

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

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- 1. ARBITRATION:** In the event that the Company 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 Vendor, Vendor agrees to join in such arbitration proceeding as the Company 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 Company's prior written consent and any such assignment or delegations shall be void. Company 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 Company's affiliates and Vendor 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 Vendor prior to closeout of this Purchase Order. Copies of Company'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 Company will normally notify the Vendor of the deficiency and request any recommendations for solution. If critical schedules are impacted, Company may proceed with repair without prior notification to Vendor.
- 4. BUSINESS CONDUCT AND ETHICS EXPECTATIONS:** Company'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). Contractor confirms that it has received or accessed and reviewed Company'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 Company's Expectations, and where more stringent, applicable laws and Vendor's own business conduct guidelines and policies. Violation of this Article may be deemed by Company to be a material breach of this Order and in such event, Company may, without prejudice to any other rights or remedies Company may have, cancel further performance by Vendor under this Purchase Order, in whole or in part, pursuant to Article 12, Cancellation for Default. Company'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 Company's supplier and contractor database. The most current publication of Company's Expectations shall apply to this Article.
- 5. CHANGES:** No substitutions shall be made in this Purchase Order without the prior written consent of the Company. The Company 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 Vendor believes that such change affects the price or delivery date for such goods or services, Vendor shall so notify Company in writing (with adequate supporting documentation) within five (5) working days after receipt of said written direction. Vendor shall suspend performance of the change unless thereafter released in writing by Company to perform said change, and Company and Vendor shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change.

Vendor's request for any adjustments shall be deemed waived unless submitted in writing within such five (5) working days after Vendor receives direction to make such changes. Vendor shall not suspend performance of the unaffected portion of this Purchase Order while Company and Vendor are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by Company. If released in writing by Company, Vendor shall comply with and perform such change in accordance with the terms of this Purchase Order during the time Vendor and Company require to mutually agree upon an equitable adjustment. No agreement or understanding modifying the conditions

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of terms of this Purchase Order shall be binding upon Company nor will extra compensation be paid by Company unless the agreement or understanding is made in writing.

6. **COMPLETE AGREEMENT:** This Purchase Order shall become a binding agreement of Vendor and Company upon Vendor signing and returning an acceptance copy of this Purchase Order, or upon Vendor 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 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 Vendor'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 Vendor 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 Vendor'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, Vendor shall immediately submit the matter to Company for its determination and shall comply with the determination of Company in such matter.

7. **CONFIDENTIAL INFORMATION:** The documents and all other information designated as confidential or proprietary and contents thereof are referred to as "Information". Vendor agrees to retain the Information in confidence and not to disclose it to any third party or use such Information for any other purpose, except as authorized by Company for the performance of this Purchase Order. Vendor shall not publicize the existence or scope of this Purchase Order without Company's written consent. Vendor shall require these same agreements on the part of any supplier of Vendor's to whom the Information is disclosed. Vendor shall return all Information and copies thereof to Company upon written request.
8. **DELAYS:** Time of delivery is of the essence for this Purchase Order. Vendor shall promptly notify Company of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to Company. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, or other similar causes beyond Vendor's control and which Vendor could not have reasonably foreseen or provided against, Company shall have the right to either: (i) terminate by written notice to Vendor 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 Vendor shall not be entitled to any extra compensation for such delay. Vendor shall not be excused from performance hereunder where alternate sources of supply of materials, goods or services are available.
9. **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 Vendor and the Company may attempt to settle any dispute by negotiation and/or by mediation and/or by arbitration as they may agree.

Vendor 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 Company's option, be tried before a judge sitting without a jury.

10. **EXPORT AUTHORIZATIONS:** Vendor agrees to comply with all applicable export and re-export control laws and regulations, including but not limited to United States Export Administration Regulations (EAR) administered by the Bureau of Industry and Security, U.S. Department of Commerce, trade and economic sanctions regulations administered by the Office of Foreign Assets Control (OFAC), U.S. Department of Treasury, the International Traffic in Arms Regulations (ITAR), Arms Control Export Act, and United States Munitions List (USML) administered by Directorate of Defense Trade Controls, Bureau of Political-Military Affairs of the U. S. Department of State, and any other export authorities identified in Supplement 3 to Part 730 of the EAR.

Vendor shall accurately identify in writing to Company, within thirty (30) days after issuance of this purchase order, those goods, services and technologies for which an export license or other regulatory approval is required and shall provide accurate export classification and licensing information necessary for supporting export documents, including but not limited to (as applicable) the appropriate Export Control Classification Numbers (ECCN), an indication of the applicability or availability of license exceptions or exemptions, and all pertinent technical data, drawings, brochures, technical expertise, or other relevant information as deemed necessary by Company. Vendor acknowledges that Company shall undertake to obtain any required license or other regulatory approval required, and shall rely upon the information provided by Vendor. Accordingly, Vendor agrees to indemnify Company for any fines, penalties, claims, losses, damages, costs (including legal costs), expenses and liabilities that may arise as a result of Vendor's breach of this provision.

Company agrees that no good or technology received from the Vendor is intended to be shipped, either directly or indirectly, to any country, company or Person or for any end-use that is prohibited under applicable laws and regulations, such as the EAR, OFAC regulations or ITAR.

11. **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 Vendor and its subcontractors at any tier, the Contractor has the responsibility to identify to the Company any personnel who are Foreign Nationals who may be involved, working with Company 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 Company personnel (including making deliveries), or be assigned to work at the site must obtain approval of the Company 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

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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 Contractor should contact the Company to obtain the necessary information and forms.

- 12. HAZARDOUS MATERIALS:** Vendor shall notify Company 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. Vendor 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 Company'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 Company 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.

- 13. INDEMNITY:** Vendor agrees to defend, indemnify and hold harmless Company 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 Vendor 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 Vendor'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 Vendor or its suppliers. Should any goods or services provided by Vendor become, or appear likely to become, the subject of a claim of infringement of a patent, copyright or other property right, Vendor shall, at Company's option, either procure for Company 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 Company, nor shall it apply to claims that the sale or use of a process or use of a combination of the goods supplied by Vendor hereunder with other goods infringes a patent, if such process or other goods were not supplied by Vendor and Vendor's supplying of the goods hereunder does not constitute contributory patent infringement.

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

Vendor'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. Vendor's defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by Company or U.S. Department of Energy for legal action to enforce Vendor'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 Vendor 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 Vendor, its suppliers or sub suppliers under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and Vendor waives any limitations of liability arising from workers' compensation or such other acts or regulations.

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

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

**15. INVOICING**

Any of the following conditions will be considered just cause for withholding payment and/or returning invoices to Vendor 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 Vendor's invoice; including Purchase Order Line Item Reference Number on Packing List and Invoices

**Invoices must include the following information:**

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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." Company may require Vendor to execute a lien release and certification of full payment satisfactory in form and content to Company as a condition to making payment to Vendor.

Payment will be made only to Vendor 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 Vendor invoices will be withheld pending receipt of all information and/or vendor data requested on this order.

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

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

Bank Name Bank address Swift code

Intermediary bank (if available)

- 16. LAWS AND REGULATIONS:** Vendor warrants that all goods and services supplied pursuant to this Purchase Order will comply with all applicable laws, ordinances and regulations, and further Vendor 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.

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 Vendor with its suppliers.

Vendor further warrants that all goods furnished by Vendor 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 Company may have, Vendor shall indemnify, defend and hold harmless Company 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.

Vendor 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.

Vendor 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.

Vendor 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 Contractor acknowledges that work performed under this contract is done as work subcontracted by the Company under contract to the U.S. Department of Energy. The Contractor 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,

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- (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, Employment 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.*

- 17. LIENS:** Vendor agrees to indemnify, hold harmless and defend Company and U.S. Department of Energy from and against all laborers', material men, mechanics, or other liens arising from the performance of Vendor's obligations under this Purchase Order and shall keep the premises of Company and U.S. Department of Energy free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, Vendor, for itself and all of its suppliers of any tier, waives all rights of lien against the property and premises of Company and U.S. Department of Energy for labor performed or for goods furnished for the Work.
- 18. LOWEST PRICE WARRANTY:** Vendor warrants that the prices set forth in this Purchase Order do not exceed those charged by Vendor to any other customers purchasing the same item in like or comparable quantities. The Company or authorized representative shall have the right to examine the records of the Vendor as necessary to assure that the prices charged for the items under this Purchase Order do not exceed those charged by the Vendor to any other customer purchasing the same items in like or comparable quantities.
- 19. ORDER OF PRECEDENCE:** All Purchase Order documents and subsequently issued Change Orders are essential parts of this Purchase Order. In resolving conflicts, errors, or omissions, the following order of precedence shall be used:
1. The Purchase Order form including signature page
  2. Terms and Conditions of Purchase or Rental
  3. Special Provisions – Vendor On-Site Services
  4. Attachments
- 20. 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 Company's Purchase Order. Packages/shipments that cannot be properly identified against a Company Purchase Order are subject to rejection and return at Vendor expense.

Unless specifically directed by the Company's Company or designated Contract Technical Representative, deliveries shall be at the following location and times:

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 Company 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.

- 21. 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 Company's right to reject nonconforming or defective goods or services, nor be deemed to constitute acceptance by Company of the goods or services, nor affect in any way Vendor's obligations under this Purchase Order notwithstanding Company's opportunity to inspect the goods or services, Company's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, nor Company's earlier failure to reject the goods or services.
- 22. RIGHT TO OFFSET:** Company, without waiver or limitation of any rights or remedies of Company or U.S. Department of Energy, shall be entitled from time to time to deduct from any amounts due or owing by Company to Vendor in connection with this Purchase Order, any and all amounts owed by Vendor to Company or U.S. Department of Energy.
- 23. SECURITY:** If Company makes any advance or progress payment to Vendor under the Purchase Order, upon Company's request, Vendor agrees to execute a Security Agreement and Financing Statement (both in form satisfactory to Company) granting a Security interest to Company effective in all states of fabrication or manufacture in the proceeds, raw materials and goods which are purchased, manufactured, or otherwise obtained pursuant to the Purchase Order.

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- 24. SHIPMENT:** Partial shipments must be accompanied by identifying documents, but such shipments shall not be construed as making the obligations of Vendor severable. No charge will be allowed for packing, shipment or handling unless stated in this Purchase Order. Vendor shall pay for damaged goods resulting from improper packing or marking. Itemized packing lists must accompany each shipment. Company's count will be accepted as final and conclusive on shipments not accompanied by Vendor'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 Vendor'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. SUPPLIER QUALITY SURVEILLANCE (SQS) INSPECTION AND EXPEDITING:** Vendor shall be responsible for the performance of all activities affecting quality and schedule including those of its suppliers. Company shall have the right to reject any and all goods which fail to conform to the specifications under which they were purchased or to proper standards of workmanship. Company reserves the right to review Vendor's Quality Assurance and Quality Control Procedures. Vendor's Quality Plan submittal requirements, if applicable, are defined in the "Supplier Drawing and Data Commitment Form" section of this Purchase Order.

The goods provided by Vendor under this Purchase Order are subject to SQS inspection, expediting, audit of Quality Plan implementation and witnessing of Vendor testing by the Company's representative and/or the U.S. Department of Energy, who shall be granted access to all parts of the Vendor's plant(s) or Vendor's supplier's plant(s) engaged in the manufacturing or processing of this Purchase Order. The representative's inspection and witnessing of testing, or lack of inspection, witnessing of testing or response, shall in no way release the Vendor from any obligations related to this Purchase Order. Vendor shall further ensure that these terms and conditions become a part of its purchase orders to its suppliers for all goods or services which are used in the products purchased under this Purchase Order. Vendor is further responsible for obtaining and submitting Quality Plans as required from its suppliers.

Vendor and/or Vendor's suppliers will notify Company at least five (5) calendar days in advance of the date inspection or test can be made. If for any reason the date should be set back, Vendor shall telephone, wire or facsimile Company immediately. NOTE: THE VENDOR SHALL NOT SHIP THE GOODS ON THIS PURCHASE ORDER WITHOUT EITHER COMPANY'S FINAL INSPECTION OR A WRITTEN WAIVER OF INSPECTION FROM COMPANY. VIOLATION OF THIS REQUIREMENT SHALL CONSTITUTE A REJECTION OF THE GOODS, WITH SUBSEQUENT RETURN OR OTHER ACTION AT VENDOR'S COST.

Complete and accurate information is required to maintain the overall schedule. Unless otherwise stated, Vendor shall at a minimum furnish every fourteen (14) days, status of engineering, material procurement, production and shipping information.

- 26. 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.
- 27. Suspect/Counterfeit items (S/CI):** Notwithstanding any other provisions of this agreement, the Vendor warrants that all items provided to the Company shall be genuine, new and unused unless otherwise specified in writing by the Company. Vendor further warrants that all items used by the Vendor 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 Vendor shall indemnify the Company, 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, Company will impound the items pending a decision on disposition. The Vendor 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. Company 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.

- 28. SUSPENSION OF PERFORMANCE:** Company may at any time, and from time to time, by written notice to Vendor, suspend further performance of all or any portion of this Purchase Order by Vendor. Such suspensions shall not exceed more than one hundred eighty (180) consecutive calendar days each nor aggregate more than two hundred seventy (270) calendar days. Upon receiving any such notice of suspension, Vendor shall promptly suspend further performance of the Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies, and equipment Vendor has on hand for performance of the Purchase Order. Vendor shall use its best efforts to utilize its material, labor and equipment in such a manner as to mitigate costs associated with suspension. Company may at any time withdraw the suspension as to all or part of the suspended performance by written notice to Vendor specifying the effective date and scope of withdrawal and Vendor shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn.

If Vendor believes that any such suspension or withdrawal of suspension justifies modification of the Purchase Order price or time for performance, Vendor shall comply with the provisions set forth in Article 11, entitled CHANGES. In no event shall Vendor be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension.

- 29. 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

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shown separately.

30. **TECHNICAL DIRECTION**

- (a) Performance of the work under this contract may be subject to the technical direction of the cognizant Company's Contract Technical Representative (CTR), if identified in the purchase order or otherwise in writing by the Company. The term "technical direction" is defined to include, without limitation:
- (1) Directions to the Vendor 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 Vendor, 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 Vendor to the Company under this contract.
- (b) 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 Vendor's right to perform the terms and conditions of this contract.
- (c) All technical direction shall be issued in writing by the cognizant CTR.
- (d) The Vendor 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 Vendor, any instruction or direction by the CTR falls within one of the categories defined in (b)(1) through (b)(5) above, the Vendor shall not proceed but shall notify the cognizant Company in writing within five (5) working days of any such instruction or direction and shall request the Company to modify the contract. Upon receiving the written notification from the Vendor, the Company shall:
- (1) Advise the Vendor in writing within seven (7) working days after receipt of the Vendor'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 Vendor in writing within seven (7) working days after receipt of the Vendor's letter not to perform under the direction and to cancel the direction; or
  - (3) Advise the Vendor in writing within a reasonable time that Company will issue a written change order.
- (e) Failure of the Vendor and the Company 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 General Provision entitled "**Disputes**."

31. **TERMINATION FOR CONVENIENCE:** Company shall have the right to terminate for its convenience further performance of all or any separable part of this Purchase Order at any time by written notice to Vendor. On the date of such termination stated in the notice, Vendor shall discontinue all work pertaining to this Purchase Order, shall place no additional orders, and shall preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Vendor's and in its supplier's plants pending Company's instructions, and shall dispose of same in accordance with Company's instructions. Termination payment to Vendor or refund to Company, if any, shall be promptly and mutually agreed to by Company and Vendor, based on that portion of the work satisfactorily performed to the date of cancellation, including reimbursement for actual costs, reasonable overhead and profit on such work, plus reasonable and necessary expenses resulting from the termination, disposition of work and material on hand, and amounts previously paid by Company, all as substantiated by documentation satisfactory to and verified by Company. Vendor shall not be entitled to any loss of prospective profits, contribution to overhead or incidental, consequential or other damages because of such termination.

Vendor shall deliver or assign all goods with all applicable warranties or dispose of goods as directed by Company prior to final payment.

32. **TERMINATION FOR DEFAULT:** In the event Vendor shall be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Vendor's insolvency, or in the event Vendor is in default of any material provisions or requirement of this Purchase Order, Company may, by written notice to Vendor, without prejudice to any other rights or remedies which Company may have, cancel further performance by Vendor under this Purchase Order, in whole or in part. In the event of such cancellation, Company may complete the performance of the terminated portions of this Purchase Order by such means as Company selects, and Vendor shall be responsible for any additional costs incurred by Company in so doing.

Vendor shall deliver or assign to Company any work in progress as Company may request. Any amounts due Vendor for goods and services completed by Vendor in full compliance with the terms of this Purchase Order prior to such cancellation, as verified by Company, shall be subject to set off of Company's additional costs of completing the Purchase Order and other damages incurred by Company as a result of Vendor's default. Waiver by Company of any default of Vendor shall not be considered to be a waiver by Company of any provision of this Purchase Order or of any subsequent default by Vendor. If Vendor's contract is terminated by virtue of default, and it is later determined by the final judgment or order of a court of competent jurisdiction, arbitration entity or administrative proceeding of any type whatsoever that the Vendor was not in default, the parties agree that the termination shall then be considered a termination for convenience.

33. **TITLE** Unless specified elsewhere in this contract, title to items furnished under this Purchase Order shall pass to the United States Department of Energy upon acceptance, regardless of when or where the Company takes physical possession.

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34. **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:** Company'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.

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

36. **WARRANTY:** Vendor warrants to Company 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 Company 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 Company, U.S. Department of Energy, their successors and assigns.

Vendor, 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 Company 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 Vendor 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 replacement. Vendor will at any time be chargeable for repairs made by Company to correct such a failure to meet the warranty herein when Vendor 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



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**- WORK SITE TERMS –**

**WHEN THIS ORDER COVERS THE SUPPLYING OF SERVICES OR SERVICES AND MATERIALS ON THE PREMISES OF COMPANY OR U.S. DEPARTMENT OF ENERGY, IT IS SUBJECT TO ADDITIONAL TERMS AND CONDITIONS FOUND IN SPECIAL PROVISIONS - VENDOR ON SITE SERVICES**

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