



## Avani Purchase Order Terms and Conditions for Suppliers

The following applies to the purchase of goods ("Goods") and services ("Services") set forth in this Purchase Order. This Purchase Order is between the Contractor set forth on the front ("Contractor") and Avani Environmental International, Inc. set forth on the front ("Avani"). This Purchase Order becomes a valid and binding obligation of the parties upon the earlier of (i) ten (10) business days after the issue date printed on the front page of this Purchase Order unless Contractor notifies Avani prior to the expiration of such ten-day period that this Purchase Order is rejected by Contractor; (ii) Contractor's approval of this Purchase Order by email or other written acknowledgment to Avani, or (iii) Contractor commencing performance under this Purchase Order. Except for terms expressly agreed to in writing signed by an authorized Avani representative, any terms that contradict the printed terms of this Purchase Order, and any preprinted term and condition on any Contractor quote or communication for conditions of sale, are not valid.

1. **PAYMENT AND INVOICES:** Avani will pay any undisputed amounts within thirty (30) days after receipt of a valid, approved invoice. Contractor shall not invoice Avani until Goods have been delivered or Services rendered and accepted by Avani. The prices for Goods and Services on the front are complete and include, without limitation: purchase price, taxes, shipping, packaging, labeling, custom duties, storage and insurance. Contractor must submit all invoices to Avani within three (3) months following delivery or completion of the Goods or Services. Avani will not pay and will not be responsible for any invoices submitted after the expiration of such three-month period.
2. **DELIVERY AND ACCEPTANCE:** All shipping, completion and delivery dates are firm. Shipment of Goods will be ExWorks (Incoterms 2010), unless otherwise set forth on the front page of this Purchase Order. Contractor will ship freight prepaid. Contractor must suitably pack or otherwise prepare for shipment of all Goods to prevent damages in transfer. Contractor must comply with all carrier requirements. Avani may inspect all Goods or Services delivered, but Avani's inspection, testing or payment (or lack of inspection, testing or payment) is not an acceptance of Goods or Services or waiver of any right or warranty and does not preclude Avani from rejecting defective Goods or Services. Avani shall communicate its rejection or acceptance ("Acceptance") of Goods and/or Services within fifteen (15) days following delivery of Goods or final completion of Services, as the case may be.
3. **CONFIDENTIALITY:** Any and all information, including this Purchase Order, learned by Contractor concerning the business or affairs of Avani shall be treated as confidential both during the term of this Purchase Order, and after termination. Any such information shall not be disclosed to any other person, firm or corporation without the express written consent of Avani. Contractor agrees that it will not refer to the existence of this Purchase Order in press releases, advertising or materials distributed to prospective customers without the express written consent of Avani, which consent may be withheld in its sole discretion. In addition, Contractor shall, with respect to any information, including this Purchase Order, received from Avani or its agents; (i) Hold such information in strict confidence and use the same only in connection with the Services provided hereunder. (ii) Take such precautions as shall be reasonably necessary to keep such information confidential, and prevent unauthorized disclosure of such information by Contractor's employees and agents; and (iii) Return, or discard, at Avani's option, any physical or written records containing such information, whether such records were supplied by Avani or prepared by Contractor. The Contractor may retain one copy for their legal records where required by law.
4. **WARRANTIES AND CERTAIN COVENANTS:**
  - a. Contractor warrants and covenants that all Goods and Services delivered shall: (i) conform with this Purchase Order and all specifications; (ii) with respect to Goods only, be free from defects in materials, workmanship and design; (iii) with respect to Goods only, be free from liens, restrictions, reservations, security interests or encumbrances; (iv) with respect to Goods only, be suitable for, and perform in accordance with, the particular purposes (A) for which they were purchased by Avani and (B) for which they were designed, manufactured or constructed; (v) with respect with Services only, will be provided by individuals who have the expertise, skills, training, and professional education to perform the Services in a professional manner. The warranty period for Goods and Services shall be one (1) years after Acceptance; or one (1) year after Contractor cured any deficient workmanship discovered during the requisite warranty period. The warranty period in all cases shall commence upon Acceptance.
  - b. Contractor will, at Avani's request and without additional expense to Avani, promptly correct defects or substitute non-conforming Goods and Services. If Contractor does not promptly correct defects or replace non-conforming Goods or Services, Avani, after written notice to Contractor, may make corrections or replace non-conforming Goods or Services and charge Contractor for costs incurred.
  - c. Contractor warrants that neither Goods nor Services, nor Avani's use of Goods or Services shall infringe any patent, copyright, trademark, service mark, intellectual property rights or the misappropriation of any trade secret or the violation of a right of publicity or a nondisclosure obligation.

5. **INDEMNIFICATION:** Contractor shall indemnify and hold harmless Avani and its client and their respective affiliates, and the directors, officers, shareholders, agents and employees of any of them (collectively, "Indemnitees"), from and against any fine, penalty, loss, cost (including reasonable attorneys' fees), damage, injury, claim, expense or liability (collectively "Liabilities"), including but not limited to, Liabilities resulting from or related to (i) breach by Contractor of these Standard Purchase Order Terms and Conditions, including any warranty or representations by Contractor hereunder, (ii) Contractor's acts or omissions leading to injury to or death of any person, or damage to, or loss or destruction of, any property, and (iii) Contractor's negligent performance or non-performance under this Purchase Order, whether directly or by its Subcontractors or Contractor's personnel, except for that portion of Liabilities directly caused by the gross negligence or willful misconduct of Avani.
6. **PROPRIETARY RIGHTS:** Contractor must promptly disclose and assign to Avani all intellectual property generated, conceived or developed under this Purchase Order, including but not limited to, inventions, discoveries, designs, developments, improvements and innovations conceived or reduced to practice as a result of this Purchase Order, and any resulting patents and other proprietary or intellectual property rights related thereto. Any work of authorship in any form of expression, including but not limited to, manuals and software development under this Purchase Order, are works for hire and belong exclusively to Avani. If by operation of law, the ownership of works for hire does not automatically vest in Avani, Contractor hereby assigns and agrees to assign ownership to Avani. Contractor warrants to Avani that Contractor's employees are subject to agreements that will secure Avani's rights under this Purchase Order.
7. **TERMINATION:** Avani may at any time terminate for convenience further performance of all or part of the Purchase Order by giving written notice to Contractor. Such termination shall be without liability of any kind to Avani if communicated to Contractor thirty (30) days prior to scheduled delivery of Goods or at any time prior to performance of Services. If Contractor, for any reason, fails to ship or deliver Goods or perform Services within the time specified in this Purchase Order, Avani without liability (except for Goods and Services previously delivered and accepted), may terminate this Purchase Order in whole or in part, by written notice to Contractor, and Contractor will be liable to Avani for any damages that Avani incurs due to non-performance, including the excess cost for substitute Goods or Services.
8. **LIMITATION OF AVANI'S LIABILITY. AVANI SHALL NOT BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO, LOST PROFIT), SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF RELATING TO THIS PURCHASE ORDER. AVANI'S LIABILITY FOR ANY CLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER WILL NOT EXCEED THE PRICE OF THE GOODS OR SERVICES GIVING RISE TO THE CLAIM.**
9. **CHANGES:** Prices on the Purchase Order are firm fixed pricing inclusive of all scope items. If Contractor discovers an unforeseen condition outside of the scope for Services, then Contractor shall notify Avani within three (3) days of identification of the need for the change order or before starting such Service. Any delay in notifying Avani of the need for a change, may delay or otherwise impede the issuance of a revised Purchase Order and payment for that Work.
10. **SUBCONTRACTORS:** Contractor may, at its own expense, employ professional service providers, contractors, engineers, or other subcontractors, or professionals, (collectively referred to herein as "Subcontractors"), as it deems necessary or advisable in the performance of its obligations hereunder; provided the Contractor obtains Avani's prior written consent to use of any such subcontractor. No such delegation by Contractor, or consent by Avani, shall relieve Contractor of any of its obligations hereunder, between Avani and Contractor and Contractor shall remain fully liable for the performance of the Services hereunder as if no subcontractor had been employed.
11. **CONTRACTOR RELEASES:** If reasonably required by Avani, Contractor shall furnish to Avani final releases of lien in a form reasonably required by Avani from Contractor, its Subcontractors and any other persons who may lawfully claim a lien through Contractor. To the extent required by law, such release shall be deemed to arise solely for liens in connection with Goods and/or Services for which Contractor (for itself and on behalf of its Subcontractors) has received payment from Avani.
12. **INSURANCE:** Prior to commencing work hereunder, Contractor and its Subcontractors (prior to their use) agree to maintain policies of insurance that include, but are not limited to, general commercial liability insurance covering its performance under this Purchase Order, worker's compensation insurance to comply with applicable law, employer liability insurance and automobile insurance. All insurance policies will have limits of at least \$1,000,000 per occurrence. The limits specified shall not act to limit the liability of Contractor or the indemnification obligation of Contractor to Avani. Prior to performing any Services, Contractor must obtain the required minimum insurance and provide Certificate(s) of Insurance to Avani showing coverage and limits not less than the minimum amounts shown herein. All policies of insurance shall contain a waiver of subrogation in favor of Avani. Avani must be listed as an additional insured under the primary and excess insurance policy(s), with the exception of Workers Compensation and Professional Liability.

13. APPLICABLE LAW: This Purchase Order shall be governed by, subject to and construed according to the laws of the state in which the work is to be performed, without regard to that state's conflict of laws provisions. The prevailing party in any formal dispute shall be entitled to recover reasonable attorneys' fees and other legal costs from the non-prevailing party.
14. GENERAL :
  - a. No change, amendment or modification of this Purchase Order will be effective unless in writing and signed by an authorized representative of Avani and Contractor, respectively.
  - b. Contractor shall not, without Avani's prior written consent, assign all or any part of this Purchase Order.
  - c. Avani's remedies under this Purchase Order, in law and equity are cumulative and may be exercised concurrently or separately.
  - d. The invalidity in whole or in part of any provision of this Purchase Order will not affect the validity of any other provision.
  - e. Failure by Avani to insist upon strict performance by Contractor of any of its obligations under this Purchase Order will not waive any subsequent or other defect or failure to perform by Contractor.
  - f. Contractor is an independent contractor and not an agent or employee of Avani or of any of its affiliates. Contractor is solely responsible for paying wages, salaries, fringe benefits and any other compensation to or claimed by Contractor's employees.
  - g. Avani has the right to offset any amount owed by Contractor to Avani under this Purchase Order or any other agreement against any amount owed by Avani to the Contractor under this Purchase Order.
  - h. Written communications to Avani should be sent to Avani Environmental International, Inc., 6541-125 Meridien Drive, Raleigh, NC 27616, or by e-mail at:
  - i. Contractor shall (a) comply and cause its Subcontractors to comply with all applicable federal, state and local laws, ordinances, regulations and orders with respect to its performance of the Services, including, without limitation, any labor, non-discrimination and equal opportunity in employment laws, ordinances, regulations and orders (b) file all reports relating to the services to be performed hereunder (including, without limitation, tax returns), (c) pay all filing fees and federal, state and local taxes applicable to Contractor's business as the same shall become due, and (d) pay all amounts required under local, state and federal workers' compensation acts, disability benefit acts, unemployment insurance acts and other employee benefit acts when due.