

DTE

Terms and Conditions for Material Purchases

TABLE OF CONTENTS

1.	DEFINITIONS.....	3
2.	SCOPE OF SALE AND PURCHASE.....	3
3.	INGREDIENTS AND HAZARDOUS MATERIALS.....	3
4.	DELIVERY OF MATERIALS.....	3
5.	ON-SITE SERVICES.....	4
6.	TITLE AND RISK OF LOSS.....	4
7.	INSPECTION, REJECTION, ACCEPTANCE AND REVOCATION OF ACCEPTANCE OF GOODS.....	4
8.	WORK DOCUMENTS.....	4
9.	ELECTRONIC SUBMISSIONS.....	4
10.	CHANGES.....	4
11.	PRICE AND PAYMENT.....	5
12.	GENERAL REPRESENTATIONS.....	5
13.	SELLER COVENANTS.....	5
14.	NUCLEAR POWER PLANT ADDITIONAL TERMS.....	5
15.	FEDERAL CONTRACTING REQUIREMENTS.....	5
16.	BACKGROUND INVESTIGATION REQUIREMENTS.....	6
17.	CONFIDENTIALITY.....	6
18.	INTELLECTUAL PROPERTY.....	6
19.	WARRANTY.....	7
20.	TERMINATION FOR CONVENIENCE.....	7
21.	TERMINATION FOR CAUSE.....	7
22.	INDEMNIFICATION.....	8
23.	LIQUIDATED DAMAGES.....	8
24.	LIMITATION ON LIABILITY.....	8
25.	SET OFF.....	8
26.	RECORDS AND AUDITS.....	8
27.	ASSIGNMENT.....	8
28.	FORCE MAJEURE.....	8
29.	NONWAIVER.....	9
30.	NOTICES.....	9
31.	SAVING CLAUSE- INDEPENDENT TERMS.....	9
32.	SURVIVAL.....	9
33.	NON-EXCLUSIVITY.....	9
34.	CONSTRUCTION OF TERMS.....	9
35.	GOVERNING LAW AND JURISDICTION.....	9
36.	ENTIRE AGREEMENT.....	9
	ON-SITE SERVICES SCHEDULE.....	9
	NUCLEAR TERMS SCHEDULE.....	11
	FEDERAL REQUIREMENT SCHEDULE.....	Error! Bookmark not defined.
	BACKGROUND INVESTIGATIONS REQUIREMENTS.....	13

TERMS AND CONDITIONS FOR MATERIAL PURCHASES

1. DEFINITIONS

The following terms shall have the following meanings:

- A. "Agreement" means these Terms and Conditions, the document(s) called the Purchase Order and/or Contract as executed by the parties, and all of the documents listed in the Purchase Order and/or Contract that are specifically incorporated into the Agreement.
- B. "Change Order" means the document issued by the authorized Company Representative that modifies the Agreement and, when required by Company, executed by Company and Seller.
- C. "Company" means the DTE Energy Company entity stated on the first page of the Purchase Order and/or Contract.
- D. "Company Representative" means the Company representative(s) identified in the Purchase Order and/or Contract.
- E. "Seller" means the person or legal entity with whom Company has entered into the Agreement.
- F. "Materials" means the materials, goods, equipment, stock, other tangible items or non-stock, and/or services covered by the Agreement, and includes all parts, portions, items, attachments, repairs, replacements and substitutions thereof.
- G. "Third Party Work" means any original works of authorship or inventions or designs created or owned by a third party and used in performing any Work under this Agreement, as identified in writing in sufficient detail in the Agreement so as to distinguish such Work from Work Product developed or created under the Agreement.
- H. "Work Documents" means all manuals, designs, specifications, technical descriptions, drawings, plans, reports, calculations, summaries, other items identified as deliverables from Seller to Company pursuant to the Agreement and other documentation necessary for the use of Materials.
- I. "Work Product" means all materials, notes, reports, documentation, computer programs in object code and fully-commented source code, literary works, graphical works, performances or displays and any derivatives, inventions, formulae, processes, machines, manufacturers, composition of matter devices or any portions thereof and Work Documents, and any improvements on any of them, prepared or developed by Seller for Company in the performance of this Agreement.

2. SCOPE OF SALE AND PURCHASE

Seller agrees to sell to Company the Materials identified in the Agreement at the stated price, quantity, ship to location and other specifications. Company is not obligated to purchase any minimum quantity or dollar amount of Materials from Seller.

3. INGREDIENTS AND HAZARDOUS MATERIALS

- A. Prior to delivery, Seller shall promptly furnish to Company a Material Safety Data Sheet ("MSDS") for any chemicals or hazardous materials or products to be delivered to Company, which includes at a minimum: (1) a list of all ingredients in the products and materials to be brought by Seller or its subcontractor or supplier to Company's property, (2) the quantity of all such ingredients and (3) information concerning any changes in or additions to such ingredients. Company shall require the immediate removal of any substance from its property if Seller fails to provide an MSDS. Any damage or delays caused by the removal of such substance shall be at Seller's expense.
- B. Prior to and during the shipment of any Materials, Seller shall furnish Company and any carriers with sufficient written warnings and notices (including appropriate labels on the products, materials, containers and packaging) of any hazardous material that is an ingredient or a part of any of the Materials, together with all special handling instructions, safety measures and precautions necessary to comply with all applicable laws, to inform Company and any carriers of any applicable legal requirements and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Materials, containers and packaging.

4. DELIVERY OF MATERIALS

- A. All Materials shall be properly packed and secured during shipment and delivered according to the time period stated in the Purchase Order and/or Contract. Time is of the essence for this Agreement and Seller shall at all times achieve one hundred percent (100%) on-time delivery. Company may from time to time change such quantities and delivery times, or direct temporary suspension of the scheduled deliveries.
- B. In the event Seller delivers the Materials prior to their scheduled delivery date, Company may, at its option, (i) refuse to accept the Materials and return them at Seller's expense or (ii) accept the Materials but defer payment until the time when payment would have been due had the Materials been shipped according to schedule.
- C. If delivery of the Materials is not completed by the time period stated in the Agreement, Company reserves the right, without liability and in addition to other rights and remedies, to (1) terminate the Purchase Order and or Contract with written notice to Seller with

respect to the stated quantities of Materials not yet delivered and (2) purchase substitute Materials from third parties and Seller shall be responsible for any increased cost.

5. ON-SITE SERVICES

If the Agreement requires Seller to be physically present on any Company site, Seller shall also comply with the provisions set forth in the attached On-Site Services Schedule.

6. TITLE AND RISK OF LOSS

A. Except as otherwise stated in the Agreement, title to all Materials subject to the Agreement shall remain with Seller until delivery.

B. Except as otherwise stated in the Agreement, risk of loss shall pass to Company upon delivery of the Materials by Seller.

C. Notwithstanding a contrary Incoterm or other shipping term, Seller shall be responsible for any loss or damage occurring during transit to the extent that such loss or damage is attributable to an act or omission of Seller or Seller's failure to adhere to the express shipping instructions of Company.

7. INSPECTION, REJECTION, ACCEPTANCE AND REVOCATION OF ACCEPTANCE OF GOODS

A. Seller shall provide and maintain a quality assurance system which shall assure that all Materials delivered to Company conform to Company's requirements as specified in the Agreement, whether manufactured or processed by Seller or by Seller's suppliers. Seller shall maintain adequate records of all inspections and tests that shall indicate the nature and number of observations made, the number and type of nonconforming or defective Materials, the quantities approved and rejected, and the corrective action taken.

B. Notwithstanding payment, passage of title of Materials to Company, or prior inspection or testing by Seller, all Materials are subject to final inspection and acceptance or rejection by Company.

C. At all reasonable times during the period of Seller's performance under the Agreement, including the period of manufacture, Company may inspect and/or test the Materials to be furnished under the Agreement at the locations where the work is being performed, including those of Seller's suppliers and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and testing. Company may conduct one hundred percent (100%) inspection of the Materials or any lot of the Materials or, at Company's option, Company may select and inspect samples thereof. Neither Seller nor Seller's suppliers shall change the location where the Materials are being manufactured, without the prior written consent of Company Representative.

D. In the event that Company determines that any Materials are nonconforming in any manner prior to acceptance, after giving Seller a reasonable time to cure, Company may, in addition to rejecting the Materials and all other remedies available, either itself or through others, rework, correct or otherwise alter any such Materials for the purpose of making them conforming, and all reasonable costs, charges and expenses associated therewith shall be the responsibility of Seller and may be deducted by Company from any amount due Seller. The parties further agree that Company may return to Seller any nonconforming Materials that are delivered to Company and not rendered conforming through Company's efforts (although Company shall be under no obligation to undertake such efforts) and receive full credit for the price of such Materials together with all reasonable costs, charges and expenses associated therewith. Any acceptance by Company is not a release or waiver of any of its rights under this Agreement.

8. WORK DOCUMENTS

Seller shall deliver all Work Documents to Company upon request, delivery of Materials or termination of this Agreement. All Work Documents or Work Product furnished by Seller in connection with this Agreement are the property of Company and, notwithstanding any markings or notices to contrary included on such Work Documents or Work Product, there shall be no restrictions upon Company's use thereof.

9. ELECTRONIC SUBMISSIONS

A. Seller warrants that any software and related documentation provided to Company in electronic form shall not contain any computer code that would: (1) disable the software or impair its use or operation in any way based on the elapsing of a period of time, the exceeding of an authorized number of copies, users, or other relevant metric, or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); (2) permit Seller or any third party to remotely, and without Company's knowledge or approval, access the software through a device such as those referred to as a "trap," "access code," or "trap door"; or (3) permit Seller or any third party to track, monitor, or otherwise report on the use or operation of such software.

B. If such virus or other contaminant is brought into Company's computer environment, by or through Seller, Seller shall reimburse Company for all labor and material costs incurred by Company to identify, contain and correct the effects of such virus. The hourly rate paid by Seller for the identification, containment and correction of the effects of such virus shall be at the prevailing hourly rate incurred by Company.

10. CHANGES

A. Company may make changes to the Agreement, including without limitation, changes to any one or more of the following: (1) the specifications of the Materials, (2) the addition or deletion of Materials; (3) the method of shipment of the Materials and (4) the place or time of inspection, delivery or acceptance of the Materials. If such change causes an increase or decrease in the cost of, or time required for performance of, the Agreement, an equitable adjustment may be made by Change Order. Notwithstanding the foregoing, nothing in this Section shall excuse Seller from proceeding with performance of the Agreement as changed. No price increases, costs, charges or other amounts, extensions of time for delivery or other changes shall be binding on Company unless evidenced by a Change Order. Payments made under this Section shall not exceed the aggregate price specified in the Agreement, less payments otherwise made or to be made. The provisions of this Section shall not apply if Company terminates all or any portion of the Agreement due to the default of Seller.

B. No claim by Seller for adjustment hereunder shall be considered unless made in writing within ten (10) calendar days from the date notice of any such change is received by Seller.

11. PRICE AND PAYMENT

A. Company shall pay Seller the prices indicated in the Agreement for all Materials purchased under this Agreement. Unless otherwise agreed to by a Change Order, Seller shall not increase the price stated in the Agreement. Invoices for Materials delivered shall be submitted on a timely basis, in the manner, frequency and form, and with such supporting documentation, as required by the Agreement. Seller shall promptly pay its subcontractors and/or suppliers upon receipt of each payment, the respective amounts allowed Seller to the extent of each such subcontractor and/or supplier's interest therein. Company shall pay approved invoices in accordance with the payment terms specified in the Agreement or shall notify Seller of its reasons for disapproval of such invoices. All payments are subject to adjustment for shortage or rejection.

B. Seller, as directed by Company, shall, at its own expense, obtain a prompt discharge of any lien or liens that may be filed on the Material or against Company's property in connection with the Materials. If any lien is filed, Company may withhold payment for the Materials or amounts due under this Agreement (or any other agreement between Seller and Company) until Seller provides proof that said lien has been removed. Company may, at its option, make payments directly to Subcontractors, Suppliers or other lien claimants with notice of such payment to Seller, and deduct such amounts from any payment to Seller or withhold, without interest, any payments otherwise due by Company to Seller because of any claim arising out of this or any other transaction with Company.

C. Seller shall defend, indemnify and hold harmless Company from any and all claims, demands, causes of action and/or costs, including reasonable attorney fees, attributable to Seller's failure to make any payments required by this Section. Nothing in the Agreement shall imply or infer an obligation of Company to make payment to any party other than Seller.

12. GENERAL REPRESENTATIONS

Seller represents and warrants that:

A. Execution, delivery and performance by Seller of this Agreement have been authorized by all necessary action on behalf of Seller.

B. The execution, delivery and performance by Seller under this Agreement does not conflict or result in the breach of any applicable laws, any judgment or decree of any court, or any agreement to which Seller is a party.

13. SELLER COVENANTS

Seller shall keep itself fully informed of and shall comply with all applicable federal, state and local laws, ordinances, industry standards, codes, regulations and executive orders or decrees (collectively, "Laws"), including but not limited to (1) the applicable Laws set forth on the Schedules to these Terms and Conditions and attachments to this Agreement, (2) environmental and pollution control laws, (3) Laws of bodies or tribunals having any jurisdiction or authority over the Materials, and (4) any rules or regulations of Company relating to health, safety or performance of the Agreement which in any manner affect those engaged or employed on any work, the Materials used in any work, or the performance of the Agreement. If any discrepancy or inconsistency should be discovered between the Agreement and any such Laws, Seller shall immediately report the same in writing to Buyer. Seller shall be responsible for the compliance by its subcontractors and suppliers of all tiers with the above provisions and shall be liable for all fines levied in violation of any Laws.

14. NUCLEAR POWER PLANT ADDITIONAL TERMS

If Seller is providing Materials for delivery to or use at a Company nuclear power plant, Seller shall abide by the additional terms and conditions set forth in the attached Nuclear Terms Schedule, which may be modified by Company from time to time to conform to any change in law.

15. FEDERAL CONTRACTING REQUIREMENTS

Seller agrees to comply with the Federal Contracting Requirements and Foreign Corrupt Practices Act as set forth on the attached Federal Requirements Schedule. Seller agrees that Company may modify Federal Requirements Schedule at any time to conform to any change in law, without notice to Seller.

16. BACKGROUND INVESTIGATION REQUIREMENTS

Contractor shall comply with the requirements set forth on the attached Background Investigations Requirements Schedule, which may be modified by Company from time to time to conform with any change in law.

17. CONFIDENTIALITY

A. Seller acknowledges and agrees that all information Company discloses to Seller or to which Seller may have access during Seller's performance of the Agreement is considered proprietary and confidential by Company, unless designated otherwise. This information is and shall, at all times, remain the property of Company. Contractor shall disclose such information to its employees, subcontractors or suppliers only to the extent necessary to provide the Materials or perform other obligations under the Agreement. Seller shall advise such persons of the existence of this Agreement, of the confidential nature of the information and of Seller's obligations regarding same under this Agreement. Seller, its employees, subcontractors and suppliers and their employees shall not, without permission of Company, disclose such proprietary or confidential information to any third party for any reason or purpose whatsoever. In the event of a breach or threatened breach of this Section by Seller or those under its control, Company shall be entitled to an injunction restraining such conduct. Nothing herein shall be construed as prohibiting Company from pursuing any other remedies available to Company for such breach or threatened breach.

B. Seller and its employees shall not be required to protect or hold in confidence any such information which (1) becomes known to the public through no act or omission of Seller or its employees; (2) is ordered to be disclosed by a court or administrative agency; or (3) is thereafter developed independently by Seller. In the event that Seller is requested or required under compulsion of legal process to disclose such information, Seller shall not, unless required by law, disclose the information until Company has first (i) received prompt written notice of such request or requirements to disclose and (ii) had an adequate opportunity to obtain a protective order or other reliable assurance that confidential treatment shall be accorded to the Information. Seller shall not oppose actions by Company to assure such confidential treatment.

C. No publications or advisements concerning the subject matter of the Agreement, Company's name and/or logo, or photographs of Company property and materials or portions thereof shall at any time be made by or on behalf of Seller, its subcontractors, or suppliers, unless prior written authorization therefore is obtained from Company Representative.

18. INTELLECTUAL PROPERTY

A. Seller represents and warrants that it has authority to grant, and hereby grants Company, a permanent, assignable, nonexclusive, royalty free license to use, maintain and modify (except for software) any Third Party Work that is required for the performance of this Agreement.

B. All Work Product shall become the sole and exclusive property of Company, whether delivered to Company or not, and shall be delivered to Company in hard copy in electronic native file format as well as Adobe Portable Format (PDF) upon request or upon expiration, termination or completion of this Agreement.

C. Company and Seller agree that all Work Product is a Work-Made-For-Hire under the copyright, patent and trademark laws (as applicable) of the United States. In addition, if any Work Product is not Work-Made-For-Hire, Seller agrees to assign and does hereby expressly assign to Company for all time, all right, title and interest to all Work Product, including any and all intellectual property rights it may have in any whole or part of the Materials. Seller agrees to obtain any assignments of rights from other parties, including its employees, it requires to comply with this Section.

D. During and after the expiration or termination of this Agreement, Seller shall do whatever is necessary, at Company's cost, to obtain patents or copyrights on any concepts, process, products or writings conceived, developed or produced by Seller for the purpose of performing services. Seller shall execute all documents as may be necessary or requested by Company to implement and carry out the provisions of this Section.

E. Notwithstanding the foregoing, Seller shall retain ownership of all its pre-existing know-how embodied in the Work Product, provided that the Company shall have a transferable license to use such pre-existing know-how to the fullest extent necessary to realize the benefits of the Work Product and/or Materials.

F. Seller represents and warrants that all materials, equipment and processes used or supplied and Work Product are free from infringement of any patent, trademark or other intellectual property right. Seller shall pay all royalties and license fees necessary for the performance of this Agreement or use of the Materials.

G. Seller shall indemnify and defend any action brought against Company based on a claim or allegation that any process or method used, equipment or material supplied pursuant to the Agreement constitutes an infringement or violation of any patent, trademark or other proprietary right. Company shall at Seller's expense give such information and assistance as it may deem appropriate for the defense of same, and Seller shall pay all of Company's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, method, equipment, material or service is enjoined, Seller shall at its own expense and at Company's option either (1) procure for Company the right to continue using said process, equipment, material

or service; (2) replace it with non-infringing process, equipment, materials or service acceptable to Company; or (3) modify it in a manner acceptable to Company so that it becomes non-infringing.

19. WARRANTY

A. Seller represents and warrants that:

(1) all materials and equipment furnished by it and its subcontractors or suppliers shall be (a) free from defects in design, material and workmanship, (b) fit for the purpose intended, (c) new and conform to the specifications, drawings, samples and other descriptions as set forth in the Agreement and, (d) where not specified, of the highest quality and best grade of its respective kind for its intended use,

(2) it has good and marketable title to all materials at the time the materials are loaded for delivery to Company and that title to all materials and equipment furnished by it shall pass to Company free and clear of all liens, claims, security interests or encumbrances, and

(3) all engineering, drafting or other technical services provided as part of the Materials shall be performed by qualified and competent personnel in accordance with industry practice and the high standards of care, skill, diligence and practice appropriate to the nature of the services rendered and shall conform in all respects to any specifications.

B. Seller acknowledges and agrees that Company will be relying on the accuracy, competence and completeness of the technical services to be performed and will use the results of such services as input data for Company projects (as described in the applicable scope of work). If at any time during the eighteen (18) month period from the date that the Materials are first used for the purposes intended by Company or the four (4) year period from the date of acceptance by Company, whichever occurs first, it appears that the Materials or any part thereof do not conform to these warranties, Company shall notify Seller within a reasonable time after such discovery and Seller, at its sole expense and after obtaining Company's concurrence, shall promptly correct such defects as follows:

(1) Seller shall provide any redesign, repair, replacement and testing services as necessary to correct any nonconforming materials or workmanship. The warranty for redesigned, repaired or replaced Work shall be of equal duration and scope as the original warranty and commence upon Company's acceptance of such corrected Work.

(2) Seller shall defend and hold harmless Company, its successors and assigns from and against any liens, charges, claims or encumbrances in breach of the foregoing warranty; this provision of this clause B2 shall survive termination or expiration of this Agreement.

C. If Seller fails to fulfill its obligations under this Section, Company may revoke acceptance and cover by purchasing substitute Materials or may proceed to make corrections or accomplish Seller's work by the most expeditious means available. Seller shall be liable for the cost of cover or correction performed by Company, including all damages proximately caused by the breach of the foregoing warranties, such as removal and reinstallation costs, inspection costs and all shipping costs.

D. Seller shall promptly provide Company Representative (a) notice of any defects (latent or otherwise) in the Materials; (b) any warnings concerning defects (latent or otherwise) in the Materials; (c) any recall notices or safety bulletins related to the Materials; and (d) details including corrective action requirements. The provisions of this clause D shall survive termination or expiration of this Agreement.

E. In addition to, and without limiting, Seller's warranty, Seller shall obtain and extend to Company any manufacturer's warranty for products or processes utilized during, or incorporated into, the Material and procured by Seller.

20. TERMINATION FOR CONVENIENCE

Company may at any time, upon ten (10) calendar days-notice without cause, terminate this Agreement in whole or in part. Upon such termination, Seller agrees to waive all claims for damages, including without limitation claims for loss of profits, and to accept as its sole remedy for termination the cost of all Materials delivered prior to the date of termination, including reasonable overhead and profit thereon and reasonable cost incurred by Seller in terminating the Agreement. Company shall have no liability whatsoever for goods which are Seller's standard stock. Termination shall not relieve Seller of any of its obligations for Materials delivered hereunder.

21. TERMINATION FOR CAUSE

A. Seller shall be in default hereunder if (1) Seller refuses, neglects or fails in any respect to prosecute the Agreement hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein, (2) Seller refuses, neglects, or fails to perform any other obligations under this Agreement or provide adequate assurance of performance, (3) Seller makes an assignment for the benefit of creditors or bankruptcy or insolvency proceedings are instituted by or against Seller, or (iv) at any time in Company's sole judgment, Seller's financial or other condition or progress on the Agreement shall be such as to endanger timely performance.

B. Upon any default hereunder, in addition to all other remedies hereunder, under applicable law or in equity, Company may (1) terminate all or any portion of the Agreement without liability, except the obligation to pay the purchase price for conforming Materials received by Company prior to termination that were accepted in accordance with the Agreement and not previously paid for, (2) require Seller to repair or replace any or all Materials, at Company's option and at Seller's sole expense at the location designated by Company, (3) require Seller to pay all transportation and other charges arising from delivery, storage and return of Materials, (4) purchase replacement Materials from a third party and charge the same to Seller, (5) recover from Seller any and all increased costs and other damages relating to such default and/or (6) recover attorneys' fees and costs of suit, plus interest.

C. No delay by Company in the enforcement of any provision of the Agreement shall constitute a waiver thereof, and no waiver thereof shall constitute a waiver of any other provision.

D. Upon termination, Seller shall deliver all Materials in progress under the Agreement and provide Company with all intellectual rights in any Work Product.

22. INDEMNIFICATION

A. Seller covenants and agrees that it shall defend, indemnify and hold Company and all of its officers, agents and employees (each, a "Company Indemnitee") harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, whether to any person, including employees of Seller, its subcontractors and suppliers, or property or both, arising directly or indirectly out of or in connection with Seller's or any of its subcontractor's or supplier's performance of the Agreement or in connection with the provision of Materials, to which any Company Indemnitee may be subject or put by reason of any act, action, neglect or omission on the part of Seller, any of its subcontractors or suppliers or any Company Indemnitee. Without limiting the foregoing, said obligation includes claims involving Seller's, supplier's or subcontractor's employees injured while going to and from the Project. If the Agreement is one subject to the provisions MCL 691.991, then Seller shall not be liable under this Section for damage to persons or property directly caused or resulting from the sole negligence of any Company Indemnitee.

B. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Seller's foregoing indemnity should be brought against any Company Indemnitee, Seller hereby covenants and agrees to assume the defense thereof and defend the same at Seller's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by or obtained against any Company Indemnitee in such suits or other proceedings. In the event of any judgment or other lien being placed upon the property of Company in such suits or other proceedings, Seller shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

23. LIQUIDATED DAMAGES

This Section applies only if liquidated damages are specified in the Agreement. If Seller fails to deliver the Materials, or any severable portion thereof, or comply with this Agreement, within the time specified in this Agreement, the damages to Company as a result of such delay shall be substantial. However, the amount of such damages is difficult and impractical to determine and, as such the parties agree that the amount set forth as liquidated damages in the Agreement is a reasonable estimate of Company's damages for such delay. The amount of any liquidated damages may be withheld from any payments due Seller or shall be paid by Seller, or its sureties, if any, to Company. If liquidated damages are withheld during performance and Seller subsequently remedies its delay, such liquidated damages shall be refunded.

24. LIMITATION ON LIABILITY

Except as may be expressly stated elsewhere in this Agreement, neither party shall be liable to the other party for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.

25. SET OFF

Company shall be entitled at any time to set off any sums owing by Seller or any of Seller's affiliated companies, to Company or any of Company's affiliated companies, against sums payable by Company.

26. RECORDS AND AUDITS

Company or its authorized representative shall have access to Seller's records to review, audit, and verify any information connected with this Agreement for a period of three (3) years after completion of the Agreement. Seller shall keep all records in an electronic format and be able to transmit them to Company in an electronic native-file format as well as Adobe Portable Document Format (PDF). All documents and records shall be provided to Company at no additional cost. Company has the right to use general audit software and other reporting tools to analyze the data.

27. ASSIGNMENT

No assignment of this Agreement or any of its rights or obligations hereunder shall be made by Seller without first obtaining the written consent of Company. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

28. FORCE MAJEURE

A. Except as otherwise provided herein, Seller shall not be liable for a reasonable delay or default in furnishing Materials hereunder and Company shall not be liable for failure to perform any of its obligations hereunder, to the extent due to fire, flood, storm, other natural disaster, national emergency or war, and not due to labor problems, inability to obtain financing, negligence or other similar condition of such party, provided that either party has given the other prompt notice of such occurrence.

B. Within seven (7) calendar days of the commencement of any excusable delay, Seller must notify Company Representative in writing of the nature, cause, date of commencement and expected impact of the event. Seller must exercise due diligence in proceeding to meet its performance obligations hereunder, notwithstanding the delay. Upon Seller satisfying these conditions, Company may extend the schedule for the period of time equal to the time actually lost by reason of the delay.

29. NONWAIVER

None of the provisions of the Agreement shall be considered waived by either party unless such waiver is given in writing by the other party. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Agreement unless expressly set forth in such waiver.

30. NOTICES

Notices and other written communications are to be made in writing to the address stated in the Agreement. Such notices and other written communications must reference the Purchase Order and/or Contract Number appearing in the Agreement.

31. SAVING CLAUSE- INDEPENDENT TERMS

Each term and condition of this Agreement is deemed to have an independent effect and the invalidity of any partial or whole paragraph or section shall not invalidate the remaining paragraphs or sections. The obligation to perform all of the terms and conditions shall remain in effect regardless of the performance of any invalid term by the other party.

32. SURVIVAL

All of the terms of this Agreement which by their nature extend beyond (a) the termination or cancellation of this Agreement or (b) the completion of the delivery of Materials shall survive and remain in full force and effect and apply to respective successors and assigns.

33. NON-EXCLUSIVITY

It is agreed that this Agreement is not exclusive, and that nothing herein shall be deemed to prevent Company from engaging others to provide any of the Materials or to prevent Company from providing any of the Materials through its own employees or agents.

34. CONSTRUCTION OF TERMS

The terms of this Agreement have been arrived at after mutual negotiation and the parties agree that its terms shall not be construed against any party by reason of the fact that this Agreement was prepared by one of the parties. References to laws refer to such laws as they may be amended from time to time. The words "shall" and "will" have equal force and effect. The words "include", "including" or "includes" shall be read to be followed by the words "without limitation". The section headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation hereof.

35. GOVERNING LAW AND JURISDICTION

The Agreement, and the rights, obligations and liabilities of the parties hereto shall be construed in accordance with the law of the State of Michigan, without regard to its conflict of law principals. The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.

36. ENTIRE AGREEMENT

A. The Agreement represents the entire agreement between Company and Seller. No modification of the Agreement shall be effective unless made by a Change Order. Any agreements, negotiations or understandings of the parties prior or contemporaneous to the date of the Agreement, whether written or oral, are superseded hereby.

B. Any document submitted by Seller (including any Seller document referenced in the Agreement) is used solely for the purpose of describing the Materials and, to the extent containing any terms in addition to or inconsistent with the terms of the Agreement, or a rejection of any terms of the Agreement, shall be deemed to be a counter offer to Company and shall not be binding upon Company unless specifically accepted in writing by Company Representative. In the absence of written acceptance of such counteroffer by Company, commencement of performance by Seller shall be deemed to be an agreement by Seller to perform in accordance with the terms of the Agreement and an acceptance hereof, notwithstanding any prior dealings or usage of trade.

ON-SITE SERVICES SCHEDULE

SAFETY AND SECURITY

A. Seller shall take all necessary precautions for the protection of the health and safety of its employees, its subcontractors and suppliers, Company, the public and other third parties and shall at all times comply with Company's health, safety and security rules and procedures

applicable to the site (which are subject to change from time-to-time) and appropriate for the Materials. As required by the Agreement, Seller shall comply with the DTE Energy Contractor Safety Requirements and applicable Safety Handbooks.

B. Company may furnish security personnel at the site to control access, patrol yards and buildings, maintain order, and enforce regulations. The presence or absence of such security personnel shall not modify the responsibility of Seller for loss and/or damages to persons or property.

REPORTING OF ACCIDENTS

Seller shall notify Company Representative and shall comply with the following telephone reporting procedure in the event that its employee(s) or its subcontractor's or supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Work performed under the Agreement.

1. Between the hours of 8:00 a.m. and 5:00 p.m. eastern time, Monday through Friday, the Legal Investigations Division of Company's Legal Department (313-235-7705) shall be notified immediately.

2. Between the hours of 5:00 p.m. and 8:00 a.m. eastern time, Monday through Friday, weekends and holidays, the Company switchboard (313-235-8000) shall be notified. It shall in turn relay the report to the Legal Department representatives on call. In addition to this telephone reporting procedure, Seller shall also submit to the Legal Investigations Division of Company's Legal Department a written follow-up accident report form (available from the Company Representative) within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Seller shall also furnish Company with a copy of all claims submitted to its insurance companies.

INSURANCE

A. Seller shall provide Company with Certificate(s) of Insurance evidencing that insurance coverage of the types, amounts and conditions as specified in Appendix A, "Insurance provided by Contractor" are in effect. Such insurance coverage shall remain in effect at all times that Seller is present on Company property.

B. Contractor shall require its subcontractors to carry insurance in the amount, type and form of insurance required by the Agreement. If its subcontractors do not obtain such coverage, Contractor shall insure the activities of its subcontractors.

NUCLEAR TERMS SCHEDULE

PROTECTION AND INSPECTION OF MATERIALS

If Seller is providing goods for delivery to or for use at a Company nuclear power plant, Seller shall establish cleanliness control and foreign material exclusion practices that shall ensure that: (i) the Materials when delivered are free from oil or grease (not being used as a preservative or protective coating), machine tailings, dirt, mill scale, weld splatter, residue, broken or loose parts, contaminants, loose fasteners, tags and labels (not permanently affixed to internals) or other foreign material that may adversely affect the operation of the Materials or may be introduced into interfacing equipment and systems; (ii) if the Materials are shipped with other parts (such as seals, gaskets, lubricants, mounting hardware), precautions should be taken to ensure smaller items cannot be introduced into openings or cavities of larger parts and equipment; (iii) where appropriate, every item included with a shipment should be identified in the packing list or by other means; (iv) if necessary, clearly visible protective devices such as caps, plugs or covers (protective devices shall be validated for material compatibility to guarantee no impact to the Materials provided (for example, protective devices containing halogens or heavy metals should not be used on stainless steel items)); and (v) if desiccants or other preservatives are used to protect the Materials, the affected part of equipment shall be clearly labeled or tagged with information including the type of preservative, its location, and any special instructions pertaining to its removal prior to installation or other applicable information such as quantity of desiccant packages.

Prior to shipping any radioactive material to any Company Site, Seller must notify Radiation Protection (734-586-5302) no less than 48 hours in advance and inform them of what is being shipped, curie content, purchase order number and estimated time of arrival. Prior to receiving any material at any Company Site that might have been used at another nuclear facility, Seller must contact Radiation Protection Department to survey the material prior to entering the protected area.

DELIVERY OF SUSPECT/COUNTERFEIT ITEMS

The delivery of suspect/counterfeit Materials is of special concern to Company. If any Materials specified in the Agreement are described using a part or model number, a product description, and/or industry standard referenced in the Agreement, Seller shall assure that the Materials supplied by Seller meet all requirements of the latest version of the applicable manufacturer data sheet, description, and/or industry standard unless otherwise specified. If the Seller is not the manufacturer of the Materials, the Seller shall make reasonable efforts to assure that the Materials supplied under this Agreement are made by the original manufacturer and meet the applicable manufacturer data sheet or industry standard. Should Seller desire to supply an alternate item that may not meet the requirements of this paragraph, Seller shall notify Company of any exceptions and receive Company's written approval prior to shipment of the alternate Materials to Company.

If suspect/counterfeit Materials are furnished under this Agreement or are found in any of the Materials delivered hereunder, Company may dispose of or return such Materials to Seller in accordance with the warranty provisions applicable to the Agreement. The Seller shall promptly replace such suspect/counterfeit Materials with items meeting the requirements of the Order. In the event the Seller knowingly supplied suspect/counterfeit Materials, the Seller shall be liable for reasonable costs incurred by the Company for the removal, replacement and reinstallation of such Materials in accordance with the warranty provisions applicable to the Agreement.

FEDERAL REQUIREMENTS SCHEDULE

A. Company, as a federal contractor, requires that Contractor agree to be bound by and comply with the following clauses which are incorporated by reference herein and have the same force and effect as if set forth in full text.

(1) The following Federal Acquisition Regulation ("FAR") and Code of Federal Regulations ("CFR") clauses, as amended, are incorporated by reference in these terms and conditions unless Contractor is exempt thereunder: Equal Opportunity, FAR 52.222-26 (applies to all orders); Prohibition on Segregated Facilities, FAR 52.222-21 (applies to all orders); Anti-Kickback Procedures, FAR 52.203-7 (applies to all orders over \$100,000); Restrictions on Subcontractor Sales to the Government, FAR 52.203-6 (applies to all orders); Anti-kickback Procedures FAR 52.203-7 (applies to orders of \$150,000 or more); Combat Trafficking in Persons, FAR 52.222-50 (applies to orders of \$500,000 or more), Equal Opportunity for Veterans, FAR 52.222-35 (applies to orders of \$150,000 or more); Equal Opportunities for Workers with Disabilities, FAR 52.222-36 (applies to orders of \$15,000 or more) and Privacy Training, FAR 52-224-3 (applies if Contractor's (or subcontractor's) employee(s) will have access to personally identifiable information (PII) or a system of records on individuals. . To the extent not exempt, Contractor shall abide by the requirements of 41 CFR 60-300.5(a) (applies to orders of \$100,000 or more) and 60-741.5(a) (applies to orders of \$10,000 or more). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. The terms "Contractor," "Government" and "Contracting Officer" as used in the FAR clauses shall be deemed to refer to "Contractor," "Company" and "Company Representative", respectively.

(2) Except to the extent that this Agreement is exempt from any of these requirements, Contractor agrees to be bound by and comply with the clauses set forth at 48 CFR 52.219-8 (Utilization of Small Business Concerns) and 48 CFR 52.219-9 (Small Business Subcontracting Plan) (only if this Agreement exceeds \$700,000 and if Company requests submission of a Small Business Subcontracting Plan).

B. Contractor does hereby represent, warrant and covenant that:

(1) Contractor shall not cause Company or its affiliates to be in violation of the Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.) as amended (the "FCPA") or any other applicable law.

(2) With respect to its performance under the Agreement, Contractor and its owners, directors, officers, employees, and agents will not, directly or indirectly through third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to any individual, entity, or government for purposes of corruptly obtaining or retaining business for or with, or directing business to, any person, including, without limitation, Company or its affiliates.

(3) Contractor shall ensure that no part of any payment, compensation, reimbursement or fee paid by Company to Contractor will be used directly or indirectly as a corrupt payment, gratuity, emolument, bribe, kickback or other improper benefit.

(4) Contractor shall provide to Company and/or its representatives and advisors all supporting documents requested by Company pertaining to any expenses incurred, products provided, and/or services performed by Contractor and its agents pursuant to the Agreement to ensure compliance with the FCPA. Contractor understands and acknowledges that, notwithstanding any other provision contained in the Agreement, none of Company or any of its affiliates shall be obligated to reimburse any expense incurred or pay for any Work, in Company's reasonable opinion, (1) Contractor has failed to provide adequate documentation or information to confirm that an expense or charge did not violate the FCPA, or (2) an expense reimbursement or product/service payment would cause Company or any of its affiliates to be in violation of the FCPA.

BACKGROUND INVESTIGATIONS REQUIREMENTS

- A. Contractor must conduct a background check (as set forth herein) on all of its workers assigned to provide services to Company, prior to that respective worker starting work on Company's project.
- B. In performing the background checks, Contractor agrees to comply with all applicable local, state and federal laws, including the Fair Credit Reporting Act and agrees that such background check will be performed by a National Association of Professional Background Screeners Accredited Company.
- C. Background checks will include, but not limited to:
- Social Security Number (SSN) Trace;
 - Criminal history check in all federal, state, and county jurisdictions as revealed by address history on social security trace. Criminal search shall also include any name variations and/or aliases located on the social security trace. County records must be searched at the court level to maintain maximum possible accuracy. Automated county searches, commonly referred to as Bots, may not be used unless guaranteed to be equivalent by county court clerk.
 - US Patriot Act Watch Lists.
 - National Criminal Index Search to include State Sex Offender Registries; Office of Foreign Asset Control (OFAC).
 - Verification of Immigration Status, including valid I-9 Form where applicable. Note the Company expressly prohibits any contractor from employing any person on Company premises who does not have valid authorization to work in the United States.
 - U.S. law requires companies to employ only individuals who may legally work in the United States – either U.S. citizens, or foreign citizens who have the necessary authorization. Contractor must validate eligibility through E-Verify.
 - Driving History (where permitted by law and if contractor is required to operate a Company motor vehicle).
- D. Unless restricted by applicable law, all convictions for misdemeanors or felonies shall be reviewed by Contractor to determine whether the criminal conviction disqualifies the worker from working on Company's project.
- E. Examples of convictions that shall be carefully reviewed by Contractor for possible disqualification include, but are not limited to,; crimes of dishonesty (i.e. theft, embezzlement, fraud, forgery, etc.) and violence (i.e. murder, rape, kidnapping, assault, robbery, stalking, harassment, etc.).
- F. In evaluating the results of background checks, Contractor shall consider factors such as the nature and severity of the crime, the length of time that has passed since the offense occurred, how the crime relates to the worker's proposed job responsibilities, truthfulness and completeness of the worker's disclosure of convictions, and evidence of rehabilitation and subsequent job history.
- G. Contractor provides Company an ongoing representation and warranty that it has conducted background checks consistent with the requirements set forth in this Schedule. Further, if Contractor breaches this warranty, it agrees that it will make Company whole for any cost, claim, fine, or penalty that Company may incur as a result, directly or indirectly, from a breach of this warranty.
- H. Contractor covenants and agrees that it shall defend, indemnify and hold Company, its parent, and all of their officers, agents and employees (each a, "Company Indemnitee") harmless for any claim, loss, damage, cost, charge, expense, lien, settlement or judgment, including interest thereon, including employees of Contractor, its subcontractors and suppliers, or property or both, arising directly or indirectly out of or in connection with Contractor's or any of its subcontractor's or supplier's breach of the warranty and representation set forth in this Schedule. In the event any suit or other proceedings for any claim, loss, damage, cost, charge or expense covered by Contractor's foregoing indemnity shall be brought against any Company Indemnitee, Contractor hereby covenants and agrees to assume the defense thereof and defend the same at Contractor's own expense and to pay any and all costs, charges, attorney's fees, and other expenses, and any and all judgments that may be incurred by or obtained against any Company Indemnitee's in such suits or other proceedings.
- I. Federal and state laws and/or regulations may require Contractor to conduct periodic background checks for Temporary Personnel assigned to certain positions (e.g., positions requiring Nuclear, NERC or TWIC access). Company may also require Contractor or Contractor employees be subject to additional background investigative activities completed by the Company or other 3rd party vendors, to satisfy the federal regulations for access to a nuclear facility or other NERC / TWIC regulated assets. Company will notify Contractor of any assignments requiring periodic updates or re-completion of background check activities. If any worker moves from one assignment to another, Contractor shall verify with Company whether a re-analysis is required.