

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**STANDARD TERMS AND CONDITIONS**

**FOR**

**PURCHASE OF GENERAL SUPPLIES AND MATERIALS**

July 1, 2012

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Appendix A - Required Clauses and Certifications

**STANDARD TERMS AND CONDITIONS  
FOR PURCHASE OF GENERAL SUPPLIES AND MATERIALS**

1. Definitions. The following terms as used herein shall have the meanings stated:

- “Con Edison” - Consolidated Edison Company of New York, Inc., the entity entering into the Contract and issuing any purchase orders applicable to the Contract, for the purchase of general supplies and materials for Con Edison or its affiliate, Orange and Rockland Utilities, Inc. (“O&R”).
- “Seller” - The seller who is a party to the Contract with Con Edison.
- “Contract” - The contract between Con Edison and Seller consisting of (a) a Blanket Purchase Agreement (“BPA”) or Contract Purchase Agreement (“CPA”) and/or a Con Edison Standard Purchase Order (“purchase order”), (b) the relevant Con Edison request for quotation, (c) these Standard Terms and Conditions, and (d) any documents or portions thereof incorporated by reference in (a), (b) or (c) above, including, but not limited to, special conditions, specifications, and performance requirements. The words "hereof", "herein", "hereto" and "hereunder" shall be deemed to refer to the Contract.

2. Contract Formation. A legally enforceable agreement shall arise upon the signing or acknowledgement electronically by Seller of the Contract in Oracle E-Business Suite iSupplier (the “Procurement System”) or, if Seller is not enabled in the Procurement System, upon the mailing or delivery by other means of the Contract or another writing manifesting acceptance of Seller's offer; provided, however, if Seller's offer contains terms additional to or different from those upon which quotations were requested by Con Edison which are not accepted in writing by Con Edison, a legally enforceable agreement shall not arise until the signing or acknowledgment electronically by Seller of the Contract in the Procurement System or, if Seller is not enabled in the Procurement System, by the signing by Seller of the Contract or a copy of the Contract or such other writing as may be issued by Con Edison (or another document expressing Seller's acceptance thereof), or Seller's commencement or continuation of performance following its receipt of the Contract or such other writing, such performance signifying Seller's acceptance of the terms thereof.

3. Amendments. No revision or modification of, or amendment to, the Contract shall be valid or binding unless in writing (electronic or print form) and signed (electronically or in writing) by an authorized representative of Con Edison.

4. Firm Price. Unless otherwise expressly provided in the Contract, the prices stated in the Contract are firm and are not subject to increase.

5. Payment. Unless otherwise specified in the Contract, payment shall be made by Con Edison to Seller, within thirty (30) days after receipt and processing of proper invoices with required supporting documentation. Invoices (the originals) shall be submitted to Con Edison's Accounts Payable Department, after the delivery of the goods for which payment is to be made, in such detail and with such supporting documentation required by the Contract or as may reasonably be required by Con Edison for tax and regulatory purposes. Should the Contract contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery. The acceptance by Seller of final payment shall operate as a release of Con Edison from all claims of Seller for payment for all goods and services furnished in connection with the Contract. However, no payment, final or otherwise, shall operate to release Seller from any obligations under the Contract.

6. Taxes

A. Sales Tax. Except as otherwise provided in the Contract, the price does not include any federal, state or local sales, use, or other similar tax which may now or hereafter be applicable to the purchase hereunder, and Con Edison agrees to pay or reimburse Seller for any such tax. Con Edison shall have the right to direct the basis on which any such taxes shall be paid or contested and to control any contest and shall reimburse Seller for any interest, penalties or expenses Seller may be required to pay on account of any such taxes or contest. Conducting any hearings or litigation regarding a tax dispute shall be Con Edison's responsibility, but Seller shall cooperate and assist Con Edison therein.

B. Import Taxes (Duties). The prices contained in the Contract include any and all import taxes, including, but not limited to, regular, special, countervailing and antidumping duties, that are imposed at any time on the goods purchased hereunder, whether denominated duties, tariffs, surcharges, imports, tolls or otherwise Seller shall hold harmless and indemnify Con Edison and its affiliates (including O&R) from and against any liability arising out of the imposition of any such import taxes. In the event that a notice of the initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register covering the kind of goods and the country of origin involved in the purchase hereunder, Con Edison shall have the right at any time

thereafter, on written notice to Seller, to cancel the Contract without incurring any liability therefor. The exercise or non-exercise of this right of cancellation shall not in any way prejudice any right hereunder to be indemnified and held harmless.

7. Time of Performance. Seller shall deliver the goods purchased hereunder to the location stated in the Contract in accordance with the delivery dates and any schedule of performance stated herein. It is understood and agreed by Seller that TIME IS OF THE ESSENCE OF THE CONTRACT and of each and every delivery of goods for which a date or length of time is fixed for delivery.

8. Warranties. Seller warrants that the goods furnished under the Contract will be new and free from defects in title, design, material, fabrication and workmanship, will conform strictly to any applicable samples and to specification, drawings and other descriptions incorporated herein, will meet all tests, will be suitable for their intended purpose, will be of merchantable quality, and will comply with and be usable in compliance with all applicable laws and regulations. Should any failure to meet any of the warranties stated herein appear within twelve (12) months of the commencement of commercial use or operation of the goods or eighteen (18) months after their acceptance by Con Edison, whichever occurs first, Seller shall, upon notice from Con Edison, promptly replace or repair the goods not conforming to the foregoing warranties, without expense to Con Edison. In the event of a failure of Seller to promptly remedy any breach of warranty, Con Edison may correct the deficiencies and charge Seller for the cost thereof. The aforesaid warranties shall survive acceptance of, and payment for, goods furnished hereunder. After any goods furnished hereunder have been repaired or replaced pursuant to the foregoing warranties, they shall be subject anew to the warranties provided for the original goods. All warranties made or obtained hereunder are made to, and for the benefit of, Con Edison and O&R and may be enforced by or on behalf of either or both of Con Edison and O&R.

9. Inspection and Tests. Con Edison shall have the right to be present and witness tests which are performed on the goods. Con Edison, in addition, shall have the right to require additional tests to be performed at all reasonable times and places. Any special tests ordered in writing by Con Edison will be paid for by Con Edison, provided that if any such tests reveal a defect or non-conformity with the Contract requirements, the cost of the tests shall be borne by Seller. No inspection, failure to inspect or waiver of inspection by Con Edison shall relieve Seller of its obligation to furnish goods fully in accordance with the requirements of the Contract. Goods supplied hereunder shall be received subject to inspection and approval, notwithstanding prior payment, it being expressly agreed that payment shall not constitute acceptance. All rejected goods will be held at Seller's expense and at Seller's risk pending Seller's disposition instructions.

10. Assignment. Seller shall not assign the Contract or any of its rights under the Contract without the prior written consent of Con Edison, and any

assignment made without such consent shall be void. In the event of an assignment of the Contract, Seller shall not be relieved of its obligations under the Contract but shall be jointly and severally liable with the assignee for each of Seller's obligations under the Contract.

11. Termination for Convenience. Con Edison may for any reason whatsoever, including its own convenience, by written notice to Seller terminate the Contract, in whole or in part, without liability to Seller except as stated in this Article. In the event of such a termination, in full discharge of its obligations to Seller in respect of the Contract and such termination, Con Edison shall pay to Seller for goods delivered or specially manufactured prior to termination, an amount which is equitable in light of the Contract price. Seller shall take all reasonable steps to minimize any termination charges of its suppliers as well as its own termination costs. If payments made under the Contract exceed such termination amount, the excess shall be refunded promptly to Con Edison. Except as agreed in writing, termination shall not relieve Seller of any obligation arising out of goods delivered prior to termination. In no event shall Con Edison be liable to Seller for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead, or lost opportunities to obtain other sales.

12. Cancellation for Default. In the event Seller is in default of any of its obligations under the Contract, Con Edison shall have the right, by written notice to Seller, to cancel the Contract, in whole or in part, for such default. Seller shall be deemed to be in default hereunder if the Seller is in default of any of its obligations under the Contract or Seller by a statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof). In the event of cancellation for default hereunder, Con Edison shall have all rights and remedies provided by law and under the. In addition, in such event Con Edison may retain from any money otherwise due for goods delivered prior to cancellation an amount which Con Edison determines is adequate to cover all damage resulting from Seller's default. If such costs and damages exceed the unpaid balance, Seller shall pay the difference to Con Edison. Upon cancellation for default of the Contract under this Article, Con Edison shall be entitled to cancel for default any or all other contracts between Seller and Con Edison, and such cancellation shall be governed by this Article. Also, a cancellation for default of any other contract between Seller and Con Edison shall entitle Con Edison to cancel for default the Contract under this Article. In the event that Seller demonstrates that a cancellation of the Contract for default is erroneous, the cancellation shall, at Con Edison's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 11 of these Standard Terms and Conditions.

13. Title and Risk of Loss. Unless otherwise specified in the Contract, title to, and the risk of loss of, all goods to be furnished hereunder shall pass to Con Edison upon acceptance by Con Edison at the Con Edison facility to which the Contract states delivery is to be made.

14. Compliance with Laws. Seller shall comply with all federal, state and local laws, executive orders, regulations and rules applicable at the time of performance. Without limiting the generality of the foregoing, Seller agrees to comply, as applicable, with the provisions contained in Appendix A, "Required Clauses and Certifications," which is incorporated in these Standard Terms and Conditions as if fully set forth herein.

15. Set-off. Con Edison shall have the right to set-off against any sums due Seller hereunder, any claims Con Edison may have against Seller under the Contract or any other contract between Con Edison and Seller, without prejudice to the rights of the parties in respect of such claims.

16. Conflicting Documents; Headings. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with any typewritten provisions of the BPA, CPA or purchase order form or the Standard Terms and Conditions of which this Article is a part, the typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the BPA, CPA or purchase order form and these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein expressly refers by number and title to the conflicting or inconsistent provision in these Standard Terms and Conditions and states that such provision does not apply, in which case the conflicting or inconsistent typewritten provision of the BPA, CPA, purchase order form or any special conditions incorporated by reference therein shall take precedence and govern. In the event that Seller's offer is referred to in the Contract, in any instance where any provisions of the offer are in conflict or inconsistent with other provisions of the Contract, unless there is a clear statement to the contrary in the Contract, such other provisions of the Contract shall take precedence and govern. All rights and remedies provided by the Contract shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The headings of the articles, sections and paragraphs of the Contract are for convenience only and shall not be construed to limit or qualify the meaning of any such article, section or paragraph.

17. Transportation and Packaging. Unless specifically provided for in the Contract, Con Edison shall not pay Seller any additional amounts for transportation or boxing, crating or other packaging.

18. Waiver. The acceptance of goods or any part thereof or any payment therefor or any order or certificate issued under the Contract, any performance by Con Edison of any of F duties or obligations, or any failure of Con Edison to insist on strict performance by Seller of the Contract or to otherwise assert its rights in any one or more instances, shall not constitute a waiver by Con Edison

of such performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of a breach hereof shall be deemed a waiver of any money damages to which Con Edison may be entitled because of such breach. Any waiver shall be effective only if in writing and signed by Con Edison's authorized representative, and only with respect to the particular event to which it specifically refers.

19. Entire Agreement. The Contract, as it may be amended in accordance with Article 3 (Amendments) of these Standard Terms and Conditions contains the entire agreement between Con Edison and Seller with respect to its subject matter. If any provision of the Contract is or becomes legally invalid or unenforceable, the remainder of the Contract shall not be affected thereby. Any prior or contemporaneous, oral or written, understandings or agreements relating to the subject matter of the Contract are merged herein.

20. Governing Law. The Contract shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the state of New York, applicable to agreements made and to be performed in that state.

21. Personal Injury and Property Damage; Indemnification. If a third party suffers personal injury (including death) or property damage for which Seller is legally liable, no provision of the Contract shall be interpreted as an agreement by Con Edison to assume all or any part of such liability or, if Con Edison is named or joined in any legal action or proceeding in connection therewith, to preclude, prejudice or limit Con Edison's right to receive indemnification or contribution from Seller. To the fullest extent allowed by law, Seller agrees to defend, indemnify and hold harmless Con Edison and its affiliates and their respective trustees, directors, officers, employees and agents, representatives, successors and assigns from and against all claims, damage, loss and liability, including costs and expenses, legal and otherwise, for injury to or the death of persons or damage to property, including the property of Con Edison or O&R, or statutory or administrative fines, penalties or forfeitures resulting, in whole or in part, from, or connected with, the performance of the Contract by Seller, any subcontractor, their agents, servants or employees, and including claims, losses, damages and liability arising from the partial or sole negligence of Con Edison or non-parties to the Contract (including, but not limited to, O&R). Seller expressly agrees that Con Edison and O&R may pursue claims for contribution and indemnification against Seller in connection with claims against Con Edison or O&R for injury and/or death to Seller's employees notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and indemnification against employers, and Seller hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Con Edison against Seller.

22. Material Safety Data Sheets. Seller shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be

contained in the goods to be furnished. For this purpose, a toxic substance is any substance that is listed in the then latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. Seller's failure to complete and return an MSDS promptly upon Con Edison's request shall be grounds for cancellation of the Contract for default.

23. Submission to Jurisdiction/Choice of Forum/Waiver of Jury Trial

- A. Seller hereby irrevocably submits to the jurisdiction of the state and federal courts situated in the City of New York or in Westchester or Rockland County with regard to any controversy arising out of or relating to the Contract. Seller agrees that service of process on Seller in relation to such jurisdiction may be made, at the option of Con Edison, either by registered or certified mail addressed to Seller at the address shown in the Contract or at the address of any office actually maintained by Seller or by actual personal delivery to Seller. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.
- B. Seller consents to the selection of the state and federal courts situated within the City of New York or Westchester or Rockland County as the exclusive forums for any legal proceeding arising out of or relating to the Contract. Seller also agrees that all discovery in any proceeding will take place in the City of New York or in Westchester or Rockland County.
- C. Seller hereby waives trial by jury in an action, proceeding or counterclaim brought by either party against the other arising out of or in any way connected with the Contract.

24. Investigation and Audit. Seller hereby agrees to cooperate fully with any investigation, audit, or inquiry conducted by Con Edison, O&R or any federal, state or local government agency or authority relating to any aspect of the Contract or the performance of the Contract, and Seller shall make all of its books, records, and accounts available for inspection and audit in connection therewith. Moreover, in the event the Contract now provides or in the future is revised to provide for performance, or any part thereof, on a cost-reimbursable basis (whether or not a fee has, in addition, been fixed by the parties), time-and-materials basis or similar basis, or if payment on such basis is to be made under Article 11 (Termination for Convenience) of these Standard Terms and Conditions, Seller shall maintain detailed books, records and accounts covering costs incurred or, as applicable, time and materials used in connection therewith, and shall make said books, records and accounts available for inspection and audit by Con Edison, O&R, the investigating governmental agency or authority

and their authorized representatives during the term of the Contract and for a period of six (6) years after final payment under the Contract. If an investigation, audit or inquiry discloses that Con Edison has paid the Seller for any costs which were not in fact incurred or for any time spent or materials used which were not in use or for any other costs that were improperly charged, Seller shall refund to Con Edison an amount equal to such payment.

25. Third Party Rights. O&R is a third party beneficiary of the Contract and may enforce the Contract. The other Con Edison affiliates and other non-parties referenced in Articles 21, 24, 25 and 27 of these Standard Terms and Conditions are third party beneficiaries of the Contract and may enforce those Articles and any other articles in which the affiliates or non-parties are specifically referenced. There are no other third party beneficiaries of the Contract.

26. Enablement in the Procurement System. In the event Seller is not presently enabled in the Procurement System (Oracle E-Business Suite iSupplier) to transact business electronically with Con Edison (which includes receiving requests for quotation, submitting bids, receiving orders and submitting invoices), Seller shall promptly become enabled in the Procurement System.

27. Gift Policy and Unlawful Conduct. Seller is advised that it is a strict Con Edison policy that neither employees of Con Edison nor their family members, agents, or designees, shall accept gifts, whether in the form of a payment, gratuity, service, loan, thing, promise, or any other form (collectively "Gift"), from contractors, sellers, or others transacting or seeking to transact any business with Con Edison. Accordingly, Seller, its employees, agents and subcontractors are strictly prohibited from offering or giving any Gift to any employee of Con Edison or O&R or any employee's family member, agent, or designee, whether or not made with intent to obtain special consideration or treatment and whether or not the employee is involved in the purchase of supplies or materials under the Contract. Furthermore, Seller is prohibited from engaging in fraudulent or unlawful conduct in the negotiation, procurement, or performance of any contract between Con Edison and Seller or any services or work performed for or on behalf of Con Edison, or in any other dealings relating to Con Edison. Seller represents, warrants, and covenants that Seller, its agents, employees, representatives and subcontractors have not engaged and will not engage in any of the acts prohibited under this Article. Upon a breach of any these representations, warranties, or covenants and/or the commission of any act prohibited under this Article, Seller shall be in default under the Contract and all other contracts between Con Edison and Seller and (a) Con Edison may, in its sole discretion, cancel for default the Contract and any other contract between Con Edison and Seller, (b) Con Edison may, in its sole discretion, remove Seller from Con Edison's list of qualified bidders, (c) Seller shall have forfeited all rights it has under the Contract and any other contracts between Con Edison and Seller (including, but not limited to, the right to payments for goods furnished or work performed), and (d) Con Edison shall have no further obligations to Seller relating to such contracts. In addition, Seller shall be liable to Con Edison for all damages caused to, and costs incurred by, Con Edison as a result of any

violation of this Article, including the costs and expenses of internal and external attorneys and investigations. Whenever Con Edison has a good faith reason to believe that Seller may have violated this Article, and conducts an investigation into such potential violation, then, to the fullest extent permitted by law, no payments shall be due Seller under the Contract or any other contract between Con Edison and Seller during the pendency of such investigation. The remedies set forth in this Article are non-exclusive, and Con Edison expressly reserves all rights and remedies under such contracts, and in law and equity. For the purposes of this Article, the term "Con Edison" shall include all of Con Edison's affiliates (including, but not limited to, O&R). Seller shall promptly report any alleged violation of this Article to the Vice President of Purchasing or to the Ethics Helpline at 1-855-FOR-ETHX (1-855-367-3849).

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