



THE TANK CAR PEOPLE

UNION TANK CAR COMPANY

175 W. Jackson Blvd.

Chicago, IL 60604

SPECIAL CONDITIONS GOVERNING WORK ON UNION TANK CAR COMPANY (UTC) PROPERTY

For the purpose of this document, Union Tank Car Company, a Delaware Corporation, shall be referred to as "Owner", or "UTC". Eagle Industrial Instrumentation, LLC shall be referred to as "Contractor". This document is to be referred to as the "Agreement", and is accompanied by a work order, referred to as the "Purchase Order". The Purchase Order references the Proposal from the Contractor, and the specifics of the project are governed by the Proposal. In the event conflicts arise in conditions between this Agreement and the Purchase Order, the Purchase Order shall control. In the event conflicts arise in conditions between the Purchase Order and the Proposal, the Proposal shall control. Conflicts between the Proposal and the Agreement may be identified and clarified in the Purchase Order, and if such conflicts are not addressed elsewhere, the Proposal shall control.

I. INSURANCE AND INDEMNITY

- A. Contractor shall maintain the following insurance with a company approved by Owner and shall furnish Owner's Purchasing Department a certificate of insurance from every insurance company involved before any order can be placed, and said certificate of insurance shall include a ten (10) day notice of cancellation clause to Owner. Similar certificates are required from all subcontractors. Minimum requirements for insurance coverage are as follows:
1. Workers' Compensation and Employers' Liability Insurance in full compliance with applicable statutes and minimum limits of liability.
 2. Commercial General Liability Insurance at \$1,000,000.00 per incident and \$3,000,000.00 in the aggregate. (Or \$2,000,000 with \$1,000,000 Umbrella).
 3. Comprehensive Automobile Liability Insurance at \$1,000,000.00 per occurrence.
 4. Professional Liability Insurance with minimum limits of \$1,000,000.00 per incident and \$2,000,000.00 in the aggregate.
 5. The following statement must be on the insurance certificate (typed in the "other" section):
"Above policies contain no exclusion of coverage for work on or near railroad tracks and railroad operations".
- B. Owner shall indemnify, defend and hold Contractor and its directors, officers, employees and agents harmless from and against any and all claims, suits, losses, damages, liabilities, costs (including reasonable attorneys' fees) and, expenses incurred by Contractor as a result of bodily injury, including death, or property damage, arising out of the performance of this Agreement to the extent such liabilities are caused by the negligence or willful misconduct of Owner or its employees, officers or agents.
- C. Contractor shall, to the maximum extent permitted by law, indemnify, defend and hold Owner and its directors, officers, employees and agents harmless from and against any and all claims, suits, losses, damages, liabilities, costs (including reasonable attorneys' fees) and expenses incurred by Owner as a result of bodily injury, including death, or property damage, arising out of the performance' of the Agreement to the extent such

liabilities are caused by the negligence or willful misconduct of the Contractor or its subcontractors or their respective employees, officers or agents.

- D. Except for damage caused by the Owner or its agents, Contractor shall be solely responsible for all loss or damage to materials, equipment, supplies or other items, in or around the construction site due to fire, accident, theft, or any other hazard.

II. PERMITS, LICENSES, AND TAXES

- A. Contractor shall procure and pay for all necessary licenses and permits applicable to the scope of the project including the General Building Permit. Owner is responsible for procuring the environmental regulatory permit to install (PTI) and permit to operate (PTO). Contractor shall give to the proper authorities all required notices relating to the work.
- B. Contractor shall not be responsible for process, fuel consumption unit, or bulk storage construction permits to the local or state governing authorities, unless specifically requested. Contractor shall give design aid, performance data, and specifications required for the Owner's acquisition of such permits.
- C. Contractor shall pay all occupational, use or sales taxes required for the construction of the facility. All occupational use or sales taxes for operation of facility are to be paid by Owner.
- D. Contractor shall pay all royalties and license fees in connection with the work.
- E. Contractor shall be responsible for loss by reason of Contractor's neglect or violation of any state or federal law or municipal rule, regulation or order and the Contractor shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees, unless otherwise specified in this Agreement or in the Purchase Order.
- F. Contractor shall become familiar with and adhere to all applicable UTC Safety, Health and Environmental Department bulletins and directives pertaining to Contractors work. The contractor shall, when necessary, contact the UTC Safety & Health Department, and/or Environmental Department directly, and keep other UTC project managers apprised. The decisions of the UTC Safety & Health Department, and Environmental Department shall be determinant and binding even if the contractor can produce contrary opinions and/or evidence. If at any time during the performance of the work, Contractor believes the safety of its employees, agents, subcontractors or any other person is in jeopardy, Contractor reserves the right to immediately suspend performance of the work until such condition is remedied, or if such condition cannot be remedied to the satisfaction of Contractor, Contractor may terminate the Agreement.
- G. Contractor will perform all services under this Agreement on behalf of and solely for the exclusive use of Owner. Contractor shall perform its professional services in full compliance with all applicable laws and regulations and consistent with that level of care and skill ordinarily exercised by members of the environmental engineering and consulting profession practicing under similar conditions at the same time and locality at which the professional services were performed.

III. PUBLIC RESPONSIBILITY: PROFESSIONAL ETHICS

- A. Owner recognizes that both Owner and Contractor owe a duty of care to the public that requires them to comply with applicable Laws in order to protect public health and

safety, among other objectives. Further, Contractor is bound by professional engineering and other standards and ethics (collectively, the "Professional Standards"). Owner further recognizes that the performance of the Services may disclose the presence of anticipated, unanticipated or suspected hazardous waste, as defined by 42 D.S.C. 6903(5), hazardous substances, as defined by 42 D.S.C. 9601(14), pollutants and contaminants, as defined by 42 D.S.C. 9601(33) and toxic substances, hazardous materials and other chemicals and substances now or hereafter regulated by Law (collectively, the "Waste Materials") on Owner's property or other property, and disclosure of same to governmental authorities may be required by Law. "Contractor shall give Owner at least ten (10) days notice before reporting any of the foregoing matters to any governmental authority if Contractor determines that reporting is required, provided that no such notice shall be required if, in Contractor's determination, more prompt reporting is required. Nothing contained in this Paragraph shall be construed to impose on Contractor any obligation to report the foregoing matters to governmental authorities except where applicable Law specifically requires reporting by Contractor.

- B. If Contractor believes that compliance with any direction by Owner could violate such laws or professional standards, then Contractor shall not be required to comply with it and shall so advise Owner. If Owner fails to modify its, directions to comply with the foregoing within ten (10) days after Contractor's advice to Owner as aforesaid, or if Owner fails to report to governmental authorities any matter which Owner is required by Law to report, then Contractor shall have the right to terminate the applicable Purchase Order and/or this Agreement (including all Purchase Orders) by notice to Owner.

IV. OWNER'S REPRESENTATIVE

- A. Owner's Representative, unless otherwise provided by Owner in writing, shall be the chief officer of Owner at the particular location where this work is to be performed.
- B. Contractor shall assume all duties under this Agreement as an independent contractor, and shall not be deemed for any purpose to be an agent, servant or representative of Owner. Owner shall have no direct control of Contractor, its agents or subcontractors, in the performance of the work hereunder. Nothing contained herein shall be construed as inconsistent with such independent contractor relationship.

V. INVOICES AND PAYMENT

- A. Owner agrees to pay Contractor the amount specified on the Purchase Order on completion of the work; partial or progress payments shall be presented to and agreed upon by Owner in writing prior to the start of work. An amount of 10% shall be retained as contractual guarantee on the basis of monthly estimates as follows: On or about the tenth day of each month, Contractor shall submit an invoice showing the total value of all work completed to date, less 10% retention as contractual guarantee, and less the total of all previous payments, together with Contractor's Affidavit and Waivers of Lien to the date of the previous billing period, to Owner for its approval.
- B. Owner shall within thirty (30) days of receipt of Contractor's billing issue payment for the total amount of the billing, or for such an amount as approved. The billing for the retained monies accompanied by a final Contractor's Affidavit and Waivers of Lien signed by all subcontractors shall be made not later than thirty (30) days from the date of completion and acceptance of the work by Owner, and shall be paid by Owner within thirty (30) days thereafter.

- C. No certificate given or payment made under this order shall be evidence of Contractor's performance hereunder, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper materials.
- D. The acceptance of final payment by Contractor shall constitute a waiver of all claims against Owner by Contractor except those previously made in writing and not settled at the time of payment.
- E. The Warranty period on the system and its components shall begin upon written acceptance of the system by Owner.

VI. SUPERINTENDENCY AND LABOR

- A. Contractor shall furnish an experienced superintendent, who shall be in charge of the work to properly deliver, unload, schedule, and install the work. Contractor shall accept the decisions and execute the instructions of Owner regarding the time at which the work shall be performed and shall cooperate with Owner to avoid any controversy between Contractor's employees and other employees on the site, and to expedite the work.
- B. All employees of Contractor and all subcontractors must be preregistered with plant security prior to plant entry and shall be subject to the approval of Owner, who shall have the power to require the removal of any employee who, in the opinion of Owner, is incompetent or otherwise unsatisfactory. The failure of Owner to require removal of any such person shall not impose any liability on Owner.
- C. Should Contractor at any time fail to supply a sufficiency of properly skilled workers, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the Conditions herein contained, Owner shall be entitled after three (3) days written notice to Contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to Contractor. Owner shall also be entitled to terminate the employment of Contractor and to take possession for the purpose of completing the work, all materials, supplies, tools, appliances, plant and equipment which Contractor may have at the premises, and to retain the same as long as may be necessary for the completion of the work and to employ any other persons to finish the work and to provide the materials therefore; and in case of such discontinuance of the employment of Contractor, no further payment shall be due until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid shall exceed the expense incurred by Owner in finishing the work, such excess shall be paid by Owner to Contractor, but if such reasonable expense shall exceed such unpaid balance, Contractor shall pay the difference to Owner.
- D. Contractor shall be solely responsible for all unemployment, FICA and unemployment taxes and other charges with respect to Contractor's employees.

VII. MATERIALS

- A. All materials used in the construction work shall be new and of best quality, unless a substitute is accepted in writing by Owner's Representative. Materials may not be salvaged and applied as new without the prior written approval of Owner's representative.
- B. Contractor shall promptly pay for all labor, materials, tools and equipment used in the performance of this order. If any lien shall attach to Owner, Contractor shall be responsible for the removal of the lien.

VIII. UTILITIES, SERVICE, AND INFORMATION PROVIDED BY OWNER

- A. No statement in these documents shall be interpreted to imply that Owner will provide any utilities, services, or facilities, except to the extent that they may be readily available and that the use thereof, shall not in any way interfere with the normal course of business in Owner's plant. In such cases as utilities and facilities are made available, it is on the condition that Contractor shall furnish, place, maintain and remove the necessary temporary connections without interference in any way with the Owner's plant operation.
- B. Owner shall provide to Contractor promptly at Owner's expense, such information regarding the Project as Contractor may request in order to complete the Services, including information to complete or verify information previously submitted. The information furnished in response to Contractor's request may include existing information in Owner's possession and information procured from others. Owner warrants the accuracy and completeness of all information provided to Contractor, except to the extent errors, inaccuracies or omissions should have been obvious to Contractor in the exercise of its professional judgment. Contractor shall review the information and advise Owner of any potential inaccuracies or omissions that come to its attention. Contractor is entitled to rely upon information furnished by Owner, except to the extent inaccuracies or omissions should have been obvious to Contractor as aforesaid.
- C. Owner shall identify the location of all utility lines and subterranean structures within the property lines of the Project site, and, if requested by Contractor, adjacent properties. Contractor or its subcontractor(s) shall request responsible utility companies and/or appropriate public authorities to locate any utility lines existing within public rights-of-way.

IX. CHANGES IN SERVICES

- A. Owner or Contractor may, from time to time, request modifications or changes in the scope of Services to be performed under any Purchase Order, including but not limited to changes required by new or revised federal and state common laws and statues or federal, state, or local codes, orders, standards, regulations or ordinances (collectively, the "Law" or "Laws"). In the event changes affect the scope of the Services to be performed by Contractor, Contractor Compensation shall be adjusted. All changes shall be set forth in a written Change Order.

X. LIMITATION OF THE SCOPE OF SERVICES

- A. Owner acknowledges that, except to the extent included in the Services, Contractor has had no role in generating, treating, storing or disposing of Waste Materials which may be present on property owned by Owner or other property included in the Project site, and Contractor has not benefited from the processes that produced such Waste Materials. No Waste Materials encountered by Contractor in performing, or associated with, the Services shall at any time be or become the property of Contractor: Any arrangements made by Contractor for the treatment, storage, transport or disposal of any Waste Materials are made solely and exclusively for the benefit of Owner using Owner's EPA generator identification number(s) when required and shall not result in any liability of Contractor under this Agreement or with respect to the Waste Materials. Owner shall handle all Waste Materials in compliance with applicable Law and standards. Owner, shall sign manifests and obtain generator identification numbers when required by Law or when requested by Contractor. Contractor shall furnish to Owner the names of facilities currently licensed to accept the Waste Materials, but it shall be Owner's sole responsibility to select those to be engaged by Owner. Nothing contained in this

Agreement shall confer on Contractor the status of (a) a generator, storer, disposer or treater of Waste Materials, (b) the party who arranged for the disposal of Waste Materials, or (c) a Waste Materials disposal facility, as provided in any Law.

XI. DIFFERING SITE CONDITIONS

- A. A differing site condition includes, but is not limited to: (i) The presence of subsurface or latent physical conditions at the site that differ materially from those relied upon by Contractor in preparation of its proposal, revealed by Contractor, or which differ materially from those conditions customarily encountered in the area of the Project or in performing the work described herein; (ii) The presence of some property, element, physical characteristic, or other attribute not relied upon (or the absence of such property, element, physical characteristic, or other attribute relied upon) by Contractor in preparing the proposal and the scope of work; (iii) The presence of any Waste Materials not previously identified on the project site, and not contemplated by Contractor in preparation of its proposal.
- B. Owner shall promptly investigate the conditions and, if it finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Agreement, an equitable adjustment in the Agreement price and time shall be made in accordance with paragraph IX.
- C. The discovery of Waste Materials not specifically identified in Contractor's proposal, or by Owner in writing, with respect to such material's character, location and quantity, shall be deemed to be a differing site condition. If such additional Waste Materials are discovered: (i) Contractor shall immediately notify Owner of such discovery, stop that portion of the work affected by such Waste Material, and sufficiently protect the work to prevent exposure of persons or the environment to such material; (ii) Contractor shall have no obligation to perform any corrective or remedial work that would require handling of or exposure to this additional Waste Material. However, if Contractor agrees to perform such work: (A) Owner agrees to indemnify, hold harmless, and defend Contractor from and against any claim, action or legal proceeding brought against by Contractor, seeking to make Contractor strictly liable for the performance of such work; (B) Owner shall provide specific instruction to Contractor with respect to the handling, protection, removal, and disposal of such material; (C) An equitable adjustment in the Agreement price and time shall be made for such work.

XII. PROJECT DEADLINES AND DELAYS

- A. All deadlines imposed by any Government Agencies or the Owner must be met unless the following condition occurs:

If Contractor is delayed at any time in the progress of Services by (i) the act, failure to act, or negligence of Owner or Owner's shareholders, directors, officers, employees, agents or subcontractors or any other party; (ii) changes in the scope of Services; or (iii) . delay authorized by Owner and agreed to by Contractor; then upon request by Contractor, the time for completion of such Services shall be extended and, if such delays(s) result in additional costs to Contractor, Contractor's Compensation shall be equitably adjusted. The agreed modifications shall be embodied in a Change Order. If the parties fail to reach agreement within thirty (30) days after the date of such request, then either party may terminate the applicable Purchase Order effective five (5) days after notice to the other party.

XIII. USE OF PREMISES

- A. Contractor shall keep the premises in a reasonable, clean state, free of waste materials and rubbish, and upon completion of the work, Contractor shall restore the premises to its original condition, and leave the premises clean and free. of all tools, equipment, waste materials and rubbish. If the Contractor does not attend to such clean-up immediately upon request, Owner may cause such cleaning to be done by other and charge the cost of the same to Contractor, by deducting such cost from any compensation still due the contractor.

XIV. INTERFERENCE

- A. During the progress of the work, Contractor shall conduct its operations in such a manner as to minimize interference with Owner's normal operations in the existing plant facilities and adjacent roadways and work areas.
- B. Where connections between new and existing facilities, or the temporary or permanent discontinuance of all or part Owner's operations is required, these connections shall be provided by Contractor and made at such time, and in such manner, as Owner may direct, and so as to cause the least possible interference with Owner's normal operations.

XV. SAFETY

- A. Contractor shall abide by any and all of Owner's safety and health rules and shall provide Owner with a copy of all accident reports prepared by or submitted to Contractor, including all OSHA illnesses and injury reports. Contractor hereby acknowledges that it has read such rules and that it will abide by them. All work performed hereunder shall fully comply with all lawful governmental safety and health requirements, including the rules and standards established by the Occupational Safety and Health Act of 1970, as amended and other applicable federal, state and or local safety or health laws, rules or regulations and implementations thereof. Any equipment provided by Owner to Contractor for the benefit of Contractor's employees or those of its subcontractors shall be at the sole risk and liability of Contractor to make sure that such equipment is fit for the use intended and is in proper working order. Contractor shall maintain a drug and alcohol free workforce at all times while on Owner's premises.
- B. Contractor shall be subject to all Owners safety, health, accident and environmental procedures. Failure to comply shall constitute grounds for termination of order.

XVI. ENVIRONMENTAL COMPLIANCE

- A. Contractor shall abide by any and all of Owner's environmental policies, procedures, and rules and shall provide Owner with a copy of all environmental documentation prepared by or submitted to Contractor. Contractor hereby acknowledges that it is familiar with all of Owner's environmental policies, procedures, and rules. Owner will review with Contractor such applicable policies, procedures, and rules, prior to the start of on-site work, and will provide copies of applicable written documents upon Contractor's request. All work performed hereunder shall fully comply with all lawful governmental requirements, including reporting requirements, including but not limited to those of the Environmental Protection Agency, state environmental regulatory agencies, federal or state transportation or public safety regulatory agencies, and those of any local governmental entity.
- B. Failure by Contractor to comply with the requirements of this section shall constitute grounds for termination of order.

XVII. INSPECTION AND ACCEPTANCE

- A. Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by Owner, and shall within twenty-four (24) hours after receiving written notice from Owner to that effect, proceed to remove all materials condemned by the Owner, whether worked or unworked, and to take down all portions of the work which the Owner shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the Drawings and Specifications. Contractor shall make good all work damaged or destroyed thereby.
- B. The decision of the Professional Engineer of record as to the true and correct construction and meaning of the Drawings and Specifications shall be made clear to the Owner, and after Owner's acceptance, be final and binding on both parties.

XVIII. CANCELLATION

- A. If the project is abandoned or modified by Owner, Owner may terminate this order even though the Contractor may not be in default. The total price due shall be adjusted according to the percentage of the work already performed and materials specifically prepared, and compared to the price for the total work described herein, and shall be based on actual labor, material, and/or cancellation costs, with a ten percent (10%) markup. If because of any strike or other labor disturbance, or any cause beyond its control, Owner shall be prevented from furnishing facilities necessary to enable Contractor to proceed, Contractor shall consider it inadvisable that material should be delivered or work done, then Contractor shall, upon written notice from Owner, cease deliveries or work as such notification shall designate until such time as, in the opinion of Owner, the conditions are favorable to resume operations.

XIX. FORCE MAJEURE

- A. Neither Owner nor Consultant shall hold the other responsible for damages or delays in performance caused by forces or events beyond the reasonable control of the other party. The occurrence of any such event shall suspend the obligations of both parties as long as performance is delayed or prevented, and Contractors fees shall be equitably adjusted.

XX. ASSIGNMENT OR SUBCONTRACT

- A. No assignment of this order, the work or any money due, or which may become due hereunder, shall be made without the prior written consent of the Owner.
- B. Contractor shall not sublet, assign or transfer this order, nor any parts thereof; except for the delivery of material, nor any moneys due or to become due hereunder, to any person without the prior written consent of Owner. Contractor shall furnish to Owner a list of all material suppliers and subcontractors, known and anticipated prior to starting any work other than project design. No subcontract shall in any way relieve Contractor of its liabilities and responsibilities hereunder.
- C. Any subcontractors shall be governed by these conditions the same as Contractor, and it shall be responsibility of the contractor to furnish all subcontractors with all materials necessary to assure compliance therewith.

UNION TANK CAR COMPANY

SPECIAL CONDITIONS GOVERNING WORK ON UTC PROPERTY

Order Specific Changes to Conditions Governing Work on UTC Property

UTC Location: _____

Project Description:

Signatures:

Union Tank Car Company

Contact Name:

_____ (Print)

_____ (Sign)

Date: _____

Contractor:

Eagle Industrial Instrumentation, LLC

Contact Name:

John Russell (Print)

 (Sign)

Date: 23 Jan 2019