

Gulf Coast Environmental Systems, LLC  
**TERMS AND CONDITIONS OF PURCHASE**

1. DEFINITIONS

- (a) "GOODS" The materials, supplies, parts, services or other items covered by this Purchase Order.
- (b) "BUYER" Gulf Coast Environmental Systems, LLC a Texas Limited Liability Corporation.
- (c) "SELLER" The party furnishing the goods to Buyer. (d) "GOVERNMENT" The United States of America.
- (e) "SUBCONTRACTS" Includes purchase orders under this order.

2. Acceptance of the Contract. Seller's acceptance of this purchase order is limited to the terms set forth herein, buyer shall not be bound by this purchase order until seller executes and returns to buyer the acceptance copy of the purchase order or until buyer accepts goods shipped pursuant thereto. Seller shall be bound by the purchase order and its terms and conditions when it executes and returns the acceptance copy, or when it delivers to buyer any of the goods ordered, or renders for buyer any of the services ordered herein. Any of those acts by the seller shall be deemed an unconditional acceptance of this purchase order and all its terms and conditions. No contract shall exist except as herein above provided. No reference herein to seller's quotation shall imply acceptance of the terms and conditions thereof of buyer. This purchase order supersedes any prior oral or written agreements of the parties and constitutes the entire agreement between the parties.

3. AMENDMENTS. No agreement or understanding to modify this contract shall be binding upon the Buyer unless in writing and signed by Buyer's authorized agent. All specifications, drawings, and data submitted to Seller with this Purchase Order, or referred to herein, are hereby incorporated by reference herein and made a part of this Purchase Order.

4. CHANGES. Buyer may at any time by a written Purchase Change Order, and without notice to the sureties, if any, make changes, within the general scope of the contract, in any one or more of the following:

- (a) Drawings, designs, or specifications where the goods to be furnished are to specifically manufactured for the Buyer in accordance therewith;
- (b) Method of shipping or packing;
- (c) Place of delivery;
- (d) Quantities ordered;
- (e) Testing required;
- (f) Delivery schedule.

If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, or otherwise affects any other provisions of any part of the work under this contract, whether changed or not by any such Purchase Change Order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted within twenty (20) days from receipt by Seller of the notification of the change, provided, however that the Buyer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to the earlier of the final

payment or one (1) year from the date of the purchase change order. Where the cost of property is made obsolete or excess as a result of a change as included in the Seller's claim for adjustment, the Buyer shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the Seller from proceeding with the contract as changed. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representatives shall not affect the Buyer's or Seller's rights and obligations hereunder unless such information, advice, approvals or instructions is incorporated into a Purchase Change Order.

5. PACKAGING AND SHIPPING INSTRUCTIONS. (a) Subject to the limitations set forth below, commercial preservation, packing and marking is acceptable for items delivered hereunder and shall meet or exceed the following minimum requirements.

1. Items shall be free from dirt or contaminants which would contribute to the deterioration of the item or require cleaning by Buyer prior to use. Coatings and preservatives applied to the item for protection are not considered contaminants.

2. Items susceptible to corrosion or deterioration shall be provided protection such as preservative coatings, etc.

3. Items requiring protection from physical or mechanical damage shall be protected by wrapping or cushioning or other means to mitigate shock and vibration during handling and shipment.

4. Unit pack quantity should not exceed 100 pcs. or 50 lbs, whichever occurs first, unless otherwise specified. Single items weighing over 10 lbs. shall be individually packaged. Items with unit quantities which specify measurement by weight, length or volume shall be packaged as specified in the contract.

5. Kits and sets shall be suitably segregated, identified and packaged individually with a content listing.

(b) Buyer's purchase order number, Seller's name, packing slip number, part number, quantity and other markings as may be required by the purchase order shall appear on all containers by any means which provides legibility and durability.

(c) Seller shall enclose a packing slip not showing prices containing the information listed on (b) above and if the Seller and shipper are not the same, both names shall appear thereon.

(d) Unless otherwise provided in this purchase order, no charge shall be made for boxing, crating or packaging. Except as otherwise required by law or government regulations, all containers to be returned to Seller shall be shipped to Buyer on a no-charge basis, with Seller's name and address and demand for return plainly marked thereon, and will be paid for by Buyer only if so marked and not returned within a reasonable time.

6. WAIVER.

(a) No waiver, alteration, or modification of any of the provisions of the Contract shall be binding on Buyer unless evidenced by a written notice or Amendment signed by an authorized Procurement representative of Buyer.

(b) Buyer's approval of the Seller's design or material shall not relieve the Seller of the warranties or any other requirements of this Contract; nor shall waiver by Buyer of any drawing specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing. The provisions of this clause shall not limit or affect the rights of Buyer under the clause hereof titled "INSPECTION".

7. ASSIGNMENT. Neither this Purchase Order nor monies due or to become due hereunder shall be assigned by Seller in whole or part without Buyer's prior written consent. All claims for monies due or to become due from Buyer hereunder shall be subject to deduction for any offset or counterclaim arising out of this or any other Purchase Order between Seller and Buyer.

8. COMPLIANCE WITH LAWS. In accepting this Purchase Order, Seller represents that it has and will continue during the performance of this order to comply with the provisions of all federal, state and local laws and regulations from which liability may accrue to Buyer from any violation thereof. By acceptance hereof, Seller certifies compliance with the "Fair Labor Standards Act" of 1938, as amended, in the performance of this order.

9. AMOUNTS OF GOODS SHIPPED. Shipment of goods must equal the exact amounts ordered unless otherwise agreed by Buyer in writing. Except as otherwise provided in this Purchase Order, no payment for extras shall be made unless such extras and the price thereof have been authorized in writing by Buyer.

#### 10. REPRODUCTION RIGHTS.

(a) In connection with Buyer's use, maintenance and service of the goods, Seller agrees to and does hereby grant Buyer and its customers the right to reproduce, disclose, use, have used, and disclose of all or any part of the reports, drawings, blueprints, data and technical information delivered to Buyer in connection with such goods, and Seller agrees to hold Buyer, its customers and all persons claiming under Buyer harmless from any copyright or trademark liability or liability from any invasion of right of privacy, including damages, costs and expenses, arising out of said reproduction, use or disposition.

(b) If the goods, or parts thereof, contracted for hereunder are designed by Buyer, the Seller shall not reproduce any of such goods or parts without Buyer's written consent, nor, without such written consent, supply or disclose any information regarding such goods, this Purchase Order, or any equipment or material used therein; nor incorporate in other products or articles special features of design or manufacture peculiar to the goods.

11. PRICE. Buyer shall not be billed higher than stated on this Purchase Order unless authorized by a Purchase Change Order issued and signed by Buyer. Seller represents that the price charged for the items or services covered by this Purchase Order, is the lowest prices charged by the Seller to Buyer's of a class similar to Buyer under conditions similar to those specified in this Purchase Order, and that prices comply with applicable government regulations in effect at time of quotation, sale or delivery. Seller agrees that any price reduction made in merchandise covered by this Purchase Order subsequent to the placement of this Purchase Order will be applicable to this Purchase Order.

12. WARRANTY. Unless otherwise provided, Seller warrants (1) "that the goods, shall fully conform to the specifications, drawings, samples or other description set forth in this Purchase Order, or furnished by Buyer (or Seller, as the case maybe), and shall be of good materials and workmanship, free from defect and suitable for the use intended by Buyer." (2) " That the goods are free and clear of all liens, pledges, encumbrances and security interests of any kind or nature and that the Seller is the owner of said goods and it has good right to sell the same." (3) "That the goods are of merchantable quality." (4) "That all warranties shall run to, be for the benefit of and be enforceable by Buyer and its successors, assigns and customers." Such warranties are binding on Seller whether defects or deviations are discovered before or after payment, inspection or acceptance by Buyer. Said warranties shall be in addition to any warranties of additional scope given to Buyer by Seller.

Buyer may, in the event of any breach of warranty set forth above, either (a) Require the prompt correction or replacement of any goods or part thereof, or (b) Retain such goods whereupon the Contract prices shall be reduced by an amount equitable under the circumstances and Seller shall promptly make the appropriate payment.

When return, correction or replacement is required, transportation charges and responsibility for such goods-in transit shall be borne by the Seller.

Any goods corrected or furnished in replacement pursuant to this clause shall also be subject to all provisions of this clause to the same extent as goods initially delivered.

The Warranties and Remedies provided for in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or elsewhere in this contract.

### 13. DEFAULT OF SELLER:

(a) If Seller shall (1) fail to deliver the goods in accordance with the delivery schedule specified in this Purchase Order; (2) or fail to make progress as in the sole judgment of Buyer, to endanger performance of this Purchase Order, or (3) fail to comply with any of the provisions hereof, Buyer may cancel this Purchase Order or any part thereof, in which case Buyer shall not be liable to Seller for any sums of money or damages with respect hereto. Furthermore, in such event, Buyer may purchase similar goods elsewhere or secure the manufacture and delivery of the goods by contract or otherwise, and Seller shall be liable to Buyer for any excess cost to Buyer of such similar goods; provided, that Seller shall continue the performance of this Purchase Order to the extent not terminated hereunder.

(b) If Seller shall fail to comply with the warranty provisions of Article 12, Buyer may reject and return at Seller's expense any goods delivered by Seller not in conformity with Article 12, and may (1) require Seller to replace such rejected goods at Seller's expense and otherwise fully perform this Purchase Order, or (2) cancel this Purchase Order, in whole or part, in which case Buyer shall not be liable to Seller for any sums of money or damages with respect thereto, and Seller shall be required to refund the invoice price of the rejected goods plus all transportation charges paid by Buyer.

(c) In the event of any such cancellation of this Purchase Order by Buyer, Seller agrees to hold Buyer harmless for any sums of money or damages which Buyer may be liable to pay as a result of Buyer's inability to purchase similar goods or services elsewhere so as to meet Buyer's commitments under its contract with any third party.

(d) In the event that any default of Seller hereunder shall cause or contribute to the termination for default of any Government contract to which Buyer is a part, either a prime contractor or subcontractor, Seller agrees to hold Buyer harmless from any damages or losses occasioned thereby.

(e) Buyer's remedies herein mentioned are in addition to, and not in exclusion of, any other remedies of Buyer for Seller's default, whether expressed herein or otherwise provided by law. The acceptance of late delivery of goods under this order shall not be a waiver the Buyer's right to recover any damages incurred by Buyer as a result of such late delivery.

(f) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any right hereunder.

14. INSPECTION. Goods purchased hereunder shall be subject to inspection and test by the Buyer and its Customer to the extent practicable at all times and places including the period of manufacturing and in any event prior to acceptance. In any case, if any goods are defective in material or workmanship or otherwise not in conformity with the requirements or specifications of this contract, Buyer shall have the right either to reject them (with or without instructions as to their disposition) or the require-their correction. Goods which have been rejected by Buyer shall be corrected in place by and at the expense of the Seller promptly after notice. If the Seller fails promptly to remove such goods which are required to be removed, or promptly to replace or correct such goods Buyer may replace same and charge to the Seller the cost occasioned Buyer thereby; or (b) may terminate this contract for default, unless the Seller corrects or replaces such goods within the delivery schedule required herein. Buyer may require the delivery of such goods at a reduction in price that is equitable under the circumstances.

If any inspection or test is made by Buyer or its Customer on the premises of the Seller or its subcontractor, the Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Buyer or its Customer's inspectors in the performance of their duties. If inspection or test is made at a point other than the premises of the Seller or its subcontractor, it shall be at the expense of Buyer, except as otherwise provided in this contract; provided, that in case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or tests. All inspections and tests by Buyer or its Customer shall be performed in such a manner as not to unduly delay the work. Acceptance or rejection of the Goods shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect or accept or reject Goods shall neither relieve the Seller from responsibility for such Goods as are not in accordance with the contract requirements or specifications and shall not impose liability on Buyer therefore. Inspection and test by Buyer or its Customer of any Goods or lots thereof does not relieve the Seller from any responsibility regarding defects or other failure to meet the contract requirements.

#### 15. PROPERTY FURNISHED TO SELLER BY BUYER.

(a) Unless otherwise agreed in writing, all raw material, castings, forgings, tools, die, molds, patterns, jigs, fixtures, specifications, drawings, data and any other property furnished to the Seller by Buyer, or specifically paid for by the Buyer, for use in the performance of this contract, shall be and remain the property of the Buyer, shall be subject to removal upon the Buyer's instruction, shall be used only in filling Purchase Orders from the Buyer, shall be held at the Seller's risk, and shall be kept insured by the Seller at the Seller's expense while in its

custody or control in an amount equal to the replacement cost thereof, with loss payable to the Buyer. Such insurance shall protect against risks normally covered under a standard form fire and extended coverage insurance policy. Copies of policies or certificates of such insurance will be furnished to Buyer on demand. Seller will not disclose any such specifications, drawings, or data, or the contents thereof, to any person other than employees of Seller of Buyer, subcontractors hereunder, and Government inspectors, and only to the extent required for the performance of this Purchase Order or as required by law or regulation.

(b) The Seller will:

1. Mark items of tooling with the tooling number indicated on the Purchase Order and keep same separate from all other materials, or tools.
2. Furnish the Buyer, within thirty (30) days after completion of fabrication by Seller of all tooling, with a complete list and description of the items including number of pieces, approximate weight, and cost of each piece.
3. Make no change, modification, or alteration in any items furnished by the Buyer or made to the Buyer's design without the Buyer's written consent.
4. Until the completion of this order, and or a reasonable time thereafter, and without cost to the Buyer, keep such items in good order and repair, ordinary wear and tear expected, and store such facilities when not in use in sections of Seller's plant marked "PROPERTY OF GULF COAST ENVIRONMENTAL SYSTEMS, LLC."
5. Buyer and its designated representatives shall at all reasonable times have access to the premises where Buyer's property is located, for the purpose of inspecting Buyer's property.

(c) Seller shall be responsible for raw materials, forgings, and other parts of articles furnished by Buyer for use in performing work under this contract. Should such property be scrapped, lost, damaged or otherwise rendered unusable by Seller, it shall, at Buyer's option, replace such property at its own expense or reimburse Buyer for replacement. Buyer's responsibility in furnishing such property shall be limited to replacement or repair of such property found to be defective by Seller and shall not extend to incidental or consequential damages. Seller agrees to conduct an inspection of such property as soon as practicable after receipt from Buyer and notify Buyer immediately if property is not suitable for its intended use.

(d) TITLE TO PROPERTY. Title to Government or Buyer's property shall not be affected by the incorporation or attachment thereof to any other, nor shall such property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

(e) Where applicable above, the word "Buyer" shall designate "Buyer and/or Buyer's Customer".

16. INSURANCE. The Seller shall maintain insurance in sufficient amount to cover any injury or harm to persons or property arising out of performance of this Purchase Order which might befall Buyer, its representatives and customers, Representatives of Buyer and its customers shall not be required to waive release of any personal rights in connection with visits to Seller' premises.

17. TAXES. Unless otherwise indicated in this Purchase Order, the prices herein (1) do not include any state or local sales, use or other tax from which Seller or this transaction of this procurement of the goods is exempt, and (2) do include all applicable Federal taxes and other applicable state and local taxes in effect at the date of the Purchase Order.

18. PATENTS. Seller undertakes and agrees to defend at Seller's own expense, all suits, actions, or proceedings in which Buyer, any of Buyer's distributors or dealers, or the users of any Buyer's products are made defendants for actual or alleged infringement of any U.S. or foreign letter patent resulting from the use or sale of the items purchased hereunder (exact infringement necessarily resulting from adherence to specifications or drawings, other than those of Seller's design or selection, originally submitted to Seller by Buyer) and further agrees to indemnify Buyer and the users of any of Buyer's products against, and to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action or proceedings against such defendants therein.

19. SUBCONTRACTING THIS PURCHASE ORDER. Seller agrees that it will not enter into a subcontract or Purchase Order for the procurement of the goods covered by this Purchase Order in completed or substantially completed form without first obtaining the written approval of Buyer as to source.

20. PROGRESS REPORTS. Upon the written request of Buyer, Seller will from time to time during the course of the work under this Purchase Order, furnish Buyer with written progress reports which will include all information requested by Buyer, provided that Seller shall not be required to furnish said reports more often than monthly, unless specifically requested to do so on the face of this Purchase Order.

21. TITLE AND RISK OF LOSS.

(a) Unless this Contract specifically provides for earlier passage of title, title to articles covered by this Contract shall pass to Buyer upon acceptance, regardless of when or where Buyer takes physical possession.

(b) Unless this Contract specifically provides otherwise, risk of loss of or damage to articles covered by this contract shall remain with the Seller until and shall pass to Buyer upon:

(1) delivery of the articles to an authorized carrier if transportation is f.o.b. origin;

(2) acceptance by Buyer or delivery of possession of the articles to Buyer at the designation specified in this contract, whichever is later, if transportation is f.o.b. destination.

(c) Notwithstanding (b) above, the risk of or damage to articles which so fail to conform to the Contract as to give a right to rejection shall remain with the Seller until cure or acceptance, at which time (b) above shall apply.

22. PRODUCTS, METHODS AND MANUFACTURING PROCESSES. Any unpatented knowledge or information concerning Seller's products, methods, or manufacturing processes which Seller may disclose to Buyer incident to the manufacture of goods shall, unless otherwise specifically agreed to in writing, be deemed to have been disclosed as a part of the consideration for this Purchase Order, and Seller agrees not to assert any claim (other than a claim for patent infringements) against Buyer or the Government by reason of Buyer's or the Government's use or alleged use thereof.

23. INVOICING AND PAYMENT. Invoices shall be rendered in triplicate for each shipment and must show the date shipment was made, the shipping point, the packing list number and Buyer's Purchase Order number, invoices covering final shipment under this Purchase Order shall be designated as such. Seller shall be paid, upon submission of proper invoices, the prices stipulated herein for goods delivered and accepted, less deductions, if any, as herein provided except that all payments shall be contingent upon receipt of adequate and correct certifications as defined in the Quality Assurance requirements of this Purchase Order. Unless otherwise specified, payment will be made on partial deliveries accepted by Buyer. No payments made hereunder shall be deemed a waiver of any of Buyer's rights and remedies under the terms of this Purchase Order.

24. DISCOUNTS. The cash discount period will be computed, either from the date of delivery, inspection and acceptance, or the date of receipt of proper invoices prepared in accordance with the terms of this purchase order, whichever is later.

25. GOVERNMENT CONTRACT:

(a) The provisions of this Article 25 are effective if (1) so noted on the face of this Purchase Order, (2) if Purchase Order bears a Government Contract number, or (3) if, in any event, this Purchase Order is issued pursuant to a Government contract or subcontract.

(b) Seller expressly agrees to be bound by all provisions of the Federal Acquisition Regulation (hereinafter referred to as FAR) and/or the Defense Acquisition Regulation (hereinafter referred to as DAR), and all other Department of Defense policies or procedures applicable to this Purchase Order as fully as a Buyer is thereby, whether or not such regulations, policies or procedures are expressly set forth in this Purchase Order, incorporated by reference herein, or omitted herefrom. Buyer may exercise all rights against Seller which Government or any Contractor or Subcontractor under a Government contract may exercise against Buyer under any such regulations, policies or procedures.

(c) Whenever any clause of FAR or DAR is referred to by number in this Purchase Order, said clause in effect as of the date of the Prime Contract shown on the fact of this Order is incorporated herein by reference, as though fully rewritten (copies of FAR and DAR clauses hereafter referred to are obtainable from The Superintendent of Documents, United States Government Printing Office, Washington, D.C.).

(d) Without limiting the Scope of Article 25 (b) hereof, Seller agrees to accept such of the following provisions of the Federal Acquisition Regulation and/or Defense Acquisition Regulation in effect on the date of hereof as are included in Buyer's prime contract with the Government or Buyer's subcontract under a Government prime contractor:

(e) EQUAL OPPORTUNITY

(a) if, during any 12 month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national-origin.
- (2) The Contractor shall take affirmative action to ensure applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, and (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection from training, including apprenticeship.
- (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended and but the rules, regulations, and orders of the Secretary of Labor, Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.
- (9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of subparagraph (b) (1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for non-compliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into this litigation to protect the interests of the United States.

(e) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures 41 CFR 60- 1.1.

(f) If this purchase Order is for \$10,000 or more, the clause DAR 7-103.27 Affirmative Action for Disabled Veterans and Veterans from the Vietnam Era and/or FAR 52.222-35 "Affirmative Action for Special Disabled and Vietnam Era Veterans" applies to this order.

(g) If this Purchase Order is for \$2,500.00 or more, the clause DAR 7-103.28 "Affirmative Action for the Handicapped Workers" and/or FAR 52.222-36 "Affirmative Action for Handicapped Workers" applies to the order.

(h) Overseas Distribution of Defense Subcontracts (1982 Jun) [a] For each subcontract or modification thereof which exceeds \$10,000, where the principal place of performance is outside the United States or its territories and possessions, the Contractor agrees to furnish the information listed below on a quarterly basis to Director for Information, Operations and Reports, Washington Headquarters Services, Department of Defense, Washington, DC 20301.

(1) Name and address of prime contractor (or subcontractor required to report).

(2) Prime contract number.

(3) Name and address of overseas subcontractor. (This is important for discussion of trade balances with other countries, but submission of this information is not mandatory.)

(4) Subcontract number (including modification number) being reported.

(5) Dollar amount of this action (enclose decommitments in parentheses)

(6) Principal place of subcontract performance.

(7) Type of supply of service.

(b) The required information, if any, shall be at the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(c) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over \$100,000 except subcontracts for ores, nature gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(i) Where necessary to make to context of the above provisions applicable hereto, the term Contractor shall mean Seller, and the terms "Government", "Contracting Officer", and "Contracting Agency" shall include Buyer.

(j) None of the provisions of DAR or FAR incorporated herein by reference shall be deemed to limit or restrict any of Buyer's other rights or remedies whether expresses herein or otherwise provided by law.

26. **BANKRUPTCY, INSOLVENCY, ETC.** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of Sellers creditors or of a receiver of any of Seller's property, then Buyer shall be entitled to cancel any unfilled portion of this Purchase Order without any liability whatsoever.

27. **DELIVERY TIME.** Time is of the essence in the performance of this Purchase Order. Seller agrees that it shall, at its expense, exert all effort necessary to meet promised delivery dates for each deliverable item specified in the Purchase Order. Seller agrees to notify Buyer immediately if, at any time, it appears that the delivery schedule set forth herein may not be met. Such notification shall include the reasons for possible delays, remedies applies to alleviate such problems and proposed revised delivery schedule if it appears necessary. Such notification is not to be construed as a waiver of the delivery schedule set forth herein. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time reasonable required to meet Buyer's delivery schedule. It is Seller's responsibility to comply with this schedule, but not to anticipate Buyer's requirements.

(1) "Delivery of the goods ordered shall be made at one time unless otherwise indicated on the face of the Purchase Order."

(2) "Without limiting Buyer's other remedies, legal or equitable, Buyer shall have the right to cancel all or any part of this Purchase Order without liability to it upon failure by Seller to deliver conforming goods in accordance with the delivery schedule (as indicated on the face hereof)."

(3) "Buyer shall not be liable for failure to receive or take delivery if occasioned by causes beyond Buyer's reasonable control, including without limitation, strikes, civil unrest, labor slow downs, interruption or shortages in the supply of its materials, equipment breakdowns, delays in carriers or suppliers, governmental actions and regulations, fires, floods, tornadoes and other acts of God."

28. **PRECEDENCE.** This Purchase Order is subject only to the terms and conditions set forth on the face thereof, this form, and the drawings, specifications or other documents, if any, referenced herein. In case of conflict or inconsistency between or among one or more of the provisions of the face of this Purchase Order, this form and the drawings, specifications or other documents, if any, the provisions on the face of this Purchase Order shall prevail over those of this form, drawings, specifications or other documents, if any; and the provisions of this form shall prevail over those drawings, specifications or other documents, if any.

29. **APPLICABLE LAW.** This Purchase Order shall be governed by and construed according to the laws of the State of Texas except that when this Purchase Order is issued pursuant to a Government prime contract and where Federal Law exists on substantive matters requiring construction under this Purchase Order, such Federal Law shall apply in lieu of the applicable State Law. The Seller will comply with all applicable Federal, State, and Local Laws. Where Texas law applies, Texas courts shall have exclusive jurisdiction over this Purchase Order or any controversies arising hereunder. Venue for any action arising out of this Purchase Order

shall lie exclusively in State Court in Montgomery County, Texas. If any provision of this Purchase Order is found to be invalid, or unenforceable, the remaining provisions shall not be impaired.

30. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970. Seller agrees to comply with all provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder and by acceptance of this order ensures that all items furnished under this order will conform to and comply with said standards and regulations. Seller agrees to indemnify and hold Buyer harmless from any damages assessed against Buyer as a result of Seller's failure to comply with the Occupational Safety and Health Act of 1970 and the standards issued thereunder and for the failure of the items furnished under this order to so comply.

31. RESTOCK CHARGES. Restock Charges, if any, shall be no greater than the lesser of Industry Standard or that charged Seller's most favored customer.

32. INDEMNIFICATION. To the fullest extent permitted by applicable law, the Seller expressly agrees to defend (at Seller's expense and with counsel acceptable to Buyer), Indemnify, and save and hold harmless the Buyer and all of its officers, directors, shareholders, employees, agents, successors, and assigns, from and against any and all claims, suits, losses, causes of action, damages, liabilities, and expenses of any kind whatsoever, including without limitation, all expenses of litigation and arbitration, court costs, and attorneys fees, arising on account of or in connection with injuries to or the death of any person whomsoever, or any and all damages to property (including the loss of use thereof), regardless of possession or ownership, which injuries, death or damages arise from, or are in any manner connected with, the work performed by or for the Seller under this Purchase Order, or are caused in whole or part by reason of the acts or omissions or presence of the person or property of the Seller or any of its employees, agents, representatives, subcontractors, or suppliers, INCLUDING WITHOUT LIMITATIONS INJURIES, DEATH, OR DAMAGES WHICH ARISE FROM OR IN CONNECTION WITH, OR ARE CAUSED BY, ANY ACT, ERROR, OMISSION, OR NEGLIGENCE OF THE BUYER, and all of their OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, OR SUPPLIERS; BUT EXCLUDING INJURIES, DEATH, OR DAMAGES CAUSED BY THE SOLE NEGLIGENCE OR WANTON AND WILLFUL MISCONDUCT OF THE BUYER. The indemnification obligations under this Purchase Order shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Seller under worker=s or workman=s compensation acts, disability benefit acts or other employee benefits acts, and shall extend to and include any actions brought by or in the name of any employee of the Seller or of any third party to whom Seller may sublet a part of the Purchase Order.