Attachment C

BASIC ORDERING AGREEMENT
GENERAL TERMS AND CONDITIONS FOR COMMERCIAL ITEMS AND SERVICES
DOE CONTRACTORS (01/06)

1. DEFINITIONS

The following terms shall have the meanings below:

a. Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
b. Seller means the person or organization that has entered into this Basic Ordering Agreement (BOA).
c. Company means any DOE Contractor and authorized Subcontractor utilizing the BOA.
d. Item means "commercial items or services" and "commercial component", as defined in FAR 52.202-1.
e. Order means individual requests for Items or Services (hereinafter referred to as "Item") issued under this BOA.
f. Authorized Subcontractor means a subcontractor holding an active subcontract issued by a DOE Contractor.
g. BOA Procurement Representative means the person responsible for negotiating and administrating the BOA
h. Order Procurement Representative means the person responsible for negotiating and administration of the respective Order.
i. Site Specific Terms and Conditions means those unique requirements of the Company issuing Orders under this BOA which will supplement these general terms and conditions.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) item description, (2) face of the Order, (3) Site Specific Terms and Conditions, (4) face of the BOA, and (5) the BOA general terms and conditions.

3. TITLE AND ADMINISTRATION

All property rights and interests resulting from this BOA and Orders shall pass directly from Seller to the Government. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. The Company may assign the BOA and Orders to DOE or its designee, and in case of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

4. ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing the BOA or Orders or delivering the items identified therein, agrees to comply with all the terms and conditions, all specifications and all other documents that this BOA or Order incorporates by reference or attachment. Company hereby objects to any Terms and Conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirements of the BOA or Order, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of the BOA or any Order thereunder.

5. WARRANTY

Seller expressly warrants that items delivered under the Orders shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of the BOA and Order. The

warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer, of the item or has modified it. If any nonconformity with the item appears within that time, Seller shall promptly repair or replace such items or reperform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If repair or replacement or reperformance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocure the services at Seller's expense.

6. ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller.

7. NEW MATERIALS

Unless otherwise specified in the BOA or Order, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not include the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

8. TRANSPORTATION

Transportation shall be "FOB Destination" unless specified otherwise in the Order and no insurance cost shall be allowed unless authorized in writing on the specific Order. The bill of lading shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.

9. RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

10. PAYMENT

Unless otherwise provided, terms of payment shall be Net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery (and acceptance, if required by the Order) of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check, purchase card or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made. Not_withstanding anything to the contrary stated herein, the Company shall be entitled at any and all times to set off against any amounts payable by the Company hereunder any amount owing from Seller to the Company under Orders or any subcontracts with Seller.

11. COMPLIANCE WITH LAWS

a. Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent orders, DOE directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this BOA and resulting Orders. Seller warrants that each chemical substance constituting or contained in items furnished under this BOA is on the list of substances published by the Administrator of the Environmental Protection Agency pursuant to the Emergency Preparedness and Community Right-to-Know Act and Toxic Substances Control Act as amended. With each delivery Seller

shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception, 29 CFR 1910.1200.

b. Seller shall include this article in all subcontracts, at any tier, involving the performance of this BOA.

12. TERMINATION FOR CAUSE

a. Only the Company issuing the BOA may terminate the BOA for cause, in whole or in part, if the Seller fails to comply with any of the terms of the BOA, or fails to provide adequate assurance of future performance. Only the Company issuing any Order may terminate the Order for cause, in whole or in part, if Seller fails to comply with any of the terms of the Order or fails to provide adequate assurance of future performance. In either event, the Company shall not be liable for any amount for items not accepted.
b. If the BOA or any Order is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the BOA or Order. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Seller shall agree on the amount of payment for all other deliverables.
c. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence.
d. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under the BOA or resulting Order.

13. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the BOA Procurement Representative within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

14. TAXES

Taxes shall be collected and paid in accordance with the Site Specific Terms and Conditions of the respective Order.

15. CHANGES

a. The Company issuing the BOA reserves the right to make changes within the general scope of the BOA by issuance of a unilateral change order, or by a bilateral modification to the BOA. The Company issuing the Order reserves the right to make changes within the general scope of the Order by issuance of a unilateral change order or by a bilateral modification to the Order. Such changes may include, without limitation, changes in (1) the description of the item, (2) the quantities of items ordered, (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the BOA or any Order shall be made by the parties in a bilateral modification. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.
b. Only the BOA Procurement Representative is authorized on behalf of Company to issue changes whether formal or informal to the BOA. Only the Order Procurement Representative is authorized on behalf of Company to issue changes whether formal or informal to the respective Order. If Seller considers that any direction or instruction by Company personnel constitutes such a change Seller shall not rely upon such instruction or direction without written confirmation from the BOA Procurement Representative or the Order Procurement Representative, as the case may be.
c. Nothing in this article, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed by the BOA Procurement Representative or the Order Procurement Representative, as the case may be.

16. TERMINATION FOR CONVENIENCE

The Company issuing the BOA may, in its sole discretion, terminate the BOA, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. The Company issuing the Order may, in its sole discretion, terminate the order, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination for convenience by the Company.

17. SUSPENSION

The Company issuing the BOA may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the BOA for an indefinite period of time. The Company issuing the Order may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the Order. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the BOA or any Order.

18. INCORPORATION BY REFERENCE

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company BOA Procurement Representative. The FAR clauses may be obtained from the Company upon request.
The following clauses are incorporated by reference:

- FAR 52. 219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-26 Equal Opportunity (APR 2002), (The required poster is available at: http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (DEC 2001), and
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.227-3 Patent Indemnity (APR 1984)
- FAR 52.227-9 Refund of Royalties (APR 1984)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

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