

COLUMBIA POWER TECHNOLOGIES, INC.
PURCHASE ORDER TERMS AND CONDITIONS

- 1. Terms and Conditions.** Vendor agrees to be bound by and to comply with these Columbia Power Technologies, Inc. Purchase Order Terms and Conditions (the "Terms") set forth herein and in the Purchase Order to which these Terms are attached and/or any Purchase Order submitted by or on behalf of Columbia Power Technologies, Inc. ("Columbia Power") which references the Terms (collectively, the "Order"), including any amendments, supplements, specifications and other documents referred to in the Order as submitted by Columbia Power. The Terms supersede, replace and take precedence over any additional or alternative terms in any other document connected with this transaction except as follows: (a) in the event the parties to the Order have negotiated and signed a supply agreement which states that such supply agreement shall override the Terms ("Supply Agreement") and/or (b) the Order as placed by Columbia Power includes a reference to different or additional terms. In the event these terms are part of a written Supply Agreement between the parties, the term "Order" used herein shall mean any purchase order issued under the Supply Agreement. These Terms apply to any and all products, parts, services, warranties or any additional items provided under an Order.
- 2. Acceptance.** An Order may be revoked by Columbia Power at any time prior to acceptance by Vendor. ANY ACCEPTANCE OR ACKNOWLEDGMENT OF THE ORDER BY VENDOR (INCLUDING WITHOUT LIMITATION BY BEGINNING PERFORMANCE OF ANY OF THE WORK OR ACTIVITIES CALLED FOR IN THE ORDER) SHALL BE DEEMED AS A FULL ACCEPTANCE BY VENDOR OF THE ORDER, SPECIFICALLY INCLUDING THESE TERMS. FAILURE TO SIGN OR ACKNOWLEDGE THE TERMS SHALL IN NO WAY EFFECT THE BINDING NATURE OF THE ORDER AND/OR TERMS. TERMS AND CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THESE TERMS, WHETHER CONTAINED IN ANY ACKNOWLEDGMENT OF THIS ORDER, SET FORTH ON AN INVOICE OR PACKAGING, OR OTHERWISE SHALL NOT BE BINDING ON COLUMBIA POWER, WHETHER OR NOT THEY WOULD MATERIALLY ALTER THIS ORDER, AND COLUMBIA POWER HEREBY OBJECTS AND REJECT SAME. THE TERMS MAY ONLY BE MODIFIED BY A WRITTEN AGREEMENT EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF COLUMBIA POWER AND VENDOR.
- 3. Price.** Vendor shall sell to Columbia Power the Goods or Services shown on the face of the Purchase Order at the prices specified. Such prices are firm for the delivery period shown. Unless otherwise stated on the face of the Purchase Order, the prices specified are inclusive of shipping, insurance, and sales, use, excise and similar taxes. Prices stated as "NTE" or not to exceed are the maximum amount that Columbia Power will be obligated to under this purchase order. Vendor invoices on NTE purchase orders require a line item justification for the billing that includes details concerning time and materials supplied (hours worked and rate, purchase cost of materials, travel costs, etc.).
- 4. Delivery.** Time is of the essence of the Purchase Order. Columbia Power may reject any Goods not delivered before any delivery schedule stated in the Purchase Order. If Vendor ships the Goods in installments, payment shall not be due until after Columbia Power receives the last shipment. If Vendor for any reason anticipates difficulty in complying with the required delivery date or in meeting any of the other requirements of any Purchase Order, Vendor shall promptly notify Columbia Power in writing. Furthermore, if Vendor does not comply with Columbia Power's delivery schedule, Columbia Power may require delivery by fastest method at Vendor's cost. Unless expressly agreed to the contrary in writing, Columbia Power's remedies are cumulative and Columbia Power shall be entitled to pursue any and all remedies available under applicable law, contract and/or equity, including but not limited to Columbia Power's right to terminate a Purchase Order for default. Vendor shall be responsible for any and all liquidated damages assessed against Columbia Power as a result of Vendor's failure to meet the delivery date.
- 5. Title and Risk of Loss.** Unless otherwise specified on the face of this Purchase Order, shipping terms shall be DDP Columbia Power's dock or designated receiving facility (Incoterms 2000). Title and risk of loss shall pass to Columbia Power upon delivery of the Goods to Columbia Power's dock or designated receiving facility.
- 6. Invoices and Payments.** Vendor shall issue invoices only in accordance with the Purchase Order. Payment terms are a minimum of net 60 days from receipt of invoice unless otherwise stated on the submitted Purchase Order. Columbia Power may take advantage of any applicable prompt payment discount. Payment does not constitute acceptance of the Goods or Services. Adjustments for payments made for rejected Goods or Service or for any overpayments shall be deducted from subsequent payments due or, at Columbia Power's option, promptly refunded by Vendor upon request. Vendor invoices for time and materials (T&M) under NTE contract shall include an itemized report of (a) detailed and itemized listing for all materials and equipment with cost for each; and (b) work performed by date, name/title, hours worked, hourly rate, and work description as outlined in the table below for each billing cycle.
- 7. Vendor.** Vendor is not a "sub-recipient" for any work to be performed under this PO. Vendor is to perform the Services independently and not as an agent or employee of Columbia Power or of its agents. Vendor shall supervise and control all Services performed under the Purchase Order. Vendor shall perform all work in compliance with all applicable safety laws, codes, standards and practices associated with the services performed. If Vendor performs work on a CPwr work site, Vendor shall review and confirm compliance with applicable CPwr safety procedures.
- 8. Inspection.** Columbia Power may inspect and test the Goods and Services prior to accepting them. Inspection of, or the failure to inspect, the Goods or Services shall not constitute acceptance of the Goods or Services or relieve Vendor of any responsibility under the Purchase Order. Vendor shall permit access of DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to this purchase order, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.
- 9. Warranties.** In addition to all express warranties made by Vendor's agents and representatives in writing, Vendor warrants that (a) it has title to the Goods, title is good and merchantable when conveyed to Columbia Power, transfer is lawful, and the Goods are delivered free of any security interest or encumbrance; (b) the Goods and Services (i) conform to the specifications set forth in this Purchase Order and (ii) are provided in strict accordance with the specifications, work plans, drawings, designs or other requirements (including performance specifications) approved or adopted by Columbia Power; (c) the Goods (i) do not infringe any patent, trademarks or copyrights, and (ii) are free from all defects in design, workmanship and materials including any defects discovered after initial inspection/acceptance; and (d) the Services and any related deliverables (i) do not infringe any patent, trademarks or copyrights, (ii) are free from all defects in design, workmanship and materials, including any defects discovered after initial inspection/acceptance, and (iii) satisfy the standard of care, skill and diligence ordinarily provided by a professional in the performance of similar services as of the time Vendor performs the Services. Inspection of or payment for Goods or Services, or testing, acceptance or use of the Goods or Services, shall not affect Vendor's obligations under this warranty, which shall run to Columbia Power, its successors, assigns, users of the Goods or Services and customers. In addition to any other rights which Columbia Power may have, if Goods or Services are found not to be as warranted within a one year period after receipt at the specified Columbia Power location (or such longer period as is provided in Vendor's standard warranty or in any agreement between Vendor and Columbia Power), Columbia Power may require such Goods to Vendor, at Vendor's expense, for correction, replacement, credit, or refund, as Columbia Power may direct, or may require the services to be corrected, redone or replaced at Vendor's expense.
- 10. Insurance:** Vendor shall maintain at all times with a reliable insurance carrier or carriers, at Vendor's sole expense, insurance policies providing sufficient coverage and limits to cover the liabilities assumed under this Purchase Order. Insurance policies provided by Vendor shall include but are not limited to General Liability (\$1,000,000 combined single limit Bodily Injury and Property Damage per occurrence and \$2,000,000 aggregate limit), including coverage for Products and Completed Operations and Contractual Liability; Business Automobile Liability (\$1,000,000 per accident) and Workers' Compensation (statutory limits) including Employers Liability coverage (\$1,000,000 each accident). All policies, except Workers' Compensation shall include Columbia Power and its affiliated companies, subsidiaries and clients as additional insureds to the extent of Vendor's liabilities under all Orders. All policies shall provide a waiver of subrogation in favor of Columbia Power and its affiliated companies, subsidiaries and clients. All policies provided by Vendor shall be deemed as primary coverage with respect to any and all other insurance. Vendor shall provide certificates of insurance to Columbia Power prior to commencement of performance hereunder.
- 11. Rejection.** If any of the Goods or Services ordered are found at any time to be defective, or otherwise not in conformity with the requirements of a Purchase Order, including any applicable drawings and specifications, Columbia Power, in addition to any other rights and remedies it may have by law, contract and/or at equity, and in addition to seeking recovery of any and all damages and costs emanating therefrom, at its option and sole discretion may: (a) reject and return such Goods at Vendor's expense; (b) require Vendor to inspect the Goods and remove and replace non-conforming Goods with Goods that conform to the Purchase Order; (c) upon notice to Vendor, take such actions as may be required to cure all defects and/or bring the Goods or Services into conformity with all the requirements of the Purchase Order; and/or (d) reject the Services and require Vendor to re-perform, at its own expense, any defective portion of the Services performed. If Columbia Power elects option (b) above and Vendor fails to promptly make the necessary inspection, removal and replacement, Columbia Power may at its option inspect and sort the goods; and Vendor shall pay the cost thereof. For any repairs or replacements, Vendor, at its sole cost and expense, shall perform any tests requested by Columbia Power to verify conformance to the Purchase Order.

12. Changes. Columbia Power may change the specifications (including shipping instructions, quantities and delivery schedule) under the Purchase Order by written notice to Vendor. The price and/or delivery or performance schedule shall be equitably adjusted for any change that increases or decreases the cost of, or time required for, performance of the Purchase Order. Vendor must make a claim for adjustment within 30 days of the date the change is ordered.

13. Cancellation for Convenience. Columbia Power may, for its own convenience and without charge, cancel any portion or all of this Purchase Order if Columbia Power gives Vendor notice (i) for custom Goods or Services (i.e., supplied exclusively in accordance with Columbia Power's designs or specifications), at least sixty (60) calendar days, unless otherwise agreed by Vendor and Columbia Power, prior to the delivery date, and (ii) for standard Goods or Services (i.e., all Goods or Services other than custom), prior to the delivery date. If Columbia Power cancels any portion or all of this Purchase Order (other than as a result of a default by Vendor) and fails to provide the applicable notice thereof specified above, Columbia Power shall be responsible for the actual costs incurred by Vendor as a direct result of such cancellation which are not recoverable by either (i) the sale of the Goods affected to other parties within a reasonable time, or (ii) the exercise by Vendor, in a commercially reasonable manner, of the other mitigation measures. Any claim by Vendor for such actual costs shall be deemed waived by Vendor unless submitted in writing to Columbia Power within thirty (30) calendar days after Columbia Power notifies Vendor of the cancellation. Any such claim by Vendor shall not under any circumstances exceed the full amount due on the face of this Purchase Order.

14. Cancellation for Default. Columbia Power may cancel this Purchase Order, or any part thereof, without liability in the event (i) Vendor fails to deliver the Goods or perform the Services within the time specified in this Purchase Order, (ii) Vendor fails to perform any other obligations provided for in this Purchase Order, or Vendor so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, and in either of these two circumstances Vendor does not cure such failure within a period of ten (10) calendar days (or such longer period as Columbia Power may authorize in writing) after receipt of notice of such failure from Columbia Power, (iii) a petition in bankruptcy is filed by or against Vendor, or (iv) a receiver is appointed for Vendor or Vendor makes an assignment for the benefit of creditors. In the event Columbia Power cancels this Purchase Order, in whole or in part, as provided in this paragraph, Vendor shall be liable to Columbia Power for damages sustained by Columbia Power in connection with the default which gave rise to the cancellation. The rights and remedies of Columbia Power contained herein are in addition to any other rights or remedies provided by law.

15. Indemnity. Vendor shall defend, hold harmless and indemnify Columbia Power, its affiliates, directors, officers, employees, agents, insurers, successors and assigns against all damages, liabilities, claims, losses and expenses (including attorney's fees through appeal), in any manner arising out of or relating to Vendor's performance or failure to perform its obligations, or any Goods or Services supplied, under a Purchase Order, including claims relating to personal injury (including death) or damage to property.

16. Assignment. Vendor may not assign the Purchase Order or any monies payable under the Purchase Order without Columbia Power's written consent.

17. Compliance with Law and Code of Conduct. Vendor shall comply with all Applicable Laws and Regulations related to the transaction contemplated herein. Applicable Laws and Regulations means, without limitation, local, state and federal laws, rules and regulations including federal and state wage and hour laws, and equal opportunity laws. For contracts in excess of \$100,000, vendor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Department of Energy and the Regional Office of the Environmental Protection Agency (EPA). Vendor stipulates per 31 USC 1352 that, to their knowledge, no funds related to this Purchase Order have been, or will be used to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

18. Equal opportunity clause. During the performance of this contract, the vendor agrees to comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by E.O. 11375 (3 CFR, 1966-1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, and of the rules, regulations, and relevant orders of the Secretary of Labor.

19. Nondisclosure of Information. Vendor shall not, without the prior written consent of Columbia Power, make any release of information concerning this Purchase Order (other than to Vendor's employees which is required for the performance of their duties) nor use the name of Columbia Power in any advertising or publicity. All information obtained by Vendor from Columbia Power which is identified as confidential or proprietary by Columbia Power or is acquired by Vendor under circumstances reasonably considered to impose an obligation of confidentiality shall be received in confidence, shall not be disclosed by Vendor to any third parties and shall be used by Vendor only to the extent necessary for the performance of this Purchase Order and not for any other purpose.

20. Governing Law. The laws of the State of Virginia govern the Purchase Order, and all disputes relating to the Purchase Order shall be settled exclusively in a court of competent jurisdiction in the State of Virginia, with Vendor expressly consenting to jurisdiction in the State of Virginia.

21. Intellectual Property (IP). All designs, drawings, processes, improvements and inventions resulting from the work performed under this contract are the sole property of Columbia Power. All Improvements and Inventions to the Goods and all Product IP therein, shall be and remain at all times the property of Columbia Power, and Vendor shall not have any right, title or interest therein. No pre-existing Intellectual Property of Vendor ("Vendor IP") shall be incorporated into any Good delivered hereunder. Vendor hereby grants to Columbia Power a worldwide, perpetual, royalty-free, fully paid up, assignable, sub-licensable license to make, use, offer for sale, sell, reproduce, modify, prepare derivative works of and distribute products that incorporate any Vendor IP incorporated into any Good delivered hereunder. The following terms have the following meanings:

"Intellectual Property" shall mean (i) trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, business marks, brand names, trade names, trade dress, names, logos and slogans and all goodwill associated therewith; (ii) patents, patent rights, provisional patent applications, patent applications, designs, registered designs, registered design applications, industrial designs, industrial design applications and industrial design registrations, including any and all divisions, continuations, continuations-in-part, extensions, substitutions, renewals, registrations, revalidations, reexaminations, reissues or additions, including supplementary certificates of protection, of or to any of the foregoing items; (iii) copyrights, copyright registrations, copyright applications, original works of authorship fixed in any tangible medium of expression, including literary works (including all forms and types of computer software, including all source code, object code, firmware, development tools, files, records and data, and all documentation related to any of the foregoing), musical, dramatic, pictorial, graphic and sculptured works; (iv) trade secrets, technology, discoveries and Improvements, proprietary rights, formulae, confidential and proprietary information, technical information, manufacturing processes, techniques, inventions, designs, drawings, procedures, processes, models, formulations, manuals and systems, whether or not patentable or copyrightable, including all data relating thereto that has actual or potential commercial value and are not available in the public domain; and (v) all other intellectual property or proprietary rights, in each case whether or not subject to statutory registration or protection.

"Product IP" means all Intellectual Property relating to the Goods, any Improvements of the foregoing that relate to any modifications, future configurations or other products that are similar to the Goods; provided, however, that the Product IP shall not include the Vendor IP.

"Improvements" means any improvements, modifications or adoptions pertaining to the Goods made, created, invented, discovered or acquired by Columbia Power and/or Vendor and/or any of their employees, vendors, or agents.

"Inventions" means any new, useful process, machine, improvement, etc., that did not exist previously and that is recognized as the product of some unique intuition or genius, as distinguished from ordinary mechanical skill or craftsmanship pertaining to the Goods made, created, invented, discovered or acquired by Columbia Power and/or Vendor and/or any of their employees, vendors, or agents.

22. Waiver. The failure of Columbia Power to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of Columbia Power thereafter to enforce each and every such provision. Any check or approval of drawings by Columbia Power will be for Vendor's convenience and will not relieve Vendor of its responsibility to meet all requirements of this order. No claim or right arising out of a breach of this order can be discharged in whole or part by a waiver of the claim or right unless the waiver is supported by consideration and is in writing signed by the aggrieved party.

23. Entire Agreement. This order, with such documents as are expressly incorporated herein by reference, is intended by the parties as a final expression of their agreement with respect to such items as are included herein, and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. The invalidity, in whole or in part, of any of the paragraphs of this order shall not affect the remainder of such paragraphs or any other paragraph of this order.