

**SHORT FORM
TERMS AND CONDITIONS FOR MATERIAL PURCHASES**



1. ENTIRE AGREEMENT

The Purchase Order or Contract together with these Terms and Conditions and all documents referenced and specifically incorporated into the Purchase Order or Contract are the entire agreement between the Parties (referred to collectively as "Agreement"). No modification of the Agreement shall be effective unless by a Change Order issued by Company's Buyer. "Company" shall mean the DTE Energy entity stated on the first page of the Purchase Order or Contract. "Seller" shall mean the person or legal entity with whom Company has entered into the Agreement. Any agreements, negotiations or understandings of the parties prior or contemporaneous to the date of the Agreement, whether written or oral, are superseded hereby. Any document submitted by Seller (including any Seller document referenced in the Agreement) is used solely for the purpose of describing the materials ("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's Buyer.

2. DELIVERY OF MATERIALS

Time is of the essence for this Agreement. 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 cancel this Agreement by notice effective upon receipt by Seller as to stated quantities of Materials not yet delivered and to purchase substitute Materials from third parties and Seller shall be liable for increased cost.

3. INSPECTION AND ACCEPTANCE OF GOODS

A. Seller shall provide and maintain a quality assurance system which shall assure that all Materials delivered to Company conform to the Agreement Seller shall maintain adequate records of all inspections and tests. Such records shall be made available to Company at all times and, unless otherwise agreed to by Company, shall be retained by Seller for a period of at least five (5) years.

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

4. RISK OF LOSS IN TRANSIT

Notwithstanding the stated F.O.B. point, Seller shall be responsible for any loss or damage occurring during transit when such loss or damage is attributable either to an act or omission of Seller or to a failure of Seller to adhere to the express shipping instructions of Company.

5. WARRANTY

A. Seller warrants that it has good and marketable title and that the Materials are not subject to any liens, charges, claims or encumbrances by any person or entity. Seller shall defend and hold harmless Company, its successors and assigns from and against any such liens, charges, claim or encumbrances. Seller warrants that the Materials shall be free from defects in design, material, workmanship and title, conform in all respects to the terms of Agreement, be new and, if no quality is specified, of the best quality. If at any time prior to eighteen (18) months from the date that the Materials are first used for the purposes intended by Company or four (4) years from the date of receipt by Company, whichever occurs first, it appears that the Materials or any part thereof do not conform to these warranties and Company so notifies Seller within a reasonable time after such discovery, Seller,

at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity or replace the nonconforming Materials. The warranty period for such corrected or replaced Materials shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected or replaced Materials. If Seller fails to fulfill its obligations under this Section, Company may reject or 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.

C. Seller shall promptly provide Company's Buyer and the Company's Contract Administrator (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 Section shall survive termination, cancellation or expiration of the Purchase Order or Contract.

6. WARRANTY AND INDEMNITY - PATENTS, TRADEMARKS, AND PROPRIETARY RIGHTS

Seller warrants that all materials, and processes used or supplied and any work performed are free from any infringement of any patent, trademark or other intellectual property right. Seller shall indemnify and defend any action brought against Company based on a claim or allegation that any process or method used, material supplied or service performed 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, Materials 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, Materials or service; (2) replace it with non-infringing process, Materials or service acceptable to Company; or (3) modify it in a manner acceptable to Company so that it becomes non-infringing.

7. PRICE AND PAYMENT

Company shall pay Seller the prices indicated in the Agreement for all Materials purchased under this Agreement. 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.

8. CHANGES

Company may make changes to the Agreement, including without limitation, changes to any one or more of the following: (a) the specifications of the Materials, (b) the addition or deletion of Materials; (c) the method of shipment of the Materials and (d) 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 issued by Company Buyer. 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 issued by Company Buyer. Payments made under this Section shall not exceed the aggregate price specified in the Agreement. No claim by Seller for adjustment hereunder shall be considered unless made in writing within ten (10) days from the date of notice of any such change is received by Seller.

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9. FORCE MAJEURE

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, 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. Within seven (7) days of the commencement of any excusable delay, Seller must notify Company Buyer 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.

10. TERMINATION FOR CONVENIENCE

Company may, at its option, by written Change Order issued by Company's Buyer, terminate the Agreement or any part thereof upon ten (10) days notice without cause. Upon such termination, Seller agrees to waive all claims for damages, including 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.

12. 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.

13. LAWS, REGULATIONS AND PERMITS

Seller shall keep itself fully informed of and shall observe and comply with all federal, state and local laws, ordinances, codes and regulations..

14. FEDERAL CONTRACTING REQUIREMENTS

As a federal Contractor, Company requires that Seller 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:

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 Seller 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); Affirmative Action for Workers with Disabilities-FAR 52.222-36 (applies to orders of \$10,000 or more); Anti-Kickback Procedures, FAR 52.203-7 (applies to all orders over \$100,000); Notice of Employee Rights Concerning Payment of Union Dues and Fees, 29 CFR Part 470 (applies to all orders over \$100,000); Affirmative Action for Special Disabled and Vietnam Era Veterans-FAR 52.222-35 (applies to orders of \$25,000 or more); and Employment Reports on Disabled Veterans and Veterans of the Vietnam Era-FAR 52.222-37 (applies to orders of \$25,000 or more). The terms "Contractor," "Government," and "Contracting Officer" as used in the FAR clauses shall be deemed to refer to "Seller," "Company" and "Contract Administrator."

15. TECHNICAL DATA

Seller grants Company and its affiliates and contractors a perpetual license to use all materials and documents provided by Seller including all manuals, data, designs, drawings, plans, and/or specifications for use, repair or maintenance of the Materials.

17. RECORDS AND AUDITS

Company or its authorized representative shall have access to Seller's records at Company's premises or at Seller's regular place of business during normal business hours to review, audit, and verify any information connected with this Agreement, including (1) payment for furnished other than on a firm price basis, (2) progress payments, or (3) the negotiation of price adjustments for changes. Copies of any material shall be made for Company at its request and any reasonable cost of reproduction shall be borne by Company.

18. 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.

19. 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 Number appearing in the Agreement.

20. 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.

21. 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.

22. 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.