

## SERVICE ORDER TERMS AND CONDITIONS

1. **CONTRACT.** (a) This Order constitutes the entire contract between the parties. Acceptance is limited to the terms hereof and Owner hereby objects to any additional or revised terms proposed by Contractor. No revision of or addition to this Order or any of its terms and conditions shall be effective (whether or not in Contractor's acknowledgement or other form including, without limitation, Contractor's standard service terms and conditions) unless agreed to in writing by Owner. Performance of any of the work hereunder constitutes acceptance of all the terms and conditions hereof whether or not Contractor has acknowledged this Order. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this Order. (b) In case of conflict, the order of precedence shall be as follows in resolving such conflict: (i) the face of this Order; (ii) these terms and conditions; (iii) any specifications attached to this Order or issued pursuant to this Order; and (iv) any drawings attached to this Order or issued pursuant to this Order.
2. **PERFORMANCE OF WORK.** Contractor shall be an independent contractor and not an employee or agent of Owner. Unless otherwise specified, Contractor shall furnish all necessary labor, supervision, services, material, supplies, tools and equipment, and shall complete the work hereunder in compliance with the terms of this Order and of any applicable specifications and with all applicable laws and regulations. Contractor shall employ, or cause to be employed, on or in connection with the performance of this Order, only persons who are fit and skilled in the work assigned. Should any disorderly, incompetent, or objectionable person be employed by Contractor or by any of its subcontractors, Contractor shall, upon request of Owner, cause such person to be removed from the performance of this Order. Contractor shall execute the work so as to require minimum shut-downs, if any, of Owner's operations, any such shut-downs to be scheduled by Owner. All materials shall be suitable for the purpose intended and shall be new unless otherwise specified. Contractor shall utilize Owner products in the work to the extent practicable. Contractor shall at all times keep the premises free from accumulations of waste material and rubbish resulting from its operations and, upon completion, it shall remove all surplus materials and leave the premises broom clean. During the progress of the work, Contractor shall take every precaution against the possibility of fire and any other hazard to persons or property and shall comply with all safety regulations and instructions of Owner. Contractor will not permit any attachment, lien or other encumbrance arising out of work to be performed hereunder, to be imposed upon Owner's property.
3. **SUBCONTRACTS.** Contractor shall not subcontract any portion of the work without the written permission of Owner. The use by Contractor of approved subcontractors shall not relieve Contractor of its duties, responsibilities and obligations under this Order. Contractor's use of subcontractors shall not modify Contractor's compensation under this Order. Seller (and its subcontractors) shall comply with all safety rules and regulations of Buyer which may include, but not be limited to, the safety rules and regulations, badging requirements, and hold harmless requirements of any lessor of Buyer's premises. Seller is responsible for ensuring that any subcontractors to be used by Seller to perform any services under this Order are pre-qualified and approved for site access. Seller, not its subcontractors, shall initiate the pre-qualification and approval process for its subcontractors, and Buyer shall not be responsible for any delays caused by Seller's failure to timely initiate such process.
4. **OVERTIME.** "Overtime work" shall, unless otherwise defined in this Order, be all labor hours worked per man; which are required, by applicable custom of the trade, union contract or law, to be paid at a premium hourly rate which is not less than time and one half the basic straight time hourly rate for the work performed. The amount above such basic straight time hourly rate shall be considered the premium for such overtime work. Contractor shall not perform any overtime work unless such overtime work is requested or authorized by Owner in writing, or is required by the nature of the work, and Contractor shall perform all overtime work so requested or authorized by Owner in writing. Owner shall pay Contractor for such overtime work in accordance with the provisions of this Order for determining amounts for overtime work.
5. **TIME OF COMPLETION.** Time is of the essence. Work shall be started and performed in accordance with terms hereof and of any applicable specifications and shall be completed on or before the date set forth in this Order.
6. **PRICE AND PAYMENT.** Unless otherwise provided herein, price specified on this Order is a lump sum fixed price and includes all taxes not expressly imposed by law on Owner. Specifically, all taxes based upon gross or net

income or receipts and imposed upon Contractor shall be borne by Contractor. Contractor represents that it is familiar with the premises, nature of the work and conditions relating to performance of the work, and that the compensation specified herein is based on an independent examination of the site and that Contractor will make no claim for additional compensation if conditions encountered differ from those anticipated from such examination. Unless otherwise provided, compensation specified herein shall be due sixty (60) days after completion of work in accordance with the terms of this Order and all applicable specifications, acceptance of work by Owner, and receipt by Owner of a valid invoice therefore; provided, however, that prior to payment, Contractor shall deliver to Owner, if requested: (a) a release of all liens arising out of this Order or receipts in full covering all labor and materials for which a lien could be filed or a bond satisfactory to Owner indemnifying it against such liens and (b) a release discharging Owner, its successors and assigns, officers, employees and agents of and from all liabilities, obligations and claims arising under or by virtue of this Order. If this Order is issued on a cost-plus basis, Contractor will avail himself, for the benefit of Owner, of all refunds, rebates, credits, trade discounts, prompt payment discounts and insurance premium dividends that may be obtained.

7. **HEALTH, SAFETY, ENVIRONMENTAL PROTECTION AND SECURITY.** As described below, and as may be further detailed in this Order, Contractor agrees to: (a) abide by applicable governmental and Owner's health, safety, environmental protection and security rules, regulations and requirements; (b) meet Owner's health, safety and environmental performance criteria; (c) employ or cause to be employed only persons who are fit and skilled in the work to be performed; (d) use equipment that is safe to operate and meets governmental requirements; (e) provide equipment (lease, rent, or "lend to") to Owner that meets applicable governmental and Owner's health, safety and environmental requirements; and (f) provide authorized Owner's representatives access to Contractor's work area(s).

The Department of Homeland Security has implemented a Transportation Worker Identification Credential ("TWIC") program for certain facilities regulated by the US Coast Guard. Any person, including any employee of Contractor or Contractor's subcontractors, who needs unescorted access to secure areas at certain Owner facilities, which currently include the St. Gabriel, Louisiana; McIntosh, Alabama and Charleston, Tennessee plants, must obtain a TWIC card before any such access. The TWIC program applies to all persons, even those who may be on site for only a short period of time, such as delivery drivers and customer service representatives if they are unescorted and are in a designated secure area. Contractor acknowledges and agrees that all unescorted Contractor employees and subcontractors' employees will possess a valid TWIC card upon entering a secure area.

8. **INDEMNITY.** Contractor agrees to protect, indemnify and hold harmless Owner, its agents and employees from and against: (a) any loss, damage, liability, claim, demand, suit, or cost of any nature whatsoever (including counsel fees and related expenses) asserted by employees of Contractor or by third persons (including employees or other contractors of Owner) for property damage, personal injury or death, or any other reason, arising out of, in connection with or incidental to the work performed by Contractor and its subcontractors under this Order, regardless of whether or not such loss, damage, liability, claim, demand, suit or cost shall arise out of, in connection with or incidental to acts or omissions of Owner, its agents and employees; provided, however, that neither this provision nor any other provision of this Order shall be construed in any circumstances to constitute an indemnification against any loss, damage, liability, claim, demand, suit or cost caused solely by the negligence of said Owner, its agents and employees; (b) any lien or other encumbrance against the premises on account of debts or claims alleged to be due from Contractor to any person, including other contractors, subcontractors, suppliers or employees or agents of Contractor; and (c) any penalty or damage incurred by reason of Contractor's failure to obtain any required permits or licenses or to comply with any applicable laws, rules or regulations. If so directed by Owner, Contractor will defend at its own expense, on behalf of Owner, any claims based upon contingencies against which Contractor is obligated to indemnify Owner hereunder. The foregoing obligations shall survive completion or termination of this Order.

9. **INSURANCE.** (a) Contractor shall procure and maintain, at its expense, the following types of insurance, in amounts at least equal to those specified below, issued by companies meeting Owner's approval: (i) Workmen's Compensation Insurance, including occupational diseases, providing for the payment of statutory benefits as required by law, covering all persons employed by the Contractor on work under this Order, Employers' Liability Insurance with a minimum limit of \$500,000 and Longshoremen's Harbor Workers' Compensation Act Insurance, if applicable; (ii) Comprehensive General Liability Insurance providing coverage with \$3,000,000 single limit

coverage for bodily injury and property damage each occurrence, such coverage to include contractual liability and products liability (including completed operations) and specialized coverage with respect to liability of the Contractor and its subcontractors arising from explosion, collapse and underground damage (XCU); and (iii) Comprehensive Automobile Liability Insurance providing coverage with limits as specified for Comprehensive General Liability Insurance. (b) Owner may revise the types and limits of insurance at any time during the period of this Order. (c) Contractor shall require each subcontractor to provide and maintain statutory Workmen's Compensation Insurance, Employer's Liability Insurance in the minimum amount of \$500,000, Longshoremen's and Harbor Workers' Compensation Act Insurance, if applicable, and other types and limits of insurance requested by Owner, covering all persons employed by such subcontractors on work to be performed under this Order. (d) Contractor shall furnish Owner with certificates issued by the insurance company or companies issuing the insurance policies required by this provision (other than subcontractor's policies) prior to commencement of work. Such certificates shall name Owner as an additional insured and provide that written notices shall be given to Owner's Risk Management Department at its office at 190 Carondelet Plaza, Suite 1530, Clayton, MO 63105-3443, or its office location that issued this Order, if different, at least forty-five (45) days prior to any cancellation or change in any such policy.

10. COMPLIANCE WITH LAW. In the performance of this Order, Contractor represents and warrants that it and its subcontractors are compliant with all applicable Federal, state, and local laws, rules, regulations, statutes, ordinances, and orders, including, but not limited to the Immigration Reform and Control Act of 1986, as amended, and the Fair Labor Standards Act of 1938, as amended, modified and supplemented and all related implementing regulations and orders of the Secretary of Labor and any other state or local wage and hour law, relating to the compensation of its employees, including the requirements as to records. When applicable, the following provisions are incorporated into this Order:

Contractor and subcontractor shall comply with the EO Clause in Section 202 of Executive Order 11246, as amended, which is incorporated herein by specific reference and Executive Order 13496.

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

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

11. GUARANTEE. Contractor guarantees for a period of one year from date of acceptance of such work by Owner that all work performed hereunder shall be free from all defects of workmanship and materials. Contractor agrees to indemnify Owner against all loss or damage arising during such period out of or in connection with any such defect and agrees, on notice from Owner, promptly to remedy any such defect at Contractor's sole cost. Owner may itself remedy any such defect or request another to do so, at Contractor's expense, if Contractor shall fail to take remedial action promptly upon receipt of notice of such defect.

12. TERMINATION. If Contractor should so fail to make progress as to endanger completion of work hereunder by the completion date specified herein, or should fail to comply with any provision of this Order, or should file a voluntary petition under any bankruptcy law, be adjudicated a bankrupt, become insolvent or commit any act of bankruptcy, Owner may, after three (3) days written notice to Contractor, terminate this Order wholly or in part without prejudice to any other remedy. Owner may itself perform the terminated portion of the work, or may have same performed by another, at Contractor's expense.

13. CHANGES. Owner shall have the right to make changes by notice in writing as to the nature or extent of work required by this Order, but no additional charge will be allowed unless authorized in writing by Owner. If any such change materially affects the completion date or cost of the work, Contractor shall promptly notify Owner thereof, and the parties shall negotiate an adjustment. Failure to agree upon an adjustment shall not excuse Contractor from its performance of the work hereunder, as changed by Owner.

14. TITLE. Title to all work completed or in the course of construction shall be in Owner, and Contractor expressly and irrevocably assigns to Owner all its rights, title and interest in and to the work.

15. INTELLECTUAL PROPERTY. Contractor hereby expressly and irrevocably assigns to Owner all its rights, title and interest in and to the work hereunder including all intellectual property rights therein (subject to any third party licenses) and waives in favor of Owner any and all moral rights that it may have in the work hereunder in each jurisdiction throughout the world. Contractor shall defend or settle, at its sole expense, any and all claims, suits and proceedings for any violation or alleged violation of any third party's intellectual property rights arising in connection with, resulting from or arising out of facilities constructed or worked on hereunder which includes any materials, equipment or combination designed by Contractor or an article of sale of Contractor, and Contractor shall indemnify and save harmless Owner from and against all claims, damages, loss and expense on account of such violation; provided that Contractor is notified promptly in writing of such claim or of the commencement of such suit or proceeding, as the case may be, and is given authority, information and reasonable assistance for the defense or settlement thereof; and provided further that Owner shall not settle such claim, suit or proceeding without the written consent of Contractor. Furthermore, in the event that Owner should be enjoined in such suit or proceeding from using any of the facilities constructed or worked on hereunder as a result of such violation, Contractor, at its option, shall promptly either (a) secure termination of the injunction and procure for Owner the right to use such facilities without any obligation or liability, or (b) modify such facilities to become non-violating at Contractor's expense and to Owner's satisfaction. Contractor shall in no way obligate Owner for any royalties or license fees applicable to the work performed under this Order without the prior written consent of Owner.

16. CONFIDENTIALITY. (a) As used in this Order, "Confidential Information" shall mean and include any and all of the following: information, know-how and data, whether technical or non-technical, regardless of the format, which is in any way, heretofore or hereafter, disclosed to Contractor by or on behalf of Owner or otherwise obtained by Contractor, directly or indirectly, in the course of, as a result of, or in connection with this Order or in connection with proposals or negotiations for this Order. (b) Except as provided below and except as otherwise agreed to in writing by Owner, Contractor shall keep confidential, and prevent the disclosure of, Confidential Information, except, on a confidential basis, to such of its employees and subcontractors who need such Confidential Information in order to enable Contractor to properly perform under this Order, and who are subject to similar confidentiality obligations obligating them at least to the same extent as Contractor is obligated under this provision. Contractor shall not use, or permit to be used, Confidential Information for anyone other than Owner. Contractor shall be responsible for any unauthorized disclosure of Confidential Information by such employees and subcontractors. Contractor agrees to use the Confidential Information for the sole purposes of performing its obligations hereunder. (c) Contractor's obligations under this CONFIDENTIALITY provision shall not apply, however, to Confidential Information when, after and to the extent that the Confidential Information either (i) is known to the public, (ii) was known to Contractor prior to the first disclosure to Contractor by or on behalf of Owner and Contractor can establish such fact by reasonably convincing evidence, (iii) is received by Contractor in good faith from a third party having a bona fide right to make such disclosure and Contractor does not violate any obligation which it may have to a third party with respect to such Confidential Information or (iv) is required to be disclosed by applicable law, court order or regulatory order *provided, however*, that prior to making any such disclosure, Contractor shall provide Owner with written notice of the proposed disclosure in order to provide Owner with sufficient opportunity to seek a protective order or other similar order preventing or limiting the proposed disclosure and Contractor shall disclose such Confidential Information only to the extent required by the applicable law, the court order or the regulatory order. This CONFIDENTIALITY provision shall survive the expiration or termination of this Order.

17. TOOLS. If Owner should furnish any tools or equipment to Contractor, the latter shall use same at its own risk and shall be responsible for loss of or damage to such tools and equipment and injury and damage to all persons and other property arising out of the use thereof. Contractor shall store tools, equipment, materials and supplies located on Owner's premises only at places designated by Owner, and Owner assumes no responsibility for loss or damage to same.

18. CONSTRUCTION MACHINERY. If this Order is issued on a cost-plus basis, Contractor agrees that rental rates applicable to construction tools and machinery (other than tools covered by small tools allowance if specifically provided) rented from Contractor or any company affiliated with Contractor, shall not exceed rates then prevailing in the area where the work is performed, or 85% of rates listed in the then current edition of the AED Green Book, whichever is lower.

19. **FORCE MAJEURE.** Neither party shall be liable for any delay or failure of performance due solely to strikes, fires or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof. If Contractor should be unable due to such a cause, to meet all of its performance commitments as they become due, Contractor shall not discriminate against Owner or in favor of any other customer, in rendering performance. Contractor shall use its best efforts to anticipate the effect of such cause and mitigate the effect of such cause and to render performance as expeditiously as possible. However, if Owner believes that the delay or anticipated delay in Contractor's performance may impair Owner's ability to meet its production schedules or may otherwise interfere with its operations, Owner may, at its option and without liability to Contractor, cancel any outstanding performance hereunder wholly or in part. Notwithstanding any provision of this Order, Contractor agrees it will not claim that increased costs alone excuse its performance.

20. **EXCUSE.** If either party should elect to discontinue, curtail or limit the performance or utilization of the work hereunder in consequence of the application of any federal, state or local law, rule or regulation, such as, but not limited to, those relating to pollution or energy controls, toxic substances requirements, safety and health regulations, or consumer protection, compliance with which would render, in that party's sole judgment, the performance or utilization of the work economically, technically and/or commercially infeasible, then and in such event that party may terminate this Order upon ten (10) days prior written notice to the other.

21. **RECORDS.** If this Order is on a basis other than lump-sum fixed price: (a) Contractor shall maintain complete and accurate books and records in accordance with generally accepted accounting principals and practices and in sufficient detail to reflect the actual cost of performing the work under this Order; (b) Contractor shall furnish Owner with statements of its actual cost at such times and in such form and detail as Owner may request; (c) Owner or its representatives may inspect and audit any and all of Contractor's books, records, and accounts relating to this Order at all reasonable times during performance thereof and for a period of one year after payment of the final invoice; and (d) if required by Owner, Contractor's invoices shall be certified by an authorized representative of Contractor in a manner to be prescribed by Owner.

22. **ASSIGNMENT.** Contractor shall not assign this Order or any of its obligations, or any sums due or to become due, under this Order without the prior written approval of Owner.

23. **APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict of laws provisions. The parties hereto do hereby consent to the jurisdiction of the state and federal courts of the State of Tennessee.