

**SANDIA CORPORATION
SF 6432-PC (10-98)
SECTION II**

STANDARD TERMS & CONDITIONS FOR PRODUCTION MATERIAL

THE FOLLOWING CLAUSES APPLY TO THIS CONTRACT AS INDICATED UNLESS SPECIFICALLY DELETED, OR EXCEPT TO THE EXTENT THEY ARE SPECIFICALLY SUPPLEMENTED OR AMENDED IN WRITING IN THE SIGNATURE PAGE OR SECTION

PC10 - DEFINITIONS The following terms shall have the meanings set forth below for all purposes of this contract.

(a) GOVERNMENT means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.

(b) SANDIA means Sandia National Laboratories, operated by Sandia Corporation under Contract No. DE-ACO4-94AL-85000 with the U.S. Department of Energy.

(c) SELLER means the person or organization that has entered into this agreement.

(d) ITEM means commercial items, commercial services and commercial components as defined in FAR 52.202-1.

(e) AGREEMENT means Purchase Order, Contract, Price Agreement, Subcontract, As Ordered Agreement, or modifications thereof.

(f) SCR means Sandia Contracting Representative, the only person authorized to execute and/or administer this Agreement for Sandia.

(g) SDR means Sandia Delegated Representative, the person(s) who has been delegated limited authority as defined in Section I of this contract.

PC11 - APPLICABLE LAW The rights and obligations of the parties hereto shall be governed by this Agreement and construed in accordance with federal law for FAR or DEAR clauses and Article 2 of the Uniform Commercial Code as enacted in the State of delivery of Items giving rise to the claim. The parties agree to jurisdiction in the Federal District Court, with venue in the District closest to the delivery point of the Items giving rise to the claim. In the event the requirements for jurisdiction in Federal District Court are not present, such litigation shall be brought in the State Court closest to the delivery point of the Items giving rise to the claim.

PC12 - ORDER OF PRECEDENCE Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) Order Item descriptions, prices, quantities, delivery dates and other statements on the order and (2) SF 6432-CI, Section II Standard Terms and Conditions For Production Material, and (3) incorporated by reference provisions of Section II.

PC13 - TITLE AND ADMINISTRATION All property rights and interests resulting from this Agreement shall pass directly from the Seller to the Government.

PC14 - ACCEPTANCE OF TERMS AND CONDITIONS Seller, by signing this Agreement and/or delivering Items or services ordered under this Agreement, agrees to comply with all the terms and conditions and all specifications and other documents that this Agreement incorporated by reference or attachment. Sandia hereby objects to any terms and conditions contained in any acknowledgment of this Agreement that are different from or in addition to those mentioned in this document. Failure of Sandia to enforce any of the provisions of this Agreement shall not be construed as evidence to interpret the requirements of this Agreement, nor a waiver of any requirement, nor of the right of Sandia to enforce each and every provision. All rights and obligations shall survive final performance of this Agreement.

PC15 - WARRANTY Seller expressly warrants that Items delivered under this Agreement shall be in accordance with Sandia's affirmation, description, sample, or model and compliant with all requirements of this Agreement. Seller expressly warrants that no counterfeit Items or components in Items shall be delivered to Sandia on this Agreement. Seller expressly warrants that all Items provided under this agreement shall have a rightful transfer of good title thereto and are delivered free of any rightful claims of any third person by way of infringement of any intellectual property right. The warranty shall begin upon receipt of conforming Items and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if the Seller is not the manufacturer and has not modified the Item or (2) one year or the manufacturer's warranty period, whichever is longer, if the Seller is the manufacturer of the Item or had modified it. If any nonconformity with Item appears within that time, Seller shall promptly repair, replace, or reperform such Items at Seller's election. transportation of replacement Items and return of nonconforming Items and repeat performance of services shall be at Seller's expense. Sandia shall notify Seller of such nonconformity within a reasonable time after discovery, and Seller shall notify Sandia of whether it chooses to make repairs or replacements within three working days after Sandia's notice of nonconformity. If repair or replacement or reperformance of services is not timely, Sandia may elect to return the nonconforming Items or repair or replace them or reprocur the services at Seller's expense. Seller disclaims the implied warranties of merchantability or fitness for a particular purpose.

PC16 - ASSIGNMENT Seller shall not assign rights or obligations to third parties without the prior written consent of Sandia. However, the Seller may assign rights to be paid amounts due or to become due to a financing institution if Sandia is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to setoff or recoupment for any present or future claims of Sandia against the Seller. Administration of this Agreement may be transferred from Sandia to DOE or its designee, and in case of such transfer and notice thereof to the Seller, Sandia shall have no further responsibilities hereunder.

PC17 - NEW MATERIALS Unless otherwise specified in this Agreement, all Items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property.

PC18 - MANUFACTURING AND TESTING STANDARDS

(a) Unless excluded or modified elsewhere in this contract/order, Contractor warrants that all items or components, thereof delivered under this contract, shall be manufactured and/or tested in accordance with standards normally associated with such items when they are sold to commercial users in the United States. Examples of such manufacturing and/or testing standards include, but are not limited to:

- Underwriter's Laboratory (UL) Listing
- National Fire Protection Association (NFPA) Approval
- Occupational Safety and Health Act (OSHA) Approval
- American Society for Testing Material (ASTM) Certification
- Nationally Recognized Testing Laboratory (NRTL) Approvals

(b) All items furnished under this contract shall be clearly marked and/or labeled, as appropriate; and, if applicable, all items shall be accompanied by installation and/or operating instruction normally associated with such items.

PC19 - WORKMANSHIP AND MATERIALS (a) Grade or Workmanship and Materials. Unless otherwise specified in Section I or expressly provided for by specifications issued under this agreement: all articles, equipment, and materials incorporated in the work are to be:

- (i) New and of the most suitable grade of their respective kinds for the purpose;
- (ii) In accordance with any applicable drawings and specifications; and
- (iii) Installed to the satisfaction and with the approval of the SCR.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the SCR shall decide the question of equality.

(b) Samples and Test Results. If the SCR so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

PC20 - TRANSPORTATION If transportation is specified "FOB Origin," (a) no insurance cost shall be allowed unless authorized in writing and (b) the bill of lading shall indicate that transportation is for DOE and the actual total transportation charges paid to the carrier(s) shall be reimbursed by the Government pursuant to Contract No. DE-ACO4-94-AL85000. Confirmation will be made by Sandia National Laboratories.

PC21 - RISK OF LOSS If Sandia is responsible for the risk of loss during transportation of compliant Items, Sandia shall compensate Seller the lesser of (1) the agreed price of such Items, or (2) the Seller's cost of replacing such Items; and such loss shall entitle the Seller to an equitable adjustment in delivery schedule obligations.

PC22 - PAYMENT Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of Items/completion of work. Any offered discount shall be taken if payment is made within the discount period that the Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Sandia. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made.

PC23 - COMPLIANCE WITH LAWS Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of this Agreement.

PC24 - CANCELLATION OR TERMINATION FOR CONVENIENCE (a) Sandia may cancel this Agreement, in whole or in part, if the Seller fails to comply with any of the terms of this Agreement, or fails to provide adequate assurance of future performance. In that event, Sandia shall not be liable for any amount for Items or services not yet accepted by Sandia.

(b) Sandia may terminate for the convenience of Sandia or the Government this Agreement, in whole or in part, for any Items or services not yet accepted by Sandia. In that event Sandia shall not be liable for the purchase price of Items or services already completed or identified to this Agreement but not yet accepted by Sandia.

(c) Seller shall not be liable for delays in performance occasioned by causes beyond Seller's reasonable control and without Seller's fault or negligence.

(d) The rights and remedies of Sandia in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

PC25 - BANKRUPTCY If the Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SCR responsible for this Agreement within