that there is no lien or claim against the results of the Purchase Order or Synagro.
- ii. **Proof of No Liens.** Before or after making any payment, Synagro may require that Seller furnish a complete waiver or release of liens from each subcontractor, materialman, artisan, and mechanic retained by Seller waiving or releasing any lien or claim against the results of the Purchase Order or Synagro.

5. SELLER INDEMNITY.

(a) **Indemnity.** Seller hereby defends, indemnifies and holds harmless Synagro (its subsidiaries and affiliates, and its and their directors, officers, employees, agents, contractors, successors and assigns) from all actions, demands, liabilities, losses, costs and expenses (including attorneys' fees) arising out of or related to Seller's performance under these terms and conditions (including, without limitation, liabilities arising from any personal injury (including death), damage to property, or any violation of health, safety or environmental laws; and any other damage or loss including, without limitation, to Seller's or Synagro's agents or employees, resulting directly or indirectly, from the Products or Services, or Seller's breach of any representation, warranty or other term of these terms and conditions), except if such liability is caused by the sole negligence or willful misconduct of Synagro or its employees. To the extent applicable law limits the scope of Seller's indemnity, Seller agrees to provide the maximum indemnification permitted by such applicable law, and the provisions of this section shall be deemed to be modified to accomplish such agreement.

(b) **Claims by Seller's Employees.** As to any claim made against Synagro, Seller waives any insulation from liability or immunity from suit with respect to injuries to Seller's employees that may be extended to Seller as a result of any payments made by Seller to such employees or under any applicable worker's compensation statute or similar law or judicial decision. Seller hereby indemnifies and holds harmless Synagro from and against any claims made by any of Seller's employees, contractors or representatives working in the course and scope of their employment by Seller or provision of Services while at any Synagro Location unless such claim was the sole and proximate result of the gross negligence or willful misconduct of Synagro. Synagro will be held harmless from any worker's compensation liens incurred from Seller's insurance carrier, third party administrator or self-administered, self-insured claims programs.

(c) **Intellectual Property Indemnity.** Seller represents and warrants that all Products and Services delivered hereunder do not infringe on any third party's intellectual property rights and Seller shall defend and indemnify Buyer and its affiliates from any claim to the contrary.

6. **DISCLAIMER OF DAMAGES.** Synagro shall not be liable for any indirect, special or consequential damages arising out of or related to a Purchase Order (including without limitation lost profits or business).

7. MISCELLANEOUS TERMS.

- (a) **Independent Contractor.** Seller is an independent contractor with respect to Synagro.
- (b) **Enforceability and Waivers.** If any provision of these terms and conditions is unenforceable, the remaining provisions will remain enforceable. No failure by either party in exercising any right will operate as a waiver.
- (c) **Governing Law and No Jury Trial.** The laws of the State of Delaware govern these terms and conditions, without regard to conflict of laws principles. THE PARTIES HEREBY WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- (d) **Assignment.** Seller may not assign or transfer a Purchase Order, in whole or in part, to any third party without first obtaining the prior written consent of Synagro. The rights and obligations of Synagro will inure to the benefit of, and be binding upon Synagro and its successors and assigns.
- (e) **Entire Agreement.** The Purchase Order and these terms and conditions constitute the entire agreement between the parties, and supersede all prior and contemporaneous negotiations and understandings, relating to this subject matter. If the goods and/or services procured hereby are used to fulfill Synagro's obligations under any contract between Synagro and its customer, then any terms and conditions contained therein which are required to be flowed down to Seller are hereby incorporated by reference and Seller acknowledges and agrees to all such terms and conditions.
- (f) **Changes.** Any change to these terms and conditions must be set forth in the Purchase Order as issued by Synagro or otherwise in a signed agreement between the parties.
- (g) **Order of Precedence.** If there is a conflict between the terms of a Purchase Order and these Terms and Conditions, the terms of the Purchase Order as issued by Synagro prevail.
- (h) **Force Majeure.** Neither party is liable for any delay caused by a force majeure event. Synagro may cancel the un-received portion of a Purchase Order if delivery of the Product or Services is not timely, however the payments for Services (payment for Services rendered through the cancellation effective date), and for Product (payment of an equitable amount for the Product) will be made for delivered Products and/or Services. If Seller can fulfill its delivery obligation only by shipping by premium routing, the premium charges must be prepaid by the Seller or, if not prepaid, then Synagro may issue chargebacks for the additional freight costs and administrative costs. Synagro may reject any shipment and has no obligation to pay for the rejected shipment if Synagro's business is affected by a force majeure event.
- (i) **No Other Terms.** Any additional or conflicting terms of any Seller form purchase order do not apply, and they are null and void.
- (j) **Insurance Requirements.** For any Services provided at a Synagro location, Seller must, at its own cost and expense, procure and keep in force the insurance listed below. Before commencing any work, Seller must furnish

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Synagro with Certificates of Insurance attested by a duly authorized representative of the insurance carriers evidencing that the required insurance is in force and that such insurance will not be canceled or materially changed without giving Synagro at least 30 days' prior written notice (except 10 days for non-payment of premium).

- *Worker's Compensation and Employer's Liability Insurance:* Seller and all their employees, workers, agents, and servants must comply with all requirements of the worker's or workmen's compensation laws of the state in which Seller is performing any work hereunder. In addition, Seller must carry Employer's Liability Insurance covering all operations and work hereunder in an amount not less than \$1,000,000 per occurrence. All such Worker's Compensation and Employer's Liability Insurance must expressly provide that all rights of subrogation against Synagro are waived;
- *General Liability Insurance* (including without limitation Blanket Contractual Liability, Products and Completed Operations Liability, XCU Hazards, Pollution Liability and Broad Form Property Damage, covering all work under the Purchase Order). With limits of not less than the following; Comprehensive General Liability -- \$1,000,000 for all liability arising out of injury to or death of one or more persons, in any one occurrence, and \$2,000,000 for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence; and
- *Automobile Liability Insurance:* All motor vehicles owned, hired, or non-owned, which may be used or connected with any of the work under the Purchase Order, with limits of not less than \$1,000,000 for all liability arising out of injury to or death of one or more persons, in any one occurrence, and \$1,000,000 for all liability arising out of damage to or destruction of property, including loss of use thereof and downtime, in any one occurrence.

Such insurance must specifically name Synagro and its affiliates as an additional insured party and must be primary to any and all other insurance of Synagro with respect to any and all claims and demands which may be made against Synagro for bodily injury or death, including injury to or death to Seller and its employees, workers, agents, and servants, and for property damage. Such insurance must specifically provide that it applies separately to each insured against which claim is made or suit is brought, except with respect to the limits of the insurer's liability, and that all rights of subrogation against Synagro are waived.

- (k) **Notice.** All notices to Synagro must be sent in writing to Synagro, and any notice regarding a dispute related to a Purchase Order must be sent in writing to (with proof of receipt): Synagro, Attn: General Counsel, 435 Williams Court, Suite 100, Baltimore, MD 21220.
- (l) **Survival.** The obligations accruing prior to the termination of a Purchase Order shall survive the termination.
- (m) **Drafting Responsibility.** Neither Synagro nor Seller shall be considered the drafter of these terms and conditions, and any ambiguities herein shall not be construed against either party, both having participated in the drafting of these terms and conditions.
- (n) **Attorneys' Fees.** In the event of a dispute, the prevailing party shall be entitled to recover its costs of enforcement (including attorneys' fees) in the same proportion as the final recovery bears to the entire claim.
- (o) **TIME IS OF THE ESSENCE. Seller acknowledges and agrees that time is of the essence in performing the Services or delivering the Products set forth in the Purchase Order and that failure to timely perform/deliver will result in costs, losses and damages to Buyer. Accordingly, Seller will deliver the Products and/or perform the Services within the time frame specified in the Purchase Order and shall be liable to Buyer for losses incurred as a result of any failure to do so.**