

PURCHASING TERMS AND CONDITIONS

1. ACCEPTANCE. This Purchase Order is to be accepted in writing by Seller by signing and returning promptly to Buyer the Acknowledgement Copy, but if for any reason Seller should fail to sign and return to Buyer the Acknowledgement Copy, the commencement of any work or performance of any services hereunder by Seller shall constitute acceptance by Seller of this Purchase Order and all its terms and conditions. Acceptance of this Purchase Order is hereby expressly limited to the terms hereof. All material variations of Seller are rejected. If the terms submitted by Seller are materially inconsistent with the terms contained herein, such terms shall constitute a counter offer and Seller shall be deemed to have accepted Spirax Sarco's terms unless Seller notifies Spirax Sarco to the contrary within five (5) days after receiving this document. Spirax Sarco reserves the right to modify the design and construction of its products.

2. PRICES. Prices stated in this Purchase Order apply to all shipments made or services rendered hereunder. Buyer shall have no obligation to honor invoices for goods or services at any increased price until such increase shall have been confirmed in writing by Buyer. The acceptance of this order specifies that the prices to be charged do not exceed prices charged to other customers for similar quantities and delivery requirements. Seller agrees that if at any time during the life of this Purchase Order it quotes or sells at lower net prices like articles, materials, supplies, facilities or service under similar conditions such lower net prices shall from that time be substituted for the prices named herein. Unless otherwise specified, price is to cover net weight of material order hereunder and no charges will be allowed for boxing, crating, carting or storage.

3. DELIVERY. The obligation of Seller to meet the delivery dates, specifications, packing requirements and quantities, as set forth herein is of the essence of this order. Deliveries are to be made both in quantities and at times specified herein, or if no such quantities or times are specified, pursuant to Buyer's written instructions. If Seller's deliveries fail to meet schedule, Buyer without limiting its other rights or remedies, may direct expedited routing and any excess costs incurred thereby shall be debited to Seller's account. Purchaser may in accordance with paragraph 11 hereof cancel all or part of this order in the event Seller fails to deliver goods as scheduled herein. Buyer shall not be liable for Seller's commitments or production arrangements in excess of the amount, or in advance of the time necessary to meet Buyer's delivery schedule. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at Buyer's option, (a) be returned at Seller's expense for proper delivery, (b) have payment therefor withheld by Buyer until the date that goods are actually scheduled for delivery, or (c) be placed in storage for Seller's account until delivery date specified herein.

Except as otherwise provided herein, title and risk of loss on all goods supplied to Buyer hereunder shall pass to Buyer upon delivery to Buyer, f.o.b. place of delivery.

4. BLANKET PURCHASE ORDERS. Where this contract is for purchase and sale of a stated quantity, Buyer shall not be obligated to purchase any additional quantity. In the case of Blanket Orders, (a) Seller agrees to furnish Buyer's requirements for the goods or services covered by this Purchase Order to the extent of and in accordance with the delivery schedule set forth therein, or if no such schedule is set forth, then pursuant to Buyer's written instructions (b) Buyer shall have no obligation to honor invoices for goods or services fabricated, rendered, or delivered other than according to the delivery schedule or written instructions of Buyer pursuant to (a) above, and (c) Buyer shall be entitled to make other purchases at its discretion in order to assure its production operations and maintain reasonable alternative sources of supply.

5. PRICES AND TAXES. Unless otherwise stated, all prices quoted are firm during the term of the order. Unless otherwise indicated, the prices set forth in this Purchase Order do not include applicable federal, state, and local taxes. All such taxes shall be stated separately on Seller's invoice. The prices stated herein do not, nor will any invoice of Seller, include any tax with respect to which an exemption is available or is indicated by Buyer hereon or otherwise, or any federal excise or other tax with respect to which Buyer has furnished Seller an exemption certificate. The Seller agrees to pay any and all personal property ad valorem, or value added, taxes assessed or otherwise levied against any property placed in the hands of the Seller by the Buyer for the purpose of fulfilling this Purchase. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer and to make prompt application for the refund thereof, and to take all steps to procure the same and when received to pay the same, including interest, if any, to Buyer.

6. INSPECTION. The goods and all parts, material and workmanship entering into the performance of this Purchase Order shall be subject to inspection, test and count by Buyer at any time or place in the discretion of the Buyer whether during or after manufacture. If any goods shall be defective in materials or workmanship or otherwise not in conformity with the requirements of this order, Buyer, in addition to its other rights may reject the same for full credit or may re-work same at Seller's expense or require prompt correction or replacement thereof at Seller's expense, including transportation charges. Nothing herein shall relieve Seller of the obligation to make full and adequate testing and inspection of good sold hereunder.

In the event that this purchase order covers the acquisition of capital equipment, or goods and services related thereto, Buyer reserves the right to make final inspection and acceptance of such equipment, or related goods and services, at the point of final installation designated on the face of this order. Final payment for such equipment, or related goods and services, in full, or in part if specifically provided for herein, shall be made only upon Buyer's final inspection and acceptance.

7. WARRANTY. Seller warrants that all goods or services ordered or provided hereunder will be free of all claims, liens and encumbrances and will conform in all respects with the specifications, drawings, samples, or quality control or other procedure or description whether furnished by Seller or provided by Buyer, and will be merchantable and free from any defects in materials, design, and workmanship; and Seller further warrants that all material purchased hereunder that is manufactured in accordance with the Seller's specifications shall be fit and sufficient for the purposes for which it was intended. Seller agrees that the foregoing warranty shall survive acceptance of and payment for the material, and that Seller shall save Buyer harmless from any loss, damage or expense whatsoever, including attorney's fees, that the Buyer may incur as a result of any breach of such warranties. These warranties shall survive delivery and inspection of all or a part of the goods or services.

8. PAYMENT.

(a) All payments are made conditional upon acceptance by the Buyer of the goods called for under this Purchase Order.

(b) To the extent new materials or goods have been identified for production by Seller to fill Buyer's purchase, Buyer shall have a lien for payments made under the Purchase Order terms until goods are delivered.

(c) Invoices for tools, if tooling is expressly covered by this Purchase Order, will not be honored until production pieces are approved by the Buyer's inspection department.

(d) Discount period, if any, begins the date invoice or material is received by Buyer, whichever is later.

9. CHANGE ORDERS. The Buyer may at any time, by a written order, make changes within the general scope of this order, in any one or more of the following and no other changes may occur except by written order of Buyer:

- (a) applicable drawing, designs, or specifications;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) material, methods or manner of production, or final product.

In cases where change orders are issued, if any such change causes an increase or decrease in the cost of or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule or both, and order shall be modified in writing accordingly. Any claim by the Seller for adjustment hereunder must be asserted within 20 days from the date of receipt by the Seller of the notification of change, provided however, that such period may be extended upon the written approval of the Buyer. However, nothing in this clause shall excuse the Seller from the order as charged or modified.

10. SUBSTITUTIONS; EXTRAS. No substitutions of materials or accessories may be made without Buyer's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by Buyer.

11. TERMINATION.

(a) The Buyer may terminate all or any part of this order, without liability to the Seller, by written notice of default if Seller fails to perform its obligations under this order as specified, or so fails to give adequate assurance of performance.

(b) In the event of Seller's default or apparent inability to perform this order, Seller agrees upon demand by Buyer to deliver to Buyer the raw materials and work in process acquired in order to perform under this order, and Buyer may then complete the work deducting the cost of such completion from the price, or in the alternative, pay to Seller the reasonable cost of such raw material and work in process.

12. EXCUSABLE DELAYS. It shall not be deemed a default hereunder and neither Buyer nor Seller shall be liable for a failure to perform hereunder arising from causes or events beyond the reasonable control and without the fault or negligence of Buyer or Seller in failing to perform hereunder, including but not limited to, labor disputes of any kind. Seller agrees that in the event of a strike or other labor dispute, resulting in possible delay in the performance of this Purchase Order, Buyer shall have the option exercisable by written notice to vest title in itself to tools, finished parts, raw materials, or work in process, and Seller will upon request from Buyer deliver any and all tooling as defined in paragraph 24 herein, finished parts, raw materials, or work in process and Seller will upon request from Buyer deliver any and all tooling as defined in paragraph 24 herein, finished parts, raw materials, and work in process

associated with the Purchase Order to Buyer at any point outside Seller's plant, and Buyer will make an equitable payment to Seller for such.

13. INSOLVENCY, LOSS OF PROFITS, DAMAGES. The insolvency or adjudication of bankruptcy of, or the filing of a voluntary petition in bankruptcy by, or the making of an assignment for the benefit of creditor a bulk transfer of assets by, either party, shall be a material breach hereof. In no such event shall Seller be entitled to anticipatory profits, or to special or consequential damages.

14. SUBCONTRACTING. No subcontracting shall be made by the Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for, without the prior written approval of the Buyer.

15. PATENT'S, ROYALTIES AND ENCUMBRANCES. All goods and services supplied must be free from liability of royalties, infringement of intellectual property rights and mechanic's liens or other encumbrances, and Seller hereby waives any right it or its subcontractor may have now or in the future to any mechanic's lien or other encumbrance with respect to the goods and services supplied hereunder. Seller warrants that the goods specified in this Purchase Order and their sale or use alone, or in combination according to Seller's specifications or recommendations, if any, will not infringe any United States or foreign patents, copyrights or marks. Seller agrees to indemnify and hold harmless Buyer and anyone selling or using any of Buyer's products against all judgments, decrees, costs and expenses resulting from any alleged infringement as aforesaid, and Seller further agrees that, upon request of Buyer and at Seller's own expense, Seller will defend or assist in the defense of any of Buyer's products by reason of any such alleged infringement or obtain a license to obtain use of same on terms acceptable to Buyer.

16. LICENSE. The Seller, as part consideration for this Purchase Order and without further cost to the Buyer, hereby grants and agrees to grant to the Buyer an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with the performance of this Purchase Order, and Seller hereby grant to Buyer a license to repair, rebuild or relocate and have repaired, rebuilt or relocated the goods, purchased by Buyer under this Purchase Order.

17. BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS OR A CUSTOMER'S PLANT. If this Purchase Order provides for the Seller to render services, including without limitation delivery services, temporary labor, and subcontractor work, whether performed at Buyer's plant or the plant of a customer of Buyer or otherwise, Seller agrees that such services are to be rendered by Seller as an independent contractor; that neither Buyer nor any customer of Buyer at whose plant such work is performed shall have liability for the acts of, bodily injury to, death of, or loss of employment by Seller or Seller's agents or employees; and that Seller will indemnify and save harmless Buyer or such customer as the case may be, its officers, directors, shareholders, employees and agents, from any and all liability and expense (including attorney fees and other litigation or settlement expense) with respect to any and all claims for bodily injury or death or property loss or damage arising out of or attributable to the faulty performance of this Purchase Order by Seller, its employees, agents or contractors. In event Buyer's machinery and/or equipment or machinery and/or equipment of any such customer of Buyer is used by Seller in the performance of the work called for by this Purchase Order, such machinery and/or equipment shall be considered as performance of the work called for by this Purchase Order, such machinery and/or equipment shall be considered as being under sole custody and control of the Seller during the period of such use by Seller, and should any person or persons in the employ of Buyer or any such customer be used to operate said machinery and/or equipment during the period of such use, such person or persons shall be deemed during such period of operation to be an employee, or employees of Seller. Upon the request of Buyer or such customer, Seller shall furnish Buyer or such customer such fidelity and performance bonds as Buyer or such customer may reasonably specify, evidence that Seller has adequate public liability and property damage insurance in amounts and with companies acceptable to Buyer or such customer and evidence that Seller has made adequate provisions for satisfying applicable workmen's and unemployment compensation laws or regulations of any state lawfully requiring same.

18. COMPLIANCE WITH LAWS. The Seller warrants that no law, rule, regulation or ordinance of the United States, a State, or local government, or any other government agency has been violated in the manufacture or sale of the items or in the performance of services covered by this order and will indemnify and hold the Buyer harmless from loss, cost or damages as a result of any such violation.

19. SAFETY AND HEALTH REGULATIONS. Seller represents and certifies to Buyer that any and all services performed and any goods delivered under this Purchase Order shall comply with all requirements of the Occupational Safety and Health Act of 1970, Fair Labor Standards Act of 1938, the Consumer Products Safety Act, as amended, and all regulations, rules, standards and orders thereunder and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government having jurisdiction in the location from or to which such items are to be shipped or at which such work is to be performed pursuant to this Purchase Order. Seller agrees to indemnify and hold harmless Buyer against any claims, losses, damages, fines, penalties, costs and expenses assessed against or incurred by Buyer as a result of Seller's failure to comply with such Acts, statutes or regulations, and with all rules, standards, or orders issued thereunder, and for the failure of the goods or services furnished under this Purchase Order to so comply.

20. ANTI-CORRUPTION. The Seller warrants that its directors, employees, agents and other representatives have not and will not, directly or indirectly, offer, promise, give, accept or agree to receive a bribe, corrupt payment or any article of financial value whether for the benefit of any public official, Buyer, its employees and agents or any other person. Seller will immediately report to Buyer any actual or attempted breach of this clause by an employee or agent of Buyer and any such action of acceptance of any such solicitation is a material breach of every contract between Buyer and Seller.

21. NON-DISCLOSURE OF CONFIDENTIAL MATTER. Materials purchased hereunder with the Buyer's specifications or drawings shall not be quoted for sale to others without the Buyer's prior written authorization. Such specifications, drawings, samples or any other data furnished by the Buyer or any other information gained by Seller in connection with this Purchase Order shall be treated as confidential information by the Seller, shall remain Buyer's property, and shall be returned to it on request.

22. ASSIGNMENT. No right or obligation under this Purchase Order, including the right to receive moneys due and to become due hereunder, shall be assigned by Seller, the effect of which alters or compromises Buyer's rights to assert an offset claim against assignee, without the prior written consent of Buyer, and any purported assignment without such consent shall be void.

23. TOOLING. Unless otherwise agreed to in writing, all materials, drawings, tools, dies, jigs, gauges, fixtures, patterns, molds, testing apparatus, machinery and equipment, together with all other manufacturing aids (hereinafter collectively called tooling) used in the manufacture of the articles, materials, supplies, facilities or services ordered hereunder shall be furnished by and at the expense of the Seller. In the event any tooling (including tooling, if any, purchased hereunder) is furnished by Buyer at its expense or is furnished by Seller and the cost thereof paid by Buyer, such tooling shall be and remain Buyer's sole property and for Buyer's sole use and shall be subject to removal at any time at the option of the Buyer. Seller agrees, at its expense, to maintain in commercially usable condition and in good order and repair, appropriately identify mark where necessary, inventory, preserve and not to encumber, lien or pledge to store all Buyer owned items of tooling referred to in this paragraph 24 for such period of time after performance or termination of this Purchase Order as may be mutually agreed upon by Buyer and Seller. Any and all items of tooling which are Buyer's sole property shall at any reasonable time be subject to inspection and examination by Buyer. Seller shall not substitute any property for Buyer's property and shall not use said property except in filing Buyer's purchase orders. Such property, while in Seller's custody and control, shall be held at Seller's risk, and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to the Buyer, and shall be subject to removal at Buyer's written request, in which event Seller shall properly prepare such property for shipment and shall deliver same to Buyer f.o.b. cars or trucks at Seller's plant in the same condition as originally received by Seller, reasonable wear and tear excepted.

24. NOTICE OF LABOR DISPUTES. Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller will immediately notify the Buyer of such dispute and furnish all relevant details. Seller will include a provision identical to the above in each subcontract hereunder and immediately upon receipt of any such notice pass it on to the Buyer.

25. GOVERNMENT SUBCONTRACT PROVISIONS. If this Purchase Order constitutes a subcontract of any tier under a contract with the United States Government, the Federal Acquisition Regulations (FARs) shall apply as incorporated by reference.

26. EQUAL OPPORTUNITY. The equal employment opportunity clause in Section 202 of Executive Order 11246, as amended, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs, including 41 C.F.R. §§80-1.4(a)(7), 60-250.4 and 60-741.4 are incorporated herein by reference when applicable.

SERVICE - TERMS AND CONDITIONS OF PURCHASE

1. **WORK.** The Work described in Spirax-Sarco, Inc.'s ("Company") purchase order ("Purchase Order") (hereinafter referred to collectively as the "Work", and, where applicable, separately as the "Fixed Price Work", "Rates Work" and "Cost Plus Work") shall be performed by Contractor in accordance with the descriptions contained therein. In addition to such Work, Contractor shall perform all ancillary or incidental services at no additional cost to Company. Any Work not performed to the satisfaction of Company, acting reasonably, shall be re-performed (and in the case of goods, equipment or materials supplied as part of the Work, repaired or replaced) at Contractor's sole cost and expense.

2. **PRICE & PAYMENT.** Subject to Contractor performing the Work in accordance with this Services Contract, Company shall pay Contractor the amounts set forth in the Purchase Order (the "Contract Price") on the terms set out herein.

(a) **Fixed Price Work.** The Contract Price for the Fixed Price Work is fixed and firm, is not subject to adjustment (other than in accordance with Section 4) and shall be paid in accordance with any schedule for payment set out in the Purchase Order, and in the absence thereof, on the terms set forth in Section 2(e).

Rates Work.

The Contract Price for any Rates Work shall be the amount calculated by multiplying the quantity of Rates Work performed by the applicable rates set forth on Appendix B and shall be paid subject to the terms set forth in Section 2(b)(i) and (iii) and Section 2(e).

The estimate set forth in the Contract Particulars for the Rates Work ("Contractor's Estimate") is an estimate only and is not binding, provided however that Contractor must obtain Company's prior written consent before performing any Rates Work which will cause the Contract Price for Rates Work to exceed Contractor's estimate by more than 10%. Contractor is not entitled to payment of any amount for the performance of any Rates Work which Company has not consented to under this Section 2(b)(iii).

Unless otherwise stated in the Purchase Order all rates set forth in this Services Contract are inclusive of Contractor's overhead and margin. Where there is no corresponding rate for any portion of the Work: (A) where the Work includes Fixed Price Work, such portion of the Work is deemed to be part of the Fixed Price Work, and (B) where the Work consists solely of Rates Work, the rates set forth in the Purchase Order are deemed to be inclusive of the cost of performing such portion of the Work.

Cost Plus Work. The Contract Price for the Cost Plus Work (if any) is the actual, reasonably incurred (as determined by Company) cost of such Work, plus the Contractor's Agreed Margin (as set forth in the Purchase Order) and shall be paid subject to the terms set out in Section 2(e).

Preconditions to Payment. Contractor is not entitled to payment of any amount under this Services Contract unless and until Contractor has fully complied with the terms set out in Section 2(e).

Invoices.

Contractor shall, unless otherwise specified in the Purchase Order, submit monthly invoices and be paid in accordance with any schedule of payment set out in the Purchase Order, and in the absence thereof, by the last day of the month following the month in which such invoice is received, subject always to the preconditions set forth in Section 2(e)(iii).

A final invoice shall be submitted within 30 days after the Acceptance Date (defined in Section 3(c) below). By submitting an invoice after the Acceptance Date, Contractor releases Company from all claims for payment arising under or in connection with this Services Contract which are not set forth in such invoice.

Invoices shall be paid by Company by the last day of the month following the month in which such invoice is received, provided however that: (A) no payment shall be due unless (I) all amounts owed by Contractor to its subcontractors, suppliers, sub-consultants and employees for the Work to which the invoice relates have been paid in full, (II) all Work to which the invoice relates has been completed, free of material defects, (III) where the invoice claims payment for Rates Work, any approval or consent required under Section 2(b) has been obtained, and (IV) where the invoice claims payment for Rates Work and/or Cost Plus Work, the invoice is accompanied by such evidence as is required by Company, including as applicable daily time sheets (signed by a representative of Company, which list man hours worked and equipment used) and copies of invoices for all materials, equipment rentals, Work or other goods or services performed or supplied by subcontractors, subconsultants or suppliers engaged by Contractor, and (B) Company may withhold 10% of the amount owed under each invoice as retainage, which shall be released to Contractor one hundred and fifty (150) days after the Acceptance Date.

No payment, including the final payment, shall constitute an acceptance of the Work or a waiver of any of Company's right under this Services Contract.

3. TIME

(a) Contractor shall commence the Work on the Start Date (as set forth in the Purchase Order) and complete the Work by the Completion Date (as set forth in the Purchase Order). Time is of the essence to the performance of Contractor's obligations under this Services Contract. If the Work cannot be completed on time, Contractor must give Company immediate written notice of the expected completion date. In that event, Company may at its option, accept the late performance or cancel this Services Contract in whole or in part without (a) cost to Company and (b) prejudice to Company's rights to the charge Contractor with any damages (including loss of profits and consequential damages) incurred as a result of Contractor's failure to make performance.

Ten (10) days prior to the Start Date, Contractor shall submit for approval to Company three (3) copies of a complete detailed schedule for the performance of the Work. The schedule shall include sufficient details to show how and when Contractor proposes to carry out each stage of the Work. There shall be no schedule revision without Company's prior written approval. Contractor shall furnish to Company a weekly report, in form and content satisfactory to Company, showing the actual progress against the approved schedule. This report will be submitted on the first day of every week. Upon final acceptance by Company of Contractor's performance of the Work (including any Work approved under Section 4, Company shall issue to Contractor confirmation of acceptance of the Work (the date of such confirmation being the "Acceptance Date").

4. CHANGES IN SERVICES.

(a) **Change Orders.** Before performing any construction, services or Work, or incurring any cost which increases, decreases or otherwise varies the Scope of the Work described in the Purchase Order (including by substituting any materials or goods with materials or goods not specified), Contractor must receive an executed written change from Company ("Change Order").

(b) **Change Order Process.** Company may, at any time, require Contractor to submit an estimate of the difference between the cost of the Work as originally planned and the cost of performing the Work in accordance with a proposed alteration or change. If the scope of the change and its price are agreed to by Company, Company may execute a Change Order setting forth the change, the amount added or deducted from the contract Price, and any extension or reduction in the time for performance of this Services Contract.

(c) **Authorization of Changes.** No Company representative has the authority to orally authorize any change in the Work or the Contract Price. No payment or allowance of any kind shall be made to Contractor for any construction, services or Work performed, or cost incurred, without a Change Order executed in advance under this Section 4. Performance by Contractor of a Change Order shall not relieve Contractor of any responsibility for completion by the Completion Date and/or performance of the Work, except as specified in the Change Order.

(d) **Payment.** Work performed in accordance with approved Change Orders shall be paid for on the following basis:

- At the cost and/or rate specified in the relevant Change Order;
- If prices or rates are not set forth in the relevant Change Order or are not applicable, then in accordance with applicable prices and rates set forth in this Services Contract and/or the Purchase Order (the applicability of which shall be determined by Company, acting reasonably);
- Where no applicable rates are specified in the relevant Change Order or set forth in the Purchase Order, (A) in relation to labor or other services provided, in accordance with market rates for such labor or services, as determined by Company acting reasonably, and (B) in relation to material consumed or provided, goods, or equipment used by Contractor, the actual cost reasonably incurred by Contractor (as determined by Company) plus Contractor's Agreed Margin;

A copy of the relevant Change Order must accompany any invoice for payment for Work performed pursuant to a Change Order.

5. **INSURANCE.** Contractor shall obtain and maintain in force throughout this Services Contract term, at its sole cost and expense, those insurance coverages specified in Appendix A on the terms and conditions specified in such Appendix A. Without limiting the requirements set forth in Appendix

A, it is the intent of this Services Contract that Contractor obtain insurance for all of its obligations hereunder. Contractor agrees to assist in every manner possible in reporting and investigating any accident and, upon request, to cooperate with all interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for any claim or suit.

6. **INSPECTION OF SITE AND RESPONSIBILITY FOR SPECIFICATIONS.** Contractor represents that it has examined the description of the Work to be performed as set forth in this Services Contract, together with all other specifications, relevant drawings, plans and surveys (including those not provided by Company but available in the records of public agencies), the Site, and its surrounding environment. Contractor represents that it understands all conditions on the Site and otherwise relevant to the Work. Contractor agrees that it will complete the Work at no additional cost to Company notwithstanding any variance between actual conditions of the Site or any other place where the Work is performed and the conditions as shown in this Services Contract and its Appendices, if any.

7. INDEPENDENT CONTRACTOR.

Contractor is performing the Work at its sole risk and account and assumes full responsibility for it. Nothing in this Services Contract shall be deemed to appoint Contractor, or any of its employees or agents, as the agent, servant, representative, or employee of Company. At all times, Contractor shall be deemed an independent contractor for purposes of this Services Contract. Any rights of inspection accorded to Company in this Services Contract, or otherwise granted to Company, are granted solely to allow Company to determine whether Contractor's performance is in compliance with this Services Contract.

8. **RESPONSIBILITY FOR SAFETY.** Contractor shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of the Work, whether or not on the Site or any other property owned by Company. Contractor shall provide a safe place to work for its employees and its subcontractors' employees, if any. Contractor recognizes that the Work may involve crude or refined petroleum products pipelines, stations, terminals, and related facilities which require careful attention to the manner in which the Work is performed. Contractor shall obtain (from Company or otherwise) all information necessary for Contractor to perform all Work without Company's supervision. Contractor shall maintain physical control of all persons visiting the Site, and shall prevent such persons from causing any dangerous condition. Company shall bear no responsibility, whether supervisory or otherwise, for the safety of Work or the Site.

9. **COMPLIANCE WITH LAWS.** Contractor shall strictly comply, at its sole cost, with the local, state and federal laws, ordinances, rules, and regulations applicable to the Work (collectively "Applicable Laws"). Contractor shall obtain, and pay all fees for, all necessary permits, certificates, and licenses required to perform the Work including without limitation, any necessary hazardous work authorizations. Contractor shall furnish Company with documentary proof of compliance with all permits or licenses prior to commencement of any Work. In addition, Contractor shall pay when due all local state and federal taxes applicable to its performance of its Work. Without limiting the generality of the foregoing, Contractor specifically warrants that Contractor shall fully comply with:

- the requirements of the Fair Labor Standards Act of 1938, as amended from time to time, and all regulation thereunder;
- the provisions of Executive Order 11246 of the President of the United States on Equal Employment Opportunity and the rules and regulations issued pursuant thereto, unless Contractor is specifically exempted therefrom;
- the United States Department of Transportation "Rules and Regulations for Liquid Pipe Lines";
- all federal, state, and local right-to-know laws, rules, regulations, or ordinances. Company shall provide, upon Contractor's request, all relevant survey sheets and necessary Materials Safety Data sheets pertaining to hazardous materials situated on Company's premises, if any, and Contractor shall provide Company with all relevant survey sheets and necessary Material Safety Data sheets pertaining to hazardous materials which Contractor may bring onto Company's premises;
- United States Department of Transportation regulations pertaining to control of drug use in hazardous liquid pipeline operations.

Contractor shall indemnify Company from and against any and all claims against or losses suffered by Company due to any alleged or actual violation of any Applicable Laws by contractor, its subcontractors or their respective officers, employees and agents in relation to Contractor's performance of the Work.

10. **PROTECTION OF PROPERTY.** Contractor shall take all necessary precautions to protect from theft, damage, or injury from any cause whatsoever all property, including all property brought upon the Site, in connection with the Work. While on the Site or any adjacent premises or any other Company property, Contractor shall comply with all fire, safety and other rules and regulations prescribed by Company. In the event that any one of Contractor's employees, subcontractors, or subcontractor's employees violates any of the fire, safety, or other rules or regulations prescribed by Company, or any law or regulation applicable to the Work or, in Company's opinion, is incompetent or not qualified to perform the portion of the Work assigned to him, then, upon the request of Company, such person shall be immediately removed from the work site.

11. INDEMNIFICATION.

(a) **CONTRACTOR AGREES TO RELEASE, PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY, ITS AFFILIATES, PARTNERS, CO-OWNERS AND JOINT VENTURERS AND ITS AND ALL OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND INVITEES ("Company Group")** from and against all costs (including court costs and reasonable attorneys' fees), losses, expenses, damages, claims, suits and liabilities ("Claims") resulting from injury, including death, to persons or property arising from or in any manner growing out of the negligence or intentional misconduct of, or breach of this Services Contract by, Contractor or its affiliates, subcontractors or suppliers, or their respective employees, agents, representatives and invitees ("Contractor Group");

(b) To the fullest extent permitted by law, CONTRACTOR HEREBY AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY AND EACH MEMBER OF COMPANY GROUP from and against any and all Claims, inclusive of Claims made by third parties, for any injury or death of any of any member of Contractor Group directly or indirectly arising out of, incident to, or in connection with this Services Contract, WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE BREACH OF ANY PROVISION OF THIS SERVICES CONTRACT, INCLUDING WITHOUT LIMITATION THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR OTHER FAULT OF ANY MEMBER OF COMPANY GROUP.

12. WARRANTIES.

(a) Contractor represents and warrants that: (i) it possesses the necessary skill, competence, materials and qualified staff to perform the Work required by Company; (ii) the Work will be performed with the reasonable skill, care and diligence to be expected of a competent contractor experienced in carrying out services of a similar nature, scope and complexity to the Work; and (iii) the Work will be performed in accordance with the specifications of this Services Contract.

Contractor hereby confirms that it is aware of and shall comply with (i) all of Company's health, safety and environment policies, rules and regulations (ii) all applicable laws of the United States and the state(s) in which the Work is to be performed and (iii) all of the procedures and policies produced from time to time by or on behalf of Company (including but not limited to those in connection with conditions and responsibilities).

Contractor agrees that if, during the twelve (12) month period beginning on the Acceptance Date (the "Warranty Period"), any of the Work is found to be not in compliance with this Services Contract (including the warranties set out above), Contractor shall furnish at its own cost and expense, any additional services necessary to reperform and/or remedy such deficient Work. Any Work re-performed or remedied in accordance with this paragraph shall be warranted for a new period ending upon the date twelve (12) months after acceptance by Company of such reperformance of the Work. If Contractor fails to comply with this paragraph, Company may carry out, or engage other contractors to perform and/or correct, the relevant deficient Work and Contractor shall defend, protect, indemnify and hold Company against the cost of so doing.

Contractor shall Indemnify Company from and against any and all Losses of any kind suffered by Company resulting from or arising out of any breach of Contractor's obligations under this Section 12.

13. INSPECTION/AUDIT. Contractor shall maintain complete and detailed records to substantiate all costs to Contractor under this Services Contract. Company shall have the right upon twenty-four (24) hours' notice to Contractor to audit the books and records of Contractor relating to the Work and to place personnel at Contractor's office for the audit. Company shall at all times have access to the Work to inspect it and Contractor shall provide safe facilities for access to, and inspection of, the Work. Inspection by Company shall not constitute acceptance of any portion of the work, without Company's written acknowledgment that a portion of the Work has been accepted. If any of the Work is found at any time to be defective or not in conformity with the requirements of this Services Contract, Company, in addition to any other rights which it may have under warranties or otherwise, shall have the right to reject the Work and require Contractor, at its sole expense, to repair, alter, or replace it or to provide a credit to Company, as Company decides in its sole discretion. In the event that any portion of the Work has been rejected, and Contractor is directed to repair or replace it, Contractor shall, within 24 hours after receiving notice of the rejection, proceed to repair or replace the rejected Work and shall proceed as promptly as possible to complete the repair or replacement thereof.

14. LIEN PROTECTION.

(a) Unless Company has failed to pay Contractor an amount which Company acknowledges to be due, Contractor shall not file or permit (and shall ensure its subcontractors do not so file or so permit) any claims, liens, encumbrances or charges of any nature (collectively, "Liens") against Company's property, the Work, the Site or any other property on the Site or otherwise connected with the Work (collectively "Protected Property") without Company's prior written approval. Contractor shall Indemnify Company from and against any Liens made, exercised or asserted against Company or any Protected Property by Contractor, any subcontractor and its or their respective employees or by any other person whomsoever whether by judicial action and/or other proceeding and arising from or in respect of Contractor's performance of the Work. If a payment becomes due under this Services Contract and either (i) Company is aware of or reasonably suspects that Contractor is indebted to one or more subcontractors or employees in relation to activities performed in connection with the Work, (ii) there remains a lien undisputed of record, an attached unsatisfied, or any other encumbrances attached to Protected Property, or (iii) Company reasonably suspects that any person has or may in the future have the right to assert a lien or other encumbrance over Protected Property, Company shall have the right to retain out of any monies due to Contractor, sufficient sums to indemnify Company against any such lien, attachment or other encumbrance, including any attorney's fees Company has to expend in connection therewith, and such funds may be used in any way Company deems appropriate in order to discharge or prevent the creation of any lien, attachment or other encumbrance.

15. PROHIBITED EMPLOYMENT. Contractor shall not, under any conditions, employ in connection with the Work, any person who, during his normal working hours, is employed by Company. Any such person found to be in the employ of a Contractor shall be immediately dismissed by Contractor.

16. CLEAN-UP. Contractor shall keep Company's property, including the Site and any surrounding premises belonging to Company, clear of debris and rubbish caused by Contractor's operation under this Services Contract. At the completion of the Work, Contractor shall leave the Site and the surrounding vicinity clear and ready for use.

17. SUSPENSION AND TERMINATION.

(a) Company shall have the right to suspend the Services in whole or in part at any time during the performance of the Work. Upon receipt of notice of suspension, Contractor shall immediately suspend the performance of the Work to the extent indicated by the notice, take such measures as to protect those aspects of the Work completed or in progress and use its best efforts to mitigate the impact of the suspension including using its equipment and personnel in a manner so as to minimize the costs of the suspension.

Subject to the above and provided that such suspension is not necessary by reason of the act or omission of Contractor or is not otherwise provided for in this Services Contract, Company shall reimburse Contractor for its reasonably and properly incurred costs during the suspension period. Company shall have the right to terminate this Services Contract and any Work being done under this Services Contract, effective upon delivery of notice to Contractor: at any time prior to Contractor's performance under this Services Contract; upon Contractor's death, if Contractor is an individual, or death of one of its partner's, if Contractor is a partnership, or the death of a principal employee of Contractor; upon Contractor's bankruptcy, insolvency, or assignment for benefit of creditor; upon Contractor's failure to perform any of its obligations under this Services Contract; upon Contractor or any of its subcontractors, employees or agents engaging in willful misconduct or gross negligence; for the convenience of Company. In the event Company terminates this Services Contract, for any of the above reasons other than under subparagraph (vi), Company may take possession of the Site and engage any other person to finish the Work. All expenses incurred by Company in finishing the Work and any damage incurred through any default shall be a charge against any amount due from Company to Contractor, except that in the event Company exercises the right of termination under subparagraph (vi), Contractor shall receive payment of the Contract Price as follows: For Fixed Price Work, Contractor shall receive the proportion of the total Contract Price which the proportion of the Fixed Price Work completed by Contractor at the date of termination bears to the total Fixed Price Work to be performed under this Services Contract as determined by Company, acting reasonably.

For Rates Work (if any), Contractor shall be paid for all Rates Work performed by Contractor prior to termination by Company in accordance with the applicable rates set forth in the Purchase Order. For Cost Plus Work (if any), Contractor shall be paid for the actual cost, reasonably incurred (as determined by Company) by Contractor in performing Cost Plus Work prior to termination by Company, plus the Contractor's Agreed Margin.

An invoice for any final payment shall be submitted by Contractor, subject to Company's approval and payment in accordance with Section 2(e).

18. SET-OFF. Company shall be entitled at all times to set-off any amount owing from Contractor to Company under or in connection with this Services Contract against any amount payable by Company to Contractor under this Services Contract or another other agreement between Contractor and Company.

19. LIMITATIONS. No suit or action against Company for the recovery of any claim or damage by virtue of this Services Contract, or in any way arising therefrom, shall be sustainable in any court unless the suit or action shall be commenced within twelve months after such cause of action accrued. And should any suit or action be commenced in any court against Company, after the expiration of said twelve months, the lapse of time shall be deemed conclusive evidence against the validity of such claim or demand, any statute of limitations to the contrary notwithstanding.

20. ANTI-CORRUPTION. The Contractor warrants that its directors, employees, agents and other representatives have not and will not, directly or indirectly, offer, promise, give, accept or agree to receive a bribe, corrupt payment or any article of financial value over whether for the benefit of any public official, Company, its employees and agents or any other person. The Contractor will immediately report to the Company any actual or attempted breach of this section by an employee or agent of the Contractor and any such action of acceptance of any such solicitation is a material breach of every contract between the Contractor and Company.

21. CONFIDENTIALITY & ASSIGNMENT.

(a) Contractor agrees not to assign the benefit of or delegate any of its obligations under this Services Contract, whether in whole or in part, or to enter into any subcontract in connection with this Services Contract, without the prior written consent of Company. No assignment, delegation or subcontract shall be valid or binding upon Company without its written consent. Subject to the foregoing, this Services Contract shall insure to the benefit of, and be binding upon, the representative, successors, or assigns of the parties to this Services Contract. Notwithstanding any assignment to which Company has given consent, Contractor shall be and remain solely responsible for the due and proper performance of the Work, shall remain responsible for the performance of any assignee and shall remain liable for any breach of this Services Contract. Company may at any time assign, transfer, and novate and/or charge the benefit of this Services Contract and/or any of Company's present or future rights, interests and/or benefits hereunder to any person.

Contractor, its subsidiaries, affiliates and subcontractors, and their respective agents, employees and shareholders shall not, without the prior written consent of Company: (i) disclose or make available to any person, other than Company, or use, directly or indirectly, except for the performance and implementation of this Services Contract or to the extent required by applicable law, any information acquired from Company in connection with the performance of this Services Contract whether acquired before or after the Effective Date and undertake to keep all such information confidential; or (ii) announce, declare, communicate, publish or issue any statement mentioning Company or information relating to this Services Contract.

Contractor shall not subcontract any elements of this Services Contract or terminate the services of any subcontractor previously approved by Company without the prior written consent of Company. Such consent shall not relieve Contractor of any of its obligations hereunder or create any contractual relationship between Company and such subcontractors.

22. FORCE MAJEURE.

(a) No failure or omission by either Party to carry out or observe any of the terms and conditions of this Services Contract shall, except as herein expressly provided to the contrary, give rise to any claim against the Party in question or be deemed a breach of this Services Contract if such failure or omission arises from an event of Force Majeure. "Force Majeure" means any event beyond the reasonable control of Company or Contractor, as the case may be, occurring after the Effective Date and which (or the effects of which) is or are unavoidable notwithstanding the reasonable care of the Party affected, including: strikes (excluding strikes occurring among the employees of a Party); acts of the public or foreign enemy, war, hostilities or warfare operations; rebellion, revolution, insurrection, mutiny, usurpation of the government, riot, terrorist acts; expropriation, confiscation or other such governmental acts; natural or physical disasters; or epidemic. For the avoidance of doubt, Force Majeure shall not include (i) reasonably foreseeable weather conditions; (ii) the failure of any subcontractor to furnish labor, services, materials or equipment on the dates agreed to unless such failure is itself due to an event of Force Majeure; (iii) general economic conditions and exchange rate fluctuations; (iv) the financial condition of Contractor or any subcontractor; and (v) the financial condition of Company.

The Party prevented from carrying out its obligations shall immediately give notice in writing to the other Party specifying the exact nature of the circumstances relied upon and the date upon which it became unable to perform its obligations as a consequence of the circumstance specified and the steps it is taking to mitigate those circumstances. In the event that the circumstances shall continue for a period in excess of ninety (90) consecutive or one hundred and twenty (120) non-consecutive calendar days then either of the Parties may terminate this Services Contract by written notice without any liability upon either of the Parties to the other save to the extent that any amount that shall have accrued to Contractor prior to the occurrence of the Force Majeure event.

23. ENTIRE AGREEMENT. This Services Contract is the complete, integrated agreement between Company and Contractor as to the Work. This Services Contract may be modified or voided only by a writing signed by both parties.

24. NON-WAIVER. No waiver by Company of any breach or default of this Services Contract by Contractor, or release by Company of Contractor from its obligation to comply with any provision of this Services Contract shall be considered valid unless such waiver or release is given in writing and signed by an authorized representative of Company. No waiver or release given by Company under this Section 24 shall be deemed a waiver or release of any subsequent breach, default or timely compliance of the same or similar nature.

25. APPLICABLE LAW. This Services Contract shall be deemed to have been made in the State of South Carolina. This Services Contract shall be governed by the laws of the State of South Carolina. The United Nations Convention on the International Supply of Goods will not apply to this Services Contract.

26. EFFECTIVENESS OF CONTRACT. This Services Contract shall become effective when a Purchase Order is accepted in writing by Contractor by signing and returning promptly to the Company an acknowledgement of such Purchase Order, but if for any reason the Contractor should fail to sign and return to Company an acknowledgement, the commencement of any work or performance of any services hereunder by the Contractor shall constitute acceptance by the Contractor of the Purchase Order, this Services Contract and all its terms and conditions. Acceptance of a Purchase Order is hereby expressly limited to the terms hereof.

27. DISPUTES. Contractor will submit any claims or disputes arising under this Services Contract to Contractor in writing within sixty (60) days after final payment is made to Contractor, or Contractor's discovery of the facts giving rise to the claim or dispute, whichever occurs earlier, and Contractor's failure to do so will constitute a waiver by Contractor of any legal or equitable rights with respect to the subject matter of the claim or dispute. Contractor agrees that any claims and disputes submitted by Contractor which cannot be resolved through direct negotiation between Company and Contractor will be submitted to mediation and, if not successful, to binding arbitration, both proceedings to be conducted by the American Arbitration Association in Houston, Texas, in accordance with its Commercial Rules and Procedures. Each party will bear its own expenses in any dispute resolution proceeding.

28. CUMULATIVE REMEDIES. All rights and remedies of Company hereunder and all those given to it by law and equity shall be cumulative and concurrent and nonexclusive and in addition to any right that might otherwise apply. Failure by Company to enforce at any time or for any period of time any provision hereof shall not be deemed waiver of such provision or any violation thereof or of the right of Company to enforce each and every such provision.

Appendix A – Insurance Requirements

1 Proof of Insurance: Before starting any work under this Services Contract, Contractor must submit a valid certificate of insurance to Company showing that Contractor's insurance obligations as set forth in this Appendix A have been fulfilled. The insured name on the certificate of insurance must match Contractor name on this Services Contract. Policy numbers must be listed for each policy on the certificate of insurance. Insurers must be rated better than A- VII by AM Best. Contractor will provide additional documentation including copies of the policies if requested by Company for clarification of coverage. Buckeye Partners, L.P. or West Shore Pipe Line Company, as applicable, shall be named as the certificate holder. Prior to the expiration of any policy, Contractor shall furnish Company a new certificate, policy or other proof that the insurance coverage remains in effect.

2 General Liability Coverage: Per occurrence general liability limits of not less than one million dollars (\$1 million) and aggregate general liability limits of two million dollars (\$2 million).

3 Automobile Liability Coverage: Not less than one million dollars (\$1 million) combined single limits covering bodily injury and property damage per accident.

4 Excess Liability: Excess liability insurance not less than five million dollars (\$5 million) will be required if the total Contract Price or Contractor's Estimate (as applicable) exceeds two hundred and fifty thousand dollars (\$250 thousand). Excess liability insurance not less than ten million dollars (\$10 million) will be required if the Contract Price or Contractor's Estimate (as applicable) exceeds one million dollars (\$1 million). Excess liability insurance can also be used to supplement any primary insurance policy that does not meet Buckeye insurance requirements.

5 Workers Compensation/Employers Liability: Statutory workers compensation limits in each state where contractor will be performing work. Employers Liability Insurance shall be maintained with limits of not less than one million dollars (\$1,000,000) for each accident, disease each employee, and disease policy limit.

6 Pollution Coverage: Contractor agrees to carry pollution insurance as required by the additional terms of this purchase order.

7 Professional Liability/E&O Coverage: Limits of not less than three million dollars (\$3 million) per occurrence professional liability insurance and three million dollars (\$3 million) aggregate limits.

- 8 **Additional Insured:** Contractor agrees to name Company as an additional insured on all policies except workers compensation and professional liability insurance.
- 9 **Waiver of Subrogation:** Contractor agrees to provide a waiver of subrogation in favor of Company on all policies except where forbidden by law.
- 10 **Primary and Non-Contributory:** Contractor agrees that all policies listed on the certificate of insurance shall be primary and non-contributory.
- 11 **Subcontractors:** Contractor agrees to require all subcontractors to carry the limits set forth in this Appendix A including naming Company as additional insured and providing a waiver of subrogation in favor of Company. Contractor shall submit subcontractor's certificates of insurance to Company for review.
- 12 **Additional Terms:** Company reserves the right to increase the amount of insurance required for any job based on perceived risk and Contractor shall be notified prior to completion of a purchase order if the limits required are higher than those set forth in this Appendix A.