



TERMS AND CONDITIONS OF PURCHASE

1. OFFER AND ACCEPTANCE

- 1.1 The Purchase Order is an offer by the Tallgrass-affiliated entity named in the “ship to” address on the face of the Purchase Order (“**Company**”), on a non-recourse basis with respect to any other subsidiary or affiliate of Tallgrass MLP Operations, LLC (such non-recourse basis meaning no other subsidiary or affiliate of Tallgrass MLP Operations, LLC has any obligations to Seller, whether payment or otherwise), to purchase the materials, goods, equipment, parts and associated services referenced or otherwise inferred to on the face of the Purchase Order (the “**Goods**”) from the entity to which it is addressed (“**Seller**”). Company shall be responsible solely for the liabilities and obligations set forth in these Purchase Order Terms & Conditions under which the Purchase Order is being issued. In the event the Tallgrass entity executing this Purchase Order is doing so as agent for one of its subsidiary or affiliate entities, then such Tallgrass entity shall state that on the face of the Purchase Order, and in such event such subsidiary or affiliate entity shall be considered the Company hereunder for all purposes and the Tallgrass entity executing the Purchase Order and acting as agent shall have no liability or obligation hereunder except as otherwise expressly stated on the face of the Purchase Order.
- 1.2 The parties agree that the Purchase Order shall consist of the cover sheet of the Purchase Order including all referenced Exhibits, these Terms and Conditions, and all specifications, drawings, notes, instructions or technical data referred or attached to the Purchase Order, and in the event of any conflict, the cover sheet of the Purchase Order shall control followed by these Terms and Conditions, followed by any terms and conditions contained in supporting documentation provided by Company. But for the Terms and Conditions contained in this Purchase Order, Company would not have entered into this transaction. Seller hereby agrees that by accepting this Purchase Order it agrees to be bound by these Terms and Conditions to the exclusion of all others, notwithstanding any term or condition contained in any of Seller’s documents or otherwise communicated orally or in writing by Seller. Any alteration of this Purchase Order without the specific written agreement of Company is hereby objected to and rejected, notwithstanding that either party may have commenced performance hereunder. If Seller’s bid or proposal is incorporated into or otherwise made a part of the Purchase Order, and if such bid or proposal contains any term or condition that is inconsistent with the Terms and Conditions herein, then the Terms and Conditions contained herein shall govern unless specifically provided otherwise in this Purchase Order.
- 1.3 Acceptance by Seller of this Purchase Order shall occur by any of the following acts:
 - 1.3.1 Seller’s signing and returning a copy of the Purchase Order to Company;
 - 1.3.2 Seller’s delivery of the Goods or any portion thereof;
 - 1.3.3 Seller’s commencement of performance; or
 - 1.3.4 Seller’s express written acknowledgment of the terms set forth herein.
- 1.4 For the avoidance of doubt, Company’s acceptance of the Goods shall not constitute acceptance by Company of any terms and conditions other than the Terms and Conditions contained herein. If this Purchase Order is construed as Company’s acceptance of an offer from Seller to sell the Goods, Company’s acceptance of such offer is expressly conditioned upon the consent of Seller to the Terms and Conditions of the Purchase Order, including any and all Terms and Conditions contained herein that are additional to or different from those contained in Seller’s offer, and no other forms of acceptance except those stated herein or agreed to by Company will be considered acceptance by Company. Prior dealings between the parties or usage of trade shall not be relevant to supplement or explain any term used in the Purchase Order.

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2. PRICE; TAXES; TERMS AND INVOICING

- 2.1 Unless otherwise stated, unit prices are as stated at the date of issuance of the Purchase Order, are not subject to escalation, and are exclusive of all federal, state, and local excise, sales and use, and any other type of taxes, duties, customs, fees, or other governmental assessments. Any reduction in Seller's costs of providing the Goods to Company ultimately paid or owed in connection therewith shall be paid to Company by Seller reducing the price of the Goods.
- 2.2 Invoices shall be addressed as directed by Company and shall contain the Purchase Order number, line item numbers, unit of measure, description of line items, sizes, quantities, unit prices, and extended totals. Applicable charges for freight and any taxes that are not included in the pricing shall be stated separately. Bills of lading or express receipts shall accompany such invoices. To accommodate Company's Accounts Payable systems software, invoiced amounts for labor and/or services shall be billed separately than invoiced amounts for materials and equipment.
- 2.3 Invoices shall be payable on terms stated on the face of the Purchase Order and shall not include any terms or conditions included on or submitted with Seller's invoice. All invoices submitted shall be provided by Seller in such detail and substantiated as Company may direct and must be accompanied by all documentation necessary to establish the accuracy of all information contained within each invoice.
- 2.4 Any time for payment shall commence on the latest of:
- 2.4.1 Company's actual receipt of invoice and all necessary and/or requested supporting documents,
 - 2.4.2 Company's acceptance of the Goods after inspection,
 - 2.4.3 compliance by Seller with all requirements of the Purchase Order, and
 - 2.4.4 the date of Company's receipt of a corrected invoice (in the event that invoices are returned by Company to Seller for corrections). Any applicable discount will be taken on the full amount of the invoice(s), and all payments are subject to adjustment for offset, shortage, or rejection.
- 2.5 All claims for moneys due or to become due to Seller from Company shall be subject to deduction by Company for any setoff or counterclaim arising out of this or any other agreement or order with Seller or Seller's affiliates and subsidiaries (and in the case of assignment of the Purchase Order, whether such setoff or counterclaim arose before or after assignment by Seller). Company may withhold payment on any invoice in an amount and to such extent as may be reasonably necessary to protect Company from loss due to defects in the Goods not remedied in accordance with these Terms and Conditions and from any other costs or liabilities Company incurred or will incur for which Seller is responsible. Seller shall ensure that all subcontractors, suppliers and/or employees are timely paid all amounts due in connection with the Goods or this Purchase Order and Company shall have the right to withhold any payment until Seller makes all such payments. Complete or partial payment by Company to Seller shall not be deemed an acceptance of, or waiver of any right to reject to defects in, the Goods or any portion thereof.
- 2.6 Delayed submittal of Invoices and Non-payment:
- Any costs for which Seller does not submit an invoice to Company within sixty (60) days after the date on which the Goods associated with those costs were received by Company shall be deemed to have been provided by Seller without compensation; provided, however, that if prior to the end of such sixty (60) day period, Seller requests in writing from Company a further extension of time for submitting such invoice (stating the reasons therefor and the amount of additional time requested), and if Company elects to authorize such extension in writing, Seller shall have until the end of such extension period to submit such invoice; and provided further, that nothing in this Purchase Order shall affect Seller's right to submit invoices within a longer period of time if so afforded by applicable statute.

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3. DELIVERY; ACCELERATION; LIQUIDATED DAMAGES; TITLE AND RISK OF LOSS

- 3.1 Unless otherwise stated on the face of the Purchase Order:
- 3.1.1 time is of the essence in Seller performing and delivering the Goods, and if there is a milestone schedule attached to the Purchase Order, in meeting each of the stated milestones;
 - 3.1.2 the Goods shall be shipped DAP destination (INCOTERMS 2010), by a transportation carrier acceptable to Company;
 - 3.1.3 title to the Goods shall transfer to Company upon the earlier of payment made by Company to Seller for such Goods or delivery of such Goods to Company in accordance with the Purchase Order. Transfer of title shall be without prejudice to Company's right to reject any defects in the Goods.
 - 3.1.4 risk for loss or damage to any Goods, by whatsoever nature caused, shall remain with Seller until delivery is complete at destination;
 - 3.1.5 delivery shall not be deemed to be complete until the Goods have been received and accepted by Company and risk of loss shall be and remain with Seller until that time; and
 - 3.1.6 if any or all of the Goods are not accompanied by a packing slip, Company's count or weight for the entire Purchase Order shall be conclusive;
 - 3.1.7 Seller shall transfer good and marketable title in and to the Goods free and clear of any and all claims, charges, liens, or other encumbrances; and
 - 3.1.8 if Company, in its reasonable discretion, requires Seller to execute Company's Facility Access Agreement prior to making deliveries called for by this Purchase Order, such execution shall become part of Seller's required performance hereunder. Company will furnish a sample Facility Access Agreement to Seller upon request.
- 3.2 If at any time Company reasonably determines that delivery of the Goods will be delayed, and such delay is due to the fault of Seller or its subcontractors, Seller shall, upon Company's written request, at Seller's own cost and expense, perform any work (including any overtime work) necessary to bring delivery of the Goods back on the original schedule and expedite the delivery of the Goods, either by special, overland transport or air freight, from point of manufacture to the project site. Even if deliveries are otherwise in compliance with the original schedule, Company may, at any time, request Seller to accelerate deliveries, and Seller shall use its best efforts to comply. In this event, Company's sole liability to Seller will be to pay any payments actually incurred over and above Seller's normal rates. Any adjustment to the total price, the delivery dates, or guaranteed dates that the parties agree in writing will be changed by such acceleration of the work shall be implemented by a Change Order.
- 3.3 Seller acknowledges that its failure to deliver all or a portion of the Goods in a timely manner will result in damages to Company that are extremely difficult and impractical to ascertain or compute at present. Company and Seller may desire to stipulate a measure of damages reasonably proportionate to the amount of actual damages that would be sustained by Company in the event of Seller's delay in performance, and in such event, the parties agree that Seller will be liable to Company for liquidated damages in the amount (if any) set forth on the face of the Purchase Order for each calendar day that passes without Seller delivering or achieving completion of the Goods by the delivery date(s) (if any) specified on the face of the Purchase Order. Delay liquidated damages may be assessed concurrently for each line item in the Purchase Order unless otherwise specified in the Purchase Order. With respect to any liquidated damages that accrue, Company, at its sole discretion, may either (i) invoice Seller for such owed liquidated damages, and within thirty (30) calendar days of Seller's receipt of such invoice, Seller shall pay Company such liquidated damages or (ii) withhold from Seller amounts that are otherwise due and payable to Seller in the amount of such liquidated damages. It is expressly agreed that liquidated damages payable under the Purchase Order do not constitute a penalty and that the parties, having negotiated in good faith for such specific liquidated damages and having agreed that the amount

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of such liquidated damages is reasonable in light of the anticipated harm caused by the breach related thereto and the difficulties of proof of loss and inconvenience or non-feasibility of obtaining any adequate remedy, are estopped from contesting the validity or enforceability of such liquidated damages. In the event any liquidated damages are held to be unenforceable due to the urging by or on behalf of Seller, Seller specifically agrees to pay Company all actual damages incurred by Seller in connection with such breach, including all consequential damages (such as loss of profits and revenues, business interruption, loss of opportunity and use) and all costs incurred by Company in proving the same.

4. PACKAGING AND LABELING

All Goods furnished under the Purchase Order shall be suitably packed, marked and shipped in accordance with the requirements of the carrier and in a manner to secure the lowest transportation cost, and no additional charges shall be made to Company for such packing, marking, shipping or any other costs of transportation, nor shall Company be charged for demurrage or storage unless otherwise stated herein. Partial shipments are not allowed unless expressly stated in the Purchase Order. The outside of each box, crate, bale, or other containment device shall be marked with Company's Purchase Order number, Seller's name, shipper's name (if different from Seller), shipping point of origin, and Company's designated name and destination. Where multiple packages comprise a single shipment to the same destination, then each package shall be marked consecutively. Such marking shall include a type of marking similar to "Carton 1 of 2," "Carton 2 of 2," etc. Packing slips with the Purchase Order number and exact quantity and description of Goods must accompany each shipment. Goods imported into Canada must be supported by two copies of the Canadian Customs invoice, the Seller's commercial invoice, and if the Goods qualify under NAFTA rules of origin, a NAFTA Certificate of Origin signed by the Seller's Controller or Chief Financial Officer, all of which must be forwarded via courier or fax, on the day of shipment to Company or its custom broker as designated on the face of the Purchase Order. In the event authorities for U.S. or Canadian Customs deem the Goods ineligible for the NAFTA tariff program where NAFTA has been used to determine pricing of the Goods then Seller shall be liable for any and all duties, interest, and penalties, retroactive to the first occurrence of shipping, and any administrative fee charged by Company to offset the cost of resources utilized in any customs audit.

5. SHIPPING

5.1 If the Purchase Order stipulates that Seller is required to transport the Goods, Company shall have the right to inspect and review Seller's logistics, transportation, and packing plan, and shall have the right to require appropriate adjustments to such plan. In addition, Seller shall as appropriate:

- 5.1.1 use only properly licensed and insurable carriers for required transportation logistics services, and
- 5.1.2 package and transport the Goods as necessary to prevent damage during transport.
- 5.1.3 Inspection and Testing

All Goods provided hereunder shall at all times be subject to inspection and testing by Company and its representatives. Seller shall furnish Company with a production schedule for the Goods upon receipt of the Purchase Order and subsequent production schedules shall be submitted every two (2) weeks thereafter. If any of the Goods are Defective or otherwise not in conformity with the requirements of the Purchase Order, then Company, in addition to any other rights, may:

- 1. reject the same for full credit;
- 2. conditionally accept the shipment, fix the Goods to conform to Company's requirements as stated in the Purchase Order, and either
 - (a) bill Seller for such expense, or
 - (b) reduce the amount owed by Company accordingly; or

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(c) require prompt correction or replacement thereof (as chosen by Company) by Seller or Seller's designee at Seller's expense.

- 5.2 Any Goods rejected by Company shall be at Seller's risk and expense and shall not thereafter be tendered for acceptance without Company's written consent, provided that Company shall take reasonable measures to preserve and protect the rejected Goods for a reasonable time not to exceed thirty (30) days. The packing and handling expense incidental to such rejection and the applicable transportation costs or charges will be charged to Seller's account. Nothing herein shall relieve Seller from the obligation to make full and adequate testing and inspection of Goods sold hereunder.
- 5.3 Notwithstanding the foregoing, neither an inspection nor a failure to inspect shall relieve Seller from any obligation under the Purchase Order, and any failure on the part of Company to discover or reject Goods not in accordance with the Purchase Order shall not be deemed an acceptance of, or a waiver of any right to reject, Defective Goods.

6. EXCUSABLE DELAYS

Time is of the essence for delivering the Goods. By entering into the Purchase Order, Seller represents that it has taken into consideration and made allowances for all reasonably foreseeable weather, hindrances, and delays incident to the work required under the Purchase Order. However, either Company or Seller may, upon five (5) days' written notice to the other party, suspend performance hereunder during the occurrence of a Force Majeure Event. For the purpose of the Purchase Order, a "**Force Majeure Event**" shall be limited to catastrophic storms or floods, tornadoes, hurricanes, earthquakes and other acts of God, fires, wars, national strikes, terrorist attacks, revolts, insurrections, sabotage, epidemics, explosions, or commandeering of raw materials or products or plants or facilities by a government; provided that, such act or event (i) delays or renders impossible the affected party's performance of its obligations under the Purchase Order, (ii) is beyond the reasonable control of the affected party, was not due to its fault or negligence and was not reasonably foreseeable and (iii) could not have been prevented or avoided by the affected party through the exercise of due diligence. Except in the event of a Company ordered suspension as provided in Section 8 below, no interruption, cessation, postponement, or delay in the commencement or progress of the work required under the Purchase Order from any other cause whatsoever, including any Dispute arising out of this Purchase Order, will relieve Seller or Company from its duty to perform in accordance with the terms of the Purchase Order. In case of a Force Majeure Event, Company shall have the right to cancel the Purchase Order in whole or in part. If Company does not elect to cancel the Purchase Order as the result of a Force Majeure Event, and if the commencement, prosecution or completion of the work under the Purchase Order is delayed by such Force Majeure Event, Seller shall be entitled to an adjustment to the delivery schedule or other time commitments if such delay affects the performance of any such work that is on the critical path to such time commitments, *provided that* Seller's claim for adjustment for such time commitments is made within thirty (30) days after the Force Majeure Event has ended and Seller is unable to proceed with other portions of the work so as not to cause a delay in such time commitments. The party claiming a Force Majeure Event shall take all reasonable measures to mitigate the effects of the delay and to minimize the delay. The party claiming such delay shall have the burden of proof with respect to demonstrating that such delay, in fact, constitutes a Force Majeure Event and that it has strictly complied with the notice provisions of this Section. Notwithstanding anything to the contrary, Seller is only entitled to additional costs in the event of a Company ordered suspension and only to the extent specified in Section 8 below.

7. CHANGES

Company shall have the right at any time prior to the completion or delivery date of the Goods to make changes in the scope of work including changes to quantities, descriptions, drawings, designs, specifications, packaging, time and place of delivery and/or method or routing of transportation, via written change order issued by Company to Seller. If any such change causes an increase or decrease in the cost, the time required for the performance, or otherwise affects any provision of the Purchase Order, Seller shall, before proceeding, notify Company in writing of any such changes and receive Company's agreement thereto and the same shall be included in such Change Order. Seller will not be granted additional time or compensation for extra or additional work, and no modification, alteration, or amendment to the Purchase Order shall be effective unless authorized by a Change Order issued by Company. The Terms and Conditions of the Purchase Order shall apply to all such Change Orders, modifications, additions, or deletions with the same effect as if they were embodied in the original Purchase Order. Seller agrees that any

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Change Order accepted by Company in writing constitutes a full and final settlement and accord and satisfaction of all effects of the change upon all aspects of the Purchase Order and will compensate Seller fully for such change.

8. SUSPENSION

Seller shall, upon receipt of notice from Company, suspend work hereunder for the period specified by Company. Upon receipt of a suspension notice, Seller shall immediately discontinue all of its work under this Purchase Order and the placing of all orders and subcontracts in connection with this Purchase Order and Seller shall take all reasonable steps to minimize costs during the period of the suspension. If adequate documentation acceptable to Company supporting a request for additional costs or schedule relief is provided to Company, an adjustment shall be made to the price or delivery schedule affected by the suspension if such suspension affects the performance of any such work that is on the critical path to such time commitments; provided, however, Seller shall notify Company in writing of the necessity of such adjustment within five (5) days of receiving Company's directive to suspend performance. Seller acknowledges that its failure to notify Company of a need for an adjustment will prejudice Company and Seller, therefore, agrees that any failure to provide notice to Company in accordance with this Section shall constitute a waiver of any adjustment under this Section. Within five (5) days of receiving Seller's notice of an adjustment, Company may elect to retract its suspension notice in which case Seller shall continue and complete its performance under the terms of the Purchase Order as if such suspension notice had not been issued.

9. WARRANTY

9.1 Seller expressly warrants that (i) the Goods shall conform to the terms of the Purchase Order, all applicable laws, and good industry practices; (ii) the Goods shall be of merchantable quality and fit for the purpose specified in the Purchase Order and of suitable grade for the intended function and use; (iii) the Goods shall be of new and good material, quality and workmanship; (iv) the Goods shall be free from defects in design, material and workmanship and (v) Company shall have good and marketable title in and to the Goods free and clear of any liens or encumbrances. Inspection, testing, acceptance or use of the Goods by Company shall not affect the Seller's obligation under this warranty, and such warranty shall survive inspection, testing, acceptance, and use. This warranty shall run to Company, its successors, assigns and customers and the users of its products. If at any time prior to the earlier of 24 months from Company's acceptance of the Goods or 18 months from Company's first commercial use of the Goods, Company provides written notice to Seller that the Goods are Defective ("**Defective**" meaning a failure to comply with any of the warranties listed above), Seller shall promptly repair, replace, or otherwise restore to like-new condition any portion of the Goods which are Defective and any resultant loss or damages caused by such defects or by the repair of such defects at Seller's sole expense, including parts, freight, and labor for removal and reinstallation. Any Goods repaired, replaced, or otherwise restored under the terms hereof shall be additionally warranted on like terms for the longer of the original warranty period stated above or one hundred eighty (180) days from acceptance of such repair, replacement, or restoration. If Seller fails to commence work to correct any defect in the Goods within a reasonable period of time not to exceed three (3) days after Company's written notice thereof, or does not complete such correction on an expedited basis, then Company, by written notice to Seller, may (in addition to any other remedies that it has under the Purchase Order) correct such defects, and Seller shall be liable to Company for all reasonable costs and expenses incurred by Company in connection with such corrections and any resultant loss and damages and shall pay Company (directly or by offset, at Company's sole discretion) an amount equal to such costs and expenses; provided, however, if such defects materially affect the Goods or present an imminent threat to the safety or health of any person and Company knows of such defects, Company may (in addition to any other remedies that it has under the Purchase Order) correct such defects without giving prior written notice to Seller, and, in that event, Seller shall be liable to Company for all reasonable costs and expenses incurred by Company in connection with correcting such defects and arising out of or relating to such defects (including any resultant loss and damages) and shall pay Company (directly or by offset, at Company's sole discretion) an amount equal to such costs and expenses (which costs and expenses shall be adequately documented and supported by Company).

9.2 Seller shall pass-through to Company all of manufacturers', factories', suppliers', and subcontractors' warranties. To the extent any such warranties are not transferable from Seller to Company or for any other reason cannot be passed-through from Seller to Company, Seller shall enforce all such warranties on Company's behalf. In all cases, Seller shall use its best efforts to assist Company in enforcing any third-party

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warranties. Seller agrees that its warranty, as provided under this Section 9, shall apply to the Goods regardless of the provisions of any such manufacturers', factories', suppliers' and subcontractors' warranties, and such manufacturers', factories', suppliers', and subcontractors' warranties shall be in addition to, and not a limitation of, such Seller warranty.

10. TERMINATION FOR CONVENIENCE

Company may upon five (5) days written notice to Seller terminate the Purchase Order, in whole or in part, for its convenience in which case Seller shall have a duty to mitigate its costs and expenses associated with said termination, including using reasonable efforts to resell all or a part of the Goods delivered or any work-in-progress. Seller shall deliver to Company any work-in-progress or Goods completed and title to same as of the date of termination. Seller shall be paid (i) the reasonable value of the work performed prior to termination, less that portion of the Purchase Order previously paid to Seller (including down payments, if any, made under the Purchase Order), and (ii) Seller's reasonable close-out costs submitted in accordance with this Section 10 that are properly allocable, documented and incurred as a direct result of such termination; *provided, however*, in no case shall Company pay Seller for unrealized costs or anticipated profits hereunder or any cancellation charges (unless such cancellation charges were previously accepted by Company and specifically written in the Purchase Order). Seller shall submit all such reasonable close-out costs to Company no later than thirty (30) days following the effective date of the termination and Seller's failure to so notify Company will amount to a waiver of any right to recover any such close-out costs. Any termination for convenience by Company or payments to Seller will be without prejudice to any claims or legal remedies that Company may have against Seller for any cause. Seller shall include in any subcontracts a termination for convenience provision substantially similar to this Section 10.

11. TERMINATION FOR CAUSE

- 11.1 Company may upon three (3) days written notice terminate the Purchase Order, in whole or in part, for cause including the following Seller's actions, provided that Company has first provided Seller with written notice of its default and, except for a default pursuant to Section 11.1.6, seven (7) days to cure such default (unless such default is incapable of being cured within such 7-day period, in which case Seller shall have no more than twenty-one (21) days to cure such default):
- 11.1.1 any default or breach of any of the terms or conditions of the Purchase Order or violation of any law, ordinance, rule regulation, order or safety requirement of any public authority having jurisdiction;
 - 11.1.2 failure to timely ship or deliver the Goods or complete any performance based on the delivery dates or schedule set forth in the Purchase Order;
 - 11.1.3 furnishing Defective Goods or Goods that otherwise do not conform to the Purchase Order terms and specifications;
 - 11.1.4 failure to provide Company, upon written request, reasonable assurances of future performance on terms acceptable to Company;
 - 11.1.5 Seller's violation of an EHS Law (defined in Section 11.3 below);
 - 11.1.6 bankruptcy, dissolution, suspension of payments by judicial decree or Seller becomes insolvent, is generally unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due, or seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for all or substantially all of its assets, or otherwise seeks protection from creditors; and
 - 11.1.7 failure to timely pay any of its subcontractors or vendors for performance in furtherance of this Purchase Order.
- 11.2 In the event of termination for cause, Seller will be liable to Company for any and all costs and damages (including reasonable attorney's fees) incurred by Company as a result of such termination, including any cost

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incurred by Company in obtaining similar Goods elsewhere. At Company's request, Seller shall turn over to Company any work-in-progress or Goods completed as of the date of termination and title to same.

- 11.3 For purposes of this Purchase Order, an "EHS Law" is any and all U.S. federal, state, and local laws, regulations, permits, approvals, and requirements pertaining to health, safety, or the environment.
- 11.4 Upon a determination that termination by Company for cause was wrongful for any reason, such termination will automatically be deemed converted to a termination for convenience, and Seller's remedy for such termination will be limited to the remedies specified in Section 10 of these Terms and Conditions.

12. DISPUTES; VENUE; REMEDIES AND LIENS

- 12.1 The Purchase Order shall be deemed to have been made and accepted in Johnson County, Kansas, and the laws of Kansas (without giving effect to Kansas' choice of law rules) shall govern any interpretation or construction of the Purchase Order and/or the parties' rights, remedies, and obligations in connection herewith. The parties expressly exclude the application of the Convention on International Sale of Goods to the Purchase Order. Any claim, dispute, controversy, difference, disagreement, or grievance (of any kind or type, whether based on contract, tort, statute, regulation, or otherwise) between Company and Seller arising from, connected with or relating in any way to the Purchase Order ("**Dispute**") shall be resolved first through discussions between management of the parties, and if the Dispute cannot be resolved within forty-five (45) days from the date the matter was first brought by the disputing party to the attention of the other party, then either party may elect to resolve the Dispute through binding arbitration which shall be held in Johnson County, Kansas, unless mutually otherwise agreed by the parties, and shall be administered by the Denver, Colorado office of the American Arbitration Association ("AAA"). The number of arbitrators required for the arbitration hearing shall be determined in accordance with AAA rules. The arbitrator(s) shall determine the rights and obligations of the Parties according to the substantive law of the state of Kansas, excluding its conflict of law principles, as would a court for the state of Kansas; provided, however, the law applicable to the validity of the arbitration clause, the conduct of the arbitration, including resort to a court for provisional remedies, the enforcement of any award and any other question of arbitration law or procedure shall be the Federal Arbitration Act, 9 U.S.C.A. § 2. Company and Seller waive the right to resolve any Dispute in any other location or venue or by any other means including litigation. The prevailing party in such arbitration shall be entitled to recover its attorney's fees and court costs from the other party.
- 12.2 Seller agrees not to file or cause to be filed any mechanics', laborers', or material men's lien or any other lien against any property or premises in which Company, its affiliates or customers have an interest on account of any labor, equipment or materials furnished under the Purchase Order. If requested by Company, Seller shall execute a written release and waiver of lien, prior to any payment under the Purchase Order and as a condition thereof, in a form acceptable to Company, for all labor, materials, or equipment used in performance of Seller's activities under the Purchase Order.
- 12.3 **SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY FOR ANY COSTS OR DAMAGES (INCLUDING ATTORNEY'S FEES) INCURRED AS A RESULT OF SELLER'S BREACH OF SECTION 12.2 (EXCEPT TO THE EXTENT SUCH LIENS RESULT FROM COMPANY'S FAILURE TO MAKE UNDISPUTED PAYMENTS TO SELLER). FURTHER SELLER SHALL IMMEDIATELY, AT ITS OWN EXPENSE, REMOVE BY PAYMENT, BOND, OR OTHERWISE ANY LIEN FILED OR IMPOSED BY A THIRD PARTY ON SUCH GOODS, UNLESS SUCH LIEN RESULTED FROM COMPANY'S FAILURE TO PAY UNDISPUTED AMOUNTS TO SELLER. IF SELLER FAILS TO REMOVE AND DISCHARGE ANY SUCH LIEN OR ENCUMBRANCE WITHIN SUCH TWENTY-FIVE (25) CALENDAR-DAY PERIOD, THEN COMPANY MAY, IN ITS SOLE DISCRETION, AND IN ADDITION TO ANY OTHER RIGHTS THAT IT HAS UNDER THE PURCHASE ORDER, AT LAW OR EQUITY, REMOVE AND DISCHARGE SUCH LIEN AND ENCUMBRANCE USING WHATEVER MEANS THAT COMPANY, IN ITS SOLE DISCRETION, DEEMS APPROPRIATE, INCLUDING THE PAYMENT OF SETTLEMENT AMOUNTS THAT IT DETERMINES IN ITS SOLE DISCRETION AS BEING NECESSARY TO DISCHARGE SUCH LIEN OR ENCUMBRANCE. IN SUCH CIRCUMSTANCES, SELLER SHALL BE LIABLE TO COMPANY FOR ALL DAMAGES, COSTS, LOSSES, AND EXPENSES (INCLUDING ALL ATTORNEYS' FEES, CONSULTANT FEES, AND LITIGATION EXPENSES, AND SETTLEMENT PAYMENTS) INCURRED BY COMPANY ARISING OUT OF OR RELATING TO SUCH REMOVAL AND DISCHARGE. ALL SUCH DAMAGES, COSTS, LOSSES, AND EXPENSES SHALL BE PAID BY SELLER NO LATER THAN THIRTY (30) CALENDAR DAYS AFTER RECEIPT OF EACH INVOICE FROM COMPANY, AND, AT COMPANY'S**

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OPTION, COMPANY MAY WITHHOLD PAYMENT FOR AMOUNTS OTHERWISE DUE SELLER IN THE AMOUNT OF SUCH DAMAGES, COSTS, LOSSES, AND EXPENSES.

13. COMPLIANCE WITH LAWS

- 13.1 Seller shall at its own expense obtain all necessary licenses and permits pertaining to the Goods or relating to the work performed in connection with the Goods, including any manufacturing, transportation, importation, or exportation in connection with the Goods. Seller warrants that all Goods and all work performed in connection with the Goods comply with, and Seller agrees to be bound by, all applicable U.S. and Canadian federal, state, and local laws, rules and regulations including Title VI and Title VII of the Civil Rights Act of 1967, the Equal Pay Act of 1963, the Rehabilitation Act of 1974, the Immigration Reform Control Act of 1986, the Americans With Disabilities Act of 1990, Executive Orders of the President of the United States, the Office of Federal Contract Compliance Programs and Executive Orders 11246 and 11758, the Equal Opportunity Regulations at 41 CFR Subsection 60-1.4, Age Discrimination in Employment Act of 1967 (including the Older Workers Benefit Protection Act of 1990), Vietnam Era Veterans Readjustment Assistance Act, the Civil Rights Act of 1871 and 1991, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Affirmative Action Regulations at 41 CFR Subsections 250.5 and 741.5, U.S. Occupational Health and Safety Act of 1970, and any applicable anti-discrimination laws or other laws pertaining to an employment relationship, all as may be amended.
- 13.2 Seller certifies that at the time of execution of this Purchase Order Seller is not included on any debarment list maintained by any federal, state, or local governmental authority, nor prevented from performing this Purchase Order by virtue of any governmental order, proceeding or otherwise. If at any time during the term of this Purchase Order (including warranty periods) Seller cannot so certify to Company, Seller shall promptly notify Company as to Seller's status.

14. ASSIGNMENT AND INDEPENDENT CONTRACTOR

Neither the Purchase Order nor any interest therein shall be assigned by Seller except upon the prior written consent of Company. All Seller's subcontracts shall be subject to the provisions of the Purchase Order, and Seller shall insert in Seller's subcontracts all provisions required by the Purchase Order or necessary to enable Seller to comply with the terms of the Purchase Order. The parties agree that in performing the work and supplying the Goods hereunder, Seller shall be an independent contractor and shall not create an employer/employee relationship with Company. Seller shall not subcontract any portion of the work related to the Goods without Company's prior written consent to such subcontractor.

15. HARMFUL MATERIALS

Any Goods that are deemed dangerous or hazardous will be packaged, marked, and shipped by Seller to comply with all federal, state, and local laws and regulations and will further comply with any Company requirements or instructions. Seller warrants that each and every chemical substance constituted or contained in the Goods sold or otherwise transferred to Company in the United States is on the list of chemical substances compiled and published by the administrator of the U.S. Environmental Protection Agency pursuant to the Toxic Substances Control Act, as amended, or are otherwise in compliance with said Act or otherwise applicable federal, state or local environmental law or regulation. Furthermore, if the Goods contain toxic chemical substances which exceed the de minimis concentration allowed in the reporting list under SARA Section 313 of the Community Right to Know Act, then Seller shall promptly report same to Company and shall supply without request by Company, Manufacturer's Safety Data Sheets for such Goods, and toxic chemical substances.

16. CONFIDENTIAL INFORMATION

All specifications, drawings, designs, documents and any other information transmitted to Seller by Company or prepared by Seller for Company or customized for Company's use, in connection with the performance of the Purchase Order, including the terms and subject matter of the Purchase Order, are the property of Company and are to be considered by Seller as proprietary, confidential or a trade secret and are not to be reproduced or copied or used for furnishing information, materials or services to third parties or for any other purpose detrimental to the

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interest of Company as determined solely by Company. Seller shall return to Company all such confidential information and copies thereof to Company upon completion of the Seller's obligations under the Purchase Order, or upon Company's written request at an earlier time. Any know-how or information concerning Seller's products, methods, manufacturing processes or services which Seller discloses to Company incident to providing the Goods shall, unless otherwise specifically agreed to in writing, be deemed to have been disclosed as part of the consideration for the Purchase Order, and Seller agrees not to assert any claim against Company by reason of Company's use or alleged use thereof. Seller shall not be permitted to use the name of Company or its affiliates in the form of advertising or in a press release without the prior written approval of Company.

17. INDEMNIFICATION

17.1 **Seller** AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY AND ITS AFFILIATES, SUBSIDIARIES, CUSTOMERS, AND EACH OF THEIR EMPLOYEES, REPRESENTATIVES, AND CONTRACTORS (INDEMNIFIED PARTIES) FROM AND AGAINST ANY DEMAND, LAWSUIT, ACTION, DAMAGES, LOSSES, LIABILITIES, INJURIES, EXPENSES, OF EVERY KIND OR CHARACTER (INCLUDING ATTORNEY'S FEES) CAUSED BY, ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, THE:

17.1.1 ALLEGED VIOLATION OR INFRINGEMENT OF FOREIGN OR DOMESTIC PATENT, TRADEMARK, COPYRIGHT, OR OTHER INVENTION OR INTELLECTUAL PROPERTY RIGHTS ARISING FROM THE SALE OR USE OF THE GOODS; *PROVIDED, HOWEVER*, THAT SELLER'S OBLIGATION TO INDEMNIFY SHALL NOT APPLY TO ANY SUCH DAMAGES, INJURIES OR LOSSES TO THE EXTENT THE INFRINGEMENT OR VIOLATION RESULTS FROM THE GOODS BEING: (i) MODIFIED BY COMPANY AFTER DELIVERY TO COMPANY'S FACILITIES; OR (ii) COMBINED BY COMPANY OR ITS CONTRACTORS WITH ITEMS NOT FURNISHED HEREUNDER, AND BY REASON OF SAID MODIFICATION OR COMBINATION A SUIT IS BROUGHT AGAINST COMPANY, *PROVIDED FURTHER, HOWEVER*, THAT THIS EXCEPTION TO SELLER'S INDEMNITY OBLIGATIONS IN THIS SECTION 17.1.1 FOR COMPANY'S MODIFICATION OR COMBINATION (A) HAD THE WRITTEN APPROVAL OF SELLER, (B) WAS PERFORMED IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS (INCLUDING INSTRUCTION MANUALS OR SERVICE BULLETIN(S)), OR (C) WAS KNOWN TO SELLER THAT SUCH MODIFICATION OR COMBINATION WAS INTENDED AND SELLER DID NOT PROVIDE WRITTEN NOTICE TO COMPANY THAT SUCH MODIFICATION OR COMBINATION WOULD RESULT IN INFRINGEMENT OF ANOTHER PERSON'S INTELLECTUAL PROPERTY AND IDENTIFYING SUCH INTELLECTUAL PROPERTY TO COMPANY;

17.1.2 ACTS OR OMISSIONS OF SELLER, ITS EMPLOYEES, REPRESENTATIVES AND PERMITTED SUBCONTRACTORS IN PERFORMING SELLER'S OBLIGATIONS UNDER THE PURCHASE ORDER; *PROVIDED, HOWEVER*, THAT SELLER'S OBLIGATION TO INDEMNIFY SHALL NOT EXTEND TO SUCH DAMAGES, INJURIES OR LOSSES TO THE EXTENT AND FOR SUCH PORTION THAT THE SAME WAS CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF ANY OF THE INDEMNIFIED PARTIES;

17.1.3 ACTUAL OR ALLEGED FAILURE OF SELLER OR ITS SUBCONTRACTORS TO COMPLY WITH APPLICABLE LAW, APPLICABLE CODES AND STANDARDS OR SAFETY REQUIREMENTS UNDER A PURCHASE ORDER;

17.1.4 CLAIMS BY ANY GOVERNMENTAL INSTRUMENTALITY AS A RESULT OF A FAILURE BY SELLER OR ANY SUBCONTRACTOR TO PAY (1) TAXES OR (2) STATE AND APPLICABLE LOCAL SALES AND USE TAXES ON THE ITEMS; AND

17.1.5 FAILURE OF SELLER TO MAKE PAYMENTS TO ANY SUBCONTRACTOR IN ACCORDANCE WITH THE RESPECTIVE SUBCONTRACT.

17.2 THE INDEMNITY OBLIGATIONS HEREIN SHALL BE CONSIDERED TO BE MODIFIED AS REQUIRED TO EXCLUDE INDEMNIFICATION WHICH IS EXPRESSLY PROHIBITED BY APPLICABLE LAW, WITH ALL OTHER OBLIGATIONS OF SELLER UNDER THE PURCHASE ORDER ENFORCED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

17.3 COMPANY SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO CONTROL THE DEFENSE OR SETTLEMENT OF ANY CLAIM OR LAWSUIT COVERED BY SELLER'S INDEMNITY HEREUNDER AND, AT COMPANY'S OPTION, SELLER SHALL, AT

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SELLER'S EXPENSE (1) DEFEND ALL ACTIONS BASED THEREON, OR (2) PAY COMPANY ALL ATTORNEYS' AND CONSULTANTS' FEES AND ALL COSTS AND OTHER EXPENSES ARISING FROM ITS DEFENSE AND SETTLEMENT THEREOF.

18. RIGHT TO AUDIT

Company or any affiliate of Company, at any time until the later of (i) five (5) years following the delivery of the Goods or (ii) as required under applicable law, and for so long thereafter as there may remain any unresolved questions or disputes regarding any item covered by the Purchase Order, shall, at all reasonable times and upon prior notice to Seller, have access to all Seller's, subcontractors' and vendors' personnel, books, records, correspondence, instructions, plans, equipment maintenance records, drawings, receipts, vouchers, financial accounts and memoranda of every description pertaining to the performance of the Purchase Order for the purpose of auditing and verifying costs of performance, Seller's safety performance under the Purchase Order, or for any other reasonable purpose. Company or any affiliate of Company shall have the right to reproduce any of the aforesaid documents. In the event that any audit reveals an error or discrepancy of any nature whatsoever, Seller shall promptly correct such error or discrepancy, and any sums of money owing and due either Company or Seller will be paid promptly by the other party. Seller shall not charge for any costs incurred by assisting Company or Company's affiliate with audits performed pursuant to this Section 18.

19. SITEWORK AND OFF-SITE EQUIPMENT REPAIR

19.1 If Seller performs any work (including installation, supervision of installation, fabrication, assembly, start-up services, repairs, and/or technical support), at Company's or its affiliate's or customer's premises, then Seller shall, in addition to the other terms set forth in the Purchase Order, be obligated as follows:

19.1.1 **PROTECT, DEFEND, INDEMNIFY, AND HOLD COMPANY AND ITS AFFILIATES AND CUSTOMERS HARMLESS FROM ANY DAMAGE OR INJURY TO ANY PERSON OR PROPERTY, AND FROM ANY CLAIM, DEMAND, ACTION, COST OR EXPENSE (INCLUDING ATTORNEY'S FEES) RESULTING FROM OR IN ANY WAY ARISING OUT OF THE ACTIVITIES OF SELLER'S EMPLOYEES, AGENTS OR PERMITTED SUBCONTRACTORS, INCLUDING ANY CONTAMINATION OR POLLUTION OF PROPERTY TO THE EXTENT ARISING OUT OF ACTS OR OMISSIONS OF SELLER'S OR ITS SUBCONTRACTORS' USE, HANDLING, OR DISPOSAL OF HAZARDOUS MATERIALS GENERATED OR BROUGHT TO COMPANY'S PROPERTY OR WORK SITE BY SELLER AND USED IN SUCH ACTIVITIES OR FAILURE OF SELLER OR ANY SUBCONTRACTOR TO STOP ACTIVITIES AFTER ENCOUNTERING ANY PRE-EXISTING HAZARDOUS MATERIALS ON SELLER'S PROPERTY OR WORK SITE;**

19.1.2 before commencing any such work, provide Company with certificates of insurance evidencing insurance coverage on such terms as required by Company including naming Company as an additional insured with a waiver of rights of subrogation;

19.1.3 comply with any labor agreements associated with the site;

19.1.4 use all reasonable efforts to avoid any labor disturbance or dispute which will affect installation or operation of the Goods; and

19.1.5 comply with Company's most current safety regulations, procedures, and practices, and take whatever additional actions necessary to ensure that Seller's employees operate safely and competently on the site.

19.2 In the event the Purchase Order covers repair/refurbishment or other off-site services to be performed on Company equipment at Seller's or its permitted subcontractor's facility, then, in addition to the other terms set forth in the Purchase Order, the following provisions shall apply:

19.2.1 the services shall be subject to inspection and testing upon redelivery of the equipment to Company, or if the equipment which was serviced or stored is to be integrated with other Company equipment, upon such integration;

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- 19.2.2 unless otherwise specified on the face of the Purchase Order, the services shall be performed and the equipment returned to Company premises within sixty (60) days after the equipment has arrived on Seller's or its permitted subcontractor's premises (or such other date specified in the Purchase Order), and the parties agree that if the return of the equipment is delayed for reasons other than a Force Majeure Event or Company ordered suspension, Company shall suffer damage not susceptible to calculation and therefore Seller agrees to pay Company, as liquidated damages and not as a penalty, the amount of liquidated damages per day shown on the face of the Purchase Order (if any), and Seller acknowledges and agrees that such liquidated damages are a fair, reasonable, and appropriate estimate of the losses that Company may suffer from such delay;
- 19.2.3 if as part of the Purchase Order Seller provides a substitute piece of equipment for Company's use during the time the services are being rendered, Seller shall not charge Company any "loaner fee" for any period of delay;
- 19.2.4 unless otherwise specified on the face of the Purchase Order, transportation for the equipment to and from Seller's premises shall be DAP the site designated by Company (INCOTERMS 2010), by common carrier acceptable to Seller;
- 19.2.5 risk of loss shall remain with Seller at all times while equipment is in transport and/or the possession of Seller;
- 19.2.6 title to equipment shall at all times remain with Company; and
- 19.2.7 Seller shall protect, defend, indemnify, and hold Company and its affiliates and customers harmless from any damage or injury to any person or property, and from any claim, demand, action, cost, or expense (including attorney's fees) resulting from or in any way arising out of the performance of the services by Seller's employees, agents or permitted subcontractors.

20. MISCELLANEOUS

- 20.1 **Entire Agreement.** The Purchase Order and any documents referred to herein, supersede all prior oral or written understandings, transactions, and communications pertaining to the Purchase Order and form the complete contract between Company and Seller. Seller's delivery of the Goods, commencement of performance to fulfill this Purchase Order, or signature on the Purchase Order (whether by facsimile or hard original), whichever occurs first, shall constitute Seller's acknowledgment of its review, acceptance, and understanding of these terms and conditions. No modification, alteration, waiver or amendment of the Purchase Order or any term hereof shall be binding upon Company unless in writing and signed by Company's authorized representative. A waiver or failure to act by Company with respect to any of its rights under the Purchase Order shall not be construed as a waiver or relinquishment of that right in any other instance or of Company's right to assert or to rely on the terms of the Purchase Order.
- 20.2 **Cumulative Remedies.** Company's remedies reserved herein shall be cumulative and in addition to any other or further remedies provided at law or in equity.
- 20.3 **Interpretation.** No part of the Purchase Order including these Terms and Conditions will be construed against either party on account of either party being considered the drafter of the Purchase Order or any provision herein. The Purchase Order shall not be changed or modified by any oral agreement. References to "days" or a "day" shall mean a calendar day unless otherwise stated. No course of dealing between the parties or any waiver of a breach of any provision of these Terms and Conditions shall constitute a waiver of any other breach or of such provision.
- 20.4 **Definitions.** All definitions provided in these Terms and Conditions are applicable to both the singular and plural. As used in these Terms and Conditions, the terms "herein," "herewith," "hereunder" and "hereof" are references to this Agreement taken as a whole, and the terms "include," "includes" and "including" means "including, without limitation," or variant thereof. Unless expressly stated otherwise, reference in these Terms and Conditions to a Section shall be a reference to a Section contained in these Terms and Conditions (and not

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in any Attachments or Exhibits to this Agreement) and a reference in these Terms and Conditions to an Attachment or Exhibit shall be a reference to an Attachment or Exhibit attached to the Purchase Order.

- 20.5 **Counterparts.** The Purchase Order may be signed in any number of counterparts and each counterpart (when combined with all other counterparts) shall represent a fully executed original as if one copy had been signed by all of the parties. Facsimile or electronic signatures shall be deemed as effective as original signatures.
- 20.6 **Survival.** If any provision of the Purchase Order shall be unlawful, void or for any reason unenforceable, it shall be deemed severed from, and shall in no way affect the validity or enforceability of, the remaining provisions of the Purchase Order, which shall remain valid and enforceable according to its terms. Headings are inserted for reference only and are not to be considered part of the terms of the Purchase Order. The provisions under the headings OFFER AND ACCEPTANCE, WARRANTY, TERMINATION FOR CONVENIENCE, TERMINATION FOR CAUSE, DISPUTE, VENUE, REMEDIES AND LIENS, HARMFUL MATERIALS, CONFIDENTIAL INFORMATION, INDEMNIFICATION, RIGHT TO AUDIT, SITEWORK AND OFF-SITE EQUIPMENT REPAIR, and ENTIRE AGREEMENT shall survive the termination of the Purchase Order.
- 20.7 **Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to the Purchase Order shall be in writing signed by the party giving such notice and shall be hand-delivered or sent by overnight courier, messenger, facsimile, or certified mail, return receipt requested, to the other party at the address set forth in the Purchase Order. Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the other party in like manner. Notices, demands, offers, or other written instruments shall be deemed to have been duly given on the date received by the intended recipient.
- 20.8 **Further Assurances.** Seller and Company agree to provide such information, execute, and deliver any such instruments and documents and to take such other actions as may be necessary or reasonably requested by the other party that are not inconsistent with these Terms and Conditions and that do not involve the assumption of obligations greater than those provided for in these Terms and Conditions, in order to give full effect to these Terms and Conditions and to carry out the intent of the Purchase Order.