

# NRG Texas Power LLC

P.O. BOX 4710, Houston, TX 77210

**PO #: 152825**

<b>Vendor:</b> Refractory Construction Services Co LLC  3240 Delesandri Lane Kemah, TX 77565 <b>Vendor #:</b> 376425 <b>Phone</b> 281-336-0895 <b>Fax</b> 281-538-3804	<b>PO Date:</b> 02-01-2012 <b>Change Order Date:</b> <b>Contract No:</b> <b>Payment Terms:</b> Net 45 <b>Freight Terms:</b> <b>Ship Via:</b> <b>FOB:</b>	<b>Rev #:</b>
<b>Ship To:</b> Cedar Bayou - Warehouse  7705 West Bay Road Baytown, TX 77523  <b>ATTN:</b>  <b>Buyer:</b> McKay, Emily <b>Tel:</b> 281-383-4274 <b>Fax:</b> 281-383-4273	<b>Bill To:</b> NRG ENERGY AP TEXAS REGION  P.O. BOX 840 New Roads, LA 70760  <b>ATTN:</b>  <b>Tel:</b> 225-618-4031 <b>Fax:</b> 225-618-4040	

Please include the purchase order number, corresponding line number, ship to location, and ship to addresss on all invoices. Invoices received without this information may result in delayed payments. The NRG Accounts Payable website containing more billing information can be accessed through [www.nrgenergy.com/invoice](http://www.nrgenergy.com/invoice).

## Shipping Info:

\*\*\*\*\*NEW\*\*\*\*\*NEW\*\*\*\*\*NEW\*\*\*\*\*NEW\*\*\*\*\*NEW\*\*\*\*\*

- These routing instructions include LTL, Truckload, UPS, Flatbed, Wide load, Heavy Haul, Air, and Expedited.
- NRG Energy c/o Malark Logistics, PO Box 438 Maple Grove, MN 55369 should appear as the BILL TO on all bill of ladings in which NRG is responsible for the freight charges.
- NRG Energy Purchase Order number must appear on all Shipping and Invoice documents.
- Shipments should be consolidated on a daily basis.
- Do not declare a value beyond normal carrier liability.
- Non Expedited Shipments:
  - o 1-150 lbs use UPS Ground. - Bill 3rd Party Account Number Y1V 172, zip code 08540.
  - o Over 150 lbs, Expedited Shipments and Same Day call Malark Logistics.
- Air
  - o For next day and second day shipments under 150 pounds UPS Next Day or UPS 2nd Day Air Bill 3rd Account Number Y1V 172, zip code 08540.
  - o For next day and second day shipments over 150 Pounds contact Malark Logistics.
- Failure to comply will result in escalating non-compliance fees beginning at \$50 per shipment and reaching \$250 plus freight cost for subsequent violations.

Malark Logistics is available 24 hours a day, 365 days a year at (1-877-674-2497 and 763-428-3564)

**PO Details:**

**EKM -- CBY Hopper Bottom Inspection**

**Total charges under this Purchase Order shall not exceed \$25,000.00 without further written notice.**

**Contractor shall be paid on a 'Time & Materials' expended basis in accordance with the following rates.**

**Rates:**

**Classification**

**Straight Time**

**Overtime**

**Staff:**

**Project Manager**

**75.00**

**105.00**

**Superintendent**

**60.00**

**85.00**

**General Foreman**

**47.50**

**65.00**

**Safety Coordinator**

**45.50**

**62.05**

**Administration:**

**Field Cost Planner**

**48.50**

**69.70**

**QA/QC**

**45.50**

**62.05**

**Project Planner/Coordinator**

**57.50**

**82.75**

**Timekeeper / Clerk**

35.55

52.20

Crafts:

Foreman

45.00

61.75

Welder

40.75

55.20

Specialist I

43.40

59.10

Specialist II

39.50

53.10

Craftsman I

36.50

49.10

Craftsman II

34.00

45.70

Helper / Safety/Fire Watch

29.85

41.10

Demolition / Clean-Up Equipment

Rivet Buster 50.00 Roura Dumpster 38.00

Chipping Gun 28.00 Air Vacuum Cleaner 25.00

Air Scaler / "Zip" Gun 12.50 Air "Hepa" Vacuum Cleaner 35.00

Pressure Washer, 3000 psi 100.00

Surface Preparation Equipment

7" Air Grinder 9.50 Sandblast Rig, Complete 300 lb. 125.00

4" Air Grinder 9.25 Sandblast Rig, Complete 600 lb. 175.00

Welding Equipment

Rod Oven Box, 300 lb. 20.00 Welding Set-Up (100' lead,ground,whip) 9.50

**Purchase Order #: 152825    VENDOR: Refractory Construction Services Co LLC**

Electric Welder 27.50 Additional Lead, per 100' 6.75

Gas/Diesel 400 amp Welder 60.00 Air Arc Gouger Set-up 14.00

Eight Bank Welder 85.00 Plasma Arc Unit 95.00

Burning Unit, complete 22.50

**Gunite Equipment**

Allentown Pneumatic Gun (N2 Pot) 145.00 1 1/2" Material Hose ( 50' section) 15.00

Allentown Pneumatic Placement Rig 275.00 Water Booster Pump 20.00

Rotary Gun 170.00 Bull Hose (25' section) 14.50

**Masonry Equipment**

14" Masonry Saw 30.00 60 qt. Hobart Mixer 95.00

20" Masonry Saw 95.00 Additional Hobart Bowl & Paddle 20.00

Rescue Saw 45.00 Concrete Bucket 25.00

Tile Saw 25.00 Bull Dog Pump w/material hose 50.00

Roller Conveyor, 10' section 20.00 Core Drill w/ water swivel 30.00

Pogo Sticks (40 pc. Set) 95.00 Rotary Vibrator 55.50

Mortar Mixer 60.00 2 ton Come-a-long w/ 25' chain 17.50

Batch Mixer (vibra/pump cast) 220.00 Bench Rammer 15.50

30 qt. Hobart Mixer 75.00 2 ton Port-a-Power 10.00

**Air Supply / Monitoring Equipment**

Air Header Manifold 25.00 Personal H2S Monitor 5.00

Moisture Separator 9.00 CO2 / 4 gas / Multi Gas Monitor 40.00

**Vehicles**

3/4 Ton Truck 65.00 16' Tandem Axle Trailer 25.00

Gator (or similar equivalent) 45.00 9000 lb Fork Lift 225.00

**Project Site / Office Equipment**

Combination Office/Tool Trailer (40') 65.00 Tool Van 60.00

Initial trailer load out /unload (ea) 1250.00 Computer w/ printer 30.00

Storage Trailer / Container 25.00 Furnace / Boiler Trailer (complete) 900.00

Refrigerated Storage Container 65.00 Coatings / Acid Proofing Trailer (complete) 750.00

Line Item No.	Description	Contract Ref #	Qty	UOM	Unit Cost	Tax	Ext Cost
1	RCS to Inspect Hopper Bottom		25000	USD	\$1.00	\$0.00	\$25,000.00

Due Date:        01-23-12

Notes to  
Supplier:

Mfr:

Mfr Model/PN:

Supplier PN:

**Purchase Order #: 152825    VENDOR: Refractory Construction Services Co LLC**

Req #:        MX290148                      Requestor:    Collier, Mike

Business Unit	Account	Subsidiary Code	Project No.	WONUM
25120602	513175	004		12-29647

Line Item No.	Description	Contract Ref #	Qty	UOM	Unit Cost	Tax	Ext Cost
2	ADDED TO LINE 1		1	EA	\$0.00	\$0.00	\$0.00

Due Date:        07-21-11

Notes to  
Supplier:

Mfr:                                      Mfr Model/PN:                                      Supplier PN:

Req #:        MX290148                      Requestor:    Knowles, Thomas

Business Unit	Account	Subsidiary Code	Project No.	WONUM
25120602	513175	004		11-184973

Total LineCost:                      **\$25,000.00**

\*Total Tax:                                      **\$0.00**

Total PO Amount:                      **\$25,000.00**

\*Direct Pay Exemption Certificate available upon request

**Other Instructions:**

The Purchase Order number must be shown on all invoices shipping papers, package, and correspondence pertaining to order. Invoice must separate materials from labor/services and must include make, model, and serial number of all installed equipment.

By:                      Agent on Behalf of NRG Texas Power LLC

By:                       7/1/2012  
Authorized Vendor

IMPORTANT: All provisions on the face hereof, as well as all terms and conditions attached, are part of this order, Read them carefully.

**Terms and Conditions:**

Term (ID)	Description
GC-01-PO	General Terms and Conditions of Purchase Order Dated 07-22-10

**1.0 DEFINITIONS**

(a) 'Owner' shall mean the business entity issuing this Purchase Order as named on the face of this Purchase Order. (b) 'Vendor' means the business entity, its employees, and representatives, or person(s) to whom this Purchase Order is issued as named on the face of this Purchase Order. (c) 'Parties' means Owner and Vendor when referred to collectively. (d) 'Purchase Order' means Owner's standard authorizing document as preprinted on the reverse side hereof, including these terms and conditions, and all documents attached hereto or referenced herein. (e) 'Work' means labor, equipment, supplies, goods, (including raw materials, components, intermediate assemblies and end products) or materials and related services to be furnished under the Purchase Order at Owner's site, and the carrying out of all obligations imposed by the Purchase Order.

**2.0 ACCEPTANCE OF AGREEMENT**

Vendor's signing and returning of the Purchase Order, Vendor's order acknowledgement, Vendor's commencement of performance of any Work, or shipment of goods subject to this Purchase Order, whichever occurs first, shall be deemed an effective acceptance of this Purchase Order. Additional terms attached to or included in any form to Vendor's proposal or Vendor's acceptance are unacceptable and shall not become part of the Purchase Order.

**3.0 PRICE AND PAYMENTS**

In making payments hereunder, Owner shall be entitled to conclusively presume that payment information furnished by Vendor, such as name, account number(s) and name of payee is accurate. In no event shall Owner make a second payment where the first payment is made in accordance with such Vendor furnished information. All payments shall be in U.S. currency. All correct, undisputed invoices for Work accepted by Owner shall be subject to a 2% discount when paid within 15 days from the date of such invoice and are payable forty-five (45) days after the date of such invoice (or on the next succeeding business day if such 45th day is a weekend or holiday). Payment terms shall be net forty-five (45) days after receipt of a correct invoice unless otherwise agreed to under this Contract.

**4.0 INSPECTION, EXPEDITING, SHIPMENT, DELIVERY, ACCEPTANCE OR REJECTION**

Shipments shall be F.O.B. Origin, Collect, unless stated on the front of this Purchase Order. Vendor shall immediately notify Owner once it expects a delivery to be late. Owner may accept or reject any or all Work within a reasonable time after receipt. Acceptance of the Work shall in no way be a waiver of or impair Owner's right to reject or revoke its acceptance of nonconforming Work, or to avail itself of any other remedies to which Owner may be entitled, notwithstanding Owner's knowledge of the nonconformity, its substantiality or ease of discovery. Owner shall have the right of access to Vendor's, and Vendor's major sub-vendors', plant(s) for inspection and expediting purposes. Vendor shall supply schedules and progress reports to Owner for use in expediting.

**5.0 INSURANCE**

Vendor shall purchase and maintain such insurance as will protect Vendor and Owner from the losses or claims which may arise out of or result from liabilities that Vendor or Owner may incur related to Vendor's performance or obligations to perform under this Purchase Order, whether such performance be by Vendor or by anyone directly or indirectly employed by Vendor, or by anyone for whose acts Vendor may be liable: (a) The Vendor shall maintain insurance written in the kinds and minimum limits of liability specified below: 1) Workers' Compensation (WC) - Statutory, including temporary, leased and casual workers. If required for the Work or services being rendered, USL&H and FELA shall also be provided. Employer's Liability (EL) - \$1,000,000 each accident. 2) Commercial General Liability (GL) - \$1,000,000 per occurrence for Bodily Injury, including death, Property Damage, and Personal Injury, with a \$2,000,000 Aggregate, written on an occurrence based form. Inclusions on the GL Policy: Contractual Liability (to include coverage that responds to the Indemnity provision specified in Paragraph 6.0 below); Broad Form Property; Independent Contractors; Premises and Operations; Products & Completed Operations; Mobile Equipment, Cross Liabilities/Separation of Insureds, and, no exclusion for X.C. & U., Lifting, Rigging, or Boom Overload, or operations within 50 feet of a railroad; 3) Automobile Liability (AL) - \$1,000,000 Combined Single Limit, including coverage for owned, non-owned and hired vehicles; 4) Marine Liability (ML) - If a Marine Liability exposure exists as part of the services being rendered by Vendor pursuant to this Purchase Order, then Vendor agrees to maintain appropriate insurance coverages having limits, terms and conditions reasonably satisfactory to Owner. 5) Excess Liability (Umbrella) - \$5,000,000 coverage that will respond excess of the underlying EL, GL, AL, and ML (if applicable) policies on a following form basis. (b) NRG Energy, Inc., Owner, and any entity or entities that own or operate the site(s) where the Work is being performed, and the respective parent companies, subsidiaries, affiliates, directors, officers, managers, members, and employees of each, shall be included as Additional Insured's on the GL, AL, ML and Umbrella policies for injury or damage arising out of, resulting from, or in connection with, Vendor's performance of this Purchase Order and/or terms and conditions of this Purchase Order. The Additional Insured status noted in this Section shall be specifically endorsed to Vendor's Policies, and with respect to the General Liability Policy shall be as broad as that provided by the ISO CG 20 10 11 85 endorsement form, or an equivalent form or forms that provide additional insured status for both ongoing and completed operations. The insurance provided by Vendor shall be primary, without right of contribution, with respect to any similar insurance being maintained by, or available to, Owner, NRG Energy, Inc., or any additional insured. Waiver of Subrogation shall be provided pursuant to this written contract for all Insureds and Additional Insureds with respect to each of the coverages noted in 5 (a), above. (c) Vendor shall furnish Owner certificates of insurance acceptable to Owner evidencing the required coverage, as well as any other terms and conditions as specified by this Purchase Order, prior to commencement of the Work. The policies noted in this Section 5 shall contain a provision that coverages afforded under the policies shall not be canceled or materially changed in a manner that adversely affects Owner or any additional insured until thirty (30) days prior written notice has been provided to Owner. The failure by Vendor to provide Owner with Certificates of Insurance, or Owner to insist upon Certificates of Insurance, shall not be deemed a waiver of any rights of Owner under these Terms and Conditions or under any applicable Purchase Order. The inclusions, coverage and limits set forth herein are minimum inclusions, coverage and limits, and shall not be construed as a limitation of Owner's rights under the noted policies, or other policies being maintained by Vendor. Vendor is responsible for determining what additional coverage, terms or limits are required to perform this Purchase Order, even though those requirements may be in addition to, in excess of, the minimum requirements set forth herein.

**6.0 INDEMNITY**

VENDOR AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD OWNER, ITS PARENT COMPANY, SUBSIDIARIES, AFFILIATES, DIVISIONS, ANY ENTITY OR ENTITIES THAT OWN OR OPERATE THE SITE(S) WHERE THE WORK IS BEING PERFORMED AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS (COLLECTIVELY THE 'OWNER PARTIES') FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS OR OTHER LITIGATION (INCLUDING ALL COSTS THEREOF AND ATTORNEYS' FEES) OF EVERY KIND AND CHARACTER ASSESSED AGAINST OR INCURRED BY ANY OF THE OWNER PARTIES OR ARISING IN FAVOR OF VENDOR OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, PERSONNEL FURNISHED BY VENDOR OR ITS SUPPLIERS OR SUBCONTRACTORS OF ANY TIER) ON ACCOUNT OF PERSONAL INJURY, BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING, INCIDENT TO, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED OR PROVIDED BY VENDOR HEREUNDER OR THE PRESENCE OF VENDOR, ITS PERSONNEL, AGENTS, SUPPLIERS OR SUBCONTRACTORS ON THE OWNER'S PREMISES.

**7.0 CHANGES IN THE WORK**

Owner shall have the right to make any changes in the Work. Should any change affect the amount or character of labor or material required or time for performance hereunder, the price and/or schedule shall be adjusted by mutual written agreement. Any such revisions shall be made only by a written supplement to this Purchase Order. In the absence of such a supplement, Vendor shall have no claim for additional compensation. In case any such change shall result in a decrease of Work, no allowance shall be made to the Vendor for loss of anticipated profits.

**8.0 PATENT & COPYRIGHT INFRINGEMENT**

VENDOR SHALL, AT ITS OWN EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE OWNER PARTIES FREE AND HARMLESS FROM AND AGAINST ALL CLAIMS, SUITS, OR PROCEEDINGS BROUGHT AGAINST ANY OF THE OWNER PARTIES WHICH ARE BASED ON A CLAIM, WHETHER RIGHTFUL OR OTHERWISE, THAT THE WORK FURNISHED UNDER THIS PURCHASE ORDER, CONSTITUTE(S) AN INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADE SECRET, AND VENDOR SHALL PAY ALL DAMAGES, COSTS, AND EXPENSES ARISING OUT OF SUCH CLAIMS. IN ADDITION, VENDOR SHALL, PROMPTLY AND AT ITS OWN EXPENSE (A) PROCURE FOR OWNER THE RIGHT TO CONTINUE THE USE OF THE WORK, (B) REPLACE SAME WITH NON-INFRINGEMENT WORK SATISFACTORY TO OWNER OR (C) MODIFY THE WORK IN A WAY SATISFYING TO OWNER SO THEY BECOME NON-INFRINGEMENT.

#### **9.0 SAFETY & HEALTH**

Vendor shall be solely responsible for the safety and health of its personnel, its subcontractors' personnel, and other persons required in the execution of the Work. Vendor shall maintain a safety program on the jobsite. The Supplier further represents that all work performed by it hereunder shall be conducted in accordance with appropriate safety regulations, precautions, and procedures and by employing all necessary or desirable protective equipment and devices, whether suggested or required by safety associations, government agencies, municipalities or otherwise. Without limitation its foregoing obligations, Supplier shall ensure its employees, subcontractors and other workers become familiar with and abide by Owner's 'Corporate Safety Manual - Contractor Safety; OSH-1602'; to be provided prior to commencement of any on-site work. Owner's 'Corporate Safety Manual - Contractor Safety; OSH-1602' shall not be deemed to be an exclusive description of Supplier's safety obligations hereunder and shall be in addition to Supplier's own program. Any breach of this safety covenant shall be grounds for immediate termination of this Contract and Owner reserves the right to immediately remove individual offender(s). Any civil or criminal penalties imposed upon Vendor pursuant to OSHA or any other laws or regulation by any governmental authority having jurisdiction shall not constitute reimbursable costs of Vendor. Vendor will reimburse Owner for any penalties and cost of compliance relating to OSHA or other governmental authority citations incurred by Owner, its parent corporation, subsidiaries or affiliates arising from Vendor's violations. Vendor shall be responsible that its employees shall at all times be fit to work and their performance not be impaired by alcohol or drugs. If Owner notifies Vendor verbally of Vendor's violations of OSHA requirements, or Vendor's individual safety program, Vendor shall immediately take corrective action. In imminent danger situations Owner reserves the right to stop work immediately.

#### **10.0 ENVIRONMENTAL PROTECTION**

Vendor shall comply with all Federal, State and local laws and regulations pertaining to the protection of the environment. Vendor shall not drain equipment, spill, pour, abandon, bury or dispose of material in any manner on Owner's property. Vendor will put waste materials (i.e., spent abrasives, spent thinners, solvent, or other cleaning waste) in containers (provided by Owner) and label for disposal by Owner. Vendor shall in accordance with applicable laws and regulations, provide suitable facilities to prevent the introduction of any substances or materials into the waters of the state. A containment berm shall be used around any kind of chemical or petroleum storage area designated to contain a release. Vendor shall perform its Work so as not to discharge into the atmosphere, from any source whatever, smoke, dust or other contaminants in violation of the laws, rules regulations and permits of the governmental entities having jurisdiction. If any such releases to the environment occur, Vendor shall immediately contact Owner. The Vendor shall be liable for all expenses incurred to remove all contaminated material in accordance with appropriate governmental regulation and to the satisfaction of Owner. Vendor shall not overhaul any equipment on Owner's property, except for emergency repairs of short duration, which would be necessary to complete the work of that day. Any fluids drained or removed from vehicles or equipment shall be collected in suitable containers and transferred to Owner's designated waste storage area where it is to be disposed of in accordance with applicable governmental regulations at Vendor's expense. In the event that the Vendor encounters on the site, materials reasonable believed to be asbestos or polychlorinated biphenyl (PCB), or any other hazardous substance subject to regulation, the Vendor shall immediately stop work in the area affected and report the condition to Owner. The Vendor shall not be required to perform any work related to hazardous materials. Vendor is responsible for ensuring that personnel receive training on environmental requirements applicable to the nature of the work.

#### **11.0 WARRANTY**

Vendor warrants that it shall have title to all of the goods furnished hereunder and the right to sell such goods. Vendor warrants that all Work furnished hereunder shall be performed, produced, and furnished in compliance with all applicable federal, state, and local laws, orders, and regulations. Unless otherwise specified herein, the Vendor shall obtain all permits necessary for performance under this Purchase Order. Vendor expressly warrants that all Work performed, produced, and furnished under this Purchase Order shall be provided in accordance with the requirements of the specifications, if any, and performed in accordance with standards of care, skill and diligence consistent with recognized and sound industry practices and procedures, will be new and will be free from defects in design, material and workmanship, and if installed by Vendor, be properly installed and activated, for a period of eighteen (18) months. Owner shall have the benefit of all warranties implied at law and express warranties made by Vendor. Vendor agrees to promptly replace or correct defects of any Work not conforming to the foregoing warranty, without expense to Owner, including, without limitation, transportation, shipping, and any incidental expenses. Failure of Vendor to promptly repair or replace any of the foregoing, Owner may make such corrections or replace such Work, goods or services and charge Vendor for the cost incurred by Owner in doing so.

#### **12.0 INVOICING**

Invoices shall have sufficient detail and back-up information (e.g., time sheets, equipment rates, etc.) to allow verification the invoice is accurate. All invoices must contain the Purchase Order number and respective line item number (if applicable), in order to be paid. Payment of an invoice does not constitute acceptance by Owner and is without prejudice to any and all claims Owner may have against Vendor. Owner, or an independent certified public accountant designated by Owner, shall have the right to audit, during Vendor's normal working hours for a period of up to three (3) years after the Work is performed or goods delivered. The expense of such audit shall be borne by Owner.

#### **13.0 TAXES**

Except as provided herein, Vendor shall pay all Import Taxes and any other Taxes levied on the Work and in connection with Vendor's performance hereunder, including without limitation, applicable taxes based on or related to the income, receipt, capital or net worth of Vendor, Vendor's or its Subcontractors' Labor or income, sales and use taxes assessed against Vendor owned, leased or rented equipment, all personal property taxes assessed, if any, by any governmental authority with respect to or against any Vendor equipment located at Owner's site, and any amounts related to licenses and permits required for Vendor to carry on business or perform any Work or deliver any goods, but excluding (i) net income taxes or franchise taxes imposed on Owner and (ii) real property taxes assessed against Owner's facility and any permanent use charges or assessments such as water or sewer, but excluding charges and taxes for construction utilities and fuel to be supplied by Vendor as required hereunder, that shall be Vendor's responsibility, except for such taxes Owner contests in good faith. Where applicable, Owner will apply for a Direct Payment Exemption Certificate. To the extent Owner is granted a Direct Payment Exemption Certificate, or similar mechanism, Owner hereby claims an exemption from the payment of all sales and use taxes to Vendor upon its purchase of any and all taxable items except for (1) taxable items to be resold by Owner, (2) purchases or rentals of motor vehicles subject to sales, use and similar taxes and (3) materials or supplies used, transferred or consumed by Vendor in providing a non-taxable service. If applicable law or regulation requires the payment of any sales or use taxes on account of this transaction which tax is imposed upon Owner, then such amount of tax shall be accrued and paid directly by Owner to the State in which Owner's site is operating as required by statute. To the extent the Owner is not granted a Direct Payment Exemption Certificate and applicable law or regulation requires the payment of any sales and use taxes on this transaction then Owner shall pay this tax directly to the vendor; if the vendor is not authorized to collect the tax then the Owner will accrue this tax and pay directly to the appropriate governmental authority.

#### **14.0 LIEN RIGHTS**

Prior to making any payment, Owner in its sole discretion may require Vendor to furnish a release of claims or liens arising out of the Work, or consents of surety, or lien waivers or receipts from Vendor and its subcontractors and vendors. Upon request, Vendor shall furnish an acceptable affidavit stating that to his knowledge, the releases and receipts include all the labor, services and material for which a lien could be filed. If any lien arises as a result of the Work, Vendor shall immediately take all steps necessary to obtain the release of such lien and indemnify Owner against the lien and any costs and expenses associated therewith, including reasonable attorney's fees.

#### **15.0 SETOFF**

All claims for money due or to become due from Owner shall be subject to deduction or setoff by Owner by reason of any claim arising out of this or any other transaction with Vendor.

#### **16.0 FORCE MAJEURE**

If either Party is delayed in the performance of the Work or of any other obligation due to unforeseeable causes beyond the Party's reasonable control, such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine restrictions, war, or riot, the date of delivery or performance of any other obligations hereunder may be extended for a period of time not to exceed the time lost by reason of the delay. If, however, Vendor's delivery or performance of other obligations is delayed for such reasons or it is reasonable to anticipate that delivery or performance will be delayed for such reasons for a continuous period of three (3) months from the scheduled date of delivery or performance, Owner shall have the right, at its discretion, to terminate this Purchase Order without liability to Vendor for any sum whatsoever.

#### **17.0 TERMINATION**

Owner reserves the right to cancel or suspend, at any time, by written notice, in whole or in part, this Purchase Order. Except in the case of termination for breach, Owner's sole obligation shall be to pay Vendor all amounts due and not previously paid to Vendor for goods furnished or services rendered in accordance with this Purchase Order. **IN NO EVENT SHALL OWNER BE LIABLE TO VENDOR FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES OR ANTICIPATED PROFIT, OVERHEAD OR INDIRECT COSTS.** Refusal or failure of Vendor to deliver the goods or perform the Work and/or services in accordance with the delivery schedule specified herein or within a reasonable time if no time is specified or failure to make reasonable progress such that timely performance of this Purchase Order in accordance with the terms has been endangered shall be considered breach of this Purchase Order. The remedies herein shall be in addition to and not in lieu of any other remedies Owner may have at law or equity.

#### **18.0 ASSIGNMENT**

Owner reserves the right to assign this Purchase Order to successors, affiliates, or subsidiaries without further notice to Vendor. Such assignment shall not require the consent of Vendor. Vendor shall not assign or subcontract any of its rights or obligations under this Purchase Order without Owner's prior written consent. In no event shall Owner's written consent be construed as discharging or releasing Vendor from the performance of its obligations specified in this Purchase Order. Vendor shall remain jointly and severally liable with any assignee of its rights or obligations.

#### **19.0 INDEPENDENT CONTRACTOR**

During the performance of this Purchase Order, Vendor shall be an independent contractor and not an agent of Owner; and no principal-agent or employer-employee relationship, or partnership, or joint venture shall be created. Vendor represents to Owner that it is properly equipped, organized, staffed, financed, experienced, qualified, insured, and licensed to perform the Work under this Purchase Order.

#### **20.0 PROPRIETARY INFORMATION & CONFIDENTIALITY**

Vendor shall consider all information furnished by Owner to be confidential and shall not disclose any such information to any other entity or person, or use such information for any purpose other than performing Vendor's obligation(s) under this Purchase Order unless Vendor obtains prior written consent from Owner. Vendor shall not engage in any advertising, publicity, or other promotional activity that directly or indirectly mentions or refers to Owner, the relationship between the Parties, or the Work provided under this Purchase Order without submitting said information or release to Owner for review and written consent.

#### **21.0 NON-WAIVER OF RIGHTS**

The failure of Owner to insist upon or enforce, in any instance, strict performance by Vendor of any of the terms of this Purchase Order, including those relating to compensation or to the exercise of any right herein conferred, shall not be construed as a waiver or relinquishment to any extent of Owner's right to assert or rely upon such terms or rights on any future occasion.

#### **22.0 GOVERNING LAW**

The definition of terms used, interpretation or construction of this Purchase Order and the rights of all parties hereunder shall be interpreted, construed and governed by the laws of the state to which the goods are delivered or in which services are performed. If goods are delivered to or services are performed in more than one state, then the laws of the State of Texas, shall apply without reference to any provision that would direct the application of the substantive law of any other jurisdiction.

#### **23.0 LIMITATION OF LIABILITY**

(a) In no event shall Owner, its parent company, subsidiaries, affiliates, divisions, and their respective directors, officers, managers, members, shareholders, employees, agents, representatives, successors or any combination of them, be liable (in contract or in tort, including negligence and strict liability) to Vendor or its subcontractors or suppliers of or any tier for special, indirect, incidental, or consequential damages, resulting from Owner's performance, non-performance, or delay in performance of its obligations under this Purchase Order, or from Owner's delay, termination (with or without cause), or suspension of the Work under this Purchase Order. (b) In no event shall Vendor, its subcontractors or suppliers of any tier, be liable (in contract or in tort, including negligence and strict liability) to Owner or its parent corporation for special, indirect, incidental, or consequential loss or damage, including without limitation, loss of use of equipment, cost of capital, loss of profits or revenues or the loss of use thereof, or cost of purchased or replacement power. (c) The limitations of liability contained in this Article 23 shall not apply to the extent that Vendor is insured under policies of insurance maintained by Owner or Vendor under this Purchase Order. (d) Vendor's total liability for any and all liability to Owner arising out of or in connection with its performance of this Purchase Order whether in contract or in tort (including negligence and strict liability) shall not exceed the Purchase Order price except as it applies to Vendor's obligations pursuant to Article 6.0 INDEMNITY, Article 5.0 INSURANCE, Article 8.0 PATENT & COPYRIGHT INFRINGEMENT, and Article 11.0 WARRANTY. (e) The provisions of this Article 23.0 shall also apply to subcontracts and shall apply to the full extent permitted by law and shall survive termination of this Purchase Order and/or completion of the Work hereunder.

#### **24.0 ENTIRE AGREEMENT**

This Purchase Order, including these terms and conditions, any specifications, and any additional terms and conditions incorporated into and attached hereto or referenced herein, constitute the sole, entire, and exclusive agreement between the Parties. Unless expressly accepted by Owner in writing, no other terms and conditions in conflict with or in addition to those stated herein shall be binding on Owner. Any provision of this Purchase Order that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction. Any provisions of this Purchase Order, which by their express terms or by their nature are continuing, shall survive termination or expiration of this Purchase Order.

GC-01-PO

### **Terms and Conditions:**

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<b>Term (ID)</b>	<b>Description</b>
INV-SHIP-INSTRUCTIONS	Invoice and Shipping Instructions

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Please include the purchase order number, corresponding line number, ship to location, and ship to addresses on all invoices. Invoices received without this information may result in delayed payments. Invoice must separate materials from labor/services and must include make, model, and serial number of all installed equipment. Invoicing through the Ariba Network will fulfill these requirements. The NRG Accounts Payable website containing more billing information can be accessed through [www.nrgenergy.com/invoice](http://www.nrgenergy.com/invoice).

Other instructions: The Purchase Order number must be shown on all shipping papers, package, and correspondence pertaining to order.