

SPECIAL CONDITIONS OF PURCHASE – SYSTEMS CONTRACT

1. Requirements Contract

- (a) This is a requirements contract for the goods specified in the Contract for the period set forth in the Contract. The quantities of goods specified in the Contract are estimated only and are not purchased merely by the execution or issuance of the Contract.
- (b) Except as otherwise provided in the Contract, Con Edison shall order from Seller the goods set forth in the Contract which are required to be purchased by Con Edison during the term of the Contract.
- (c) Subject to any limitations elsewhere in the Contract Seller shall furnish to Con Edison all goods set forth in the Contract which are ordered in accordance with these Special Conditions.

2. Orders for Goods

Con Edison will order goods by issuing Standard Purchase Orders ("purchase orders") through Oracle E-Business Suite that will be transmitted by electronic data interchange ("EDI") for specific quantities of goods to be furnished under the Contract.

3. Deliveries

- (a) Deliveries shall be made to Con Edison locations in New York City and Westchester County or O&R locations in Rockland County as specified in the requisitions.

- (b) Unless Con Edison has specified emergency delivery, Seller shall deliver goods as follows:

Goods on purchase orders received prior to noon shall be delivered by the next business day (overnight delivery).

Goods on purchase orders received after noon shall be delivered by the second business day following receipt of the purchase order.

- (c) Deliveries to Con Edison's corporate headquarters at 4 Irving Place in New York City shall be made between 7 a.m. and 4 p.m.

Deliveries to all other locations shall be made between 7 a.m. and 2 p.m.

- (d) Seller shall retain written proof of each delivery made to Con Edison or O&R (including signed receipts) for at least one (1) year after the date of the delivery. Proof of delivery shall include the signature and the employee number of the Con Edison or O&R employee who received the delivery. No claim for unbilled deliveries shall be allowed in the absence of such proof of delivery.

4. Emergency Requirements

- (a) Con Edison's Purchasing Department may order goods by telephone for delivery on an emergency basis. Such requests will include a purchase order reference number.
- (b) Seller shall make delivery of an emergency purchase order as soon as possible and not later than twelve (12) hours after receipt of the telephoned purchase order unless otherwise agreed by Seller and Con Edison.

5. Seller Inventory

Based on the estimated quantities shown or incorporated by reference in the Contract, Seller shall maintain a thirty (30) day supply (unless otherwise directed by Con Edison) in stock of all items. Seller shall have this supply immediately available at all times, allowing a reasonable time to replenish items removed from stock to fill Con Edison purchase orders.

6. Out-of-Stock Items

In the event that Seller does not have the entire quantity of a requisitioned item, Seller shall immediately note the condition on the purchase order, indicating the actual quantity being shipped, and return copies of the corrected purchase order to the Procurement Specialist from Con Edison's Purchasing Department named in the purchase order. Seller shall also immediately advise the Procurement Specialist by telephone of the shortages and the date when the out-of-stock items will be delivered. Seller shall maintain a system to keep track of out-of-stock items and shall deliver them promptly when they become available (a backorder system). Con Edison may, in its discretion, purchase items that are out of stock from another supplier and, if the out-of-stock condition is not excusable, Seller shall be liable to Con Edison for the increased costs Con Edison incurs.

7. Invoicing and Payment

Con Edison will issue to Seller weekly billing lists summarizing all purchase orders under the Contract during the period covered. Seller shall review and return each billing list with a covering invoice. Unless otherwise specified in the Contract, payment for undisputed quantities

will be made by Con Edison net thirty (30) days after receipt of Seller's invoice. Listed items as to which the parties are not in agreement shall be resolved separately between Con Edison and Seller.

8. Unusual Quantities

Seller shall ask the Purchasing Department Procurement Specialist to confirm purchase orders for unusually large quantities before processing such purchase orders. An "unusually large quantity" is defined as any quantity equal to or greater than a thirty (30) day supply for the item as determined in accordance with Paragraph 5 of these Special Conditions (Seller Inventory). Seller shall advise the Item Master Group of Con Edison's Purchasing Department in writing, on a weekly basis, of purchase orders for unusually large quantities.

9. Packing Lists

Each shipment shall be accompanied by an itemized packing list that states the purchase order number, and any difference between the purchase order and the shipment. Seller may use a copy of the purchase order for the packing list.

10. No Substitutions

Seller shall not accept purchase orders for, and shall not make substitutions of, goods that are different from the purchase order descriptions without a written purchase order revision.

11. Terms and Conditions

All purchase orders issued under the Contract are subject to the terms and conditions of the Contract. In the event of conflict between the Contract and any purchase order issued thereunder, the terms and conditions of the Contract shall govern.

12. No Price Adjustment

Except as may be otherwise provided herein, in the event Con Edison's requirements for the goods do not result in orders for the quantities specified in the Contract, or even in approximations thereof, or in the event Con Edison has no requirements at all for some or all of the items, one or more of such events shall not constitute the basis for an equitable price adjustment under the Contract.

13. Price Limit

Seller Shall not deliver the goods or perform the services specified on any purchase order if the price thereof together with the price of all such previous purchase orders issued under the Contract exceeds the total amount of the expenditures authorized by the Contract, unless and until

that amount has been increased by means of a duly executed amendment to the Contract. Seller shall inform the Con Edison Procurement Specialist in writing when the total price of goods released reaches seventy-five (75%) of the maximum expenditures authorized by the Contract.

14. Contract Expiration

- (a) Sixty (60) days prior to expiration of the Contract, a Con Edison Procurement Specialist may confer with Seller to specify Con Edison's requirements through the last day of the Contract term.
- (b) If, in the reasonable judgment of Con Edison, Seller suffers a loss as a direct result of the obsolescence of items which are stocked pursuant to this Contract exclusively and specifically for Con Edison, Con Edison shall reimburse the Seller for such loss up to a thirty (30)-day supply of each item (unless Con Edison has directed Seller in writing to maintain a different quantity, in which case the different quantity shall apply), taking into account any adjustments for transportation and any scrap value of the items. Con Edison shall not be responsible for items in Seller's inventory that are not purchased exclusively by Con Edison.

15. Completion of Performance

A purchase order issued during the term of the Contract and not completed within that time shall be completed by Seller within the time specified in such purchase order, and the rights and obligations of Seller and Con Edison respecting such purchase order shall be governed by the terms of the Contract to the same extent as if such purchase order were completed during the term of the Contract.