

OGLETHORPE POWER CORPORATION TERMS AND CONDITIONS

This Purchase Order is subject to the terms and conditions set forth herein. With respect to the matters described herein, this Purchase Order sets forth the complete agreement between the parties and supersedes all other agreements of the parties, written or oral. This Purchase Order may not be modified hereafter except by the written agreement of Seller and Purchaser.

1. Definitions

- (A) "Goods" means those articles, materials, supplies, equipment, hardware, software, drawings and data, including any part thereof, or otherwise, to be furnished under this Purchase Order, as well as all services, including design, delivery, installation, inspection, programming, testing, and expediting, as specified or required to be rendered in connection therewith. Unless otherwise provided herein, the definitions of all other terms shall have the meaning ascribed to them in the Uniform Commercial Code in effect in the State of Georgia as of the date of this Purchase Order.
- (B) "Purchaser" means Oglethorpe Power Corporation (An Electric Membership Corporation).
- (C) "Purchase Order" means the attached purchase order describing the sale of the Goods, together with these terms and conditions set forth herein.
- (D) "RUS" means the Rural Utilities Services, a division of the U.S. Department of Agriculture.
- (E) "Seller" means the person, firm, corporation or entity to which this Purchase Order is addressed.

2. Acknowledgement & Acceptance

Seller's commencement of performance pursuant to this Purchaser Order constitutes Seller's acceptance of the terms and conditions set forth herein.

3. Changes

Purchaser shall have the right to make changes as to packing, testing, shipping, destinations, specifications, designs, and postponements of delivery schedules. Seller shall immediately notify Purchaser of any increases or decreases in costs caused by such changes and an equitable adjustment in prices hereof shall be provided by written amendment to this Purchase Order and acknowledged accordingly. A specification should not be changed. However, if a specification needs to be changed due to assembly and/or the manufacturing process, Seller shall immediately notify Purchaser's technical design and procurement departments and obtain written approval from Purchaser concerning the changes.

4. Termination & Force Majeure

(A) Purchaser may terminate this Purchase Order at any time, in which event it shall pay to Seller the proportionate part of the purchase price representing the Goods delivered. Purchaser shall not be liable for any claims for anticipated profits on the unfinished or unshipped portion of the Goods, except as hereinafter provided. If this Purchase Order covers Goods manufactured or fabricated to Purchaser's specifications and Purchaser terminates this Purchase Order for reasons other than Seller's default, upon notice of termination Seller shall stop all performance hereunder and Purchaser shall pay to Seller the costs incurred prior to the date of termination related to the fabrication of any unfinished or unshipped Goods and Purchaser shall have no other obligation to Seller. Purchaser may cancel any unfilled part of this Purchase Order without any liability to Seller if any proceeding, whether voluntary or involuntary, in bankruptcy or insolvency, is instituted by or against Seller, or if an assignee for the benefit of creditors or a receiver is appointed for Seller.

(B) Purchaser may defer or cancel this Purchase Order, in whole or in part, without liability to Seller, upon the occurrence of any event that requires Purchaser, in its sole discretion, to suspend or discontinue Purchaser's normal operations. Such event shall include, but not be limited to, any labor dispute, strike, war, terrorist act, riot, insurrection, civil disorder, flood, earthquake, storm or other act of God or act of public authority. Purchaser's exercise of its rights hereunder shall not be deemed a breach of contract nor entitle Seller to make claim for any damages on account thereof.

5. Adherence to Schedule

Time of delivery of the Goods is of the essence. At any time Seller believes that its deliveries will not be made as scheduled, Seller shall give prompt written notice to Purchaser of the length of and reason for such anticipated delay. Within ten (10) days from receipt of such notice, Purchaser may, without any liability to Seller and without prejudice to any other rights or remedies, cancel all or any portion of the undelivered Purchase Order, unless the delay is caused by Purchaser. Purchaser may accept Goods without waiving any rights by law or in equity to recover damages from Seller for late delivery.

6. Title and Risk of Loss

Title to the Goods shall pass to Purchaser when Purchaser accepts the Goods. Seller bears the risk of loss for the Goods prior to delivery and acceptance at the designated delivery point, and, if applicable, after non-conforming Goods are rejected by Purchaser as provided in Paragraph 7 below.

7. Rejection of Non-conforming Goods

Purchaser may reject any Goods if they do not comply with the specification for the materials or terms and conditions hereof or are otherwise nonperforming or nonfunctioning. Purchaser's acceptance of any non-conforming Goods shall not constitute a waiver of its right to reject future deliveries. Purchaser may elect to remedy any defect in the Goods delivered and Seller shall reimburse Purchaser for all reasonable costs and expenses thereof. Seller may not substitute returned or rejected Goods without Purchaser's written instructions and agreement. Purchaser may reject any Goods that do not comply with the specifications for materials and warranties of Seller and manufacturers, and Purchaser may reject any defective Goods, either before or after incorporation of them into any project, within eighteen (18) months of the date the Goods are accepted or twelve (12) months from the date of commercial operation, whichever is longer, or such other time as may be specified on the Purchase Order. Purchaser may return the rejected Goods at Seller's expense; F.O.B. Purchaser's designated delivery location. At Purchaser's option, Seller must replace the rejected Goods with Goods complying with the specifications and

warranties for the Goods; F.O.B. Purchaser's designated delivery location. If Seller fails to so replace rejected Goods, Purchaser may replace them at Seller's sole cost and expense. Purchaser reserves all other rights and remedies to which it may be entitled against Seller for non-conforming Goods.

8. Use, Application or Installation

The Goods will be used, applied or installed by Purchaser, unless otherwise specified. Seller shall furnish technical direction and instructions to Purchaser or its agent(s) regarding the use of the Goods. If any portion of the Goods shall prove unfit for use within twelve (12) months from date of initial use, as a result of faulty or inadequate technical direction or instruction by Seller, Seller shall replace such portion of the Goods at no expense to Purchaser.

9. Inspection, Acceptance and Rejection

Final inspection shall be on Purchaser's premises unless otherwise directed by Purchaser. Upon acceptance, Seller warrants that Purchaser shall have free and clear title to the Goods, unencumbered by any lien, claim or security interest arising, by operation of law or otherwise, by reason of Seller's acts or omission, of this sale. Goods rejected as not conforming to this Purchase Order or specifications shall be returned at Seller's expense, including transportation and handling costs. During the performance of an order, Purchaser or its designated representative shall have access to any manufacturers or distributor's facility, records and documents pertaining to this Purchase Order for inspection and audit.

10. Warranty

In addition to any and all other warranties from Seller, the manufacturer or otherwise, Seller warrants that the Goods delivered hereunder will conform strictly to the specifications, drawings, or sample(s) specified or furnished, will be new unless otherwise indicated, and will be fit and sufficient for the purpose intended, of merchantable quality, of good material and workmanship free from defect for a period of eighteen (18) months from date the Goods are accepted, or twelve (12) months from date of commercial operation, whichever is longer or such other time as may be specified on the Purchase Order, and shall be in conformity with all applicable federal, state and local laws respecting the Goods. The Goods furnished hereunder shall become the property of Purchaser when accepted. All manufacturer's warranties and guaranties relating to the Goods are transferred and assigned to Purchaser upon delivery of the Goods even if prior to payment for such Goods. This warranty shall survive any inspection, delivery or acceptance of, or payment for, the Goods by Purchaser.

11. Remedies

Purchaser's remedies hereunder shall be cumulative and in addition to all other remedies at law or in equity. Without prejudice to Purchaser's rights and remedies expressed herein or elsewhere, any breach by Seller may be deemed a total breach and Purchaser may hold Seller accountable for all damages, whether direct, indirect or consequential, and for all losses of every type resulting from such breach. In addition to and not as a limitation or alternative to the foregoing remedies, Purchaser may elect to rescind this Purchase Order, in whole or in part, refuse to accept further delivery of any Goods ordered hereunder and hold Seller accountable for all damages arising or resulting therefrom.

12. Confidentiality

Seller acknowledges that all specifications, technical information and data furnished to Seller in connection with this Purchase Order are submitted confidentially and solely for Seller's use in performing its obligations hereunder and may not be transmitted to any other person, firm, corporation or entity, or used in connection with the manufacture or sale of any materials or products other than the Goods without specific written authorization from Purchaser.

13. Indemnity

To the maximum extent permitted by law Seller shall indemnify, defend, and hold harmless Purchaser and Purchaser's members, owners, subsidiaries, affiliates, officers, directors, employees and agents (the "Indemnified Parties") against, any and all demands, claims, lawsuits, judgments, awards, liabilities, damages, penalties, costs and expenses of any kind or nature (including attorney's fees and experts' fees) arising out of or related to any defect in the Goods or any related services, or from any act or omission of Seller, its agents, employees, or suppliers, including but not limited to the failure to comply with the terms and conditions of this Purchase Order. Without limiting the foregoing Seller shall indemnify, defend, and hold harmless Purchaser and the Indemnified Parties against, any and all demands, claims, lawsuits, judgments, awards, liabilities, damages, penalties, costs and expenses arising out of or related to any claim that the Goods, or any part thereof, infringe any patent(s), copyright(s) or other intellectual property rights. If the Goods, or any part thereof, is enjoined, Seller shall, at its own expense, either procure for Purchaser the right to continue to use the Goods or shall replace the Goods, with non-infringing Goods.

14. Purchaser's Property

All materials, including tools, furnished or specifically paid for by Purchaser are the property of Purchaser, are subject to removal by Purchaser at any time without additional cost to Purchaser, must be used only in filling orders from Purchaser, must be kept separate from other materials or tools, and must be clearly identified by Seller as the property of Purchaser. Seller assumes all liability for loss or damage to the materials or tools, except for normal wear and tear, and agrees to supply detailed statements of inventory as agreed upon. Upon request, and prior to the performance of any work, Seller shall provide any Certificates of Insurance (in form satisfactory to Purchaser) required to perform installation or other work at Purchaser's premises.

15. Invoicing and Set-Off

(A) Seller must submit separate invoices for each Purchase Order to the billing address on page 1 of this Purchase Order on or after the date of shipment. Goods, Shipping, Installation Costs, and Sales Tax shall be itemized separately.

(B) Purchaser may set-off any amount owed to Seller, or its affiliates, by Purchaser, or its affiliates, against any amount owed or payable to Purchaser under this Purchase Order.

16. Assignment

Seller shall not assign any right, obligation or interest in this Purchase Order without the prior written consent of Purchaser. Any attempted assignment without Purchaser's consent is void and has no effect.

17. Non-Waiver

Failure of Purchaser to insist upon strict performance of any of these terms and conditions, or failure or delay to exercise any rights or remedies provided herein by law or equity, or to properly notify Seller in the event of breach, or the acceptance of, or payment for, any Goods hereunder, or approved of design, shall not release Seller from any of the warranties or obligations of this Purchase Order and shall not be deemed a waiver of any right of Purchaser to insist upon strict performance of these terms and conditions, regardless when shipped, received or accepted, nor shall any purported oral modification or rescission of this Purchase Order waive any of these terms and conditions. If any provision of this Purchase Order is declared invalid by an authority with jurisdiction, the remaining provisions of this Purchase Order shall remain in full force and effect.

18. Packaging and Shipping

Seller must ensure that all Goods are suitably packed, marked, insured and shipped in accordance with Purchaser's written specifications and with the customs of the common carriers used by Seller, so as to ensure delivery in an undamaged state and to secure the lowest transportation costs for the Goods. Unless otherwise indicated on page 1 of this Purchase Order, all shipments shall be made F.O.B. Purchaser's designated delivery location and all shipping charges shall be prepaid. No charge for packing, shipping, carting or insurance shall be payable by Purchaser except as agreed in writing. Seller shall affix to each package bill of lading or delivery a receipt for the Goods and each such shipment shall be accompanied by an itemized packing slip, in the absence of which Purchaser's count shall be conclusive.

19. Regulatory Compliance & Governing Law

Seller acknowledges that Purchaser may use Federal loan funds in connection with this Purchase Order. Seller shall comply with all applicable federal, state and local laws, regulations and ordinances, including, without limitation, the Anti-Kickback statutes (18 U.S.C. § 874 and 40 U.S.C. § 3145) and implementing regulations (29 C.F.R. Parts 3 and 5). Seller warrants that any Goods supplied comply with the Buy-American requirements described in Paragraph 21 hereof and with all applicable federal, state and local laws, regulations and ordinances. This Purchase Order shall be governed in all respects by the laws of the State of Georgia.

20. Equal Opportunity

Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

Seller shall, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

Seller shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of Seller's commitments under this Paragraph 20, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Seller shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

Seller shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of Seller's noncompliance with the nondiscrimination clauses of this Purchase Order or with any of the said rules, regulations or orders, this Purchase Order may be canceled, terminated or suspended in whole or in part and Seller may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

Seller shall include the provisions of this Paragraph 20 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. Seller shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, Seller may request the United States to enter into such litigation to protect the interests of the United States.

21. Buy American

In the performance of this Purchase Order, Seller shall use or furnish or cause to be used or furnished only unmanufactured articles, materials and supplies which have been mined or produced in the United States or any eligible country, and only manufactured articles, materials and supplies which have been manufactured in the United States or any eligible country substantially all from articles, materials and supplies mined, produced or manufactured, as the case may be, in the United States or any eligible country, except to the extent the RUS shall have previously determined that such shall be impracticable or that the cost thereof shall be unreasonable. For purposes of this Paragraph 21, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative. Seller shall provide to Purchaser such information, documents, and certificates as may be requested by Purchaser or the Administrator of the RUS from time to time with respect to any Goods furnished under this Purchase Order.

22. Debarment And Suspension

Seller represents and warrants that neither it nor any of its "principals" (as defined in 7 C.F.R. Part 3017) is presently debarred, suspended, proposed for debarment, voluntarily excluded or declared ineligible by any Federal department or agency from participation in any "covered transaction" (as defined in 7 C.F.R. Part 3017). Seller agrees to comply with Subpart C [Responsibilities of Participants Regarding Transactions] of 7 C.F.R. Part 3017 in connection with the performance of this Purchase Order. Seller further agrees to cause any person, firm, corporation or entity with whom Seller contracts to perform services or provide goods in a "covered transaction" at the next lower tier (as described in 7 C.F.R. § 3017.220(b)) to provide a representation and warranty and agreement substantially identical to the representation and warranty and agreement set forth in the first two sentences of this Paragraph 22.

23. Lobbying

Federal regulations (i) prohibit Purchaser from using Federal appropriated funds to pay any person for influencing or attempting to influence certain Federal officers or agents in connection with the making of a Federal loan and (ii) require Purchaser to include the lobbying certification set forth in Appendix A to 7 C.F.R. Part 3018, a form of which is set forth on Exhibit A hereto (the "Lobbying Certification") in its contracts under the Federal loan. On or before the Seller's return of the Purchase Order acknowledgement required by Paragraph 2 hereof, Seller shall execute and deliver to Purchaser the Lobbying Certification if Seller does not already have a Lobbying Certification on file with Purchaser. If Seller already has a Lobbying Certification on file with Purchaser, Seller represents, warrants and agrees that (i) the representations made in such Lobbying Certification are true and correct as of the date of this Purchase Order, (ii) Seller shall continue to comply with the covenants set forth in such Lobbying Certification, and (iii) Seller shall cause any person, firm, corporation or entity with whom Seller contracts to provide goods and services with respect to Seller's performance under this Purchase Order to execute and deliver a Lobbying Certification to Seller.