

ORANGE AND ROCKLAND UTILITIES, INC.

STANDARD TERMS AND CONDITIONS

FOR

PURCHASE OF EQUIPMENT

March 31, 2006

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STANDARD TERMS AND CONDITIONS FOR PURCHASE OF EQUIPMENT

1. Definitions. The following terms as used herein shall have the meanings stated:

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| "Orange and Rockland" | - Orange and Rockland Utilities, Inc. |
| "Seller" | - The Seller named on the face of the Purchase Order. |
| "Purchase Order" | - The contract between Orange and Rockland and the Seller containing all provisions set forth on the face and reverse sides and on any other pages of and attachments to the Orange and Rockland purchase order form and on documents or portions thereof expressly incorporated by reference herein, including, without limitation, special conditions, specifications and drawings. (The words "hereof", "herein", "hereto" and "hereunder" shall be deemed to refer to the Purchase Order.) |

2. Contract Formation. Acceptance of the bid or proposal is expressly conditioned upon the Seller's assent to the terms and conditions hereof. The Seller shall be bound by the Purchase Order and its terms and conditions upon the mailing or delivery by other means of the Orange and Rockland purchase order form or other writing manifesting acceptance of the Seller's offer, unless the Seller's offer contains terms additional to or different from those expressed herein which are not accepted in writing by Orange and Rockland. In such event, Seller shall be bound by the Purchase Order and its terms and conditions when it executes the acknowledgment copy or such other writing issued by Orange and Rockland (or issues another document expressing the Seller's acceptance of the Purchase Order), or when it renders to Orange and Rockland any of the equipment or associated services ordered hereunder, whichever occurs first. No terms or conditions stated by the Seller in its bid or proposal, acknowledgment or other correspondence shall be binding upon Orange and Rockland if different from or in addition to the express provisions of the Purchase Order.

3. Amendments. No modification of or amendment to the Purchase Order shall be valid or binding unless in writing and signed by an authorized representative of Orange and Rockland.

4. Firm Price. Unless otherwise expressly and specifically provided herein, the prices stated in the Purchase Order are firm and are not subject to increase.

5. Payment.

- A. Unless otherwise specified in the Purchase Order, payment shall be made by Orange and Rockland to the Seller within thirty (30) days after receipt and processing of proper invoices with required supporting documentation.
- B. Invoices (the originals) shall be submitted to Orange and Rockland's Accounts Payable Department after the delivery of the equipment or payment of the services to which the payment applies, in such detail and with such supporting documentation as required by the Purchase Order documents or as may reasonably be required by Orange and Rockland for tax and regulatory purposes. Proofs of costs shall be submitted for cost reimbursable items. If the contract provides for any services to be rendered on an hourly rate basis, invoices shall include the number of hours worked and the hourly rate for each person performing services as well as the total amount invoiced, and shall be accompanied by signed time sheets and any other data reasonably required by Orange and Rockland.
- C. Should the Purchase Order contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery or other performance.
- D. The acceptance by the Seller of final payment, except for any express written reservation of rights, shall be and shall operate as a release of Orange and Rockland from all claims of and all liability to the Seller for all things done or furnished in connection with the Purchase Order and for every act and neglect of Orange and Rockland and others for whom Orange and Rockland is or may be responsible relating to or arising out of the Purchase Order. However, no payment, final or otherwise, shall operate to release the Seller from any obligations under the Purchase order.
- E. Orange and Rockland at any time may, after notifying the Seller in writing, pay directly any unpaid claims against the Seller based on services rendered hereunder, and in so doing Orange and Rockland shall be conclusively deemed to be acting as the Seller's agent. Any payment made by Orange and Rockland to discharge a claim against the Seller shall be treated as a payment made under the Contract from Orange and Rockland to the Seller.

6. Taxes.

- A. Sales Tax. Except as otherwise provided in the Purchase Order, the price does not include any federal, state or local sales, use or other similar tax which may now or hereafter be applicable to the purchase by Orange and Rockland of the equipment or services furnished hereunder, and Orange and Rockland agrees to pay or reimburse the Seller for any such tax. Orange and Rockland shall have the right to direct the basis on which any such taxes shall be paid or contested and to control any contest and shall reimburse the Seller for any interest, penalties or expenses the Seller may be required to pay on account of any such direction or contest. Conducting any hearings or litigation regarding a tax dispute shall be Orange and Rockland's responsibility, but the Seller shall cooperate and assist Orange and Rockland therein.
- B. Payroll Taxes and Contributions. The Seller assumes exclusive liability for and shall pay all contributions or taxes imposed by or required under the unemployment insurance laws of New York or any other state or the Federal Social Security Act or any other act, now or hereafter in effect, upon or in respect of wages, salaries or other compensation paid to employees engaged upon or in connection with the work to be performed.
- C. Import Taxes (Tariffs and Duties). The prices include any and all import taxes, including but not limited to regular, special, countervailing and antidumping duties imposed at any time on the equipment purchased hereunder, whether denominated duties, tariffs, surcharges, imposts, tolls or otherwise. The Seller shall indemnify and hold harmless Orange and Rockland against any liability arising out of the imposition of any such import taxes. In the event a notice of the initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register relating to the kind of equipment and the country of origin involved in the purchase hereunder, Orange and Rockland shall have the right at any time thereafter to cancel the purchase by written notice without incurring any liability therefor. The exercise or nonexercise of this right of cancellation shall not affect Orange and Rockland's right to be indemnified and held harmless.

7. Time of Performance. The Seller shall deliver the equipment and perform any services to be furnished in accordance with the scheduled delivery dates and any schedule of performance stated herein. It is understood and agreed by the Seller that TIME IS OF THE ESSENCE OF THE PURCHASE ORDER and of each and every portion thereof for which a certain length of time or a completion date is fixed for performance. Receipt and acceptance by Orange and Rockland of revised schedules from the Seller during the work shall not be deemed a waiver of the contract completion date.

8. Excusable Delay. Seller shall be excused for any delay in performance hereunder arising from a cause beyond its control which it could not by the exercise of due diligence have avoided, including an act of any governmental authority, an act of God, extraordinary weather conditions, flood, an accident such as a fire or explosion not due to the negligence of the Seller, a strike not caused or prolonged by an unfair labor practice of the Seller, public disorder or riot, a failure of public transportation facilities., and inability of Orange and Rockland to provide access due to plant malfunctions. Delay in the Seller's receipt of subcontracted supplies or services, even for reasons beyond the control of the subcontractors, shall not be excusable delay hereunder if the supplies or services are available to the Seller from another source. The Seller shall give written notice and full particulars of the cause of delay relied upon within 48 hours after its occurrence. The time for performance in any such instance shall be extended by a period equal to the time lost by reason of the excusable delay. Orange and Rockland shall not be liable for any additional costs incurred as a result of such delay.

9. Suspension. Orange and Rockland shall have the right, for its convenience and by written notice, to suspend all or part of the Seller's performance hereunder at any time. The Seller shall, as soon as possible, resume any suspended performance when so directed by Orange and Rockland. The time for performance shall be extended for a period equal to the delay caused by the suspension. If such suspension continues for an unreasonable period, the Seller shall be entitled to an adjustment in the Purchase Order price to cover any additional out-of-pocket costs (exclusive of overhead or costs resulting from loss of efficiency) which the Seller establishes to the satisfaction of Orange and Rockland were incurred by the Seller solely by reason of the suspension, provided, however, that such entitlement is conditioned upon the Seller notifying Orange and Rockland in writing within fifteen (15) days of the suspension that additional costs will or may be incurred thereby and upon the Seller's making claim therefor in writing within thirty (30) days of Orange and Rockland's notice to resume work. Delay caused by Orange and Rockland's act or failure to act shall not be deemed a suspension within the meaning of this article and shall not entitle the Seller to receive any additional costs.

10. Warranties. The Seller warrants that the equipment furnished hereunder will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to applicable specifications, drawings, and other descriptions incorporated herein, will be suitable for its intended purpose and of merchantable quality, and will comply with and be usable in compliance with all applicable laws and regulations. The Seller further warrants that any services furnished hereunder shall be rendered competently by qualified personnel and in accordance with the best accepted practices. Should any failure to meet any of the warranties stated herein appear within twelve (12) months after commencement of commercial operation of the equipment or eighteen (18) months after acceptance of the equipment by Orange and Rockland, whichever first occurs, the Seller shall upon notice by Orange and Rockland repair or replace the equipment and reperform the

services not conforming to the foregoing warranties, promptly and without expense to Orange and Rockland. In the event of a failure of the Seller to promptly remedy any breach of warranty as aforesaid, Orange and Rockland may correct the deficiencies and charge the Seller for the cost thereof. The aforesaid warranties shall survive acceptance of and payment for equipment and services furnished hereunder. After any equipment or services have been repaired, replaced or redone pursuant to the foregoing warranties, they shall be subject anew to the original warranties.

11. Changes. Orange and Rockland reserves the right at any time to make changes in the services to be performed or in any specifications, drawings and data incorporated herein, the method of shipment or the time of delivery. Any such changes shall be directed in writing. If any such change causes an increase or decrease in the cost of or the time required for performance hereunder, an equitable adjustment shall be made in the contract price or schedule, or both. Any claim by the Seller for adjustment under this clause shall be deemed waived unless asserted in writing within thirty (30) days from the date of the direction to make the change. In the event any such adjustment is not agreed upon promptly, the Seller shall, nevertheless, proceed diligently to effect the change at the time it is directed to do so by Orange and Rockland, without prejudice to its right to an equitable adjustment in respect thereof. Any price increase or decrease or extension or acceleration of time for performance shall not be binding on Orange and Rockland unless evidenced by a Purchase Order modification signed and issued by Orange and Rockland.

12. Time and Material and Cost Reimbursable Work.

- A. Orange and Rockland shall have the right to generally supervise, direct, control and approve the extent and character of work done on a time and material or other cost reimbursable basis.
- B. Work performed on the basis of time and material shall not be performed either in whole or in part on a premium time basis (including overtime, Saturdays, Sundays and holidays) unless the Seller obtains the prior written consent of Orange and Rockland's duly authorized representative.

If the Seller should perform work on a premium time basis without obtaining such consent then all cost relating to the premium time portion shall be borne solely by the Seller without recourse to Orange and Rockland.

- C. For time and material work, Seller shall submit reports which shall list the time and trades used, material consumed and types of equipment used on site and operating hours indicated. The reports shall be submitted by the end of the next working day for each shift worked. These reports are to be submitted to the Orange and Rockland site representative for approval (subject to future audit and adjustment if

found to be in error). Orange and Rockland shall make payment within 30 days after receipt of a proper invoice with required supporting documentation.

- D. All work performed on a time and material basis shall be subject to the provisions of Article 10 (“Warranties”), above.
- E. The hourly rates for time and material and cost reimbursable contracts include profit and all indirect costs such as, but not limited to, field overhead, home office costs, engineering and all other off-site costs.

13. Claims.

- A. The only claims that may be made by the Seller are claims for (i) providing services or materials beyond the scope of the Purchase Order that are not covered by a written and signed change order (hereafter “Non-Contract Work”), and (ii) the increased cost of performing Purchase Order work caused by Orange and Rockland’s breach of the Purchase Order (hereafter “Increased Costs”).
- B. For each claim for Non-Contract Work, as defined in A(i), above, the Seller must give written notice to Orange and Rockland’s designated representative within 5 days of when the Seller began to perform such work. The notice must identify such work with particularity, the date such work was begun, the reason such work was performed, the estimated cost and duration of the work, the anticipated schedule impact, and the name of any Orange and Rockland representative alleged to have ordered such work. For each claim for Increased Costs, as defined in A(ii), above, the Seller must give written notice to Orange and Rockland’s designated representative within 5 days of Seller’s discovery of Orange and Rockland’s breach. The notice must identify the breach with the following particularity: for an act of Orange and Rockland, identify the act, the location of the act, the individual who performed the act, and the date of the act; for an omission by Orange and Rockland, identify the specific action Seller believes Orange and Rockland should have taken, the date the action should have been taken, and the date the action was taken, if ever; for a misrepresentation by Orange and Rockland, identify the representation alleged to be incorrect by document, page, section, and clause, describe the fact or condition misrepresented, and provide the date the Seller learned of the misrepresentation.
- C. For claims for which Seller has given timely notice, Seller must segregate and maintain, on a weekly basis, all costs associated with the claim. Documentation of all such costs shall be maintained and be made available to Orange and Rockland upon request. Ten days after

submitting the notice required by paragraph B of this Article, the Seller must begin submitting weekly detailed itemizations of such costs to Orange and Rockland. For each claim for Non-Contract Work, as defined in A(i), above, these detailed records shall include:

- (1) The name, title, trade, local, and number of each worker employed in such work, the dates and hours each worker was employed in such work, and the tasks performed, and
- (2) The nature and quantity of any materials, plant and equipment furnished or used on connection with the performance of such work and from whom purchased or rented.

For each claim for Increased Costs, as defined in A(ii), above, these detailed records must include:

- (1) The date the Increased Costs were incurred,
- (2) The name, title, trade local, and number of the workers who performed the work whose costs were increased,
- (3) The price in the Seller's bid for the performance of the work that had its cost increased, the actual cost to the Seller to perform such work, and the amount of the Increased Costs that the Seller claims Orange and Rockland is responsible for, and
- (4) The nature and quantity of any materials, plant, and equipment whose cost was increased by Orange and Rockland's act, omission, or misrepresentation.

- D. Seller's failure to provide timely notice of a claim, as required by paragraph B, or to collect, segregate, maintain, and make available to Orange and Rockland documentation of all costs sought in the claim, as required in paragraph C, or to timely submit such costs on a weekly basis, as required by paragraph C, shall be deemed a conclusive and binding determination by the Seller that neither the Seller nor any of its subcontractors have provided any services or materials beyond the scope of the Purchase Order not covered by a written and signed change order and that neither the Seller nor any of its subcontractors have had their costs increased by a breach of the Purchase Order by Orange and Rockland, and such failure shall be deemed a waiver of the claim.

14. Inspection and Tests. Orange and Rockland shall have the right to inspect any and all records of the Seller or its subcontractors whenever Orange and Rockland believes that this is necessary to assure it that equipment to be furnished hereunder is being produced and will be produced in full compliance with the

requirement of the Purchase Order and on schedule. In addition, the Seller shall provide, and shall cause its subcontractors to provide, access to factories and shops at all reasonable times for Orange and Rockland to inspect work in progress. Orange and Rockland shall have the right to be present and witness tests relating to the equipment purchased hereunder. Orange and Rockland, in addition, shall have the right to require additional tests to be performed at all reasonable times and places. Any special tests ordered in writing by Orange and Rockland will be paid for by Orange and Rockland, provided that if such tests reveal a nonconformity with the Purchase Order requirements, the cost of such tests shall be borne by the Seller. No inspection, failure to inspect or waiver of inspection by Orange and Rockland or anyone acting on its behalf shall relieve the Seller of its obligation to furnish equipment and services fully in accordance with the requirements of the Purchase Order. All equipment is received subject to inspection and approval, notwithstanding prior payment, it being understood that payment does not constitute acceptance. All rejected equipment will be held at the Seller's expense and risk, pending the Seller's disposition instructions.

15. Subcontracting. The Seller shall not subcontract all or any portion of the performance to be rendered hereunder without the express written approval of Orange and Rockland as to the work to be subcontracted and the subcontractor; provided, however, that this limitation shall not apply to the purchase of standard commercial supplies or raw materials; and provided further, that the Seller shall not be relieved of any obligations hereunder by reason of any such approved subcontracting. Nothing contained herein shall create any contractual rights in any subcontractor against Orange and Rockland. Seller shall cause all subcontracts applicable to the work on Orange and Rockland's premises to contain provisions which require the subcontractor to provide the same insurance coverage as is required of the Seller, naming both Orange and Rockland and Seller as additional insureds. Subcontracts shall provide for the Seller the same rights against the subcontractor as Orange and Rockland has hereunder against the Seller and shall expressly state that such provisions shall also be for the benefit of Orange and Rockland.

16. Assignment. The Seller shall not assign the Purchase Order or any of its rights under the Purchase Order without the prior written consent of Orange and Rockland, and any assignment made without such consent shall be void.

17. Confidentiality. All reports, specifications, software, drawings, photographs, technical information, and information regarding locations of facilities, furnished by Orange and Rockland or originally furnished or prepared by the Seller or its subcontractors in connection with the Purchase Order shall, except to the extent indicated in writing by Orange and Rockland, be held confidential and not disclosed to any third parties, be used only in connection with the performance of the Purchase Order, and be delivered or returned to Orange and Rockland upon completion of such performance. The Seller shall not use Orange and Rockland's name in connection with any advertisement or any announcement regarding its work under the Purchase Order or for any other purpose without obtaining Orange and

Rockland's prior written permission. The Seller acknowledges that its violation of the provisions of this article may result in irreparable harm to Orange and Rockland, the amount of which would be difficult to ascertain and which would not be adequately compensated for by monetary damages. Accordingly, the Seller agrees that Orange and Rockland will be entitled to injunctive relief to enforce the terms of this article, in addition to its remedies at law.

18. Patents, Etc. If the Seller, in the performance of the Purchase Order, employs, constructs or provides any goods, design, process, material, tool, equipment or work of authorship (including computer programs and documentation) covered by a patent, copyright, trademark or other proprietary right, the Seller shall, if it does not itself own such right, at its own expense secure permission prior to its use hereunder by securing a suitable agreement from the owner of such right. The Seller shall indemnify and hold Orange and Rockland harmless against any liability arising from a claim, suit or proceeding brought against Orange and Rockland and any liability arising therefrom based on a claim that the any equipment, designs, processes or works of authorship (including computer programs and documentation) infringe any patent, copyright, trademark or any other proprietary right. The Seller shall provide for the defense of any such claim, suit or proceeding, and shall pay all costs and expenses thereof, including compensation of experts and counsel, and all damages and costs awarded therein against Orange and Rockland. Orange and Rockland shall notify the Seller of any such claim, suit or proceeding in writing and give the Seller authority, information and assistance (at the Seller's expense) for the defense thereof. In the event that the use of any equipment, designs, processes or works of authorship furnished hereunder is enjoined, the Seller shall promptly, at its own expense, either (a) procure for Orange and Rockland the right to continue using said equipment, designs, processes or works of authorship or (b) with the approval of Orange and Rockland, (i) replace them with noninfringing equipment, designs, processes or works of authorship of equal performance and quality, or (ii) modify them so they become noninfringing.

19. Indemnification. To the fullest extent allowed by law, the Seller agrees to defend, indemnify and save Orange and Rockland, its directors, officers, employees and agents harmless from all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Orange and Rockland, or statutory or administrative fines, penalties or forfeitures resulting, in whole or in part, from, or connected with, the performance of the Purchase Order by the Seller, any subcontractor, their agents, servants or employees, and including claims, loss, damage and liability arising from the partial or sole negligence of Orange and Rockland or non-parties to this Purchase Order. The Seller expressly agrees that Orange and Rockland may pursue claims for contribution and indemnification against the Seller in connection with claims against Orange and Rockland for injury and/or death to Seller's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Seller hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the

Workers' Compensation Law insofar as such claims are asserted by Orange and Rockland against the Seller.

20. Insurance. The Seller shall procure and maintain the following insurance at its own expense until completion and acceptance of performance hereunder, and thereafter to the extent stated below, with at least the monetary limits specified. The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage and shall be placed with insurance companies acceptable to Orange and Rockland.

- A. Employment related insurance
 - (a) Workers' Compensation Insurance as required by law.
 - (b) Employers' Liability Insurance, including accidents (with a limit of \$1,000,000 per accident) and occupational diseases (with a limit of \$1,000,000 per employee).
 - (c) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act, and the Jones Act.

- B. Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$3,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$3,000,000 per occurrence and, for at least one year after completion of performance hereunder, Products/Completed Operations Liability Insurance with similar but separate and independent limits. (If the equipment delivered or any part of the work involves Orange and Rockland's gas system or boiler controls, the insurance procured and maintained by the Seller shall be for \$5,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$5,000,000 per occurrence.) Policy deductibles shall be subject to Orange and Rockland's approval.

The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards. The insurance policy or policies shall name Orange and Rockland as an additional insured. There shall be no exclusion for claims by Seller's employees against Orange and Rockland based on injury to Seller's employees.

- C. Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired automobiles used by the Seller or any Subcontractors, with limits of \$1,000,000 per occurrence for bodily injury or death and \$500,000 per occurrence for property damage or a combined single limit of \$1,000,000 per occurrence.

- D. Where performance involves the use of aircraft, aircraft liability insurance, covering all owned, non-owned and hired aircraft including helicopters, used by the Seller or any subcontractors, with a combined single limit of \$5,000,000 for bodily injury or death and property damage. The insurance policy shall name Orange and Rockland as an additional insured.
- E. For asbestos abatement and lead abatement work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of \$5,000,000 for bodily injury or death and property damage. Each insurance policy shall name Orange and Rockland as an additional insured. Where the abatement work is to be performed by a subcontractor, the Seller shall require the subcontractor to name both the Seller and Orange and Rockland as additional insureds and to submit copies of the policies to Orange and Rockland.

The Seller shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish Orange and Rockland with at least ten (10) days' written notice prior to the effective date of cancellation of the insurance or of any changes in policy limits or scope of coverage. All coverage of additional insureds shall be primary coverage as to the additional insureds.

At least three days prior to commencing any work at Orange and Rockland's premises the Seller shall furnish Orange and Rockland with copies of the policies specified in paragraphs B and E above and Certificate(s) of Insurance covering all required insurance, signed by the insurer or its authorized representative, certifying that the required insurance has been obtained and will not be cancelled or altered without at least ten (10) days' prior written notice to Orange and Rockland. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that Orange and Rockland is an additional insured with respect to all coverages enumerated in paragraph B, above. Such certificates shall not contain a disclaimer of liability of the insurer for failure to provide Orange and Rockland with notice of cancellation or substantial alteration. Orange and Rockland shall have the right to require the Seller to furnish Orange and Rockland, upon request, with a copy of the insurance policy or policies required under paragraphs A, C and D hereunder.

The Seller agrees that this is an insured contract. The insurance required herein is intended to cover Orange and Rockland for its own liability for negligence or any other cause of action in any claim or lawsuit for bodily injury or property damage arising out of the work.

For purposes of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Seller shall be deemed to have assumed tort

liability for any injury to any employee of Seller or Orange and Rockland arising out of the performance of the work, including injury caused by the partial or sole negligence of Orange and Rockland and notwithstanding any statutory prohibition or limitation of the Seller's indemnification obligation hereunder.

Certificates of insurance identifying the Purchase Order shall be sent to:

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River, NY 10965
Attention: Purchasing Department

21. Termination for Convenience. Orange and Rockland may for any reason whatsoever, including its own convenience, by written notice to the Seller terminate the Purchase Order, in whole or in part, without liability to the Seller except as stated in this Article. In the event of such termination, in full discharge of its obligations to the Seller in respect of the Purchase Order and such termination, Orange and Rockland shall pay the Seller for equipment manufactured or delivered and services performed prior to termination an amount which is equitable in light of the Purchase Order price. The Seller shall take all reasonable steps to minimize any termination charges of its subcontractors and suppliers as well as its own termination costs. If payments made under the Purchase Order exceed such termination amount, the excess shall be refunded to Orange and Rockland. Except as agreed in writing, termination shall not relieve the Seller of any obligation which may arise out of equipment delivered or services performed prior to termination. In no event shall Orange and Rockland be liable to the Seller for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead, or lost opportunities to obtain other sales.

22. Cancellation for Default. In the event the Seller is in default of any of its obligations under the Purchase Order, Orange and Rockland shall have the right, by written notice to the Seller, to cancel the Purchase Order, in whole or in part, for such default. The Seller shall be deemed to be in default hereunder if the Seller is in default of any of its obligations under the Purchase Order or the Seller by a statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof). In the event of cancellation for default hereunder, Orange and Rockland shall have all rights and remedies provided by law and under the Purchase Order. In addition, in such event Orange and Rockland may retain from any money otherwise due for equipment delivered and services rendered prior to cancellation an amount which Orange and Rockland determines is adequate to cover all damage resulting from the Seller's default. In the event that the Seller demonstrates that a cancellation of the Purchase Order for default is erroneous, the cancellation shall, at Orange and Rockland's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 21 hereof, and the rights and obligations of the parties shall be governed accordingly.

23. Ownership of Documents. All documents, drawings, plans, specifications, reports, books, photographs, films, tapes, recordings, models, and computer programs furnished or prepared by the Seller under the Purchase Order (hereinafter "Materials"), regardless of any statements thereon or therewith purporting to make them confidential or to limit the use Orange and Rockland may make of them, shall be the property of Orange and Rockland, and Orange and Rockland shall have the unrestricted right to copy and reproduce the Materials, use them in any way it sees fit, and disclose them to others. The Seller hereby assigns any and all copyrights in the Materials to Orange and Rockland, and, upon the request of Orange and Rockland, the Seller shall execute any documents that Orange and Rockland deems necessary to effectuate such assignments.

24. Orange and Rockland's Performance. Orange and Rockland shall perform any action required of it by this Purchase Order in order to enable the Seller to perform hereunder. Failure by Orange and Rockland to substantially perform any such obligation shall not give rise to an action by the Seller for damages, in contract or in tort, or entitle the Seller to cancel or rescind the Purchase Order or abandon its performance. Unexcused nonperformance by Orange and Rockland shall, however, relieve the Seller of its obligation to perform hereunder to the extent it prevents the Seller from performing. Nonperformance by Orange and Rockland shall be excused where caused by an act or omission of the Seller.

25. Compliance with Laws. The Seller shall comply with all federal, state, and local laws, executive orders, regulations, ordinances, rules, and safety codes applicable at the time of performance to services rendered hereunder. The Seller shall provide Orange and Rockland, upon request, with the original or a copy of permits, certificates, receipts and other evidence establishing its compliance with this Article. Without limiting the generality of the foregoing, the Seller agrees to comply with the Fair Labor Standards Act and, as applicable, with the provisions contained in [Appendix A](#) hereto, which is incorporated in these Standard Terms and Conditions as if fully set forth herein. It contains clauses applicable to, and certifications required to be provided by, subcontractors of federal government Sellers.

26. Set-Off. Orange and Rockland shall have the right to set off against any sums due the Seller hereunder any claims Orange and Rockland may have against the Seller under the Purchase Order or any other contract between Orange and Rockland and the Seller without prejudice to the rights of the parties in respect of such claims.

27. Right to Audit (Cost-Reimbursable or Time-and-Materials Contracts). In the event the Purchase Order now provides or in the future is modified to provide for performance, or any part thereof, on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 9 ("Suspension"), or Article 21 ("Termination for Convenience") hereof, the Seller shall maintain detailed books, records and accounts covering costs incurred or, as applicable, time and materials

used in connection therewith, and shall make said books, records and accounts available for inspection and audit by Orange and Rockland and its authorized representatives during the term of the Purchase Order and for a period of six years after final payment under the Purchase Order. If audit discloses that Orange and Rockland has paid the Seller for any costs alleged by the Seller to have been incurred but which were not in fact incurred or for any time and materials which were not used, the Seller shall refund to Orange and Rockland an amount equal to such payment plus interest thereon.

28. Required Approvals.

- A. The Seller will not be permitted to perform any field service work, including but not limited to inspection, installation, maintenance, and repair, until it has submitted to Orange and Rockland and received approval of a site specific health, safety, and environmental plan.
- B. Where required by the Purchase Order, the Seller shall submit designated documents, such as drawings and process procedures, for review and approval by Orange and Rockland prior to fabrication. All proposed changes to or deviations from such documents after they have been approved shall also be submitted to Orange and Rockland for review and approval prior to the implementation of any such changes or deviations.

29. Quality Assurance. To further assure compliance with warranties stated herein, the Seller shall meet the quality assurance requirements stated in the Purchase Order, to the extent any quality assurance requirements are set forth or incorporated herein.

30. Effect of Orange and Rockland Approval. The Seller's obligations under the Purchase Order shall not be affected by the grant to, or the exercise or non-exercise by, Orange and Rockland of rights to inspect, test, review or approve the Seller's work hereunder, including, without limitation, documents such as drawings and written process procedures. Any approval by Orange and Rockland of any goods, services, documents or other things done or furnished or proposed by the Seller shall be construed merely as indicating that at that time of approval Orange and Rockland was not aware of any reason for objecting. Any failure of a Orange and Rockland representative to object to a non-conformity of the item, even if apparent or discoverable, with all the requirements of the Purchase Order shall not be effective as a waiver or acceptance of the non-conformity.

31. Safeguards. The Seller shall strictly observe safety requirements of applicable federal, state and municipal laws and regulations, including, without limitation, the Federal Occupational Safety and Health Act. The Seller shall cause all equipment and structures, the place of work and the ways and approaches thereto to meet the requirements of all public authorities. All equipment, tools, other aids and materials utilized by the Seller shall have been tested and meet all

applicable ANSI standards and legal requirements, shall be of high quality and in good working order. The Seller shall be responsible for learning what all of these requirements are and the acceptable techniques for complying with them.

If in the opinion of Orange and Rockland's authorized representative the Seller's work practices or conditions created by the Seller are unsafe or fail to comply with applicable laws or regulations, Orange and Rockland may halt the work until such practices and conditions are corrected. The Seller shall not be entitled to any additional costs or time for performance due to such work stoppage.

If, when Orange and Rockland's authorized representative is not present at a work site, an Orange and Rockland employee directs the Seller to discontinue an operation because it may be unsafe or illegal, the Seller shall immediately halt the questioned operation and, if the Seller disagrees with the employee, shall contact Orange and Rockland's authorized representative for instructions. The Seller shall obtain the employee's name and employee identification number and report this information to Orange and Rockland's authorized representative.

32. Maintenance of Work Site. If the Seller performs services hereunder on Orange and Rockland's premises, the Seller shall, at its own expense, store its apparatus, material, supplies and equipment in such orderly fashion as will not interfere with the progress of the work or the work of any other Sellers; clean up and remove frequently all refuse, rubbish, scrap materials, and debris so that at all times the work site shall present a neat, orderly and workmanlike appearance; and, before final payment, remove all surplus material, falsework, and temporary structures.

33. Vehicle Spills. Seller is required to assure that all vehicles, including those of subcontractors and suppliers, used in the performance of work for Orange and Rockland are maintained in good working condition and are not leaking any fluids. Particular attention is to be paid, without limitation, to hydraulic systems on each vehicle.

The driver must immediately notify an Orange and Rockland authorized representative in the event of a leak or spill from a vehicle or container carried on a vehicle while at the job site. The driver must wait for instructions before moving the vehicle unless field conditions require it, and then, only to the nearest safe point.

The driver will be required to eliminate the leak or spill before leaving the job site. Seller shall be required to reimburse Orange and Rockland for all costs associated with the cleanup of leaks and spills.

34. Protection of Persons and Property; Notice of Accidents.

A. When the Seller performs services hereunder on Orange and Rockland's premises, the Seller shall at all times exercise every reasonable precaution to protect persons and property and any items on which it is working. The Seller shall at its own expense design,

furnish, and erect such enclosures, barricades, platforms, scaffolds, planking of floor openings, fences and railings, give such warnings, display such lights, signals and signs, exercise such precautions against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed by Orange and Rockland. The Seller shall, and shall cause any subcontractor, their agents, servants and employees, while on or about Orange and Rockland's premises, to observe and comply with all fire, safety, hazard, "No Smoking", and other rules and regulations prescribed by Orange and Rockland or legally in effect at the time.

- B. The Seller shall promptly report in writing to Orange and Rockland all accidents whatsoever, and any claims made in connection therewith, arising out of or in connection with the performance of the Purchase Order whether on or adjacent to the work site, which result in death, injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage to property is caused, the Seller shall immediately orally report the accident to Orange and Rockland.
- C. If at any time or place a third party suffers personal injury (including death) or property damage for which the Seller is legally liable, no provision of the Purchase Order shall be construed as an agreement by Orange and Rockland to assume all or any part of such liability or, if Orange and Rockland is named or joined in any legal action or proceeding in connection therewith, to preclude, prejudice or limit Orange and Rockland's right to receive indemnification or contribution from the Seller.

35. Material Safety Data Sheets. The Seller shall complete and submit a Material Safety Data Sheet (MSDS) on which the Seller must indicate what if any toxic substances may be contained within the equipment to be furnished. For this purpose, a toxic substance is any substance listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Failure to complete and return a MSDS promptly at Orange and Rockland's request shall be grounds for cancellation of the Purchase Order for default.

36. Conflicting Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and the Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern

unless the typewritten provision or any special condition incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent clause and states that it does not apply, in which case the typewritten provision shall take precedence and govern. In the event that the Seller's offer is referred to in the Purchase Order, in any instance where any terms of the offer are in conflict or inconsistent with other provisions of the Purchase Order, unless there is a clear statement to the contrary herein said other provisions shall take precedence and govern. All rights and remedies provided by the Purchase Order shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of the Purchase Order are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

37. Transportation and Packaging. Unless specifically provided for herein, Orange and Rockland shall not be obligated to pay the Seller for transportation, boxing, crating or other packaging.

38. Waiver. Neither the acceptance of equipment or services or any part thereof nor any payment therefor nor any order or certificate issued under the Purchase Order nor any performance by Orange and Rockland of any of the Seller's duties or obligations nor any failure of Orange and Rockland to insist on strict performance by the Seller of this Purchase Order or to assert Orange and Rockland's rights in any one or more instances shall constitute a waiver by Orange and Rockland of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of breach hereof shall be deemed a waiver of any money damages to which Orange and Rockland may be entitled because of said breach. Any waiver shall be effective only if in writing and signed by Orange and Rockland's authorized representative, and only with respect to the particular event to which it specifically refers.

39. Relationship of Parties; Third Parties. The Seller shall act as an independent Seller. No right of supervision, requirement of approval or other provision of the Purchase Order and no conduct of the parties shall be construed to create a relationship of principal and agent, partners, or joint venturers between the parties, or joint employers of the Seller's employees. Unless specifically provided elsewhere herein, nothing contained in the Purchase Order is intended for the benefit of any third parties.

40. Entire Agreement. The Purchase Order, as it may be amended in accordance with Article 3 ("Amendments") hereof, contains the entire agreement between Orange and Rockland and the Seller. If any provision of the Purchase Order is or becomes legally invalid or unenforceable, the remainder of the article containing the provision and of the Purchase Order shall not be affected thereby. Any prior or contemporaneous oral or written understandings or agreements relating to the subject matter of the Purchase Order are merged herein.

41. New York Law. The Purchase Order shall be construed and the rights and liabilities of the parties hereto determined, in accordance with the laws of the state of New York.

42. Waiver of Trial by Jury. Seller hereby waives trial by jury in any action, proceeding or counterclaim brought by either party against the other on all matters whatsoever arising out of or in any way connected with the Purchase Order or any claim of damage resulting from any act or omission of the parties in any way connected with the Purchase Order.

43. Submission to Jurisdiction/Choice of Forum

- A. The Seller hereby irrevocably submits to the jurisdiction of the courts of the state of New York with regard to any controversy arising out of or relating to the Purchase Order. The Seller agrees that service of process on the Seller in relation to such jurisdiction may be made, at the option of Orange and Rockland, either by registered or certified mail addressed to the Seller at the address shown in the Purchase Order or at the address of any office actually maintained by the Seller, or by actual personal delivery to the Seller. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.
- B. The Seller hereby consents to the selection of the New York State and the United States courts situated within the City of New York, Rockland County, and Westchester County as the exclusive forums for any legal proceeding arising out of or relating to the Purchase Order.

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