

ATTACHMENT TO PURCHASE ORDER
STANDARD TERMS AND CONDITIONS
EAST KENTUCKY POWER COOPERATIVE, INC.

NOTE: To the extent Seller and East Kentucky Power Cooperative, Inc. are parties to a General Services Agreement ("GSA") applicable to the subject matter of this "Purchase Order", then that certain GSA is incorporated, in its entirety, by reference in this Purchase Order as if fully set forth herein. In the event of a conflict between the terms and conditions set forth in a GSA and this Purchase Order, the terms and conditions set forth in the GSA shall prevail and control over this Purchase Order.

1. **Seller:** "Seller" shall mean the entity from which East Kentucky Power Cooperative, Inc. is purchasing goods and materials.

2. **EKPC:** "EKPC" shall mean East Kentucky Power Cooperative, Inc.

3. **Delivery and Acceptance of Goods; Purchase Orders; Performance; Payment:** Under all circumstances, time is of the essence. If any goods are not delivered within any specified times, or within a reasonable time if no certain time is specified, then EKPC may terminate the Purchase Order by notice to Seller in addition to exercising all other rights and remedies available to EKPC under applicable law, to be cumulatively enforced. All materials provided are subject to EKPC's acceptance. A complete listing of all goods provided under this Purchase Order is attached herewith as **EXHIBIT A** specifying the prices and delivery terms for such goods, as well as other specific terms and conditions that may otherwise not be provided for herein (possibly involving the installation of such goods by Seller and/or its employees, agents or representatives, which terms and conditions of such installation work shall be specified between the parties). Seller acknowledges that it has inspected all conditions relevant to the sale of the goods and how they shall be used and, furthermore, Seller fully assumes the risk of such conditions under which the goods shall perform without recourse to EKPC. In the event Seller commences performance and delivers the goods, Seller hereby agrees to the formation of a binding agreement as described in this Purchase Order. Upon Seller's delivery of the goods, Seller agrees not to contest the enforceability of this Purchase Order, nor the admissibility of EKPC's records related to this Purchase Order. In no event shall the terms and conditions of any other proposal, request for quotation and/or other description of work, or acknowledgement, invoice or other document as unilaterally issued by Seller, be binding upon EKPC without EKPC's explicit written acceptance thereof. Any goods provided by Seller without EKPC's binding commitment for acceptance of such goods, via a duly executed or accepted Purchase Order, shall be at Seller's sole risk and expense, and EKPC shall have no obligation to pay for any such goods. Payment, whether in full and/or partial, shall not constitute acceptance.

(A) **DELIVERY TERMS AND TRANSPORTATION CHARGES ON ALL SHIPMENTS - F.O.B. DESTINATION, FREIGHT PRE-PAID** unless delivery terms are specified otherwise on the purchase order or bid documents. If quoted delivery terms do not include transportation cost, buyer agrees to reimburse seller for transportation cost in the amount specified in Seller's bid, or actual cost, whichever is lower, provided buyer shall have the right to designate what method of transportation shall be used to ship the goods.

(B) The delivery terms stated above shall apply, unless otherwise specified on EKPC purchase order. Overshipments will not be accepted unless authorized by an EKPC Buyer prior to shipment.

4. **Title and Risk of Loss:** The title and risk of loss of the goods shall not pass to EKPC until EKPC actually receives and takes possession of the goods at the point or points of delivery

5. **Warranties:** Seller expressly warrants that the goods shall:(a) be in accordance with its own technical data sheets, comply strictly with the provisions of this Purchase Order (and/or GSA) and with all specifications, drawings and exhibits referred to in this Purchase Order, or as may thereafter be furnished by EKPC; (b) be new, unused, free from defects in design, material, and workmanship as well as the most suitable grade in accordance with the highest industry standards and specifications (to the extent any warranty on goods shall be transferable from the original manufacturer and/or any subcontractor, Seller shall assign over and/or otherwise assist EKPC in the transfer of such OEM/subcontractor warranties); (c) be suitable for the EKPC's intended purposes within an industrial environment or as specified by EKPC; (d) be in full compliance with all applicable laws, ordinances, regulations, codes and facility rules; and (e) be free from any liens, encumbrances or security interests, and/or claims of patent, copyright or trademark infringements or rights of others. In addition, Seller warrants that it has or will obtain the financial resources necessary to provide goods and, in the sole discretion of Company, will provide, subject to the terms of a non-disclosure agreement, Company with the adequate financial statements to affirm such assurances. Unless otherwise mutually agreed by the parties, all such warranties shall extend for a period of two years after the delivery of goods or two years after the start of regular use of the goods by EKPC.

6. **Changes:** This paragraph shall only apply to items of the purchase order subject to a change. EKPC expressly reserves the right at any time to change the specifications, quantity ordered and/or delivery date. Such changes may result in adjustments in the price or delivery schedule in accordance with the pricing and delivery structure of the Purchase Order. However, in the case of a change in specifications, any claim for adjustment of price or delivery schedule by the Seller shall be waived unless such claims are asserted in writing within five (5) working days after receipt of EKPC notice of change. Seller shall continue performance pursuant to the Purchase Order during the time any claim hereunder is pending.

7. **Termination:** EKPC shall have the right at any time, with or without cause, to terminate the Purchase Order by written, telegraphic or electronic notice to Seller. In case of Seller's default, EKPC shall have all rights and remedies available under applicable law to be cumulatively enforced. In no case shall EKPC be liable for special, incidental or consequential damages. EKPC shall not have any liability for such termination except as follows: (a) in case of termination of a Purchase Order for goods specially manufactured for EKPC, if Seller is not in default, then EKPC shall be liable for actual costs incurred by Seller prior to the notice of termination pursuant to the Purchase Order up to the price of the goods; or (b) in case of termination of a Purchase Order for goods not specially manufactured for EKPC, whether or not Seller is in default, EKPC shall not have any liability for termination of the Purchase Order and shall have the right to return any such goods purchased from Seller without any restocking charges whatsoever.

8. **Nondiscrimination:** Contractor agrees to comply, and cause all subcontractors to comply, with all applicable nondiscrimination laws, and take all actions necessary related thereto that may be requested by the Owner for the Owner to maintain eligibility for Federal financing, including but not limited to compliance with Title VI of the Civil Rights Act of 1964, as amended, Age Discrimination Act of 1975, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended.

9. **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 Rural Utilities Services ("RUS") shall have previously determined that such shall be impracticable or that the cost thereof shall be unreasonable. 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 EKPC such information, documents, and certificates as may be requested by EKPC or the Administrator of the RUS from time to time with respect to any goods furnished under this Purchase Order.

10. **Debarment And Suspension:** Seller represents and warrants that neither it nor any of its "principals" (as defined in 2 C.F.R. Part 417 or any successor regulation) 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 2 C.F.R. Part 417 or any successor regulation). Seller agrees to comply with Subpart C [Responsibilities of Participants Regarding Transactions] of 2 C.F.R. Part 417 or any successor regulation, 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 2 C.F.R. Part 417.220(b) or any successor regulation), 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.

11. **Lobbying:** Federal regulations prohibit EKPC 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. Seller represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

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12. Indemnification: Seller agrees to release, indemnify, hold harmless and defend EKPC and all of its respective directors, officers, members, managers, employees, agents and representatives from and against any claim, liability, loss and expense (including but not limited to attorney's fees) arising directly or indirectly out of, or in connection with, goods supplied under the Purchase Order including, but not limited to, those arising directly or indirectly out of or in connection with: (a) injury to or death of persons (including but not limited to the employees of EKPC or any other third persons) or damage to or loss of property (including but not limited to the property of EKPC and/or of others); and (b) Seller's failure to comply with or breach of any warranty or other obligation in this Purchase Order.

13. Independent Contractor: Nothing herein shall be deemed to constitute Seller, or any of Sellers' employees, agents, representatives and/or subcontractors, to be the agent, representative or employee of EKPC. Seller shall be an independent contractor and shall have sole responsibility for and control over the details and means of performance pursuant to this Purchase Order.

14. Assignments: Seller shall not assign its rights or obligations hereunder wholly or in part, voluntarily, by operation of law, or otherwise without first obtaining the written consent of EKPC. Subject to the foregoing, the provisions hereof shall be binding upon the successors and assigns, and/or personal representatives, of the parties hereto.

15. Governing Law: The transactions and agreements between Seller and EKPC shall be governed by the subject to the law and jurisdiction of the Commonwealth of Kentucky

16. Hazardous or Toxic Materials: For hazardous materials as defined by 29CFR1910.1200, a Material Safety Data Sheet (MSDS) is required prior to delivery. For toxic chemicals subject to Toxic Release Inventory (TRI) reporting under 40 CFR Part 372 that are present in the goods, provide written notification of the chemical and amount prior to delivery. Please mail to EKPC's corporate safety department. NO ASBESTOS OR LEAD CONTAINING MATERIALS ALLOWED.

17. Sales Tax: Do not bill Kentucky Sales Tax. EKPC is a direct pay cooperative maintained under 103 KAR 31:030 permit # 47507.

18. Invoicing Instructions: INVOICE AND PAYMENTS – Seller shall submit separate invoices, in duplicate, on each Purchase Order after each delivery. All invoices, shipping papers and correspondences **MUST** be identified with the applicable EKPC Purchase Order number. Failure to include a Purchase Order number **WILL** cause payment delays. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill when applicable should be attached to the invoice. Payment shall not be due until the above instruments are submitted after delivery. Invoices should be sent electronically to ap@ekpc.coop or mailed to: East Kentucky Power Cooperative, Accounts Payable, Post Office Box 707, Winchester, Kentucky 40392. Seller should notify EKPC of any changes in remittance addresses.

19. Payment Terms; Partial Release and Indemnity Regarding Liens: Unless otherwise agreed, payment terms are net 60 days on receipt of properly submitted invoice or net 60 days after delivery of the goods at EKPC's designated shipping location, whichever shall be the latter. Unless otherwise herein agreed, no COD deliveries with respect to any tangible personal property used by Seller in providing goods will be accepted. Only to the extent applicable, with every payment requested under Article 14, Seller shall submit an affidavit and waiver of lien showing all payments made for labor and materials and on account for all Work covered in the previous months or periods request for payment. An affidavit and waiver of liens may be required to be submitted from materialmen or suppliers, if any. In addition, to the extent applicable, Seller shall indemnify, defend and hold EKPC harmless and free from all mechanic's and materialmen's liens and all other liens and claims, legal or equitable, including the payment of reasonable attorney's fees, arising out of the sale of Seller's goods hereunder. In the event any such lien or claim is filed by anyone claiming by, through or under Seller (including any materialman), Seller shall remove and discharge same, by bonding or otherwise, within five (5) days of the filing thereof. If not timely removed, EKPC may remove the lien and charge all costs and expenses to Seller, including without limitation costs of bonding off such lien.

20. Modification: This Purchase Order, together with any written instructions issued hereunder and any attachments hereto, contains the complete and final agreement between EKPC and Seller and any agreement that purports to modify the terms and conditions hereof shall not be binding upon EKPC unless made in writing and signed by EKPC's authorized representative.

21. Compliance with Laws and EKPC Policies. Without limiting the foregoing, Seller agrees to strictly abide by and observe all standards of the Occupational Safety & Health Administration (OSHA) which are applicable to the work being performed now or in the future and to be bound by EKPC's Supplier Code of Conduct located at www.ekpc.coop. Seller shall request a copy of said policy if a copy has not been provided. Seller agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable, including all applicable NERC Critical Infrastructure Protection ("CIP") Standards, including CIP-013

22. Right of Auditing: Seller shall maintain complete records relating to any cost-based (i.e., Work not covered by firm prices) components of the Work billed under this Agreement or relating to the quantity of units billed under any unit price provisions of this Agreement (all the foregoing hereinafter referred to as "Records") for a minimum of five years following the latest of performance of, delivery to EKPC of, or payment by EKPC for, such Work or units. All such Records shall be open to inspection and subject to audit and reproduction during normal working hours, by EKPC or its authorized representatives to the extent necessary to adequately permit evaluation and verification of any invoices, payments, time sheets, or claims based on Seller's actual costs incurred in the performance or delivery of Work under this Agreement. For the purpose of evaluating or verifying such actual or claimed costs, EKPC or its authorized representative shall have access to said Records at any time, including any time after final payment by EKPC to Seller pursuant to this Agreement. All non-public information obtained in the course of such audits shall be held in confidence except pursuant to judicial and administrative order. EKPC or its authorized representative shall have access, during normal working hours, to all necessary Seller facilities and shall be provided adequate and appropriate work space to conduct audits in compliance with the provisions of this Article. EKPC shall give Seller reasonable notice of intended audits. The rights of EKPC set forth in this paragraph shall survive the termination or expiration of this Agreement.

23. Drawings: If applicable and if required by EKPC in the Purchase Order, Seller shall prepare and, within fifteen (15) days after delivery of the material, submit a complete and detailed final set of as-built or as-installed drawings/documents to EKPC. Design and/or construction drawings/documents shall be updated and corrected to represent what was actually provided and installed. These drawings shall become the property of EKPC, and may be used in any manner and provided to any person at the sole discretion of EKPC. Drawings/documents may include maps, project cost estimate, design or project calculations, project studies, design drawings, construction drawings, equipment drawings, and bill of materials. When requested, design and/or construction documents to include engineer's stamp and signature. Seller shall provide all submittal documents with a transmittal letter containing date, project title and number, Seller's name and address, title and number of each record document, and Seller's official signature.

24. Order of Precedence: This Agreement and the Exhibits hereto shall be considered complementary and what is required by one shall be binding as if required by all. The failure to specifically list a requirement in one document, once this requirement is specifically listed in another, shall not imply the inapplicability of such requirement and Seller shall provide as part of this Agreement all items required to conform to the project scope and standards herein contained. In the event of a conflict between the body of this Agreement and the Exhibits, the body of this Agreement shall govern. Later dated Exhibits shall take precedence over earlier dated Exhibits. The latest date of an amendment or Change Order shall take precedence over that part of this Agreement which it supersedes.

25. Confidential Information: All information relating to the Work or the business of EKPC, including, but not limited to, drawings and specifications relating to the Work, and customer information, shall be held in confidence by Seller and shall not be used by Seller for any purpose other than for the performance of the Work or as authorized in writing by EKPC. In the event that the Seller assigns the work to one or more subcontractors, a signed confidentiality agreement between the Seller and each subcontractor(s) will be provided to the EKPC prior to the provision of any information described in the immediately preceding sentence or the performance of any Work by the subcontractor. All drawings, specifications, or documents furnished by EKPC to Seller or developed in connection with the Work shall either be destroyed or returned to EKPC (including any copies thereof) upon request at any time.

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ATTACHMENTS: EXHIBIT A - Listing of Goods and Pricing (and Description of Installation Services, if any)