

CITY OF HOBBS
SOLE SOURCE/EMERGENCY PURCHASE

TO: CPO
FROM: Bill Griffin
DATE: 8/18/2022

CHECK ONE: SOLE SOURCE ☒ EMERGENCY PURCHASE ☐

ITEM(S)/SERVICES(S) TO BE PURCHASED: Proprietary foam media, media support grating, inoculum and technical support during commissioning.

Award To (If new vender make sure address is on this form): Envirogen Technologies, Inc.
2627 Chestnut Ridge, Suite 260
Kingwood, TX 77339
815-904-9001/rloken@envirogen.com
Phone/Email:
Rob Loken
Point of Contact:

COST: \$81,433.10 (not Incl NMGR)

The WWRF uses a Envirogen Technologies BT-700 odor removal system to help mitigate
unpleasant odors that could migrate to surrounding homes and churches. The BT-700 uses a
proprietary flexible media to grow microorganisms that destroy the offensive odors. This media
lasts from seven (7) to twelve (12) years. The media has been exhausted after ten (10) years
and must be replaced. Envirogen Technologies is the manufactuer and distributor of this
manufacturer can supply a drop-in interchange media. This will be a sole source purchase
from Envirogen Technologies, nc.

Account Number: 63-4370-43015

Prepared By: Bill Griffin

Department Approval: *Kim Woomer*

CPO: *Shelly Paulest*

Deborah Oval
8/18/22

Deborah Corral

From: Rob Loken <rloken@envirogen.com>
Sent: Wednesday, August 24, 2022 2:35 PM
To: Bill Griffin
Cc: Tim Woomer; Deborah Corral; Charles Paterson
Subject: EXTERNAL: RE: non prepayment accepted

Bill,

We can change the billing milestones to Invoicing upon shipment of materials, and completion of wervices. Most likely this will be one invoice for the materials, but we reserve the right to invoice in part if some of the materials ship on a different day. I would expect you would receive the material within a few days of shipment. We will invoice for the services after completion of the startup and commissioning.

Regards,

Robert Loken
VP Sales – Service and Products

Cell: 815-904-9001

Rob Loken
VP of Sales



rloken@envirogen.com
d: 815-904-9001
m: 815 904-9001

Wastewater Treatment Exp

Envirogen Technologies

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From: Bill Griffin <bgriffin@hobbsnm.org>
Sent: Wednesday, August 24, 2022 3:04 PM
To: Rob Loken <rloken@envirogen.com>
Cc: Tim Woomer <twoomer@hobbsnm.org>; Deborah Corral <dcorral@hobbsnm.org>
Subject: non prepayment accepted

Rob,

We need an email from you saying that you agree with us not prepaying anything until after we have physically received it. We can do the multi-deliverables payments; we just can't pay for anything until we have physically received

the products and/or services. As soon as I get this, I can get it advertised and sent to commission. Thank you and have a great rest of your day. BG

Bill Griffin
City of Hobbs WWRF Superintendent
200 E. Broadway
Hobbs, NM 88240
Office: 575-397-9315
Fax: 575-397-9370
Cell: 575-263-3412
bgriffin@hobbsnm.org

Bill Griffin

From: Rob Loken <rloken@envirogen.com>
Sent: Friday, August 19, 2022 12:18 PM
To: Bill Griffin
Subject: RE: EXTERNAL: Hobbs Rebed

We have reviewed your T&C's and they are acceptable. Thank you and we look forward to working with you further.

Regards,

Robert Loken
VP Sales – Service and Products

Cell: 815-904-9001

Rob Loken
VP of Sales



rloken@envirogen.com
d: 815-904-9001
m: 815 904-9001

Wastewater Treatment Exp

Envirogen Technologies

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From: Bill Griffin <bgriffin@hobbsnm.org>
Sent: Thursday, August 18, 2022 3:27 PM
To: Rob Loken <rloken@envirogen.com>
Subject: FW: EXTERNAL: Hobbs Rebed

Rob,

Here is a copy of our T&C's per our conversation. There usually isn't an issue with a staged invoicing based on deliverables as long as it is stated in the quote. BG

Bill Griffin
City of Hobbs WWRF Superintendent
200 E. Broadway
Hobbs, NM 88240
Office: 575-397-9315
Fax: 575-397-9370

August 17, 2022

Bill Griffin
City of Hobbs WWRF Superintendent
200 E. Broadway
Hobbs, NM 88240
Office: 575-397-9315
Fax: 575-397-9370
Cell: 575-263-3412
bgriffin@hobbsnm.org

Subject: Hobbs Re-bed Proposal for Project # 1404-103

Dear Mr. Griffin:

Envirogen Proposal: 24332-2

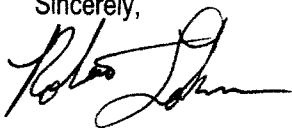
Dear Bill,

As per your request, and on behalf of Envirogen Technologies, Inc. (Envirogen), we are pleased to submit the attached proposal in response to your request for the re-bedding of the BT-700 Odor Control system. Enclosed is our proposal for the replacement material supply and start-up support services.

The Flexfil™ media used in the BT-700 is an engineered proprietary polymer foam media exclusive to Envirogen Technologies. We have designed this media to maximize the surface area and overall performance of the media in the treatment of hydrogen sulfide. The vessel and support grating is also Envirogen's engineered design. These items cannot be procured through third parties.

Thank you for the opportunity to provide this proposal. We look forward to working with you in the near future.

Sincerely,



Rob Loken

VP Sales Service and Products

CC: C Patterson

Hobbs Media Re-bed Proposal

August 17, 2022

1.0 ODOR CONTROL SYSTEM REBED

Envirogen Technologies supplied a P-600 biofilter in 2012 (Project # 1353-003) and a BT-700 in 2014 (Project # 1404-103). The typical life expectancy of media is 7-12 years depending on the site-specific operations. The proposal is to supply the necessary equipment and media to re-bed the BT-700 which has been plugged.

For the BT-700, we are recommending the replacement of the support mating and FlexFil™ media. As requested, we have included a price for the support grating structure. The grating is in two or more sections depending on the manway size. We have included a field service technician to assist with the installation and start-up supervision. Below is our scope of supply for this project:

2.0 SCOPE OF SUPPLY

BT-700 Re-bed

The following is required for the refurbishment of the BT-700 at the Hobbs site:

- One (1) Lot media retaining matting
- One (1) Lot FlexFil™ Media
- One (1) Lot Inoculum

Optional equipment:

- One (1) lot BT-700 Support Grating

Optional Field Service Support:

Envirogen will supply a factory-trained Field Service Technician for one week to supervise the installation and start-up of the system. Below is the scope of services that is associated with this service for the BT-700 Odor Control System.

Service Point	Allotted Trip/Time	Description
Installation inspection, Mechanical and Instrumentation Checkout	One (1) trip consisting of up to three (3) 8-hour days	Perform a manufacturer's final review of mechanical and instrumentation installation. Supervise the installation of the media and inoculation.
System Startup and Operator Instruction and training		Supervise the initial startup of the system. Provide Operations Personnel training and instruction for system operation and routine maintenance

Any additional services or time, if requested by the Owner or contractor, shall be invoiced at Envirogen's published or prevailing rates. Expenses associated with any additional Field Engineer will be invoiced at \$180 per hour plus travel and materials at Cost plus 10%. The expenses associated with any additional Field Technician will be invoiced at \$125 per hour plus travel and materials at Cost plus 10%.

3.0 OTHERS SCOPE

This proposal assumes the customer salvages and re-uses the following:

- All Hardware.

This proposal assumes the customer will be responsible for the following:

- Receiving, storage, and security of all equipment and supplies.
- Removal of all media and proper disposal.
- Inspection and cleaning of biotrickling filter interior.
- If required, all repairs of existing equipment and structure.
- Disposal of all residuals.
- Installation of media, equipment and supplies per Envirogen instructions.
- Installation of irrigation system per Envirogen instructions

4.0 PROJECT PRICE

Equipment	Price
BT-700 Re-bed	\$63,266.95
Option 1 Support Grating	\$6,498.15
Option 2 Field services (4 days on-site)	\$7,669.00
Total	\$77,433.10

The above pricing is firm for 30 days from the date of this proposal. Except as otherwise noted herein, freight pricing is EX works, and exclusive of any applicable sales, use or excise taxes. Freight costs are changing daily. We estimate the freight cost at \$4,000 to be added to the above. We will provide an updated freight quote for our scope of supply DAP (delivery at place) when a PO is ready to be issued at cost + 10%.

The above scope of supply is subject to the availability of the items at the time of acceptance of the purchase order. Due to the current market conditions, most items are available within 6-9 weeks. We will coordinate at the time of the order to provide a project schedule based on the availability of the items at that time.

Warranties are covered in Appendix A - General Conditions; "General Conditions for the Sale of Products and Services by Envirogen Technologies, Inc.

6.0 PAYMENT MILESTONES & TERMS

This project has the following payment milestones:

1. 20% of project equipment value invoiced upon order acceptance.
2. 80% of the project equipment value invoiced upon shipment of or 14 days after notification ready to ship materials whichever occurs first. Materials will be prorated based on value as shipped/notified.
3. 100% of the Field Services after Startup commissioning.

Payments will be Net 30 days after the invoice date (pending credit approval). Payment is due in full without retainage. Payment is not subject to third-party payment (paid when paid).

7.0 STANDARD TERMS AND CONDITIONS

This proposal and offer, and all pricing and schedules contained herein, are contingent on satisfaction of all of the following conditions:

- A binding order must be issued and accepted by Envirogen within 30 calendar days of the date first written above.
- Envirogen's General Conditions for the Sale of Products and Services by Envirogen Technologies, Inc. (ETIGC #180131), attached hereto as Appendix A, must be made a part of the order.
- This proposal and its appendices must be attached to or incorporated by reference in the order.

APPENDIX A
GENERAL CONDITIONS FOR THE SALE
OF PRODUCTS AND SERVICES
BY
ENVIROGEN TECHNOLOGIES, INC.

GENERAL CONDITIONS FOR THE SALE
OF PRODUCTS AND SERVICES BY ENVIROGEN TECHNOLOGIES, INC.
ETIGC #180131

The following General Conditions are and shall be an integral part of any Order to which these terms and conditions are attached and/or referenced. In no event shall any term or condition attached to or made part of any purchase order or other contract document issued by Purchaser, or any shipping document or other document associated with the services or Products described in the Order to which these General Conditions apply have any controlling effect whatsoever unless specifically adopted in writing by an authorized representative of both Envirogen Technologies, Inc. ("Envirogen") and Purchaser.

1. Definitions. Throughout these General Conditions or any Order or other document to which they apply, the following words and phrases, when printed with the initial letter capitalized (unless shown below without capitalization), shall have the meanings ascribed to them below, unless the context requires otherwise:

"Cost" shall mean all expenses incurred by Envirogen for materials, supplies, energy, regulatory permitting, labor, outside contractors and professionals, transportation, supervision, excise, sales and similar taxes. For all purchases of materials, supplies and services, "Costs" shall include an additional ten percent (10%) of the direct expense to reimburse Envirogen for purchasing and accounting activities. Labor charges for Envirogen's personnel will be at rates shown in any Order or attachment, exhibit or schedule incorporated therein. In the absence of any such specification of rate(s), labor charges for Envirogen's personnel will be at the individual's hourly wage rate (or equivalent) plus forty percent (40%) for employee and group benefits and employee taxes.

"Purchaser" shall mean the person or entity purchasing Products or services from Envirogen.

"Day" or "day" shall mean a calendar day unless otherwise indicated.

"Party" or "Parties" shall mean either Envirogen or Purchaser or both.

"Products" shall mean products, equipment, parts, goods, media or materials meeting the description or specifications set forth in the Order.

"Order" shall mean any purchase order, work order, change order, letter agreement or similar contract document issued by Purchaser and accepted in writing by Envirogen or issued by Envirogen and accepted in writing by Purchaser which either references or attaches these General Conditions and/or all attachments, amendments or any ancillary documents to any such contract document.

"Owner" shall mean the ultimate end user of the Product or service where the end user is not the Purchaser. Normally this would occur where the Purchaser is a prime contractor and Envirogen is a subcontractor.

In addition to the definitions set forth above, embedded within these General Conditions or any Order, there may be additional defined terms which are designated as such in a parenthetical and highlighted with quotation marks.

2. Cooperation of Purchaser. To assist Envirogen in providing Products and/or performing services, Purchaser shall (i) provide Envirogen with all relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with Envirogen when requested, (iii) permit Envirogen reasonable access to relevant Purchaser or Owner controlled sites, (iv) ensure reasonable cooperation of Purchaser's employees and the Owner, and (v) unless a longer period is provided for in the Order, return all drawings or other documents submitted by Envirogen to Purchaser for review, comment and/or approval within a commercially reasonable time following submission not to exceed ten (10) business days. Any failure to return documents within the time prescribed shall be considered a waiver by Purchaser of its right to review and approve or comment on the documents.

3. Price, Costs and Payments.

3.1 Unless otherwise stated therein, the price(s) and charges for Products and/or services specified in any Order are exclusive of any sales, use, value added, excise, gross receipts, business and occupation or similar present or future taxes imposed by any governmental entity on the sale, delivery, use or other handling of the Product or service or in connection with any transactions contemplated by the Order to which these General Conditions apply. If any such

taxes are incurred by Envirogen, Purchaser shall reimburse Envirogen the amount of such taxes.

32 Whenever rates or prices in any Order include transportation or when transportation is charged separately by Envirogen, such rates, prices or charges shall be exclusive of (i) material increases in the cost of transportation occasioned by significant increases in the costs of fuel or weather, road or access conditions which could not have been reasonably anticipated in advances of pricing the cost of transportation or (ii) any extraordinary or excess demurrage charges incurred by Envirogen from third party carriers which arise from delays or demurrage at the delivery point. Demurrage will be charged to Purchaser except to the extent such demurrage primarily results from the negligence or other fault on the part of Envirogen or its carrier.

33 Unless otherwise specifically indicated in the Order, all prices (or other values) in the Order are stated in U.S. dollars and all payments are to be made in U.S. dollars.

34 Invoices may be provided to Purchaser, at the option of Envirogen, by mail, delivery service, electronic mail or fax and payments by Purchaser shall, at the election of Envirogen, be made by mail, overnight delivery service or electronic funds transfer. Purchaser shall provide Envirogen with contact information for delivery of invoices. Invoices shall be due and payable within thirty (30) days of receipt by Purchaser of the invoice. TIME IS OF THE ESSENCE for payment of all fees and charges. Interest on delinquent payments shall accrue until paid at the greater rate of (i) twelve percent (12%) per annum or (ii) the prime interest rate as quoted by the Wall Street Journal plus 500 basis points (adjusted on the first day of each calendar quarter.) In the event that the interest rate described above exceeds the maximum interest rate chargeable under law for such transactions, such maximum legal rate shall apply.

35 Should any portion of an Envirogen invoice be disputed by Purchaser, Purchaser will pay the undisputed portion and within the payment period prescribed above shall provide Envirogen with written notice of the disputed portion of the invoice and the reasons for the dispute. In no event shall Purchaser withhold payment of any undisputed portion of a Envirogen invoice based on the set-off of a Purchaser claim against Envirogen or as a back-charge for monies claimed to be owed Purchaser by Envirogen. At the request of Purchaser, Envirogen shall provide Purchaser with a written partial release of statutory liens utilizing Envirogen's standard form which shall be conditioned on actual receipt of payment of a particular invoice.

36 Envirogen may, from time to time, establish such credit terms as it shall, in the sole judgment of Envirogen, deem reasonably necessary, including, but not limited to, credit limits.

37 In the event that Envirogen should incur Costs, including, but not limited to, attorney's fees and collection agency fees, to collect overdue invoices and accounts, Purchaser shall reimburse Envirogen for all such reasonable Costs whether or not litigation has been initiated to collect the overdue account.

38 When fees or charges are based in whole or in part on a reimbursement by Purchaser of Envirogen's actual costs, with or without a mark-up, such costs shall be determined at the time of invoicing whether or not the cost has already been paid by Envirogen or has, as of that time, accrued as an expense for purposes of accounting. Any future rebate or credit to Envirogen which may be associated either directly or indirectly with the cost or expense, shall not give rise to a similar rebate or credit from Envirogen to Purchaser.

4. Delivery and Risk of Loss.

- 4.1 Except as otherwise set forth in the Order, delivery of Product shall be DAP work/installation site (Incoterms 2010).
- 4.2 Except as otherwise set forth in the Order, Purchaser agrees to take delivery of Product upon notice from Envirogen that the Product is ready for delivery. If for any reason Purchaser is either unable or unwilling to accept delivery, Purchaser shall be responsible to pay or reimburse Envirogen for all additional Costs incurred for storage, insurance and/or transportation.
- 4.3 Title to and risk of loss with respect to Products shall pass from Envirogen to Purchaser at the time the Product is delivered to Purchaser. Product shall be deemed to be delivered when the Product has been loaded to Purchaser's carrier or if delivered by Envirogen to Purchaser's or Owner's work site, upon arrival at the work site. (See Section 4.1) Offloading from the Envirogen carrier is the responsibility of Purchaser. Damages to the Product incurred during offloading shall be the responsibility of Purchaser. To qualify for a credit, any shortage or damages (other than those incurred after delivery DAP) to the Product shall be reported in writing to Envirogen by Purchaser within five (5)

business days of the date of delivery of the Product.

5. **Force Majeure.** If Envirogen is rendered unable to perform its obligations under the Order by an event beyond the reasonable control of Envirogen, Envirogen shall not be liable to Purchaser for failure or delay in such performance to the extent that the failure or delay is due to such force majeure event. Force majeure events shall include, but shall not be limited to, war (whether declared or undeclared), fire, flood, lightning, earthquake, hurricane, storm or any other act of God; strikes, lockouts or other labor difficulties; civil disturbances, riots, sabotage, accident not involving fault on the part of Envirogen or explosion; inability to secure necessary fuel, power, equipment, transportation or raw materials and/or any other reason beyond the reasonable control of Envirogen.
6. **Warranties.** The following warranties are in addition to any other warranties specifically set forth in the Order:
 - 6.1 **Products.** Envirogen warrants to Purchaser that (i) Envirogen will have title to all Products delivered to Purchaser, free and clear of all liens, encumbrances and security interests, and (ii) that all Product will conform at the time of delivery to the written mechanical product description and/or specifications set forth or otherwise referenced in the Order. In the event of a failure by Envirogen to materially meet the terms of the warranty set forth in this Subsection 6.1, Envirogen, at its own expense, shall remove the defective, non-conforming product and replace it with a like quantity of conforming Product meeting the description or specifications.
 - 6.2 **Equipment, Parts and Goods.** Except as otherwise provided for in the Order, Envirogen warrants as follows:
 - A. Equipment and systems which are the subject of the Order shall, when constructed, installed, used, maintained and operated in strict compliance with the plans, specifications and instructions of Envirogen, meet the performance criteria specifically set forth in the Order during the performance testing period described therein.
 - B. At the time of delivery, equipment and parts will be free from any and all material defects which would reasonably interfere with their use by Purchaser. In the event such defect is reported to Envirogen within twelve (12) months from date of installation of the equipment or part or within fourteen (14) months following delivery by Envirogen, whichever comes first, Envirogen will repair or replace the defective component without charge.
 - 6.3 **Services.** Envirogen warrants as follows:
 - A. In providing services under the Order, Envirogen will comply with all federal, state and local laws.
 - B. The services to be provided by Envirogen shall be performed utilizing the same generally accepted standards of due diligence, skill, reasonable care and safety ordinarily employed by service providers similarly situated in the same geographic region and at the same time.
 - C. All Envirogen personnel engaged in providing the services pursuant to the Order (i) shall be appropriately supervised by qualified persons in Envirogen's employ, (ii) shall be appropriately skilled to perform the work to which they are assigned, and (iii) shall have met appropriate licensing and certification requirements of the state in which the service are to be provided.
 - 6.4 **Media and Resins.** Unless otherwise set forth in the Order, Envirogen warrants that media supplied by Envirogen meets or exceeds Envirogen's specifications for the media and manufacturer's specifications for the media at the time of shipment.
 - 6.5 **Patents.** Envirogen warrants that neither its Products nor its services shall infringe upon any patent(s) or copyright(s), or misappropriate or misuse trade secret(s) or other confidential information unless such Product or service is provided in compliance with Purchaser provided specifications. In the event of a default under this patent and intellectual property warranty, upon notice of the default by Purchaser, Envirogen shall obtain on behalf of Purchaser such releases, licenses or other appropriate authorizations as shall be necessary to prevent the infringement.
 - 6.6 **ENVIROGEN MAKES NO WARRANTY, EXPRESSED OR IMPLIED, PURSUANT TO THESE GENERAL CONDITIONS, THE ORDER OR OTHERWISE OTHER THAN AS IS SPECIFICALLY SET FORTH IN THIS WARRANTIES PARAGRAPH AND THE ORDER AND NONE SHALL BE IMPLIED. THE WARRANTIES AND ANY REMEDIES SET FORTH IN THIS WARRANTIES PARAGRAPH AND/OR THE ORDER ARE EXCLUSIVE. THE WARRANTIES ARE GIVEN AND ACCEPTED BY PURCHASER IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL SUCH WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED BY ENVIROGEN AND WAIVED BY PURCHASER. ANY**

REMEDIES PROVIDED FOR IN THIS WARRANTIES PARAGRAPH AND OR THE ORDER ARE IN LIEU OF ALL OTHER REMEDIES AT LAW OR IN EQUITY FOR BREACH OF A WARRANTY.

67 Purchaser may assign Envirogen's warranty obligations to the Owner without the consent of Envirogen and shall provide Envirogen with written notice of such an assignment.

7. Indemnification.

7.1 Each Party hereby agrees to defend, indemnify and hold the other Party and their respective partners, affiliates and subsidiaries, and their respective directors, officers, partners, members, employees and agents (collectively "Indemnified Parties"), harmless from and against any and all claims, liabilities, suits, proceedings, judgments, orders, fines, penalties, damages, losses, Costs and expenses (including, without limitation, costs of defense, settlement and reasonable attorneys' fees and expenses) (all of the foregoing herein collectively called "Liabilities"), arising out of (i) the indemnifying Party's negligence or willful misconduct; and, (ii) failure of the indemnifying Party or any of its employees or agents to observe or comply with any of the indemnifying Party's duties or obligations under these General Conditions or the Order, including, without limiting the generality of the foregoing, any failure to observe or comply with any applicable laws, ordinances, codes, orders, rules or regulations; violation or breach of any provision in these General Conditions or the Order including, but not limited to, any warranty for which a remedy is not specified. The foregoing obligations of indemnity will include, but not be limited to, any and all Liabilities for or relating to (i) injury to or death of any person (including, without limitation, employees or agents of the Parties), (ii) damage to or loss or destruction of any property (including, without limitation, property of the Parties, or their respective employees or agents), and (iii) any spill, release or leak of any hazardous substance or waste or any contamination of, injury or damage to or adverse effect on the environment. The indemnifying Party shall be liable, however, only for that percentage of total Liabilities that corresponds to the indemnifying Party's percentage of total negligence or fault as compared to that of the indemnified Party.

7.2 Neither Party shall have any liability to the other Party for any indirect, incidental, aggravated, exemplary, punitive, or consequential damages incurred by the other Party, whether brought on an action for breach of contract, breach of warranty, tort, strict liability, or otherwise and irrespective of whether caused or allegedly caused by either Party's negligence or willful misconduct and none shall be awarded by any tribunal against a Party hereto in favor of a Party hereto; provided, however, that the limitations on liability contained in this Section 7.2 shall not apply to damages which are part of a third party claim for which a Party is claiming an indemnity obligation under this agreement from the other Party and the Party entitled to indemnity protection under this agreement is seeking an indemnity or other relief against the payment of such damages from the Party required to provide such indemnity or other relief. Anything in the Order or these General Conditions notwithstanding, any liability of Envirogen under the Order shall not exceed in the cumulative aggregate, the lesser of the total fee or charges invoiced under the Order or \$1,000,000.

8. Confidential Information.

8.1 Purchaser agrees that all information related to Envirogen's systems, services, Products, methods, procedures, techniques, and equipment ("Confidential Information") is and shall remain Envirogen's exclusive proprietary and confidential information, know-how and property. Purchaser agrees to use Confidential Information solely for the purposes set forth in the Order. Purchaser agrees to keep Confidential Information confidential in accordance with the provisions of Section 8.2, and Purchaser shall not disclose, use or exploit for its benefit or the benefit of any third party Confidential Information other than in furtherance of the purpose of the Order. Purchaser shall not reverse engineer, disassemble, chemically or biologically analyze or decompile any Product or other tangible objects which embody Envirogen's Confidential Information.

8.2 Disclosure of Confidential Information may be in tangible form, by electronic media, by visual display or inspection or it may be provided orally. Confidential Information need not be marked "confidential", "secret" or the like. Purchaser shall not use or disclose Confidential Information for any purpose other than as specified in the Order. Purchaser will use at least the same degree of care to avoid disclosure or unauthorized use of Confidential Information as Purchaser uses with respect to its own confidential information, but in no event less than a reasonable standard of care. Purchaser shall require in writing that the Owner agree to be contractually bound to Envirogen by the provisions of this Section 8. Envirogen may seek injunctive relief to enforce its rights under this Section without any requirement of proving irreparable injury. Confidential Information does not include the following: (a)

information which prior to receipt by Purchaser was either generally available to the public or in Purchaser's possession free of any restrictions on its use or disclosure from a source other than Envirogen; or (b) information which after the receipt thereof by the Purchaser either becomes available to the public through no fault of Purchaser or is acquired by Purchaser from a third party who has the legal right to transfer the information to Purchaser; or (c) information required to be disclosed by Purchaser pursuant to law but only after reasonable notice of the requirement of disclosure is provided to Envirogen.

9. **Termination for Convenience.** If the Order provides that the Purchaser may terminate the Order for its convenience and without cause, such termination shall be accomplished by written notice from the Purchaser to Envirogen. Upon such a termination for convenience, Purchaser shall pay Envirogen (i) for all Products and services delivered prior to the date of termination, and (ii) any and all Costs incurred by Envirogen prior the date of Termination incurred by Envirogen in the engineering, design, production, acquisition, transportation or otherwise for any Product or service as yet undelivered plus a mark-up of 25% and (iii) all reasonable Costs associated with the demobilization of Envirogen following the termination.

10. **Insurance.** If the services and/or the delivery of the Products require Envirogen or its contractors or carriers to enter on to any property owned or occupied by Purchaser, then Envirogen shall procure and maintain the following insurance coverages:

Coverage	Policy Limits
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per accident or disease
Commercial General Liability	\$1,000,000 per occurrence and including contractual liability; and \$1,000,000 in the aggregate
Automobile Liability Policy	\$1,000,000 per occurrence (including owned, non-owned, and hired vehicles) non-owned, and hired vehicles)

All such policies shall name Purchaser and Owner as an additional insured as respects liability arising from work or operations performed by or on behalf of Envirogen (excluding the workers' compensation policy). Envirogen shall promptly furnish Purchaser with certificates of insurance evidencing the required insurance coverage.

11. **Miscellaneous Provisions.**

11.1 For all purposes of the Order, Envirogen is and shall remain an independent contractor. There are no intended third party beneficiaries to these General Conditions or the Order and nothing in this Contract will entitle any person other than Envirogen or Purchaser to any claim, cause of action, remedy or right of any kind under the Order.

11.2 Purchaser agrees that during the term of the Order and for a period of twelve (12) months thereafter, Purchaser will not, directly or indirectly, solicit, request or otherwise induce any Envirogen employee or personnel to terminate his or her employment with Envirogen if such employee has been materially engaged in providing Product or services to Purchaser under the Order. Nothing herein shall be construed to prohibit the hiring of Envirogen employees who have responded without any direct inducement by Purchaser to publically available employment advertisements by Purchaser.

11.3 Those provisions of these General Conditions or the Order which by their nature are intended to survive the termination, cancellation, completion or expiration of these general conditions or the Order to which they apply shall continue as valid and enforceable obligations of the Parties, notwithstanding any such termination, cancellation, completion or expiration. Such provisions include, but are not limited to, provisions concerning warranties, indemnifications and confidentiality.

- 11.4 The validity, interpretation and performance of these General Conditions shall be governed exclusively in accordance with and by the laws of the State of Texas, save and except those Texas laws governing choice of laws which would result in the choice of a law or laws of another jurisdiction.
- 11.5 In the event of any dispute between the parties arising under these General Conditions or the Order, the parties agree that (i) the civil courts in and for the County of Montgomery, State of Texas, shall have exclusive jurisdiction and venue to determine such dispute(s) and each party hereby waives any objection to such jurisdiction and venue in any such court and any claim that such forum is an inconvenient forum and (ii) the prevailing Party shall be awarded its costs of suit, including reasonable attorney's fees.
- 11.6 The Order and these General Conditions set forth the entire agreement of the Parties regarding the services and Products described in the Order and supersede all prior discussions and agreements of the Parties, whether written or verbal other than prior confidentiality or non-disclosure agreements between Purchaser and Envirogen. The Order and these General Conditions may not be modified, amended, rescinded, canceled or waived in whole or in part by amendment or change order, except by written instrument, signed by both Parties, which makes specific reference to the Order and which specifies that the Order or these General Conditions are being amended, modified or otherwise altered. All change orders shall make specific reference to the Order and shall be signed by both Parties. All change orders shall indicate any modifications or amendment to the pricing or delivery schedule resulting from the change in scope. Any request by Purchaser to either accelerate or delay a deliverable date described in the Order for any reason shall require a mutually acceptable change order pursuant to this Section. Such change order shall include the new schedule of deliverable due date(s) and any price adjustment occasioned by the change in schedule.
- 11.7 Any waiver by either Party of any provision or condition of the Order or these General Conditions shall not be construed or deemed to be a waiver of any other provision or condition of the Order or these General Conditions, nor a waiver of any subsequent breach of the same provision or condition.
- 11.8 If any section, subsection, paragraph, clause or sentence of the Order or these General Conditions shall be adjudged illegal, invalid or unenforceable, such event shall not affect the legality, validity or enforceability of the remaining portions of the Order and these General Conditions as a whole or any portion thereof.
- 11.9 The covenants and agreements contained herein shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.
- 11.10 The Order (or any amendment) may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the Order when a duly authorized representative of each Party has signed a counterpart. Photographic, facsimiled and scanned copies of such executed counterparts may be used in lieu of the originals for any purpose.