

Expansa Standard Terms of Sale

1. **Applicable Terms.** These Expansa Standard Terms of Sale are issued by Basin Water Resources, LLC, d/b/a Expansa ("Seller"), and govern the sale of equipment, products, consumables, media, and related services described in Seller's quotation, proposal, Sales Order, acknowledgment, change order, or other documentation, collectively, the "Work." These Terms apply only to orders for delivery within the United States. International orders are governed by Seller's applicable international terms and conditions. Buyer accepts these Terms and the applicable order by signing or electronically accepting Seller's documentation, issuing a purchase order, authorizing Seller by email, text message, or other electronic communication to proceed, paying any deposit or invoice, accepting delivery, or using the Work. Upon such acceptance, the order becomes binding on Buyer. Seller rejects any additional or conflicting terms unless expressly accepted in writing by an authorized representative of Seller. Leased or rented equipment and related services are governed exclusively by Seller's applicable Master Equipment Lease and Services Agreement, Emergency Equipment Lease and Services Agreement, and associated Equipment & Services Schedule or Sales Order. Buyer shall not export, re-export, transfer, or use the Work in violation of applicable United States export control or sanctions laws.
2. **Payment Terms.** Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation specifically provides otherwise, freight, storage, insurance and all taxes, levies, duties, tariffs, permits or license fees or other governmental charges relating to the Work, or any incremental increases thereto shall be paid by Buyer. If Seller is required to pay any such charges, Buyer shall immediately reimburse Seller. If Buyer claims a tax or other exemption or direct payment permit, it shall provide Seller with a valid exemption certificate or permit and indemnify, defend, and hold Seller harmless from any taxes, costs and penalties arising out of the same. All payments are due within 30 days from the invoice date. Buyer shall be charged the lower of 1 ½% interest per month or the maximum legal rate on all amounts not received by the due date and shall pay all of Seller's reasonable costs (including attorneys' fees) of collecting amounts due but unpaid. All orders are subject to credit approval by Seller. Back charges without Seller's prior written approval shall not be accepted. Seller may suspend performance, withhold shipment or delivery, revoke credit terms, or require advance payment if Buyer fails to make any payment when due or if Seller reasonably determines that Buyer's creditworthiness has materially deteriorated.
3. **Delivery: Title: Risk of Loss.** Delivery of the Work shall be in material compliance with the schedule stated in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are EXW Seller's designated facility, Incoterms 2020. Risk of loss shall pass to Buyer upon delivery of the Work to the carrier at Seller's designated facility, regardless of when title passes. Title to the Work shall pass to Buyer only upon Seller's receipt of full payment for the applicable Work. Unless otherwise agreed in writing by Seller, all shipping and delivery dates are estimates only, and Seller shall not be liable for any loss, expense, delay damages, or consequential damages arising from a failure to meet an estimated delivery date.
4. **Document Precedence & Attachments.** All documents issued or expressly accepted by Seller in connection with an Order are incorporated into the agreement between the parties. If a direct conflict exists, the following order of precedence applies: (a) a Master Service Agreement or other master agreement executed by both parties; (b) the applicable Sales Order or order acknowledgment; (c) attachments containing expressly agreed special commercial terms; (d) attachments containing specifications or scope of work; and (e) these Expansa Standard Terms of Sale. A higher-ranking document shall control only to the extent of the direct conflict. No purchase order, specification, attachment, or other Buyer document shall modify these Terms unless Seller expressly accepts the modification in writing through an authorized representative.
5. **Ownership of Materials and Licenses.** All designs, drawings, specifications, calculations, estimates, pricing, notes, software, electronic data, processes, methods, documents, and other materials prepared or provided by Seller, together with all related intellectual property rights, shall remain Seller's exclusive property. Upon full payment for the applicable Work, Seller grants Buyer a limited, non-exclusive, non-transferable license to use such materials solely for Buyer's ownership, operation, and maintenance of the Work. Buyer shall not copy, modify, disclose, distribute, reverse engineer, or use such materials for any other project or purpose without Seller's prior written consent. Seller may not use Buyer's name, logo, or trademarks in marketing materials without Buyer's prior written approval.
6. **Changes to the Work.** Neither party shall implement any changes in the scope of Work described in Seller's Documentation without a mutually agreed upon change order. Any change to the scope of the Work, delivery schedule for the Work, any Force Majeure Event, any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the price and time of performance. Seller shall not be required to proceed with any changed or affected Work until the applicable adjustment in price and schedule has been agreed in writing.
7. **Force Majeure.** Neither Buyer nor Seller shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Seller shall have the right to terminate the applicable order without liability, upon fifteen (15) days' written notice to Buyer and shall be entitled to payment for work performed prior to the date of termination. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Events may include, but are not limited to, supply-chain disruptions, shortages or delays in obtaining equipment or materials, transportation delays, utility outages, governmental actions, epidemics, pandemics, labor shortages, war, acts of foreign enemies, terrorism, riots, strikes or lockouts, natural catastrophes, and, with respect to on-site Work, unusual weather conditions.
8. **Warranty.** For parts, components, chemicals, membranes, resin, media, consumables, and other products manufactured or supplied by third parties, Seller shall pass through to Buyer any applicable manufacturer's warranty to the extent transferable, and Seller shall have no additional warranty obligation for such items. Equipment manufactured or fabricated by Seller is warranted against defects in materials and workmanship for the earlier of: (a) twelve (12) months from the date the equipment is first placed into service; or (b) eighteen (18) months from the date of delivery. Services performed by Seller are warranted to be performed in a timely and workmanlike manner. Any claim concerning Services



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must be submitted within ninety (90) days after completion of the applicable Services. If Buyer provides prompt written notice of a covered defect within the applicable warranty period, Seller shall, at its option and as Buyer's sole and exclusive remedy, repair or replace the defective Work, re-perform the applicable Services, or refund the amount paid for the defective Work. This warranty does not cover normal wear, improper installation not performed by Seller, misuse, unauthorized repairs or modifications, improper operation or maintenance, unsuitable feedwater or operating conditions, chemical attack, abrasion, fouling, scaling, contamination, freezing, or damage caused by third parties. Seller's warranty obligations are conditioned upon Buyer complying with Seller's operating and maintenance instructions and being current on all payment obligations. THE WARRANTIES SET FORTH IN THIS SECTION 8 ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. **Indemnification.** Seller shall indemnify, defend, and hold harmless Buyer and its officers, directors, employees, agents, successors, and permitted assigns from and against third-party claims for bodily injury, death, or damage to tangible property, but only to the extent directly caused by Seller's negligence or willful misconduct in performing the Work. Buyer shall indemnify, defend, and hold harmless Seller and its affiliates, officers, directors, managers, employees, agents, successors, and permitted assigns from and against third-party claims, damages, losses, liabilities, fines, penalties, costs, and expenses, including reasonable attorneys' fees, arising out of or relating to Buyer's negligence or willful misconduct, breach of these Terms and the applicable order, misuse or improper operation of the Work, Buyer-provided specifications or instructions, unsafe or unsuitable site conditions, or Buyer's handling, treatment, storage, discharge, or disposal of water, wastewater, chemicals, media, or other materials. The indemnified party shall promptly notify the indemnifying party of any claim and provide reasonable cooperation in the defense. The indemnifying party shall control the defense and settlement of the claim, provided that it may not agree to any settlement that admits fault by or imposes any non-monetary obligation on the indemnified party without that party's prior written consent.
10. **Assignment.** Neither party may assign these Terms and the applicable order, in whole or in part, nor any rights or obligations hereunder without the prior written consent of the other party; provided, however, the Seller may assign its rights and obligations under these Terms to its affiliates or in connection with the sale or transfer of the Seller's business and Seller may grant a security interest in these Terms and the applicable order, or assign amounts payable under them, without Buyer's consent.
11. **Termination.** Either party may terminate these Terms and the applicable order for a material breach if the breaching party fails to cure the breach within thirty (30) days after receiving written notice. A material breach includes, without limitation, failure to perform a material obligation under these Terms or the applicable order, insolvency, filing for bankruptcy, or the commencement of bankruptcy, receivership, reorganization, or similar proceedings. If Buyer suspends an order without an agreed change order for ninety (90) or more consecutive days, Seller may terminate the applicable order without liability upon fifteen (15) days' written notice to Buyer. Upon termination, Seller shall be entitled to payment for all Work performed and costs incurred through the effective date of termination, whether or not the Work has been completed or delivered.
12. **Dispute Resolution; Governing Law.** These Terms, the applicable Seller's Documentation, and all matters arising out of or relating to them shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflict-of-laws principles. Seller and Buyer shall negotiate in good faith to resolve any dispute relating hereto. If, despite good faith efforts, the parties are unable to resolve a dispute or claim arising out of or relating to these Terms and the applicable order or its breach, termination, enforcement, interpretation or validity, the parties will first seek to agree on a forum for mediation to be held in a mutually agreeable site. If the parties are unable to resolve the dispute through mediation, then any dispute, claim or controversy arising out of or relating to these Terms and the applicable order or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope, validity, or enforceability of the parties' agreement to arbitrate, shall be determined by arbitration in Houston, Texas. Arbitration shall be conducted before one arbitrator, unless the amount in controversy exceeds \$2,000,000, in which case either party may request a panel of three arbitrators. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitrator or arbitration panel, as applicable, shall issue a reasoned written decision. If the arbitration is conducted before a panel of three arbitrators, the decision of a majority of the panel shall control. Judgment upon any arbitration award may be entered in any court of competent jurisdiction. The substantially prevailing party as determined by the arbitrator or arbitration panel shall be reimbursed by the other party for all costs, expenses, and charges, including without limitation reasonable attorneys' fees, incurred by the prevailing party in connection with the arbitration.
13. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST REVENUE, LOSS OF USE, LOSS OF PRODUCTION, OR BUSINESS INTERRUPTION, ARISING OUT OF OR RELATING TO THE WORK. SELLER'S TOTAL AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE WORK SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE TO SELLER FOR THE SPECIFIC WORK GIVING RISE TO THE CLAIM. THESE LIMITATIONS APPLY REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. THE FOREGOING LIMITATIONS SHALL NOT LIMIT BUYER'S PAYMENT OBLIGATIONS OR BUYER'S INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS.
14. **Returns and Refunds.** Products may be returned only with Seller's prior written approval and must be unused, unopened, undamaged, and in their original packaging. Approved returns, including unused chemicals, membranes, resin, media, and other consumable products, may be subject to a restocking fee and return freight charges. Custom, special-order, opened, installed, contaminated, expired, or otherwise non-resalable products are nonreturnable. No credit or refund will be issued until the returned products are received and inspected by Seller.