

## **PURCHASE ORDER TERMS AND CONDITIONS FOR EQUIPMENT & MATERIAL**

These **Terms and Conditions** shall govern all equipment and materials covered by the **Vermont Transco LLC** (“VT TRANSCO”) **Purchase Order** (“PO”) and are deemed to be in effect as of the PO date. These Terms and Conditions supercede and take precedence over any other terms and conditions contained in any quote, bid, or invoice pertaining to the work, services, equipment and materials.

### **1. Scope of Work**

Seller to provide VT TRANSCO the equipment and materials (hereinafter, the “Work”) as described on the PO.

### **2. Compensation**

As compensation for the performance of the Work and delivery of the materials, VT TRANSCO shall pay to Contractor the amount specified on the PO (hereinafter sometimes referred to as the “Price”).

### **3. Performance**

Seller shall deliver the Work described in Paragraph 1 of these Terms and Conditions in accordance with the schedule identified within the PO.

### **4. Technical Materials**

All design, blueprints, tools, dies, patterns, plates or other technical materials furnished to Seller, or paid for by VT TRANSCO under the PO shall remain VT TRANSCO’s sole and exclusive property. VT TRANSCO reserves and retains all rights thereto. Any such materials provided to Seller shall be deemed Confidential Information. Unless otherwise directed by VT TRANSCO, Seller shall return the same to VT TRANSCO in good condition upon completion, termination or cancellation of the Agreement or on demand by VT TRANSCO. Seller shall not copy or otherwise use any such materials for any purpose other than performance under the PO. Seller grants to VT TRANSCO the right to reproduce, use and disclose in connection with the use, maintenance and service of the Work, all reports, drawings and reproductions thereof, and all data and technical information delivered to VT TRANSCO.

### **5. Nonconforming Work**

VT TRANSCO may reject nonconforming Work for replacement or credit, at its sole discretion, provided that it shall provide timely notice to Seller of such rejection. VT TRANSCO may similarly revoke acceptance of Work containing latent or hidden defects within a reasonable time following discovery of such defects. VT TRANSCO may, upon rejecting or revoking acceptance of Work, and in the absence of a valid credit memorandum from Seller, set off against any monies due Seller, whether or not under this order, an amount equal to the value of the unacceptable Work and associated delivery costs.

## **6. Delivery; Time is of the Essence; Risk of Loss**

Delivery shall be made Freight on Board (“F.O.B.”) destination, and by the date(s) specified in Paragraph 3 of these Terms and Conditions. Time is of the essence. If the deliveries are not made at the time agreed upon, VT TRANSCO may terminate the PO as stipulated in Paragraph 15 of these Terms and Conditions and obtain damages from Seller caused thereby. Seller shall package goods in a manner that is suitable to prevent damage or loss, and shall identify each package by marking with VT TRANSCO’s PO and line item numbers. Such packing and marking shall comply with all applicable industry standards unless otherwise identified in the PO. Unless otherwise directed in the PO, Seller shall arrange delivery to the F.O.B. destination, and in so doing shall place the goods in the possession of a reputable commercial carrier and make such contract for their transportation as may be reasonable, taking account of the nature of the goods. Transportation charges on products delivered to destination must be prepaid unless otherwise indicated in the PO. No insurance charges shall be allowed unless authorized in advance by VT TRANSCO. Seller shall bear the risk of loss until delivery is made to the destination specified in the PO.

## **7. Invoicing**

Seller shall submit a separate invoice for each shipment. Each invoice shall identify the items shipped, and shall show the associated PO and line item numbers, the quantity of items shipped, point of shipment, destination, method of shipment, number of packages or containers included within such shipment, and the quantities contained in each package or container. Invoices incorporating transportation charges, if any, payable under the terms of the PO shall be accompanied by original receipted bills of lading and all supporting documentation. Except as otherwise provided in the PO, properly submitted invoices will be due and payable 30 days after acceptance of the Work or receipt and approval of the invoice by VT TRANSCO, whichever is later.

## **8. Pricing**

Seller warrants in good faith that the Prices for the Work under the PO are not less favorable than those currently extended to any of Seller’s other customers for the same or like items in comparable quantities. In the event Seller reduces the price for such items during the term of the PO, Seller agrees to reduce the Price hereof accordingly.

## **9. Extra Charges**

No additional charges of any kind, including charges for boxing, packing, transportation charges resulting from Seller’s demurrage or deviation from routing instructions or other extras, will be allowed unless specifically agreed to in a Change Order by both parties.

## **10. Taxes**

All taxes (federal, state and local) not expressly imposed by law on VT TRANSCO are included in the Price except Vermont Sales Tax. VT TRANSCO will pay the applicable sales tax directly to the State of Vermont.

## **11. Force Majeure**

Neither party shall be liable for failure or delay in performance due to any cause, beyond the reasonable control of, the affected party (a “Force Majeure Event”), provided that the affected party shall have used its best efforts to avoid such Force Majeure Event and minimize the impact of same on the other party and rendered prompt written notice to the other party. The term “Force Majeure” shall include, but not be limited to, acts of God or the public enemy; expropriation or confiscation; war, rebellion, civil disturbances, sabotage, and riots; strikes or other labor disputes that are not due to the breach of any labor agreement by the affected party hereunder; inability to obtain any local, state or federal governmental approval due to actions or omissions by any such governmental authority that were not voluntarily induced or promoted by the affected party hereunder; and floods or unusually severe weather that could not have been reasonably anticipated, fires, explosions, and earthquakes, and other similar occurrences. Force Majeure shall not include economic hardship, changes in market conditions or delays attributable to and within the control of the Seller’s suppliers or subcontractors of any tier. In the event of a Force Majeure Event, VT TRANSCO shall have the right at its option and without liability to Seller to cancel by written notice to Seller any portion or portions of Seller’s performance so affected and to take such other action as VT TRANSCO deems necessary.

## **12. Warranty**

Seller warrants (a) that title in and to all Work delivered hereunder is good and marketable, that its transfer is rightful, and that it is free from any security interest, lien, encumbrance or other defect in title; (b) that the Work conforms to the specifications, drawings, plans, documents and other requirements of the PO; (c) that the Work is free from defects in design, workmanship and material and is fit for VT TRANSCO’s purpose and is fully merchantable; (d) that services performed as part of the Work conform with the highest professional standards of care and practice appropriate to the nature of the services rendered and that the personnel providing such services shall be highly qualified, knowledgeable, experienced and competent and shall be effectively supervised to perform the Work; (e) that the Work is new and not used or reconditioned, unless otherwise noted in the PO; and (f) that any goods making up the Work are of even kind, quality and quantity within each unit and among all units involved. Furthermore, Seller’s express statements or affirmations of fact regarding goods purchased hereunder contained in published product specifications and commercial literature shall constitute warranties under the PO when such publications are referenced therein. Without limiting any other remedies VT TRANSCO may have, if the Work does not conform in all respects with Seller’s warranties, Seller, at its sole expense, shall promptly correct such nonconformity or replace such Work as VT TRANSCO shall elect in its sole discretion. The obligation of Seller to correct or replace nonconforming or defective Work shall continue for four years after delivery or placement in service at VT TRANSCO’s facility, whichever is later, with the limitation that such warranty period shall in no case begin later than 36 months after date of delivery, and provided that that goods are stored in accordance with Seller’s recommendations, if any, prior to placement in service. Upon revocation of acceptance of Work containing latent or hidden defects which could not reasonably have been discovered at time of delivery, VT TRANSCO reserves the right to require Seller to provide a satisfactory cure, to be negotiated at the time of such revocation, regardless of the limits stated above.

### **13. Infringement**

Seller warrants that the Work will not infringe any patent, trademark, copyright or other proprietary interest. Seller shall defend (at VT TRANSCO's option), indemnify and hold harmless VT TRANSCO from all claims, suits or proceedings made or brought against VT TRANSCO so far as such claims, suits or proceedings are based on any claim or allegation that the Work or its use constitutes an infringement of any patent, trademark, copyright or other proprietary interest and Seller shall pay all damages, costs and expenses, including reasonable attorneys' fees, in connection with any such claims, suits or proceedings.

### **14. Compliance with Law**

Seller's performance shall comply with and Seller represents, warrants and covenants that all Work shall be produced, sold and delivered in compliance with all applicable laws, statutes, ordinances, rules, regulations and orders enacted or promulgated by federal, state, municipal or other governmental authority, including, but not limited to, those relating to importation, safety, employment, employment opportunity, the environment, taxes and withholding and labor. This warranty shall extend to the goods and services provided by the Seller's agents, employees and subcontractors.

### **15. Termination**

#### a. Default.

Upon default (a "Default") by Seller with respect to any material term of the PO, and upon written notification of breach to Seller, VT TRANSCO may terminate the PO for Default. Regardless of the reason for such Default, and irrespective of other remedies VT TRANSCO may have, VT TRANSCO may elect to cover for Seller's Default by purchasing equivalent replacement Work from a third party and charging any increase in purchase price to Seller's account. If at any time VT TRANSCO determines that Seller's progress is inadequate to meet the terms of the PO, VT TRANSCO may request in writing adequate assurances of performance from Seller. VT TRANSCO shall be entitled to treat the failure of Seller to provide such assurances in writing within 3 days of the request as a repudiation of the PO, and VT TRANSCO may terminate for Default.

#### b. Termination for Convenience.

VT TRANSCO may, by written or telephone or electronic notice, terminate performance under the PO in whole, or from time to time in part, for any reason, including its convenience. Upon termination in whole, the obligations under the PO shall be terminated except as to the Paragraphs herein headed "Warranty", "Indemnification and Insurance", "Technical Materials", and "Confidential Information". In such event, Seller shall waive any claims for damages, including loss of anticipated profits on account thereof, but as the sole right and remedy of the Seller, the Purchaser shall make payment to the Seller for all cost incurred prior to such termination reasonably allocable to the PO under recognized accounting practice, plus a reasonable allowance for direct overhead for Work completed, less disposal or retention value of termination inventory and any

amounts previously paid by VT TRANSCO. No payment for indirect overhead or profit will be made. This right of termination shall be in addition to any other remedies VT TRANSCO may have.

## **16. Indemnification**

Contractor shall, at its sole expense, defend (at VT TRANSCO's option), indemnify and hold harmless VT TRANSCO, its directors, officers, agents and employees (collectively, the "Indemnitee"), from and against all claims, causes of action, suits, losses and damages (including attorneys' fees) (the "Liabilities"), and from threatened loss or expense by reason of Liabilities, arising in whole or in part, from or out of the Work; except to the extent that the Liabilities arise from the negligence or wrongful act or omission of Indemnitee, its officers, agents, employees, or subcontractors.

## **17. Insurance**

If the Work requires the Seller to perform services, excluding delivery of equipment and materials, on VT TRANSCO's property, The Seller shall purchase and maintain insurance to protect Seller and VT TRANSCO, and shall at a minimum obtain and maintain throughout the term of the PO and for a period of three years post final Acceptance of the Work, the following minimum insurance coverage:

- Workers' Compensation/Employers' Liability

Statutory requirements for the State of Vermont, the location where performance occurs or both, if obligations arise in both.

- Comprehensive Automobile Liability

Combined Single Limit for Bodily Injury and Property Damage for owned, non-owned and hired automobiles of not less than \$500,000.

- Comprehensive General Liability

Combined Single Limit for Bodily Injury, Property Damage, Personal Injury/Advertising Injury, to include Blanket Contractual coverage, of not less than \$500,000 per occurrence.

- Umbrella Liability

Combined Single Limit - Excess of Primary Limits - \$1,000,000. These limits apply to all of the above-mentioned policies.

- Professional Liability

For Engineers/Architects, Professional Liability Insurance with a Combined Single Limit of \$1,000,000 is also required.

Seller shall secure endorsements to its Comprehensive General, Auto and Excess/Umbrella Liability Policies that name VT TRANSCO, VELCO and VETCO their directors, officers, employees, agents and representatives as additional insured for the purposes of any PO. VT TRANSCO, VELCO and VETCO must be named as additional insured on a primary and non-contributory basis using Additional Insured Endorsements and any insurance maintained by the additional insured shall be deemed to be excess and non-contributory. Upon VT TRANSCO's request, Seller shall provide proof of endorsements. Seller shall also obtain certificates and/or endorsements which shall provide that no insurance policy required hereunder shall be canceled or allowed to expire or the limits in any manner reduced until at least 30 days prior written notice has been given to VT TRANSCO. To the fullest extent allowable under all policies and under law, Seller and its insurers hereby waive all rights of subrogation against VT TRANSCO and its directors, officers, employees, agents and representatives. Upon VT TRANSCO's request, Seller shall also furnish to VT TRANSCO certificates of insurance as evidence of required coverage and waiver of subrogation endorsements.

## **18. Safety and Environmental**

If Seller will be providing services, excluding delivery of equipment and materials, on or at any VT TRANSCO property or facility, Seller shall abide by their then current safety program and all applicable safety laws and rules.

If Seller will be providing services on or at any VT Transco property or facility, except for deliveries and office visits with VT Transco employees, Seller shall abide by the then current requirements of VT Transco's environmental program, as set forth in VT Transco's managers environmental manual found at [www.velco.com/contact/contractors-and-vendors](http://www.velco.com/contact/contractors-and-vendors).

Please contact the Safety Manager by e-mail at [Safety@velco.com](mailto:Safety@velco.com) or Environmental Manager at [Environmental@velco.com](mailto:Environmental@velco.com) to discuss any safety and/or environmental questions or requirements.

## **19. Applicable Law, Dispute Resolution, and Arbitration**

The PO is made under and shall be governed by and construed under the laws of the State of Vermont, without regard to principles of conflicts of laws.

In the event of any dispute under the PO, the parties agree to first negotiate in good faith to resolve the dispute. If negotiation fails, the parties agree to submit the dispute to mediation at a mutually agreeable location, with a mutually agreeable, impartial mediator. If that fails, except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of the arbitrator(s), all disputes, controversies, or differences which may arise between the parties, out of, in relation to, or in connection with the PO, or the breach thereof, will be finally settled by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect as of the date the dispute arises. The arbitration will be subject to and governed by the procedures and requirements of the Vermont Arbitration Act except as permissibly modified herein. Unless otherwise agreed, all hearings will be held in Rutland, Vermont. The arbitrator(s) will enforce the express terms of the PO, will follow the applicable law where the PO is silent on a matter in dispute, and will have no authority to award punitive damages or any damages

expressly excluded by the terms of the PO. The arbitrator's award may be enforced in any court of competent jurisdiction.

#### **ACKNOWLEDGMENT OF ARBITRATION:**

Seller understands that the PO contains an agreement to arbitrate. After receiving the PO, Seller understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, Seller agrees to submit any such dispute to an impartial arbitrator.

#### **20. Assignment**

Seller shall not assign its rights or subcontract any of its obligations under the PO without the prior written consent of VT TRANSCO. VT TRANSCO's consent to an assignment by Seller shall not operate to release Seller from any obligations under the PO. Any assignment by Seller without the prior written consent of VT TRANSCO shall be null and void.

#### **21. Waiver**

The failure of either party to enforce any of the provisions hereof shall not be construed to be a waiver of such provision or any other provision, nor of the right of such party thereafter to enforce any provision hereof.

#### **22. Severability**

In the event any provision of the PO shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

#### **23. Notices**

All notices to VT TRANSCO shall be in writing and shall be sent first class, postage prepaid to:

Vermont Transco LLC  
366 Pinnacle Ridge Road  
Rutland, VT 05701  
Attention: Procurement Department  
E-mail: Procurement@velco.com

Notices to Seller shall be sent to the address indicated on the first page of the PO or such other address or phone number agreed to by the parties.

#### **24. Successors and Assigns**

All of the covenants and agreements herein contained on the part of VT TRANSCO and Seller shall apply and inure to the benefit of, and be binding upon, their respective legal representatives, successors and assigns.

## **25. Authority**

VT TRANSCO and Seller each hereby represent and warrant that it has full power and authority to carry on its business and to enter into the PO and to perform all of its obligations hereunder.

## **26. Entire PO**

The PO, including these Terms and Conditions, any schedules, exhibits, Change Orders, documents, certificates, forms and instruments referred to herein or therein, embodies the entire PO between the parties.