

Terms & Conditions - Purchase Order Commercial Items & Services Under Simplified Acquisition Threshold

1. DEFINITIONS

Unless otherwise indicated, the following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Company means UT-Battelle, LLC, acting under Contract No. DE-AC05-00OR22725 with DOE.
- (c) Seller means the person or organization that has entered into this Agreement with Company.
- (d) Agreement means Purchase Order, Subcontract, Price Agreement or any supplement and/or modification thereof.
- (e) Procurement Officer means Company's cognizant Contracts Division representative.
- (f) Item means "commercial item" and "commercial component" as defined in FAR 2.101.

2. RESOLUTION OF DISPUTES

The parties agree that substantive issues presented for mediation, arbitration, dispute, claim, litigation, or other effort at resolution shall be determined in accordance with Federal law. To the extent there is no Federal law, Tennessee state law shall apply. There shall be no interruption in the performance of the work, and Seller shall proceed diligently with the performance of this Agreement pending final resolution of any dispute arising under this Agreement between the parties hereto or between Seller and its lower-tier subcontractors.

2.1 ORDER OF PRECEDENCE

Any inconsistencies between sections of the Agreement shall be resolved in accordance with the following descending order of precedence:

(a) Prime flowdowns; (b) Special Provisions; (c) Inspection and Acceptance; (d) Agreement Form, Supplies or Services and Prices/Costs; Delivery, Shipping, Packaging; Performance Period/Payment Information; List of Attachments; (e) General Provisions; and (f) Specifications/Statement of Work.

3. ACKNOWLEDGEMENT/ENTIRE AGREEMENT

These terms and the terms on the face of the Purchase Order constitute the entire agreement between the parties and no other additional or conflicting terms submitted by Seller shall be deemed a part hereof unless accepted in writing by the Company's Procurement Officer. Seller's commencement of performance shall constitute acceptance of these terms and conditions without modification. Any change, amendment or modification must be in writing and executed by Company's Procurement Officer.

4. COMMUNICATION AND PRIVACY OF CONTRACT WITH GOVERNMENT

Seller does not have any privity with the Government. Seller shall not communicate with Company's customer or higher tier customer in connection with this Contract, except as expressly permitted by Company. This clause does not prohibit Seller from communicating with the Government with respect to (1) matters Seller is required by law or regulation to communicate to the Government, (2) fraud, waste, or abuse communicated to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information, (3) any matter for which this Subcontract, including a FAR or FAR Supplement clause included in this Subcontract, provides for direct communication by Seller to the Government, or (4) any material matter pertaining to payment or utilization.

5. WARRANTY AND INSPECTION

- (a) Goods. In addition to the warranties provided for under the Uniform Commercial Code, Seller warrants that all goods furnished under this Agreement will be free from defects, will conform with all requirements of this Order, and, unless manufactured solely in accordance with Company certified manufacturing designs, will be free from defects in design. Any goods corrected or replaced will be covered by this warranty. Seller agrees to notify the Company's Procurement Officer immediately upon becoming aware of a potential problem with goods previously delivered to Company.
- (b) Services. Seller warrants that all services will be performed with the highest standard of professional service, be free from defects, conform to the requirements of this Purchase Order, and be performed in strict compliance with any specified regulatory or international standards. Any services corrected or re-performed will be covered by this warranty. The Company's rights regarding inspection and acceptance of services under this agreement shall be equivalent to those provided for inspection of goods under the Uniform Commercial Code. Nonconforming goods or services will be replaced, corrected, or re-performed at Seller's expense.

6. SHIPPING TERMS – DELIVERY DRIVERS MUST BE U.S. CITIZENS

All deliverables coming onsite to a DOE laboratory, including Oak Ridge National Laboratory (ORNL), must be delivered by a United States citizen. If a foreign national attempts to deliver anything to the ORNL site, the driver will be instructed to turn around and will not be allowed onsite.

7. ELECTRICAL EQUIPMENT REQUIREMENTS

Unless stated elsewhere in this Agreement, all electrical equipment, assemblies, or items: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller shall provide the NRTL's evaluation report with the equipment.

8. PAYMENT

Ariba Network for Suppliers: For detailed payment information or inquiries concerning invoices and payments please access the Ariba Network account for your organization at <https://supplier.ariba.com/> or email your questions to ornlap@ornl.gov.

9. COMPLIANCE WITH LAWS

Seller shall comply with all applicable federal, state, and local laws and ordinances and regulations. Compliance shall be a material requirement of this Agreement. Seller shall, without additional Company expense, be responsible for obtaining any necessary licenses and permits. Seller shall include this clause in all subcontracts, at any tier, involving the performance of this Agreement. In the event that any actions that result in fines and/or penalties are taken by a local, state, or federal agency against Company or the Government for a regulatory and/or permit noncompliance that resulted from a failure of Seller to perform in accordance with this Agreement or local, state, or federal law, Seller shall reimburse Company or the Government for the amount of the resultant fine and/or penalty including the cost of any additional work required as a result of the enforcement action to the extent caused by Seller's and its lower-tier subcontractors' negligence and/or failure. Company may withhold such amounts from the future payment due Seller.

10. TERMINATION

Company may at any time, by written notice to the Seller, terminate this Purchase Order in whole or in part either for the convenience of Company or for default. In the event of termination for convenience, Company shall be liable for payments to Seller only for cost for performance rendered up to the effective date of termination. Termination costs shall be determined in accordance with FAR 52.249-1. Company may terminate this order in whole or in part for default if Seller fails to deliver goods or services conforming to the requirements of this order, or in the event of the suspension, or debarment of Seller from participation in Federal or state procurement(s). Seller shall provide immediate notice to Procurement Officer in the event of being suspended, debarred or declared ineligible by any agency or department of the U.S. Government, or upon receipt of a notice of proposed debarment from any agency or department of the U.S. Government or any State Government, during the performance of this Agreement. In the event that this order is terminated for default, Seller shall be liable to pay to Company all amounts incurred for re-procurement of items or services provided for in this Purchase Order, in addition to any other remedies provided by law or this Agreement.

11. EXCUSABLE DELAY

The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, named weather event (i.e., hurricane, typhoon, cyclone/tornado) causing loss, and delays of common carriers. The Seller shall notify the Company in writing within three (3) working days after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Company within three (3) working days of the cessation of such occurrence.

If the Company determines that any failure to perform results from one or more of the causes above, only the delivery schedule shall be revised, subject to the rights of the Company under the termination clause of this Agreement. Notwithstanding the above in (a), any such event to which Seller may be entitled to an adjustment, in schedule delivery, shall be handled in accordance with Part 12 Changes.

12. PUBLIC RELEASE OF INFORMATION

Company does not endorse products or services. Seller agrees not to use Company's name, the name Oak Ridge National Laboratory (ORNL), the name of any of its projects or programs, or identifying characteristics of any of these for advertising or in any way that implies endorsement by UT-Battelle, ORNL, or DOE. Any media releases concerning this Agreement are prohibited without written consent of the Procurement Officer.

13. ACCESS

If Seller is granted access to DOE facilities, Seller shall comply with all rules and policies regarding conduct, security, and safety.

14. CHANGES

(a) Only the Procurement Officer is authorized on behalf of Company to issue changes. If Seller considers that any direction or instruction by Company personnel constitutes such a change, Seller shall not rely upon such instruction or direction without written confirmation from the Procurement Officer. Company may, at any time, by a written order make changes within the general scope of this Purchase Order.

If any such change causes an increase or decrease in the cost of or the time required for, the performance of any part of the work under this Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the Seller of a written notification of change from the Company. Company may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. Nothing in this clause shall excuse the Seller from proceeding with the Purchase Order as changed.

(b) *Updating terms.* After award, the contractor may unilaterally revise commercial supplier agreement terms if they are not material. A material change is defined as any change to schedule, price, quantity, key personnel, or any term that creates an obligation upon the Company.

15. INSURANCE AND INDEMNITY

Seller shall maintain insurance in accordance with Insurance – Form 1 (Company – November 2020). Seller's insurance shall not be deemed to limit Seller's liability. Seller agrees to indemnify, defend and hold harmless Company and the Government from damages, liabilities, and claims arising out of the Seller's performance hereunder that are caused, in whole or in part, by the negligent or wrongful acts or omissions of Seller or anyone employed by Seller for whose acts Seller may be liable.

16. INFORMATION TECHNOLOGY

All information technology acquisitions shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology's website at <http://checklists.nist.gov> commensurate with the mission of the subcontract and conducive to the research and development efforts of the ORNL.

17. GRATUITIES

Seller, its agent or anyone acting on its behalf, shall not offer any gratuity (e.g., entertainment, gift, or cash) or special treatment to any employee of Company with the intent of obtaining a subcontract or other agreement or favorable treatment. If the Company determines that the provisions of this clause were violated, it may terminate the agreement for default and pursue any other remedies provided by law or this Agreement.

18. INCORPORATION BY REFERENCE

This Agreement incorporates certain provisions by reference. These articles and clauses apply as if they were set forth in their entirety. For the purposes of the FAR, DEAR provisions, and DOE Orders incorporated by reference, "Contractor" means Seller; "Government" shall mean Company and/or Government; and "Contracting Officer" means Company's Procurement Officer. Company clauses incorporated by reference are available in the *Documents Index* and then *Special Articles and Forms* or *Exhibits* section of our website <https://contracts.ornl.gov/>.

FAR 52.222-50 Combating Trafficking in Persons (Feb 2009)

FAR 52.222-35 Equal Opportunity for Veterans (July 2014) (applicable to Agreements in excess of \$100,000)

FAR 52.222-37 Employment Reports on Veterans (July 2014) (applicable to Agreements in excess of \$100,000)

FAR 52.222-54 Employment Eligibility Verification (Aug 2013) – in Agreements for more than \$3K and greater than 120 days duration; not applicable to services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications) and performed by the COTS provider.

FAR 52.223-13 Acquisition of EPEAT® - Registered Imaging Equipment (June 2014)

FAR 52.225-1 Buy American Act – Supplies (May 2014) applicable to Agreements in excess of the micro-purchase threshold.

FAR 52.232-39 Unenforceability of Unauthorized Obligations (June 2013)

Protection of Personally Identifiable Information (PII) (10/2018)

[Supplier Code of Conduct](#) (Company – July 26, 2023)

19. APPLICABLE IF SERVICES ARE PERFORMED ON DOE SITE

FAR 52.204-9 Personal Identity Verification of Contractor Personnel (Jan 2011)
DEAR 952.203-70 Whistleblower Protection for Contractor Employees (Dec 2000)
DEAR 970.5223-1 DOE Approved Worker Safety and Health Program
DEAR 970.5223-4 Workplace Substance Abuse Programs at DOE Sites – in subcontracts over \$25K that involve: (i) Access to or handling of classified information or special nuclear materials; (ii) High risk of danger to life, the environment, public health and safety, or national security; or (iii) Transportation of hazardous materials to or from a DOE site.

All electrical equipment, assemblies, or items utilized by Seller or lower-tier: (1) Shall be listed by a nationally recognized testing laboratory (NRTL) or (2) Shall be field evaluated and labeled by a NRTL at the Seller's expense. The NRTL's evaluation label must appear on the equipment, and the Seller or lower-tier shall provide the NRTL's evaluation report with the equipment.

20. APPLICABLE IF PERFORMANCE INVOLVES SPECIAL ITEMS AND SERVICES

FAR 52.208-8 Required Sources for Helium and Helium Usage Data (Apr 2014) – in any subcontract or order that involves a major helium requirement.
FAR 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013)
FAR 52.224-1 Privacy Act Notification (Apr 1984)
FAR 52.224-2 Privacy Act (Apr 1984)
FAR 52.232-78 Commercial Supplier Agreements -Unenforceable Clauses (Feb. 2018)
Insurance – Form 1 (Company – March 2011)

21. NOTIFICATION OF VISA DENIAL

If the work to be performed is in or on behalf of a foreign country by workers recruited in the United States, FAR 52.222-29 Notification of Visa Denial (June 2003) applies.

22. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said act and regulations issued thereunder by the secretary of labor, such representations and stipulations being subject to all applicable rulings and interpretations of the secretary of labor which are now or may hereafter be in effect.

22. COMMERCIAL COMPUTER SOFTWARE

If performance involves acquisition of existing computer software, the following Company Exhibit is incorporated by reference: CCS Commercial Computer Software License (Company – July 2010).

23. NO AUTOMATIC RENEWALS

If any license or service tied to periodic payment is provided under this agreement (e.g., annual software or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express consent by an authorized Government representative.

24. FOREIGN CORRUPT PRACTICES ACT

Seller understands and agrees to comply with the United States Foreign Corrupt Practices Act, which prohibits Company and Seller from providing anything of value to a foreign public official in order to obtain or retain business. Seller agrees not to give anything of value, including but not limited to business gratuities and reimbursement of travel, to any foreign government officials. Seller agrees to ensure that it complies with all requirements relevant to its business arrangement with Company, including any registration requirements, and warrants that this Agreement is in compliance with all applicable laws and regulations of the country or countries in which it performs any services for the Company.

25. EXPORT CONTROL

- (a) The Seller must comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, Export Administration Regulations (EAR), 15 CFR Parts 730 through 774, and Atomic Energy Act of 1954 (Public Law 83-703), Nuclear Regulatory Commission 10 CFR Part 110 and Department of Energy 10 CFR Part 810, in the performance of this Agreement. In the absence of available license exemptions or exceptions, the Seller must obtain the appropriate licenses or other approvals, if required, for exports of hardware, technical data, and software, or for the provision of technical assistance.
- (b) The Seller must obtain export licenses, if required, before using foreign persons in the performance of this Agreement, where the foreign person will have access to export-controlled technical data or software.
- (c) The Seller is responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions and exceptions.
- (d) the Seller shall include this clause in subcontracts hereunder.

26. EMPLOYEE CONCERNS PROGRAM / DIFFERING PROFESSIONAL OPINIONS

- (a) DOE Order 442.1B (available at [directives.doe.gov/directives-documents/400-series/0442.1-BOrder-B](https://www.directives.doe.gov/directives-documents/400-series/0442.1-BOrder-B)) establishes an Employee Concerns Program (ECP). The ECP applies to any person working for DOE or a contractor or subcontractor on a DOE project. The ECP provides a means for employees to raise good-faith concerns that a policy or practice of DOE or one of its contractors or subcontractors should be improved, modified, or terminated. Concerns can address health, safety, the environment, management practices, fraud, waste, or reprisal for raising a concern.
- (b) DOE Order 442.2 (available at <https://www.directives.doe.gov/directives-documents/400-series/0442.2-BOrder-chg1-pgchg>) establishes the Differing Professional Opinions (DPO) process. The DPO process is available to employees of contractors or subcontractors to facilitate dialogue and resolution on technical issues involving environment, safety, and health (ES&H), which have not been resolved through routine work processes.
- (c) In addition, the Company has its own ECP and a DPO process. Subcontractor employees may raise concerns about actions of the Company or its employees directly with the Company.
- (d) The Seller must notify its employees at least annually that:
- (1) DOE and the Company have ECPs and DPO processes.
 - (2) Employees are encouraged to first seek resolution with first-line supervisors or through other in-house complaint or dispute resolution systems.

- (3) Employees have the right to report concerns through the Company ECP (1-888-280-0616) or the DOE ECP (1-800-676-3267 or 1-865-241-3267), if a concern is not resolved by supervisors, or if the employee elects not to raise the concern with supervisory personnel.
- (4) Employees have the right to report differences of professional opinion through the Company ECP (1-888-280-0616), or through the DOE DPO process using contact information contained at <https://www.energy.gov/ehss/doe-differing-professional-opinions>
- (5) DOE and the Company will not tolerate reprisals against or intimidation of employees who have reported concerns.
- (e) Upon request, the Seller must assist DOE and the Company in resolution of employee concerns.
- (f) The Seller shall include this clause in subcontracts hereunder.