

SUPPLY AGREEMENT NO. 3251

HACH - Instruments, Consumables and Chemistries

THIS **HACH-Instruments, Consumables and Chemistries Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and HACH Company ("Contractor"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Contractor has bid to provide HACH - Instruments, Consumables and Chemistries in response to Request for Bid No. **SS-3251** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Contractor's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Contractor agree as follows:

- 1. Scope.** Contractor will provide HACH - Instruments, Consumable and Chemistries in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for five years. The parties may mutually extend the term of this Agreement for up to zero additional zero-year periods ("Option Period(s)"), provided, the parties do so by written amendment prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** This Agreement is for an amount not to exceed \$3,100,000.00, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. Contractor shall invoice no more frequently than once per month. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. Any amount not expended during the initial term or any option period may, at the City's discretion, be allocated for use in the next option period.

Invoices will be mailed to the following address with a copy provided to the Contract Administrator:

City of Corpus Christi
Attn: Accounts Payable
P.O. Box 9277
Corpus Christi, Texas 78469-9277

- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Name: Diana Zertuche-Garza
Department: Utilities Department
Phone: (361) 826-1827
Email: DianaG@cctexas.com

- 5. Insurance.** Before performance can begin under this Agreement, the Contractor must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Additionally, the COI must state that the City will be given at least 30 days' advance written notice of cancellation, material change in coverage, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
- 6. Purchase Release Order.** For multiple-release purchases of products to be provided by the Contractor over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Contractor a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Contractor until such time as the products are delivered and accepted by the City.
- 7. Inspection and Acceptance.** City may inspect all products supplied before acceptance. Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Contractor, a replacement product may be bought by the City on the open market and any costs incurred, including additional costs over the item's bid price, must be paid by the Contractor within 30 days of receipt of City's invoice.

8. Warranty.

(A) The Contractor warrants that all products supplied under this Agreement are new, quality items that are free from defects, fit for their intended purpose, and of good material and workmanship. The Contractor warrants that it has clear title to the products and that the products are free of liens or encumbrances.

(B) In addition, the products purchased under this Agreement shall be warranted by the Contractor or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. Quality/Quantity Adjustments. Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator

10. Non-Appropriation. The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.

11. Independent Contractor. Contractor will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Contractor be considered an employee of the City.

12. Subcontractors. Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless the subcontractors were named in the bid or in an attachment to this Agreement. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable

to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the work.

13. **Amendments.** This Agreement may be amended or modified only in writing executed by authorized representatives of both parties.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other applicable taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.
16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Diana Zertuche-Garza
Title: Contract/Fund Administrator
Address: 2726 Holly road, Corpus Christi, Texas 78415
Phone: (361) 826-1827
Fax: (361) 826-1715

IF TO CONTRACTOR:

HACH Company
Attn: JR Stendebach
Title: Regional Sales Manager
Address: 5600 Lindbergh Drive, Loveland, Colorado 80539
Phone: (970) 669-3050
Fax: (970) 669-2932

17. **CONTRACTOR SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION OF WHATEVER NATURE, CHARACTER, OR DESCRIPTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR ANY OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING ALL EXPENSES OF**

LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH A BREACH OF THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT BY THE CONTRACTOR OR RESULTS FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE CONTRACTOR OR ITS EMPLOYEES OR AGENTS. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING OR RESULTING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

SUPPLIER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF COMPENSATION PAYABLE TO SUPPLIER DURING THE TERM HEREOF. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. LIMITATIONS ON LIABILITY SHALL NOT APPLY WHERE LIABILITY CANNOT BE EXCLUDED OR RESTRICTED BY STATUTORY LAW, OR WHERE DAMAGES HAVE BEEN CAUSED BY WILLFUL MISCONDUCT.

18. Termination.

(A) The City Manager may terminate this Agreement for Contractor's failure to comply with any of the terms of this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Contractor. The City Manager may also terminate this Agreement upon 24 hours written notice to the Contractor for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. Owner's Manual and Preventative Maintenance. Contractor agrees to provide a copy of the owner's manual and/or preventative maintenance guidelines or instructions if available for any equipment purchased by the City pursuant to this Agreement. Contractor must provide such documentation upon delivery of such equipment and prior to receipt of the final payment by the City.

20. Limitation of Liability. The City's maximum liability under this Agreement is limited

to the total amount of compensation listed in Section 3 of this Agreement. In no event shall the City be liable for incidental, consequential or special damages.

21. Assignment. No assignment of this Agreement by the Contractor, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the

Contractor is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

- 22. Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
- 23. Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:

 - A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Contractor's bid response (Exhibit 2).
- 24. Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement if required by said statute.
- 25. Governing Law.** Contractor agrees to comply with all federal, Texas, and City laws in the performance of this Agreement. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.
- 26. Public Information Act Requirements.** This paragraph applies only to agreements that have a stated expenditure of at least \$1,000,000 or that result in the expenditure of at least \$1,000,000 by the City. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the Contractor agrees that the contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.
- 27. Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

CONTRACTOR

Signature: Divya Mittal

Printed Name: Divya Mittal

Title: Hach, VP Global Sales

Date: October 29, 2020

CITY OF CORPUS CHRISTI

Kim Baker
Director of Contracts and Procurement

Date: _____

Attached and Incorporated by Reference:

- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB No. SS-3251
- Exhibit 2: Contractor's Bid Response



ATTACHMENT A: SCOPE OF WORK

1. **General Requirements/Background Information**

The City's Utilities Department purchases instruments, accessories/consumables and chemistries for water and wastewater plants. Water will be identified as DR (Drinking Water) and Wastewater will be identified as WW.

2. **Scope of Work**

The Contractor shall provide Hach instruments, accessories/consumables and chemistries on an as needed basis.

3. **Supplier Quality Control and Superintendence**

All Hach instruments, accessories/consumables and chemistries will be defect free, properly packed and shipped to ensure a safe delivery.

4. **Special Instructions**

A. Ordering and Delivery

1. City Staff will place orders on an as needed basis.
2. The Contractor shall deliver orders between the hours of 8:00AM to 5:00PM.
3. The Contractor shall deliver products to the following City facilities:

No.	Location Name & Address
1	O. N. Stevens Water Treatment Plant (ONSWTP) Warehouse (Deliveries for ONSWTP, Water Quality & Water Utilities Lab) 13101 Leopard St. Corpus Christi, Texas 78410
2	Allison Wastewater Treatment Plant 4101 Allison Rd Corpus Christi, Texas 78410
3	Broadway Wastewater Treatment Plant 1492 W. Broadway Corpus Christi, Texas 78401
4	Greenwood Wastewater Treatment Plant 1541 Saratoga Blvd Corpus Christi, Texas 78417
5	Laguna Madre Wastewater Treatment Plant 201 Jester St. Corpus Christi, Texas 78418
6	Oso Wastewater Treatment Plant 501 Nile Dr. Corpus Christi, Texas 78412
7	Whitecap Wastewater Treatment Plant 13500 Whitecap Corpus Christi, Texas 78418

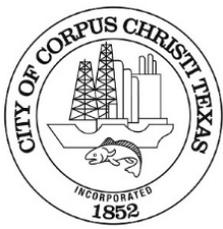
4. All contract prices are F.O.B. destination, inside delivery to the City of Corpus Christi Facility, freight prepaid.
5. If any items found defective, unusable or inoperable to the condition, the Contractor shall arrange return shipment or shipping charge will be reimbursed from the invoice.
6. The Contractor understands and agrees that the City may, at its discretion, cancel any backorders due to the Contractor's inability to deliver the product within the set time frame.
7. Cancellations shall be in writing and sent to the Contractor by email, fax or mail.
8. No restocking fee or payment of any kind shall be owed for orders cancelled due to Contractor's inability to meet the deadline delivery date.

B. Defective Goods

Supplier shall pay for return shipment on any products that arrive in a defective, unusable or inoperable condition. Contractor must arrange for the return shipment of damaged products.

5. Invoicing

All invoices for parts purchased under this contract must list the list price, discount percentage off the list price as per contract, and the actual cost for the item after applying the discount. The Contractor shall provide a copy of list price for verification.



ATTACHMENT B: QUOTE/PRICING SCHEDULE

CITY OF CORPUS CHRISTI QUOTE FORM

Hach Product Categories and Discount

Section	Hach Code	Description	Discount
Hach Lab	LI	Hach Lab Instruments	10.00%
Hach Lab	LA	Hach Lab Accessories/Consumables	10.00%
Hach Lab	LC	Hach Lab Chemistries (includes test kits)	10.00%
Hach Lab	LR	Hach Lab Resale	10.00%
Hach Lab	LM	Hach Lab Micro	10.00%
Sigma Samplers	SMP	Sampler Instruments	25.00%
Sigma Samplers	SMPA	Sampler Accessories/Consumables	25.00%
Sigma Samplers	SMPC	Sampler Chemistries	25.00%
Hach Process	HP	Hach Process Instruments	10.00%
Hach Process	HPA	Hach Process Accessories/Consumables	10.00%
Hach Process	HPC	Hach Process Chemistries	10.00%
Homeland Security	HSP	All Homeland Security Process	10.00%
GLI Process	G	GLI Instruments	10.00%
GLI Process	GA	GLI Accessories/Consumables	10.00%
GLI Process	GC	GLI Chemistries	10.00%
Orbisphere	OR	Orbisphere Instruments	10.00%
Orbisphere	ORA	Orbisphere Accessories/Consumables	10.00%
Orbisphere	ORC	Orbisphere Chemistries	10.00%
Polymetron	PY	Polymetron Instruments	10.00%
Polymetron	PYA	Polymetron Accessories/Consumables	10.00%
Polymetron	PYC	Polymetron Chemistries	10.00%
Evita	EV	Evita Instruments	10.00%
Evita	EVA	Evita Accessories/Consumables	10.00%
Radiometer	RAD	Radiometer (Instruments and all except service parts)	10.00%
Sigma Flow	SF	Sigma Flow (Instruments and all except service parts)	10.00%
Marsh Flow	MF	Marsh Flow (Instruments and all except service parts)	10.00%

Total Contract value (five years) not to exceed \$3,100,000.00

Price List is Available Upon Request.

Attachment C -Insurance Requirements

I. CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor must not commence work under this agreement until all insurance required has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor Agency to commence work until all similar insurance required of any subcontractor Agency has been obtained.
- B. Contractor must furnish to the City's Risk Manager and Contract Administer one (1) copy of Certificates of Insurance (COI) with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the City's Risk Manager. The City must be listed as an additional insured on the General liability and Auto Liability policies **by endorsement**, and a waiver of subrogation is required on all applicable policies. **Endorsements** must be provided with COI. Project name and or number must be listed in Description Box of COI.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-written day notice of cancellation, required on all certificates or by applicable policy endorsements	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability Including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence
AUTO LIABILITY (including) 1. Owned 2. Hired and Non-Owned 3. Rented/Leased	\$500,000 Combined Single Limit
WORKERS' COMPENSATION	Statutory
EMPLOYER'S LIABILITY	\$500,000 /\$500,000 /\$500,000

- C. In the event of accidents of any kind related to this agreement, Contractor must furnish the Risk Manager with copies of all reports of any accidents within 10 days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in an amount sufficient to assure that all workers' compensation obligations incurred by the Contractor will be promptly met.
- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Manager
P.O. Box 9277
Corpus Christi, TX 78469-9277

- D. Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- List the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations, completed operation and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract.

Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.

- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to remove the exhibit hereunder, and/or withhold any payment(s) if any, which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.
- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2020 Insurance Requirements

Ins. Req. Exhibit **4-B**

Contracts for General Services – Services Performed Onsite

06/08/2020 Risk Management – Legal Dept.

Attachment D - Warranty

Warranty

All Hach manufactured instrumentation comes with a one year warranty from date of shipment to the original purchaser against any defects that are due to faulty material or workmanship.

In the event that a defect is discovered during the warranty period, Hach Company agrees that, at its option, it will repair or replace the defective product or refund the purchase price excluding original shipping and handling charges. Any product repaired or replaced under this warranty will be warranted only for the remainder of the original product warranty period.

This warranty does not apply to consumable products such as chemical reagents; or consumable components of a product, such as, but not limited to, lamps and tubing.

Contact Hach Company to initiate warranty support. Products may not be returned without authorization from Hach Company.

Limitations

This warranty does not cover:

- Damage caused by acts of God, natural disaster, labor unrest, acts of war (declared or undeclared), terrorism, civil strife or acts of any governmental jurisdiction
- Damage caused by misuse, neglect, accident or improper application or installation
- Damage caused by any repair or attempted repair not authorized by Hach Company
- Any product not used in accordance with the instructions furnished by Hach Company
- Freight charges to return merchandise to Hach Company
- Freight charges on expedited or express shipment of warranted parts or product
- Travel fees associated with on-site warranty repair.

This warranty contains the sole express warranty made by Hach Company in connection with its products. ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

Some states within the United States do not allow the disclaimer of implied warranties and if this is true in your state the above limitation may not apply to you. This warranty gives you specific rights, and you may also have other rights that vary from state to state.

This warranty constitutes the final, complete, and exclusive statement of warranty terms and no person is authorized to make any other warranties or representations on behalf of Hach Company.

Limitation of Remedies / Liability

The remedies of repair, replacement, or refund of purchase price as stated above are the exclusive remedies for breach of this warranty. IN NO EVENT SHALL HACH COMPANY BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY. Hach Company's liability shall be limited to an amount that is not unreasonably disproportionate to the total amount of compensation actually paid to Hach Company under this purchase, except only in the case of damages arising due to Hach Company's willful misconduct.

Any and all indemnification obligations imposed upon Hach Company shall be reduced to the extent that any negligence, recklessness, or lesser standard of conduct, any omission, any violations of law, or any misuse, misapplication, or use of product not in accordance with Hach Company's instructions, by Customer or any third party contributes to any otherwise covered claims or damages.