

**GENERAL CONDITIONS FOR COMMERCIAL ITEM SUBCONTRACTS UNDER  
U. S. DEPARTMENT OF ENERGY PRIME CONTRACT NO. DE-EM0004559  
DEPLETED URANIUM HEXAFLORIDE (DUF<sub>6</sub>) CONVERSION FACILITIES  
PADUCAH, KY AND PORTSMOUTH, OH**

*Change Bar indicates new article, a change in application, or that text of Article has changed*

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## 1 DEFINITIONS

The following definitions apply to these General Conditions and in the other Purchase Order Documents, unless the context clearly requires otherwise:

- 1.1 "Applicable Laws" shall have the meaning set forth in Article 25.1.
- 1.2 "Buyer" means Mid America Conversion Services, LLC (MCS).
- 1.3 "Damages" shall have the meaning set forth in Article 28.1.
- 1.4 "Day(s)" means calendar day(s) unless otherwise specified.
- 1.5 "Facility Site" means all those parcels of land on which the Project is to be located.
- 1.6 "Force Majeure Event" shall have the meaning set forth in Article 37.
- 1.7 "General Conditions" means the terms and conditions set forth in this document.
- 1.8 "Goods" means all material, equipment, supplies and other items to be furnished by Seller under the Purchase Order.
- 1.9 "Hazardous Material" means any hazardous material or waste, toxic substance, pollution or contamination.
- 1.10 "Indemnified Parties" shall have the meaning set forth in Article 25.2.
- 1.11 "Owner" means the ultimate Owner of the project identified as such in the Purchase Order and any of its subsuppliers affiliates or vendors of any tier.
- 1.12 "Party" or "Parties" means Buyer and/or Seller.
- 1.13 "Project" means the project or facility for which the Goods and/or Services are being purchased.
- 1.14 "Purchase Order" means the document entitled "Purchase Order Form" and issued by Buyer to Seller in connection with the Project, all Purchase Order Documents set forth therein, and all written change orders, modifications and supplements thereto, if any.
- 1.15 "Purchase Order Documents" means the documents identified as Purchase Order Documents in the Purchase Order.
- 1.16 "Purchase Order Form" shall mean the document entitled Purchase Order Form and executed by Buyer and Seller.
- 1.17 "Purchase Order Price" means the price to be paid by Buyer to Seller for the Goods and Services as provided for in the Purchase Order.
- 1.18 "Schedule" shall have the meaning set forth in Article 6.1.
- 1.19 "Seller" means the individual or entity identified as such in the "Purchase Order".
- 1.20 "Services" shall have the meaning set forth in Article 20
- 1.21 "Special Conditions" means the terms and conditions identified as such in the "Purchase Order".
- 1.22 "Subsupplier" means vendor, supplier, materialman, consultant, contractor, subcontractor or other person or entity providing goods or services directly or indirectly to Seller in connection with the Purchase Order.

## 2 PURCHASE ORDER ADMINISTRATION

- 2.1 Buyer may establish and implement a program to monitor the performance and quality of the Goods and Services. Seller shall provide Buyer's inspectors and supervisory personnel reasonable access to all Goods and Services wherever in preparation or progress. Notwithstanding any monitoring program implemented by Buyer with respect to the Goods and Services, Buyer shall have no obligation to supervise or inspect Goods and Services, and any inspection by Buyer with respect to the Goods and Services shall not relieve Seller of its obligations under this Purchase Order.
- 2.2 Buyer may expedite Seller and Subsuppliers in the performance of the Goods and Services and Seller shall provide Buyer with all information reasonably requested by Buyer to enable it to do so. Any expediting efforts by Buyer will not relieve or lessen Seller's responsibility for its failure to meet its obligations under the Purchase Order.

- 2.3 Seller shall be solely responsible for the Goods and Services and neither Owner nor Buyer shall be responsible for Seller's safety precautions and programs incident thereto, failure to comply with Applicable Law, or failure to furnish or perform the Goods or Services as required under the Purchase Order.
- 2.4 Neither party shall be responsible for the acts or omissions of the other party.
- 2.5 Buyer may disapprove or reject Goods or Services which do not conform to the requirements of the Purchase Order.
- 2.6 Buyer may schedule and conduct job meetings to be attended by persons designated by Buyer, including Seller and its Subsupplier(s) for the Project, to discuss matters related to the Goods, Services or Project, including but not limited to procedures, progress, problems, scheduling, safety and coordination.
- 2.7 Buyer and/or the Owner may implement from time to time safety, health and drug free programs (and amendments thereto) of general applicability to the Facility Site. Buyer's personnel, Seller's personnel, and all Subsupplier personnel shall all fully comply with any such programs. Buyer will keep copies of any such programs at the Facility Site and they will be available during normal business hours for Seller to inspect and/or copy.
- 2.8 Buyer may establish procedures for processing shop drawings, samples and other submittals by Seller.
- 2.9 Buyer shall review and process all requests for change orders by Seller as set forth in Article 9.
- 2.10 Buyer shall determine when the Goods and Services are complete.

## 3 PURCHASE ORDER

- 3.1 Should a question or doubt arise as to the intent and meaning of any part of the Purchase Order, Seller shall immediately notify Buyer in writing before the part of the Goods and Services affected is performed. Buyer's determination of intent and meaning of such part shall be final, subject to dispute resolution under Article 38.
- 3.2 In the various parts of the Purchase Order where reference is made to applicable codes and standards, the Goods and Services shall, except as otherwise specified, conform to the latest issue of the referenced code or standard available at the time the Goods or Services are delivered or performed. Upon any point of conflict between codes and standards applicable to the Goods or Services, Buyer shall be notified, but the code or standard imposing the more or most stringent requirement as the case may be shall govern, unless otherwise stipulated by Buyer in writing. Should compliance of the work with the laws, rules, regulations, or ordinances of any Federal, State, or local authority, or of any agency thereof, be required, or require changes in the work; or should any permits, licenses or approvals of plans and specifications for the work or permits, licenses, or approvals for the installation or use thereof be required; Buyer shall assume the risk and responsibility for such compliance or changes, and for securing such permits, licenses and approvals from the proper authorities, and for paying any associated costs or fees.
- 3.3 Where specific governing standards are not specified in connection with the Goods or Services, the highest applicable industry codes and standards shall govern.

- 3.4 Seller acknowledges and agrees that it shall provide all labor, services, equipment, materials, supplies, documentation and other such items necessary or appropriate to perform and complete the Goods and Services in conformity with and as reasonably inferred from the Purchase Order, notwithstanding the fact that each such necessary or appropriate item may not be expressly specified therein.

#### **4 SAFETY**

- 4.1 Seller acknowledges that safety is of prime importance to Buyer and Owner, and Seller shall cooperate with Buyer and Owner in efforts to prevent injuries to personnel and to comply with all applicable safety rules and regulations.

#### **5 SUBSUPPLIERS**

- 5.1 Seller shall notify Buyer in writing of the names of Subsuppliers proposed for any of the Goods or Services and shall not subcontract any part of the Goods or Services without the prior written authorization of Buyer. Seller shall not subcontract the Goods or Services as a whole. Seller shall bind all Subsuppliers to the provisions of the Purchase Order applicable to the subcontracted Goods and Services.
- 5.2 Neither the Purchase Order nor any purchase order with a Subsupplier shall create any contractual relationship between any Subsupplier and either Owner or Buyer, nor any payment or other obligation on the part of either Owner or Buyer to any Subsupplier.
- 5.3 Notwithstanding the existence of any purchase order with a Subsupplier, Seller shall be fully responsible to Buyer for the Goods and Services as if no such purchase order exists.
- 5.4 Seller's purchase orders and similar purchase forms with any Subsuppliers in connection with any subcontracted Goods or Services under any of the Purchase Order Documents shall comply with the applicable requirements of all Purchase Order Documents.
- 5.5 Seller shall ensure that all Subsuppliers establish and implement a quality control system in their work and manufacturing processes which assures that all subcontracted Goods and Services shall meet the standard of performance required under the Purchase Order Documents.
- 5.6 All purchase orders and similar purchase forms with Subsuppliers shall contain a provision making them assignable to Buyer, Owner, or their respective successors and assigns, upon Buyer's written request following termination of this Purchase Order or Owner's written request following termination of the Prime Contract, as applicable.

#### **6 SCHEDULE**

- 6.1 Within ten (10) days after Purchase Order award, Seller shall prepare and submit for Buyer's approval a detailed schedule for furnishing the Goods and Services as required by the Purchase Order (such approved schedule, the "Schedule"). The Schedule must conform to all schedule parameters provided in the Purchase Order, including without limitation the Buyer's schedule. Seller shall, subject to Buyer's approval, maintain and update the Schedule throughout the performance of the Purchase Order. Unless directed otherwise by Buyer, Seller shall furnish the Goods and Services strictly in accordance with the Schedule (as updated), and shall, without additional cost to Buyer, work

such overtime or take such other or different measures as may be required in order to meet the Schedule.

- 6.2 Seller represents that it shall (i) prepare documents for its planning, scheduling and coordination of the performance of the Purchase Order that are feasible and realistic, and (ii) prepare schedules, updates, revisions and reports that accurately reflect Seller's reasonable expectations as to the sequence of activities, duration of activities, productivity or efficiency, projected and actual completion of any Goods or Services or activity, and delays or problems expected or encountered and specified float time.

- 6.3 Seller acknowledges that the dates required in the Schedule for the performance and completion of the Goods and Services are essential conditions of the Purchase Order and agrees that Seller's failure to perform and complete the Goods and Services consistent with such dates shall constitute a material violation of the Purchase Order for the purposes of Article 16 and for the purposes of any other remedy available to the Buyer under the Purchase Order, at law, and/or in equity. However, the foregoing shall apply only to critical path items that are identified as such in a mutually agreed upon schedule that is incorporated into the Purchase Order.

#### **7 PROJECT INVESTIGATION**

- 7.1 Seller represents that it has, or has had full opportunity to, examine the Facility Site and the Purchase Order; that it has satisfied itself as to the requirements of the Purchase Order and all conditions which may affect its performance under the Purchase Order, including but not limited to, as applicable, labor conditions and availability, the condition of the Facility Site and access thereto to furnish the Goods and Services and local weather conditions; that the Purchase Order Price and Schedule have been determined with due regard for all such requirements and conditions which do or may affect the Purchase Order; and that its entry into the Purchase Order has not been induced either wholly or in part by any promises, representations or statements by or on behalf of the Buyer, its agents, or the Owner, its agents or representatives, other than those set forth in the Purchase Order. Seller acknowledges and accepts the risk of its mistake or error with respect to all matters within the scope of its Project investigation, and agrees that it shall not be entitled to, and shall make no claim for, any additional compensation or damages of any kind or character or extension of time should any requirements or conditions applicable to the Purchase Order be different from or in addition to those identified by Seller through such investigation. The foregoing shall not apply to any condition that could not be discovered by a reasonable investigation by Seller.

#### **8 SELLER'S DRAWINGS, SPECIFICATIONS, AND CALCULATIONS**

- 8.1 Drawings, specifications, and calculations submitted by Seller to the Buyer with a request for review, may be reviewed and commented upon by the Buyer. Such review and comment shall relate only to general conformance with the specifications and for confirmation of physical interface of items shown with related systems. In no event will such review and comment relieve Seller of the responsibility of compliance with all requirements of the Purchase Order.
- 8.2 Seller shall furnish all submittals and other documentation when and as required by the Purchase Order.

8.3 All drawings submitted by Seller and its suppliers shall bear the following identifications in or near the title block:

- (a) P.O. No.
- (b) Owner
- (c) Explanatory Title
- (d) Owner's Item Number

Where possible, a space six inches wide by four inches high shall be reserved above the title block for Buyer's foreign print label.

8.4 Buyer will, within thirty (30) days of submittal by Seller, examine drawings, schedules or details for design, controlling dimensions and apparent suitability and shall return one (1) copy either released for manufacture or marked showing changes desired. When changes are required, drawings shall be resubmitted promptly, with revision clearly marked, until finally released for manufacture. All drawings and test and inspection reports will be reviewed by Buyer prior to shipment of the equipment. All data submitted for review shall follow the above procedures. Review of drawings and data by Buyer will be only for conformance with the drawings and specifications and for confirmation of physical interface of items shown with related systems and does not constitute acceptance of any design, material, component or equipment not fulfilling all contract specification and drawing requirements. Such review shall not relieve Seller from his responsibility for any deviations from the requirements of the purchase agreement unless Seller has in writing called Buyer's attention to such deviation at the time of submission and Buyer has given written approval to the specific deviation, nor shall such review by Buyer relieve Seller from responsibility for errors or omissions in the Seller's drawings or for the sufficiency of the material and equipment to accomplish the result required as set forth in the purchase agreement.

8.5 Any discrepancies in the drawings and/or specifications shall be referred to Buyer for interpretation and decision, which shall be binding; otherwise, Seller shall furnish everything called for by either drawings or specifications even though not called for by both. If Seller does not agree with Buyer's interpretation and/or decision, Seller may proceed under Article 38, Disputes.

8.6 Figured dimensions shall take precedence over scaled dimensions; detailed drawings over general drawings.

## **9 CHANGES**

9.1 Buyer has the right by written order to Seller to add to, deduct from or otherwise change the Purchase Order within the general scope of the work. If any such Buyer directed change affects the Purchase Order Price, Schedule or any other provision of the Purchase Order, or Seller becomes aware of any circumstance which Seller believes necessitates a change in the Purchase Order Price, Schedule or any other provision of the Purchase Order, Seller shall, within fourteen (14) days of receipt of such written order or becoming aware of such circumstance, submit a written request to Buyer for an adjustment to the Purchase Order Price, Schedule or other provision of the Purchase Order Seller believes is affected thereby. Seller's written request shall include documentation sufficient to enable Buyer to determine the factors necessitating the adjustment(s) being requested. If Seller fails to provide such written request to Buyer within such seven (7) day period (or fails within such period to provide Buyer with a detailed statement of the reasons it is unable to do so and, as soon as it is able to do so, provides such request), Seller

shall be deemed to have waived any right for submitting a claim and/or any claim for an adjustment of the applicable Purchase Order Price, Schedule or other provision of the Purchase Order.

9.2 Following receipt of timely written documentation from Seller as prescribed in Article 9.1, Buyer shall, provided an adjustment is warranted, issue a written change order to Seller either (i) adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order as requested by Seller or (ii) in the event Buyer disagrees with Seller's statement as to the effect of a Buyer directed or other change to the Goods and Services, adjusting the Purchase Order Price, Schedule or other provision of the Purchase Order as appropriate. Seller shall thereafter furnish the Goods and Services in accordance with a written change order, subject to dispute resolution under Article 38. Seller shall have no right to suspend or delay the furnishing of Goods or Services while Buyer is reviewing Seller's change request or if it disagrees with the written change order issued to it by Buyer.

9.3 Notwithstanding anything to the contrary in this Article 9.0; no adjustment in the Purchase Order Price, Schedule or any other provision of the Purchase Order shall be made for or as a result of any correction of errors, omissions, deficiencies, or improper or defective Goods or Services on the part of Seller or its Subsuppliers.

9.4 Any changes shall be performed by Seller consistent with all of the requirements of the Purchase Order, unless otherwise agreed by the parties.

## **10 INVOICING AND PAYMENT**

10.1 Invoices will be paid as set forth in the Purchase Order Form if they meet the invoicing requirements set forth in the Purchase Order and this Section 10; show applicable discounts, and are accompanied by the bills of lading or transportation receipts. Applicable freight charges and sales and use taxes shall be shown separately on the invoices. Freight charges shall be supported by copy of the paid freight bill.

10.2 Time in conjunction with payment and any applicable payment discounts will be computed from the date the Buyer receives Seller's proper invoice, unless Seller's entitlement to payment is conditioned on delivery of Goods and Services, in which event time for payment and any applicable payment discounts will be computed from the later of (i) the date the Buyer receives Seller's proper invoice and (ii) the date Goods are received and accepted.

10.3 Any invoice deviating from the requirements of the Purchase Order will be returned to Seller for correction and/or submission of acceptable support documentation.

10.4 The terms of payment as shown in the Purchase Order shall take precedence over terms of payment shown on Seller's invoices or elsewhere.

10.5 No payment shall constitute a waiver of any claims either party may have against the other party.

10.6 All payments are provisional and any overpayments or underpayments by Buyer to Seller shall be deemed to be a mistake of fact and promptly repaid to Buyer or paid to Seller, as the case may be.

10.7 The date of receipt by Buyer of a proper, complete and fully substantiated invoice from Seller will establish the effective date of the invoice. If not otherwise specified in the Purchase Order, payment shall be net forty five (45) days after the effective date of the invoice. The acceptance of any payment shall constitute a waiver of all claims by Seller.

10.8 If required by Buyer, Seller shall furnish with each invoice a waiver and release in reasonable form and substance in which Seller waives and releases any and all claims of any nature, including but not limited to mechanic's and other liens or claim or right of lien or other encumbrance, except for any claims for which Seller has provided notice to Buyer, which Seller or its Subsuppliers have or may have against Buyer, Owner the Facility Site and/or Project as a result of labor, services, equipment, material, supplies, documentation or other items used or employed by Seller or its Subsuppliers to the date of the invoice in the performance of the Purchase Order.

10.9 Acceptance by the Seller of the final payment on the Purchase Order Price shall be and shall operate as a release by Seller of Buyer from all claims of the Seller arising out of or in connection with the Purchase Order. Seller further agrees that as a condition to Buyer's obligation to make final payment, Seller shall, if required by Buyer, procure and furnish to Buyer in a form acceptable to Buyer a full and complete waiver and release of any and all claims of any nature, including but not limited to mechanic's and other liens, or claim or right of lien or other encumbrance, from one or more Subsuppliers.

## 11 PAYMENTS WITHHELD

11.1 Buyer may withhold the whole or any part of any payment to Seller to such extent as may be necessary to protect Buyer from loss as a result of:

- (a) Incomplete, defective or damaged Goods or Services not remedied;
- (b) Backcharges, per Article 44;
- (c) Claims filed or reasonable evidence indicating probable filing of claims, including lien claims, involving or arising out of Seller's performance under the Purchase Order;
- (d) Damage to Buyer's, Owner's or their respective other contractors work;
- (e) Failure of the Seller to make payments when due to Subsuppliers;
- (f) Reasonable insecurity regarding Seller's intention or ability to continue with the proper and timely performance under the Purchase Order;
- (g) Failure of the Seller to perform or comply with any of its obligations under the Purchase Order; or
- (h) Expenses arising from frivolous claims against Buyer.

11.2 Funds withheld in accordance with this Purchase Order are not for the benefit of the bonding company or any other third party.

## 12 SHIPMENT OF GOODS

12.1 Seller shall deliver the Goods in good condition properly packaged for shipment and otherwise in accordance with the Purchase Order.

12.2 Seller must strictly comply with any requirement specified in the Purchase Order.

12.3 All charges for packing, boxing, crating, freight, trucking, or special services of any kind are included in the Purchase Order Price unless otherwise specifically authorized in the Purchase Order.

12.4 All shipping documents must reference Buyer's Purchase Order number.

12.5 No delivery of any Goods shall be considered made or complete until such Goods are completely and finally delivered to Buyer's physical possession in their entirety, including but not limited to replacement of any defective parts. No shipment is deemed completed until Seller has

delivered the bill of lading or transportation receipt to the Buyer.

## 13 SELLER INSURANCE

13.1 Unless otherwise specified in the Purchase Order, Seller agrees that it shall obtain and maintain during the performance of any Services at the Facility Site and until the acceptance thereof, the insurance described in 13.2 and shall be carried with insurance companies with at least a Best's "A" rating. Seller will furnish to Buyer three (3) copies of the certificate(s) evidencing such insurance prior to commencing, performance or physically present on the Facility site under the Purchase Order.

13.2 The required insurance coverage is as follows:

- (a) Worker's Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Worker's Compensation laws of any applicable jurisdiction in which the Services are to be performed hereunder, and Employers' Liability Insurance with limits of five hundred thousand dollars (\$500,000) for trauma, each accident; five hundred thousand dollars (\$500,000) for disease, each person and five hundred thousand dollars (\$500,000) disease, policy limit.
- (b) Commercial General Liability Insurance written on the latest ISO occurrence form and including coverage for Contractual Liability and Products and Completed Operations (to remain in force for two (2) years following acceptance of the Goods and Services). The insurance required by this clause (b) shall have the following limits of liability:
  - (1) Third Party Bodily Injury and Property Damage Liability: \$1,000,000 combined single limit per occurrence and \$2,000,000 combined single limit general aggregate, with such limits available to the Project.
- (c) Business Automobile Liability insurance covering all owned, leased and non-owned vehicles used in connection with the Goods and Services, with \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- (d) If professional services are involved, Professional Liability Insurance with not less than \$1,000,000 per occurrence with a 24 months discovery period after completion of the performance under the Purchase Order.

13.3 The following endorsements shall be included in the above insurance coverages:

- (a) Thirty (30) days advance written notice in the event of cancellation, non-renewal or material change of any policy. Language referring to "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be stricken from the certificate of insurance.
- (b) Buyer and Owner named as additional insureds (except on workers' compensation and professional liability)
- (c) A waiver of subrogation in favor of Buyer and Owner. (d) Severability of Interest or Separation of Insureds.
- (e) Seller's insurance is primary and any insurance maintained by Buyer is considered excess and non-contributory.

13.4 Seller shall insert the substance of this Article in lower tier orders under the Purchase Order that require the performance of services at the facility site and shall require

lower-tier suppliers to provide and maintain the insurance required in this Article or elsewhere in the Purchase Order.

#### **14 RISK OF LOSS; DEDUCTIBLES; TITLE**

- 14.1 Notwithstanding any other provision in the Purchase Order, at all times prior to Buyer's transfer to the Owner of risk of loss of the Project and to the extent not covered by Builder's Risk insurance applicable to the Project, Seller shall bear the risk of loss and full responsibility for the costs of replacement or repair resulting from any damage to, or loss or destruction of, the Project or any portion thereof arising from any nonconformity or defect in the Goods or Services.
- 14.2 In addition to its obligations under Article 14.1, Seller shall be responsible for deductibles for any damage or loss covered by insurance provided by Seller under Article 13, and for the payment of deductibles for any damage or loss covered by any Builder's Risk insurance and covering the Goods and/or Services, provided that with respect to such Builder's Risk insurance deductible, such damage or loss to the extent caused by the fault, negligence or willful misconduct of Seller or any of its Subsuppliers.
- 14.3 Title to the Goods, or portions thereof, shall pass to Buyer upon the occurrence of the earliest of the following events, as applicable: (i) when such Goods or portion thereof are delivered to the Buyer or Facility Site pursuant to the Purchase Order; (ii) when Seller has been paid any sum to which it may become entitled in respect to such Goods or portion thereof; or (iii) when such Goods or portion thereof are identifiable to the Purchase Order. All Goods or portions thereof and other items to which Buyer has title shall not be removed from the Facility Site without Buyer's prior written consent. Use of storage facilities furnished to Seller at the Facility Site shall not relieve Seller of such risk of loss unless otherwise agreed in writing.

#### **15 EXPEDITING**

- 15.1 Seller agrees 1) to expedite delivery of the Purchase Order and any suborders to the extent necessary and in sufficient time to safeguard the Schedule; 2) that all Goods and Services furnished hereunder by Seller or its Subsuppliers shall be subject to expediting by the Buyer and/or Owner at all reasonable times and places, both before, during and after manufacture; 3) that such expediting or failure to expedite by the Buyer and/or Owner shall not relieve Seller of any of its responsibilities under the Purchase Order; and 4) that all orders with Subsuppliers shall include a statement providing for the expediting rights of the Buyer and/or Owner. Any expediting hereunder shall be subject to a change pursuant to Article 9, Changes.

#### **16 TERMINATION FOR CAUSE**

- 16.1 If the Seller should file a bankruptcy petition or be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for the Seller, or if it should fail to supply enough properly skilled workmen or proper plant or materials or fail to make sufficient progress so as to endanger the timely and proper performance of the Purchase Order, or if it should abandon the Purchase Order or unreasonably delay its progress or completion, or persistently disregard Applicable Law or the instructions of Buyer or materially breach any provision of the Purchase Order, then Buyer may, without prejudice to any other right or remedy, upon written notice to Seller, terminate the employment of the Seller with respect to all or

part of the Goods or Services and take possession of such Goods or Services, and all materials for such Goods or Services and tools, plant, appliances and equipment and temporary construction used in connection therewith and finish such Goods or Services by whatever method Buyer may deem expedient, all at the expense of Seller. In such case Seller shall not be entitled to receive any further payment from Buyer.

- 16.2 If Buyer's expense of completing the Goods and Services, including any attorney's fees and other legal expenses plus 15% administration fee in connection therewith, exceed the amount, if any, which Buyer agrees would have been payable to Seller had it completed the Goods and Services as required under the Purchase Order, Seller shall pay the difference to Buyer within ten (10) days after receipt from Buyer of written notice of the amount thereof.
- 16.3 Upon the failure of Seller to pay Buyer as set forth in Article 16.2, Buyer shall have the right to sell the whole or any part of any of Seller's materials, tools, plant, appliances, equipment and temporary structures at public or private sale at any time or times thereafter without further notice to Seller and to transfer and deliver the same. Buyer shall have the right to become the purchaser at such sale or sales (free and discharged of any equity of redemption) and after deducting all legal and other costs, attorney fees and expense of sale and delivery, shall apply the balance, if any, of the proceeds of such sale or sales so made, to the amount due Buyer. Buyer shall pay the surplus, if any, to Seller and Seller shall pay any deficiency to Buyer on demand.

#### **17 SUSPENSION**

- 17.1 Buyer may upon written notice to Seller at any time suspend the performance of all or any portion of this Purchase Order. Upon receipt of such notice, Seller shall, unless the notice requires otherwise:
- (a) Immediately discontinue the performance under the suspended Purchase Order on the date and to the extent specified in the notice;
  - (b) Place no further suborders or contracts for equipment, material, supplies, services or facilities with respect to the performance under the suspended Purchase Order, except to the extent required in the notice;
  - (c) Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Buyer of all suborders and other agreements to the extent they relate to suspended performance under this Purchase Order;
  - (d) Continue protection and maintenance of Goods, including those portions of Goods which have been suspended; and
  - (e) Take any other reasonable steps to minimize Seller's costs associated with such suspension.
- 17.2 In the event of such suspension, Seller shall be paid [the full price, including G&A and profit, for the work already performed as of the date of the suspension; and] for all direct costs due to the suspension. In addition, the schedule for performing the work shall be extended to account for the suspension and Seller shall have the right to terminate the Contract if such suspension exceeds ninety (90) days in the aggregate.
- 17.3 Upon receipt of notice to resume suspended performance under this Purchase Order, Seller shall immediately resume performance thereof to the extent required in the notice.
- 17.4 No adjustment shall be made for any suspension to the extent that performance under this Purchase Order would

have been concurrently suspended, delayed, or interrupted by Seller's non-compliance with the requirements of this Purchase Order.

## **18 EMERGENCIES**

- 18.1 In the event of an emergency at the Facility Site threatening loss or injury to life or property which Seller may be able to prevent or mitigate, Seller, without awaiting special instruction or authorization from Buyer, shall act as necessary to attempt to prevent or mitigate such threatened loss or injury.

## **19 RELATED SERVICES**

- 19.1 Whenever Seller furnishes personnel for installation, start-up, testing, inspection, related services, or maintenance (the "Services"), the following provisions shall apply, in addition to other applicable provisions of the Purchase Order:

- (a) Seller warrants that Services, excluding any as may be performed under the direction or supervision of Buyer, performed pursuant to the Purchase Order will be performed in a professional manner consistent with the standards of quality and care typical within the industry at the time of performance for similar work. Such warranty will be effective for a period of one (1) year from the date of performance of the Service. Any such Services performed by Seller which do not conform to Seller's above-stated warranty obligation will be reperfomed by Seller at Seller's expense; or if reperformance is impractical or impossible, Seller will refund to Buyer the price paid to Seller for the non-conforming Services. For the foregoing warranty and remedy to apply, written claim must be made by Buyer within (30) days from the date the non-conformance is detected by Buyer and in no event later than thirty (30) days after expiration of the aforementioned warranty period.

The warranties and remedies set forth above will apply only if notice of claim is given to Seller in accordance with the requirements specified above, and the following additional obligations of Buyer are complied with:

1. If Seller is to reperform any Services, Buyer shall be obligated at its own expense to provide decontamination of and access to the area of work or any parts or items of equipment which are to be repaired or replaced.
  2. Buyer shall, at no expense to Seller, provide site personnel, facilities, data and information to assist in any activity which may be required of Seller under this warranty. Removal of defective parts of equipment, installation of replacement parts of equipment, required decontamination, transportation, and ultimate disposal of defective items shall be Buyer's responsibility.
- (b) THE WARRANTIES AND REMEDIES SET FORTH IN ARTICLE 20.1 (a) AND ARTICLE 21.1 ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

The sole liability of Seller and the exclusive remedy of Buyer with respect thereto, arising out of the purchase, manufacture, sale, furnishing, or use of any work, whether such liability is alleged to arise on account of contract, tort (including negligence), strict liability, or otherwise, shall be limited to the remedies specified in this Article, and in Article 23, Intellectual Property Protection.

Seller shall not, in any event, be responsible for any work done by others or for any loss, damage, costs, or expense arising out of or resulting from such work; provided that in the event Seller has engaged Subsuppliers in the performance of its obligations, Seller will have the same responsibilities to Buyer for such work as it has with respect to its own work.

- (c) Seller's personnel will, upon arrival at the Facility Site, report to Buyer's site manager who will provide an appropriate orientation to such personnel including proper lines of communication with discipline superintendents. All formal communications shall pass between the Buyer and Seller's personnel. This does not include routine communications among such personnel and discipline superintendents and other appropriate personnel;
- (d) Seller's personnel shall comply with all Facility Site and Project rules and regulations, including but not limited to those pertaining to safety, plant protection, security, identification, drug testing, and the operation and parking of vehicles;
- (e) When Seller deems the Services completed, Seller shall give the Buyer notice thereof in writing. Within fifteen (15) days after receipt of such notice, Buyer will determine if the Services have been performed and completed as required. If the Services have been properly completed, Buyer will advise Seller in writing that same have been accepted. If the Services have not been completed as required, Buyer will so notify Seller and Seller will take remedial action as described in Article 20.1(b) and will repeat the procedure stated herein until the Services have been accepted;
- (f) At any time prior to final completion and acceptance of all the Services, Buyer may accept as finally complete any finished part of the Services that Buyer and Seller reasonably agree constitutes a separately functioning and usable part of the Services that can be used by the Buyer without significant interference with Seller's performance of the remainder of the Services. The Buyer may at any time request in writing that Seller permit Buyer to accept any such part of the Services and Seller shall make that part of the Services available for Buyer's inspection within five (5) days following the request. If Buyer and Seller agree following the inspection that the part of the Services in question can be accepted by Buyer as finally complete, Buyer shall issue a written notice to Seller accepting such part of the Services;
- (g) Seller shall not interfere with the work of any other entity(ies) on the Facility Site, without prior specific written authorization from Buyer, but Seller shall immediately notify Buyer if Seller foresees risk of such interference. Buyer shall reimburse Seller for any reasonable costs incurred by Seller due to interference by other parties. Seller will use all reasonable means to ensure labor harmony and continued progress of work at the Facility Site.

- (h) Seller agrees that the Owner or Buyer shall have the right to perform or have performed in or about the Facility Site during the time when Seller is furnishing the Goods or Services such other work as Owner or Buyer may desire and that Seller shall make every reasonable effort to enable both its performance under the Purchase Order and such other work to be completed without hindrance or interference. Buyer shall reimburse Seller for any reasonable costs incurred by Seller due to hindrance or interference by other parties.
- (i) In the event Seller's performance is delayed or interfered with by the work of Buyer, Owner or their respective other contractors, Seller shall be reimbursed by Buyer for any reasonable costs incurred by Seller due to interference by Buyer, Owner or their respective other parties.

## 20 GOODS WARRANTIES

- 20.1 Seller warrants that the Goods delivered hereunder will be free from defects in workmanship and material. Such warranty will be in effect for a period of one (1) year from date of delivery, provided that for consumables, any shorter warranty period under normal industry practice shall apply. Any part of any item of Goods furnished to Buyer which fails to conform to this warranty will be either repaired, or at Seller's option, replaced F.O.B. point of shipment, at Seller's expense; or, if repair or replacement is impracticable or impossible, Seller will refund to Buyer the price paid to Seller for the defective item of Goods. For the foregoing warranty and remedy to apply, written claim must be made by Buyer within thirty (30) days from the date the failure is detected by Buyer and in no event later than thirty (30) days after expiration of the aforesaid warranty period; use of such Goods must be discontinued as soon as practicable; and such Goods must be returned, at Seller's request, with reasonable promptness.
- 20.2 The warranties and remedies set forth above will apply only if notice of claim is given to Seller in accordance with the requirements specified above, and the following additional obligations of Buyer are complied with:
  - 1. Any goods shall be properly unloaded, stored, maintained, and installed, and shall at all times, be protected from damaging agents by Buyer except when such activity is expressly included in a specific order and part of the work. It shall be operated only in a normal and proper manner and not in excess of any applicable ratings, limitations, or operating specifications.
  - 2. If Seller is to repair or replace any parts of items of goods, Buyer shall be obligated at its own expense to provide decontamination of and access to the area of work or any parts or items of Goods which are to be repaired or replaced.
  - 3. Buyer shall, at no expense to Seller, provide site personnel, facilities, data and information to assist in any activity which may be required of Seller under this warranty. Removal of defective parts of equipment, installation of replacement parts of equipment, required decontamination, transportation, and ultimate disposal of defective items, shall be Buyer's responsibility.
- 20.3 THE WARRANTIES AND REMEDIES SET FORTH IN ARTICLE 20.1(a) AND ARTICLE 21.1 ARE EXCLUSIVE, AND NO OTHER WARRANTY OR REMEDY OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF PERFORMANCE, MERCHANTABILITY

AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

- 20.4 The sole liability of Seller and the exclusive remedy of Buyer with respect thereto, arising out of the purchase, manufacture, sale, furnishing, or use of any work, whether such liability is alleged to arise on account of contract, tort (including negligence), strict liability, or otherwise, shall be limited to the remedies specified in this Article, and in Article 22, Intellectual Property Protection. Seller shall not, in any event, be responsible for any work done by others or for any loss, damage, cost, or expense arising out of or resulting from such work; provided, that in the event Seller has engaged Subsuppliers in the performance of its obligations, Seller will have the same responsibilities to Buyer for such work as it has with respect to its own work.

## 21 LIENS

- 21.1 Seller shall promptly pay for all labor, services, equipment, materials, supplies, documentation or other items used or employed by it or on its behalf in the performance of the Purchase Order and shall keep and maintain all equipment, materials, supplies, and other items and the Facility Site and Project free from all mechanic's and other liens or claim or right of lien or other encumbrance. If any mechanic's or other lien or claim or right of lien or other encumbrance is filed upon or asserted against the Facility Site and/or Project by a Subsupplier due to Seller's or Subsuppliers' work, Seller shall discharge such lien or claim or right of lien or other encumbrance, and shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages arising from or in connection with any such lien or claim or right of lien or other encumbrance, as applicable, subject to Applicable Law.

## 22 INTELLECTUAL PROPERTY PROTECTION

- 22.1 Seller shall defend at its own expense any suit or action brought against Buyer or Owner based on a claim that any work furnished hereunder, or any part thereof, or the designed use of same, constitutes infringement of any patent, trademark or copyright of the United States, and Seller shall also pay all costs and damages awarded therein against Buyer. In case such work, or any part thereof, is in such suit held to constitute infringement and its use is enjoined, Seller shall, at its option and own expense either procure for Buyer the right to continue to use such work or part thereof, or replace it with substantially equivalent non-infringing work, or modify it so it becomes non-infringing; or if the foregoing is impracticable or impossible, refund the price paid for such work. Buyer shall not have the right to claim indemnity under this Article 22.1 unless it provides prompt written notice of the assertion of any claim of infringement and to make available all other needed information, assistance, and authority it possesses for the defense of any suit or proceeding in which such claim is asserted. Any such replacement or modification shall be accomplished pursuant to the provisions of Article 20.1 that apply for repair or replacement of defective Goods. The foregoing sets forth the entire responsibility of the parties with respect to claims relating to infringement.



## 23 CONFIDENTIALITY

Any information concerning the parties hereto which is designated as proprietary and disclosed to the other party incident to the performance of work pursuant to the Purchase Order is disclosed in confidence, and the transferee shall not publish or otherwise disclose it to others without the written approval of the transferor.

Buyer understands that special techniques in the arts and sciences, developed or accumulated by Seller at its own time and expense, will be employed to benefit Buyer under the Purchase Order, and agrees that such special techniques are proprietary and shall not be disclosed to any third party during or subsequent to the term of the Purchase Order without Seller's prior written consent.

## 24 APPLICABLE LAW

- 24.1 Seller, all Subsuppliers, all Goods and Services provided hereunder shall comply with all laws, treaties, ordinances, judgments, decrees, injunctions, writs and orders of any court or governmental agency or authority, and rules, regulations, codes, orders, interpretations of any federal, state, county, municipal, regional, environmental or other governmental body, instrumentality, agency, authority, court or other body having jurisdiction over the Project or any activity conducted at or in connection with the Project ("Applicable Law").
- 24.2 Seller shall indemnify, defend, and hold harmless Owner, Buyer, and their respective directors, officers, employees, parents and subsidiaries of any tier, agents, successors and assigns, and any and all agents, directors, officers, employees of any of the foregoing, (the "Indemnified Parties"), against and from any and all fines and penalties arising from or based on any actual violation of Applicable Law by Seller or any of its Subsuppliers, subject to Applicable Law.
- 24.3 Seller shall not under any circumstance apply to or enter into negotiations with any governmental authority or agency for acceptance of variations from or revisions to safety or health, or air, water or noise pollution, laws or regulations relating to the Purchase Order or the performance thereof, without Buyer's prior written approval.

## 25 PERMITS AND LICENSES

- 25.1 Unless obtained by Owner or Buyer, Seller shall obtain and pay for any permits, licenses, or royalties which may be required in Seller's name for the shipping, transportation, delivery, furnishing and unrestricted, perpetual, royalty-free use of the Goods, and shall furnish evidence thereof to Buyer.

## 26 TAXES/DUTIES

- 26.1 Seller agrees to pay, and that the Purchase Order Price is inclusive of, all taxes, fees and contributions on or measured by the income, gross receipts or assets of Seller or any of its Subsuppliers and all taxes, fees and contributions on or measured by employees or other labor costs of Seller or any of its Subsuppliers, including without limitation all payroll or employment compensation tax, social security tax or similar taxes for Seller's or any of its Subsupplier's employees and agrees that Seller shall pay all such amounts. Seller further agrees to pay and that the Purchase Order Price is inclusive of all import, export and other customs duties, charges, levies and fees imposed or incurred in connection with the shipping and delivery of any

equipment, materials, supplies or other items required for the Purchase Order to the Facility Site. In the event that Buyer should pay or be required to pay any of the foregoing items or any portion thereof, Seller shall reimburse Buyer therefor in full within five (5) days of receipt of written demand from Buyer for any such reimbursement.

- 26.2 If Seller is required by applicable law or regulation to collect any sales or use or similar tax from Buyer on account of the delivery of the Purchase Order to the Facility Site, then the amount of such tax shall be separately stated on Seller invoice and Buyer shall remit such tax to Seller.

## 27 GENERAL INDEMNITY

- 27.1 Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all losses, costs, damages, injuries, liabilities, claims, demand, penalties, including reasonable attorneys' fees arising from the death of or bodily injury to persons, (regardless of whether they are employees of an Indemnified Party, Seller or any Subsupplier, or unaffiliated with the Project, or otherwise (collectively, "Damages"), occurring prior to completion of the site activity under the Purchase Order, to the extent caused by the negligent act or omission of Seller or any of its Subsuppliers, or any of their respective employees or agents provided such death or bodily injury does not result from or is not caused in whole or in part directly or indirectly by a "nuclear incident" or a "precautionary evacuation" as defined in the Atomic Energy Act of 1954, as amended.
- 27.2 In any and all claims against one or more of the Indemnified Parties by any employee of Seller or of any of its Subsuppliers, the indemnification, defense and hold harmless obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or of any of its Subsuppliers, under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

## 28 ASSIGNMENT

- 28.1 This clause shall not, however, prohibit a transfer resulting from corporate merger. In the event Buyer transfers to another party any interest in the Goods and/or Services, Buyer shall obtain for Seller written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Seller and its Subsuppliers under this Purchase Order. Seller agrees that it shall have no right, power or authority to assign or delegate any of its rights or obligations under the Purchase Order, either voluntarily or involuntarily, or by operation of law, without prior written consent of Buyer and that any such unauthorized assignment or delegation shall be null and void and of no effect. This clause shall not, however, prohibit a transfer resulting from corporate merger. In the event Buyer transfers any interest in any work, Buyer will indemnify and hold harmless Seller from and against any claims, losses, damages, or liabilities which Seller may incur and which it would not have incurred but for such transfer.

## 29 NO WAIVER OF BREACH

- 29.1 Any failure by either party at any time, or from time to time, to enforce or require the strict compliance with and performance by the other party of any of the terms or conditions of the Purchase Order shall not constitute a waiver by either party or a breach of any such terms or

conditions or any other breaches, or the right of either party to avail itself of the remedies it may have for any such breach.

### **30 PUBLICITY**

- 30.1 Seller shall not disclose the nature of its work on the Project, or engage in any other publicity or public media disclosures with respect to the Project without the prior written consent of the Buyer which consent shall not be unreasonably withheld.

### **31 SEVERABILITY/SURVIVAL**

- 31.1 The provisions of the Purchase Order are severable, and, if any provision shall be determined to be illegal or unenforceable, such determination shall in no manner affect any other provision of the Purchase Order, and the remainder of the Purchase Order shall remain in full force and effect. In the event that any provision of the Purchase Order is held to be unenforceable or invalid by any court of competent jurisdiction, Buyer and Seller shall in good faith negotiate an equitable adjustment in the provisions of the Purchase Order to preserve its purpose and maintain the allocation of risk, liabilities and obligations originally agreed upon, to the maximum extent then possible under Applicable Law.
- 31.2 Notwithstanding anything to the contrary in the Purchase Order, the provisions of the Purchase Order setting forth (i) Seller's obligations and protections with respect to confidentiality, indemnification, and warranty; (ii) limitations on either party's liability; and (iii) any obligation which expressly or by implication survives termination of the Purchase Order, shall survive completion of the Goods and Services or the earlier termination under Article 16 or Article 17.

### **32 SUCCESSORS AND ASSIGNS**

- 32.1 The Purchase Order shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, executors, administrators and authorized assigns.

### **33 RESERVED**

### **34 BUYER INFORMATION**

- 34.1 Buyer represents that Seller may rely on information obtained in writing from Buyer that is necessary for the performance of the work.
- 34.2 Although the Goods or Services furnished under unit price items, if any, may differ from estimated quantities, the basis of payment for such Goods or Services shall be the actual amount of Goods or Services completed in each case, unless otherwise agreed in writing. Seller agrees that it will make no claim for loss of anticipated profits or for any other damages because no work is ordered under certain items or because of the quantities of Goods or Services actually completed are less than any estimates of quantity that have been or may be furnished to Seller.

### **35 BUYER FURNISHED MATERIALS**

- 35.1 Seller shall carefully note any visible shortage or damage to Buyer's furnished items prior to Seller's acceptance of delivery thereof and shall assume full responsibility for any loss or damage of such items thereafter. Seller shall promptly notify Buyer if any items supplied to Seller are

surplus and, without additional compensation, shall cooperate in the disposition of such surplus.

### **36 FORCE MAJEURE**

- 36.1 Any delay in or failure of performance by the Seller hereunder shall be excused if and to the extent caused by a "Force Majeure Event". Force Majeure Events are defined as fire, explosion, act of God, act of the public enemy, and change in law, or any other event that is beyond the control of and without fault on the part of the Seller and the effects of which could not be prevented or avoided by the exercise of due care or foresight.
- 36.2 In the event Seller, to the extent due to a Force Majeure Event, is rendered unable to perform any of its obligations or comply with any conditions under the Purchase Order, Seller shall give written notice to Buyer no later than three (3) days after the occurrence of such Force Majeure Event, with a description of the particulars of the Force Majeure Event, including the estimated duration of said Force Majeure Event or the effect thereof and the probable impact on Seller's performance under the Purchase Order. The effects of said Force Majeure Event shall, so far as possible, be remedied by Seller with all reasonable dispatch, and Seller shall use its best efforts to eliminate and mitigate the consequences thereof. The time for Seller's performance shall be extended for a period equal to the time such performance is delayed by said Force Majeure Event. Under no circumstances shall Seller be entitled to any additional compensation or damages of any kind or character by virtue of a Force Majeure Event. Any claim by Seller for an extension of time arising out of any alleged Force Majeure Event shall be made to Buyer in accordance with Article 9. In the event that the aggregate number of days of delays exceeds sixty (60), Seller shall have the right to terminate the Purchase Order for its convenience and/or renegotiate the terms of the Purchase Order with the Buyer. For any such termination, Seller shall be paid pursuant to Article 68. Termination for the Convenience of the Owner – Fixed price Supply.

### **37 DISPUTES**

- 37.1 In the event a dispute arises between the Parties regarding the application or interpretation of any provision of the Purchase Order, the aggrieved Party shall give notice in writing to the other Party and the Parties shall negotiate in good faith and attempt to resolve such dispute. If the Parties fail to resolve the dispute within thirty (30) days after delivery of such notice, each Party shall have the right to pursue any and all remedies available to it hereunder or available to it at law or in equity. Notwithstanding the existence of a dispute between the Parties and regardless of whether such dispute is the subject of dispute resolution pursuant to this Article 38, Seller shall not be entitled to suspend or otherwise delay its performance under the Purchase Order.

### **38 NO THIRD PARTY OR OTHER CLAIMS**

- 38.1 Seller agrees that nothing in any agreement between Owner and Buyer creates any rights in favor of Seller and Seller covenants not to sue Owner or Buyer as a third-party beneficiary of any such agreement.

### **39 DAMAGES**

- 39.1 In no event shall Owner, Buyer, or any of their respective parents, affiliates, subsidiaries, or any directors, officers, or employees of any of the foregoing be liable to Seller or any

of its Subsuppliers, whether based on delay, contract, tort, negligence, warranty, indemnity, strict liability, error or omission or otherwise, for any consequential, special, incidental, indirect, exemplary, multiple or punitive damages or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, or otherwise. Seller hereby releases Owner, Buyer and each of their respective parents, affiliates, subsidiaries, or any directors, officers and employees from any such liability.

#### **40 GOVERNING LAW AND VENUE**

- 40.1 The Purchase Order, unless it expressly provides to the contrary in the "Purchase Order Form", shall be governed by and construed in accordance with the laws of the State of Delaware, excluding any provisions or principals thereof which would require the application of the laws of a different jurisdiction. Any litigation initiated by and between the Parties arising out of or relating to the Purchase Order shall be conducted in the federal or state court of jurisdiction in the State whose laws govern the Purchase Order, and Buyer and Seller each consent to the jurisdiction of such court, and excluding FAR and DEAR clauses incorporated into the Purchase Order. FAR and DEAR clauses incorporated into the Purchase Order shall be governed by and construed in accordance with the federal law of government contracts.

#### **41 ARTICLE HEADINGS**

- 41.1 The Article headings herein have been inserted for convenience of reference only and shall not in any manner affect the construction, meaning or effect of anything herein contained nor govern the rights and liabilities of the Parties.

#### **42 INSPECTION/TESTING/ACCEPTANCE**

- 42.1 All Goods shall be subject to inspection and testing by the Buyer and/or Owner on Seller's or its Subsupplier's premises before, during, and after manufacture, at reasonable times. Notwithstanding any inspection at Seller's or its Subsupplier's premises, acceptance of the Goods shall be at the Facility Site unless expressly indicated otherwise in the Purchase Order.
- 42.2 If any inspection or test, whether preliminary or final, is to be made on Seller's or its Subsupplier's premises, Seller shall ensure that the Buyer is furnished, without additional charge, all reasonable facilities and assistance required for such inspection or test to be conducted safely and conveniently. Any inspection or test by the Buyer or failure to inspect or test by the Buyer shall not relieve Seller of any responsibility or liability with respect to the Goods; however, such failure to inspect shall be deemed an acceptance of the Goods.
- 42.3 If the results of the tests conducted indicate that any Goods or Services do not comply with the requirements set forth in the Purchase Order, the Seller shall, at his expense, make all necessary adjustments, repairs, replacements or changes in order to attain the required compliance. Until the required compliance is achieved, all subsequent tests by Buyer or the Owner shall be made at Seller's expense.

#### **43 BUYER'S WORK; OFFSET**

- 43.1 If Seller requests Buyer to provide the services of its personnel or equipment, or provide permanent, temporary or consumable materials for Seller's use, Buyer will charge Seller the reasonable direct cost for such items.

- 43.2 In the event of emergency, Buyer may proceed to furnish Goods or Services and backcharge Seller for Buyer's reasonable direct costs and expenses.

- 43.3 Prior to completion of the Purchase Order the reasonable direct costs mentioned in this Article 44 will be treated as a Purchase Order Price adjustment. Seller shall pay such costs within thirty (30) days from receipt by Seller of a proper, complete and fully substantiated invoice. The performance of such work by Buyer shall not relieve Seller of any of its responsibilities under the Purchase Order.

- 43.4 Independently of its backcharge rights, Buyer shall at any time and from time to time be entitled, but not required, to offset, against any obligation of Buyer to Seller, any obligation of Seller to Buyer under the Purchase Order, by giving Seller written notice thereof.

#### **44 MATERIALS AND WORKMANSHIP**

- 44.1 Materials shall be new and unused and the Seller shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

- 44.2 The Seller shall comply with all laws, ordinances, rules and regulations applicable to the work. If the Seller observes that the specifications or drawings are at variance therewith, Seller shall give Buyer prompt written notice thereof and any necessary change shall be adjusted by appropriate modification. If the Seller performed any work which it knew or reasonably should have known was contrary to such laws, ordinances, rules or regulations, Seller shall bear all reasonable direct costs arising therefrom.

- 44.3 Designs, materials, construction, workmanship and testing, including shop and field work of all equipment furnished and all work performed under this purchase agreement, shall in all respects comply with the latest ASME, AIEE, NEMA, ASA, and other applicable national, state, local and recognized institutional Codes.

#### **45 SHOP ASSEMBLY AND INSPECTION**

- 45.1 The Owner, Buyer and their representatives shall at all times have reasonable access to the work wherever it is in preparation, and the Seller shall provide proper facilities for such access and for inspection. These inspections will include, but not be limited to, the verification and implementation of the Seller's standard material control and in-house inspection procedures.

- 45.2 Shop surveillance, if required by the specification, will be performed by representatives from Buyer quality assurance; however, these surveillance efforts by Buyer will not relieve the Seller of any responsibility for the stated conditions of the specification and shall not be considered as a waiver of warranty or other rights.

- 45.3 Buyer surveillance personnel will not accept equipment or material in the Seller's plant. Lack of rejection by Buyer surveillance personnel shall not constitute acceptance of the work, equipment or material.

- 45.4 All equipment or material produced by the Seller will undergo final inspection during site receiving inspection.

- 45.5 The basic equipment shall be shop assembled, fitted, match-marked and then dismantled to the extent necessary for shipping in largest practical sections. Complete assemblies requiring the least possible field assembly are required. Sufficient notice shall be given to Buyer prior to the time of dismantling and shipping so that Owner and Buyer or their representatives may inspect the completed shop work.

- 45.6 Neither inspection, partial or final payment, nor approval by the Owner, Buyer or their representatives, shall lessen the

responsibility of the Seller to make the work and/or equipment comply with the requirements of the Purchase Order.

- 45.7 If the specifications, laws, ordinances, or any public authority require any work to be specially tested or approved, the Buyer shall assume the cost thereof, unless stated otherwise in the Purchase Order, and Seller shall give Buyer seven (7) days' notice of its readiness for inspection or testing.
- 45.8 If the results of the tests conducted indicate that the equipment does not comply with the performance requirements set forth in the drawings or specifications, the Seller shall, at his expense, make all necessary adjustments, repairs, replacements or changes in order to attain the required performance. Until the required performance is achieved, all subsequent tests by Buyer or the Owner shall be made at Seller's expense.

#### **46 INDEPENDENT CONTRACTOR**

- 46.1 Seller is an independent contractor, and neither an employee, agent, nor representative of the Buyer or the Owner, and shall maintain complete control of, and responsibility for, its Subsuppliers, employees, agents, means, methods, and operations.

#### **47 SUSPECT/COUNTERFEIT PARTS**

- 47.1 Supplier's shall supply products under this order that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the supplier to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
- 47.2 If it is determined that a suspect/counterfeit part has been supplied, Buyer will impound the items pending a decision on disposition. The Supplier may be required to replace such items with items acceptable under the terms of the Purchase Order and shall be liable for all costs relating to the impoundment, removal, and replacement. Buyer may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

#### **48 PRICE-ANDERSON AMENDMENTS ACT**

- 48.1 The Department of Energy has promulgated Nuclear Safety Rules in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules may provide a basis for the assessment of civil and criminal penalties under the PAAA. Nuclear Safety Rules subject to enforcement under PAAA are 10 CFR 820, "Procedural Rules for DOE Nuclear Activities", 10 CFR 830, "Nuclear Safety Management Subpart A.
- 48.2 This Order is subject to the requirements of the above rules if the performance of work involves conducting activities

(including providing items and services), that affects, or may affect, the safety of DOE nuclear facilities.

- 48.3 Supplier assumes full responsibility and shall indemnify, save harmless, and defend Buyer and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors.

#### **49 SECURITY AND SITE ACCESS**

- 49.1 All persons on the DUF6 project site are required to have a DOE identification badge and a General Employee Training (GET) badge. These badges are required for access through the DOE security gate and must be worn, visible at all times while on DOE property.
- 49.2 The DUF6 site is not within the secure perimeter of the Gaseous Diffusion Plant and there are no known radiological hazards on the DUF6 site; therefore, no other badges or training are required at this time for general access to the DUF6 site.
- 49.3 DOE identification Badge - Employees will be photographed when they first report to work. At the present time it takes approximately two weeks for the badge to be issued after the picture is taken. Contractor is attempting to shorten this turnaround time. Employees and visitors who do not have a DOE badge may be escorted onto the DUF6 site by subcontractor employees who are properly badged. Each escort is allowed to escort up to three unbadged individuals at one time. The individuals being escorted must remain within the escort person's field of view at all times.
- (a) There is no charge for issuing DOE Badges. However, since unauthorized possession of a DOE identification badge is a serious security issue, the seller will be assessed an administrative fee of \$250.00 for each DOE identification badge which is not returned at the completion of the subcontractor's task or upon employee termination.
- (b) GET and Site Access Badging - When employees first report to work at the DUF<sub>6</sub> site they will be required, in addition to being photographed for the DOE identification badge, to attend a one and a half hour site orientation lecture provided by Contractor at no charge to the subcontractor, followed by a half hour computerized test. After attending the orientation lecture and successfully completion of the test, the employee will be issued a GET and Site Access badge. This badge attests that the employee has received the basic safety and security training required for access to the site. Unlike the identification badge, the GET badge is transportable between subcontractors on the DUF<sub>6</sub> site and is valid for two years from the date of issue. Employees must retake the orientation lecture and test prior to the expiration date of their badge or if their badge is rescinded for safety/security violations. A certificate of completion of GET is also provided to the employee. If the GET badge is lost, this certificate may be used as evidenced of GET certification pending issuance of a new badge.

#### **50 FOREIGN NATIONALS**

(As used in this article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States,

is a citizen of a foreign nation, and has not been naturalized under U.S. law.)

- 50.1. The Subcontractor shall obtain the approval of Procurement Representative, in writing, prior to any visit to a DOE or Contractor Operated facility by any Foreign National in connection with work being performed under this Subcontract, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, Subcontract service work, including delivery of materials, or for courtesy purposes. The term visit also includes officially-sponsored attendance at a DOE or Contractor event offsite from DOE/DUF6 facility, but does not include offsite events and activities open to the general public. Subcontractor should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the Contractor Procurement Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the Procurement Representative.
- 50.2 In addition, the Subcontractor shall obtain the approval of the Contractor Procurement Representative, in writing, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any lower tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3.
- 50.3 In the performance of offsite work, Foreign Nationals only incidentally involved with the Subcontract work, and who have no knowledge that their activities are associated with the Subcontract work, are exempt from the above provisions.

## **51 COMPLETE AGREEMENT**

- 51.1 The Purchase Order constitutes the complete agreement between the Parties with respect to the subject matter hereof, and supercedes all prior written or oral contracts, agreements, representations and/or understandings of any kind or nature that the Parties may have entered into or had prior to the date hereof with respect to the subject matter hereof.
- 51.2 Seller shall have accepted these Conditions provided Seller has received these Conditions and has accepted the Purchase Order by written acknowledgement and acceptance.

## **51A LIMITATION OF LIABILITY**

- 51A.1 Neither Seller nor its Subsuppliers shall be liable whether arising under contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant or other facility shutdown, nonoperation or increased expense of operation, service interruptions, cost of purchased or replacement power, claims of Buyer's or Owner's customers, contractors, governmental fines or penalties against Buyer, loss of use of capital or revenue, cost of money, radioactive contamination, or for any special, indirect, incidental, or consequential loss or damage of any nature arising at any time from any cause whatsoever.
- 51A.2 The total liability of Seller and its Subsuppliers, whether in contract, tort (including negligence), strict liability or otherwise, shall not exceed the price paid or payable under this Purchase Order including any amendments thereof.

51A.3 The liability of Seller for any claims, whether based upon contract, tort (including negligence), strict liability or otherwise, for any loss or damage arising out of, connected with, or resulting from the performance or breach of the Purchase Order shall be limited to specifically identified written claims submitted by the Buyer to Seller prior to the expiration of one (1) year after the existence of such claim was, or should with due diligence have been, discovered by Buyer.

51A.4 The provisions of this Article 51A shall apply notwithstanding any other provision of the Purchase Order or any other agreement.

## **52 FAR AND DEAR CLAUSES (INCORPORATED BY REFERENCE)**

This purchase order incorporates certain clauses below by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Buyers Procurement Representative except in the first sentence of paragraph (a) of Article 68, where it does not change. Government means the owner or the Buyer except that the term "Government" or its authorized representatives shall retain its original meaning where (1) the provision pertains to, addresses or governs rights and obligations in property (real, personal or intellectual), (2) a right, act, authorization or obligation can be granted or performed only by the Government (e.g., under the Nuclear Hazards Indemnity Agreement provision), (3) the intent of the provision is to provide benefit or protection to the Government, or (4) when access to the suppliers proprietary financial or other data is required or (5) except in the first sentence of paragraph (a) of Article 68 where it does not change. FAR clauses may be accessed electronically at <https://www.acquisition.gov/far/>. DEAR clauses can be found at <http://www.management.energy.gov/DEAR.htm>. Upon request, MCS will make their full text available

## **53 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015)**

FAR 52.203-13

*(Article is applicable if the value of this subcontract exceeds \$5 million, and the performance period exceeds 120 days)*

## **54 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

FAR 52.204-9

*(Article is applicable if subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system)*

## **55 UTILIZATION OF SMALL BUSINESS CONCERNS (NOV 2016)**

FAR 52.219-8

**56 SMALL BUSINESS SUBCONTRACTING PLAN  
(JAN 2017)**

FAR 52.219-9

*(Article applicable if subcontract exceeds \$700,000. Article does not apply if subcontractor is a Small Business concern)*

**57 NOTIFICATION OF EMPLOYEE RIGHTS  
CONCERNING PAYMENT OF UNION DUES OR  
FEES (DEC 2004)**

FAR 52.222-39

*(Article applicable if this subcontract exceeds \$150,000)*

**58 EQUAL OPPORTUNITY (APR 2016)**

FAR 52.222-26

**59 EQUAL OPPORTUNITY FOR VETERANS (OCT  
2015)**

FAR 52.222-35

**60 EQUAL OPPORTUNITY FOR WORKERS WITH  
DISABILITIES (JUN 2014)**

FAR 52.222-36

**61 COMBATING TRAFFICKING IN PERSONS (MAY  
2015)**

FAR 52.222-50

**62 PRIVACY AND SECURITY SAFEGUARDS (AUG  
1996))**

FAR 52.239-1

**63 SECURITY (JUN 2009)**

DEAR 952.204-2

*(Applicable if Subcontractor Employees will require access authorizations in performance of the work (L or Q clearances)*

**64 COMPUTER SECURITY (AUG 2006)**

DEAR 952.204-77

*(Applicable if Subcontractor Employees will have access to computers owned, leased or operated on behalf of the DOE)*

**65 NUCLEAR HAZARDS INDEMNITY AGREEMENT  
(AUG 2016)**

DEAR 952.250-70

*The following Articles are applicable to the extent this Subcontract uses funds appropriated or otherwise made*

*available by the American Recovery and Reinvestment Act of 2009. (See Special Provisions included elsewhere in the Subcontract for applicability)*

**66 AUDIT AND RECORDS-NEGOTIATION (JUN 1999)  
WITH (ALTERNATE I) (MAR 2009)**

FAR 52.215-2

**67 WHISTLEBLOWER PROTECTIONS UNDER THE  
AMERICAN RECOVERY AND REINVESTMENT  
ACT OF 2009 (MAR 2009)**

FAR 52.203-15

**68 DEFAULT (FIXED PRICE SUPPLY AND  
SERVICE)(APRIL 1984)**

FAR 52.249-8, Default (Fixed Price Supply and Service (April 1984) shall be incorporated into the Purchase Order as if fully set out therein. Any amounts paid by Seller hereunder shall be credited toward the limitation of liability in Article 53A, Limitation of Liability.

**69 TERMINATION FOR CONVENIENCE OF THE  
GOVERNMENT (FIXED-PRICE) (MAY 2004)**

FAR clause 52.249-2, Termination for Convenience of the Government (Fixed-Price) (May 2004) shall be incorporated into the Purchase Order as if fully set out therein.

**70 AFFIRMATIVE PROCUREMENT OF  
BIOBASED PRODUCTS UNDER SERVICE  
AND CONSTRUCTION CONTRACTS (SEPT  
2013)**

FAR 52.223-2

**71 POLLUTION PREVENTION AND RIGHT-TO-  
KNOW INFORMATION (MAY 2011)**

FAR 52.223-5

**72 WASTE REDUCTION PROGRAM (MAY 2011)**

FAR 52.223-10

**73 COMPLIANCE WITH ENVIRONMENTAL  
MANAGEMENT SYSTEMS (MAY 2011)**

FAR 52.223-19

**74 SUSTAINABLE ACQUISITION PROGRAM (OCT  
2010)**

DEAR 952.223-78

**75 EXECUTIVE ORDER 13423,  
STRENGTHENING FEDERAL  
ENVIRONMENTAL, ENERGY, AND  
TRANSPORTATION MANAGEMENT (MAY  
2004)**

DEAR 970-5223-6

**76 FOR PROCUREMENTS IN EXCESS OF \$3,000  
BUY AMERICAN ACT (OCT 2016)**

FAR 52.225-1

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