

PELICAN POWER LLC GENERAL TERMS AND CONDITIONS OF PURCHASE

- 1) **ACCEPTANCE – AGREEMENT** – Seller's commencement of work on a Purchase Order or shipment of goods shall be deemed an effective acceptance of this Purchase Order. Any acceptance of this Purchase Order constitutes acceptance of the express terms contained herein.
- 2) **CHANGES** – Buyer may direct in writing changes, including additions to or deletions from the quantities originally ordered, or in the specifications or drawings. If any such change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment which Seller believes results from any Buyer changes, suspension of the work directed by Buyer, or from any implementation of Buyer's comments on Seller's documents shall be asserted by Seller no later than thirty (30) days from the date of Seller's receipt of any such changes, direction, or comments. Equitable adjustments for any claims or changes hereunder, including claims arising from cancellations or terminations directed under Sections 11 or 12 of these terms, will be made by written Purchase Order revision. Nothing contained herein shall excuse Seller from proceeding with the change prior to negotiation of any reasonable adjustment supported by appropriate documentation.
- 3) **PRICE AND PAYMENT** – The prices herein specified, unless otherwise expressly stated, shall exclude all taxes and duties of any kind which either party is required to pay with respect to the provision of services and/or sale of the goods covered by this agreement, but shall include all charges and expenses in connection with the good and services, the packing of the goods and their carriage to the place of delivery to the Buyer, unless specifically excluded. All prices are firm unless otherwise expressly stated. Payment will be made as set forth herein; however, payment may be withheld or portions thereof may be deducted or set-offs may be made against Seller if Seller is not performing in accordance with the applicable provisions of this agreement. The time for payment of invoices, or for accepting any discounts offered, shall run only from the date of receipt of goods or services, provided Buyer has received correct invoices with required certification documents. Notwithstanding Buyer's final acceptance of the goods and/or services and payment thereof, all provisions of this agreement such as, but not limited to, Warranties, Infringement, and Compliance shall survive such acceptance and payment.
- 4) **DELIVERY** - Buyer reserves the right to cancel this Order if delivery specified by Seller on the acknowledgment copy of this Order or elsewhere is unsatisfactory or if shipments are not made as requested. However, Seller will not be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition that is beyond Seller's reasonable control and without Seller's fault or negligence. Seller, to be so excused, must (a) within seven days of the commencement of any excusable delay, provide Buyer with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof, and (b) within seven days of the cessation of the event causing delay, provide Buyer with written notice of the actual delay incurred, upon receipt of which, the date of promised delivery shall be extended for the time actually lost by reason of an excusable delay.
- 5) **TITLE AND RISK OF LOSS** – Except as otherwise provided herein, all goods and services furnished by Seller hereunder shall become the property of Buyer upon payment thereof or upon delivery, whichever occurs earlier. Notwithstanding the foregoing, Seller shall be responsible for and shall bear any and all risk of loss or damage to the goods and services until delivery thereof in accordance with the delivery and shipping provisions of this agreement. Upon such delivery, risk of loss, or damage, whenever occurring, which results from Seller's improper packaging or crating, or other fault shall be borne by Seller.
- 6) **INSPECTION AND TESTS** – All goods and services ordered hereunder will be subject to inspection and testing by Buyer to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Seller agrees to permit access to

Seller's facilities at all reasonable times for inspection of goods and services by Buyer's agents or employees and will provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Buyer. Such goods and/or services will be subject to final inspection and acceptance by Buyer after delivery to Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods or services delivered do not meet the specifications or otherwise do not conform to the requirements of this Purchase Order, Buyer shall have the right to reject such goods or services. Goods or services which have been delivered and rejected in whole or in part may, at Buyer's option and as applicable, be returned to Seller or held for disposition at Seller's risk and expense.

- 7) **WARRANTIES** – For a period of one (1) year from the date of acceptance in writing from Buyer, Seller warrants that the goods, items and services covered hereunder shall conform and comply with applicable specifications, instructions, drawings, data and samples, applicable laws and regulations and will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties and remedies are cumulative and shall be in addition to all other warranties, express, implied or statutory or in equity. Payment for, inspection of, or receipt of goods, items, or services shall not constitute a waiver of any breach of warranty. Seller shall execute and deliver to Buyer any documents as may be required to effect or to evidence such compliance. In the case of defects that could not be discovered by visual inspection, the one- year warranty period shall commence upon the date of discovery of the defect. The warranty period for replaced or repaired goods, items, or services shall be one year following the date the replacement, repair or re-performance is accepted in writing by Buyer. All warranties shall run to Buyer, its successors, and assigns. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the goods or services with the foregoing warranties. Should Seller fail or be unable to effect the necessary repairs, replacements, reperformance, and tests within the time specified by Buyer, Buyer may perform or cause to be performed the necessary work at Seller's expense.
- 8) **PATENTS** – Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the goods or services covered by this Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims, losses and expenses (including attorney's fees) paid or incurred by Buyer in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this Purchase Order.
- 9) **SAFETY** – All work performed by Seller under this Purchase Order or any work authorization form shall be carried out in a safe and reasonable manner, and Seller shall be solely responsible for job safety.

Seller shall comply with all federal, state and local safety laws, rules, and regulations and any safety procedures customarily recognized by other sellers performing the same or similar work. Seller shall, prior to the commencement of work and at regular intervals during the work, conduct safety meetings and jobsite safety meetings and jobsite safety inspections and shall keep a permanent, written log of such safety meetings and inspections which shall detail subjects discussed, any safety violations, and all remedial responses. Said reports shall be available for inspection by Buyer.

Failure of Seller to comply with any safety rule or regulation shall be cause, at Buyer's option, for immediate termination and/or suspension of this Purchase Order and any work being performed hereunder or under any other agreement or work authorization. If Buyer suspends any work for this reason, Buyer shall have sole discretion to determine when a safety violation has been corrected and work can recommence.

In addition, should Buyer present Seller, at any time during the existence of this Purchase Order, with any safety manuals, safety rules, regulations or guidelines adopted by Buyer, Seller shall comply with said safety regulations, safety rules, manuals or guidelines during all work or services performed by Seller under this Purchase Order or any work authorization issued by Buyer.

10) **ASSIGNMENTS AND SUBCONTRACTING** – This Purchase Order and any payments hereunder may not be assigned or transferred without prior written approval by Buyer. No invoices may be rendered by others than the named Seller without the prior written permission of Buyer. All claims for monies due or to become due from the Buyer shall be subject to deduction by the Buyer for any set off or counterclaim arising out of this or any other Purchase Orders with the Seller, whether such set off or counterclaim arose before or after such assignment by the Seller.

11) **CANCELLATION** – Buyer may at any time cancel this Purchase Order in whole or in part for its convenience upon written notice to Seller, in which event Seller, if not in default at the time, shall be entitled to reasonable cancellation charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to cancellation plus actual direct, documented, reasonable costs resulting from cancellation.

12) **TERMINATION FOR DEFAULT** – The Buyer may terminate for default any or all of Seller's goods, services, or work in any one or more of the following circumstances:
(1) if the Seller fails to make delivery or fails to perform within the time specified in the Purchase Order or any extension thereof, or (2) if Seller delivers nonconforming goods or services and fails to correct such nonconforming goods or services within a reasonable period of time determined by Buyer, or (3) if the Seller fails to perform in accordance with the provisions of these terms, or so fails to make progress as to endanger performance of this order in accordance with its terms. In the event of any such failure, Buyer will provide Seller with written notice of the nature of the failure and Buyer's intention to terminate for default. In the event Seller does not cure such failure within the time period stated in such notice (or such other time agreed by Buyer, depending on the circumstances of the particular default), Buyer may terminate for default by providing Seller with a written Notice of Default, and Buyer will have no liability to Seller except for completed work accepted by Buyer prior to termination.

In the event the Buyer terminates as provided in this Section 12, the Buyer may procure, upon such terms and in such manner as the Buyer may deem appropriate, goods, supplies or services similar to those so terminated and the Seller shall be liable to the Buyer for any excess costs for such similar goods, supplies or services; provided, however, the Seller shall continue the performance of this order to the extent not terminated under the provisions of this clause.

13) **NON-WAIVER** – Failure by Buyer to insist upon strict performance of any of the terms and conditions hereof, or failure or delay in exercising any rights or remedies provided herein or by law or to notify Seller in the event of breach, or the acceptance of or payment for goods or services hereunder, or review of design, shall not release Seller from any of the warranties or obligations of these terms and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof for any of its rights or remedies as to any such goods or services, regardless when shipped, received, accepted, or as to any prior or any subsequent default hereunder, nor shall any termination of this order by Buyer operate as a waiver in any of the terms hereof.

14) **APPLICABLE LAW; DEFINITIONS** – The definitions of terms used, interpretation of the terms and rights of all parties hereunder shall be construed under and governed by the laws of the state where the applicable Buyer facility is located. Unless otherwise specified herein, Seller means the person, firm or corporation to which this Purchase Order is addressed. The "goods" means those articles, materials, supplies, drawings, data, and other property sold or supplied by Seller, and "services" means any and all services by Seller, including but not limited to design,

inspection, testing, compliance, regulatory, expediting and delivery specified or required hereunder.

15) **CONFIDENTIALITY** – Seller shall not, without first obtaining Buyer’s written consent, disseminate the fact that Seller has furnished or has contracted to furnish Buyer the goods or services covered hereby nor, except as is necessary for performance of this order, shall Seller disclose any of the details connected with this order to third parties. Any specifications, drawings, designs, manufacturing data, and other information transmitted to Seller by Buyer in connection with the performance of this Purchase Order are the property of Buyer and are disclosed in confidence upon the condition that they are not to be reproduced, copied or transmitted to other parties.

16) **SUBSTANCE ABUSE, POLICIES** – Buyer maintains a strong commitment to provide a safe workplace and a high standard of health, safety and performance. Seller warrants that it maintains like commitments and Seller, its employees, agents, representatives, successors, assignors and subcontractors shall refrain from the use, abuse, presence in the body or reporting to work under the influence, bringing onto Buyer’s property, unlawful manufacture, distribution, dispensation, concession, storage, transfer, concealment, transportation, promotion or sale of alcoholic beverages, controlled substances or illegal drugs while performing any goods, work or services hereunder or under any Purchase Order on Buyer’s premises or any designated Buyer work area.

Seller, its employees, agents, representatives, successors, assignors and subcontractors shall not possess firearms and weapons, or paraphernalia that has the appearance of firearms or weapons (i.e., toy guns, knives, etc.) on any property owned, leased, or under the control of Buyer or its affiliates. No firearms or weapons are permitted in any motor vehicles owned or leased by Buyer. Buyer also maintains a strong commitment to prohibit sexual harassment, as well as discrimination of any other kind, in the workplace. Seller agrees to abide by all applicable corporate policies of Buyer in this regard, which policies shall be made available to Seller upon request.

Buyer reserves the right to take appropriate actions, including but not limited to enforcement of its substance abuse and other policies, and/or automatic and immediate cancellation of this Order, should Buyer determine that circumstances warrant same.

17) **FORCE MAJEURE** – Events beyond the control of Buyer which shall affect the Buyer’s ability to receive and use the goods and services ordered shall constitute valid ground for suspension or cancellation of goods and services under this Purchase Order, without penalty to the Buyer, except that a cancellation for such causes may not be made without reimbursement to the Seller for documented, reasonable expenditures actually made for labor and materials upon the authority of this Order.

18) **INDEMNIFICATION** – To the maximum extent allowed by applicable law, Seller shall fully defend, protect, indemnify and hold harmless Buyer, Buyer’s agent, Buyer’s direct and indirect parent companies, their subsidiaries, affiliates, successors or assigns and their respective employees, officers, directors, and shareholders (collectively, “Buyer Indemnitees”), from and against each and every claim, demand or cause of action and any liability, costs or expenses (including attorney’s fees and all other costs incurred in the defense of Buyer Indemnitees), for damages or loss in connection therewith, which may be made or asserted by Seller, its employees, agents, subcontractors, assigns or any third parties, on account of personal/bodily injury, including wrongful death or property damages, breach of contract or any other action, caused by, arising out of, or in any way incidental to, or in connection with, the performance of any work hereunder or the rendering of any goods or services hereunder, whether or not Buyer may have jointly caused or contributed to, by its own negligence or fault, any such claim, demand or cause of action, except such claim, demand or cause of action which results solely from the negligence or fault of Buyer.

The indemnification and defense provided herein shall be extended to the benefit of any and all entities which hold an ownership interest, in any way, in the premises on or in which the work, goods, or services are being performed by Seller. The indemnification and defense given these entities shall be equal to the indemnification and defense given Buyer by Seller.

¹⁹⁾ **HAZARDOUS MATERIALS** – Any materials or chemicals or other merchandise required by this Purchase Order that are deemed hazardous shall be packaged, marked, shipped, handled and unloaded by the Seller, its agents, employees or subcontractors, to comply with all present and future federal, state and local regulations and shall further comply with any special Buyer requirements which may be noted on the face of the Purchase Order.

²⁰⁾ **INSURANCE** – Seller shall maintain insurance with minimum limits as follows: (a) worker's compensation coverage as required by law, including USL&H and FELA if applicable, and covering employees, including temporary, leased and casual workers, and employer's liability insurance with a limit of \$1,000,000; (b) commercial general liability insurance with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and include coverage for contractual liability, broad form property damage, independent contractors, premises and operations, products and completed operations, mobile equipment, and containing no exclusions for explosion, collapse, or underground, lifting, rigging, or operations within 50 feet of a railroad; (c) business automobile insurance with a combined single limit of \$1,000,000 per accident; (d) pollution/environmental liability insurance with a minimum limit of \$5,000,000 each occurrence where the goods or services involve or include handling, transporting, disposing, or performing work or operations with hazardous substances, contaminants, waste, toxic materials, or any potential pollutants; (e) marine liability coverage, to the extent an applicable exposure exists as part of delivery of the goods or services being performed pursuant to the applicable Purchase Order, with limits, terms and conditions appropriate to cover the exposure; (f) professional liability insurance with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate if the goods/services provided involve professional services, such as consulting, engineering, etc.; (g) cargo insurance, if applicable, with limits not less than the replacement value of the Buyer cargo; and (h) excess or umbrella liability coverage with a limit of \$5,000,000 per occurrence and \$5,000,000 in the aggregate that will respond excess of the underlying required general liability, auto liability and employers' liability policies (and contractor's pollution liability, marine liability, cargo, and professional liability, if applicable) on a following form basis. Insurance is to be maintained on an occurrence basis, be placed with insurers rated "A- VII" or better by A.M. Best's rating service, and contain a separation of insured clause. Buyer Indemnitees shall be additional insureds on a primary and non-contributory basis with respect to all Seller liability policies, except under workers' compensation, employer's liability, and professional liability insurances, for ongoing and completed operations. The Additional Insured status shall be specifically endorsed to Seller's policies (blanket endorsements acceptable), and with respect to the general liability policy shall provide additional insured status for both ongoing and completed operations, utilizing an ISO CG 20 10 07 04 endorsement form, issued in combination with an ISO CG 20 37 07 04 endorsement form, with the additional insured status applying to the maximum extent permitted by law. All Seller insurance policies shall include a waiver of subrogation in favor of Buyer Indemnitees. Before beginning its scope of work, Seller shall furnish Buyer with insurance certificates evidencing that Seller has complied with the foregoing insurance requirements. Seller shall provide written notice by certified mail to Buyer at least thirty (30) days prior to termination, cancellation, non-renewal, or reduction of coverage in any policy. In no event will Seller's obligation to maintain insurance limit or diminish Seller's obligations or liability to Buyer. All Seller insurance requirements likewise apply to its subcontractors and subvendors.

²¹⁾ **LIMITATION OF LIABILITY** – Except for Seller's indemnity obligations hereunder as to third parties and except for Seller's or its subcontractors'/subvendors' gross negligence, fraud or willful misconduct or breach of confidentiality, neither party shall be liable (whether in contract, tort, negligence, strict liability, statutory liability or otherwise) to the other for incidental, consequential or indirect damages including lost profits, lost revenue(s) or lost goodwill, whether

or not the possibility of such damages has been disclosed or could have been reasonably foreseen.

22)

LIEN RELEASES – Seller shall keep Buyer's premises free of all mechanics and supplier's liens. In the event that any of Seller's personnel or subcontractors or subvendors file a lien or claim against Buyer, Buyer may withhold payment to Seller of any invoice in an amount equal to 125% of the lien or claim until such as time as the lien or claim is released or withdrawn. Partial or final payments shall not become due and payable to Seller until Seller delivers to Buyer partial or final lien releases, as applicable, in a form satisfactory to Buyer. Final payment to Seller shall not relieve Seller of its obligation to discharge any lien filed before or after Seller is paid for its services. SELLER IS STRICTLY LIABLE FOR AND SHALL, WITHOUT LIMIT AND AT ITS OWN COST, INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER INDEMNITEES FROM AND AGAINST ALL LIABILITY FOR LIENS ARISING OUT OF SELLER'S PERFORMANCE OF THIS ORDER.