

GENERAL CONDITIONS OF PURCHASE

1. DEFINITIONS

As used throughout this Agreement the following terms shall have the meanings set forth below:

- a) "Agreement" shall mean these General Conditions of Purchase together with any attachments, exhibits, appendices or other documents specifically referenced therein.
- b) "Goods" shall mean all equipment, materials, supplies and other items furnished by the Seller.
- c) "Purchaser" or "Owner" means the party designated as such on the face of this Agreement.
- d) "Purchaser's or Owner's premises" includes sites or facilities belonging to Purchaser, Purchaser's clients and Purchaser's agents.
- e) "Seller" or "Contractor" means the person, firm, company or corporation executing this Agreement with Purchaser and who will furnish the Work or Services provided for herein.
- f) "Subcontractor" shall mean and refer to a corporation, company, partnership, firm or individual having a direct contract with Seller or Contractor for performing the Work, and its, their or his employees and representatives.
- g) "Services" mean the services to be performed by Contractor for the Purchaser under this Agreement.
- h) "Work" means the labor, equipment, supplies or materials and related Services necessary to provide the construction required by or reasonably inferable from the Agreement.

Provisions 1 through 23 shall govern purchases of Goods. Provisions 24-33 shall also apply if this Agreement is for Services (including warranty Services) or installation of Goods purchased. To the extent that they may be in conflict, provisions 24 - 33 shall govern.

2. TITLE

Seller warrants to Purchaser that Seller has good title to the Goods furnished pursuant to this Agreement and is transferring title to the Goods free and clear of any and all liens, restrictions, reservations, security interests or encumbrances of any kind.

3. PROPERTY RIGHTS

All plans, drawings, specifications and the subject matter contained therein and all other information given to Seller by or on behalf of Purchaser in connection with performance of the Agreement involve valuable property rights of Purchaser and shall be held confidential by Seller and shall not be used or disclosed by Seller for any purposes other than those for which they have been supplied or prepared. When requested by Purchaser, Seller shall execute secrecy agreements.

All data, notes, drawings, designs, sketches, specifications, reports, and memoranda of every description relating to the Agreement or any part thereof as Seller shall produce and all copies of the foregoing, shall be the property of Purchaser, subject to inspection by Purchaser at all reasonable times and delivered to Purchaser or otherwise disposed of by Seller as Purchaser may direct from time to time.

4. SHIPPING

All Goods are to be shipped in accordance with instructions in this Agreement. Seller shall be responsible for the payment of all charges for handling, packaging, wrapping, bags and containers.

5. INSPECTION, ACCEPTANCE OR REJECTION

The Goods shall be subject to inspection and tests by Purchaser and inspection and acceptance or rejection of the Goods shall be made as promptly as practicable after delivery. Failure to promptly inspect, accept or reject the Goods shall, nonetheless, not release the Seller from the responsibility of providing the Goods in accordance with the terms of this Agreement. If Purchaser rejects the Goods for whatever reason, said Goods shall be held, transported and/or stored at Seller's sole expense. Seller agrees that it shall promptly reimburse Purchaser for any such expenses.

6. PAYMENTS

Payment will be made based upon invoices of Seller for Work performed based upon Seller's progress or for Goods furnished unless otherwise specified in this Agreement. Payment otherwise due may be withheld by Owner based upon defective Work not remedied, claims made or liens filed against Owner, damage by Seller or its Subcontractors to property of Owner, failure to make proper payments to Subcontractors for materials or labor, failure to submit required documentation or any other failure by Seller to perform in accordance with the terms of this Agreement. Payment, final or otherwise, shall not be construed as approval as to quality of the Work or Goods or any part thereof or relieve Seller of its obligations hereunder. In the case of Work performed at Purchaser's premises, payment shall not be due until Seller has delivered a Waiver and Release of Lien in the form set forth as Exhibit A.

7. WARRANTY

Seller warrants to Purchaser that the Goods will conform with the specifications, drawings and other descriptions supplied or adopted by Purchaser, if any, will, unless otherwise specified, be new, fit and sufficient for the purpose for which they are intended as evidenced in this Agreement and will be of good materials, design and workmanship and free from defects. At Purchaser's request, Seller shall promptly, at no cost to Purchaser, either repair or replace (including payment of all removal, packing and transportation costs) any Goods, which within one year after being placed in regular use by Purchaser shall fail in the normal use and service and under proper operation, to conform to the foregoing warranties of Seller. In the event that Seller fails to promptly undertake to so repair or replace, Purchaser shall be entitled to correct the same at whatever means are available to Purchaser and to charge Seller for the cost of the same. All express warranties of Seller are set forth in this Agreement and NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. All third party warranties shall be assigned to Purchaser.

8. OPERATION & MAINTENANCE MANUALS

Seller shall supply or shall cause to be supplied operating and maintenance manuals (the "Manuals") in the English language for the Equipment furnished by Seller or by Seller's suppliers, including information concerning system design and installation, startup, operation, as built drawings, precautions and warnings relative to the safety of life and equipment, certified code documentation, shutdown, maintenance and repair. Any difference between Equipment supplied for multiple units regarding operation, maintenance and repair shall be clearly identified. Manuals shall include the Owner's Contract number, facility and a complete index of all data, documents and drawings contained within the Manual to facilitate the timely access to such information.

Seller shall submit two (2) draft copies of each Manual to Owner for technical review prior to submitting Manual in the final form. Following such review, unless otherwise required in the Specification, Seller shall furnish to Owner two (2) final copies, assembled in hard copy book form and one (1) editable and searchable electronic copy of each final Manual. The electronic copy shall be in Microsoft Word, Microsoft Excel and AutoCAD or other Owner preapproved format. Owner will reject incomplete Manuals and they will be returned to the Seller for completion and re-submittal. Final payment will not be made to Seller until acceptable final Manuals are submitted to Owner.

9. DELAYS

Time of delivery is of the essence of this Agreement. Notwithstanding, Seller shall be excused for delays in delivery of the Goods where any such delay is due to acts of God, acts of Purchaser not within its rights, acts of civil or military authority, terrorism, fires, strikes, floods, epidemics, war, riot or other similar causes beyond Seller's control, which Seller could not have reasonably foreseen or provided against. In the event of any such delay, Seller shall only be allowed an extension of the date of delivery for a period equal to the duration of the delay and Seller shall not be entitled to any extra compensation for such delay. Seller shall promptly notify Purchaser in writing of any such delay and, at no additional cost to Purchaser, Seller shall take all reasonable steps to avoid or end such delay. Seller shall also promptly notify Purchaser when the cause of such delay has abated.

10. CHANGES

Purchaser shall have the right to make changes in the specifications and drawings for the Goods by written notice to Seller. Upon receipt of a written notice, if Seller believes that such change or changes affects the price and/or the scheduled delivery or installation date for the Goods, Seller shall so notify Purchaser in writing within five (5) days. After receipt of Seller's written response, Purchaser and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or the scheduled delivery or installation date to reflect the effect of such change. Seller agrees that it shall not suspend performance of this Agreement during the period Purchaser and Seller are in the process of negotiating such adjustments. No substitution shall be made in this Agreement without prior written consent of Purchaser and extra compensation will be paid to Seller only if agreed to in writing by Purchaser.

11. SUSPENSION

Purchaser shall have the right to suspend Seller's performance of this Agreement for its convenience at any time by written notice to Seller. Upon receipt of such notice, Seller shall promptly suspend further performance of this Agreement to the extent specified and during the period of such suspension shall properly care for and protect the Work in progress. Purchaser may, at any time, withdraw this suspension by written notice to Seller specifying the effective date of said withdrawal and, upon such date, Seller shall diligently resume performance of the suspended work on the Goods. In the event Seller believes that any such suspension justifies modification of the Agreement price or delivery date, Seller shall notify Purchaser in writing of the same within five (5) working days after receipt of said notice. Thereafter, Purchaser and Seller shall agree upon an equitable adjustment in the Agreement price and/or delivery date based upon verified and approved supporting documentation. Seller shall be entitled to recover the additional costs incurred by it as a result of such suspension, but shall not be entitled to any damages or additional profits as a result of the suspension. Purchaser may, at its option, have costs reimbursable under this Section audited by either Purchaser's

auditing staff or by independent certified public accountants selected by Purchaser.

12. CANCELLATION FOR CONVENIENCE

Purchaser shall have the right to cancel this Agreement for its convenience at any time by written notice to Seller. On the date of such cancellation stated in said notice, Seller shall discontinue all Work pertaining to this Agreement, shall place no additional orders and shall preserve and protect materials on hand purchased for or committed to this Agreement. In the event of cancellation, Seller shall promptly deliver to the Purchaser all Work product, finished or unfinished and in exchange Seller shall be paid the earned portion of the total cost of all Work completed as of the date of cancellation. The earned portion of the total cost of Work is that part of the work on the Goods or Services which Seller has completed and for which Seller has expended resources. Purchaser may, at its option, have those costs, which are reimbursable under this Section audited by either Purchaser's auditing staff or by independent certified public accountants selected by Purchaser.

13. TERMINATION FOR DEFAULT

In the event Seller becomes insolvent, files for bankruptcy, a bankruptcy petition is filed against Seller, Seller makes a general assignment for the benefit of its creditors or if a receiver shall be appointed for all or a substantial portion of Seller's property or in the event Seller fails to comply with any of the provisions or requirements of this Agreement within ten (10) days after receipt in writing of notice of such default by Purchaser, Purchaser may, by written notice to Seller, without prejudice to any other rights or remedies which Purchaser may have at law or in equity, terminate further performance by Seller of this Agreement. In the event of such termination, Seller shall promptly deliver to the Purchaser all Work product, finished or unfinished, or make disposition as otherwise directed by the Purchaser. Purchaser may complete the performance of this Agreement by such means as Purchaser reasonably selects and Seller shall be responsible for any additional costs incurred by Purchaser in so doing. Any amounts due Seller for Goods delivered by Seller in compliance with the terms of this Agreement prior to such termination for default, shall be subject to a set off against the additional costs incurred by Purchaser completing Seller's obligations under the Agreement and other damages incurred by Purchaser as a result of Seller's default.

14. INDEMNITY

Seller agrees to defend, indemnify and hold harmless Owner and its members, shareholders, directors, managers, partners, officers, employees, agents and contractors (the "Indemnified Parties") from and against, and shall promptly reimburse each Indemnified Party with respect to any claim, demand or cause of action, including any actual loss, cost, expense, liability, fine or damage incurred or suffered by the Indemnified Party (including reasonable fees and expenses of attorneys, technical experts and expert witnesses, court costs and other out-of-pocket expenses) related to any bodily injury, death or property damage resulting from Seller's breach of this Agreement, Seller's violation of any law, rule or regulation or Seller's negligence or willful misconduct.

In the event any such loss, cost, expense, liability, fine or damage is caused by the concurrent default or negligence of any Indemnified Party, the Indemnified Party's violation of any law, rule or regulation or the failure of the Indemnified Party to perform its obligations under this Agreement, Seller shall be relieved of its obligation to indemnify the Indemnified Party to the extent such loss, cost, expense, liability, fine or damage was caused by such concurrent default or negligence, such failure to comply or such failure to perform.

Neither the coverage nor the limits of Insurance required by this Agreement shall in any way restrict the foregoing indemnity obligation of Seller.

15. CONSEQUENTIAL DAMAGES

Seller and Purchaser shall not be liable to the other for consequential or punitive damages for lost production and revenues as a result of performance under this Agreement.

16. ASSIGNMENTS

This Agreement may not be assigned by Seller without the prior written consent of Purchaser. Any assignment of this Agreement by Seller, in whole or in part, voluntarily, by operation of law or otherwise, without the prior written consent of Purchaser, shall be void.

17. INFRINGEMENT

Seller warrants that Owner's purchase, installation and/or use of the Goods will not result in any claim of infringement or actual infringement of any patent, trademark, copyright, franchise or other intellectual property right.

18. MECHANIC'S LIENS

Seller agrees to indemnify, hold harmless and defend Purchaser from and against all laborers', material men's and/or mechanics' liens arising from the performance of Seller's obligations under this Agreement and Seller shall keep the premises of the Purchaser free from all such claims, liens or encumbrances. Seller waives all rights of mechanics' or material men's lien against the property of the premises of the Purchaser.

19. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION CERTIFICATION

The Seller agrees to abide by and comply with the following statutes, rules, orders, and regulations which are a part of this Agreement and which are incorporated herein by reference.

- Executive Order 11246 issued September 24, 1965 as amended, and all rules, regulations, and orders issued thereto and as implemented in 41 CFR 60-1.40.
- 41 CFR 60-1.4 Equal Opportunity Clause.
- 41 CFR 60-1.8 Segregated Facilities.
- 41 CFR 60-250.4 and 250.5 Equal Opportunity – Special Disabled Veterans and Veterans of the Vietnam Era.
- 41 CFR 60-741.4 and 741.5 Equal Opportunity – Workers with Disabilities.
- 41 CFR 60-1.7 Reports and other Required Information.

20. ENTIRE AGREEMENT

This Agreement shall become a binding contract to Seller and Purchaser upon Seller's signing and returning an acceptance copy of this Agreement or upon Seller otherwise acknowledging acceptance of this Agreement or commencing performance of this Agreement, whichever occurs first. This Agreement, together with specifications, drawings and documents, if any, referred to herein and other documents referred to therein, if any, which by this reference are all made a part hereof, constitute the entire Agreement between Seller and Purchaser and all prior negotiations, proposals and writings pertaining to this Agreement on the subject matter hereof are hereby superseded. Any additional or different terms or conditions which may appear in any communication from Seller are hereby expressly objected to and shall not be effective or binding unless specifically agreed to in writing by Purchaser and no such additional or different terms or conditions in any printed form of Seller shall become part of this Agreement despite Purchaser's acceptance of Goods unless such acceptance specifically, in writing, recognizes or consents to their inclusion.

21. CONFLICTS

In the event of an express conflict among the terms contained within the Agreement documents, Seller shall promptly so notify the Purchaser and shall comply with the Purchaser's resolution of the conflict.

22. CHEMICALS

Seller shall provide a current Material Safety Data Sheet ("MSDS") for all substances delivered hereunder which may pose a physical, or health hazard to the user in accordance with Federal Regulation 29 CFR 1910.1200 (Hazard Communication, Right to Know). Seller will provide MSDS with the initial shipment of the material for this Agreement as well as with the first shipment after an MSDS has been updated.

23. GOVERNING LAW

This Agreement shall be subject to and governed by the laws of the State of North Dakota without respect to any conflict of law principles that might otherwise direct the application of the laws of another jurisdiction.

24. ADMINISTRATION

Activities of Contractor shall be subject to coordination by Owner.

25. FAMILIARITY WITH CONDITIONS

Contractor has made a careful examination of the site of the Work, plans, specifications and drawings supplied by Owner, if any, and has become informed as to the location and nature of the proposed construction, transportation facilities and kind of facilities required before and during the Work, and has also become acquainted with the labor conditions, meteorological conditions, the ecological and environmental criteria to be followed, and state and federal laws and regulations which would affect the Work. Contractor has examined the site of the Work and assumes responsibility for any preparatory work on Owner's property necessary to enable deliveries of the Goods as well as parts and materials to the site of the Work.

Contractor has made a careful examination of Owner's requirements for site access, including but not limited to secrecy agreements, plant site orientation, plant site training, drug screening documentation and compliance with 29CFR 1910.119 (if applicable).

26. SUPERVISION AND INSPECTION

Contractor shall give sufficient supervision of the Work using its best skill and attention. Contractor shall carefully study and compare all specifications and other instructions and shall at once report to Owner any error, inconsistency or omission which it may discover. Contractor shall also employ capable, experienced or reliable skilled workmen as may be required for the Work.

Owner reserves the right to require removal from the project of any Contractor employee if, in the judgment of Owner, such removal shall be necessary in order to protect the interests of Owner. The manner of performance of the Work and all materials and equipment used therein, shall be subject to the inspection, test and approval of Owner, and Contractor shall furnish all information required by Owner concerning the nature and source of any materials incorporated or to be incorporated in the Work.

27. INSURANCE

Contractor shall carry worker's compensation insurance including coverage for owners and proprietors in the state or province where Work is to be performed under the terms of this Agreement.

Contractor shall carry and maintain or cause to be carried

business auto and commercial general liability (CGL) insurance. The CGL insurance shall be at least equivalent in form to the 1986 or later CGL policy in amounts at least comparable to and against risks customarily insured against by other responsible firms in like businesses. However, in no event because of any claims or potential claims against Contractor shall the CGL or business auto liability limit be less than \$1 million (US\$) single limit combined, each occurrence, for bodily injury and property damage liability. Any policy providing such coverage shall be from a company acceptable to Owner, authorized to do business in the state or province in which the Work is to be performed, and for CGL coverage;

- a) Name Owner, its officers and employees as an additional insured, limited only with respect to liability or claims deriving or imposed upon them as a result of the Work under this Agreement;
- b) Be primary insurance without right of contribution from any other insurance, which is carried by Owner. Indemnity provisions shall not deprive or affect the validity nor scope of coverage to Owner;
- c) Waive and cause its insurers to waive all rights of subrogation against Owner pursuant to this Agreement;
- d) Expressly provide that all of the policy provisions, except the limits of liability, shall operate in the same manner as if a separate policy were issued to each insured;
- e) Provide that Owner must receive at least thirty (30) days prior written notice of any cancellation or material modification of Contractor's insurance coverage;
- f) Provide that any general aggregate limit shall apply separately on a "per contract" basis for Work under this Agreement; and
- g) Contain no exclusion for explosion, collapse, or underground property damage (XCU).

Contractor shall provide Owner evidence of such insurance coverage prior to commencement of the Work.

28. SUBCONTRACTS

Prior to the commencement of the Work, Contractor shall provide a listing of all Subcontractors to be utilized in performing the Work. Owner reserves the right to reject same.

29. LAWS AND REGULATIONS

Contractor shall comply with all applicable state and federal laws, rules, regulations, standards and ordinances pertaining to the Work.

30. RIGHT TO AUDIT

Contractor agrees to maintain adequate books and records concerning transactions in connection with this Agreement and to make said books and records available for inspection and audit by Owner's auditing staff or by independent certified public accountants selected by Owner during the term of this Agreement and for a period of three (3) years after final payment under this Agreement.

31. WORK WARRANTY

Contractor warrants that the Work shall be performed in a competent manner and shall be free from defects and workmanship. If such defects become apparent to Owner within one year from the date of completion of the Work, Owner shall promptly notify Contractor and Contractor shall correct

such deficiencies during standard working hours at no cost to Owner. Such corrected deficiencies shall likewise be subject to the provisions of this paragraph for one year from the date of completion of correction by Contractor.

In the event Contractor does not undertake the correction, Owner will have the right to perform the corrections and bill the associated costs to Contractor.

32. INDEPENDENT CONTRACTOR

Contractor agrees that in the performance of the Work, it shall act as an independent contractor, and all of its agents and employees, and agents and employees of its Subcontractors, shall be subject solely to the control, supervision and authority of the Contractor or its Subcontractor.

33. ON-SITE CHEMICAL USE

Contractor shall notify the Owner forty-eight (48) hours prior to the scheduled use of any hazardous chemical on Owner's premises. Contractor shall have complete labeling on all containers of chemicals concerning contents. Hazards and precautions in accordance with applicable federal and state requirements. Prior to beginning Work, Contractor shall provide to Owner an MSDS for each hazardous chemical to be used. Contractor's failure to comply with this provision is cause for Owner to immediately stop or delay the Work until compliance occurs. Such stoppage of the Work shall be at no additional cost to Owner.

WAIVER AND RELEASE OF LIEN
CONTRACT NO. _____

WHEREAS, the undersigned has furnished to Basin Electric Power Cooperative (the "Owner")

the following: _____
(List or Reference)

for use in Owner's _____.
(Contract Title)

NOW, THEREFORE, the undersigned for and in consideration of payments made heretofore and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens, or right to or claim of lien, on the above described Contract and related premises, under any law common or statutory, on account of labor or materials, or both, furnished by the undersigned as of the date written below.

CONTRACTOR hereby agrees to indemnify Owner against and hold Owner harmless of and from all liens, claims, demands, penalties, losses, costs, damages and liability in any manner whatsoever heretofore or hereafter arising out of or in respect of any claim by any person or governmental agency for payment for work, labor, services or materials heretofore or hereafter performed, furnished, or rendered under or pursuant to or in respect of the performances of said Contract or the aforesaid applicable taxes and insurances.

Contractor
By: _____

Notary Public Required Date: _____

State of: _____

County of: _____

The foregoing instrument was acknowledged before me this _____ (date)

by _____
(name of officer or agent and title of officer or agent)

of _____, a _____, corporation,
(name of corporation acknowledging) (state or place of

incorporation)
on behalf of the corporation.

Signature _____
Title or Rank _____
Serial Number, if any _____ (seal)