



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



ARC

49

November 10, 2025

DEC 17 2025

Her Excellency, Governor Kelly A. Ayotte
 and the Honorable Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to MOP 150 VII (C), authorize the Department of Environmental Services (DES), Winnepesaukee River Basin Program (WRBP) to make a **SOLE SOURCE** purchase of eight pressure relief valves (PRVs) for the four anaerobic digesters at the Franklin Wastewater Treatment Facility (WWTF) from Varec Biogas (Vendor Code 176045) in the amount of \$343,821, effective upon Governor and Council approval through June 30, 2026. 100% WRBP Funds.

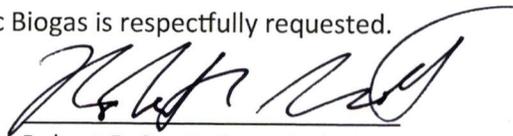
Funding is available as follows:

	<u>FY26</u>
03-44-44-442010-1300-030-500331	\$343,821
Dept. Environmental Services, Winnepesaukee River Basin, Equipment New Replacement	

EXPLANATION

This request is **Sole Source** since Varec Biogas is the only provider that can supply and install necessary replacement pressure relief valves (PRV's) on the four anaerobic digesters at the WRBP Franklin WWTF. The reason for this purchase is to replace the failing PRV's. In addition, the new PRV's are required to be equipped with Flame Arresters and Selector Valves necessary to maintain safe conditions for WRBP staff, protect the infrastructure from potential damage, and continue compliant operation of the state-owned and operated WRBP Franklin WWTF that serves ten communities in the Lakes Region. WRBP contacted the other manufacturer (Groth Briggs) of PRVs identified by their engineer plus another potential supplier (Mothwell Tank Protection). No other manufacturer besides Varec Biogas builds the PRVs which meet the engineer's specifications. In addition, other suppliers do not sell the same product or a product that meets the specifications. The key specification for the replacement PRVs is the need to be "drop-in" which requires no additional re-engineering or other construction, which will save significant funding. Additionally, the PRVs need to remain operational through the replacement process which virtually eliminates any option that requires re-engineering or adaptation of current facilities. Finally, based on engineer estimates for the cost of replacement, these PRV prices are reasonable. The equipment and installation came in significantly below engineer's estimate. Also, because this product is "drop in," the costs are reasonable compared to other products that would require very expensive ancillary costs. The manufacturer's representative will provide the installation services.

Your approval for this sole source purchase from Varec Biogas is respectfully requested.


 Robert R. Scott, Commissioner



State of New Hampshire Purchase Order

**PURCHASE ORDER NUMBER
1109369**

This number must appear on all invoices, packages,
cartons, bills of lading, and packing slips.

Date: 10/14/2025
 Status: DRAFT
 Ship Via:
 FOB: Destination
 Freight Terms: Freight Allowed
 Terms: Net 30
 Due Days: 30

Bill To: DEPT OF ENVIRONMENTAL SVCS
 ADMINISTRATIVE SVCS
 PO BOX 95
 29 HAZEN DR
 CONCORD NH 03302-0095

OVIVO USA LLC
 4255 LAKE WATER BLVD
 SALT LAKE CITY UT 84120

Ship To:
 DES WRBP
 528 RIVER RD
 FRANKLIN NH 03235

Phone: 801 931 3000
 Fax: 9 1 801 931 3100

Agency Contact: Emily Antoni 603 934-9923

Vendor #: 176045
 Contact:

In accordance with Quote: 100902

LINE	QTY	UOM	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
			Deliver on or before October 31, 2025 unless specified by line Emily.M.Antoni@des.nh.gov IRT# WD-WRBB-05-2025-29 PROPOSAL NO. 100902 "WRBP Franklin Wastewater Treatment Facility 528 River St, Franklin, NH 03235 Open M-F, 7:00AM- 2:30PM. Please call (603) 934-4032 to schedule delivery. Contact: Elaine Bolduc Phone: (603) 271-8443 Email: Fundaccounting@des.nh.gov		
1	1.00	EA	ALL WEATHER RELIEF VALVES to include all from proposal Deliver on or before October 16, 2025	328,478.00000	328,478.00
2	1.00	EA	FIELD SVC INSTALL/INSPECTION commissioning/startup assist Deliver on or before October 16, 2025	7,500.00000	7,500.00
3	1.00	EA	SHIPPING shipping Deliver on or before October 16, 2025	7,843.00000	7,843.00
			Purchase Order Summary		
				Goods Total:	\$343,821.00
				Order Total:	\$343,821.00

Buyer: Gary S Lunetta
 Phone: 603 271 2650
 Process Level: 04400

Total Amount: \$343,821.00

1. The State of New Hampshire engages the firm or individual ("the Vendor") to perform the services and/or sale of goods, described in the attached State Proposal and the Vendor's proposal, bid or quotation, any of which are incorporated herein by reference.

2. **COMPLIANCE BY VENDOR WITH LAWS AND REGULATIONS.** In connection with the performance of this agreement, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.

3. **TERM.** The contract and all obligations of the parties thereunder, shall become effective on a specified date and shall be completed in their entirety prior to a specified date. Any work undertaken by the Vendor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Vendor for any such work.

4. **CONTRACT PRICE.** The contract price, a payment schedule and a maximum limitation of price shall be as specified by the proposal or bid invitation and the Vendor's response. All payments shall be conditioned upon receipt, and approval by the State, of appropriate vouchers and upon satisfactory performance by the Vendor, as determined by the State. The payment by the State of the Contract Price shall constitute complete reimbursement to the Vendor for all expenses of any nature incurred by the Vendor in the performance by the contractor and complete payment for the Services. The State shall have no other liability to the Vendor.

5. **DELIVERY.** If the Vendor fails to furnish items and/or services in accordance with all requirements, including delivery, the state may repurchase similar items from any other source without competitive process, and the original Vendor may be liable to the state for any excess costs.

If a Vendor is unable to complete delivery by the date specified, he must contact the using branch and or agency. However, the branch and or agency is not required to accept a delay to the original delivery date. All deliveries are subject to inspection and receiving procedure rules as established by the State of New Hampshire. Deliveries are not considered accepted until compliance with these rules has been established. State personnel signatures on shipping documents shall signify only the receipt of shipment.

6. **INVOICING.** All invoices must be in triplicate showing Order Number, Unit and Extension Prices and discounts allowed. A separate invoice shall be submitted for each order. Unless otherwise noted on the proposal or purchase order, payment will not be due until thirty(30) days after all services have been completed, or all items have been delivered, inspected and accepted or the invoice has been received , whichever is later.

7. PERSONNEL.

7.1. The Vendor shall disclose in writing the names of all owners (5% or more), directors, officers, employees, agents or subcontractors who are also officials or employees of the State of New Hampshire. Any change in this information shall be reported in writing within fifteen (15) days of their occurrence.

7.2. The person signing this agreement on behalf of the State, or his or her delegee ("Contracting Officer") shall be the State's representative for purposes of this agreement. In the event of any dispute concerning the interpretation of this agreement, the Contracting Officer's decision shall be final.

8. EVENT OF DEFAULT; REMEDIES.

8.1. Any one or more of the following acts or omissions of the Vendor shall constitute an event of default hereunder ("Events of Default").

8.1.1. failure to deliver the goods or services satisfactorily or on schedule; or

8.1.2. failure to submit any report required hereunder; or

8.1.3. failure to perform any of the other covenants and conditions of this agreement.

8.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1. give the Vendor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty(30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Vendor notice of termination; and

8.2.2. give the Vendor a written notice specifying the Event of Default and suspending all payments to be made under this agreement and ordering that the portion of the Contract Price, which would otherwise accrue to the Vendor during the period from the date of such notice until such time as the State determines that the Vendor has cured the Event of Default, shall never be paid to the Vendor; and

8.2.3. set off against any other obligation the State may owe to the Vendor any damages the State suffers by reason of any Event of Default; and

8.2.4. treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

9. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof regarding any further or other default on the part of the Vendor.

10. **VENDOR'S RELATION TO THE STATE.** In the performance of this agreement the Vendor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, agents or members shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

11. **ASSIGNMENT AND SUBCONTRACTS.** The Vendor shall not assign, or otherwise transfer any interest in this agreement without the prior written consent of the State. No work required by this contract shall be subcontracted without the prior written consent of the State.

12. **INDEMNIFICATION.** The Vendor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the state, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

12.1. **PATENT PROTECTION.** The Vendor agrees to indemnify and defend the State of New Hampshire from alleged and actual patent infringements and further agrees to hold the State of New Hampshire harmless from any liability arising under RSA 382-A:2-312(3). (Uniform Commercial Code).

13. **TOXIC SUBSTANCES.** In compliance with RSA 277-A known as the Workers Right to Know Act, the Vendor shall provide Material Safety Data Sheets with the delivery of any and all products covered by said law.

14. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given below.

15. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

16. **CONSTRUCTION OF AGREEMENT AND TERMS.** This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

17. **ADDITIONAL PROVISIONS.** The additional provisions (if any) have been set forth as Exhibit "A" hereto.

18. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.



DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROCUREMENT AND SUPPORT SERVICES
BUREAU OF PURCHASE AND PROPERTY
STATE HOUSE ANNEX
CONCORD, NEW HAMPSHIRE 03301-6398

DATE: 10/06/2025

TO: CHARLES ARLINGHAUS, COMMISSIONER
 DEPT. OF ADMINISTRATIVE SERVICES

Requester: Mark Corliss	Agency: Dept. of Environmental Services
Commodity: Pressure Relief Valves/Vacuum Relief Valves	Vendor: Varec Biogas
RFB/RFP/RFQ (if applicable) RQ 253581	Contract: N/A
Est. Amount: \$343,821.00	

PERMISSION IS HEREBY REQUESTED TO WAIVE THE COMPETITIVE BID REQUIREMENTS OF RSA 21-I:11, (A)(3) AND ADMINISTRATIVE RULE 600 FOR THE FOLLOWING REASONS:

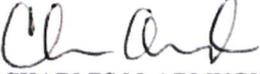
The Dept. of Environmental Services (DES) is requesting to waive the competitive bid requirements in order to purchase Pressure Relief Valves/Vacuum Relief Valves (PRV) from Varec Biogas in the amount of \$343,821.00. The PRVs installed on each of the digester covers are beginning to fail and parts for the existing PRVs are obsolete and not readily available. The existing PRVs also do not have the new, code-compliant flame arrestors integral in the replacement model units. Therefore, upgrading the PVR's to those equipped with Flame Arresters and Selector Valves is necessary to maintain safe conditions for staff, protect the infrastructure from potential damage, and continue compliant operation of the state-owned and operated equipment. The attached specifications were taken from the Solids Handling Upgrades Construction Project prepared by the WRBP's engineer (Brown & Caldwell). However, the larger construction project has been unavoidably delayed but the failing PRV equipment needs immediate replacement with compliant, safe units. These represent the minimum specifications for the WRBP digesters. Similar PRVs and another potential supplier (Mothwell Tank Protection) were identified. However, after review of our current installation, floating cover design and technical requirements, neither of their offerings met our specifications for scope of supply nor could they provide a "drop-in" replacement without re-engineering connections and/or orientation – affecting the ability of the digester floating covers to remain stable during operation. The DES will seek Governor and Executive Council approval after this waiver is approved and prior to a purchase order being issued to the vendor.

SUBMITTED FOR ACCEPTANCE BY:

Jonah L. Rosa Digitally signed by Jonah L. Rosa dn: cn=Jonah L. Rosa, o=State of New Hampshire, ou=Department of Administrative Services, c=US	Christopher R. Fuller Digitally signed by Christopher R. Fuller dn: cn=Christopher R. Fuller, o=State of New Hampshire, ou=Department of Administrative Services, c=US	Mathew T. Stanton Digitally signed by Mathew T. Stanton dn: cn=Mathew T. Stanton, o=State of New Hampshire, ou=Department of Administrative Services, c=US
das.nh.gov	@das.nh.gov	anton@das.nh.gov
PA	ADMIN	DEPUTY DIRECTOR
BUREAU OF PURCHASE AND PROPERTY		

APPROVED FOR ACCEPTANCE BY:


 DN: cn=Gary S. Lunetta@das.nh.gov
 Date: 2025.10.08 13:20:33 -0400
GARY S. LUNETTA, DIRECTOR
DIVISION OF PROCUREMENT & SUPPORT SERVICES
 ACCEPTED FOR THE STATE OF NEW HAMPSHIRE UNDER
 THE AUTHORITY GRANTED TO ME BY NEW HAMPSHIRE
 REVISED STATUTES, ANNOTATED 21-I:14, XII.

 10-13-25
CHARLES M. ARLINGHAUS, COMMISSIONER DATE
DEPARTMENT OF ADMINISTRATIVE SERVICES

PRV with Flame Arrestor and 3-way safety selector valves - Specifications from Brown & Caldwell

Vacuum and pressure relief will be provided on each digester roof. Two of the combination vacuum and pressure relief valves will be installed for each digester; with a three-way safety selector valve to select which pressure and vacuum relief valve is in service at the time. Only one set of vacuum and pressure relief valves need to be in service for each digester at a time.

Size - 8"

Capacity - 74,000 scfh/80,000 scfh

Set Pressure inch w.c. - 22/-2

Maximum allowable accumulation, inch w.c. - 25.5--6

VACUUM PRESSURE RELIEF ASSEMBLIES

A. Each pressure/vacuum relief assembly shall consist of two pressure/vacuum relief valves, two flame arresters, a three-way safety selector valve, and insulation jacket. Each pressure/vacuum relief valve and flame arrester shall be two independent items of equipment; however, the pressure/vacuum relief valve shall be mounted on the flame arrester by means of a bolted and gasketed flange connection. ANSI 125-pound connections shall be provided for each assembly. Each assembly shall be provided with an insulating jacket designed to protect the assembly in temperatures ranging from -25 to 200 degrees F.

B. Pressure/Vacuum Relief Valves: Valve pressure and vacuum ports shall be oversized to minimize overpressure. Protective HDPE or stainless-steel screens shall be provided at the intake and exhaust ports and shall be located external to the pallets. Pressure pallets shall include removable weights for adjusting the setting over not less than an 8-inch range in 1-inch increments. Pressure and vacuum pallets shall be the same diameter, and the effective diameter shall not be less than 14 percent greater in size than the port diameter. Pallets shall be centered, and side guided and shall incorporate replaceable seat inserts. The valve shall have a certified pressure leakage rate of no greater than 1 SCFH of air at 75% of the relief set point. Leakage rates greater than 1.0 SCFH of air at 75% of the relief setpoint shall not be acceptable. "All weather" feature shall be provided to protect the valve in temperatures ranging from -25 to 200 degrees F. "All weather" feature shall include special anti-freeze coating applied to seat ring tip, pallet periphery and stem and guideposts.

C. Flame Arrester: The flame arrester net free area through the bank assembly shall not be less than three times the corresponding size standard pipe. The flame bank assembly shall slide easily out of the arrester housing to facilitate inspection and cleaning. The corrugated flame bank sheets shall be individually stamped, rectangular sheets or spiral wound tube bank. Flame arresters shall be leak-proof to 10 psig. Removing or replacing the assembly shall not require support for alignment, require a jackscrew for extending the housing, or place strain on the connecting piping. The bank frame shall be extensible and shall be filled with corrugated rectangular-shaped bank sheets constructed of 316 stainless steel. Flame arresters for vertical installation shall be self-draining. The flame NHDES Solids Handling Facility Upgrades Digester Gas Handling and Safety Equipment and Specialties 160264 60% Design 43 13 46 – 5 arresters shall include an offset housing with a 1/2" NPT drip trap connection at the low point.

D. Three Way Safety Selector Valve: Three-way safety selector valves serve as a safe method of switching from an active pressure/vacuum relief valve to a standby pressure/vacuum relief valve thereby maintaining system protection regardless of valve position. The valve shall consist of a three-way (three-port), switching device provided for switching the operating pressure/vacuum relief valve and flame arrester assembly without cutoff. Valves shall provide a red indicator to indicate the active pressure/vacuum relief valve and flame arrester assembly. Valves shall have a means of accommodating a locking device to prevent unwanted access to the pressure/vacuum relief valve and flame arrester assembly. Three-way safety selector valves shall have 1-inch Type 316 stainless steel manual valves on both process sides to allow for pressure testing and field calibration of the pressure/vacuum relief valve. Valves shall be rated for a minimum pressure of 15 psig at 100 degrees F and shall be rated for a maximum of 400 degrees F. ANSI 150-pound flanged mounting connection shall be provided.

E. INSULATION JACKET: Each assembly shall be provided with an insulation jacket designed to protect the assembly in temperatures ranging from -25 to 200 degrees F. Insulation jacket shall be minimum 1-inch thick, easily removable, and constructed with a silicone impregnated woven glass cloth lining, 6-lb density fiber glass insulating material. Through-cover quilting pins shall provide firm support for the insulation. The pins shall keep the insulation from shifting inside the liner and jacket for dimensional stability and uniform heat retention. The silicone lining shall have inside seams and folded closing seams with two parallel rows of stitching. The insulation jacket shall be attached to the unit with a combination of Velcro and cinch belts. The jacket shall allow access to the flame arrester bank assembly during maintenance without removing the entire jacket.



An Ovivo Division

PROPOSAL NO. 100902

PROPOSAL

APRIL 18, 2025

FRANKLIN, NH VAREC PRESSURE/VACUUM RELIEF VALVE AND FLAME ARRESTERS WITH SAFETY SELECTOR VALVE

PREPARED FOR

Mark Corliss
NHDES Franklin WWTF
Franklin, NH

AREA REPRESENTATIVE

Robert M. Trzepacz, P.E.
Tech Sales NE
P: 603-417-5650

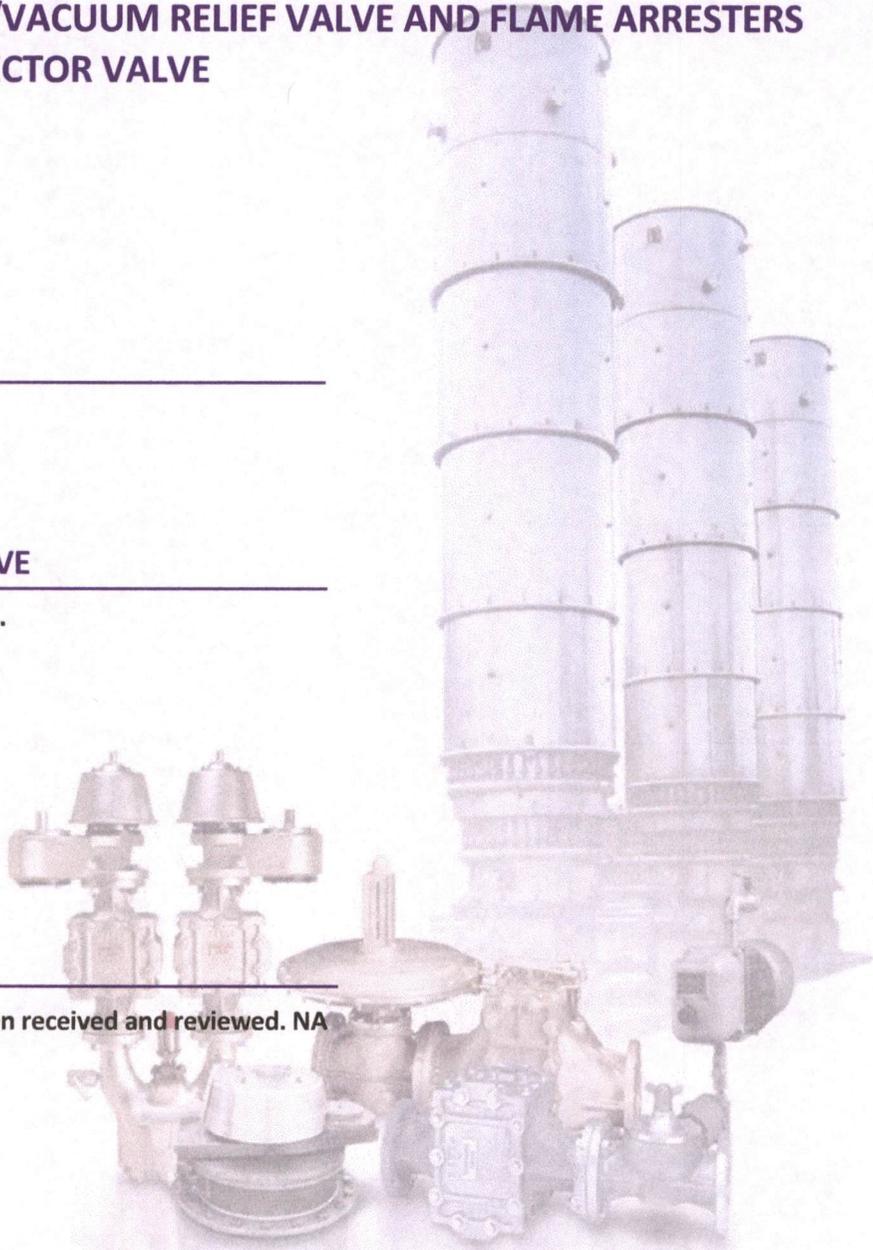
NOTE

Addendum No (#s) has been received and reviewed. NA

PREPARED BY

Regina Hanson
(O): +1 714-220-9924
Regina.Hanson@ovivowater.com

Varec Biogas, a Division of Ovivo USA, LLC
15061 Springdale St., Suite 210,
Huntington Beach, CA 92649
www.varec-biogas.com



TO: BIDDING CONTRACTORS

BID DATE: April 18, 2025

Varec Biogas is pleased to submit a proposal for the equipment, (“Scope of Supply”) on the project indicated above (the “Project”). This proposal, either in its original form or in its “as sold” format, constitutes Varec Biogas’s contractual offer of goods and services in connection with the Project. Please contact Varec Biogas’s sales representative in your area for any questions or comments you may have in connection with this proposal.

PRICING

	US DOLLARS	APPENDIX
Equipment, Total Price, Ex-works, Factory	TO BE PROVIDE BY VAREC LOCAL SALES REPRESENTATIVE	A
Spare Parts, Total Price, Ex-works, Factory		B
Field Service Installation Inspection, Commissioning, and Start-Up Assistance and Operator Training (see below for description of included services)		
Documentation Requirements per Specification Freight Charges to Jobsite		
TOTAL PRICE, FCA JOBSITE		

The pricing provided above shall be in accordance with the equipment scope provided in the Appendix of this proposal. The scope of supply is derived from the contract documents and will comply where applicable to our scope as supplier of equipment. Our comments including clarification or exceptions to the applicable specification section are included in the appendix and shall form part of our proposal.

Varec Biogas scope of responsibility is limited to the equipment that it supplies and its ability to meet the agreed upon project specifications. Unless expressly stated in its proposal document, Varec Biogas is not responsible for a treatment plant’s process performance, engineering decisions in relation to the plant’s construction or operation nor the appropriateness or compatibility of Varec Biogas’ equipment within such plant.

DELIVERY

- Varec Biogas will submit all submittal information required per Specification and when applicable for approval within 6-8 weeks after Purchaser’s receipt of Varec Biogas’s written acknowledgement of an approved purchase order.
- Varec Biogas will provide response to any submittal comments within 4-6 weeks from date of receipt.
- Varec Biogas intends to have the equipment scope of supply ready for shipment 22-24 weeks after receipt of approved drawings from Purchaser and formal release to fabrication/production.
- Installation, Operation and Maintenance (IOM) Manuals will be submitted within 6-8 weeks after receipt of approved drawings and formal release to fabrication/production. This is to ensure that any information per the specification that can only be provided after production can be included.
- Shipping terms are FCA Jobsite, unloading excluded.
- The equipment, “Scope of Supply” proposed is provided in standard domestic packaging and is not intended for long term outdoor storage. The equipment should be stored indoors, in a cool and dry place.

Note that dates of document submission and shipment of the Scope of Supply in Appendix A represents Varec Biogas's best estimate, but is not guaranteed, and Varec Biogas shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in this proposal.

If such delivery is prevented or postponed by reason of Force Majeure, as defined in Varec Biogas's standard terms and conditions of sale, then Varec Biogas shall be entitled at its option to tender delivery to Purchaser at the point or points of manufacture, and in default of Purchaser's acceptance of delivery, to cause the Products to be stored at such a point or points of manufacture at Purchaser's expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this proposal. If shipment is postponed at request of Purchaser, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from Varec Biogas that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by Varec Biogas with respect to the Products shall be for the account of Purchaser and shall be paid by Purchaser when invoiced.

CUSTOM BUILT AND/OR SPECIALTY REQUIREMENTS

For equipment that have custom or specialty requirements to meet contract, Varec Biogas shall be relieved of any clause covering time is of the essence or default that might be invoked on account of late delivery. So long as Varec Biogas is making a reasonable effort to complete the manufacture and shipment of the equipment, even though shipment is late, it shall not be considered in default, nor subject to damages, nor shall the order be subject to cancellation without payment of appropriate cancellation costs.

FIELD SERVICES

Field services are included in Varec scope of supply as follows:

One trip, one man, one day –

- a. Installation check: Manufacturer to furnish the services of a qualified representative as necessary to check the installation of all equipment installed (Installation is not in Varec's scope). Calibration of PRV Valve/Flame Arrester
- b. Classroom training

Varec Biogas will supply the service of a competent field representative to inspect the completed installation and adjustment of equipment, commissioning and start-up assistance of the equipment, and instruct Owner's personnel in the operation and maintenance of the "Scope of Supply" to comply with the requirements.

Notwithstanding Varec Biogas' performance of the above-referenced services, Varec Biogas shall not be held liable for any faulty workmanship or other defects in the Products' installation, or for other goods and/or services, performed by third parties unless such goods and/or services are expressly included under Varec Biogas scope of work.

1. The value paid for service will be invoiced with the shipped goods.
2. Varec Biogas requires a minimum of three-week advanced notification prior to the required onsite date. Varec service personnel are booked on a first come-first serve basis and subject to availability.
3. Field service will be scheduled upon Varec Biogas receipt of signed formal consent and our service engineer has qualified the equipment installation prior to the scheduled visit. This includes, but is not limited to, contractor-supplied wiring and piping for the equipment purchased, when and if applicable.
4. The Purchaser is responsible for coordinating with the Owner for the required training schedule and for complying with all milestone schedules or dates.

5. Varec Biogas requires two-week Cancellation notice for scheduled service and shall be subject to charges for any cost incurred plus 10% administrative fees.
6. If additional service is required, it will be furnished to the Purchaser and billed to him at the current rate for each additional day required, plus travel and lodging expenses incurred by the service personnel during the additional service days.
7. It shall be the Purchaser's responsibility to provide for all necessary lubrication of all equipment prior to placing equipment in operation. All equipment must be in operating condition and ready for the Field Service Engineer when called to the project location. Should the Purchaser/Owner not be ready when the Field Service Engineer is requested or if additional service is requested, the Varec Biogas current service rates will apply for each additional day required, plus travel and lodging expenses incurred by the service personnel during the additional service days.

AMERICAN IRON AND STEEL (AIS) ACT OF 2014, PA STEEL ACT, BUILD AMERICA BUY AMERICA ACT (BABAA) REQUIREMENTS

None of the above requirements considered in our scope. If required, it will be subject to additional price.

DISCLAIMER:

The Infrastructure Investment and Jobs Act signed into law on November 15, 2021, includes substantive changes to Buy America requirements compared to those specified in the preceding American Iron and Steel Act. While Varec Biogas fabricates and procures the vast majority of steel domestically for our equipment for the United States market, there are certain components that are either unavailable domestically or impractical to procure domestically through long-established supply chains, while meeting other project specifications, internal requirements, and project schedules. This challenge is further exacerbated by supply chain and labor shortages in pandemic and post pandemic times. As with previous legislation, we are awaiting any additional guidance for the US Environmental Protection Agency or other Agencies for further clarification relating to current Buy America requirements. As of now, the industry at large is unable to ascertain the parameters of the Buy America requirement. Thus, Varec Biogas cannot make any guarantee that its proposed scope of supply will be in compliance with any Buy America requirements under the Infrastructure Investment and Jobs Act. Accordingly, any offer for sale, proposal, or budgetary quote/estimate submitted by or on behalf of Varec Biogas should not be construed as meeting such Buy America requirements unless explicitly stated otherwise.

GENERAL ITEMS NOT INCLUDED

Unless specifically and expressly included in this proposal, the price quotation does not include:

1. Unloading, hauling, erection, installation
2. field wiring, including but not limited to conduit and conduit seals.
3. Lightning protection
4. Mounting hardware including, but not limited to studs, nuts, gaskets for the equipment proposed to connect to the gas piping or on the digester cover or tank connection.
5. When an emergency pressure relief cover is supplied, a horizontal and level connection is required and is excluded from our proposal. If the cover will mount to an existing opening, provide base dimensions including thickness at time of order placement.
6. Protection against corrosion due to unprotected storage.
7. Costs for Permits, licenses, inspections, witness tests.
8. Special engineering, or overall plant or system operating instructions or any other products or services not defined in our proposal or in the "Scope of Supply".
9. Bonds of any kind

SURFACE PREPARATION AND PAINTING GENERAL INFORMATION

The equipment proposed is supplied in either aluminum or stainless steel. No special painting or field painting is included in the price provided for the "Scope of Supply". Varec Biogas provides our standard procedure for surface finish for equipment constructed in stainless steel.

Varec Biogas will not be responsible for field painting.

ANCHORAGE, SUPPORT SYSTEMS

Anchor bolts, support systems, setting drawings, anchor bolt templates are not part of Varec's scope of supply.

CONNECTING PIPE FLANGES, BOLTS, GASKETS AND BASES

Connecting piping, flanges, valves, nozzles, fittings, wall spools, concrete, grout, sealant, dissimilar metal protection, field painting, oil or grease and lubricants are not included in our scope of supply.

INSULATION AND HEAT TRACING

Special insulating jackets or heat tracing for defined in "Scope of Supply" is specific to the equipment. Any insulation or heat tracing required for ancillary equipment not mentioned in the specification and "Scope of Supply" is excluded from the quoted price.

SPARE PARTS

Spare parts are not included with the equipment unless itemized in the "Scope of Supply".

COMMERCIAL SECTION

PRICING TERMS

The prices quoted are based upon Purchaser's acceptance of this proposal, through the submission of a purchase order or other written acceptance, being placed no later than 30 days after date of bid opening. After expiration of the pricing effectiveness period, prices will be subject to review and adjustment. Prices quoted are FCA surface point of shipment, with freight included to an accessible point nearest the jobsite. Federal, state or local sales, use or other taxes are not included in the sales price.

PAYMENT TERMS

Payment terms are:

1. Twenty-five percent (25%) Net 45 days upon receipt of Approved Submittals or written release of goods to fabrication.
2. Seventy percent (70%) Net 45 days upon Receipt of Invoice for shipment or Readiness to Ship.
3. Five percent (5%) upon the earlier of (a. Equipment startup and (b. one hundred eighty (180) days after completion of shipment.
4. Credit is subject to acceptance by the Varec Biogas Credit Department.

Purchaser shall remit payment for proper invoices received from Varec Biogas in accordance with the payment terms stated above even if the Purchaser has not been paid by the Purchaser's customer (the "Owner"), if Purchaser is not the end-user of the Products. Payments are due within forty-five (45) days after Purchaser's receipt of invoice. Overdue and unpaid invoices are subject to a service charge of 2% per month until paid.

If Purchaser requests or causes cancellation, suspension or delay of Varec Biogas's work, Purchaser shall accept transfer of title and pay Varec Biogas all appropriate charges incurred up to date of such event plus Varec Biogas's overhead and reasonable profit. Additionally, all charges related to and risks incidental to storage, disposition and/or resumption of work shall be borne solely by Purchaser. Full payment for all work shall be due and payable forty-five (45) days from the date work is placed into storage.

TAXES

Any and all taxes, excises, tariffs and/or other governmental charges are not included in the sales price and shall be the responsibility of Purchaser. Furthermore, Purchaser shall pay and/or reimburse Varec Biogas, in addition to the sales price, for all costs Varec Biogas incurs arising out of any taxes, excises, tariffs, and/or governmental charges imposed on, or related to, the Products, materials used in the Products, as well as the manufacturing or transportation of such Products and Product materials.

PRICE ESCALATION

The prices submitted are based upon Purchaser's acceptance of this proposal before bid validity expiration. If a binding purchase order is not received by Varec Biogas prior to the above referenced date, prices and shipping dates are subject to review and adjustment by Varec Biogas.

Additionally, due to the unpredictability of material and labor prices, including but not limited to recent sharp increases in carbon steel, stainless steel, aluminum, other metal prices, electrical components, coatings, FRP, shipping, and labor prices in the North American and worldwide markets (the "Labor and Material Price(s)"), Varec Biogas, shall not assume responsibility for such possible escalations beyond the validity date of its proposal or between the date of the executed Contract and the procurement of such labor and material.

Varec Biogas may increase the price of its proposal or require additional payment in the form of a change order due to any Labor and Material Price increase (a) that exceeds 5% per annum of the price of the specific labor or material in place on the date of Varec Biogas's proposal or (b) when product fabrication utilizing labor or materials does not commence until more than 6 months after the purchase order date, due primarily to actions of parties other than Varec Biogas. Furthermore, Varec Biogas is entitled to adjust its delivery date to account for such delay.

Any Labor and Material Price increase shall be based on an industry-standard pricing measure or index for that particular labor or material that accurately represents the market increase or, at Varec Biogas's reasonable discretion, actual increases incurred by Varec Biogas. The resulting cost and schedule impact shall be disclosed to the Buyer prior to fabrication.

Notwithstanding the above, should requested shipment dates be extended primarily due to actions of parties other than by Varec Biogas or its suppliers, Varec Biogas reserves the right to charge 1.5% per month of the Contract Price for each month or partial month of delay, unless said delay is agreed to in writing by all affected parties.

Any additional duties and tariffs invoked after the date of its proposal will be added to the total proposed price.

FLOW DOWN TERMS

We will not accept flow down terms from Owner to Purchaser. The terms and conditions of the Contract between Owner and Purchaser may contain requirements that are not applicable to the Supplier or unacceptable to Varec Biogas terms and condition of sale. Any specific requirement must be noted on the purchase order.

BONDS

Payment or Performance Bonds are not included in the Proposal.

Performance and payment security, including but not limited to bonds, letters of credit, or bank guarantees, are not included, but can be provided if requested with five (5) working days of Ovivo's receipt of the notice of award or Purchaser's acceptance of Proposal, and purchased for an addition cost.

Any performance and/or payment bond agreed to be provided by Ovivo will extend to supply of equipment and services for a period not to exceed the first twenty four (24) months of the service or warranty period, and for a value not to exceed the total price of this Proposal.

In an effort to ensure all purchase orders are processed timely and efficiently, please submit all purchase order documentation to the following department and address:

Attn: Order Entry Administrator

Varec Biogas, a Division of Ovivo USA, LLC
15061 Springdale St, Suite 210
Huntington Beach, CA 92649 USA
Tel: 714-220-9920
Fax: 714-952-2701
ABA: 072000096
Account Number: 1853487872

Remit To (Via ACH or Wire):

Comerica Bank
411 W. Lafayette
5th Floor, MC 3328
Detroit, MI 48226
SWIFT: MNBDUS33

Remit To (Via Check):

Varec Biogas, a Division of Ovivo USA, LLC
4246 Riverboat Road, Suite 300
Salt Lake City, UT 84123
Telephone: 801-931-3218
E-Mail: diane.preston@ovivowater.com

A/R Contact:

4246 Riverboat Road, Suite 300
Salt Lake City, UT 84123
Contact: Diane Preston

On April 15, 2019, Ovivo Inc. ("Ovivo") announced the acquisition of Westech Industrial Inc., doing business as Varec Biogas Inc. ("Varec Biogas"), making Varec Biogas an Ovivo **company**.

On January 1, 2022, Varec Biogas became a **division** of Ovivo USA, LLC, and is now known as Varec Biogas, a Division of Ovivo USA, LLC. As a result, Varec Biogas' Tax Identification Number is now 76-0742644.

INTELLECTUAL PROPERTY

The content of any submittal drawings, documents such as installation, operation and maintenance or other manuals or documents pertaining to the Products proposed are copyrighted and shall not be modified without the express prior written consent of Varec Biogas. Varec Biogas disclaims any liability for claims resulting from

unauthorized modifications to any such manuals or other documents provided by Varec Biogas in connection with the Project.

WARRANTY AND CONDITIONS

Varec Biogas standard Terms and Conditions of Sale is attached and made an essential part of this proposal and shall govern, replace and supersede any terms and conditions or warranty included in Purchaser or Owner requests for quotation or specifications and cannot be changed without written approval from an authorized representative of Varec Biogas. No verbal or written information or advice given by any personnel of the Seller shall create a warranty or in any way increase the scope of the warranties.

PERFORMANCE WARRANTY DISCLAIMER

The performance of the Products is dependent upon many factors, including, but not limited to, the influent or feed quality and quantity, additives required, time, temperature, rates of change, sizing criteria used, operating conditions, etc. Therefore, Varec Biogas cannot assume any liability or responsibility for performance or process results that Purchaser is expecting or has predicted. No verbal or written information or advice given by any personnel of the Ovivo shall create a warranty or in any way increase the scope of the warranties.

THE PARTIES AGREE THAT OTHER THAN ITS MECHANICAL WARRANTY SET FORTH IN THIS PROPOSAL, OR ANY PERFORMANCE WARRANTY SET FORTH ON VAREC'S STANDARD ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY PROCESS OR PERFORMANCE RELATED WARRANTIES OR WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

CONFIDENTIALITY

This document is not to be reproduced or submitted to any third party without the written consent of Varec Biogas.

This document contains, or Varec Biogas may have previously disclosed to Purchaser, certain technical and business information of Varec Biogas and/or Varec Biogas's affiliated entities, including certain copyrighted material, which is considered to be confidential. Such information, hereinafter referred to individually and collectively as the "Information", may include, without limitation, ideas, concepts, development plans for new or improved products or processes, data, formula, techniques, flow sheets, designs, sketches, know-how, photographs, plans, drawings (regardless of what name, if any, is stated on the title block), specifications, samples, test specimens, reports, customer lists, price lists, findings, studies, computer programs and technical documentation, trade secrets, diagrams, and inventions, notes, and all information pertaining thereto and/or developed there from. This Information is disclosed in good faith solely for the purposes of our proposal, and in addition on the understanding that its confidentiality will be properly maintained and safeguarded.

Neither this proposal, the Information nor any part thereof may be copied, reproduced or used for any purpose other than that for which it is disclosed by Varec Biogas. Except as reasonably necessary for the evaluation of this proposal, no part thereof may be disclosed to any other person, without Varec Biogas's prior consent in writing.

Varec Biogas will retain the rights to any intellectual property rights ("IPR") related to the Products. Varec Biogas will grant a non-exclusive royalty free license to use the IPR for the sole purposes of operating and maintaining the equipment supplied by Varec Biogas.

The duties, obligations, restrictions, and responsibilities described hereinabove shall apply to the Purchaser, their agents, affiliates, and all related parties regardless of whether any transaction occurs between Varec Biogas and Purchaser, and shall survive termination, cancellation, and expiration of any transaction between Varec Biogas and Purchaser.

In the event of a breach of the terms herein, Varec Biogas maintains the right to seek any and all remedies and damages available to it, including but not limited to the amount, including interest, by which Purchaser profited from the breach, any gains made by Purchaser or any third party who received Information from Purchaser, compensation for all Varec Biogas loss or injury, and the value of Varec Biogas's expectation created by the promise of Purchaser. The parties agree Varec Biogas would suffer irreparable harm in the event of any breach of these terms, and therefore Varec Biogas shall be entitled to any and all injunctive relief available.

Sincerely,

**Varec Biogas,
a Division of Ovivo USA, LLC**

APPENDIX

A – SCOPE OF SUPPLY

B – TERMS AND CONDITION OF SALE

C – TECHNICAL INFORMATION



Varec Biogas - a Division of Ovivo USA, LLC
 15061 Springdale St., Ste. 210
 Huntington Beach, CA 92649
 Phone: (714) 220-9920
 www.varec-biogas.com

An Ovivo Division

QUOTATION NUMBER: 100902

APPENDIX: A

April 18, 2025

Company:		Project Name:	Franklin WWTF, NH
Attention:		Engineer:	Brown and Caldwell
Fax No.:		Customer:	
From:		Project/Contract No.:	
E-mail:		Applicable Specification:	Section 43 13 46 Digester Gas Handling and Safety Equipment and Specialities
Subject:		Manufacturer's Sales Rep. :	Robert M. Trzepacz, P.E.
Number of Pages:		Contact Name:	Tech Sales NE P: 603-417-5650
CC:		Contact Phone No.:	

This message, including any attached file, is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution, copying or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by reply e-mail and delete all copies of the original communication.

Thank you for your interest in our products. Varec Biogas is pleased to offer our proposal in response to your request.

IMPORTANT: Final responsibility on verifying accuracy of the quantities in the proposed scope of supply rests with the CONTRACTOR.

Item Number	Drawing Sheet No.	Specification Paragraph	Tag Number	Comments	Qty	Size	End Connections	Description	Part Number
1					8	8"	Flat Faced Flange ANSI 150	"All Weather" Relief Valve with Flame Arrester, Vent to Atmosphere, Pressure Setting: 11" WC, Vacuum Setting: 2" WC	5811B 8 2 S
2					4	8"	Flat Face Flange	Safety Selector Valve, Rotary Style: Single Active, w/ Flat Face Flange	SVR-3205B-ASTO
3					8	8"	N/A	Insulating Jacket for 5810B / 5811B Relief Valve & Flame Arrester Assembly, Vent to Atmosphere, 8"	VB05.1185.145
4					4	8"	N/A	Insulating Jacket for SSV Safety Selector Valve, 8"	VB05.1185.261
5				Connect kit to mating flange on digester cover.	4	8"	NA	8" 5800B/SSV Stainless Steel Hardware (bolts, nuts and gaskets) Kit Consisting Of: CONNECT.Kit.8.SS, 2 pcs B3049.546N18, 1/8" THK GASKET, 1 pc	CONNECT.KIT.8.SS.SSV Consisting Of: CONNECT.KIT.8.SS B3049.546N18
6				Adapter flange per Document PVR	4	8"	NA	NOZZLE ADAPTER 8" ANSI 150 lb flange to	8.ADAPTER.FLANGE
Documentation Requirements per Specification									
Field Service Installation Inspection, Commissioning, and Start-Up Assistance and Operator Training per Proposal									\$7,500.00
Freight to Jobsite									\$7,843.00
Total Price, FCA Jobsite									\$343,821.00



An Ovivo Division

TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** The proposal of **Varec Biogas, a Division of Ovivo USA, LLC** ("SELLER"), as well as these terms and conditions of sale (collectively the "Agreement"), constitutes SELLER's contractual offer of goods and associated services, and PURCHASER's acceptance of this offer is expressly limited to the terms of the Agreement. The scope and terms and conditions of this Agreement represent the entire offer by SELLER and supersede all other solicitations, discussions, agreements, understandings and representations between the parties. Any scope or terms and conditions included in PURCHASER's acceptance/purchase order that are in addition to or different from this Agreement are hereby rejected.
2. **DELIVERY.** Any statements relating to the date of shipment of the Products (as defined below) represent SELLER's best estimate, but is not guaranteed, and SELLER shall not be liable for any damages due to late delivery. The Products shall be delivered to the delivery point or points in accordance with the delivery terms stated in SELLER's proposal. If such delivery is prevented or postponed by reason of Force Majeure (as defined below), SELLER shall be entitled at its option to tender delivery to PURCHASER at the point or points of manufacture, and in default of PURCHASER's acceptance of delivery to cause the Products to be stored at such point or points of manufacture at PURCHASER'S expense. Such tender, if accepted, or such storage, shall constitute delivery for all purposes of this agreement. If shipment is postponed at request of PURCHASER, or due to delay in receipt of shipping instructions, payment of the purchase price shall be due on notice from SELLER that the Products are ready for shipment. Handling, moving, storage, insurance and other charges thereafter incurred by SELLER with respect to the Products shall be for the account of PURCHASER and shall be paid by PURCHASER when invoiced. Delivery by SELLER of the Products shall constitute acceptance of the Products by PURCHASER, unless written notice of defect or nonconformity is received by SELLER within thirty (30) days of SELLER's delivery of the Products.
3. **TITLE AND RISK OF LOSS.** SELLER shall retain the fullest right, title, and interest in the Products to the extent permitted by applicable law, including a security interest in the Products, until the full purchase price has been paid to SELLER. The giving and accepting of drafts, notes and/or trade acceptances to evidence the payments due shall not constitute or be construed as payment so as to pass SELLER'S interests until said drafts, notes and/or trade acceptances are paid in full. Risk of loss shall pass to PURCHASER at the delivery point.
4. **PAYMENT TERMS.** SELLER reserves the right to ship the Products and be paid for such on a pro rata basis, as shipped. If payments are not made by the due date, interest at a rate of two percent (2%) per month, calculated daily, shall apply from the due date for payment. PURCHASER is liable to pay SELLER'S legal fees and all other expenses in respect of enforcing or attempting to enforce any of SELLER'S rights relating to a breach or threatened breach of the payment terms by PURCHASER. In the event of nonpayment SELLER reserves the further right to seek compensation from any third party in possession of the Products.
5. **TAXES.** Unless otherwise specified in SELLER'S quotation/proposal; PURCHASER shall pay and/or reimburse SELLER, in addition to the price, for all sales, use and other taxes, excises and charges which SELLER may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation, and/or use by SELLER or PURCHASER, of any of the Products or services dealt with herein (whether the same may be regarded as personal or real property). PURCHASER agrees to pay all property and other taxes which may be levied, assessed or charged against or upon any of the Products on or after the date of actual shipment, or placing into storage for PURCHASER'S account.
6. **MECHANICAL WARRANTY.** Solely for the benefit of PURCHASER, SELLER warrants that new equipment and parts manufactured by it and provided to PURCHASER (collectively, "Products") shall be free from defects in material and workmanship. The warranty period shall be twelve (12) months from startup of the equipment not to exceed eighteen (18) months from the earliest of the notice of readiness to ship or the actual shipment. If any of SELLER'S Products fail to comply with the foregoing warranty, SELLER shall repair or replace free of charge to PURCHASER, EX WORKS SELLER'S FACTORIES or other location that SELLER designates, any Product or parts thereof returned to SELLER, which examination shall show to have failed under normal use and service operation by PURCHASER within the Warranty Period; provided, that if it would be impracticable for the Product or part thereof to be returned to SELLER, SELLER will send a representative to PURCHASER'S job site to inspect the Product. If it is determined after inspection that SELLER is liable under this warranty to repair or replace the Product or part thereof, SELLER shall bear the transportation costs of (a) returning the Product to SELLER for inspection or sending its representative to the job site and (b) returning the repaired or replaced Products to PURCHASER; however, if it is determined after inspection that SELLER is not liable under this warranty, PURCHASER shall pay those costs. For SELLER to be liable with respect to this warranty, PURCHASER must make its claims to SELLER with respect to this warranty in writing no later than thirty (30) days after the date PURCHASER discovers the basis for its warranty claim and in no event more than thirty (30) days after the expiration of the Warranty Period. In addition to any other limitation or disclaimer with respect to this warranty, SELLER shall have no liability with respect to any of the following: (i) failure of the Products, or damages to them, due to PURCHASER'S negligence or willful misconduct, abuse or improper storage, installation, application or maintenance (as specified in any manuals or written instructions that SELLER provides to the PURCHASER); (ii) any Products that have been altered or repaired in any way without SELLER'S prior written authorization; (iii) the costs of dismantling and reinstallation of the Products; (iv) any Products damaged while in transit or otherwise by accident; (v) decomposition of Products by chemical action, erosion or corrosion or wear to Products or due to conditions of temperature, moisture and dirt; or (vi) claims with respect to parts that are consumable and normally replaced during maintenance such as filter media, filter drainage belts and the like, except where such parts are not performing to SELLER'S estimate of normal service life, in which case, SELLER shall only be liable for the pro rata cost of replacement of those parts based on SELLER'S estimate of what the remaining service life of those parts should have been; provided, that failure of those parts did not result from any of the matters listed in clauses (i) through (v) above. With regard to third-party parts, equipment, accessories or components not of SELLER'S design, SELLER'S liability shall be limited solely to the assignment of available third-party warranties. **THE PARTIES AGREE THAT ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, WHETHER WRITTEN, ORAL OR STATUTORY, ARE EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.** All warranties and obligations of SELLER shall terminate if PURCHASER fails to perform its obligations under this Agreement including but not limited to any failure to pay any charges due to SELLER. SELLER'S quoted price for the Products is based upon this warranty. Any increase in warranty obligation may be subject to an increase in price.
7. **CONFIDENTIAL AND PROPRIETARY INFORMATION.** All nonpublic or proprietary information and data furnished to PURCHASER hereunder shall not be limited to design, type design and other technical or business information relating to the Products is the sole property of SELLER and submitted for PURCHASER'S own confidential use solely in connection with this Agreement and is not to be made known or available to any third party without SELLER'S prior written consent.
8. **SURFACE COATING.** The Products shall be painted or otherwise coated in accordance with SELLER'S standard practice unless otherwise agreed in writing.
9. **DRAWINGS AND TECHNICAL DOCUMENTATION.** When PURCHASER requests to approve drawings before commencement of manufacture, shipment may be delayed if approved drawings are not returned to SELLER within fourteen (14) days of receipt by PURCHASER of such drawings for approval. SELLER will furnish only general arrangement, general assembly, and if required, wiring diagrams, erection drawings, installation and operation-maintenance manuals for SELLER'S Products (in English language). SELLER will supply six (6) complete sets of drawings and operating instructions. Additional sets will be paid for by PURCHASER. Electronic files, if requested from SELLER, will be provided in pdf, jpg or tif format only.
10. **SET OFF.** This Agreement shall be completely independent of all other contracts between the parties and all payments due to SELLER hereunder shall be paid when due and shall not be setoff or applied against any money due or claimed to be due from SELLER to PURCHASER on account of any other transaction or claim.
11. **SOFTWARE.** PURCHASER shall have a nonexclusive and nontransferable license to use any information processing program supplied by SELLER with the Products. PURCHASER acknowledges that such programs and the information contained therein is Confidential Information and agrees: (a) not to copy or duplicate the program except for archival or security purposes; (b) not to use the program on any computer other than the computer with which it is supplied; and (c) to limit access to the program to those of its employees who are necessary to permit authorized use of the program. PURCHASER agrees to execute and be bound by the terms of any software license applicable to the Products supplied.
12. **PATENT INDEMNITY.** SELLER will defend at its own expense any suit instituted against PURCHASER based upon claims that SELLER'S Product hereunder in and of itself constitutes an infringement of any valid apparatus claims of any United States patent issued and existing as of the date of this Agreement, if notified promptly in writing and given all information, assistance, and sole authority to defend and settle the same, and SELLER shall indemnify the PURCHASER against such claims of infringement. Furthermore, in case the use of the Products is enjoined in such suit or in case SELLER otherwise deems it advisable, SELLER shall, at its own expense and discretion, (a) procure for the PURCHASER the right to continue using the Products, (b) replace the same with non-infringing Products, (c) modify the Product so it becomes non-infringing, or (d) remove the Products and refund the purchase price less freight charges and depreciation. SELLER shall not be liable for, and PURCHASER shall indemnify SELLER for, any claim of infringement related to (a) the use of the Products for any purpose other than that for which it was furnished by SELLER, (b) compliance with equipment designs not furnished by SELLER or (c) use of the Products in combination with any other equipment. The foregoing states the sole liability of SELLER for patent infringement with respect to the Products
13. **GENERAL INDEMNITY.** Subject to the limitations of liabilities of the parties set forth in this Agreement, each party shall protect and indemnify the other party, its parent and their respective officers, directors, employees and agents, from and against all claims, demands and causes of action asserted by, or in favor of, any entity to the extent of the indemnifying party's negligence or willful misconduct in connection with the performance of this agreement.
14. **DEFAULT, TERMINATION.** In the event that PURCHASER becomes insolvent, commits an act of bankruptcy or defaults in the performance of any term or condition of this Agreement, the entire unpaid portion of the purchase price shall, without notice or demand, become immediately due and payable. SELLER at its option, without notice or demand, shall be entitled to sue for said balance and for reasonable legal fees, plus out-of-pocket expenses and interest; and/or to enter any place where the Products are located and to take immediate possession of and remove the Products, with or without legal process; and/or retain all payments made as compensation for the use of the Products; and/or resell the Products, without notice or demand, for and on behalf of the PURCHASER, and to apply the net proceeds from such sale (after deduction from the sale price of all expenses of such sale and all expenses of retaking possession, repairs necessary to put the Products in saleable condition, storage charges, taxes, liens, collection and legal fees and all other expenses in connection therewith) to the balance then due to SELLER for the Products and to receive from the PURCHASER the deficiency between such net proceeds of sale and such balance. PURCHASER hereby waives all trespass, damage and claims resulting from any such entry, repossession, removal, retention, repair, alteration and sale. The remedies provided in this paragraph are in addition to and not limitations of any other rights of SELLER.
15. **CANCELLATION.** PURCHASER may terminate this Agreement for convenience upon giving SELLER thirty (30) days prior written notice of such fact and paying SELLER for all costs and expenses (including overhead) incurred by it in performing its work and closing out the same plus a reasonable profit thereon. All such costs and expenses shall be paid to SELLER within ten (10) days of the termination of the Agreement, or be subject to an additional late payment penalty of five percent (5%) of the total amount of costs and expenses owed.
16. **REMEDIES.** The rights and remedies of the PURCHASER in connection with the goods and services provided by SELLER hereunder are exclusive and limited to the rights and remedies expressly stated in this Agreement.
17. **INSPECTION.** PURCHASER is entitled to make reasonable inspection of Products at SELLER'S facility. SELLER reserves the right to determine the reasonableness of the request and to select an appropriate time for such inspection. All costs of inspections not expressly included as an itemized part of the quoted price of the Products in this Agreement shall be paid by PURCHASER.
18. **WAIVER.** Any failure by SELLER to enforce PURCHASER'S strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
19. **COMPLIANCE WITH LAWS.** If applicable laws, ordinances, regulations or conditions require anything different from, or in addition to that called for by this Agreement, SELLER will satisfy such requirements at PURCHASER'S written request and expense.
20. **FORCE MAJEURE.** If SELLER is rendered unable, wholly or in material part, directly or indirectly, by reason of Force Majeure, to carry out any of its obligations hereunder, then on SELLER'S notice in writing to PURCHASER within a reasonable time after the occurrence of the cause relied upon, such obligations shall be suspended. "Force Majeure" shall include, but not be limited to, acts of God, epidemics and pandemics, acts of or delays caused by governmental authorities, changes in laws and regulations, strikes, civil disobedience or unrest, lightning, fire, flood, washout, storm, communication lines failure, delays of the PURCHASER or PURCHASER'S subcontractors, breakage or accident to equipment or machinery, wars, police actions, terrorism, embargos, and any other causes that are not reasonably within the control of the SELLER. If the delay is the result of PURCHASER'S action or inaction, then in addition to an adjustment in time, SELLER shall be entitled to reimbursement of costs incurred to maintain its schedule. For the avoidance of doubt, if the cause relied upon has commenced prior to the Parties entered into a contracting relationship, it shall not render the cause void and/or not capable of being included within the definitions of Force Majeure, as listed within this Article 20.
21. **DISPUTE RESOLUTION.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be exclusively determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("Commercial Rules") including, if appropriate, the Procedures for Large, Complex Commercial Disputes. The seat or place of arbitration shall be Harris County, Texas. The arbitration shall be conducted and the award shall be rendered in English. There shall be one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent(s) of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules. If more than one arbitration is commenced under this Agreement and any party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first-filed proceeding shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that arbitrator. The Parties are bound to each other by this arbitration clause. Each related party may be joined as an additional party to an arbitration involving other parties under this Agreement. The award rendered by the arbitrator shall be final, non-appealable and binding on the parties and may be entered and enforced in any court where a party or its assets is located. Each party shall be responsible for its own attorney fees and other legal costs associated with the dispute resolution process.
22. **INDEPENDENT CONTRACTOR.** It is expressly understood that SELLER is an independent contractor, and that neither SELLER nor its principals, partners, parents, subsidiaries, affiliates, employees or subcontractors are servants, agents, partners, joint venturers or employees of PURCHASER in any way whatsoever.
23. **SEVERABILITY.** Should any portion of this Agreement, be held to be invalid or unenforceable under applicable law then the validity of the remaining portions thereof shall not be affected by such invalidity or unenforceability and shall remain in full force and effect. Furthermore, any invalid or unenforceable provision shall be modified accordingly within the confines of applicable law, giving maximum permissible effect to the parties' intentions expressed herein.
24. **CHOICE OF LAW, CHOICE OF VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to its rules regarding conflicts or choice of law. The parties submit to the exclusive jurisdiction and venue of the state and federal courts located in Harris County, Texas.
25. **ASSIGNMENT.** PURCHASER shall not assign or transfer this Agreement without the prior written consent of the SELLER. Any attempt to make such an assignment or transfer shall be null and void. SELLER shall have the authority to assign, or otherwise transfer, its rights and obligations in connection with this Agreement, in whole or in part, upon prior written notice to PURCHASER.
26. **LIMITATION ON LIABILITY, TO THE EXTENT PERMISSIBLE BY LAW, SELLER SHALL HAVE NO FURTHER LIABILITY IN CONNECTION WITH THIS AGREEMENT IN EXCESS OF THE AMOUNT PAID BY PURCHASER FOR THE PRODUCTS GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANY LIABILITIES OR RESPONSIBILITIES ASSUMED BY SELLER HEREUNDER, SELLER SHALL IN NO EVENT BE RESPONSIBLE TO PURCHASER OR ANY THIRD PARTY, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, LOSS OF DATA, SERVICE INTERRUPTIONS, COST OF PURCHASED OR REPLACEMENT POWER, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE OR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE, WHETHER ARISING FROM DEFECTS, DELAY, OR FROM ANY OTHER CAUSE WHATSOEVER.**
27. **PRIVACY AND DATA PROTECTION.** Seller has put in place rigorous safeguards and procedures regarding privacy and data protection, notably the Ovivo Privacy Policy (www.ovivowater.com/privacy-policy), and requires that Purchaser adhere to its data protection principles to the extent applicable to Purchaser.
28. **DATA COLLECTION.** PURCHASER consents to the collection of the Products' operational data and to the use of such data for the purpose of improving the Products and other purposes stated herein. PURCHASER further agrees that such data collection does not constitute a performance monitoring service or other duty by SELLER.
29. **INSURANCE.** SELLER shall maintain its current levels of insurance for the duration of the above-referenced mechanical warranty period as set forth in its standard certificate of insurance, available to PURCHASER upon request.
30. **BONDS.** Upon PURCHASER request within fifteen (15) calendar days of SELLER'S receipt of an order, SELLER shall provide a bond in favor of PURCHASER, at PURCHASER'S expense, by an institution, and in a form, approved in advance by SELLER. Any performance and/or payment bond agreed to be provided by SELLER will extend to supply of equipment and services for a period not to exceed the first twenty four (24) months of the service or warranty period, and for a value not to exceed the total price of the contract.
31. **PERMITS.** PURCHASER shall be solely responsible to obtain and maintain in force all necessary permits with respect to any Products to be provided by SELLER hereunder and any intended use of such Products by PURCHASER.

REVISED - April 2024