

## TERMS AND CONDITIONS FOR GOODS AND SERVICES

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### 1. **Acceptance**

This Purchase Order (including any documents incorporated herein) is an offer to buy, and Buyer's offer (or any purported acceptance by Buyer of any instrument or offer of Seller) is expressly conditioned upon Seller's acceptance of these terms and conditions. An acknowledgment of this Purchase Order or the commencement of performance hereunder shall operate as an acceptance of this offer upon the terms and conditions herein, even though the acknowledgment or other communication states terms and conditions which are additional to or different from those stated herein. This Purchase Order shall become the entire contract between Buyer and Seller, and Seller's terms and conditions shall not be binding upon Buyer, except to the extent Buyer specifically accepts in writing such terms and conditions. Buyer objects to any terms in any proposal, quotation, acknowledgement or other communication by Seller which are additional to or different from those stated herein, and any reference herein to any such Seller communication shall, unless indicated to the contrary herein, be deemed to be limited to the description of the products or services.

### 2. **Authority and Communication**

"Buyer" means Westinghouse Electric Company LLC acting through its purchasing organization. No other department of Westinghouse Electric Company LLC is so authorized to act. Claims by Seller for any adjustments will not be allowed unless duly authorized in writing by Buyer prior to implementation. All written communications are to be directed to Buyer's purchasing representative. Communications from or to Engineering or Quality Assurance personnel on technical or quality matters only are permitted. Any agreements resulting from such communications shall be binding only if documented by Buyer's Change Notice.

### 3. **Inspection, Access and Audit, Approvals**

All Work in progress (including Work performed by Seller's subcontractors and suppliers) shall be subject to inspections and tests as Buyer may direct and may be performed by Buyer, Buyer's customer or representatives of either. If inspections and tests are made on Seller's (or Seller's subcontractors or supplier's) premises, Seller shall furnish, at no additional charge, facilities and assistance for safe and convenient inspections and tests. Buyer may charge Seller for additional costs to Buyer when Work is not ready for scheduled inspections. All shipments shall be subject to inspection and acceptance or rejection by Buyer after receipt and performance testing at site or delivery destination. Buyer shall have the right to require the prompt correction of defective Work by Seller, at Seller's expense. Buyer may backcharge Seller for the cost of any corrections made by Buyer. If correction is impractical, Seller shall bear all risk after notice of rejection and shall, at Buyer's request, promptly make all necessary replacements at Seller's expense. If Seller fails to make prompt replacements, Buyer may make such replacements and backcharge Seller for excess costs incurred by Buyer. No substitutions of materials or accessories shall be made without prior written consent of Buyer.

Seller shall provide Buyer and/or Buyer's customer or their representatives with access to plant, facilities and records of Seller and its subcontractors and suppliers for inspection and/or audit.

In performing any inspection, test or audit, or in approving any design, drawings or procedures of Seller, Buyer does not undertake to guarantee that any products or services provided by Seller, or any procedures or methods adopted by Seller, are safe, lawful or in conformity with the requirements of this Purchase Order. No such inspection, test, audit or approval (or the failure to perform any of the same) shall relieve Seller of any responsibility for such products, services, procedures or methods or for fully complying with the terms of this Purchase Order, or make Buyer liable to Seller or any third party with respect thereto.

4. **Delivery**

Seller shall furnish all resources necessary to assure compliance with the established delivery dates. Delivery, in whole or in part, shall not be made more than fifteen (15) calendar days prior to the delivery date specified herein without prior written approval of Buyer. Buyer may deduct from the purchase price expenses incurred by Buyer resulting from such early shipment.

Seller shall be responsible for packaging, loading and tying-down of each shipment in accordance with the specifications and requirements of the Purchase Order or in the absence thereof, in a manner to ensure safe shipment of the materials or ordered items.

5. **Ownership**

All information, including but not limited to data, drawings, designs, software and specifications and all innovations contained therein, to the extent generated or developed under this Purchase Order by Seller at Buyer's expense shall be the property of Buyer and shall not be used by Seller for any purpose other than the performance of Work under this Purchase Order without the express prior written consent of the Buyer. Any information, data, drawings, software, designs, specifications or innovations actually delivered to Buyer by Seller shall also become the property of Buyer and may be disclosed and used by Buyer for any purpose, whatsoever, irrespective of any statement to the contrary appearing on such information, data, drawings, software, designs, specifications or innovations. Seller agrees to transfer and does hereby transfer to Buyer all right, title and interest in and to all intellectual property rights (including copyright) associated with any information, data, drawings, software, designs, specifications or innovations generated or developed under this Purchase Order by Seller at Buyer's expense. Seller shall, at its expense, obtain any and all licenses and rights necessary to afford Buyer the foregoing rights.

Title to materials or goods furnished (or information generated or developed) under this Purchase Order shall be deemed transferred to Buyer or Buyer's customer as payments are made, and in the same proportion as the cumulative payments bear to the Purchase Order price. Seller shall identify and segregate such materials which are the property of Buyer, unless waived in writing by Buyer. In the event payments are made by Buyer prior to delivery, Seller shall execute and deliver such security agreements, financing statements and other documents as may be deemed necessary by Buyer to protect its rights therein. If title is not transferred in accordance with the foregoing, title shall pass to Buyer or Buyer's customer upon loading on board carrier, and acceptance by such carrier, at the point of shipment.

Seller warrants that the Equipment and materials will be free and clear of all liens, claims and encumbrances at the time of delivery, and upon Buyer's request shall provide releases and lien waivers in form satisfactory to Buyer.

6. **Risk of Loss**

Seller shall have risk of loss of the materials or ordered items furnished under this Purchase Order until arrival on board carrier at the destination designated in this Purchase Order.

7. **Changes**

This Purchase Order may not be changed or modified except upon the prior written authorization of Buyer, acting pursuant to Article 2 above.

Buyer may, by written Change Notice, make changes in the work covered by this Purchase Order. Seller shall comply with such Change Notices. If the change materially affects Seller's cost or time for performance, the Purchase Order will be equitably adjusted in writing. Any claim for adjustment must be asserted by Seller as promptly as possible, but in no event more than thirty (30) days after receipt of any such Change Notice. Seller shall, at Buyer's direction, proceed with the change pending resolution of any dispute.

8. **Assignment and Status**

Seller shall not assign this Purchase Order in whole or in part without Buyer's prior written consent. Seller shall promptly notify Buyer of any change in its status including, but not limited to bankruptcy, insolvency, change of ownership or control, strike or work stoppage.

9. **Intellectual Property**

Seller represents and warrants that all products delivered, and services performed, pursuant to this Purchase Order and the sale or use thereof do not infringe any third-party intellectual property rights, including but not limited to patent, trade secret, copyright or trademark rights, and that Seller will at Seller's expense, defend, indemnify and hold harmless Buyer and Buyer's customers from and against all claims, demands, actions and liability based on alleged or actual infringement thereof. Buyer, at its option, may require Seller to deliver non-infringing goods or services, to modify Seller's goods and services so as to become non-infringing, to procure for Purchaser the right to continue using Seller's infringing goods and services, or in the case of goods to refund the purchase price thereof upon the return by Buyer of the infringing goods.

10. **Compliance with Laws, Standards and Site Rules**

Seller warrants that it has and will maintain any permits, licenses, registrations or other governmental approvals which may be required for its performance under this Purchase Order. Seller shall comply with all such permits and with all applicable executive orders and federal, state, municipal and local laws of the location in which the equipment, materials or Product will be produced or services performed as well as all rules, orders, requirements and regulations thereunder, including but not limited to, the Fair Labor Standards Act of 1933, the Occupational Safety and Health Act of 1970, and the Immigration Reform and Control Act of 1986, all as may be amended. Seller shall comply with all applicable laws, codes and standards, including, but not limited to, ANSI, ASME, AIEE, ASTM and NEMA. While upon the premises of Buyer or Buyer's customer, Seller shall comply with all applicable site rules and policies. Seller shall indemnify and defend Buyer and its customer from all loss, liability, fines and expenses incurred as a result of Seller's failure to comply with the requirements of this Article 10.

11. **Termination and Suspension**

Buyer may terminate or suspend this Purchase Order for its convenience, in whole or in part, at any time by written notice. In such event, Seller shall promptly comply with the directions contained in such notice and shall, subject to such direction, (1) take all necessary action to terminate or suspend the Work as provided in the notice, minimizing costs and liabilities, (2) protect, preserve and deliver any property related to this Purchase Order which is in Seller's possession pursuant to Buyer's direction; and (3) continue the performance of such part of the Work, if any, as may not have been terminated or suspended by the notice.

If Seller at the time of such termination or suspension has in stock or on firm order any completed or uncompleted items or any raw, semi-processed or completed materials for use in fulfilling this Purchase Order, then: (1) in the case of completed items or materials, Buyer may either require delivery of all or part of the completed items or materials and make payment thereof at the purchase price or, without taking delivery thereof, pay Seller the difference, if any, of the purchase price over the market price at the time of termination, and (2) in the case of uncompleted items or raw or semi-processed materials, Buyer shall, at its option, either require Seller to deliver all or part of such items or materials at the portion of the purchase price representing their stage of completion or, without taking delivery thereof, pay Seller with respect to such items or materials as are properly allocable to this Purchase Order, a portion of the purchase price representing the state of completion of such items or materials, reduced by the higher of the market or scrap value of such items or materials at such stage of completion; and (3) in the case of items or materials which Seller has on firm order, Buyer shall, at its option, either take an assignment of Seller's right under such order or pay the costs, if any, of settling or discharging Seller's obligation under such Purchase Order.

Buyer shall have the right, by written notice to Seller, to terminate the whole or any part of this Purchase Order for default: (1) if Seller fails to deliver items and materials or to perform the services within the time or in the manner provided under this Purchase Order, (2) if reasonable grounds for insecurity arise with respect to Seller's performance and Seller fails to furnish adequate assurances within ten (10) days after a written demand by Buyer for such assurance or (3) if Seller becomes insolvent or makes an assignment for the benefit of creditors, commits an act of bankruptcy or files or has filed against it a petition in bankruptcy or reorganization proceedings. In the event Buyer terminates this Purchase Order, in whole or in part, for default, Buyer shall be entitled to all rights and remedies provided by law.

12. **Subcontracting and Equal Employment Opportunity**

Seller shall not subcontract any portion of the Work without prior written approval of Buyer.

Seller shall comply with all applicable provisions of Executive Order 11246 of September 24, 1965, as amended, the terms of which are incorporated herein by this reference and made a part hereof. It is the policy of Buyer to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action shall be taken by Seller, with respect to itself and any of its subcontractors, vendors and suppliers to insure compliance with such laws.

All federal, state and local equal opportunity and affirmative action requirements with regard to race, sex, religion, national origin, handicap and Vietnam Veterans or Disabled Veteran status, including such federal requirements found in 41 CFR 60-1.4, 41 CFR 60-250.3 and 41 CFR 741.3 are herein incorporated by reference.

13. **Warranty**

Seller warrants that the equipment and materials delivered hereunder shall be free from defects in design, workmanship and materials; shall be of the kind and quality described in this Purchase Order; shall be fit for the purpose intended; shall perform in the manner specified and shall comply with all requirements of this Purchase Order. All equipment and materials shall be warranted by Seller for two (2) years from the date such equipment and/or materials are placed in service by Buyer or four (4) years after acceptance by Buyer, whichever first occurs. Seller shall correct any nonconformance at its sole expense, as directed by Buyer, by promptly: (1) repairing or replacing the non-conforming equipment/materials (and correcting any plans, specifications or drawings affected) in a timely manner; (2) furnishing Buyer any materials, parts and instructions necessary to enable Buyer or its customer to correct or have corrected the nonconformity, or (3) refunding the purchase price, or an appropriate portion thereof, to Buyer.

Seller warrants that Services furnished by it shall reflect the highest standards of professional knowledge and judgment, shall be free from defects in workmanship and shall be in compliance with all requirements of this Purchase Order, until one (1) year from the completion of such services. Seller shall correct any nonconformity with this warranty at its sole expense, as directed by Buyer, by promptly: (1) re-performing the non-conforming services or (2) refunding the purchase price or appropriate portion thereof to Buyer.

The warranty, with respect to any corrected equipment, materials or services, shall be extended to one (1) year from the date of repair or replacement or re-performance of service(s) or as stated in paragraphs above, whichever is later.

The foregoing warranties shall extend to, and be for the benefit of, Buyer and Buyer's customer.

14. **Buyer Information**

All information including, but not limited to, software, data, drawings, designs, specifications, photographs and sketches relating to Work hereunder furnished by Buyer to Seller or developed by Seller in the performance of the Work shall (except to the extent such information has been independently developed prior to this Purchase Order by Seller, or is received by Seller from a third party without restriction, or is information in the public domain) be treated by Seller as Buyer's proprietary information and shall not be used or disclosed except as may be necessary in the performance of Work and then only on a confidential basis with the prior written consent of Buyer. Any Buyer proprietary information developed by Seller hereunder shall be considered a work for hire, for which Buyer may apply copyright or other form of intellectual property protection in its own name.

All information, including but not limited to, data, photographs, sketches, software and advertising related to Work, which Seller desires to release or publish, shall be submitted to Buyer for written approval prior to such release or publication.

15. **Resolution of Conflicts or Inconsistencies**

Seller shall clarify with Buyer any inconsistencies or conflicts in this Purchase Order. Should Seller fail to contact Buyer to resolve any such conflicts or inconsistencies, Seller will be solely responsible for any errors resulting from any conflicts or inconsistencies occurring in this Purchase Order. Where documents are referenced, the issue date in effect at the time of Purchase Order or Change Notice placement shall be applicable, unless another issue date is specified in the Purchase Order or Change Notice. In the event of any conflict or inconsistency between those terms set forth on the face of this Purchase Order and these Terms and Conditions, the terms set forth on the face of this Purchase Order shall prevail.

16. **Taxes**

The purchase price shall not include sales or use taxes imposed upon the sale or use of tangible personal property or services contemplated by this Purchase Order, and such taxes, if applicable, are for Buyer's account. If Seller is registered to collect applicable sales or use taxes, it shall do so as an addition to the purchase price, unless Buyer furnishes an exemption certificate. All other taxes imposed prior to delivery at the destination point are for the account of Seller, including property taxes imposed with respect to equipment/materials for which title has passed to Buyer pursuant to this Purchase Order, including but not limited to, inventory taxes that may be levied while equipment/materials are being stored by Seller or are otherwise in Seller's custody.

17. **Government Orders**

When the equipment or services furnished are to be used in the performance of a contract or subcontract, with a governmental body or other entity requiring compliance with similar laws and regulations, the additional and/or supplementary terms and conditions incorporated herein by reference shall apply.

18. **Buyer-Furnished Property**

The following terms apply to any tools, patterns, equipment, material or other property which is supplied to Seller by Buyer (hereinafter "Buyer-Furnished Property"):

Seller shall not use Buyer-Furnished Property on any other work without the prior written consent of Buyer.

Title to Buyer-Furnished Property shall remain with Buyer. Seller shall segregate and clearly mark Buyer-Furnished Property to show Buyer's ownership and shall preserve Buyer's title thereto free and clear of all encumbrances. Seller shall, if requested by Buyer, submit to Buyer an itemized inventory showing the description and location of each item of Buyer-Furnished Property. Buyer shall have the right to enter Seller's premises to inspect Buyer-Furnished Property. Should Seller fail to perform the duties imposed upon it by this section or should Buyer at any time have reason to believe that its title to, or right to the possession of, any Buyer-Furnished Property is threatened, Buyer shall have the right to enter upon Seller's premises and remove such property. Upon completion or termination of this Purchase Order, Seller shall segregate all Buyer-Furnished Property and shall dispose of the same as Buyer may direct. Buyer reserves the right to abandon Buyer-Furnished Property at no additional cost to Buyer upon issuance of written notification to Seller of such intent.

Seller shall, at its expense, perform all maintenance, repairs and replacements necessary with respect to Buyer-Furnished Property so that the same may remain suitable for the use contemplated hereby and may be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

Seller shall give Buyer prompt written notice of any Buyer-Furnished Property which upon delivery is found to be defective. The correction or replacement of such defective property shall be accomplished at Buyer's written direction.

Upon delivery to Seller, the risk of loss or damage to Buyer-Furnished Property shall be upon Seller. Risk of loss or damage shall transfer to Buyer when such property is returned to Buyer.

Seller waives any and all claims relating to loss, damage, injury or delay arising out of or related to Buyer-

Furnished Property and Seller shall indemnify Buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Buyer-Furnished Property, whether such damage, injury or death be caused by defects in such property, negligence in the use thereof, strict liability or otherwise.

19. **Toxic Substances and EPA Requirements**

Seller warrants that each and every chemical substance delivered under this Purchase Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substance Control Act (Public Law 94-469), as may be amended.

Seller shall submit to Buyer Material Safety Data Sheets prepared in accordance with OSHA Hazardous Communication Standard, 29 CFR 1910.1200, as required.

Seller shall be responsible for all chemical substances or mixtures which it or its subcontractors or suppliers of any tier bring upon premises of Buyer or Buyer's customer. Seller shall be responsible for removing and disposing all such substances and/or mixtures, containers, materials and residue from their use, in accordance with all applicable federal, state and/or local statutes, laws, regulations, rules, orders and ordinances.

Seller warrants that all of the equipment and material furnished hereunder has been completely and accurately labeled pursuant to the requirements of 40 CFR Part 82, "Protection of Stratospheric Ozone" or that such equipment and materials do not require such labeling.

20. **Survival**

The provisions entitled "Inspection, Access and Audit, Approvals", "Ownership", "Intellectual Property", "Compliance with Laws, Standards and Site Rules", "Warranty", "Buyer Information", "Buyer-Furnished Property", "Insurance and Indemnity", and "Governing Law and Dispute Resolution" apply notwithstanding any other provision of the Purchase Order and shall survive completion of the Purchase Order.

21. **Insurance and Indemnity**

Requirements are contained in or attached to this Purchase Order and are made a part hereof.

22. **Governing Law and Dispute Resolution**

This Purchase Order shall be governed by the laws of the Commonwealth of Pennsylvania, USA, excluding both its rules or laws governing choice of laws and the United Nations Convention on Contracts for the International Sale of Goods. All disputes connected with, arising out of or relating to the subject matter of this Purchase Order shall be subject to the procedure described herein, except that the Parties shall not be obligated to follow such procedure with regard to disputes relating to confidentiality obligations, restrictions on use of information or property, ownership of or rights in information, tangible property, or intellectual property, or compliance with laws, standards or site rules. If a dispute arises, a Party shall provide the other Party written notice thereof, asking for mediation. During the thirty (30) day period following receipt of such notice, management level representatives of each Party shall meet at a mutually-acceptable time(s) and place(s) as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the dispute has not been resolved within thirty (30) days after receipt of the notice, or if the Party receiving said notice will not meet within such thirty (30) days, either Party may initiate mediation of the dispute in accordance with the American Arbitration Association ("AAA") Commercial Mediation Rules, as may be amended by the AAA. Both Parties shall participate in good faith. If the Parties agree to forego mediation or if the dispute has not been resolved pursuant to the aforesaid mediation procedures within sixty (60) days of the initiation of such procedures, either Party may pursue such rights and remedies as are available to it at law or equity. The Parties shall bear their own costs in the aforesaid dispute resolution and mediation procedures, except that the mediator's fee shall be shared equally by the Parties.

## **SUPPLEMENT 1 TO TERMS AND CONDITIONS 012501 (Revision100605)**

### **ARTICLE 21.**

#### **Insurance and Indemnity**

Seller shall defend, indemnify and hold harmless Buyer and its officers, agents, employees, successors and assigns from and against any and all liabilities, damages, costs, losses, claims, demands, actions, and expenses (including reasonable attorney fees) arising out of the Work and resulting from the death of or injury to any person or damage to any property, except to the extent caused by the negligence or willful misconduct of Buyer.

Seller shall, during the performance of Work and the warranty period therefor, maintain insurance of the types and minimum amounts set forth below. Maintenance of insurance shall not limit Seller's liability for loss or damage in excess of policy limits or outside of policy coverage.

Type of Coverage	Minimum Amount of Coverage
Worker's Compensation	As required by law
Employer's Liability	\$100,000 for each person
Motor Vehicle Liability (covering owned, leased and non-owned vehicle)	\$1,000,000
Commercial General Liability, including: <ul style="list-style-type: none"><li>• Premises/Operations</li><li>• Underground</li><li>• Explosion &amp; Collapse Hazard</li><li>• Products/Completed Operations</li><li>• Broad Form Property Damage</li><li>• Blanket Contractual Liability Coverage</li></ul>	\$2,000,000
Product Liability (may be included in Commercial General Liability)	\$2,000,000
Property (if Seller has care, custody or control of Buyer property)	Replacement Value

Seller shall upon Buyer's request provide a certificate evidencing the required insurance.

If Appendix A, Additional Insurance Requirements, is attached to this Purchase Order, Seller shall in addition maintain the insurance required therein.

### **Article 23.**

#### **ASBESTOS:**

Except as otherwise authorized by Buyer in writing, all equipment and materials furnished hereunder shall contain zero percent asbestos and Seller by acceptance of this purchase order certifies that such equipment and materials contain zero per cent asbestos. If the equipment or materials do contain asbestos, Seller shall advise Buyer of the asbestos content thereof and obtain Buyer's written approval to deliver the equipment or material. If Buyer authorizes delivery of equipment or materials containing asbestos, Seller shall clearly mark all equipment, materials and containers containing asbestos to indicate that such equipment, materials or container contains asbestos. Unless authorized in writing by Buyer, equipment and materials containing asbestos shall be delivered in sealed containers. Seller shall indemnify, defend and hold harmless Buyer from and against any and all claims, losses, liabilities, fines, expenses, demands and damages arising from the failure to comply with the requirements of this paragraph or from any unauthorized delivery of any equipment, materials or container which contains asbestos.