

# GENERAL CONDITIONS OF PURCHASE

## 1. DEFINITIONS

As used throughout this Agreement the following terms shall have the meanings set forth below:

- a) "Agreement" shall mean these General Conditions of Purchase together with any attachments, exhibits, appendices or other documents specifically referenced therein.
- b) "Goods" shall mean all equipment, materials, supplies and other items furnished by the Seller.
- c) "Purchaser" or "Owner" means the party designated as such on the face of this Agreement.
- d) "Purchaser's or Owner's premises" includes sites or facilities belonging to Purchaser, Purchaser's clients and Purchaser's agents.
- e) "Seller" or "Company" means the person, firm, company or corporation executing this Agreement with Purchaser and who will furnish the Work or Services provided for herein.
- f) "Subcontractor" shall mean and refer to a corporation, company, partnership, firm or individual having a direct contract with Seller or Contractor for performing the Work, and its, their or his employees and representatives.
- g) "Services" mean the services to be performed by "Seller or "Company" for the Purchaser under this Agreement.
- h) "Work" means the labor, equipment, supplies or materials and related Services necessary to provide the construction required by or reasonably inferable from the Agreement.

Provisions 1 through 25 shall govern purchases of Goods.

Provisions 26-36 shall also apply if this Agreement is for Services (including warranty Services) or installation of Goods purchased. To the extent that they may be in conflict, provisions 26 - 36 shall govern.

## 2. TITLE

Seller warrants to Purchaser that Seller has good title to the Goods furnished pursuant to this Agreement and is transferring title to the Goods free and clear of any and all liens, restrictions, reservations, security interests or encumbrances of any kind.

## 3. PROPERTY RIGHTS

All plans, drawings, specifications and the subject matter contained therein and all other information given to Seller by or on behalf of Purchaser in connection with performance of the Agreement involve valuable property rights of Purchaser and shall be held confidential by Seller and shall not be used or disclosed by Seller for any purposes other than those for which they have been supplied or prepared. When requested by Purchaser, Seller shall execute secrecy agreements.

All data, notes, drawings, designs, sketches, specifications, reports, and memoranda of every description relating to the Agreement or any part thereof as Seller shall produce and all copies of the foregoing, shall be the property of Purchaser, subject to inspection by Purchaser at all reasonable times and delivered to Purchaser or otherwise disposed of by Seller as Purchaser may direct from time to time.

## 4. ETHICS

Purchaser's directors, employees and agents ("Purchaser's Personnel") are subject to ethics guidelines which prohibit acceptance of commissions, rebates, payments, kickbacks, lavish or expensive gifts and entertainments, or other things of significant cost or value. Seller agrees that its directors, employees, agents and subcontractors shall not provide any commissions, rebates, payments, kickbacks, lavish or expensive gifts and entertainments, or other things of significant cost or value to Purchaser's Personnel. Seller shall notify Purchaser's management of any such violation. Any willful violation may result in the cancellation of current contracts and removal of Seller from Purchaser's bidders list.

## 5. SHIPPING

All Goods are to be shipped in accordance with instructions in this Agreement. Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags and containers.

## 6. INSPECTION, ACCEPTANCE OR REJECTION

The Goods shall be subject to inspection and tests by Purchaser and inspection and acceptance or rejection of the Goods shall be made as promptly as practicable after delivery. Failure to promptly inspect, accept or reject the Goods shall, nonetheless, not release the Seller from the responsibility of providing the Goods in accordance with the terms of this Agreement. If Purchaser rejects the Goods for whatever reason, said Goods shall be held, transported and/or stored at Seller's sole expense. Seller agrees that it shall promptly reimburse Purchaser for any such expenses.

## 7. PAYMENTS

Payment will be made based upon invoices of Seller for Work performed based upon Seller's progress or for Goods furnished unless otherwise specified in this Agreement. Purchaser may require a Partial Waiver and Release of Lien in the form of Exhibit B. Payment otherwise due may be withheld by Purchaser based upon defective Work not remedied, claims made or liens filed against Purchaser, damage by Seller or its Subcontractors to property of Purchaser, failure to make proper payments to Subcontractors for materials or labor, failure to submit required documentation or any other failure by Seller to perform in accordance with the terms of this Agreement. Payment, final or otherwise, shall not be construed as approval as to quality of the Work or Goods or any part thereof or relieve Seller of its obligations hereunder. Purchaser may require a Waiver and Release of Lien in the form set forth as Exhibit A prior to final payment.

## 8. WARRANTY

Seller warrants to Purchaser that the Goods will conform with the specifications, drawings and other descriptions supplied or adopted by Purchaser, if any, will, unless otherwise specified, be new, fit and sufficient for the purpose for which they are intended as evidenced in this Agreement and will be of good materials, design and workmanship and free from defects.

At Purchaser's request, Seller shall promptly, at no cost to Purchaser, either repair or replace (including payment of all removal, packing and transportation costs) any Goods, which within one year after being placed in regular use by Purchaser shall fail in the normal use and service and under proper operation, to conform to the foregoing warranties of Seller. In the event that Seller fails to promptly undertake to so repair or replace, Purchaser shall be entitled to correct the same at whatever means are available to Purchaser and to charge Seller for the cost of the same. All express warranties of Seller are set forth in this Agreement and NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. All third-party warranties shall be assigned to Purchaser.

## 9. OPERATION & MAINTENANCE MANUALS

Seller shall supply or shall cause to be supplied operating and maintenance manuals (the "Manuals") in the English language for the Equipment furnished by Seller or by Seller's suppliers, including information concerning system design and installation, startup, operation, as built drawings, precautions and warnings relative to the safety of life and equipment, certified code documentation, shutdown, maintenance and repair. Any difference between Equipment supplied for multiple units regarding operation, maintenance and repair shall be clearly identified. Manuals shall include the Purchaser's Contract number, facility and a complete index of all data, documents and drawings contained within the Manual to facilitate the timely access to such information.

Seller shall submit two (2) draft copies of each Manual to

Purchaser for technical review prior to submitting Manual in the final form. Following such review, unless otherwise required in the Specification, Seller shall furnish to Purchaser two (2) final copies, assembled in hard copy book form and one (1) editable and searchable electronic copy of each final Manual. The electronic copy shall be in Microsoft Word, Microsoft Excel and AutoCAD or other Purchaser preapproved format. Purchaser will reject incomplete Manuals and they will be returned to the Seller for completion and re-submittal. Final payment will not be made to Seller until acceptable final Manuals are submitted to Purchaser.

#### **10. DELAYS**

Time of delivery is of the essence of this Agreement. Notwithstanding, Seller shall be excused for delays in delivery of the Goods where any such delay is due to acts of God, acts of Purchaser not within its rights, acts of civil or military authority, terrorism, fires, strikes, floods, epidemics, war, riot or other similar causes beyond Seller's control, which Seller could not have reasonably foreseen or provided against. In the event of any such delay, Seller shall only be allowed an extension of the date of delivery for a period equal to the duration of the delay and Seller shall not be entitled to any extra compensation for such delay. Seller shall promptly notify Purchaser in writing of any such delay and, at no additional cost to Purchaser, Seller shall take all reasonable steps to avoid or end such delay. Seller shall also promptly notify Purchaser when the cause of such delay has abated.

#### **11. CHANGES**

Purchaser shall have the right to make changes in the specifications and drawings for the Goods by written notice to Seller. Upon receipt of a written notice, if Seller believes that such change or changes affects the price and/or the scheduled delivery or installation date for the Goods, Seller shall so notify Purchaser in writing within seven (7) calendar days. After receipt of Seller's written response, Purchaser and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or the scheduled delivery or installation date to reflect the effect of such change. Seller agrees that it shall not suspend performance of this Agreement during the period Purchaser and Seller are in the process of negotiating such adjustments. No substitution shall be made in this Agreement without prior written consent of Purchaser and extra compensation will be paid to Seller only if agreed to in writing by Purchaser.

#### **12. SUSPENSION**

Purchaser shall have the right to suspend Seller's performance of this Agreement for its convenience at any time by written notice to Seller. Upon receipt of such notice, Seller shall promptly suspend further performance of this Agreement to the extent specified and during the period of such suspension shall properly care for and protect the Work in progress. Purchaser may, at any time, withdraw this suspension by written notice to Seller specifying the effective date of said withdrawal and, upon such date, Seller shall diligently resume performance of the suspended work on the Goods. In the event Seller believes that any such suspension justifies modification of the Agreement price or delivery date, Seller shall notify Purchaser in writing of the same within five (5) working days after receipt of said notice. Thereafter, Purchaser and Seller shall agree upon an equitable adjustment in the Agreement price and/or delivery date based upon verified and approved supporting documentation. Seller shall be entitled to recover the additional costs incurred by it as a result of such suspension, but shall not be entitled to any damages or additional profits as a result of the suspension. Purchaser may, at its option, have costs reimbursable under this Section audited by either Purchaser's auditing staff or by independent certified public accountants selected by Purchaser.

#### **13. TERMINATION FOR CONVENIENCE**

Purchaser shall have the right, at any time and for any reason, to terminate this Agreement, in whole or in part, for Purchaser's convenience and without cause by providing the written notice of

termination to Seller specifying the extent and effective date of the termination.

Upon Seller's receipt of such termination notice, Seller shall:

- Discontinue on the effective date of the termination notice the terminated portion of the Agreement;
- Place no additional orders in connection with this Agreement;
- Cancel any applicable subcontracts or purchase orders related to the terminated work, where possible;
- Take reasonable steps to mitigate costs and expenses associated with the termination;
- Deliver to Purchaser any completed equipment, components, work-in-progress, drawings, specifications, related materials or Goods for which Purchaser has agreed to pay.

In the event of termination for convenience, Seller shall be entitled to payment for:

- Equipment completed and accepted prior to the termination date;
- Reasonable costs incurred on Goods, materials, components, or work-in-progress specifically manufactured or procured for this Agreement and not otherwise usable or returnable; and
- Substantiated cancellation or restocking fees for Goods, materials, or components ordered specifically for this Agreement, where non-refundable.

Subject to Purchaser's payment of the foregoing, Seller shall not be entitled to any compensation for lost profits on the portion of the purchase that was terminated and Seller waives any right to claim direct, indirect, special or consequential damages resulting from Purchaser's termination of the purchase.

Seller shall submit its termination claim invoice within thirty [30] calendar days of the effective date of termination. Purchaser shall review and pay the approved amount in accordance with the payment terms of this Agreement. Purchaser may, at its option, have those costs which are reimbursable under this Section audited by either Purchaser's auditing staff or by independent certified public accountants selected by Purchaser.

#### **14. TERMINATION FOR DEFAULT**

Purchaser shall have the right to terminate this Agreement, in whole or in part, for default, effective upon written notice of termination to Seller, if Seller:

- Fails to deliver the Equipment or Goods within the time specified in the Agreement or any extension thereof granted by Purchaser in writing;
- Fails to perform any other material term or condition of this Agreement; or
- Becomes insolvent, files for bankruptcy, a bankruptcy petition is filed against Seller, or Seller makes an assignment for the benefit of Seller's creditors.

Prior to any termination pursuant to this section, Purchaser shall provide written notice to Seller specifying the nature of the default. Seller shall have ten (10) calendar days from the date of notice to cure the default to the reasonable satisfaction of Purchaser. If Seller fails to cure the default within the specified period or fails to diligently pursue and continue such a cure, Purchaser shall have the right to terminate the Agreement by issuing a written notice of termination to Seller, effective immediately.

In the event of termination for default:

- Seller shall deliver to Purchaser all Goods, materials, equipment, documents, work in progress, work product, finished or unfinished, including drawings, materials, and equipment paid for by Purchaser, which shall become the property of Purchaser;

- Purchaser shall have the right to retain and use any portion of the Equipment or Goods already delivered, subject to an equitable adjustment in the Agreement Price;
- Any amounts due to Seller for Equipment or Goods delivered by Seller in compliance with the terms of this Agreement prior to such termination for default, shall be subject to a set off against the additional costs incurred by Purchaser completing Seller's obligations under the Agreement and for any and all other damages incurred by Purchaser as a result of Seller's default.

The failure of Purchaser to exercise any right under this section shall not be deemed a waiver of such right, nor shall it limit Purchaser's rights or remedies under this Agreement or applicable law.

The rights and remedies of Purchaser under this section are in addition to any other rights and remedies provided by law, equity, or under this Agreement.

#### 15. CONFIDENTIALITY

Seller shall not, at any time prior to five years after the Services are completed or terminated, use for any purpose other than performing the Services or disclose to any third parties any business or technical information, knowledge or data of Purchaser (or its subsidiaries, agents or clients) disclosed to Seller in connection with the Services or developed by Seller in the performance of the Services; provided, however, that the foregoing obligations of nonuse and nondisclosure shall not apply to any information, knowledge or data which:

- Was already known to Seller at the time it was disclosed in connection with the Services;
- Was published prior to the issuance of this Agreement or, without fault of Seller, thereafter becomes published
- Or is lawfully disclosed to Seller by a third party as a matter of said third party's right.

This Agreement does not contemplate that Purchaser will be afforded access to any confidential or proprietary information of Seller or any third parties. In the event that Seller discloses any such information to Purchaser or includes such information in any of Seller's Work product without having obtained Purchaser's prior written approval to do so, Purchaser shall be entitled to use and disclose such information without restriction and Company shall defend and hold Purchaser harmless from any claims of third parties with respect thereto.

#### 16. INDEMNITY

Seller agrees to defend, indemnify and hold harmless Purchaser and its members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the "Indemnified Parties") from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, demand or cause of action, including any actual loss, cost, expense, liability, fine or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) related to any bodily injury, death or property damage resulting from Seller's breach of this Agreement, Seller's violation of any law, rule or regulation or Seller's negligence or willful misconduct.

In the event any such loss, cost, expense, liability, fine or damage is caused by the concurrent default or negligence of any Indemnified Party, the Indemnified Party's violation of any law, rule or regulation or the failure of the Indemnified Party to perform its obligations under this Agreement, Seller shall be relieved of its obligation to indemnify the Indemnified Party to the extent such loss, cost, expense, liability, fine or damage was caused by such concurrent default or negligence, such failure to comply or such failure to perform.

Neither the coverage nor the limits of Insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation of Seller.

#### 17. CONSEQUENTIAL DAMAGES

Seller and Purchaser shall not be liable to the other for consequential or punitive damages for lost production and revenues as a result of performance under this Agreement.

#### 18. ASSIGNMENTS

Seller shall not assign the Agreement, or any part thereof, without the prior written consent of Purchaser. Any assignment of the Agreement, in whole or in part, voluntarily, by operation of law or otherwise, without written consent of Purchaser, shall be null and void.

The Purchaser may, in its sole discretion, assign its obligations under this Agreement to one or more of its subsidiaries or any party acquiring all or substantially all of the rights or assets of Purchasers business. Such assignment will not relieve the Purchaser or Seller of its obligations and/or liabilities hereunder.

#### 19. INFRINGEMENT

Seller warrants that Purchaser's purchase, installation and/or use of the Goods will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise or other intellectual property right.

#### 20. MECHANIC'S LIENS

Seller agrees to indemnify, hold harmless and defend Purchaser from and against all laborers', material men's and/or mechanics' liens arising from the performance of Seller's obligations under this Agreement and Seller shall keep the premises of the Purchaser free from all such claims, liens or encumbrances. Seller waives all rights of mechanics' or material men's lien against the property of the premises of the Purchaser.

#### 21. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION

The Seller agrees to comply with the following executive order and regulations which form part of this Agreement and are incorporated herein by this reference:

- 41 CFR 60-1.4 Equal Opportunity Clause.
- 41 CFR 60-1.7 Reports and other Required Information.
- 41 CFR 60-1.8 Segregated Facilities.
- 41 CFR 60 Disabled & Other Veteran Status Projections
- 41 CFR 60-300.5(a) Equal Opportunity Qualified Protected Veterans
- 41 CFR 60-741.4 and 741.5 Equal Opportunity – Workers with Disabilities.

#### 22. ENTIRE AGREEMENT

This Agreement shall become a binding contract to Seller and Purchaser upon Seller's signing and returning an acceptance copy of this Agreement or upon Seller otherwise acknowledging acceptance of this Agreement or commencing performance of this Agreement, whichever occurs first. This Agreement, together with specifications, drawings and documents, if any, referred to herein and other documents referred to therein, if any, which by this reference are all made a part hereof, constitute the entire Agreement between Seller and Purchaser and all prior negotiations, proposals and writings pertaining to this Agreement on the subject matter hereof are hereby superseded. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Purchaser and no such additional or different terms or conditions in any printed form of Seller shall become part of this Agreement despite Purchaser's acceptance of Goods unless such acceptance specifically, in writing, recognizes or consents to their inclusion.

#### 23. CONFLICTS

In the event of an express conflict among the terms contained within the Agreement documents, Seller shall promptly so notify the Purchaser and shall comply with the Purchaser's resolution of

the conflict.

#### 24. CHEMICALS

Seller shall provide a current Safety Data Sheet ("SDS") for all substances delivered hereunder which may pose a physical, or health hazard to the user in accordance with Federal Regulation 29 CFR 1910.1200 (Hazard Communication, Right to Know). Seller will provide SDS with the initial shipment of the material for this Agreement as well as with the first shipment after an SDS has been updated.

#### 25. GOVERNING LAW

This Agreement shall be subject to and governed by the laws of the State of North Dakota without respect to any conflict of law principles that might otherwise direct the application of the laws of another jurisdiction.

#### 26. ADMINISTRATION

Activities of Seller shall be subject to coordination by Purchaser.

#### 27. FAMILIARITY WITH CONDITIONS

Seller has made a careful examination of the site of the Work, plans, specifications and drawings supplied by Purchaser, if any, and has become informed as to the location and nature of the proposed construction, transportation facilities and kind of facilities required before and during the Work, and has also become acquainted with the labor conditions, meteorological conditions, the ecological and environmental criteria to be followed, and state and federal laws and regulations which would affect the Work. Seller has examined the site of the Work and assumes responsibility for any preparatory work on Purchaser's property necessary to enable deliveries of the Goods as well as parts and materials to the site of the Work.

Seller has made a careful examination of Purchaser's requirements for site access, including but not limited to secrecy agreements, plant site orientation, plant site training, drug screening documentation and compliance with 29CFR 1910.119 (if applicable).

#### 28. SUPERVISION AND INSPECTION

Seller shall give sufficient supervision of the Work using its best skill and attention. Seller shall carefully study and compare all specifications and other instructions and shall at once report to Purchaser any error, inconsistency or omission which it may discover. Seller shall also employ capable, experienced or reliable skilled workmen as may be required for the Work. Purchaser reserves the right to require removal from the project of any Seller employee if, in the judgment of Purchaser, such removal shall be necessary in order to protect the interests of Purchaser. The manner of performance of the Work and all materials and equipment used therein, shall be subject to the inspection, test and approval of Purchaser, and Seller shall furnish all information required by Purchaser concerning the nature and source of any materials incorporated or to be incorporated in the Work.

#### 29. INSURANCE

Except as otherwise provided in this agreement, Seller shall procure and maintain, at its own expense, and shall require its sub Seller(s), if any, to procure and maintain for the duration hereunder the insurance coverage for the financial protection of Seller and Purchaser, its affiliates, including all units, divisions and subsidiaries from and against claims directly or indirectly arising out of, or associated with, Seller's performance of this Agreement, meeting or exceeding the requirements set forth below:

A. **Minimum Scope and Limits of Insurance** -- Coverage shall be at least as broad as the following for scope of insurance. Seller and any and all of their sub-contractor(s) shall maintain limits *no less than*:

- 1) **Commercial General Liability Insurance:** Shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). The policy shall not contain any provision which would prohibit the reporting

of a claim and the subsequent defense and indemnity that would normally be provided by the policy. Including Umbrella Liability Insurance, if necessary, limits shall be not less than the following:

- \$1,000,000 each occurrence for bodily injury and property damage;
  - \$2,000,000 aggregate for products and completed operations;
  - \$2,000,000 general aggregate.
- The limits and coverage requirements may be revised at the option of Purchaser. The policy of insurance shall contain or be endorsed to include the following:
- a) Premises and Operations Liability, Products and Completed Operations Liability, Contractual Liability, Independent Contractors, Broad Form Property Damage, Personal Injury, Cross Liability/Severability of Interest.
  - b) The policy shall be endorsed to include Purchaser, and its affiliates, including all units, divisions and subsidiaries as Additional Insureds on a Primary and Non-contributory basis, including Products-Completed Operations Coverage. The coverage shall contain no special limitations on the scope of protection afforded to said Additional Insured.
  - c) All insurance policies required herein shall contain a Waiver of Subrogation or similarly prevent recovery actions against Purchaser, its subsidiaries, affiliates, directors, officers and employees.
  - d) No XCU (explosion, collapse, underground) exclusion.
  - e) For any claims related herein any and all of their Seller's insurance shall be primary and non-contributory respecting the aforesaid Additional Insureds. Any insurance or self-insurance maintained by Purchaser shall be in excess of Seller's and any and all of their Sub-Seller's insurance and shall not contribute with it.
  - f) The policy shall not contain any provision, definition, or endorsement which would serve to eliminate third-party-over action claims.
  - g) Self-funded, or other non-risk transfer insurance mechanism is not acceptable to Purchaser. If Seller or any and all of its sub-contractors have such a program, full disclosure must be made to Purchaser prior to any consideration being given.
  - h) Provide that any general aggregate limit shall apply separately on a "Per Agreement" basis.
  - i) Contain an 'Employers Liability/Stop Gap' endorsement if any work is being done in a Monopolistic Workers Compensation state.
- 2) **Automobile Liability Insurance:** Commercial Automobile liability insurance on all motor vehicles used in connection with the contract for all on-site and off-site operations, whether owned, non-owned, or hired. Policy shall be endorsed to include Purchaser, its affiliates, including all units, divisions and subsidiaries as Additional Insureds, and to include waiver of subrogation to the benefit of all Additional Insureds, as aforesaid. Including Umbrella Liability Insurance, if necessary, limits shall be not less than \$1,000,000 per accident for bodily injury and property damage, \$5,000,000 if hazardous materials or substances are to be transported and in such case shall include an MCS 90 endorsement.
  - 3) **Workers' Compensation Insurance:** As required by the State or Commonwealth in which work is being done, and in accordance with any applicable Federal laws, including Employer's Liability Insurance and/or Stop Gap Liability coverage as per below limits. Where not otherwise prohibited by law, this policy shall be endorsed to include waiver of subrogation to the benefit of Purchaser, its affiliates, including all units, divisions and subsidiaries. Seller and any and all of their sub-contractor(s) shall maintain limits no less than: As required by the State or Commonwealth in which the work will be performed, and as required by any applicable Federal laws.

- 4) **Employer's Liability and/or Stop Gap Liability Coverage:** \$1,000,000 per accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease each employee.
  - 5) **Excess/Umbrella Liability Insurance:** to apply excess of the Commercial General Liability, Automobile Liability and Employers Liability/Stop Gap Liability and shall be not less than \$5,000,000
  - 6) **Professional Liability Insurance (Errors and Omissions):** Seller shall maintain Professional Liability Insurance appropriate to the Seller's profession covering any damages caused by an error, omission or any negligent acts. Limits of not less than \$1,000,000 shall be provided.
  - 7) **Cyber Liability:** Network Security and Privacy Liability insurance with limits of not less than \$10,000,000 for each claim and an annual aggregate of \$10,000,000 covering claims arising from privacy violations, data theft, damage, destruction or alteration of data, cyber extortion and network security intrusions.
- B. Deductibles and Self-Insured Retentions** - All insurance coverage carried by Seller and any and all of their sub-contractor(s) shall extend to and protect Purchaser, its affiliates, including all units, divisions and subsidiaries to the full amount of such coverage, and all deductibles and/or self-insured retentions (if any), including those relating to defense costs, are the sole responsibility of Seller and any and all of their sub-contractor(s).
- C. Rating of Insurer** - Seller and any and all of their sub-contractor(s) will only use insurance companies acceptable to Purchaser and authorized to do business in the state or area in which the work hereunder is to be performed. Insurers must have a minimum rating of an A-.
- D. Other Insurance Provisions**
- 1) These insurance provisions are intended to be a separate and distinct obligation on the part of Seller and any and all of their sub-contractors. Therefore, these provisions shall be enforceable and Seller and any and all of their sub-contractor(s) shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.
  - 2) The above-described insurance coverage to be provided by Seller and any and all of their sub-contractor(s) hereunder will extend coverage to all work or services performed hereunder.
  - 3) The obligation of the Seller and any and all of their sub-contractor(s) to provide the insurance herein above specified shall not limit in any way the liability or obligations assumed by the Seller and any and all of their sub-contractor(s) hereunder. All insurance required herein are the minimum types and amounts required for compliance with this Agreement, but shall not in any way be construed as the full amounts and types of insurance necessary to adequately protect the Seller or others, nor its obligations to Seller as provided for in this Agreement or otherwise, and Seller shall be solely responsible for any deficiencies thereof. It is Seller's sole obligation to determine and implement any other types or amounts of insurance necessary to protect Seller's obligations and interests. The types and amounts of any insurance required herein shall not serve to limit the total liability of the Seller under any warranty or indemnity provision of this Agreement or any other obligation Seller may have to Purchaser or others.
  - 4) In the event Seller and any and all of their sub-contractor(s), or its insurance carrier defaults on any obligations hereunder, Seller and any and all of their sub-contractor(s) agree that they will be liable for all reasonable expenses and attorneys' fees incurred by Purchaser to enforce the provisions hereunder.
- E. Evidence of Coverage**
- 1) Prior to the commencement of this Agreement, and at all times during the course of this Agreement, Seller and any

- and all of their sub-contractor(s) shall furnish Purchaser with ACORD Certificates of Insurance evidencing full compliance with the requirements herein.
- 2) Any failure on the part of Purchaser to pursue or obtain the Certificates of Insurance required hereunder and/or the failure of Purchaser to point out any non-compliance of such Certificates of Insurance shall not constitute a waiver of any of the insurance requirements hereunder, nor relieve Seller and any and all of their sub-Seller(s) of any of its obligations or liabilities hereunder. Moreover, acceptance by Purchaser of insurance submitted by Seller and any and all of their sub-contractors does not relieve or decrease in any manner the liability of such parties for performance hereunder. Seller and any and all of their sub-contractor(s) are responsible for any losses, claims, and/or costs of any kind which their insurance does not cover.
  - 3) Seller will provide written notice to the Purchaser at least thirty (30) days prior to any cancellation of the Seller's insurance coverage.

**30. Subcontractors** -- Seller shall be responsible to obtain separate certificates from each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

#### **31. SUBCONTRACTS**

Prior to the commencement of the Work, Seller shall provide a listing of all Subcontractors to be utilized in performing the Work. Purchaser reserves the right to reject same.

#### **32. LAWS AND REGULATIONS**

Seller shall comply with all applicable state and federal laws, rules, regulations, standards and ordinances pertaining to the Work.

#### **33. RIGHT TO AUDIT**

Seller agrees to maintain adequate books and records concerning transactions in connection with this Agreement and to make said books and records available for inspection and audit by Purchaser's auditing staff or by independent certified public accountants selected by Purchaser during the term of this Agreement and for a period of three (3) years after final payment under this Agreement.

#### **34. WORK WARRANTY**

Seller warrants that the Work shall be performed in a competent manner and shall be free from defects and workmanship. If such defects become apparent to Purchaser within one year from the date of completion of the Work, Purchaser shall promptly notify Seller and Seller shall correct such deficiencies during standard working hours at no cost to Purchaser. Such corrected deficiencies shall likewise be subject to the provisions of this paragraph for one year from the date of completion of correction by Seller.

In the event Seller does not undertake the correction, Purchaser will have the right to perform the corrections and bill the associated costs to Seller.

#### **35. INDEPENDENT CONTRACTOR**

Seller agrees that in the performance of the Work, it shall act as an independent Seller, and all of its agents and employees, and agents and employees of its Subcontractors, shall be subject solely to the control, supervision and authority of the Seller or its Subcontractor.

#### **36. ON-SITE CHEMICAL USE**

Seller shall notify the Purchaser forty-eight (48) hours prior to the scheduled use of any hazardous chemical on Purchaser's premises. Seller shall have complete labeling on all containers of chemicals concerning contents. Hazards and precautions in accordance with applicable federal and state requirements. Prior to

beginning Work, Seller shall provide to Purchaser an MSDS for each hazardous chemical to be used. Seller's failure to comply with this provision is cause for Purchaser to immediately stop or delay the Work until compliance occurs. Such stoppage of the Work shall be at no additional cost to Purchaser.

WAIVER AND RELEASE OF LIEN
OWNER/CONTRACTOR Contract NO. \_\_\_\_\_

WHEREAS, the undersigned has furnished to Basin Electric Power Cooperative (the "Owner")

the following: \_\_\_\_\_
(List or Reference Goods or Services Provided)

for use in Owner's \_\_\_\_\_
(Owner/Contractor Contract Title)

NOW, THEREFORE, the undersigned for and in consideration of progress payments made, the receipt of which is hereby acknowledged, and in consideration of a final payment in the amount of \_\_\_\_\_, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described Contract and related premises, under any law common or statutory, on account of labor or materials, or both, furnished by the undersigned as of the date written below.

CONTRACTOR hereby agrees to indemnify Owner against and hold Owner harmless of and from all liens, claims, demands, penalties, losses, costs, damages and liability in any manner whatsoever heretofore or hereafter arising out of or in respect of any claim by any person or governmental agency for payment for work, labor, services or materials heretofore or hereafter performed, furnished, or rendered under or pursuant to or in respect of the performances of said Contract or the aforesaid applicable taxes and insurances.

Contractor

Signature: \_\_\_\_\_
Name: \_\_\_\_\_
Title: \_\_\_\_\_
Date: \_\_\_\_\_

Notary Public Required

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date)
by \_\_\_\_\_
(name of officer or agent and title of officer or agent)
of \_\_\_\_\_, a \_\_\_\_\_, corporation,
(name of corporation acknowledging) (state or place of incorporation)
on behalf of the corporation.

Signature \_\_\_\_\_
Title or Rank \_\_\_\_\_
Serial Number, if any \_\_\_\_\_ (seal)

PARTIAL WAIVER AND RELEASE OF LIEN
OWNER/CONTRACTOR Contract NO. \_\_\_\_\_

WHEREAS, the undersigned has furnished to Basin Electric Power Cooperative (the "Owner")

the following: \_\_\_\_\_
(List or Reference Goods or Services Provided)

for use in Owner's \_\_\_\_\_
(Owner/Contractor Contract Title)

NOW, THEREFORE, the undersigned for and in consideration of progress payments made, the receipt of which is hereby acknowledged, and in consideration of a final payment in the amount of \_\_\_\_\_, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described Contract and related premises, under any law common or statutory, on account of labor or materials, or both, furnished by the undersigned as of the date written below.

CONTRACTOR hereby agrees to indemnify Owner against and hold Owner harmless of and from all liens, claims, demands, penalties, losses, costs, damages and liability in any manner whatsoever heretofore or hereafter arising out of or in respect of any claim by any person or governmental agency for payment for work, labor, services or materials heretofore or hereafter performed, furnished, or rendered under or pursuant to or in respect of the performances of said Contract or the aforesaid applicable taxes and insurances.

Contractor

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Notary Public Required

State of: \_\_\_\_\_

County of: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date)
by \_\_\_\_\_
(name of officer or agent and title of officer or agent)
of \_\_\_\_\_, a \_\_\_\_\_, corporation,
(name of corporation acknowledging) (state or place of incorporation)
on behalf of the corporation.

Signature \_\_\_\_\_
Title or Rank \_\_\_\_\_
Serial Number, if any \_\_\_\_\_ (seal)