

General Terms and Conditions

1 DEFINITIONS

1.1 "Owner" shall mean the Lamar Utilities Board (LUB), who is the buyer and Owner under the "Purchase Order" (as defined below). Where the context permits or requires this term shall include Owner representatives and agents.

1.2 "Delivery Date" shall mean the date specified in the Purchase Order for delivery of the "goods" (as defined below) or any subsequent extension of that date, which extension shall only be effective if confirmed in writing by Owner.

1.3 "Purchase Order" shall mean the purchase order issued by Owner which specifies (by reference or attachment) that this GENERAL CONDITIONS OF PURCHASE ("General Conditions"), applies to it, which, when accepted by the Seller in accordance with the instructions which accompanied its issue, shall together with these General Conditions and any other document identified in the Purchase Order constitute the contract between Owner and the Seller. Except as otherwise provided by the Purchase Order, if there is a conflict, the provisions of the Purchase Order shall prevail over the provisions of these General Conditions, and they shall prevail in that order over the provisions of any other document identified in the Purchase Order. Where the context permits or requires the term "Purchase Order" shall be equivalent to the term "contract."

1.4 "Seller" or "Vendor" shall mean the person or entity to whom the Purchase Order is issued, who is the seller under the Purchase Order. Where the context permits or requires these terms shall include the Seller's representatives, subcontractors and suppliers.

1.5 "Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as enacted and amended by the state of Colorado, as the same shall be in effect at the time the Purchase Order is issued. Any term or terms not defined in the Purchase Order shall, if defined by or contained in the UCC, have the meaning and import provided thereby. UCC also covers dispute resolution process.

1.6 "Work" or "goods" shall mean the equipment, materials, and services, as applicable, provided for Owner by the Seller as described in the Purchase Order.

2 ACCEPTANCE OF THE PURCHASE ORDER

If the Seller chooses not to accept the Purchase Order, or proposes to accept it upon terms that differ in any way from the terms stated in it ("conditional acceptance"), the Seller shall so notify Owner within forty-eight (48) hours after its receipt of the Purchase Order, which notice shall, if applicable, specify in detail the Seller's desired modifications or additions. Within forty-eight (48) hours after Owner receipt of notice of conditional acceptance from the Seller, Owner may either terminate the Purchase Order or advise the Seller which of the Seller's proposed modifications or additions are acceptable to Owner. The Purchase Order shall not be deemed to include any of the Seller's proposed modifications or additions, or otherwise be deemed "final," until Owner has issued written assent stating which, if any, of the Seller's proposed modifications or additions are acceptable to Owner. If the Seller fails to notify Owner that it proposes modifications or additions to the Purchase Order within the time specified in this paragraph, the Seller's conforming or nonconforming tender of delivery shall constitute its acceptance of the Purchase Order exactly as issued by Owner, even in the absence of Seller's written acknowledgment of its acceptance.

3 SELLER'S WARRANTIES

3.1 The Seller warrants that the goods shall strictly conform in all respects to the specifications contained in the Purchase Order, including

design and performance guarantees or specifications, and drawing or data requirements, and, unless otherwise provided by the Purchase Order, be new and of the best quality and description, and free from defects in materials and workmanship. This warranty shall be in addition to and not be deemed to exclude implied warranties under the UCC, including those that may arise from course of dealing or usage of trade, or any other express warranties made by the Seller under the UCC.

3.2 At any time during the period of eighteen (18) months from delivery or twelve (12) months from start-up, whichever occurs first, the Seller shall, at its sole cost and expense, and as soon as practicable, but in no event more than twenty-one (21) days after notice, repair or replace any good that does not conform to the warranties of paragraph 3, normal wear and tear excepted. If the Seller fails to repair or replace any nonconforming good within the time specified in this paragraph, Owner may cause the repair or replacement to be executed at the Seller's cost and expense, which may be set-off against any amounts due the Seller from Owner or, if no amounts are due, then the Seller shall reimburse Owner for the cost and expense upon demand therefore. The warranties and obligations of paragraph 3 shall apply to repairs or replacements performed by the Seller, provided that such extended warranty period shall not exceed a period of twenty-four (24) months from the initial start-up.

4 DELIVERY

If the Delivery Date is more than two (2) weeks after the date of the Purchase Order, the Seller shall provide Owner at least two (2) weeks prior written notice that the goods are ready for delivery. Thereafter, the goods shall not be delivered without Owner written instructions, which instructions shall include a certificate, release or similar document stating that the goods have passed inspection at the Seller's works, if such an inspection by Owner is required by the Purchase Order. If Owner issues instructions to delay delivery of the goods, and if those instructions extend the Delivery Date, Owner shall bear the reasonable cost of storing, protecting and insuring the goods, and Owner shall make payment under the Purchase Order, as if delivery occurred on the Delivery Date. Nevertheless, the Seller shall make all necessary arrangements and pay for storing, protecting and insuring the goods, and shall remain responsible for these matters until Date of Delivery. If the Seller delivers the goods without or contrary to Owner instructions, the Seller shall bear the reasonable cost of storing, protecting and insuring the goods up to the date on which Owner would have accepted delivery, and all other costs and expenses incurred by Owner as a result of the Seller's failure to obtain or follow Owner delivery instructions.

5 DELIVERY DATE

5.1 The Seller shall undertake programs of manufacture and other efforts as necessary to effect delivery by the Delivery Date, including those Owner may reasonably require. Specifically and without limiting the foregoing, these programs and other efforts are subject to expediting by Owner. The Seller shall provide Owner with copies of all documents necessary for efficient expediting, and it shall provide Owner free access to its works and the works of its subcontractors or suppliers at any reasonable time to effect expediting or otherwise satisfy itself that delivery will be effected by the Delivery Date. The Seller shall notify Owner immediately if the Delivery Date may be delayed.

5.2 The Seller acknowledges and agrees that *TIME IS OF THE ESSENCE*. Therefore, if delivery is not effected by the Delivery Date, Owner may, if the Seller fails to effect delivery within seven (7) days after receipt of notice of default:

Require the Seller to deliver the goods and any part thereof in an uncompleted state and all raw materials and supplies connected therewith necessary to enable Owner to complete the manufacture of the goods. The Seller shall reimburse Owner for all costs and expense

General Terms and Conditions

incurred to complete the manufacture of the goods in accordance with the Purchase Order, and Owner shall be entitled to use the Seller's cranes and other plant and equipment at the Seller's sole cost and expense to effect the remedy provided by this paragraph. Or:

5.2.2 Cancel the Purchase Order without payment to the Seller, and, if applicable, reclaim any payments made to the Seller on account of the Purchase Order.

6 INSPECTION AND ACCEPTANCE

6.1 The Seller shall provide Owner free access to its works and the works of its subcontractors or suppliers at any reasonable time to inspect the goods, and Owner may reject any goods that do not strictly conform in all respects to the Purchase Order at the time of the inspection. Upon such rejection, Seller shall promptly remedy such nonconforming goods at Seller's expense.

6.2 Owner's issue of a certificate, release or similar document, or any other communication stating that the goods have passed inspection at the Seller's works shall not constitute Owner acceptance of the goods, nor otherwise relieve the Seller of its duties or liabilities under the Purchase Order, including its warranties. If the place of delivery is not the final destination of the goods, and provided that the final destination of the goods has been disclosed to the Seller, the goods will be accepted at the place of delivery only as to number and conditions of packages and, notwithstanding any receipt that may be given, the goods shall remain subject to rejection if they do not strictly conform in all respects to the Purchase Order until Owner has had a reasonable opportunity to inspect the goods after arrival at their final destination.

6.3 Any inspection, review, approval, and/or comment by Owner with respect to any portion of the Work shall not (i) relieve, affect, or reduce Seller's obligation to complete the Work in accordance with the provisions of this Purchase Order or (ii) constitute a waiver of Owner's rights under this Purchase Order with respect to non-conforming Work.

7 DOCUMENTATION

7.1 Invoices, bills of lading and warehouse receipts shall be submitted to Owner in duplicate, and shall be transmitted by the fastest available postal or courier service immediately upon delivery or consignment of the goods. Bills of lading and warehouse receipts shall show at least every separate package, and if reasonable, every item contained in every package. If the Purchase Order requires or authorizes the Seller to send the goods, detailed packing lists shall be in each package, and a copy of each packing list shall be attached as applicable to the transport documents. The description of the equipment detailed on the packing list must include the Purchase Order line item number. The word "PURCHASE ORDER" and the number assigned to the Purchase Order by Owner shall conspicuously appear on all correspondence, invoices, notices or other documents in any way relating to the Purchase Order.

7.2 All drawings, specifications, calculations, requisitions, purchase orders and other technical documents, including electronic representations of same, provided by Owner to Seller shall be the sole property of Owner. Such documents, including the concepts, designs, and information therein may be used for any purpose whatsoever and without limitation by Owner, its affiliates, or their designees, and by Seller and its subcontractors and/or subvendors only for purposes of performing the Work and other obligations with respect to the Work. With respect to design drawings, specifications, and calculations provided by Seller to Owner under this Purchase Order, Seller shall retain ownership and title thereto, and Owner shall receive a perpetual royalty-free license to use such information only in connection with the Lamar Repowering Project Facility.

7.3 Seller shall submit two copies of all applicable drawings, Material Safety Data Sheets (MSDS), manufacturer's manuals for operation and maintenance of the goods and a spare parts list (if not included in the manufacturer's manuals) to Owner prior to or immediately upon delivery of the goods.

8 TITLE AND RISK OF LOSS

8.1 The security interest in the goods shall pass to Owner upon receipt of payment by Seller, to the extent that such payments are made. The title to and risk of ownership of equipment and materials shall remain with the Seller until Owner receives such goods F.O.B at the location specified on the Purchase Order.

8.2 Seller warrants that: (1) the goods are free and clear of liens, claims, security interests, or encumbrances (collectively, "liens"); and (2) Seller shall include in its purchasing documents and subcontracts provisions appropriately requiring that each of its suppliers shall waive any and all liens and all rights thereto, except to the extent that Owner has failed to pay Seller an amount due under this Purchase Order, and Owner shall be entitled to cause such waiver to be filed of record at any place where Owner shall deem appropriate.

8.3 Seller shall indemnify and hold harmless Owner from and against any and all claims against Owner, its affiliates or any portion thereof by any mechanic, contractor, supplier, or any other person as a result of providing equipment, material or services in connection with the performance of this Purchase Order, except to the extent that Owner has failed to pay Seller an amount due under this Purchase Order and such claim is related to Owner's failure to make the required payment. Seller agrees, at its sole expense, to defend any action or proceeding brought against Owner based upon any such claim and to promptly discharge, by bonding or otherwise, any mechanic's or other lien filed against the Owner.

9 PURCHASE PRICE AND PAYMENT TERMS

9.1 Unless otherwise provided by the Purchase Order and regardless of the provisions of any invoice submitted by the Seller: (1) the Purchase Price shall be FOB at the place designated for shipment or at the destination, and regardless of the absence of the terms "vessel, car, or other vehicle," shall include the obligation to load the goods on board at the Seller's own risk and expense; (2) each invoice shall include as required by law, convention or treaty, and separately itemize duties, excises and taxes; (3) each invoice shall be due and payable thirty (30) days from receipt by Owner; and (4) Owner may retain up to ten percent (10%) of the Purchase Price or portion of the Purchase Price subject to any invoice received until the Seller has satisfactorily performed all its obligations under the Purchase Order.

9.2 Seller shall pay all sales and use taxes on equipment, materials, and personal property used or purchased for use in connection with the Work, and shall pay all gross receipts, privilege, occupational, business, excise, or other taxes levied or imposed upon Seller, Seller's business, or performance of the Work. Seller shall maintain detailed records of the Work and make them available for inspection and audit (if payment provisions are of a type capable of audit) by Owner during the course of the Work and for two years thereafter.

10 APPROVAL/CERTIFIED DRAWINGS

If the Purchase Order specifies that "Approval", and/or "Certified Drawings" or words to that effect are to be supplied by a specified date, Owner may cancel all or part of the Purchase Order if such drawings are not received by the required date. The Seller shall not be entitled to a cancellation charge if the Purchase Order is cancelled for this reason. If the goods finally delivered differ in dimensions from those in

General Terms and Conditions

the certified drawings, Owner may reject or revoke its acceptance of the goods, or demand reimbursement from the Seller for all costs and expenses it incurs to alter the goods or other goods or work affected by the difference.

11 DISCREPANCIES

If there appears to be any conflict or discrepancy in description, dimensions, quantities or specification in the Purchase Order, the Seller shall immediately bring the conflict or discrepancy to Owner's attention for clarification or decision before proceeding with manufacture or supply which may be affected by the conflict or discrepancy.

12 INSOLVENCY

If the Seller becomes insolvent or subject to a voluntary or involuntary insolvency proceeding, Owner may cancel the Purchase Order.

13 CHANGES AND CANCELLATIONS

13.1 From time to time during the execution of the Purchase Order, Owner may instruct the Seller to change items, add items to or omit items from the Purchase Order. Provided the terms of this paragraph are fulfilled, the Seller shall execute the changes, additions or omissions as instructed upon the same terms and conditions contained in the Purchase Order so far as the same may be applicable.

If the Seller receives instructions that may delay the Delivery Date, increase the Purchase Price or affect its warranties, it shall so notify Owner in writing, specifying its best estimate of the effects of the instructions within five (5) working days after its receipt of them. In a timely manner following Owner receipt of the Seller's estimate, Owner shall notify the Seller to ignore or execute its instructions upon such terms and conditions as are acceptable to Owner. The instructions shall not be deemed to have been given, nor shall the Purchase Order be deemed to be changed, until Owner has issued its written response to the Seller's estimate. If the Seller fails to notify Owner that its instructions may delay the Delivery Date, increase the Purchase Price or affect its warranties within the time specified in this paragraph, the Seller's execution of Owner instructions shall be at the Seller's risk.

13.2 Owner may, without cause and without prejudice to any other right or remedy, elect to terminate the Purchase Order. Such termination shall be effective in the manner specified in Owner's notice and Seller shall be paid for Work properly performed to termination, less allowances provided for herein or for any breach of this Purchase Order. Seller shall not be entitled to any payments for lost profits on uncompleted portions of the Work and Owner shall not be liable for indirect, special or consequential damages. Upon termination, Seller shall deliver all plans and specifications to Owner. Seller shall not have and hereby waives its right to place a lien on the real or personal property of Owner or on any project site. Owner may at any time suspend Work during which Seller shall properly care for and protect all Work in progress. If suspension or withdrawal of suspension justifies modification of compensation, or time of performance, or both, an equitable adjustment shall be made and this Purchase Order shall be modified in writing accordingly.

14 LOSS OR DAMAGE IN TRANSIT

If the Seller is responsible for the goods while in transit, Owner shall notify the Seller (not by way of qualified execution of any delivery document) of any visible damage to the goods in transit within the following time limits: (1) partial loss, damage or non-delivery of any part of any consignment within five (5) days after the consignment or part of any consignment is delivered; (2) non-delivery of entire consignment within twenty-one (21) days after Owner's receipt of notice from the Seller that the goods subject of the consignment have

been consigned. If the Seller is responsible for the goods in transit and Owner has complied with the notice provision of this paragraph, the Seller shall replace or repair the lost or damaged goods at its sole cost and expense as soon as practicable after its receipt of notice of loss, damage or non-delivery.

15 CLAIMS OF INFRINGEMENT

15.1 Seller shall, at its sole expense, defend any suit or proceeding brought against Owner or Owner's operator to the extent such suit or proceeding is based on a claim that any goods or part thereof or modification to any component of goods not developed, proposed or specifically mandated by Owner, constitutes an infringement of any patent and Seller will pay all damages and costs awarded therein against Owner, or Owner's operator. In the event such goods, or any part thereof, or any modification to goods or part or modification is enjoined, Seller shall, at its own expense and its option, either: (a) procure for Owner the right to continue using said goods or part or modification; (b) replace same with non-infringing goods or component; or (c) modify same so that it becomes non-infringing.

15.2 The rights and obligations of the parties with respect to patent infringement are solely and exclusively as stated herein. THE PATENT WARRANTY AND INDEMNITY OBLIGATIONS RECITED ABOVE ARE IN LIEU OF ALL OTHER PATENT WARRANTIES AND INDEMNITIES WHATSOEVER, WHETHER ORAL, WRITTEN, EXPRESS, OR IMPLIED.

16 CONFIDENTIAL INFORMATION

In connection with any contracts, reports, analyses, opinions, drawings, specifications, technical data, test results, know-how, trade secrets, business plans, operations, or other information disclosed or provided to Seller by Owner, or to Owner by Seller, either orally or in writing, directly or indirectly, prior to the execution of or pursuant to this Purchase Order and identified in writing as confidential (collectively, "information"):

16.1 The recipient party shall not copy or duplicate any information for its private use or benefit or any other commercial purchases and any information, with all copies, shall be returned immediately upon request or destroyed according to instructions subject to one copy that shall be retained for record purposes if requested and subject to Owner retaining information.

16.2 Neither the recipient party nor its affiliates shall use any information for its own use or benefit or any other commercial purpose outside of performance under this Purchase Order.

16.3 No party shall disclose any information to any third person without the prior written consent of the originating party or permit the publication, dissemination, or disclosure of information by any of the recipient party's directors, officers, employees, or agents without prior written consent, subject to Owner's rights.

16.4 The recipient party shall promptly notify the originating party in the event the recipient party has knowledge of any breach of the confidentiality, or misappropriation, of any information.

16.5 Notwithstanding the foregoing, nothing herein shall limit the recipient party's right to disclose any information which: (1) was in or enters the public domain without fault of the recipient party; (2) is received from a third party without restriction or breach of any duty of confidentiality and without breach of this Purchase Order; (3) was known prior to receipt and such prior knowledge is demonstrated by competent evidence; or (4) is required to be disclosed pursuant to government process, law, order, rule or regulation; and

General Terms and Conditions

16.6 Notwithstanding the foregoing, Owner has the full authority to use information in any manner in connection with the construction and operation of the Lamar Repowering Project facility.

17 HAZARDOUS GOODS

Hazardous goods must be marked or identified by the Seller with international danger symbol(s) and conspicuously display the name of the hazardous goods or component materials in English and any other language(s) required by the Purchase Order. Transit and other documents must include conspicuous declaration of the hazard and the name of the hazardous goods or component materials in English and any other language(s) required by the Purchase Order. The hazardous goods shall be accompanied by written emergency information in English and any other language(s) required by the Purchase Order. If the Seller is responsible for the packing or transit of the hazardous goods, it shall comply with all laws, treaties or conventions applicable thereto. All information known by or reasonably available to the Seller regarding any known or potential hazard in the transit, handling or use of the goods shall be promptly communicated to Owner.

18 PACKAGES

Unless otherwise provided by the Purchase Order and regardless of the provisions of any invoice submitted by the Seller, packages, packing materials and packing charges shall be deemed included in the Purchase Price, and packages and packing material shall remain the property of Owner. If the place of delivery is "Ex Works," the Seller shall include in the Purchase Price and be responsible for packing the goods in such a manner as to ensure against loss or damage while the goods are in transit by the means stated in the Purchase Order. Owner shall be reimbursed by the Seller for any loss or damage to the goods resulting from the Seller's failure to perform its obligations under this paragraph.

19 ASSIGNMENT AND BENEFIT

19.1 In view of Owner's substantial interest in obtaining goods that strictly conform to the Purchase Order in all respects, the Seller shall not subcontract or otherwise delegate its duties under the Purchase Order without the written consent of Owner. The Seller's subcontracting or delegation of its duties under the Purchase Order, even if consented to by Owner, shall not relieve the Seller of any duty to be performed under or any liability for breach of the Purchase Order.

19.2 Subject to paragraph 20, the Purchase Order shall be binding upon and inure to the benefit of the parties and their successors and assigns. Any benefit under the Purchase Order that accrues to or is enforced by a non-party shall be subject to any burden or limitation imposed on it by the Purchase Order.

20 FORCE MAJEURE

As used herein, the term "Force Majeure" means any occurrence that is demonstrably beyond the reasonable control of Owner or Seller. Such occurrences may include, but shall not be limited to, the following, if they are demonstrably beyond the reasonable control of the affected party: acts of God, fires, floods, storms, landslides, severe weather of the Lamar Repowering Project site, epidemics, lightning, earthquakes, drought, blight, famine, quarantine, blockade, war, insurrection, civil strife, strikes/work stoppages/slowdowns (except as provided in clause (iv) below), sabotage, change in law or explosion. Such term does not include: (i) normal rain or weather conditions; (ii) the failure of an equipment manufacturer or supplier to furnish equipment or parts at the time required unless such failure is caused by an event of Force Majeure suffered by the equipment vendor's or the supplier's factory which is not caused by Seller; (iii) an inability by Seller to obtain financing to sustain the cost of the Work (but assuming

due and proper payment by Owner to Seller); or (iv) a labor strike, work stoppage, or slowdown that is the result of Seller's breach of a valid collective bargaining agreement or a violation of applicable labor laws. Any delay in, or total or partial failure of, performance of either party hereto shall not constitute a default hereunder and, in the case of a delay, shall postpone by the length of the delay the date for fulfillment of any obligation or completion or any performance which is affected by such delay if and to the extent that such delay or failure is the result of Force Majeure, and provided that the affected party shall take all reasonable actions in good faith to mitigate the effect of such delay and provided, further, that any party claiming Force Majeure may only obtain an adjustment in the Delivery Date or the Purchase Price, through a change order. The affected party shall give prompt written notice to the other party of the circumstances constituting the Force Majeure and of the obligation or performance which is or which is expected to be thereby delayed or prevented. The burden of proof as to whether an event of Force Majeure has occurred shall be upon the party claiming that it shall be excused from performing its obligations hereunder due to the occurrence of such event. Except as otherwise provided herein, all of the provisions of this Purchase Order shall remain in full force and effect in the event of the occurrence of an event of Force Majeure.

21 GOVERNING LAW, LANGUAGE AND INTERPRETATION

21.1 This Purchase Order shall be construed in accordance with, and any dispute arising in connection herewith shall be governed by, the laws of the state of Colorado, without regard to conflicts of law principles.

21.2 Unless otherwise provided by the Purchase Order (including paragraph 17 of these General Conditions), all communication or documents in any way relating to it or to the transactions contemplated by it shall be in the English language. Owner reserves the right to ignore or otherwise disregard any communication or document that does not comply with this paragraph without notice to the Seller.

21.3 The terms defined herein have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. "Include", "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import. Any agreement, instrument, law, regulation, order or other governmental rule defined or referred to herein or in any agreement or instrument that is governed by the Purchase Order means such agreement, instrument, law, regulation, order or other governmental rule as from time to time amended, modified or supplemented. "Hereof", "herein", "hereunder" and comparable terms refer to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References to any gender include, unless the context otherwise requires, references to all genders, and references to the singular include, unless the context otherwise requires, references to the plural and vice versa. "Shall" and "will" have equal force and effect.

22 ENTIRE AGREEMENT

Except to the extent otherwise provided by the Purchase Order (including paragraph 3 of these General Conditions), the Purchase Order is a complete and exclusive statement of the terms of the parties' agreement.

23 MODIFICATION, RESCISSION OR WAIVER

No modification, rescission or waiver of the Purchase Order or of any term therein shall be valid unless in writing, duly executed by the party to be charged. No evidence of any modification, rescission or waiver

General Terms and Conditions

shall be offered or received in evidence in any proceeding, arbitration or litigation between the parties arising out of or relating to the Purchase Order, or the rights or duties of either party, unless such modification, rescission or waiver is in writing, duly executed by the party to be charged. The terms of this paragraph may not be modified, rescinded or waived except as provided by this paragraph.

24 NOTICES

All notices or demands permitted or required hereunder shall be in writing, and shall be deemed to have been given or made when delivered personally, or transmitted by fastest available postal or courier service (prepaid), or via **electronic email** to the party to be charged at the address contained in the Purchase Order or such other address as either party may designate from time to time by notice pursuant to this paragraph. Notice or demand by telephone or electronically transmitted communication, e.g., facsimile, telex, or "telegram" (as defined by the UCC) or other means of communication, **e-mail** ("alternate notice") shall also be deemed to have been duly given or made when delivered or transmitted, provided that the communication was with or "addressed" to the personal attention of the individual representative of the party to be charged who is actually conducting the transaction for that party.

25 CONSTRUCTION

Unless otherwise provided by the Purchase Order, the definitions, rules of construction, principles of interpretation, statements of purpose and like provisions of the UCC shall govern the construction, interpretation and application of the Purchase Order and all of its terms. Without in any way intending to limit the foregoing, the following rules of construction shall also apply: (1) if a court, arbitrator or panel of arbitrators shall hold any term of the Purchase Order invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining terms shall not be in any way affected or impaired, and with respect to any term invalid, illegal or unenforceable because of its duration or geographic scope, the court, arbitrator or panel of arbitrators may reduce its duration or geographic scope so as to make it enforceable to its reduced extent; (2) the titles of the paragraphs in the Purchase Order are inserted only as a matter of convenience, are not part of the Purchase Order, and in no way define, limit, or affect the Purchase Order or any term of it; (3) this Purchase Order shall not be construed against either party in the event of an ambiguity; and (4) Owner's remedies herein are cumulative and additional to remedies provided in law or equity and no delay or failure by Owner to exercise any right and no partial or single exercise of that right shall constitute a waiver of that or any other right.

26 LIABILITY AND INDEMNIFICATION

26.1 Seller shall indemnify, defend, and hold harmless Owner and its members, managers, partners officers, directors, shareholders and employees from and against any and all suits, actions, legal, or administrative proceedings, claims, abilities, damages, demands, costs (including attorneys' fees and experts' fees), and expenses of any nature for personal injury or physical damage to property (including environmental liabilities) of third parties to the extent that the same arise out of any willful or negligent act or omission of Seller, its suppliers, or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable, except to the extent the events giving rise to any claim are caused by Owner's negligence or misconduct. In the event that such damage or injury is caused by the joint or concurrent negligence of Seller and Owner, (or their employees, or agents), the loss shall be borne by Seller and Owner proportionately to their degree of fault.

26.2 Notwithstanding the foregoing, Owner shall indemnify, defend, and hold harmless Seller and its members, partners, officers,

directors, shareholders and employees from and against any and all suits, actions, legal or administrative proceedings, claims, demands, costs (including attorney's fees), and expenses of any nature for personal injury or physical damage to property (including environmental liability) of third parties to the extent the same arise out of any conditions for which Seller is responsible or any willful or negligent act or omission of Owner or its employees, or anyone for whose acts Owner may be liable, except to the extent events giving rise to any claim are caused by the negligence or misconduct of Seller or its suppliers. In the event that such damage or injury is caused by the joint or concurrent negligence of Seller and Owner (or their employees, or agents or suppliers), the loss shall be born by Seller and Owner proportionately to their degree of fault.

26.3 Notwithstanding any of the foregoing, ARPA does not waive any governmental immunity it possesses under Colorado law as a political subdivision of the state of Colorado, including without restriction, any ceiling amounts of liability applicable to ARPA under the terms of the Colorado Governmental Immunity Laws.

27 INSURANCE

Seller shall furnish written evidence of insurance covering any direct physical damage to goods in process of manufacture & shipment on an All-Risk basis to the extent of the minimum total value of all prepayments made by Owner. Seller shall, at its sole expense, maintain in effect during the Work insurance coverages with limits not less than those set forth below with insurers and under forms of policies ("occurrence" type) satisfactory to Owner: **Workers' Compensation** - statutory; **Commercial General Liability** - \$1,000,000 per occurrence & \$1,000,000 aggregate; & **Business Auto Liability** - \$1,000,000 per occurrence, combined single limits (owned, hired & non-owned). The policies shall include a 30-day advance written notice of cancellation to Owner and shall waive subrogation rights against Owner. These minimum coverage's will be primary, will not limit any other obligations or liabilities of Seller hereunder, and are required for all lower-tier vendors or subcontractors of Seller.