

**DUKE ENERGY STANDARD TERMS AND CONDITIONS OF PURCHASE
FOR GOODS AND SERVICES**

Under these Standard Terms and Conditions, the word "Duke Energy" shall mean the Duke Energy legal entity listed on the face of the Agreement, Purchase Order or Contract Order to which these Standard Terms and Conditions are attached, or one of Duke Energy's authorized assigns.

A. Terms and Conditions Applicable to Purchase of Goods

1. **Warranty.** Seller represents and warrants that: (a) Seller shall deliver good, exclusive and marketable title to the Goods (as defined by the Uniform Commercial Code) free and clear of all liens, security interests, claims, and encumbrances; (b) for a period of 12 months after installation or 18 months after acceptance, whichever is less, the Goods shall be free from defects in materials and workmanship and shall comply with all final written descriptions, specifications, drawings and representations Seller has provided to Duke Energy, including those specified in the Agreement; (c) except as authorized by Duke Energy in writing, all Goods and materials furnished, delivered or installed by Seller shall contain no asbestos, and (d) no federal, state, local or foreign statute, law, rule, regulation or order will be violated in manufacturing, selling or delivering of the Goods. Seller shall promptly repair or replace, at Duke Energy's election, all Goods that do not comply with this warranty.

2. **Risk of Loss; Acceptance.** Seller shall bear all risk of loss with respect to the Goods until Duke Energy actually receives and accepts the Goods. Duke Energy shall have the right to inspect the Goods before accepting them and have a reasonable period of time after discovering a defect or nonconformity to reject or revoke acceptance of the Goods. If Duke Energy rejects the Goods or revokes its acceptance of the Goods, and Seller does not deliver conforming Goods on or before the delivery date specified in the Agreement, Duke Energy shall have the right, at Duke Energy's election, to terminate all or a portion of the Agreement and obtain a prompt refund from Seller of all payments Duke Energy has made with respect to that portion of the Agreement Duke Energy has terminated. Seller shall pay all costs Duke Energy incurs in returning the Goods. Seller shall comply with all of Duke Energy's labeling requirements for the Goods.

3. **Inspection.** Duke Energy shall have the right to place one or more inspectors in Seller's facilities at any time to inspect the Goods and the manufacturing and assembling process for the Goods and to inspect and copy all quality assurance and other records relating to the Goods at no cost to Duke Energy.

B. Terms and Conditions Applicable to the Purchase of Services

4. **Warranty.** Seller represents and warrants to Duke Energy that: (a) Seller shall perform the Services in a professional and workman like manner, in accordance with the standards of care, thoroughness and competence normally practiced by recognized firms in the industry performing Services of a similar nature, and in full compliance with all final written descriptions, specifications, drawings and representations Seller provides to Duke Energy, including those specified in the Agreement; (b) Seller shall employ only competent and experienced personnel to perform the Services; (c) Seller shall perform and complete the Services within the schedule established in the Agreement; and (d) no federal, state, local or foreign statute, law, rule, regulation or order will be violated in the performance of the Services. For a period of 12 months after the completion of the Services, Seller shall re-perform all Services that were performed incorrectly or otherwise do not comply fully with this warranty.

5. **Qualifications; Screening Measures.** For any Services performed at a Duke Energy site, Seller shall comply, and shall require its authorized subcontractors to comply, with all applicable labor and immigration laws that may impact Seller's obligations under this Agreement, including but not limited to federal, state and local laws, rules and regulations, executive orders, that are now or that become applicable to the Seller during the period the Seller is performing the Services hereunder. Without limiting the foregoing, Seller shall comply strictly with all laws relating to the verification of its workers' eligibility to work in the United States, including the Immigration Reform and Control Act of 1986 and Form I-9 requirements. Seller and its authorized subcontractors shall participate in E-Verify, perform all required employment eligibility and verification checks, and cooperate with the scope, timing, documentation, etc., of audits requested by Duke Energy, which shall be performed by a third party immigration attorney selected by Duke Energy. Seller shall maintain all required employment records for at least three years following an employee's date of hire or one year following an employee's termination. Seller acknowledges and agrees that it is responsible for conducting adequate screening of its employees and agents prior to starting the Services, and Seller further agrees to use additional screening measures that may be required by Duke Energy based upon audit results to ensure Seller's compliance with this Article. Duke Energy has an Alcohol/Drug Abuse Procedure (MICCS). Seller and its authorized subcontractors shall implement and administer an alcohol/drug abuse policy acceptable to Duke Energy and at least as stringent as that of Duke Energy. By providing an

employee under this Agreement, Seller warrants and represents that it has completed the Screening Measures (as defined below) with respect to such employee and that such Screening Measures did not reveal any information that could adversely affect such employee's suitability for employment by Seller or competence or ability to perform duties under this Agreement. If in doubt whether a suitability, competence or ability concern exists, Seller shall discuss with Duke Energy the relevant facts and Duke Energy will determine, in its sole discretion, whether such person should be allowed to perform the Services. As used in this Section, the term "Screening Measures" means reference checks, social security trace, terrorist database search, criminal background checks (including but not limited to checks for any felony convictions within the last seven years) and such other screening measures as a reasonably prudent employer would deem appropriate; provided, however, that nothing in this Section shall be interpreted as authorizing or requiring Seller to perform any screening activities that violate the federal Fair Credit Reporting Act, Title VII of the Civil Rights Act of 1964 or any other applicable law. Duke Energy, in its sole discretion, shall have the option of barring from the Site any person whom Duke Energy determines does not meet the qualification requirements set forth above. In all circumstances, Seller shall ensure, and shall require that its subcontractors ensure, that the substance and manner of any and all background checks performed by Seller pursuant to this Article conform fully to applicable federal, state and local laws. Seller shall supervise, coordinate and direct the Services using Seller's best skill, judgment and attention.

6. **Safety and Security.** All Services performed by Seller or its subcontractors on Duke Energy's premises, and the design of all equipment and systems brought onto Duke Energy's premises, shall comply fully with the occupational safety and health standards in 29 C.F.R. sections 1910 and 1926 and Duke Energy's safety and security policies and regulations, including Duke Energy's Safe Work Practices Manual, all as amended from time to time. At least two weeks before any Services are performed on Duke Energy's premises, Seller shall deliver to Duke Energy: (a) a copy of Seller's hazard communication program; (b) a list of all hazardous chemicals and other substances Seller proposes to bring onto Duke Energy's premises, if any, and the quantities of each; and (c) material safety data sheets for each chemical and substance on the list. Seller shall not use, apply, store, construct or otherwise introduce on a Duke Energy site any materials that contain methylene chloride, lead, or hexavalent chromium. Seller will collect and maintain safety and health data for the performance of the services, which will include but not be limited to total hours worked, incidents, near misses, lost work days, restricted duty, recordable injuries, workers compensation experience modifier, and any OSHA or state plan citation history. Upon request, Seller will provide this data to Duke Energy. If Seller employs non-English speaking persons, Seller shall ensure that a bilingual person is available at the jobsite where the non-English speaking person(s) are working for purposes of safety and hazard related communications, emergency response, and similar issues. Seller shall further ensure that all written and verbal safety training, hazard communications, and work rules are provided in the appropriate language for such non-English speaking employees or persons.

C. Terms and Conditions Applicable to Software License

7. **License Terms.** For any of Seller's Goods that contain software or source code, Seller hereby grants to Duke Energy an irrevocable, non-exclusive, perpetual, worldwide right and license to use and reproduce the software, data and other documentation provided by Seller to Duke Energy. Seller shall retain all ownership rights, title and interest (including without limitation all copyright, patent, trade secret and other intellectual property rights) to the software; except to the extent that the software may incorporate any proprietary or confidential information of Duke Energy or its customers. For a period of 12 months from acceptance of the Goods, Seller shall deliver to Duke Energy at no cost all fixes, corrections, and patches for errors and bugs to the software, including without limitation those relating to program code and documentation, reflecting corrective action taken by Seller.

8. **Warranty.** The Software shall not contain any viruses, Trojan horses, disabling code, timer, clock, counter or other limiting design or routine which causes the Software to be erased, inoperable or otherwise incapable of being used in the full manner for which it was designed and licensed pursuant to this Purchase Order after being used or copied a certain number of times, or after the lapse of a certain period of time, or after the occurrence or lapse of any similar triggering factor. Seller warrants, for a period of one year after delivery of the Software, that the Software shall conform to and perform in accordance with all applicable Software descriptions and specifications. Seller shall, at no additional charge correct any defects and nonconformities. If Seller is unable to correct any defect, Seller shall promptly replace such Software without

charge. All replacement Software must comply with the requirements of this warranty provision.

D. Terms and Conditions Applicable to All Purchases

9. **Insurance.** Seller shall obtain, and shall provide to Duke Energy certificates evidencing the following insurance coverage: (a) worker's compensation insurance with statutory limits and employer's liability insurance with limits of at least \$1,000,000 for service suppliers; (b) commercial general liability insurance having a limit of at least \$2,000,000 per occurrence bodily injury and property damage, including but not limited to products and completed operations liability, owner's and contractor's protective, blanket contractual liability, personal injury liability, broad form property damage and explosion, and collapse and underground hazard coverage; (c) comprehensive automobile liability insurance having a limit of at least \$1,000,000 per occurrence for bodily injury and property damage, including but not limited to coverage for owned, hired and non-owned automobiles and contractual liability, and (d) if engineering or consulting services are to be performed, Errors and Omissions Insurance in the amount of \$1,000,000. This insurance shall have an AM Best rating of A-VII or higher, be primary for all purposes and shall contain standard cross liability provisions. All insurance policies shall be endorsed to add Duke Energy as an additional insured, except for workers compensation and employer's liability policies, and shall include waivers of any right of subrogation of the insurers against Duke Energy, its officers, directors, employees and subcontractors of all tiers.

10. **No Additional Charges; Audit.** The prices specified in the Agreement are the total prices of the Goods and Services to Duke Energy, and Duke Energy shall not be responsible for any other charges, fees, taxes or expenses, including sales taxes unless otherwise expressly agreed in the Agreement. Seller shall maintain complete and accurate books, records and accounts of all materials, services and costs relating to the Agreement, in accordance with generally accepted accounting principles for at least four years after Seller receives the final payment under the Agreement. Duke Energy reserves the right to audit records necessary to permit evaluation and verification of any claims submitted by Seller or a third party, and to confirm Seller's compliance with: (a) the terms of this Agreement; (b) Duke Energy's Supplier Code of Conduct and Code of Business Ethics, and (c) the Screening Measures undertaken by Seller. Duke Energy, or Duke Energy's representative, shall have the right to copy those records.

11. **Payment Terms.** All of Seller's invoices shall refer to the Agreement and contain its Purchase Order or Contract number. Any prompt payment discount Seller offers Duke Energy shall be determined using the date Duke Energy receives a correct invoice. Duke Energy's standard payment terms are 45 days from receipt of the invoice.

12. **Cancellation and Delay.** Duke Energy shall have the right at any time to cancel all or a portion of this Purchase Order, to delay the delivery date of some or all of the Goods or to delay some of all of the Services by giving Seller written notice. If Duke Energy cancels all or a portion of the Agreement, Duke Energy shall pay Seller reasonable cancellation charges on which the parties agree which shall consist solely of direct costs for labor and materials for the Agreement expended by Seller before the cancellation, minus the salvage amount that Seller can realize by selling or using any materials. If Duke Energy delays the delivery date of some or all of the Goods under this section, Duke Energy shall pay Seller reasonable delay charges on which the parties agree which shall consist solely of necessary increases in the direct costs of labor or materials for the Agreement for which Seller has not been compensated by escalation. Seller shall take all reasonable actions to minimize any cancellation or delay charges and shall provide an accurate accounting of all charges to Duke Energy at the time Seller makes a request for payment of those charges. Cancellation and delay charges shall not include any incidental or indirect charges or expenses. If the sum of Duke Energy's prior payments and deposits under the Agreement exceed the cancellation and delay charges and other amounts due under the Agreement, Seller shall promptly refund the balance to Duke Energy.

13. **Delay Liquidated Damages.** The Parties may agree that Seller shall deliver the Goods or complete the Services on or before a guaranteed delivery date. The parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Duke Energy would incur if Seller does not deliver the Goods or Services by the guaranteed delivery date. Accordingly, the Parties agree that if Seller does not meet the guaranteed delivery date, Duke Energy's remedy for that delay shall be to recover from Seller as liquidated damages, and not as a penalty, the amount of liquidated damages, if any, set forth in the Agreement, for each day or portion of a day delivery is delayed beyond the guaranteed delivery date. The agreed upon delay liquidated damages shall not limit Duke

Energy's remedies for other breaches, actions or omissions of Seller. The delay liquidated damages shall be due and payable by Seller to Duke Energy within ten days after written demand by Duke Energy. In addition to its other rights and remedies, Duke Energy shall have the right to offset the amount of any unpaid liquidated damages plus interest against any amounts due or that may become due Seller under the Agreement.

14. **Indemnification.** Seller shall defend, indemnify and hold harmless Duke Energy and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys' and other professionals' fees and expenses arising out of or relating to: (a) any claim that the Goods or Services or Duke Energy's use of the Goods or Services infringes any patent, copyright, trademark, trade name, service mark or other property right; (b) any breach of warranty by Seller; (c) any claim that the Goods or Services are defective; and (d) any negligent act or omission of Seller or its employees, contractors and agents in the performance of the Services, including any claim arising out of Seller's failure to comply with applicable laws, rules, regulations or orders. In the case of a claim that the Goods are infringing, Seller shall have the right, at its sole expense, to obtain for Duke Energy the right to continue using the Goods without interference or to modify or replace the Goods in a manner acceptable to Duke Energy in its sole discretion. Duke Energy shall give Seller reasonable notice of any claim Duke Energy contends falls within this indemnification.

15. **Default.** If Seller defaults under any term of the Agreement and does not cure that default within 15 days after Duke Energy gives Seller written notice of default, Duke Energy shall be entitled: (a) to suspend its performance under the Agreement; (b) to terminate the Agreement and have no further obligation to Seller; (c) to declare all or part of Seller's obligations to Duke Energy under the Agreement immediately due and payable; and (d) to pursue any other right or remedy Duke Energy may have. Duke Energy shall be entitled to set off against all amounts Duke Energy owes Seller all amounts Seller owes Duke Energy.

16. **Confidentiality.** Seller shall keep confidential and not disclose to any person or entity any information that Duke Energy designates as being confidential. Seller shall not use Duke Energy's name or the fact that Seller is selling Goods or Services to Duke Energy in any press releases, media statements or public communications or otherwise publicize the Agreement. Seller shall not use Duke Energy's (including its subsidiaries and affiliates) name, logos, trademarks, service marks, trade names or trade secrets in any way, and Duke Energy shall not be deemed to have granted Seller a license of, or granted Seller any rights in, any of the foregoing by entering into the Agreement. Duke Energy shall have the right to copy, use and disclose to third parties all documents, drawings and other information delivered in connection with the Agreement as needed to operate and maintain its facilities or businesses.

17. **Compliance with Laws.** Unless Seller is exempted by the applicable rules, regulations or orders, Seller shall comply, and shall require its authorized subcontractors to comply, at all times relevant to the Agreement with all applicable laws, rules, regulations and court orders, and all amendments of the foregoing that may be made from time to time. Seller shall abide by, and shall contractually cause all of its subcontractors to abide by, any and all site policies and procedures that Duke Energy may have in effect or hereinafter put into effect when Goods are delivered or Services are to be performed on Duke Energy's property or any other property. Seller shall enforce said rules with its subcontractors and Duke Energy assumes no duty to review Seller's compliance with said laws and rules, including those involved with safety.

18. **Compliance with Regulatory Code of Conduct.** Seller acknowledges that Seller may be given access to or otherwise become aware of certain operational information of Duke Energy, the disclosure of which to departments or affiliates of Duke Energy is prohibited by federal law. Such confidential information includes, but is not limited to (a) planned outage schedules, (b) events of forced outages and generating derating, (c) construction schedules, (d) operational practices at the Duke Energy's generating stations, and (e) transmission system planning and operational data. Seller shall, and shall require its subcontractors to (i) maintain the strict confidentiality of such operational information, and (ii) not share such operational and planning information with any third parties, including any other departments or affiliated entities of Duke Energy, without prior written consent.

19. **Fraud and Ethics.** Seller shall be familiar with and shall adhere to the principles of Duke Energy's Supplier Code of Conduct located at <http://www.duke-energy.com/suppliers/code-of-conduct.asp>. Seller shall promptly report any fraud, illegal activity, fiscal waste or abuse, or other violations of Duke Energy's Code of Conduct by any party, including Seller's suppliers and service providers. Such activity may be reported by contacting: (a) your Duke Energy Contract Administrator, (b) Duke Energy's

Ethics-Line managed by an independent third party at 800-525-3783, which may be called anonymously, or by web submittal at www.dukeenergy-ethicsline.com, (c) or by sending an e-mail to Duke Energy's Ethics and Compliance Office at ethicsofficer@duke-energy.com.

20. **Diverse Suppliers.** For any Agreement in which the total compensation to Seller will equal or exceed \$550,000, Seller shall adopt and utilize a subcontracting plan that complies with 48 C.F.R. 52-219-9 for Small Diverse Suppliers ("SDS"). Seller shall: (i) use all commercially reasonable efforts to utilize SDS (and Large Diverse Suppliers) as required by law; and (ii) provide Duke Energy a quarterly status report in a format reasonably acceptable to Duke Energy. Such report shall be entered on Duke Energy's website at <http://www.duke-energy.com/suppliers/supplier-diversity.asp>, its designated auditors and any applicable government agency shall have the right of access during normal business hours to inspect Seller's records related to SDS and compliance with this Section.

21. **Assignment; Delegation; Third Party Beneficiaries.** Seller shall not assign, delegate or subcontract all or any portion of the Agreement without the prior written consent of Duke Energy. If delegation is permitted by Duke Energy, Seller shall still continue to be responsible for the delivery of the Goods or completion of the Services. If requested by Duke Energy, Seller shall provide Duke Energy with copies of any contracts with third parties regarding the assignment of rights or delegation of duties hereunder. Seller shall obtain terms and conditions in its contracts with subcontractors and suppliers which are consistent with the rights of Duke Energy and the duties of Seller in this Agreement. Any attempted assignment, delegation or subcontracting without Duke Energy's prior written consent shall be ineffective and void. The terms and conditions of the Agreement shall be binding upon and inure to the benefit of any and all successors and/or assigns of the Duke Energy and Seller. Notwithstanding any provision herein, the Agreement shall not confer or be construed in any manner to confer, directly or indirectly, any rights, privileges, benefits, and/or remedies, upon any parties other than the parties hereto and their respective successors and/or permitted assigns.

22. **Arbitration.** Any claim or controversy arising out of or relating to the Agreement or the breach of the Agreement shall be resolved by binding arbitration in the state in which the Goods are delivered or to be delivered, or for Services, the state in which the Duke Energy site is located. The arbitration shall be conducted by a single arbitrator under the Commercial Arbitration Rules of the American Arbitration Association then in effect, and judgment may be entered on the award by any court of competent jurisdiction. Each party shall be entitled to a reasonable amount of pre-hearing discovery as allowed by the Arbitrator; **provided** that the discovery period shall not exceed 120 days. This Agreement and any controversy relating to the Agreement shall be governed by the laws of the State of where the Services were or will be performed or Goods delivered, excluding its conflict of law principles. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply. If any part of a term or condition in the Agreement is found to be contrary to the law governing this Agreement by a court of competent jurisdiction, such term or condition shall in all other respects be and remain legally effective and binding to the full extent possible.

23. **Remedies.** The remedies in the Agreement are cumulative and in addition to all rights and remedies at law and in equity. No delay in exercising or failure to exercise a right of remedy shall impair that or any other right or remedy or be construed as a waiver of any default.

24. **Independent Contractor.** Seller is an independent contractor and not an agent or employee of Duke Energy and nothing contained in the Agreement shall be so construed as to justify a finding of the existence of any relationship between Duke Energy and Seller inconsistent with that status. Seller shall have exclusive control of and responsibility for its labor relations.

25. **Mechanics Liens.** Seller shall not file or permit to be filed any lien with respect to the Goods or Services, and to the extent permitted by law, expressly waives any right to file or cause to be filed a lien. Seller, in its subcontracts, shall require all subcontractors, to the extent permitted by law, to expressly waive the right to file any liens against Duke Energy's property and, if requested, provide Duke Energy with copies of such waivers. Seller shall immediately bond off any lien against Duke Energy and shall indemnify Duke Energy for any costs or expenses resulting from a breach of this paragraph. In the event that rights to a mechanic's lien are claimed upon Duke Energy's property by a subcontractor of Seller, Seller shall expeditiously obtain a bond or release of said mechanic's lien. Upon Seller's failure to expeditiously obtain said bond or release, Duke Energy may proceed to obtain the bond or release of the mechanic's lien and Seller shall be liable to Duke Energy for any costs and expenses including attorneys' fees, which are incurred by Duke Energy in obtaining said bond or release.

26. **Hazardous Materials and Working Conditions.** Any performance by Seller involving the generation, storage, handling, packaging, marking, labeling, transportation, or disposal of materials, substances, or wastes that may be hazardous, and any work in an area defined as a confined space shall be in accordance with any and all applicable federal, state, local, and other laws and with any and all rules, orders, and regulations promulgated under such laws.

27. **Order of Precedence.** The "Agreement" shall mean and shall consist of the following documents, listed in their order of priority in the event of a conflict: (a) either the signed written contract between Duke Energy and Seller or the Duke Energy Purchase Order issued to Seller, as applicable, to which these terms and conditions are attached; (b) these Duke Energy Standard Terms and Conditions; and (c) any exhibit(s), schedule(s), or other proposal(s) incorporated into the contract or Purchase Order, as applicable. Additional or different terms contained in Seller's proposal or acceptance shall not become a part of this Agreement unless expressly agreed to in writing and signed by Duke Energy.

28. **Entire Agreement; Differing Terms; Survival.** The Agreement contains the entire agreement of the parties relating to the subject matter and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral. These Standard Terms and Conditions may only be modified by a written agreement signed by both parties expressly modifying the Agreement. **BUYER HEREBY GIVES NOTICE THAT IT OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS PROPOSED BY SELLER.** Any and all additional or different terms and conditions contained in any of Seller's acceptance, invoices, bills or other commercial documents are hereby rejected and shall not become part of the Agreement between the parties. The provisions of sections 1, 4, 8, 9, 12, 14, 16, 18 and 22 of these Standard Terms and Conditions and all other provisions of the Agreement providing for indemnification or limitation of or protection against liability shall survive the termination, cancellation, or expiration of the Agreement.