

SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Aqua Sierra , a Corporation, whose address of record is 13265 Bill Francis Drive, Auburn California, 95603, (hereinafter referred to as "Contractor").

WHEREAS, City is undertaking a project to Documentation Services for PLC Control Panels; and,

WHEREAS, Contractor represents that it possesses the professional skills to provide electrical and documentation services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Contractor shall furnish the following services: Contractor shall provide the electrical services described in Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the WWTF project manager or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "A" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Contractor may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and end on June 30, 2029, with the option to renew for two (2) additional one (1) year periods.

4. **COMPENSATION.** Payment by the City to the Contractor for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Contractor agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Contractor's services rendered under this Agreement, City shall pay Contractor the not to exceed sum of \$190,246.

5. **METHOD OF PAYMENT.** Compensation to Contractor shall be paid by the City after submission by Contractor of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the City, and Contractor hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONTRACTOR'S BOOKS AND RECORDS.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire same at its expense.

In the event Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Contractor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Contractor or Contractor's officers, employees, volunteers, and agents during performance of this Agreement; Contractor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor's work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Contractor shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Contractor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Contractor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Contractor shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Contractor shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Contractor.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Contractor shall carry professional liability insurance appropriate to Contractor's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Cyber Liability Insurance. Consultant shall obtain and maintain Cyber Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence or claim, One Million Dollars (\$1,000,000) aggregate.

Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information **or personally identifiable information (PII)**, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations. Cyber Liability insurance must be maintained, and evidence of insurance shall be provided to CITY for at least two (2) years after completion of work under this Agreement.

f. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

g. Certificate of Insurance. Contractor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Contractor's insurance policies are not current.

11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a "public works" the Contractor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Contractor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Contractor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. NOTICES. Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, that provides a receipt showing date and time

of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Merced
678 West 18th Street
Merced, California 95340
Attention: City Manager

To Contractor: Aqua Sierra Inc.
13265 Bill Francis Drive
Auburn, California 95603
Attention: Josh Lane

13. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the City.

14. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

15. **CONFORMANCE TO APPLICABLE LAWS.** Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as

amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

16. **WAIVER.** In the event that either City or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

17. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

18. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

19. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

20. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

21. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

22. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

23. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
D. Scott McBride
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 6-5-2026
City Attorney Date

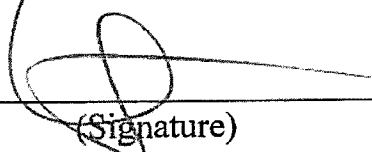
ACCOUNT DATA:
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: _____
Verified by Finance Officer

{Signatures continued on next page}

CONTRACTOR

AQUA SIERRA CONTROLS, INC.

BY:  _____
(Signature)

JOSH LANE

(Typed Name)

Its: PRESIDENT

(Title)

BY: _____
(Signature)

(Typed Name)

Its: _____
(Title)

Taxpayer I.D. No. 68-0026662

ADDRESS: 13265 BILL FRANCIS DRIVE
AUBURN, CA 95603

TELEPHONE: 530-823-3241

FAX: N/A

E-MAIL: JLANE@AQUASIERRA.COM

Exhibit A

SCOPE OF SERVICES

1. Site Assessment and Data Collection

- Conduct on-site discovery and inspections of all 11 PLC Control Panels during normal operating hours coordinating with plant staff to minimize plant disruptions.
- Gather existing documentation, schematics, and as-built drawings.
- Interview plant operators and maintenance staff to understand panel functions, historical modifications, and operational nuances.
- Identify and catalog all components, including wiring, relays, sensors, controllers, and interfaces.

1.1 Documentation Development

- Create detailed technical documentation for each control panel, including but not limited to:
 - As-built electrical schematics and wiring diagrams using AutoCAD software.
 - Panel elevation layout drawings, including front views, internal configurations, and labeling.
 - Functional descriptions, including input/output mappings, equipment names and tags, wire labels, and interdependencies with other plant systems.
 - Inventory lists of parts, including manufacturer details, part numbers, and recommended spares.
- Ensure documentation complies with industry standards (e.g., NFPA 70E for electrical safety, ISA standards for instrumentation).
- Produce both digital (PDF, editable CAD files) and printed versions of the control panel drawings.

1.2 Quality Assurance and Deliverables

- Perform field verifications to confirm accuracy of submitted documentation.
- Deliverables include:

- **Sample submittal for one (1) control panel complete with the following, at minimum:**
 - **Title Block**
 - **Index Sheet**
 - **Legend & Abbreviations Sheet**
 - **Schematic Symbols**
 - **Abbreviations**
 - **Wiring Information Table**
 - **Line Types**
 - **General Notes**
 - **Control Panel Elevation**
 - **Back panel Layout**
 - **Nameplate Legend**
 - **Bill of Materials**
 - **120VAC Power Distribution Diagram**
 - **24VDC Power Distribution Diagram**
 - **Digital Input Wiring Diagrams**
 - **Digital Output Wiring Diagrams**
 - **Analog Input Wiring Diagrams**
 - **Analog Output Wiring Diagrams**
 - **Electronic files (PDF and CAD)**
 - **City provides review comments within 2 weeks**
 - **Review meeting with the City**
- **Three (3) formal submittals containing individual documentation packages for each of the eleven (11) control panels.**
 - **75% Submittal**
 - **Electronic files (PDF and CAD)**

- City provides review comments within 2 weeks
 - Review meeting with the City
- 95% Submittal
 - Electronic files (PDF and CAD)
 - Two (2) printed 11x17 copies
 - Draft Final Report
 - City provides review comments within 2 weeks
 - Review meeting with the City
- Final Submittal
 - Electronic files (PDF, CAD, plus all other project files)
 - Two (2) printed 11x17 copies
- A master index or database linking all panels.
- Training materials and 4-hour on-site training session for plant staff on using the new documentation.
- Final report summarizing findings, recommendations for improvements, and any identified risks or deficiencies.
- Editable CAD files, spreadsheets, and all supporting documents in their native formats.
- All CAD work shall be developed with Autodesk AutoCAD Version 2025 with the following requirements:
 - Drawings must be fully vector-based with no duplicate base points or entities to maintain editability. Image-based Xrefs (e.g., raster attachments like JPEG, PNG, or TIFF files) and scanned content introduce non-editable elements, which can complicate scaling, printing, and modifications.
 - All sheets must use native AutoCAD line types (e.g., continuous, dashed, center) and fonts (e.g., Romans, Simplex, or TrueType equivalents like Arial) to ensure they are editable without requiring custom files. Custom line types or fonts must be provided as part of the submission package if used, but preference is given to built-in

standards for consistency. This applies to every sheet, including details, schedules, and annotations.

- All AutoCAD drawings submitted must be provided in a single DWG file per sheet. No X-Refs or nested X-Refs (External Referenced Drawings) are permitted. Do not include image-based Xrefs, raster attachments, or scanned images using the AutoCAD “Image” command.
 - Failure to comply will result in rejection of a submittal.
- All work produced by the consultant becomes the property of the City.

1.3 Project Timeline

- Project duration: 26 weeks from notice to proceed.
- Project kickoff: Within 2 weeks from notice to proceed.
- Sample Submittal: Within 8 weeks of kickoff.
- 75% Submittal: Within 16 weeks of kickoff.
- 95% Submittal: Within 20 weeks of kickoff.
- Final Submittal: Within 24 weeks of kickoff including revisions based on feedback.
- The contractor must adhere to all site safety protocols, including PPE requirements, lockout/tagout procedures, and confined space entry if applicable.

Exhibit B



Aqua Sierra Controls, Inc.
13265 Bill Francis Drive, Auburn, CA 95603
Cell (530) 305-3390 Office (530) 823-3241
jlane@aquasierra.com www.aquasierra.com
CA Contractors License A, C-10 474023
CA Small Business Certification #1162
CA DIR #1000003631

**SCADA & PLC Programming – UL508A Panel Shop – MCCs & Switchboards
NIST Traceable Instrument Calibrations & Maintenance**

City of Merced Public Works
1776 Grogan Avenue
Merced, CA 95341

Attention: Mr. Bill Osmer
Phone:
Email: osmerb@cityofmerced.gov

Subject: Proposal & Scope of Work
Project: Wastewater Treatment Facility Documentation Services for PLC Control Panels

Proposal # QJ09720
April 21, 2026

Mr. Osmer,

The following is our scope of work and proposal to provide comprehensive documentation services for eleven (11) control panels within the plant for the Wastewater Treatment Facility Documentation Services for PLC Control Panels Project. We have received no addendum(s). Our proposal is good for (60) sixty days.

Scope of Work

- Submittals
- As-built drawings (AutoCAD, PDF and Printed)
- Build of materials
- Point to point I/O testing
- Instrument verification
- Field acceptance testing
- Review meetings
- Training materials
- Training

Proposal Total \$190,246.00 (Cash, Check, ACH, Wire Transfer)

Included

- Shipping and handling
- Sales tax
- Travel and mileage
- Hotels and meals
- Prevailing wage rates

Exclusions

- Items not in our scope of work
- Specialty insurance beyond our standard five million dollars coverage
- Bonds, fees or permits
- Union requirements or signatories
- Third party testing
- Confined space entry
- NETA testing
- Power studies, arc flash study, arc flash stickers or short circuit analysis
- Interconnect drawings
- Loop drawings
- Single line drawings or P&IDs
- Functional descriptions or controls descriptions

Please let me know if you have any questions.

Thank you,

Josh Lane, President



TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale set forth herein, and Supplements that may be attached hereto, constitute the full and final expression of the contract of equipment or services as described in the quotation between AQUA SIERRA CONTROLS, INC. (herein referred to as Seller) and the Buyer and supercedes all prior quotations, purchase orders, correspondence or communication whether written or oral between the seller, and the Buyer. Notwithstanding any contrary language in the Buyer's purchase order or other acceptance, Buyer shall be bound by these Terms and Conditions of Sale when it returns its purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Equipment or Service. ACCEPTANCE OF THE CONTRACT IS EXPRESSLY LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS OF SALE STATED HEREIN AND ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY THE OFFICER OF THE SELLER. No contract shall exist except as herein provided. No statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an officer or other authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this agreement even through the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used herein, the definition contained in the Code shall be controlled.

ORDERS

All orders, where Equipment or Services are to be supplied for a specific order, are received subject to acceptance by an authorized representative of Seller. All orders must be firm commitments giving complete item description, including prices, quantity, installation, and shipping requirements. Typographical and clerical errors in quotations, orders and acknowledgments are subject to correction.

PRICES

Written quotations expire thirty (30) calendar days from the date of quotation unless withdrawn sooner. Verbal quotations expire twenty-four (24) hours after they are made. Prices on an Order requesting shipment or performance longer than three (3) months from date of order, and "Hold" orders which are not released in time to be shipped or performed in three (3) months, may be revised at the option of Seller. Any increase in Seller's costs associated with the imposition of new tariffs after the date of quotation may be passed through to Buyer.

CREDIT

Buyers not having established credit ratings with Seller should send satisfactory credit information with first order or remit a certified check to avoid delay in filling orders.

MINIMUM BILLING

Orders for Service performed in Seller's Shop shall have a minimum billing time of two (2) hours. Orders for Service performed in the "field" or at the Buyer's place of business shall have a minimum billing time of four (4) hours. Billing time for Services performed away from Seller's Shop shall be determined on a "portal to portal" basis.

TERMS OF PAYMENT (SERVICE)

Terms of payment to Buyers with satisfactory credit at 1% cash discount for payment within 15 days of the date of the invoice and net invoice amount for payment net 30. Invoices will be submitted as partial shipments of equipment are made. Seller reserves the right at any time to require full or partial payment before proceeding with a contract of sale if, in its judgment, the financial condition of the Buyer shall not justify the terms of payment specified. If Buyer defaults when payment is due, then the whole contract price shall become due and payable upon demand, or Seller, at its option, without prejudice to other lawful remedies, may defer delivery and/or performance or cancel the contract of sale.

TERMS OF PAYMENT (CONSTRUCTION)

Terms of payment for major construction and automation projects based on satisfactory customer credit either by prior approved projects or by approved financial credit applications. Without prior credit approval, the customer must pay in advance only a 25% good faith deposit against equipment being purchased for any given project. The seller has the right to waive the deposit requirement. Otherwise, our terms for payment will follow the standard construction billing process based on per cent of project completion invoicing. Invoices will be submitted monthly or more frequently based on contract requirements for labor, parts and materials services delivered to the project site.

ACCELERATED OR DELAYED PAYMENT

There will be no reduction in price for payments more favorable to Seller than the standard terms. If payments are not made in conformance with standard terms, the quoted price shall, without prejudice to the right of Seller to immediate payment, be increased by an amount of interest equal to the highest legal rate per month or fraction thereof on the unpaid balance. Seller reserves the right to refer for collection sums not paid by Buyer within the herein stated Terms of Payment. In the event Seller chooses to refer unpaid sums for collection of said sums, collection costs include but are not limited to collection agency fees, process fees, attorney's fees and costs, and court costs as well as such other costs, that are directly related to collection.

SHIPMENT AND RISK OF LOSS

All shipments are F.O.B. the place of shipment. Risk of loss or damage to the Equipment shall pass to Buyer at the F.O.B. point unless the Seller specifically agrees otherwise in writing.

PACKAGING

The seller's price does not include the cost of packaging for shipment. Charges for standard packaging will be imposed plus any additional special packaging or marking performed at Buyer's request and agreed to by Seller. The cost of such items is determinable only upon completion and will appear as a separate item on Seller's invoice.

GENERAL TRANSPORTATION

Seller will prepay and add the cost of common carrier transportation charges as a separate item on Seller's invoice. Seller, in the absence of direction before the date of shipment, will select method of shipment of goods. If Buyer prefers a certain method or forwarding agent to handle the shipments, complete written instructions must be given. All claims for loss, breakage and damage (obvious or concealed) should be made by Buyer within thirty (30) days after receipt of shipment. Failure to give notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

SHIPPING AND PERFORMANCE SCHEDULES

When requested, Seller will establish estimated shipping and Service performance schedules as closely as practical in accordance with the Buyer's needs and will exercise diligence in meeting such estimated schedules. However, Seller will not be responsible for deviations in meeting shipping or Service performance schedules nor for any losses or damages to Buyer (or any third persons) whether occasioned by the deviations in performance or the non-performance of any of Seller's obligations under this contract, or loss of or damage to goods when caused directly or indirectly by or in any manner arising from strikes, secondary boycott, riots, wars, accidents, fire, floods, explosions, vandalism, government embargoes, priorities or regulations, transportation delays, shortages of labor, fuel, supplies, power transportation facilities, tooling capacity or similar or dissimilar causes, beyond Seller's control. Under no circumstances shall Seller have any liability for penalties or other consequential damages of any kind resulting in whole or in part from Seller's delay in delivering or failure to deliver, any Equipment or Service to Buyer as agreed. Should shipment of goods be held beyond scheduled date for the convenience of the Buyer, the Seller reserves the right to bill for said goods plus charges for warehousing, insurance, trucking and other expenses incidents to such delay.

TERMINATION AND ALTERATION

Order may be terminated by the Buyer only upon payment of reasonable charges based upon expenses already incurred and commitments made by Seller. Termination charges on completed items will be 100% of the selling price. Buyer at any time, by timely written notice, may request alteration of any order in any one or more of the following which will be accepted by Seller where feasible: (1) Drawings, designs or specifications, where the order calls for items to be specifically manufactured for the Buyer; (2) method of shipment or packing; and (3) place of delivery. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance of any of the work under this contract, whether altered or not stated by Buyer's notice, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. The buyer will provide written documentation of all changes affecting the contract order price in the form of change orders or additional purchase orders, prior to order shipment.

WARRANTIES

Equipment - The Seller warrants the Equipment covered by this agreement of Sale to be free from defects in material and workmanship under normal care and proper use the shorter of: (1) one year from the date of shipment or installation whichever is earlier; or (2) the period of the warranty of the original equipment manufacturer, whichever is shorter. Warranty covers parts and labor to repair the Equipment, but does not include the costs of travel, labor and expenses portal to portal to remove or replace the defective Equipment. This express warranty is in lieu of and excludes all other representations made by advertisements or by agents and all other warranties, both express and implied, except as specifically set forth herein. Seller warrants that the equipment sold is as described in the Agreement of Sale, but no promise, description, estimation of fact, sample, model, or representation, oral or written, shall be deemed a part of the Agreement of Sale unless set forth therein or hereon or are made in writing and signed by an authorized representative of Seller.

Seller, in connection with Equipment covered and sold pursuant to the Agreement of Sale, agrees to either (1) correct any defect in workmanship or material which may develop under proper care and normal usage during the period of warranty set forth herein; or (2) at the option of Seller, to replace or repair the defective part or parts F.O.B. the place of shipment; or (3) to repay upon return of the defective part or parts, the price paid for such Equipment by Buyer. Buyer's remedies with respect to any Equipment furnished by Seller under the Agreement of Sale shall be limited exclusively to the right of replacement and/or repair or repayment of the purchase price as provided herein.

Service Labor - Seller warrants that the Service Labor and workmanship covered by this Agreement of Sale to be free from defects for a period of thirty (30) days from the date of completion of such Service Labor, and that the term Service Labor includes travel and expenses on a portal-to-portal basis.

Construction Labor - Seller warrants that the Construction Labor and workmanship covered by this Agreement of Sale to be free from defects for a period of ninety (90) days from the date of completion of such Construction Labor, and that the term Construction Labor includes travel and expenses on a portal-to-portal basis.

THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT OR IMMEDIATE, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL ARISING OUT OF A BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, OR NEGLIGENCE.

Seller shall not be liable for any expenses incurred by the Buyer or any other person by reason of the use, or misuse, sale or fabrication of the Equipment regardless of whether the Equipment conforms to the specifications. Any lawsuit or legal claim for breach of contract must be brought within one year after the alleged breach occurs.

PENALTY OR LIQUIDATED DAMAGES

Contracts which include Penalty and Liquidated Damage clauses for failure to meet shipping or performance promises are not acceptable or binding on Seller, unless such clauses are specifically accepted in writing by an officer of Aqua Sierra Controls, Inc.

RETURNS

Full credit will be issued for all returned material, authorized in advance, which has been accepted under warranty or returned as a result of Seller's incorrect material or quantities. In the case of Seller's error, return must be requested within 30 days of the date of invoice covering the original shipment. Buyer shall not initiate the deduction from payment to Seller for product returned to Seller.

WAIVER

The failure of Seller to insist, in any one or more instances, upon the performance of any of terms or conditions of this contract or the failure of Seller to exercise any of its rights hereunder shall not be construed as a waiver or relinquishment of any such term, condition, or right hereunder and shall not affect the Seller's right to insist on strict performance and compliance with regard to any unexecuted portions of this contract or future performance of these terms and conditions.

EQUAL OPPORTUNITY

Seller warrants that goods shipped to Buyer under this Purchase Order will be produced in compliance with the Fair Labor Standards Act. The nondiscrimination clauses contained in section 202, Executive Order 11246, as amended by Executive Order 11375, relating to equal employment opportunity for all persons without regard to race, color, sex, or national origin and the implementing rules and regulations prescribed by the Secretary of Labor (41 CFR, Chapter 60) are incorporated herein. Version: 5/22/2025