

COUNTERFEIT/SUSPECT MATERIALS (Mar 2011)

(a) Definitions. (1) "Counterfeit material," as used in this clause, means any suspect material or item that is a copy or substitute without legal right or authority to do so, or one whose material performance or characteristics are knowingly misrepresented by the vendor, supplier, distributor, or manufacturer.

(2) "Suspect material," as used in this clause, means any material or item that is not known to conform to established U. S. Government or industry-accepted specifications and national consensus standards.

(b) Types of material, parts, and components known to have been misrepresented include, but are not limited to, fasteners; hoisting, rigging, and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar, shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules.

(c)(1) DOE has determined that SAE Grades 5, 8, and 8.2 and ASTM Grade A325 fasteners, identified on the DOE Suspect Bolt Headmark List, cannot be introduced into DOE facilities and such fasteners shall not be provided as deliverable end items or incorporated into deliverable end items under this Agreement. The DOE Suspect Bolt Headmark List is available under the title *Special Articles and Forms* from Company's Contracts web site <http://www.ornl.gov/adm/contracts/documents.shtml>.

(2) Any fasteners provided as deliverable end items or incorporated into deliverable end items under this Agreement shall be subject to the requirements of the Fastener Quality Act ("the Act"), Public Law 101-592, Title 15, United States Code (U.S.C.) Chapter 80, and those requirements as stated in this Agreement. Except as provided in Section 5(a)(2) of the Act concerning lots of 50 or fewer fasteners, no "fastener" as defined in the Act and regulations issued thereunder by the Secretary of Commerce shall be supplied to the Company as a deliverable end item or incorporated into deliverable end items unless it is part of a lot that (A) conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and (B) has been inspected, tested, and certified as required by Section 5, Subsections (b) and (c) of the Act. Written certifications required by the Act shall be provided to Company by Seller upon request. Nothing in this clause shall prohibit Company from requiring in the Agreement the inspection and testing of a greater number of fasteners from a lot than is specified in the applicable standards or specifications to which the manufacturer represents the fasteners to have been manufactured or in the applicable sampling procedures specified by the Secretary of Commerce.

(d)(1) All electrical equipment, items and components and all mechanical equipment, systems and components shall exhibit manufacturers' labels and identification. All electrical equipment, items or components must be approved by a nationally recognized testing laboratory (NRTL). Electrical equipment approved by an NRTL shall bear written evidence by listing or labeling that it has received certification from the NRTL.

(2) Molded case circuit breakers that cannot be substantiated by Seller as new, or that give an appearance to Company inspectors or electricians of having been used, refurbished, or reconditioned may be rejected by Company on the basis of appearance alone. If a molded case circuit breaker is not provided by Seller in the original manufacturer's packaging, Seller shall notify Company prior to shipment and shall provide the specific identification and markings of the container(s) to be supplied. The original manufacturer's markings, date code if used, and labels shall not have been altered or obliterated. The handle of the molded case circuit breaker shall show the original manufacturer's rating in a "hot stamp" which shall not be subsequently altered or obliterated. Terminal configuration and hardware shall not have been altered or modified from the original equipment provided by the manufacturer. All molded case circuit breakers shall be Underwriters' Laboratory (UL) rated, listed, approved, and accordingly labeled.

(3) Company may obtain an opinion concerning legitimacy of item from the original manufacturer. Such opinion shall be a sufficient basis for rejection of any item provided by Seller. In addition to other rights provided by law or this Agreement, Company may reject the item provided by Seller that does not meet the original manufacturer's published performance requirements.

(e) Notwithstanding any other provisions of this Agreement, unless otherwise specified in writing by the Company, the Seller warrants that all items provided to the Company shall be genuine, new and unused. Seller further warrants that all items used by the Seller during the performance of work at a Company-managed-and-operated facility owned or leased by the U. S. Department of Energy (DOE) include all genuine, original, and new components, or are otherwise suitable for the intended purpose. The Seller's warranty also extends to labels and/or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Company. The Company may reject and retain counterfeit/suspect information or items, at no cost, and identify, segregate, and report such information or activities to cognizant DOE officials.

(f) If suspect/counterfeit parts are furnished under this Agreement, such parts shall be impounded by Company or removed by Seller as directed by Company. Seller shall promptly replace such parts with those acceptable to Company, and Seller shall be liable for all costs relating to impoundment, removal and replacement.

(g) Prior to commencement of on-site work, the Seller shall ensure that Seller's and lower-tier subcontractors' personnel involved in on-site work are adequately trained in identification of suspect/counterfeit items applicable to the work being performed. Use of DOE Suspect/Counterfeit Items Awareness Training (available at <http://www.hss.energy.gov/CSA/CSP/sci/SCIAwarenessTrainingManual062007.pdf>) or equivalent is acceptable. The Seller shall provide evidence of the training to the Technical Project Officer upon request.

(h) The Seller shall indemnify the Company, its officers, agents, and employees, and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable for the intended purpose. This includes, but is not limited to, materials that are

defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials or items that are materially altered, damaged, deteriorated, degraded, or result in product failure.

- (i) The rights of Company in this clause are in addition to any other rights provided by law or contract.