



National Renewable Energy Laboratory
Innovation for Our Energy Future

TERMS AND CONDITIONS OF PURCHASE ORDER (FOR ORDERS UNDER \$500,000)

As used in the clauses below, the term “subcontractor” means Vendor/Supplier of goods or services under the NREL Purchase Order.

CLAUSE - DEFINITIONS (SPECIAL) (OCT 2008)

Derived from FAR 52-202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002) (Applies to all subcontracts.)

- (a) When a solicitation provision or subcontract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—
- (1) The solicitation, or amended solicitation, provides a different definition;
 - (2) The contracting parties agree to a different definition in the subcontract;
 - (3) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
 - (4) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.
- (b) The FAR Index is a guide to words and terms the FAR defines and shows where each definition is located. The FAR Index is available via the Internet at <http://www.acqnet.gov> at the end of the FAR, after the FAR Appendix.
- (c) The term “DOE” means the Department of Energy.
- (d) “Head of the Agency” means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy.
- (e) The DOE Senior Procurement Executive is the Director, Office of Procurement and Assistance Management.
- (f) The term “DOE Directive” means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE’s accounting and procedures handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.
- (g) “Contractor” or “DOE Prime Contractor” means Alliance for Sustainable Energy, LLC. The term “NREL” means the National Renewable Energy Laboratory managed and operated by the Alliance for Sustainable Energy, LLC (the “Alliance”) and includes the successors and assigns of the Alliance, which is a limited liability company equally owned and governed by Midwest Research Institute and Battelle Memorial Institute. NREL is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-08GO28308 by the Alliance for Sustainable Energy, LLC.
- (h) Except as otherwise provided in this subcontract, the term “subcontracts” includes, but is not limited to, lower-tier subcontracts and changes and modifications to lower-tier subcontracts, and purchase orders and changes and modifications to purchase orders under this subcontract.

CLAUSE - DISPUTES (SPECIAL) (SEP 2007)

- (a) It is NREL’s practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator’s level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for

negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.

- (b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
- (1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 - (2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- (c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- (d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.
- (e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- (f) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

CLAUSE VENDOR/SUPPLIER QUALITY REPRESENTATIONS

The vendor/supplier represents that (1) suspect or counterfeit supplies and components and (2) misrepresented parts or items are not provided as part of this subcontract. The vendor/supplier further represents that original equipment manufacturer’s parts or factory authorized non-OEM

parts will be used for repair or maintenance services as part of this subcontract.

The vendor/supplier represents the supplies and components are new, including recycled (not new or reconditioned) and are not of such an age or so deteriorated as to impair their usefulness or safety. Furthermore, the vendor/supplier shall not furnish any item that is residual inventory resulting from terminated Government contracts/subcontracts or former Government surplus property. All items or components furnished under this procurement action shall comply with the terms and specifications herein.

CLAUSES INCORPORATED BY REFERENCE

This purchase order incorporates one or more Federal Acquisition Regulation (FAR) or Department of Energy Acquisition Regulation (DEAR) clauses by reference with the same force and effect as if they were given in full text. The following substitutions shall be made as appropriate: "NREL or the government" for "Government or DOE"; "Purchase Order" for "contract"; "Vendor/Supplier" for "contractor"; and "NREL Subcontract Administrator" for "Contracting Officer". The FAR and DEAR clauses can be accessed at <http://farsite.hill.af.mil/>. Upon request, the NREL administrator will make the full text available.

FEDERAL ACQUISITION REGULATION (48CFR CHAPTER 1)

- 52.203-6 - Restrictions on Subcontractor Sales to the Government (SEP 2006)
- 52.203-7 - Anti-Kickback Procedures (JUL 1995)
- 52.222-21 - Prohibition of Segregated Facilities (FEB 1999)
- 52.225-13 - Restrictions on Certain Foreign Purchases (JUN 2008)
- 52.227-3 - Patent Indemnity (APR 1984)
- 52.245-1 - Government Property (JUN 2007)

OVER \$10,000

- 52.222-26 - Equal Opportunity (MAR 2007) [Over \$10,000]

OVER \$25,000

- 52.222-35 - Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (SEP 2006)
- 52.222-36 - Affirmative Action for Workers with Disabilities (JUN 1998)
- 52.222-37 - Employment Reports on Disabled Veterans and Veterans of the Vietnam Era (SEP 2006)

\$100,000 OR LESS

- 52.249-1 - Termination for Convenience of Government (Fixed Price) (Short Form) (APR 1984)

OVER \$100,000

- 52.227-1 - Authorization and Consent (Alternate 1) (DEC 2007)
- 52.227-2 - Notice and Assistance Regarding Patent and Copyright Infringement (DEC 2007)
- 52.229-3 - Federal, State and Local Taxes (APR 2003)
- 52.247-63 - Preference for U.S. - Flag Air Carriers (JUN 2003)
- 52.249-2 - Termination for Convenience of Government (Fixed Price) (MAY 2004)
- 52.249-8 - Default (Fixed-Price Supply and Service) (APR 1984)

APPLICABLE TO ORDERS FOR SERVICES

- 52.222-41 - Service Contract Act of 1965 (NOV 2007) [Nonexempt over \$2,500]
- 52.243-1 - Changes - Fixed Price (AUG 1987) [Services only-Alternate 1 (APR 1984)]
- 52.246-4 - Inspection of Services - Fixed Price (AUG 1996) [Over \$100,000]
- 52.246-20 - Warranty of Services (MAY 2001) [Within 60 days of acceptance]
- 52.246-25 - Limitation of Liability - Services (FEB 1997)
- 52.249-4 - Termination for Convenience of the Government (Services) (Short Form) (APR 1984)

APPLICABLE TO ORDERS FOR SUPPLIES

- 52.243-1 - Changes - Fixed Price (AUG 1987) [Supplies] [Services furnishing supplies-Alternate 2 (APR 1984)]
- 52.246-2 - Inspection of Supplies - Fixed Price (AUG 1996) [Over \$100,000]

- 52.246-23 - Limitation of Liability (FEB 1997) [Over \$100,000]
- 52.225-1 - Buy American Act - Balance of Payments Program Supplies (JUN 2003) [Supplies and Services furnishing supplies]

SPECIAL CONDITIONS

- 52.247-1 - Commercial Bill of Lading Notations (Special) (FEB 2006) [Applicable when transportation costs are billed as a separate invoice item.]
- 52-227.19 - Commercial Computer Software - Restricted Rights (DEC 2007) [Applicable to purchase orders for the acquisition of existing computer software (i.e., privately developed software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction).]

PURCHASE ORDER SUPPLEMENTAL CLAUSES

Supplemental clauses are applicable to work performed on NREL operated facilities (full text attached).

- 52.223-6 Drug-Free Workplace (May 2001) incorporated by reference.
- Security and Access Requirements for Subcontract Work Performed at NREL Operated Facilities (Special) (AUG 2008)
- Insurance - Work on a Government Installation (Special) (JUL 2008)
- Worker Safety and Health Requirements (Special)(AUG 2008)

DEPARTMENT OF ENERGY ACQUISITION REGULATION

- (48 CFR CHAPTER 9)
- 970.5223-1 - Integration of Environment, Safety and Health into Work Planning and Execution (DEC 2000)
- 970.5208-1 - Printing (DEC 2000)
- 952.247-70 - Foreign Travel (Special) (MAY 2003)