

# CONTRACT TERMS AND CONDITIONS: PURCHASE OF MATERIALS (NOT TO EXCEED \$700,000 VALUE)

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## **1. MATERIALS**

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 both parties execute and that reference this Contract.

## **2. TERMINATION**

- a. TVA may terminate this Contract or any PO issued hereunder, in whole or in part, by written notice to Contractor: (a) upon Contractor’s default in performance of this Contract or any such PO, specifically including: (i) Contractor’s failure to meet Contract or PO performance or delivery schedules, and (ii) the failure of Contractor’s Materials to comply with requirements or specifications stated or referenced on PO(s), and Contractor’s failure to cure the default within ten (10) calendar days of the date that TVA issues such notice of termination; 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) is not obligated to pay any Contractor invoice submitted later than 45 days after the effective date of the termination. A TVA notice of termination for default will describe the Contractor default(s) that justify 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. COMPENSATION, INVOICING, AND PAYMENT**

### a. Compensation

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 in accordance with subsection b below, after delivery of Materials that comply with Contract and PO(s) requirements. 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. The parties also may agree, on individual PO(s), that (as examples) TVA will pay for Materials on a fixed, per-unit basis, or that prices for Materials will adjust over period(s) of time during the Contract term, based on fixed percentages or external indices. .

### b. Invoicing and Payment

1. Contractor must submit all Proper Invoices, including supporting documentation, through the Maximo Portal within TVA’s Supplier Connections website, at [www.tva.com/supplier](http://www.tva.com/supplier). With respect to Proper Invoices submitted under this subsection b.1., Contractor must provide all information required by the referenced website and portal in order to successfully and timely submit its invoice(s). If errors within the referenced website or portal prevent Contractor from submitting one or more Proper Invoice(s) for more than one 24 hour period, the parties may agree to allow Contractor to submit such invoice(s) electronically to TVA in a single .PDF or .TIF file, at [accountspayable@tva.gov](mailto:accountspayable@tva.gov), or in any other manner to which the parties mutually agree, in writing.
2. Contractor certifies that: (i) to the best of its knowledge and belief, all information contained in each Proper Invoice is true and correct, (ii) all costs, charges and expenditures submitted were made and incurred in accordance with the provisions of this Contract, and have been actually

paid by Contractor, and (iii) payment for the amounts on such Proper Invoice has not been received from TVA or otherwise paid or reimbursed to the Contractor by any other party, in whole or in part.

3. All payments due to either party under this Contract are subject to the Prompt Payment Act, 31 U.S.C. §§ 3901-3907.

#### **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 all Materials in compliance with this Contract and with the instructions contained in PO(s) issued hereunder, or specific, written instructions issued by TVA. If Contractor routes shipments contrary to this Contract, PO(s), or such instructions, TVA is not liable or obligated to pay any amount in excess of the shipping costs that would have been incurred had Contractor complied with Contract or PO terms, or followed the specified instructions. Each PO must indicate whether (1) Contractor's costs of shipping the Materials are included in, or will be invoiced in addition to, the Fixed Price (and any other pricing structure to which the parties have agreed), or (2) TVA is responsible for handling shipment of the Materials from Contractor's origin facility(ies) to TVA's designated delivery point(s).
- b. For shipments of Materials made: (i) Free Carrier At (FCA, INCOTERMS 2010) or F.O.B. Origin (Freight Collect) (Contractor is responsible for loading onto TVA's carrier, and TVA takes title and risk of loss upon the carrier's departure from Contractor's loading dock), or (ii) Delivered Duty Paid (DDP, INCOTERMS 2010) or F.O.B. Destination (Freight Collect) (Contractor is responsible for loading onto TVA's carrier, but retains title and risk of loss until delivery to TVA's Site destination), Contractor shall not charge or invoice to TVA any additional valuation or cargo insurance, and all invoices must be supported by and consistent with carriers' freight bills. In any of the foregoing cases, and unless TVA or its agent(s) directly cause shipment delays, if the actual delivery date is later than the delivery date stated on the relevant PO(s), then (1) Contractor will be liable for all additional charges (including costs of emergency or expedited loading, shipment, and unloading) related to such delayed delivery date, and (2) TVA may claim from or deduct and retain from any Contractor invoices, amount(s) equal to such prohibited or additional charges, plus a per-shipment administrative fee of \$250.
- c. 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 safe 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.

#### **6. 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 eighteen (18) months from first use of the Materials, 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, upon TVA's written request, shall assign to TVA the right to enforce any such warranty. Such third-party warranties do not in any way limit or modify Contractor's warranties 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.

## **7. SPECIFIC REQUIREMENTS FOR FOREIGN OR NUCLEAR MATERIALS**

- a. 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. TVA may reject any Materials that do not comply with the TAA.
- b. If under this Contract or any associated PO, TVA purchases Materials from Contractor that are or may be subject to any level of the Quality Assurance ("QA") requirements established by the U.S. Nuclear Regulatory Commission ("NRC") ("QA Materials"), then the following requirements apply to Contractor and the QA Materials, as stated:
  1. TVA's QA organization must approve Contractor's listing on TVA's Acceptable Suppliers List ("ASL"), and approve Contractor's subcontractors, distributors, and agents ("Suppliers," for purposes of this Section 8.b), if Contractor does not manufacture, supply or distribute the QA Materials. TVA will not list Contractor or its Supplier(s) on the ASL unless the Supplier(s) manufacture, distribute, handle, transmit QA and technical requirements to Contractor or among Suppliers, store, or ship (or any one or more of the foregoing) QA Materials and maintain a QA program (e.g., ANSI N45.2, ASME, Commercial) that TVA's QA Organization has approved.

2. Suppliers must ensure that TVA quality and technical requirements are transmitted to Contractor and other Supplier(s) who contribute to, distribute or deliver the QA Materials, obtain required documentation from Contractor, provide the information to TVA, and maintain traceability to the Supplier(s)' production data (such as lot number, date of manufacture, and production number).
3. Contractor and each Supplier must provide TVA with a written list, table or chart stating, at minimum, for each QA Material(s) or group of QA Materials, the QA Materials' item number, description, and the ASL Supplier's corporate name and full street address.
4. Contractor must direct any questions about a Supplier's ASL approval status to: Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801, Attn: Vendor Audit & Services - LP5M, (423) 751-7726 or (423) 751-2051.
5. Contractor shall determine whether the QA Materials are subject to the requirements and civil penalty provisions of NRC's regulations, at 10 C.F.R. Part 21 (Reporting of Defects and Noncompliance), and shall inform TVA immediately in writing of each defect or noncompliance reportable under 10 C.F.R. Part 21. Contractor must send any such notice to the following TVA address, with a copy to the Contracting Officer: TVA Nuclear Power Performance Improvement, TVA Nuclear, Nuclear Assurance and Licensing Attention: Manager - Operating Experience 1101 Market Street, Chattanooga, TN 37402-2801.

## **8. 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.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- a. TVA will own all items, documents and information, including (without limitation) drawings, instruction manuals, reports, electronic hardware, and other deliverables, which Contractor delivers or provides to TVA in connection with or as integral to the Materials, and which are necessary for TVA's installation, use, maintenance, repair, or removal of such Materials.
- 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, copyright, or other intellectual property right, related to the Materials. 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, the Materials, 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 intellectual property right, Contractor at its expense shall procure for TVA the necessary licenses and rights to continued utilization of the Materials; provided that, subject to TVA's written approval, Contractor at its expense may replace or modify the Materials so that they become non-infringing,

and provided further, that any substituted or modified Materials must comply with, and be subject to, this Contract's or PO(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.

## **10. 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.

## **11. INFORMATION TECHNOLOGY**

### **1. Definitions**

- a. "Cyber Asset" means any Material that incorporates programmable electronic device(s), including hardware, software, information, or any of the foregoing, which are components of such devices or enable such devices to function.
- b. "Harmful Code" means any computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with TVA's use of TVA's Information System(s), including, without limitation, any automatic restraint, time-bomb, trap-door, virus, worm, Trojan horse, time lock, clock or any other harmful, malicious or hidden procedure, routine or mechanism, which will cause the Materials or any other TVA software, hardware or system to cease to operate or to fail to conform to its specifications.
- c. "IT Work" means Materials that incorporate hardware, software, electronic programs, or physical records, which Contractor will deliver to TVA under this Contract.
- d. "Kaspersky Product" means any any information security product or system that is or has been supplied (directly or indirectly) by AO Kaspersky Lab or any of its predecessor entities or its affiliates (including, without limitation, Kaspersky Lab North America, Kaspersky Lab, Inc., and Kaspersky Government Security Solutions, Inc.), or any entity in which one or more of the foregoing has majority ownership or voting control.
- e. "Vulnerability(ies)" means any material defect or compromise to the cybersecurity of any electronic component of the Materials.

### **2. Viruses and Harmful Code**

- a. Contractor represents and warrants that the IT Work, and any media used to distribute the IT Work, contains no Harmful Code at the time of initial delivery or at the time of updates or upgrades. Contractor shall utilize an industry standard scanning tool to ensure that no Harmful Code is contained in the Materials, and if such scanning tool indicates the presence of any suspected or known Harmful Code associated with the IT Work, Contractor shall, at its expense, remove and confirm to TVA in writing the removal of the Harmful Code.

- b. Product Integrity Requirements. Contractor must provide or deliver to TVA Materials that comply with the requirements stated in subsection (a), above, and the following (as appropriate and specified on Work Release(s)): (1) for Materials delivered physically, in sealed boxes, packaged to indicate that the seal has not been broken, disturbed, or modified, and (2) in any of the foregoing cases, accompanied by a written confirmation that the Materials have never been affected by input from, and are free from, any Kaspersky Products (as defined in this Contract) (x) the use of which is prohibited under Section 1634 of the Fiscal Year 2018 National Defense Authorization Act, as enacted or codified; or (y) named or referenced in the U.S. Department of Homeland Security's Binding Operational Directive (BOD) 17-01, dated September 2017 (as such BOD may be revised or updated). TVA receiving personnel will verify that tamper evident seals of the Materials' packaging are intact.
- c. Contractor shall ensure that any subcontractor(s) that provide an IT Work component of Materials delivered to TVA comply with this Section, and is liable for such subcontractor(s)' failure to comply with this subsection.

### 3. Cyber Security

This Section applies if and to the extent that Contractor delivers Materials to TVA that incorporate hardware, software, firmware, or digital devices that will or may connect with or impact TVA's Information Systems. In any of the foregoing cases, Contractor's Materials must comply with the following:

- a. Contractor may utilize any combination of technical and administrative controls to secure or protect its own Information Systems, in order to control modifications to hardware, firmware, and software, and to ensure that digital devices are protected against improper modifications prior to, during, and after installation of such Information Systems (for example, but without limitation, Contractor must configure digital devices to only enable functions and services needed for operation in support of the Work, and Contractor must certify that its Information Systems that may connect with or impact TVA's Information Systems are free from any and all Kaspersky Products). However, Contractor must comply with the requirements of TVA DS-E18.1.25.8, Cyber Hardening for Digital Devices, 1/13/14, associated with the design and development of such controls, and provide TVA the opportunity to verify the adequacy of such controls.
- b. Consistent with the Contract Section, **Viruses and Harmful Code**, Contractor shall provide documentation (for example, user guides, specifications, installation guides, maintenance guides) that: (i) address the applicability and methods on conformance to security requirements outlined in TVA DS-E18.1.25.8, Cyber Hardening for Digital Devices, 1/13/14, and (ii) ensure that the Information System(s) have never been exposed to or affected by input from, and are protected and free from, any Kaspersky Products (1) the use of which is prohibited under Section 1634 of the Fiscal Year 2018 National Defense Authorization Act, as enacted or codified; or (2) that are named or referenced in the U.S. Department of Homeland Security's Binding Operational Directive (BOD) 17-01, dated September 2017 (as such BOD may be revised or updated).
- c. For any digital devices integral to the Material and delivered to TVA, Contractor shall provide the manufacturer's name and a list of all installed IT Work, including patches on the digital device, and the revision, version, or upgrade levels for embedded devices or hardware.

### 4. Indemnity

Contractor shall indemnify TVA from all liabilities resulting from the presence of Harmful Code in or contained on media within the Materials, or Vulnerabilities not disclosed in compliance with subsection 5 below, delivered by Contractor to TVA. Contractor will immediately notify TVA in writing of any suspected or known Harmful Code associated with the Materials, and will, at its expense, ensure the removal of the Harmful Code. Further, Contractor is responsible for replacing any Materials damaged or destroyed by the Harmful Code with Materials that comply with Contract or PO(s)' requirements, specifically including the **Viruses and Harmful Code** Section of this Contract.

5. Vulnerabilities

Prior to delivery to TVA of any Materials containing IT Work, Contractor shall provide summary documentation of any Vulnerability, the potential impact of such Vulnerabilities, and the status of Contractor's efforts to mitigate those Vulnerabilities. Contractor, at its expense, shall implement any corrective actions, compensating security controls, mitigations, or procedural workarounds, or any of the foregoing, which it recommends as necessary to address the identified Vulnerabilities.

6. Cyber Security Incidents: Notices and Responses

- a. In addition to any notice required under this Contract, Contractor agrees to notify TVA immediately at (423) 751-4357 and then immediately thereafter by providing a written communication to TVA at CYBERSECURITY@TVA.GOV, whenever Contractor knows or reasonably believes that an act or omission by any source has compromised or may adversely affect or breach: (i) the cybersecurity of any Materials containing IT Work, or (ii) the physical, technical, administrative, or organizational safeguards protecting Contractor's Information Systems (any of the foregoing, a "Compromise").
- b. Within seven days of notifying TVA of the Compromise, Contractor shall recommend actions that TVA should take on TVA Cyber Assets to reduce the risk of a recurrence of the same or a similar Compromise, including, as appropriate, the provision of action plans and mitigating controls. Unless TVA or its agents negligently caused the Compromise, Contractor is responsible for developing and implementing those action plans and mitigating controls, at its expense. Regardless of the cause(s) of the Compromise, Contractor shall coordinate with TVA in implementing the action plans and mitigating controls. In addition, Contractor will provide TVA guidance and recommendations for long-term remediation of any cyber security risks posed to TVA Cyber Assets, and any information necessary to assist TVA in any of its recovery efforts in response to a Compromise.

7. Remote Access

If installation of the Materials at a TVA site establishes or maintains Contractor's remote access to a TVA Cyber Asset (either interactive or to and from an external Cyber Asset), Contractor shall (i) comply with TVA Cyber Asset requirements and preconditions, and (ii) coordinate with TVA to establish controls around, any such remote access to TVA Cyber Assets.

## 12. ORGANIZATIONAL CONFLICTS OF INTEREST

- a. An organizational conflict of interest (OCI) arises when factors create an actual or potential conflict of interest on a contract, or when the nature of the work to be performed on that contract creates an actual or potential conflict of interest on a future procurement action or contract. If Contractor is unable or potentially unable to render impartial advice or assistance to TVA, or the Contractor's objectivity in performing work under this Contract, or any TVA contract, is or might be otherwise impaired, or the Contractor has an unfair competitive advantage, TVA may impose restrictions on Contractor to avoid, neutralize and/or mitigate the OCI or the appearance of an OCI.
- b. Contractor warrants that, to the best of its knowledge and belief, there are no relevant facts that could give rise to an OCI. If during the term of this Contract Contractor becomes aware of relevant facts that could give rise to an OCI, it shall promptly notify the Contracting Officer of those facts. TVA reserves the right to take or direct Contractor to take such steps as TVA deems appropriate in its discretion to identify and evaluate, avoid, neutralize, or mitigate any OCI or the appearance of an OCI

**13. TERMS INCORPORATED BY REFERENCE**

To the extent applicable to this Contract or the Materials, the regulatory provisions listed at TVA's Supplier Connections at <https://www.tva.com/Information/Supplier-Connections/Documents--Referenced-Clauses> under "Referenced Clauses" are incorporated in their entirety into this Contract.

**14. 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.