

**FLUOR FEDERAL SERVICES, INC. – PADUCAH DEACTIVATION PROJECT**  
**TERMS AND CONDITIONS OF RENTAL**

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- 1. ARBITRATION:** In the event that the Lessee is required to arbitrate a dispute with a third party, which dispute arises out of this Purchase Order or is in any way connected with Lessor, Lessor agrees to join in such arbitration proceeding as the Lessee may direct and shall submit to such jurisdiction and be finally bound by the judgment rendered in accordance with the arbitration rules as may be established therein.
- 2. ASSIGNMENT:** Neither this Purchase Order nor any portion hereof shall be assigned or delegated without Lessee's prior written consent and any such assignment or delegations shall be void. Lessee reserves the right to assign this Purchase Order to the U.S. Department of Energy or U.S. Department of Energy's successors or assigns or to Lessee's affiliates and Lessor hereby consents to any such assignment.
- 3. BACKCHARGES:** Material/equipment deficiencies which create an expenditure of labor hours to correct may be accumulated and backcharged to the Lessor prior to closeout of this Purchase Order. Copies of Lessee's inspection report, Nonconformance Report, or Overage, Shortage, and Damaged Report will be used as documentation. Prior to expenditure of funds to remedy the deficiency, the Lessee will normally notify the Lessor of the deficiency and request any recommendations for solution. If critical schedules are impacted, Lessee may proceed with repair without prior notification to Lessor.
- 4. BUSINESS CONDUCT AND ETHICS EXPECTATIONS:** Lessee's "Code of Business Conduct and Ethics" publication is available at [www.fluor.com/Sustainability/Ethics\\_Compliance/Pages/Supplier\\_Expectations.aspx](http://www.fluor.com/Sustainability/Ethics_Compliance/Pages/Supplier_Expectations.aspx). Lessor confirms that it has received or accessed and reviewed Lessee's requirements for business conduct and ethics and agrees that it and its suppliers and contractors, and the employees, agents and representatives of each shall at all times comply with Lessee's Expectations, and where more stringent, applicable laws and Lessor's own business conduct guidelines and policies. Violation of this clause may be deemed by Lessee to be a material breach of this Order and in such event, Lessee may, without prejudice to any other rights or remedies Lessee may have, cancel further performance by Lessor under this Purchase Order, in whole or in part, pursuant to the clause titled Termination for Convenience and Delays. Lessee's Expectations may be modified at any time by publication at the website address above and general mailing to its suppliers and contractors at the address contained in Lessee's supplier and contractor database. The most current publication of Lessee's Expectations shall apply to this clause.
- 5. CHANGES:** No substitutions shall be made in this Purchase Order without the prior written consent of the Lessee. The Lessee shall have the right by written direction to make changes in the specification and drawings for goods or services covered by this Purchase Order. If Lessor believes that such change affects the price or delivery date for such goods or services, Lessor shall so notify Lessee in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Lessor shall suspend performance of the change unless thereafter released in writing by Lessee to perform said change, and Lessee and Lessor shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change.

Lessor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Lessor receives direction to make such changes. Lessor shall not suspend performance of the unaffected portion of this Purchase Order while Lessee and Lessor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Lessee. If released in writing by Lessee, Lessor shall comply with and perform such change in accordance with the terms of this Purchase Order during the time Lessor and Lessee require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions of terms of this Purchase Order shall be binding upon Lessee nor will extra compensation be paid by Lessee unless the agreement or understanding is made in writing.

- 6. COMPLETE AGREEMENT:** This Purchase Order shall become a binding agreement of Lessor and Lessee upon Lessor signing and returning an acceptance copy of this Purchase Order, or upon Lessor otherwise acknowledging acceptance of this Purchase Order or commencing performance of this Purchase Order, whichever occurs first. This Purchase Order, together with the specifications, drawings and documents referred to herein and the other

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documents referred to therein, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writing pertaining to this Purchase Order, or the subject matter hereof, are superseded hereby. Any reference to Lessor's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.

Any invoice, acknowledgment or other communication issued by Lessor in connection with this Purchase Order shall be construed to be for record and accounting purposes only. Any terms and conditions stated in such communication shall not be applicable to this Purchase Order and shall not be considered to be Lessor's exceptions to the provisions of this Purchase Order. Trade custom and/or trade usage is superseded by this Purchase Order and shall not be applicable in the interpretation of this Purchase Order.

Anything that may be called for in the specifications and not shown on the drawings, or shown on the drawings and not called for in the specifications, shall be of like effect as if called for and shown in both. In the event of any ambiguities, express conflicts or discrepancies in the specifications, drawings or other documents which are a part of this Purchase Order, Lessor shall immediately submit the matter to Lessee for its determination and shall comply with the determination of Lessee in such matter.

7. **DELAYS:** Time of delivery is of the essence for this Purchase Order. Lessor shall promptly notify Lessee of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Lessee. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, or other similar causes beyond Lessor's control and which Lessor could not have reasonably foreseen or provided against, Lessee shall have the right to either: (i) terminate by written notice to Lessor all or part of this Purchase Order in accordance with its terms or (ii) extend the date of delivery or performance for a period equal to the durations of the delay, but Lessor shall not be entitled to any extra compensation for such delay. Lessor shall not be excused from performance hereunder where alternate sources of supply of materials, goods or services are available.
8. **DISPUTES:** Any dispute arising out of or related to this purchase order shall be resolved by litigation in a court of competent jurisdiction in the Commonwealth of Kentucky. Prior to and/or during litigation the Lessor and the Lessee may attempt to settle any dispute by negotiation and/or by mediation and/or by arbitration as they may agree.

Lessor hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Purchase Order and agrees that any such dispute may, at Lessee's option, be tried before a judge sitting without a jury.

9. **FOREIGN NATIONALS:** In accordance with DOE Order 142.3A, Contractor Requirements Document (CRD) the terms of which are incorporated by reference, and are flowed to the Lessor and its subcontractors at any tier, the Lessor has the responsibility to identify to the Lessee any personnel who are Foreign Nationals who may be involved, working with Lessee personnel, or have access to Department of Energy information during the performance of this Purchase Order.

Such personnel (whether off or on site) who will be involved, working with, or visiting Lessee personnel (including making deliveries), or be assigned to work at the site must obtain approval of the Lessee before such involvement can take place. This approval requirement includes access to any Department of Energy information used in performance of this contract. A foreign national is defined as a person who is a stateless person or is not a United States National (i.e., an immigrant alien is considered a foreign national). A stateless person is one who is currently without nationality by either the action of a state withdrawing the protection of nationality; by his/her own action in effectively renouncing the nationality previously held or because he/she has never held nationality due to the circumstances of birth.

Each individual must complete applications allowing six to eight weeks for processing after submitting the required information. The Lessor should contact the Lessee to obtain the necessary information and forms.

10. **HAZARDOUS MATERIALS:** Lessor shall notify Lessee in writing if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other health, safety and/or environmental regulations. Lessor shall furnish: all appropriate shipping certification; labeling in compliance with the Workplace Hazardous Materials Information System; Material Safety Data Sheets in compliance with the Workplace Hazardous Materials Information System; and instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by Lessee's non-technical personnel and sufficiently specific to identify all action which the user must take concerning the material. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to any applicable transportation regulations."

The Lessee shall have the right to use, duplicate and disclose any data to which this clause is applicable. The purpose of this right is to: apprise personnel of the hazards to which they may be exposed; obtain medical treatment for those affected by the material; and, other uses in connection with these same purposes.

11. **INDEMNITY:** Lessor agrees to defend, indemnify and hold harmless Lessee and U.S. Department of Energy, the affiliated companies of each, and their members, managers, directors, officers, employees, agents and representatives, from and against all claims, demands, causes of action, liability, loss or expense arising from or relating to any actual or asserted failure by Lessor to comply with any law, ordinance, regulation, rule or order, or with this Purchase Order. This Section includes, but is not limited to, fines or penalties by government authorities and claims arising from Lessor's actual or asserted failure to pay taxes.

Violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of goods, materials, equipment, methods, processes, designs or information furnished by Lessor or its suppliers. Should any goods or services provided by Lessor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Lessor shall, at Lessee's option, either procure for Lessee and U.S. Department of Energy the right to continue using such goods or services, replace same with equivalent, non-infringing goods or services, or modify the goods or services so that the use thereof becomes non-infringing, provided that any such modification or replacement is of equal quality and provides equal performance to the infringing goods or services.

The preceding paragraph shall not apply to any goods, or any part thereof, manufactured to designs furnished and required by Lessee, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Lessor hereunder with other goods infringes a patent, if such process or other goods were not supplied by Lessor and Lessor's supplying of the goods hereunder does not constitute contributory patent infringement.

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Injury to or death of persons (including employees of Lessee, U.S. Department of Energy, Lessor and Lessor's suppliers) or from damage to or loss of property (including the property of Lessee or U.S. Department of Energy) arising directly or indirectly out of this Purchase Order or out of any acts or omissions of Lessor or its suppliers. Lessor's defense and indemnity obligations hereunder include claims and damages arising from non-delegable duties of Lessee or U.S. Department of Energy or arising from use by Lessor of construction equipment, tools, scaffolding or facilities furnished to Lessor by Lessee or U.S. Department of Energy, contamination, pollution, or public or private nuisance, arising directly or indirectly out of this Purchase Order or out of any acts or omissions by Lessor, its suppliers or sub suppliers.

Lessor's defense and indemnity obligations shall apply regardless of whether the party to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the negligence or willful misconduct of, or by defects in design furnished by, the party to be indemnified. Lessor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Lessee or U.S. Department of Energy for legal action to enforce Lessor's indemnity obligations.

In the event that any indemnity provisions in this Purchase Order are contrary to the law governing this Purchase Order, then the indemnity obligations applicable hereunder shall be construed to apply to the fullest extent allowed by applicable law.

With respect to claims by employees of Lessor or its suppliers, the indemnity obligations under this Purchase Order shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Lessor, its suppliers or sub suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Lessor waives any limitations of liability arising from workers' compensation or such other acts or regulations.

Lessor acknowledges specific payment of \$10.00 incorporated into the Purchase Order Price as legal consideration for Lessor's indemnities as may be provided in this Purchase Order.

**12. INDEPENDENT CONTRACTOR:** Lessor shall act as an independent contractor and not as an agent or employee of Lessee or U.S. Department of Energy and shall not subcontract any portion of the work without the written consent of Lessee.

**13. INSPECTION:** Equipment leased under this Order is to be delivered to the Lessee in good operating condition, and will be returned to the Lessor in the same condition as delivered, less normal wear and tear. Except as otherwise provided in this Order, all shipments shall be subject to complete assembly, final inspection and acceptance within a reasonable time by Lessee after receipt at destination. Reasonable time will vary as may be appropriate to the characteristics of the equipment so leased. Lessee further reserves the right to inspect all equipment during any stage of preparation or repair by Lessor or Lessor's suppliers.

**14. INVOICING**

Any of the following conditions will be considered just cause for withholding payment and/or returning invoices to Lessor without loss of discount privileges:

1. The invoice, packing list and/or Purchase Order do not agree in all respects.
2. Errors or omissions have been made in the Lessor's invoice; including Purchase Order Line Item Reference Number on Packing List and Invoices

**Invoices must include the following information:**

1. Complete Purchase Order number
2. Purchase Order Line Item Number(s) for each item on the invoice.
3. Quantity for each item.
4. Material description.
5. Material tag number (if applicable).
6. Net price per item.
7. Extended total value for the quantity invoiced.
8. Payment terms.

**INVOICES AND ALL SUPPORTING DOCUMENTATION SHALL BE TRANSMITTED TO:**

**Fluor Federal Services, Inc. – Paducah Deactivation Project**  
**P.O. Box 369**  
**Kevil, KY 42053**  
**Attn: Accounts Payable**

**Email address:** [FluorAccountsPayable@ffspaducah.com](mailto:FluorAccountsPayable@ffspaducah.com)

**Combining two or more Purchase Orders on one invoice is not acceptable!**

The final invoice against this Purchase Order shall be marked "Order Complete." Lessee may require Lessor to execute a lien release and certification of full payment satisfactory in form and content to Lessee as a condition to making payment to Lessor.

Payment will be made only to Lessor shown on the face of this Purchase Order.

Unauthorized billing for component parts of an item will not be accepted. Partial quantities of complete units are acceptable; e.g., 10 of a total of 50 units.

Payment of Lessor invoices will be withheld pending receipt of all information and/or Lessor data requested on this order.

Lessee reserves the right to refuse payment, without loss of cash discount, on invoices for charges not previously authorized in writing by Lessee.

For electronic funds transfer, Lessor must provide all necessary banking information with each invoice. Information shall include:

Bank Name Bank address Swift code and Intermediary bank (if available).

**15. LAWS AND REGULATIONS:** Lessor warrants that all goods and services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances and regulations, and further Lessor shall provide all permits, certificates and licenses which may be required for the performance of the Purchase Order. This Purchase Order shall be subject to the law and jurisdiction of the Commonwealth of Kentucky unless expressly designated otherwise in the Purchase Order.

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The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Purchase Order and shall be disclaimed and excluded from any contracts placed by Lessor with its suppliers.

Lessor further warrants that all goods furnished by Lessor in performance of this Purchase Order will comply fully with the Occupational Safety and Health Act of 1970 (84 U.S. Stat 1590), as amended and the State plans approved under such Act, and the regulations there under, to the extent applicable to such equipment, and in addition to any other rights or remedies which Lessee may have, Lessor shall indemnify, defend and hold harmless Lessee and its U.S. Department of Energy from and against any and all claims, loss, or liability arising from failure of such goods to comply therewith.

Lessor certifies that it has an affirmative action policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap, that it maintains no employee facilities segregated on the basis of race, color, religion or national origin and that it is not debarred or suspended from being awarded Federal or Federally assisted contracts.

Lessor hereby certifies that the goods and services provided hereunder shall be produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof, and that each invoice submitted hereunder shall be correct and authentic and the only one issued for the goods and services mentioned.

Lessor certifies that it is in compliance, and shall at all times remain in compliance, with all applicable anti-corruption and anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended.

**COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS AND SUBCONTRACTS:** The Lessor acknowledges that work performed under this contract is done as work subcontracted by the Lessee under contract to the U.S. Department of Energy. The Lessor agrees to comply with:

- (i) FAR 52.203-13, Contractor Code of Business Ethics; Utilization of Small Business Concerns (Apr 2010), if the subcontracts exceeds \$5,000,000 and has a performance period of more than 120 days,
- (ii) FAR 52.219-8, Utilization of Small Business Concerns (May 2014) (15 U.S.C. 637 (d)(2) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities,
- (iii) FAR 52.222-26, Equal Opportunity (Mar 2007)(E.O. 11246),
- (iv) FAR 52.222-35, Equal Opportunity for Veterans (Jul 2014)(38 U.S.C. 4212),
- (v) FAR 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793)
- (vi) FAR 52.222-37, Employments Reports on Veterans (Jul 2014) (38 J.S.C. 4212),
- (vii) FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR 52.222-40,
- (viii) FAR 52.222-50, Combating Trafficking in Persons (Feb 2009) (22 U.S.C. 7104 (g)),
- (ix) FAR 52.225-1, Buy American Act – Supplies, (FEB 2009)
- (x) FAR 52.222-41, Service Contract Act of 1965 (NOV 2007)

Full text available upon request or at <http://farsite.hill.af.mil/>

*This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5 (a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.*

*This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5 (a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.*

- 16. LIENS:** Lessor agrees to indemnify, hold harmless and defend Lessee and U.S. Department of Energy from and against all laborers', material men, mechanics, or other liens arising from the performance of Lessor's obligations under this Purchase Order and shall keep the premises of Lessee and U.S. Department of Energy free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, Lessor, for itself and all of its suppliers of any tier, waives all rights of lien against the property and premises of Lessee and U.S. Department of Energy for labor performed or for goods furnished for the Work.
- 17. LOWEST PRICE WARRANTY:** Lessor warrants that the prices set forth in this Purchase Order do not exceed those charged by Lessor to any other customers purchasing the same item in like or comparable quantities. The Lessee or authorized representative shall have the right to examine the records of the Lessor as necessary to assure that the prices charged for the items under this Purchase Order do not exceed those charged by the Lessor to any other customer purchasing the same items in like or comparable quantities.
- 18. ORDER OF PRECEDENCE:** Any inconsistencies in this contract shall be resolved by giving precedence in the following order: (a) The Statement of Work or Specifications, if any; (b) Terms and Conditions of Rental; (c) Other parts of the Purchase Order; and, (d) Attachments, Exhibits or other referenced material. For on-site work, any inconsistency between the above and the Special Provisions Contractor On-Site Services, the latter will govern.
- 19. PACKAGING AND DELIVERY:** All packages will have a copy of the Packing List inside the package and a separate copy on the outside. The Packing List must include the following: Purchase Order number and the contents listed by line number and nomenclature matching the Lessee's Purchase Order. Packages/shipments that cannot be properly identified against a Lessee Purchase Order are subject to rejection and return at Lessor expense. Unless specifically directed by the Lessee's or designated Contract Technical Representative, deliveries shall be at the following location and times:

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Fluor Federal Services – Paducah Deactivation Project  
C-720 Receiving  
5511 Hobbs Road  
Kevil, KY 42053

**Receiving Hours:** Monday through Friday (except holidays) 7:00 am to 3:00 pm, Central Time

**Holidays:** The following holidays are observed by the Lessee for all employees: New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day. Any other day designated by Federal statute, Executive order, or the President's proclamation.

- 20. PRICE AND PAYMENT:** Lessor represents that the price charged is the lowest price charged by Lessor to a Lessee of a function similar to the Lessee. Lessor agrees to remit to the Lessee any taxes, which Lessor collected improperly or illegally. Payment will be made by Lessee upon the receipt and approval of Lessor's monthly invoice covering rentals earned during preceding month. shall furnish, if and when requested by Lessee, affidavits that all bills have been paid, such affidavits to be supported by receipted bills. Prior to payment, Lessee may require Lessor to release all liens and claims in a form suitable to Lessee. Rental Rates shall be monthly, unless otherwise instructed on the face of this order and should be based on single shift operations of 200 hours per month. Partial monthly rentals shall be pro-rated on the basis of a thirty day month. Any scheduled second or third shift overtime rates must be negotiated in advance and shown on the face of this Order. Unless otherwise stated herein, no payments will be made on invoices representing advanced monthly rentals.
- 21. REPAIRS AND MAINTENANCE:** Lessee's repair obligations under this lease are expressly limited by and subject to the applicability of the manufacturer's warranty to any repair situation. Before Lessor shall call on Lessee to make any repairs, Lessee agrees to pay all minor repair and maintenance cost including fuel and lubricants. Minor repair and maintenance is defined as those repairs where the costs for replacement part(s) and labor do not exceed 10% of the value of the equipment or \$250.00 whichever is less, for each component repaired except that consumed parts such as filter, wire rope, scraper blades, excavator points, and like items are minor repairs. Major repairs are for the account of the Lessor. Major repairs are defined as those involving any single equipment component in which the costs for replacement part(s) and labor for the component exceed 10% of the value of the equipment or \$250.00 whichever is less. Costs of tire replacements to construction equipment caused by normal wear and tear are for the account of the Lessor. When equipment is returned to Lessor, any claims for damages or shortages must be made within one working day after receipt of equipment on Lessor's premises. Lessor's claims made are subject to inspection of equipment and approval of claim by Lessee prior to acceptance and payment of any invoice for such damages or shortages.
- 22. RESERVATION OF RIGHTS:** The making or failure to make any inspection of, or payment for, the goods or services covered by this Purchase Order shall in no way impair Lessee's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Lessee of the goods or services, nor affect in any way Lessor's obligations under this Purchase Order notwithstanding Lessee's opportunity to inspect the goods or services, Lessee's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor Lessee's earlier failure to reject the goods or services.
- 23. RIGHT TO OFFSET:** Lessee, without waiver or limitation of any rights or remedies of Lessee or U.S. Department of Energy, shall be entitled from time to time to deduct from any amounts due or owing by Lessee to Lessor in connection with this Purchase Order, any and all amounts owed by Lessor to Lessee or U.S. Department of Energy.
- 23. SHIPMENT:** Partial shipments must be accompanied by identifying documents, but such shipments shall not be construed as making the obligations of Lessor severable. No charge will be allowed for packing, shipment or handling unless stated in this Purchase Order. Lessor shall pay for damaged goods resulting from improper packing or marking. Itemized packing lists must accompany each shipment. Lessee's count will be accepted as final and conclusive on shipments not accompanied by Lessor's itemized packing list. If applicable, shipments shall be palletized to the maximum extent of palletization. Costs for palletizing are included in the purchase price. All goods received in excess of Purchase Order requirements will be subject to return for credit at Lessor's expense. All headings and numbering in this Purchase Order are for convenience of reference only and shall in no way be used in interpretation of any of the provision in this Purchase Order.
- 25. SURVIVAL:** The provisions of this Purchase Order which by their nature are intended to survive the termination, cancellation, completion or expiration of this Purchase Order shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.
- 26. SUSPECT/COUNTERFEIT ITEMS (S/CI):** Notwithstanding any other provisions of this agreement, the Lessor warrants that all items provided to the Lessee shall be genuine, new and unused unless otherwise specified in writing by the Lessee. Lessor further warrants that all items used by the Lessor during the performance of work under this purchase order, include all genuine, original, and new components, or are otherwise suitable for the intended purpose. Furthermore, the Lessor shall indemnify the Lessee, its agents, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure as indicated in the S/CI Awareness Training Manual (PDF) <http://homer.ornl.gov/sesa/corporatesafety/sci/trainingmanual.html>
- If it is determined that a suspect/counterfeit part has been supplied, Lessee will impound the items pending a decision on disposition. The Lessor 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. Lessee may also notify the cognizant Department of Energy Contracting Officer and Office of Inspector General and reserves the right to withhold payment for the items pending results of the investigation.

Electrical material, components, and material shall have a mark indicating acceptance by a UL or other Nationally Recognized Testing Laboratory (NRTL) as recognized by OSHA.

- 27. TAXES:** Unless specifically stated in the Purchase Order, all goods and services are subject to all applicable federal, state, and local taxes. Sales tax will be shown separately.

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**28. TECHNICAL DIRECTION:**

Performance of the work under this contract may be subject to the technical direction of the cognizant Lessee's Contract Technical Representative (CTR), if identified in the purchase order or otherwise in writing by the Lessee. The term "technical direction" is defined to include, without limitation:

- (1) Directions to the Lessor that redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the Statement of Work (SOW).
- (2) Provision of written information to the Lessor, which assists in the interpretations of drawings, specifications, or technical portions of the work description.
- (3) Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Lessor to Lessee under this contract.

Technical direction must be within the scope of the SOW stated in this contract. The cognizant CTR does not have the authority to, and shall not, issue any technical directions which:

- (1) Constitute an assignment of additional work outside the scope of the SOW of this contract;
- (2) Constitute a change as defined in the Article entitled "**Changes**";
- (3) In any manner causes an increase or decrease in the total estimated contract price or the time required for the contract and/or performance;
- (4) Changes any of the expressed terms, conditions or specifications of this contract;
- (5) Interferes with the Lessor's right to perform the terms and conditions of this contract.

All technical direction shall be issued in writing by the cognizant CTR.

The Lessor shall proceed promptly with the performance of technical directions duly issued by the CTR in the manner prescribed by this article and within the CTR's authority under the provisions of this Article. If, in the opinion of the Lessor, any instruction or direction by the CTR falls within one of the categories defined in (b)(1) through (b)(5) above, the Lessor shall not proceed but shall notify the cognizant Lessee in writing within five (5) working days of any such instruction or direction and shall request the Lessee to modify the contract. Upon receiving the written notification from the Lessor, the Lessee shall:

- (1) Advise the Lessor in writing within seven (7) working days after receipt of the Lessor's letter that the technical direction is within the scope of this purchase order and does not constitute a change under the article entitled "**Changes**" of this purchase order;
  - (2) Advise the Lessor in writing within seven (7) working days after receipt of the Lessor's letter not to perform under the direction and to cancel the direction; or
  - (3) Advise the Lessor in writing within a reasonable time that Lessee will issue a written change order.
- (b) Failure of the Lessor and the Lessee to agree that the technical direction is within the scope of the contract, or failure to agree upon the contract action to be taken with respect thereto shall be subject to the clause titled "**Disputes**."

**29. TERMINATION FOR CONVENIENCE AND DELAY**

Lessee may terminate all or part of this Order without cause upon written notice to Lessor. Upon such notice, Lessor shall discontinue rental charges against this Order, Lessor shall be paid and accept as full compensation hereunder the full amount of rentals due to the date of termination.

Lessor shall promptly notify Lessee of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Lessee. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, or other similar causes beyond 's control and which could not have reasonably foreseen or provided against, Lessee shall have the right to either: (i) terminate by written notice to all or part of this Order in accordance with its terms or (ii) extend the date of delivery or performance for a period equal to the duration of the delay, but shall not be entitled to any extra compensation for such delay. L e s s o r shall not be excused from performance hereunder where alternate sources of supply of materials, goods or services are available.

**32. VALIDITY OF PROVISIONS:** In the event any Provision, or any part or portion of any Provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that Provision, or any other Provision hereof.

**35. WAIVER:** Lessee's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege, or its waiver of any breach, shall not thereafter waive any such term, condition, instruction, right or privilege.

Lessee's acceptance of any goods shall not operate as a waiver of rights hereunder or otherwise relieve Lessor from its responsibility for supplying and delivering goods in accordance with the requirements of this Purchase Order or any other obligation of Lessor under this Purchase Order.

**36. WARRANTY:** Lessor warrants to Lessee and U.S. Department of Energy that all goods and services covered by this Purchase Order will conform with the specifications, drawings, and other descriptions supplied or adopted by Lessee and will be new, of good quality, fit and sufficient for the purposes for which they are intended as evidenced in this Purchase Order and in the drawings and specifications referred to herein, of good materials, design and workmanship, free from defects, and will fulfill satisfactorily the operating conditions specified herein.

These warranties shall extend to Lessee, U.S. Department of Energy, their successors and assigns.

Lessor, at its expense, (including without limitation costs of removal, packing, transportation and reinstallation) shall promptly either repair or replace any goods and services furnished to Lessee which within twelve (12) months after operational start-up or within eighteen (18) months after shipment, whichever occurs first, shall fail to conform to the requirements of this Purchase Order. Goods or services that are repaired or replaced by Lessor pursuant to this Warranty shall be warranted, according to the terms hereof, for an additional twelve (12) months from the date of such repair or

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replacement. Lessor will at any time be chargeable for repairs made by Lessee to correct such a failure to meet the warranty herein when Lessor has been given notice of such failure and thereafter has failed to take prompt and effective action to correct the failure in accordance with the foregoing.

The above warranties are in addition to all other warranties as may be express or implied at law or equity.

**- WORK SITE TERMS -**

**THIS PURCHASE ORDER IS SUBJECT TO ADDITIONAL TERMS AND CONDITIONS FOUND IN SPECIAL PROVISIONS - CONTRACTOR ON SITE SERVICES. WHEREVER NECESSARY TO MAKE THE CONTEXT OF THE SPECIAL PROVISIONS APPLICABLE TO THIS PURCHASE ORDER, THE TERM "CONTRACTOR" SHALL MEAN "LESSOR," AND THE TERM "COMPANY" SHALL MEAN "LESSEE".**

**THIS PAGE ENDS TERMS AND CONDITIONS OF PURCHASE**