

EXIDE TECHNOLOGIES'
PURCHASE ORDER TERMS AND CONDITIONS (Page 1 of 2)

THIS ORDER INCLUDES AND IS SUBJECT TO THE FOLLOWING COVENANTS, TERMS AND CONDITIONS

1. ACCEPTANCE, REVOCATION - ACCEPTANCE OF THIS OFFER OR ORDER BY SELLER IS EXPRESSLY LIMITED TO THE EXACT TERMS AND CONDITIONS HEREIN. THE SHIPMENT BY SELLER OF THE GOODS DESCRIBED HEREIN SHALL BE CONCLUSIVELY DEEMED AN UNCONDITIONAL ACCEPTANCE OF THIS OFFER NOTWITHSTANDING ANY PROVISION IN SELLER'S COMMERCIAL FORMS OR OTHERWISE THAT SUCH SHIPMENT IS AN ACCOMMODATION AND IS BEING MADE PURSUANT TO A CONDITIONAL ACCEPTANCE. ANY OF SELLER'S TERMS AND CONDITIONS ARE DEEMED BY BUYER TO BE A MATERIAL ALTERATION AND ARE HEREBY OBJECTED TO BY BUYER, AND WILL NOT BE BINDING UNLESS AGREED TO IN WRITING BY THE BUYER. COMMENCEMENT OF PERFORMANCE BY SELLER OR RETURNING SELLER'S OWN ACKNOWLEDGMENT FORM WILL CONSTITUTE SELLER'S ACCEPTANCE OF THESE PURCHASE ORDER TERMS AND CONDITIONS NOTWITHSTANDING ANY PROVISION IN SELLER'S COMMERCIAL FORMS OR OTHERWISE THAT SUCH COMMENCEMENT OF PERFORMANCE IS BEING MADE PURSUANT TO A CONDITIONAL ACCEPTANCE. BUYER RESERVES THE RIGHT TO REVOKE THIS ORDER AT ANY TIME BEFORE ACCEPTANCE. THIS IS NOT A FIRM ORDER.

2. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION - Exide Technologies ("Exide") is a government contractor subject to federal affirmative action requirements. Certifications and equal employment provisions of Section 202 of Executive Order 11246 and its regulations at Sections 60-1.4(a)(1) through (7), Section 60-250.4 of the Vietnam Era Veterans Readjustment Assistance Act of 1973 and Section 60-741.5 of the Rehabilitation Act of 1974, as amended, are hereby incorporated by reference in the terms and conditions of this Order and are applicable when and to the extent required by law.

3. ACKNOWLEDGMENT OF CERTIFICATION - The Seller hereby certifies that, when and to the extent required by law, it does not and will not maintain segregated facilities, nor permit its employees to work at locations where facilities are segregated on the basis of race, color, religion or national origin and that a similar certification will be required prior to the award of any nonexempt subcontracts. The Seller's acceptance of this Order constitutes such certification.

4. WORKING CONDITIONS - Seller hereby certifies that, in performing the work on the goods pursuant hereto, Seller does not (a) use forced labor, regardless of its form; (b) employ any person below the age of 15, unless it is part of a Government approved job training, apprenticeship or other program that is clearly beneficial to the participants; or (c) engage in physically abusive disciplinary practices. Seller's acceptance of this Order constitutes such certification.

5. COMPLETE CHARGES - The extended prices and specifically identified extras (if any) appearing on the face of this Order, include all applicable charges, including items such as taxes, transportation, packaging, packing and returnable containers (if any). No other charges are allowable except in accordance with the Charges Clause, Section 22.

6. SHIPPING, PACKING AND INVOICING - Seller shall comply with the shipping, packing and invoicing requirements, as may be stated on the face of this Order, or as may be issued by Buyer. No charges will be allowed for packing, crating or transportation unless stated in this Order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer, against any amount owed by Buyer to Seller under this Order.

7. WARRANTY - By accepting this Order, Seller hereby warrants that the goods and services including packaging and containers, to be furnished hereunder will (unless specifically excepted on the face of this Order and the exception accepted in writing by each of the parties) fully conform with Buyer's specifications, drawings and data, or Seller's samples, and will be fit for the uses intended by Buyer. This warranty shall be in addition to any warranties of additional scope given to Buyer by Seller. All warranties shall survive inspection, tests, acceptance of, and payment for the goods shall run to Buyer, its successors, assigns and customers. Buyer shall have the benefit of all warranties implied at law and all express warranties made by Seller.

8. INSPECTION - Upon delivery, Buyer shall have a reasonable time within which to inspect the goods before accepting or paying for them.

9. RISK OF LOSS - Title to the goods shall pass to the Buyer only upon acceptance by Buyer. Until Buyer has accepted the goods the Seller shall bear all risk of loss or damage to the goods. Rejected goods will be held by Buyer at Seller's risk or may be returned, and at Seller's direction shall be returned to Seller with all transportation and related charges to be paid by Seller.

10. COMPLIANCE WITH LAWS - Seller warrants that all work performed and goods delivered pursuant hereto will be performed, manufactured, produced, sold, invoiced, packaged, labeled, shipped and, if required, registered in accordance with, and in all respects will conform to all applicable federal, state and local laws. Seller certifies that the goods conform to all applicable consumer product safety standards (if any) under the Consumer Product Safety Act and that the goods are not a misbranded hazardous substance, or a banned hazardous substance or product. All invoices covering the goods must bear the following certification: "We hereby certify that the goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of the Regulations and Orders of the United States Department of Labor issued under Section 14 thereof."

11. QUALITY CONTROL - Seller shall maintain effective quality control inspection and testing to assure that goods will consistently conform to Buyer's specification and shall furnish evidence of quality and statistical process control according to Buyer's Supplier Quality Requirements. Seller shall notify Buyer in writing prior to changing in any way the Seller's specifications used in production of supplies ordered by Buyer herein. Seller shall not modify in any way Buyer's specifications used in production of supplies ordered by Buyer, without the prior written consent of Buyer.

12. REJECTION OF GOODS - BUYER'S REMEDIES - In addition to any other remedies or rights afforded by law, Buyer may reject or revoke its acceptance of any goods that do not fully meet the warranties and other terms and conditions of this Order, including the rejection of a lot or shipment that does not meet the acceptable quality level specified. In such event, Buyer may elect to (a) return the rejected goods to Seller at Seller's expense, or (b) scrap the goods and require Seller, at Buyer's election, either to replace the goods forthwith, i.o.b. Buyer's plant destination without cost to Buyer, or issue full credit for the rejected goods, provided, however, Buyer shall have the right to retrain and correct or otherwise use unacceptable goods, when needed to maintain production. Seller shall reimburse Buyer for all costs and expenses incurred in connection with returns, and corrective and remedial action, including unpacking, examining, sorting, testing, repacking and reshipping, in addition, Buyer shall have the right to preserve and keep a sample of the goods tendered for the purpose of having evidence of the kind and quality of the tendered goods.

13. RESPONSIBILITY FOR PRODUCT HAZARDS - In the event that information is received which reasonably supports the conclusion that the goods are a 'substantial product hazard' under Section 15 of the Consumer Product Safety Act, Seller will, in addition to all other obligations hereunder, have the duty to rework or replace at Seller's expense all such goods at anytime sold to Buyer, (whether in possession of Buyer, its customers, or others) and to pay all costs of Buyer attributable to such product hazard.

14. INDEMNIFICATION - Seller shall exonerate, indemnify and hold Buyer, its agents, employees, contractors and customers harmless against all claims, demands, suits, liabilities, prosecutions, penalties, settlements, losses, damages, costs and expenses, including attorney's fees, in respect to matters and allegations that the goods fail to meet applicable specifications and quality requirements, are defective, unfit, unsafe, or infringe any patent, trademark, or other property rights, or that the goods do not meet applicable laws or regulations, or allegations of acts or omissions of Seller, its employees, sub-contractors or agents. Such indemnity will survive the termination of this Order. At Buyer's request, Seller shall defend such claims or suits at Seller's expense by reputable counsel satisfactory to Buyer.

15. SELLER'S LIABILITY INSURANCE - Seller shall, at its expense, maintain liability insurance, with a broad form vendor's endorsement naming Buyer as an additional insured providing liability coverage for products and goods sold hereunder, and operations of Seller, with an endorsement covering liabilities assumed under contract. This insurance, which shall be carried with a reputable insurer satisfactory to Buyer, shall provide coverage for bodily injury of not less than \$2,000,000 per person/occurrence and damage to property of not less than \$1,000,000 per occurrence. A certificate of insurance shall be provided to Buyer requiring the insurer to name Buyer as an additional insured on such policy and give Buyer not less than thirty (30) days written notice of cancellation or modification of the insurance coverage.

16. TOOLING, PROPRIETARY DATA - All tools, molds and similar items (tooling) needed in the manufacture of the goods shall be furnished by Seller at its expense unless otherwise specified in this Order. In the event that tooling or written data identified as proprietary is furnished by, or at the expense of Buyer, such tooling and proprietary data shall be and remain the property of Buyer, held in confidence, and be identified by a property tag and on Seller's records, as Buyer's property, and shall be used only for performance of orders from Buyer, unless otherwise permitted by Buyer's prior written consent. Any tooling furnished by, or at the expense of Buyer, shall be in Seller's possession as a bailment from Buyer and Seller acknowledges that it is a bailor-at-will of the tooling. Seller shall have no property or other rights in such tooling and shall have no power to transfer any rights or grant any security interest in the tooling to a third party. Seller waives (a) any lien that it might have or otherwise be able to assert against the tooling, and (b) any objection to Buyer's repossession and removal of the tooling owned by Buyer for any or no reason. Seller shall indemnify and hold Buyer, its agents and employees, harmless against all claims, demands, liabilities, obligations, costs and expenses based upon or arising out of the use, storage or handling of the tooling until returned to Buyer's possession.

17. SERVICES AT BUYER'S LOCATION - If labor or services in connection with this Order are performed at any location of Buyer, Seller agrees to indemnify and hold Buyer harmless from and against all claims, demands, liabilities, obligations, losses, damages, costs and expenses, including attorney's fees, arising out of or related to the labor and services to be provided, excepting only the sole negligence of the Buyer, its employees or agents.

18. DELIVERY - Time is of the essence for this Order, and if delivery of any goods or rendering of services is not completed in accordance with these terms and conditions by the time specified, Buyer reserves the right without liability; in addition to other rights and remedies, to terminate this Order, and to obtain the remaining balance of the goods or services (or substitute items) elsewhere with Seller remaining liable for all resulting losses and damages. Unless otherwise provided herein, all goods shall be sold f.o.b. destination regardless of who pays transportation costs.

19. PRICES - Buyer shall not be billed at prices higher than stated in this Order unless authorized by a purchase order change issued and signed by Buyer. Seller represents that the prices to be charged for items and services hereunder is to be the lowest price (after consideration of all discounts, rebates, and allowances) charged by the Seller to other comparable buyers, and that the prices will comply with applicable government laws and regulations. Seller agrees that any price reduction made subsequent to the date of this Order on goods of the kind ordered will be applicable to this Order.

20. REPLACEMENT PARTS - Seller shall, in the case of goods requiring servicing, stock replacement parts or maintain a manufacturing capability sufficient to meet Buyer's needs for a period of not less than seven (7) years after the last shipment of any of the goods. Replacement parts will be made available to Buyer at competitive prices not exceeding those charged to other comparable customers of Seller.

21. CHANGES - Buyer may, at any time, by written notice to Seller, make changes within the general scope of this Order, including changes in drawings, designs, specifications, shipping instructions, method of shipping or packing, place of delivery, quantity and delivery schedules. If a change increases or decreases the cost of or time required for performance hereunder, an equitable adjustment in the price of delivery dates, or both will be made and this Order shall be modified in writing accordingly. A claim for equitable adjustment by either party shall be made to the other within thirty (30) days from the date of the change notice, or such claim for an equitable adjustment is unconditionally waived. Seller shall diligently continue performance of this Order, as changed, pending agreement on the amount of an equitable adjustment, and nothing contained herein shall relieve or excuse Seller from proceeding without delay in performing this Order as changed. The Buyer's engineering, technical and other personnel may on occasion render assistance, exchange information or give advice to Seller's personnel concerning the supplies or services furnished hereunder. However, such assistance, exchange or advice shall not constitute either a change under this paragraph or a waiver of the Seller's existing obligations. In order to be valid and binding upon Buyer, any change, waiver or amendment to this Order must be in writing and signed by an authorized representative of the Buyer's purchasing department.

22. TERMINATION FOR CONVENIENCE - Buyer may, at any time, terminate this Order in whole or in part by notice to Seller for the convenience of Buyer (without default of Seller). Seller will thereupon immediately stop work on this Order or the terminated portion thereof and notify any subcontractors to do likewise. Allowance in such case will be made for normal and reasonable expenses incurred by Seller prior to receipt of notice of cancellation, but Buyer will not be liable for any charges or expenses incurred by Seller in advance of the normal or reasonable lead time necessary to meet scheduled delivery dates nor for any expenses, charges or liability incurred subsequent to the giving of notice of cancellation. Seller shall submit any claim to Buyer, within forty-five (45) days after date of termination, or such claim shall be unconditionally waived.

23. TERMINATION FOR DEFAULT - In addition to any other remedies or rights afforded by law, Buyer may terminate in whole or in part of this Order for default if (a) Seller fails to perform any provisions of this Order, or (b) Seller fails to make progress so as to endanger performance of this Order. For default under (b) only, Buyer shall give Seller notice of such failure and twenty (20) days within which to cure such default by Seller. Buyer shall have no obligations to Seller in respect of the terminated portion of this Order and Buyer's liability shall be limited to payment for the delivered portion of this Order at the rate specified on the face hereof (reflecting quantity prices as though this Order had gone to full completion). If, as a result of default in performance by Seller, this Order is terminated in whole or in part, and it is necessary to procure any of the specified supplies or services elsewhere, then Seller will be liable for any re-procurement or purchase which exceeds the amount which would have been due Seller if it had satisfactorily completed this Order. These remedies shall be cumulative and additional to any other or further remedies provided in law or in equity.

24. NO ASSIGNMENT - Seller may not assign this Order or delegate the performance of any duties hereunder without Buyer's prior written consent.

25. REMEDIES: SURVIVAL - The rights and remedies provided Buyer herein shall be cumulative and in addition to all other rights and remedies provided by law or equity. Seller's covenants, representations and warranties hereunder shall survive any delivery, inspection, payment or acceptance, and any completion, termination or cancellation of this Order.

26. NONCONFORMING GOODS - Seller shall not substitute nonconforming goods or backorder such goods without first obtaining Buyer's written consent thereto.

27. NONWAIVER: ENTIRE AGREEMENT - APPLICABLE LAWS - This Order, as the same may be amended or modified in writing, and any documents referred to or incorporated herein, supersede all prior understandings, transactions and communications, or writings with respect to the matters referred to herein. No delay or failure on the part of Buyer in exercising any rights under this Order, and no partial or single exercise thereof, shall constitute a waiver of such rights or any other rights thereunder.

None of the terms and conditions contained in this Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer. Except for such written instruments, this Order constitutes the entire agreement between the parties in respect to the matters referred to herein. The rights and obligations of the parties hereunder shall be governed by the laws of the State of Georgia, without giving effect to its conflicts of law or choice of law rules. Pending settlement or final judicial decision of any dispute, Seller shall proceed diligently to perform this Order under Buyer's direction.

28. FORCE MAJEURE - Failure of Seller to make, or Buyer to take, all or any part of any shipment hereunder, if such failure is due to acts of God, war, riot, insurrection, labor difficulties, breakdown or damage to Seller's plant facilities or Buyer's receiving facilities, embargoes, acts of terrorism, shortages of any raw materials or energy, shortage of transportation equipment, compliance with any law or regulation or order of any public authority and any other cause either similar or dissimilar beyond the control of the parties so failing, shall not subject such party to any liability to the other party, and in such event, at the request of either party, the total quantity of goods to be shipped will be reduced by the quantity not shipped due to such causes; provided, however, that if Seller is unable to meet the delivery schedule provided by Buyer due to conditions beyond Seller's control, Buyer reserves the right to refuse shipments on any other schedule unless that schedule has been submitted to and approved by Buyer in writing.

29. GOVERNMENT CONTRACTING - If a federal government contract number appears on the face of this Order, then the following Federal Acquisition Regulations (FAR) procurement clauses, as amended as of the date of this Order, shall apply to this Order and prevail insofar as they are inconsistent with any of the provisions set forth above: 52.246-2, Inspection; 52.249-8, Default except all references to disputes clause; 52.222-4, Contract Work Hours and Safety Standards Act, Overtime Compensation; 52.222-26, Equal Opportunity; 52.222-36, Affirmative Action for Handicapped Workers; 52.225-3, Buy American Act; 52.222-1, Notice to the Government of Labor Disputes; 52.212-8, Priorities, Allocations and Allotments; 52.210-5, New Material; 52.249-1, Termination; 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement; 52.203-7, Anti-Kickback Procedures. If the Order is \$100,000 or more, FAR Sections: 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns; 52.220-3, Utilization of Labor Surplus Area Concerns; 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans; 52.215-1, Examination of Records of Comptroller General; and 52.222-20, Walsh-Healey Public Contracts Act. If the Order is \$100,000 or more FAR: 52.223-2, Clear Air and Water. If the Order is \$500,000 or more FAR Sections: 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Program, and 52.220-4, Labor Surplus Area Subcontracting Program. If the Order is classified: 52.227-10, Filing of Patent Applications - Classified Subject Matter; and 52.204-2, Security Requirements. Where necessary to give the FAR clauses proper application, "contractor" shall mean Seller; "contract" means this Order, and "Government" or "Contracting Officer" means Buyer. Copies of the FAR may be obtained from the Superintendent of Documents, US Government Printing Office, Washington, DC 20025.

30. DISPUTE RESOLUTION - All disputes arising hereunder shall be resolved by arbitration.

31. MINIMUM ORDER REQUIREMENTS - Except as specifically set forth in this Order, or any sales contract between Buyer and Seller, Buyer is under no obligation to purchase any specific or minimum quantities of goods, and Buyer may make purchases at Buyer's sole discretion.

32. SPECIFICATIONS AND QUALITY REQUIREMENTS - If Exhibit A is attached hereto, all goods purchased by Buyer hereunder shall meet the Specifications and Quality Requirements set forth in Exhibit A, and incorporated by reference herein.

33. SET OFF RIGHTS - Any sums due or to become due to the Seller are subject to all claims and defenses of Buyer, whether arising from this or any other transaction, and Buyer may set off and deduct against such sums all present and future indebtedness of Seller to Buyer.

34. INTEREST/LATE CHARGES - Buyer is not liable to Seller for any interest or late charges.

Additional clauses, when necessary, will be specified on the face of this Order or added as an attachment.

EXIDE TECHNOLOGIES'
PURCHASE ORDER TERMS AND CONDITIONS (Page 2 of 2)

THIS ORDER INCLUDES AND IS SUBJECT TO THE FOLLOWING COVENANTS, TERMS AND CONDITIONS

For purchases of goods which are equipment or tooling (hereinafter the "goods" or "Equipment"), the following additional terms and conditions (the "Supplemental T&C's") shall apply. In the event of any conflict between the Supplemental T&C's and the Purchase Order Terms and Conditions set forth above, the Supplemental T&C's shall control.

35. ACCEPTANCE: Buyer shall be entitled to evaluate and test the goods for the purposes of determining whether the goods function according to their specifications and descriptions, and ensuring that the goods can be effectively utilized in Buyer's facility for their intended use. If the goods satisfactorily pass the acceptance testing, the goods shall be accepted by Buyer by written notice to Seller. If the goods fail to pass acceptance testing, Seller shall promptly correct the deficiency or deficiencies at its expense, and the applicable phase of acceptance testing will be repeated until all phases are satisfactorily passed. If all phases of acceptance testing are not satisfactorily completed within a reasonable time after installation, Buyer may at its option terminate its obligations under this Order and shall have the right to return the goods, without penalty and with no further obligation, and be entitled to a refund of any amounts paid for the goods and any services rendered by Seller in connection with the goods. Under no circumstances will Buyer be deemed to have accepted the goods and Buyer will continue to have the right to reject the goods until such time as Buyer has notified Seller in writing that the goods have successfully completed the final acceptance test to be run at Buyer's facility. If requested by Buyer, Seller will provide pre-acceptance testing for Buyer at Seller's facility, at no cost to Buyer.

36. TITLE/RISK OF LOSS – Title shall pass to Buyer upon delivery to Buyer's facility. Seller shall bear all risk of loss until final delivery to Buyer's facility.

37. PAYMENT TERMS - Buyer may withhold ten percent (10%) of the price of goods (or such higher amount as may be specified in this Order) until the goods have successfully completed final qualification and acceptance testing at Buyer's facility. Buyer may also withhold payment for any goods or services until Buyer receives evidence, in such form and detail as Buyer requires, of the absence of any liens, encumbrances and claims on the goods or services.

38. INSTALLATION/DOCUMENTATION - Seller shall provide Buyer with all relevant documentation for the goods, including operations and maintenance manuals, preventative maintenance procedures and lists of recommended parts; all of which shall be written in English and provided in the quantity requested by Buyer for the goods. Any installation services required in connection with the goods will be provided by Seller at no additional cost to Buyer, unless otherwise set forth in writing on the face of this Order. Buyer and Seller shall agree in writing on the schedule for such installation. If Buyer will be installing the goods, Seller will provide Buyer with all drawings and instructions on how to install the goods. Such documentation, drawings and instructions shall be provided electronically and in hard copy.

39. SAFETY - Seller will comply and will require its employees, agents, representatives and subcontractors who are performing work or services on Buyer's premises to comply with Buyer's CONTRACTOR POLICY (EHS-NA-106), industry standards and all occupational health and safety legislation and regulations. Seller shall, at its own expense, defend, indemnify, and hold harmless Buyer from and against any and all claims, liabilities, losses, or damages (including reasonable attorneys' fees) arising in connection with any work or services performed by Seller or its employees, agents, representatives and subcontractors on Buyer's premises, which indemnity will survive the termination of this Order. Seller further warrants that it will, whenever possible, use commercially available parts of the highest industry quality and the goods will be equipped with approved or appropriate fail-safe safeguarding systems.

40. GENERAL WARRANTY - Seller warrants that (i) title to any goods conveyed pursuant to this Order shall be good and its transfer rightful, and that the goods and all rights thereto shall be transferred and delivered free and clear of all liens, claims, and encumbrances; (ii) the goods and their manufacture, production, sale and operation will be in compliance with all applicable laws, rules, and regulations and any services performed by Seller will be in compliance with all applicable laws, rules, and regulations including those pertaining to the protection of the environment, health and safety; and (iii) no services performed by Seller will in any way infringe upon or violate any intellectual property or other rights of any third party.

41. PERFORMANCE WARRANTY - Seller warrants that for the greater of (i) the period set forth on the face of this Order, or if no period is designated, then one (1) year following the date of acceptance of the goods by Buyer, (ii) the warranty period provided by applicable law, or (iii) the warranty period provided by the ultimate manufacturer of the goods to its customer, (the "Warranty Period"), the goods will (a) be free from defects in workmanship, design and materials, (b) conform to and perform in accordance with functional specifications and descriptions provided to Buyer or published by Seller, and (c) fit for Buyer's intended use. For services provided by Seller, Seller further warrants that the work or services will be performed in a professional and workmanlike manner. In the event of any breach of the foregoing warranty during the Warranty Period, Seller shall promptly, without additional charge to Buyer, repair or replace the goods or re-perform the services as necessary in order to meet its performance obligations hereunder. If Buyer makes a warranty claim and Seller elects to repair the goods, Seller shall provide substitute goods during the repair period. Any repairs will be made or new or substitute goods will be provided immediately to mitigate any downtime or reduced production capacity. Any substitute goods shall be of equal or greater value and usefulness to Buyer. Seller further agrees to assign to Buyer any and all warranties provided to Seller by third parties related to any goods not manufactured by Seller, and Seller shall reasonably assist Buyer with any warranty claims under such third party warranties.

42. LIENS - Seller shall pay and satisfy all claims for labor and material employed or used in or with the goods and any services performed by Seller. Seller agrees to indemnify and save Buyer harmless from all liens of any kind pertaining to the services or the goods, and Seller shall furnish Buyer, at Buyer's request, proof that there are no unsatisfied liens, debts or encumbrances pertaining thereto. In the event a lien should attach, Buyer, without prejudice to its rights under this section, shall have the right, at Seller's expense, to take all steps necessary to remove such lien, including payment of the underlying debt. Where permitted by law, Seller waives any lien or other rights that Seller might otherwise have on or in any of the goods for work performed on, or utilizing, such goods or otherwise.

43. SOFTWARE - Seller grants to Buyer a permanent, paid-up, non-exclusive license to use any software (including source codes), computer programs or PLC programs incorporated into or used in connection with the goods. Buyer shall be provided with all information necessary to access the software and programs. Such software or programs shall be used by Buyer only for the purpose of operating the goods. Buyer may not modify, adapt, translate, reverse engineer, decompile, disassemble or create any derivative work based upon such software, except and only to the extent that such activity is expressly agreed to by Seller or permitted by applicable laws. Buyer shall acquire no ownership rights in the software or programs.

For purchases of goods or services which are subject to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("Recovery Act"), the following additional terms and conditions (the "ARRA T&C's") shall apply. In the event of any conflict between the ARRA T&C's and either the Supplemental T&C's or the Purchase Order Terms and Conditions set forth above, these ARRA T&C's shall control.

44. COMPLIANCE WITH LAWS: Seller shall comply with all provisions of the Recovery Act, and its implementing regulations, as amended from time to time, including but not limited to the following laws and regulations, as applicable:

- A. Equal Employment Opportunity – Seller must comply with E.O. 11246 (3 CFR, 1964-1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "amending Executive Order 11246 relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- B. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) – If an Order is in excess of \$2,000 for construction or repair, Seller must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Seller is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. Seller must report all suspected or reported violations to Buyer, such that Buyer may report the same to the responsible Department of Energy ("DOE") contracting officer.
- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) – If an Order is in excess of \$100,000 for construction and other purposes that involve the employment of mechanics or laborers, Seller must comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- D. Rights to Inventions and Data Made Under a Contract or Agreement – Orders for the performance of experimental, development, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A – Patent and Data Rights to Subpart D, Part 600.
- E. Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) – If an Order is in excess of \$100,000, Seller must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (41 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.). Violations must be reported to Buyer such that Buyer may report the same to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency ("EPA").
- F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – Sellers who apply for or bid for an award of \$100,000 or more must file the required certification. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures must be forwarded from tier to tier up to Buyer.
- G. Debarment and Suspension (E.O.'s 12549 and 12689) – Contract awards that exceed the simplified acquisition threshold (currently \$100,000) and certain other contract awards must not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and nonprocurement Programs in accordance with E.O.'s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold (currently \$100,000) must provide the required certification regarding its exclusion status and that of its principals.
- H. Davis-Bacon Act (40 U.S.C. 276a) – Seller must comply with the Davis-Bacon Act ("DBA") to the extent applicable to the services to be provided under the Order and shall provide Buyer with such information and records as may be required by Buyer to comply with such requirements. Buyer shall have the right to withhold payments to Seller until such information and records are received.
- I. National Policy Assurances to Be Incorporated As Award Terms (August 2008).

Should Seller not be required to comply with any of the provisions of the Recovery Act, or its implementing regulations, as amended from time to time, Seller shall provide Buyer with copies of the waivers for compliance obtained by Seller from the appropriate federal agencies.

45. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE RECOVERY ACT: The obligations of Buyer under the Recovery Act will flow to Seller and Seller's subcontractors, and Seller and its subcontractors will be similarly bound by these special provisions including, but not limited to, the following:

- A. Access to Records: Seller shall authorize, and shall require that its subcontractors authorize, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General to (i) examine any records of Seller, any of its subcontractors, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, grant, or subgrant; and (ii) interview any officer or employee of Seller, any of its subcontractors, or agents regarding such transactions.
- B. False Claims Act: Seller shall promptly refer, and shall require its subcontractors to promptly refer to Buyer any credible evidence that a principal, employee, agent, contractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving any Recovery Act funds.
- C. Information in Support of Recovery Act Reporting: At the request of Buyer, Seller shall submit, and shall have its subcontractors submit to Buyer backup documentation for expenditures of funds under the Recovery Act including such items as timecards, payroll records and invoices.

46. REPORTING REQUIREMENTS: Upon Buyer's request, Seller shall provide, and shall require its subcontractors to provide to Buyer, such documentation and additional information as may be required to comply with the reporting requirements of the Recovery Act. Such documentation shall be provided to Buyer in a timely manner and in all events within the time periods required to comply with the reporting requirements under the Recovery Act. In addition to the foregoing, upon Buyer's request, Seller shall provide, and shall require its subcontractors to provide to Buyer, documentation regarding the location of assembly and the origin of any component parts of any goods or equipment purchased from Seller.

47. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT: Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. At Buyer's request, Seller shall provide such documentation as may be requested by Buyer to evidence Seller's and Seller's subcontractors' compliance with the foregoing requirement. In addition to the foregoing, on behalf of Buyer, Seller shall:

- (a) Obtain, maintain, and monitor all DBA certified payroll records, including those submitted by its subcontractors at any tier;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable Department of Labor ("DOL") wage determinations;
- (c) Notify Buyer of any non-compliance with DBA requirements by Seller or any subcontractor at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;
- (d) Address any DBA non-compliance issues; if DBA non-compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to Buyer for forwarding to the DOE;
- (e) Provide Buyer with detailed information regarding the resolution of any DBA non-compliance issues;
- (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Seller and any of its subcontractors with DBA requirements;
- (g) Allow audits by Buyer of Seller's records and perform audit services on subcontractors as necessary to ensure compliance with DBA requirements and as requested by Buyer; and
- (h) Provide copies of all records of Seller and Seller's subcontractors upon request by Buyer or DOE or DOL in a timely manner.

All records maintained on behalf of the Buyer in accordance with requirements above are federal government DOE owned records. Buyer, DOE or an authorized representative of either Buyer or DOE shall be granted access to the records at all times.

In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Seller shall provide such records to Buyer such that Buyer can submit such records to DOE within 5 business days of receipt of a request from DOE.

48. INDEMNIFICATION: To the fullest extent permitted by law, Seller shall exonerate, indemnify and hold Buyer, its agents, employees, contractors and customers harmless against all claims, demands, suits, liabilities, prosecutions, penalties, settlements, losses, damages, costs and expenses, including attorney's fees, arising in connection with Seller's failure to comply with the Recovery Act requirements or the requirements set forth in these T&C's. Such indemnity will survive the termination of the Purchase Order. At Buyer's request, Seller shall defend such claims or suits at Seller's expense by reputable counsel satisfactory to Buyer.