

# CONTRACT TERMS AND CONDITIONS: PURCHASE OF MATERIALS (NOT TO EXCEED \$300,000 VALUE)

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## 1. DELIVERABLES

Contractor agrees to provide the goods, equipment, or items ("Materials") detailed in the work scope attached hereto (if any) and in any Purchase Order or Work Release ("PO(s)") that reference this Contract.

## 2. TERMINATION

- a. TVA may terminate this Contract or any PO issued hereunder, in whole or in part: (a) upon Contractor's default in performance of this Contract or any such PO, specifically including Contractor's failure to meet Contract or PO performance schedules, and Contractor's failure to cure the default within such time period (if any) required by TVA's notice of termination, specifying the default; or (b) for TVA's convenience, if such termination is in TVA's best interest.
- b. Regardless of the reason for termination, TVA: (1) is not liable to Contractor for amounts in excess of the payments due for Materials properly delivered before the effective date of termination, and (2) shall not be obligated to pay any Contractor invoice submitted later than 45 days after the effective date of the termination. Upon a termination for default, TVA has and may exercise any and all rights and remedies against Contractor available to TVA at law or in equity.

## 3. PAYMENT TERMS

- a. All payments due to either party under this Contract are subject to the Prompt Payment Act, 31 U.S.C. §§ 3901-3907. TVA will make payments to Contractor in accordance with the payment schedule attached hereto or specified in the applicable PO, after the later of: (1) receipt of a proper invoice by TVA at the office designated for receipt of invoices, and (2) Acceptance (as defined in subsection b, below) by TVA of Materials at the TVA location specified in such attachment or PO(s). For purposes of this Contract, "proper invoice" means a numbered and dated invoice, containing TVA's Contract and PO number(s) (if applicable) and itemizing the Materials for which Contractor is invoicing TVA, together with any additional documentation that this Contract or the PO requires.

b. Fixed Price

If TVA accepts Contractor's proposed firm, fixed, or "lump sum" price for the Materials and related work (a "Fixed Price"), TVA will pay Contractor such Fixed Price upon the satisfactory completion and Acceptance by TVA of the Materials and work. The Fixed Price(s) include all costs that Contractor and its subcontractors, and their agents and employees, incur in connection with the manufacture and supply of the Materials, and the performance and completion of related work. The Fixed Price(s) will not be changed except pursuant to a fully executed written amendment to this Contract. "Acceptance" means receipt by TVA of work meeting the Contract requirements and acknowledgement by an authorized representative of TVA that such Contract requirements have been met.

c. Time and Materials

If Contractor supplies Materials on a time and materials basis, based on rate(s) agreed to on the relevant PO(s) or pursuant to a rate schedule attached hereto, then TVA will pay Contractor in accordance with such rate(s). Such payments will exclude all travel time and any related travel expenses, unless authorized in advance and in writing by the TVA Contract Technical Steward (CTS).

#### **4. TAXES**

By entering into this Contract, Contractor certifies that no state sales or use taxes are or will be included in the amounts invoiced to TVA.

#### **5. SHIPMENT/DELIVERY**

- a. Time is of the essence. Contractor shall ship in accordance with the instructions contained in the Contract, PO(s) issued hereunder, or specific instructions issued by TVA. If Contractor routes shipments contrary to those instructions, TVA is obligated to pay no more than the shipping costs that would have been incurred had Contractor followed the specified instructions and TVA may claim from or deduct and retain from any amounts invoiced by Contractor, an amount equal to such difference plus an administrative fee of \$50. Unless authorized by TVA, no additional valuation or cargo insurance will be charged for shipments made Free Carrier At (FCA) or F.O.B. origin. Invoices must be supported by carriers' freight bills.
- b. Contractor must prepare the Materials provided under this Contract for shipment, accurately identify the Materials (with, at minimum, a bill of lading or packing list(s) that describe the Materials, their quantity, and the Contract or PO number), pack the Materials to protect them from damage in transit, and package the Materials for shipment to facilitate their unloading at the TVA destination. TVA may provide additional shipment or packaging instructions at time of shipment or issuance of the PO. Contractor is responsible and liable for any and all damage to Materials due to improper preparation for shipment, receiving, handling, or storage, regardless whether shipped FCA or F.O.B. origin, or DDP or CIF (Incoterms 2010) destination.
- c. If TVA, in its discretion, approves partial shipments, Contractor must identify on the bill of lading or packing list(s) the approving TVA employee's or agent's name. If such approver's name is not identified on the documentation accompanying the shipment of Materials, TVA may return the shipment to Contractor at Contractor's expense.
- d. Contractor must package Materials for shipment in recyclable, reusable containers when possible, to reduce packaging volume.
- e. Prior to shipment of Materials on an emergency or expedited basis, Contractor must communicate any special freight or handling charges that Contractor will invoice to TVA due to such emergency shipment, and obtain written approval to incur such charges.

#### **6. ENTIRE AGREEMENT**

This Contract, PO(s) issued hereunder, and any attachments hereto, embody the entire agreement between TVA and Contractor, and supersede all other communications, either oral or written, with respect to the subject matter hereof. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding not set forth herein. No amendments or modifications shall be valid unless incorporated into this Contract in writing. Specifically, any reference to a Contractor proposal or quote is solely for the purpose of incorporating the description and specifications of the Materials contained therein to the extent

that such description and specifications do not conflict with the description and specifications on the face of this Contract or the relevant PO(s). By acknowledging receipt of this Contract or any PO(s) issued hereunder, or by shipping the Materials for which Contractor will invoice TVA pursuant to these terms and conditions, Contractor agrees to these terms and conditions.

## **7. WARRANTIES-MATERIALS**

- a. Contractor warrants that the Materials and related work provided to TVA:
  1. Are free from defects due to faulty workmanship or material;
  2. Are fit for the intended use(s) and purpose(s) including, but not limited to, those uses and purposes specified or referred to in this Contract or PO(s);
  3. Comply with this Contract, PO requirements and specifications, applicable laws, regulations, and standards issued by federal, state, and local government authorities and standards boards, and industry association standards;
  4. Are, unless otherwise specified by TVA in a PO, new, unused, not surplus (never before sold for use), and not rebuilt;
  5. Are free from defects in design (except to the extent TVA or a third party that is not a subcontractor to Contractor has provided or directed the design of the Materials); and
  6. Are not fraudulent or counterfeit.
- b. If Contractor is notified in writing that the Materials fail to comply with any of the warranties stated in subsection a, above, during the warranty period of one (1) year from the date of Acceptance, or TVA's first use in actual service, whichever is later, Contractor will, at TVA's option and Contractor's expense, refund to TVA the portion of the invoiced amount(s) paid for the defective Materials, or correct such nonconformity by repair or replacement, to TVA's reasonable satisfaction. Contractor shall pay transportation and labor costs incurred in connection with correcting such defects in the Materials. Contractor shall correct any defects only at times designated by TVA. Any portion of the Materials that have undergone warranty repair or replacement, or on which corrective action has been performed, will be warranted as provided in subsection a, above. If it is impractical for TVA to wait for Contractor to perform corrective action, TVA may have such corrective actions performed at Contractor's expense. If Contractor's corrective action fails to render the Materials compliant with the warranties stated in subsection a above, or Contractor fails to take the appropriate corrective action within a reasonable time after receiving notice of the relevant defect(s) or noncompliance, then TVA may terminate this Contract (in whole or in part) for default.
- c. If the Materials are covered under a manufacturer's or subcontractor's warranty, Contractor hereby assigns to TVA the right to enforce any such warranty. Such warranties, do not in any way limit the warranties provided by Contractor to TVA under this Contract.
- d. Contractor's failure to correct a defect within a reasonable time of receiving written notification of the defect from TVA constitutes a default under subsection b, above.
- e. The foregoing warranties and remedies are in addition to any specific warranties, guarantees, or remedies contained in this Contract or available at law.

## **8. FOREIGN MATERIAL**

If this Contract or any associated PO value is at or above \$250,000, Contractor will provide Materials compliant with the Trade Agreements Act of 1979, 19 U.S.C. §§ 2501-2581 (TAA), to the extent the TAA is applicable. Contractor will provide Materials compliant with the Buy American Act, 41 U.S.C. §§ 8301-8305 (BAA), to the extent the BAA is applicable. TVA may reject any Materials that does not comply with the BAA or TAA.

## **9. CONTRACT INTERPRETATION AND DISPUTES**

This Contract is governed by and will be construed under Federal law. In the event Federal law does not provide a rule of decision for any particular dispute, the law of the State of Tennessee will apply; provided, however, in no event shall Tennessee's choice of law provisions apply. Pending resolution of any dispute, Contractor shall proceed with the work in accordance with the determinations, instructions, and clarifications of TVA's Contracting Officer. The parties will use their best efforts to resolve disputes informally at the lowest possible levels of decision making, and consensual alternative dispute resolution processes may be used. The parties agree that any lawsuit between them that asserts a claim or claims arising out of or related to this Contract (whether sounding in Contract, tort, or otherwise) shall be filed and litigated to conclusion only in the United States District Court for the Eastern District of Tennessee, and each party hereby consents to the jurisdiction and venue of that court for all such lawsuits. The parties further agree that in any such litigation, each will waive any right it may have to a trial by jury. This Section 9 is not a "disputes" clause within the meaning of the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, and this Contract is not subject to that Act.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- a. TVA will own all documents, drawings, reports, computer software, and other deliverables (whether or not copyrighted by Contractor) generated, prepared, or provided to TVA by Contractor under this Contract (all such deliverables, together with any inventions embodied in Materials, are herein collectively referred to as "Work Products"). Upon request, Contractor shall assign to TVA all copyright ownership in Work Products. Contractor retains ownership of technical data, engineering techniques and computer software not generated, prepared or provided under this Contract but utilized in connection with the Materials, but grants TVA a non-exclusive, royalty-free license to use such data, techniques and software, as required to maintain the integrity of Materials, including any subsequent necessary modifications.
- b. Contractor hereby indemnifies and holds harmless TVA from all suits, claims, actions, losses, damages, and expenses, including attorney's fees, and at its expense shall defend any suit against TVA, in so far as it is based on the claim of infringement of any United States patent or of any copyright, for any Materials or Work Products furnished to TVA. TVA shall immediately notify Contractor in writing of any such suit or claim, and permit Contractor to defend same. If in any such suit or claim, said Work Products, or their utilization by TVA, Contractor, or any party on TVA's behalf, is held to constitute infringement, or is otherwise determined to violate any right secured by patent or copyright, Contractor at its expense shall procure for TVA the necessary licenses and right to continued utilization of said Work Product; provided that, subject to TVA's written approval, Contractor at its expense may replace or modify said Work Product so that it becomes non-infringing, and provided further, that any substituted or modified Materials or Work Products must satisfy, and be subject to, this Contract's requirements. The aforementioned obligations shall not apply to any Materials, the detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by TVA. Contractor warrants that no information that it discloses to TVA under this Contract is subject to or violates an obligation of privilege or confidentiality to any third party.

## **11. NO WAIVER**

TVA's allowance or requirement that Contractor deliver Materials after the completion time specified in this Contract or any affected PO does not constitute a waiver of any right, remedy or damages TVA may have or seek due to Contractor's delay. TVA's waiver of any Contractor breach of this Contract shall not be deemed to waive any other or subsequent breach. No time limits in this Contract shall be waived by TVA's Contracting Officer's consideration of any untimely notice or information by Contractor.

## **12. TERMS INCORPORATED BY REFERENCE**

This Contract incorporates by reference the following regulatory provisions, which, to the extent applicable to this Contract or the Materials, apply as if they were set forth in their entirety in this Section, and are available from TVA's Supplier Portal Internet Site at <http://supplier.tva.gov> / under "Clauses Incorporated by Reference":

- a. If the Contract value exceeds \$10,000: Affirmative Action and Equal Opportunity; Asbestos Containing Materials.
- b. If the Contract value exceeds \$25,000: Walsh-Healey Act; Affirmative Action for Disabled Veterans.
- c. If the Contract value exceeds \$100,000: Anti-Kickback Procedures; Drug-Free Workplace (\$0 for contracts with individuals); Small Business Policy.