

**VICTORY ENERGY OPERATIONS, LLC  
TERMS AND CONDITIONS OF PURCHASE**

These Terms and Conditions ("Terms and Conditions") are made a part of and govern the purchase order issued by Victory Energy Operations, LLC, a Delaware limited liability company, with its principal office at 10701 East 126th Street North, Collinsville, Oklahoma 74021 ("Purchaser"), to Seller as identified on the face of such purchase order (the "Purchase Order" or "Order"). The Purchase Order Documents comprise the entire agreement between Purchaser and Seller concerning the furnishing of the Work and shall not be deemed to create or constitute a relationship of principal and agent, partnership, joint venture or business organization of any kind or nature whatsoever between Seller and Purchaser. If Seller finds a conflict, error or discrepancy in the Purchase Order Documents, Seller shall immediately notify Purchaser thereof in writing. Unless specifically stated otherwise in the other Purchase Order Documents, in the case of a conflict between these Terms and Conditions and the other Purchase Order Documents, these Terms and Conditions shall control.

**Definitions**

- a) Work – any and all equipment, materials, goods, labor, evaluations, reports, manuals, documents, engineering, design, fabrication, delivery, erection, construction, testing, permits, and any other services, including all duties and obligations, which are the responsibility of the Seller under the Order.
- b) Purchase Order Documents – the Purchase Order, these Terms and Conditions and all Exhibits accompanying any of such documents.

**1. Acceptance of the Order**

Acceptance of the Purchase Order (herein referred to as the "Order") by Seller is expressly limited to the terms and conditions contained in the Order and these Terms and Conditions. By acceptance of the Order, Seller agrees to be bound by and comply with all terms and conditions of the Order and these Terms and Conditions, including any supplements thereto, and all specifications and other documents referred to in the Order. Any additional or different terms in Seller's proposal, invoices, billing statements, acknowledgement forms or other documents are deemed to be material, are objected to by Purchaser, and are excluded from the Order and shall be of no force or effect unless specifically agreed to in writing by Purchaser. Any of the following acts by Seller shall constitute acceptance of the Order and the terms contained herein: a) Seller's commencement of performance of the Work; b) Signing and returning the acceptance copy of the Order; c) delivery of any of the Work; or d) Seller informing Purchaser in any manner of commencement of performance.

**2. General**

Time is of the essence in this Order. If delivery is not made at the time agreed upon, Purchaser reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefor. All written notices shall be deemed to have been given when transmitted and received by electronic mail or facsimile transmission or when deposited, postage prepaid in the United States mail addressed to the address of the recipient as shown on the Order. In the event Seller anticipates any delay in performance of the Order, Seller shall immediately notify Purchaser in writing. Seller shall provide a written recovery plan to address corrective measures to ensure order schedule subject to Purchaser's approval. The Seller may not assign, without the prior written consent of the Purchaser, the Order, or any interest herein or any payment due or to become due hereunder. Any such attempted assignment shall be null and void. Reference to standard specifications, manuals or codes of any technical society, organization or association, or any

governmental authority shall mean the latest standard specification, manual, or code in effect at the time of the Order award except as may be otherwise specifically stated.

### **3. Prices**

All prices are firm, not subject to escalation, and are inclusive of all costs including but not limited to boxing, crating, tagging, carting, handling, transportation, licenses, fees, permits, duties, assessments, all associated and complimentary work which is indispensably necessary for the satisfactory completion and performance of the Order, and the like, unless otherwise agreed to in writing by Purchaser. Seller shall not be permitted to escalate the price under the Order due to any act of God, industry wide supply chain disruptions, pandemics, weather, increased expert taxes, tariffs, or any related shipping disturbances. Seller shall submit invoices in accordance with the Order instructions. Acceptance of invoices is contingent upon receipt by Purchaser of any required waivers, release of liens (partial and/or final), and all Work required by the Order. Seller shall forward to the Purchaser, with the final invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.

### **4. Terms of Payment**

The Order is subject to billing in accordance with payment terms as stated in the Order. Seller may invoice for payment, upon verifiable and acceptable completion of payment milestone(s) in accordance with the Order, for the amounts specified therein. Any claim, demand, or request for payment under the Order shall be subject to setoff for any present or future claims which Purchaser may have against Seller or any of Seller's affiliated companies. Seller understands that receipt of payment from Purchaser's customer to Purchaser related to the Work that corresponds with a particular invoice from Seller is a condition precedent to Purchaser's obligation to make payment on that invoice from Seller.

### **5. Changes**

The Order shall not be changed or otherwise modified except upon the prior written authorization of a duly authorized representative of Purchaser. Notwithstanding the foregoing, Purchaser may change the scope of the Order at any time before complete delivery is made by written notice from Purchaser to Seller. Seller shall be deemed to have accepted Purchaser's proposed changes without additional costs to Purchaser and without extension of Seller's time for performance unless Seller, within three (3) days following receipt of Purchaser's notice of change, notifies Purchaser in writing of any additional costs and or time required to make such change. Seller shall proceed with the supply of the goods (which term throughout the Order includes without limitation materials, components, assemblies, tools, equipment, and end products) and performance of the Work as changed without interruption while the cost and schedule of such changes are negotiated. Purchaser retains the right to act upon any such claim asserted at any time prior to final payment of the Order.

### **6. Acceptance/Rejection of Work**

All Work is subject to inspection and test at all times and places by Purchaser. If any inspection or test is made on the premises of Seller or its suppliers, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Purchaser's inspectors in the performance of their duties. If any of the Work is found at any time to be defective in material, workmanship, or otherwise not in conformity with the requirements of the Order, Purchaser may, in addition to any other rights granted under contract or law, (a) Reject and return the Work at Seller's cost and expense; (b) Require Seller to inspect the Work and remove and replace nonconforming Work with Work that conforms to the Order, all at Seller's cost and expense; and (c) Upon written notice to Seller, Purchaser shall take such actions as may be required to cure all defects (including the removal of any

integrated nonconforming Work) and/or bring nonconforming Work into conformity with all requirements of the Order, in which event all costs and expenses thereby incurred by Purchaser for actions taken pursuant to this clause shall be the sole responsibility of Seller. Payment of invoices, failure to inspect and accept or reject Work shall not constitute acceptance of Work and shall not relieve Seller of any responsibility of Work that is not in accordance with the Order. Inspection and acceptance of the Work by Purchaser will not waive or reduce the obligation of Seller or the rights of Purchaser to comply with the provisions of the Order. Warranties and Performance Guarantees or as may be provided by law.

## **7. Warranties and Performance Guarantees**

Seller hereby represents and warrants all Work hereunder or pursuant hereto will be factory new, free from all defects in design, workmanship and materials, and will be merchantable and fit for the particular purposes for which it is intended and are provided in accordance with the Order. Seller hereby represents and warrants that all Work shall be in compliance with all applicable laws, rules, regulations, and ordinances of governmental or other authorities having jurisdiction over Seller. Seller shall indemnify and hold harmless Purchaser from all loss, liability and fines incurred by Purchaser as a result of Seller's failure to so comply with the terms of this provision. If a failure to meet the foregoing warranties appears or occurs within the warranty period, Purchaser shall notify Seller. Seller shall repair and/or replace in place, DDP jobsite, including freight, any Work found by Purchaser to be defective in design, workmanship, material, or otherwise. Seller shall be responsible for all costs incurred for such repair and/or replacement including, without limitation, any costs associated with accessing the Work and other incidental costs. In the event Seller, upon notification from Purchaser of a defect(s) in the Work during the warranty period herein, fails to promptly and adequately correct such defect(s), Purchaser shall correct or have such defects corrected to the account of Seller, and Seller shall promptly reimburse Purchaser for all costs incurred by Purchaser in connection with correcting such defects. Each of the foregoing warranties shall apply for a period as stated within the Order. In the absence of any such statement in the Order, Seller's warranty period shall apply for a period the longer of twelve (12) months after acceptance of field commissioning of the boiler or twenty four (24) months from the date of delivery of the Work in accordance with the Order. For all Work that is repaired or replaced by the supplier during the warranty period, the later of twelve (12) months or the original warranty period will apply after repairs are made or Work replaced.

## **8. Termination for Default**

Purchaser may by written notice of default to Seller take the following actions:

- a) Terminate the whole or any part of the Order in any one of the following circumstances: (i) Seller fails to perform within the time specified in the Order or any extension thereof; or (ii) Seller fails to perform any of the other provisions of the Order, or (iii) Seller fails to make progress as to endanger performance of the Order in accordance with its terms.
- b) Upon such partial or whole termination, Purchaser may at its sole discretion, require all Work in progress subject to the partial or whole termination to be delivered to Purchaser within five (5) days of such notice. Upon receipt of goods, Purchaser shall, within a reasonable period of time, reimburse Seller for actual costs incurred by Seller to include raw material and labor up to the time termination notice was given, except that Purchaser may withhold as an offset the reimbursement to Seller to cover any damages caused by Seller, including the cost to procure replacement Work as discussed in Section 8(c) below.
- c) Purchaser shall procure, upon such terms as it shall deem appropriate, Work similar to that so terminated; provided that Seller shall continue performance of the Order to the extent not terminated and shall be liable to Purchaser for any excess costs or expenses for such similar

- Work.
- d) As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect: (i) to extend the delivery schedule and or (ii) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price shall be made.
  - e) If Seller does not comply with Purchaser's delivery schedule, Purchaser may require delivery by the shipping method it determines most expedient and charges and expenses caused thereby are the sole responsibility of the Seller.
  - f) The rights and remedies of the Purchaser provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Order.

**9. Termination for Convenience**

Purchaser may terminate all or part of the Order at any time by written notice to Seller. Upon termination for convenience, Purchaser and Seller shall negotiate reasonable termination charges which will be agreed by Seller and Purchaser within 30 days of termination. Termination charges shall not exceed Seller's actual direct costs incurred by Seller to include raw material and labor up to the time termination notice was given.

**10. Suspension**

In the event of suspension of the performance of the Order, upon written notice from Purchaser, Seller shall promptly suspend further performance of the Order and shall properly care for and protect all Work in progress, materials, supplies, and equipment Seller has on hand for performance of the Order. Purchaser may, at any time, withdraw the suspension of performance of any or all Work and Seller shall resume diligent performance of the Order according to the withdrawal. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Order price and or shipment or delivery date, Seller shall comply with the provisions set forth in Section 5 entitled "Changes".

**11. Purchaser's Property**

All material, including tools, furnished or specifically paid for by the Purchaser shall be the Purchaser's property, shall be subject to removal at any time without additional cost upon demand by the Purchaser, shall be used only in filling orders from the Purchaser, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the Purchaser. Seller assumes all liability for loss or damage, with the exception of normal wear and tear.

**12. Taxes**

Except as may be otherwise provided in the Order, the contract price includes all applicable federal, state, and local taxes in effect on the date of this Order. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the contract price shall be adjusted accordingly.

**13. Traffic Routing**

Any losses accruing from deviation from the Purchaser's routing instructions will be charged to Seller's account.

**14. Title to Drawings and Specifications**

Purchaser shall at all times have title to all drawings and specifications furnished by the Purchaser to Seller and intended for use in connection with the Order. Seller shall use such drawings and specifications only in connection with this Order, and shall not disclose such drawings and specifications to any person, firm, or corporation other than the Purchaser's or Seller's employees, subcontractors, or government

inspectors. Upon the Purchaser's request or upon completion of this Order, Seller shall promptly return all drawings and specifications to the Purchaser.

**15. Insolvency**

If Seller ceases to conduct its operations in the normal course of business, or is otherwise unable to meet its obligations as such obligations mature, or if any proceeding under bankruptcy or insolvency law is brought by Seller or against Seller and is not dismissed by Seller within seven (7) days from the date such proceeding is brought, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Purchaser may terminate the Order without any liability whatsoever.

**16. Indemnification**

Seller shall at all times indemnify, defend Purchaser and its customers and their respective affiliates, employees, officers, directors, and agents harmless from and against any and all costs, liabilities, losses and expenses resulting from and against all claims for; infringement of any existing or applied for patent, personal injury, property damage, wrongful death or other damages, losses, and expenses, including reasonable attorney's fees arising out of, or resulting from, performance of the Work or any services on behalf of the Purchaser, whether commenced pursuant to the Order or written contract, unless such claims are caused by the gross negligence or willful misconduct of Purchaser. **FOR PURPOSES OF THE INDEMNITY PROVIDED PURSUANT TO THIS PURCHASE ORDER, SELLER SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY THAT MAY BE GRANTED IT UNDER ANY APPLICABLE WORKMEN'S COMPENSATION LAW. FURTHER, THE INDEMNIFICATION OBLIGATIONS UNDER THIS PURCHASE ORDER SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFIT ACTS; PROVIDED SELLER'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS ARTICLE EXTENDS ONLY TO CLAIMS AGAINST SELLER BY PURCHASER AND ITS CUSTOMERS AND THEIR RESPECTIVE AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AND AGENTS AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY SUBCONTRACTOR'S EMPLOYEES DIRECTLY AGAINST SUBCONTRACTOR.**

**17. Insurance / Financial Security**

If required by the Order, Seller shall at its own expense, provide payment and/or performance bonds, letters of credit, or like instruments of financial security, satisfactory to Purchaser. Seller shall maintain the following minimum insurance coverage during the term of the Contract and shall provide Buyer with a certificate evidencing such coverage: (a) Statutory Workers' Compensation and Employer's Liability Insurance, with limits of One Million USD (\$1,000,000.00) each accident, One Million USD (\$1,000,000.00) disease each employee, and One Million USD (\$1,000,000.00) disease policy limit; (b) Commercial General Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per occurrence and Two Million USD (\$2,000,000.00) in the aggregate; and (c) Automobile Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per accident. In the event the Work includes engineering, design, inspection, or other professional services, Seller shall maintain professional liability/errors and omissions insurance with limits not less than \$2,000,000 for each claim and annual aggregate, and continue such coverage for a period of two (2) years after delivery of the Work. Seller's insurance must name Purchaser as Additionally Insured, must include a Waiver of Subrogation, and shall be primary without right of contribution of any other insurance carried by or on behalf of Buyer with respect to their interests as such in the Work.

**18. Governing Law; Jurisdiction; Waiver of Right to Jury Trial**

The Order shall be interpreted and governed in accordance with the laws of the State of Oklahoma (without giving effect to principles of choice law thereof) and any legal action which is instituted hereunder shall be brought in the federal or state courts located in Tulsa, Oklahoma and Seller hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. EACH PARTY HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER THEORY WHATSOEVER).

**19. Severability of Provisions**

If any provision, portion, or application thereof, of the Order be deemed illegal, invalid, unenforceable, or in conflict with any applicable law or statute by a court of competent jurisdiction, such invalidity or unenforceability shall not invalidate or render unenforceable the entire agreement, but rather the entire agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Seller and Purchaser shall be construed and enforced accordingly.

**20. Disputes**

In the event of dispute in the performance of Purchaser of the Purchase Order Documents, Seller shall notify Purchaser in writing within five (5) days. Seller shall not halt, delay, or suspend performance of the Order during the period of dispute. Seller shall not withhold ASME code paperwork or certificate(s), any governing body certification sheet(s), data sheet(s), operation manual(s), detail drawing(s), user name(s), or the like during dispute resolution and shall deliver any and all certificate(s) and or document(s) to Purchaser within three (3) days of Purchaser's request for said certificate(s) and or document(s). Purchaser and Seller agree to make a diligent, good-faith attempt to resolve all Disputes. If the Authorized Representatives of the parties are unable to resolve a Dispute arising under this Agreement within ten (10) days after notice from one party to the other, such dispute will be submitted promptly to the senior executive officers of the parties, who will meet, in person or by telephone, not later than ten (10) days after the date such Dispute was submitted to them. In the event that the officers cannot resolve the Dispute within ten (10) days after the matter is submitted to them, then the parties may pursue such rights and remedies as may be available under applicable law. Purchaser maintains the right to suspend payments until such performance of the Work is satisfied pursuant to the Purchase Order. The Seller and Purchaser waive all claims against each other for all consequential damages arising out of or relating to the Purchase Order.

**21. Governmental Regulation**

Seller shall not (1) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Purchaser from doing business with Seller, or (2) fail to provide documentary and other evidence of Seller's identity as may be requested by Purchaser at any time to enable Purchaser to verify Seller's identity or to comply with any applicable law or regulation, including without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.



**22. For Work on Purchaser's Or Its Customer's Premises**

If Seller's Work under the Purchaser Order involves operations by Seller on the premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or to property during the progress of such Work. At any time that Seller or Seller's representative visit Purchaser's offices or sites operating under Purchaser's control, Seller agrees that Seller and any representatives of Seller shall be bound by the Work and safety rules of such site.

**23. Operating Instructions and Parts List**

Seller shall furnish the number of copies as stated in the Purchase Order, of complete instructions for the installation, operation, and maintenance of each component of the Work furnished hereunder, including priced lists of manufacture's recommended spare parts. If required by the Purchase Order, Seller shall also supply a priced list of manufacturer's recommended spare parts and materials typically consumed during the installation, commissioning, startup and/or testing of the Work.

**24. Drawings**

Unless otherwise specifically agreed to in writing by Purchaser, any check, review, or approval of drawings by Purchaser or its customers, shall be for Seller's convenience and will not relieve Seller of its responsibility to meet all requirements of the Purchase Order.

**25. Spare Parts / Site Requests**

Seller will direct all inquiries for spare parts from the end customer directly to Purchaser. For any issues at the site involving Work supplied by Seller, the Seller MUST contact Purchaser if the goods are within the warranty period. Once the warranty period expires, the Seller will notify Purchaser of site issues of the Work.

**26. Flowdown**

The Purchaser and Seller are mutually bound by the terms of this Agreement and to the extent that there are terms in the contract between Purchaser's Customer (Owner) and Purchaser that apply to the Work of the Seller, Seller agrees to assume towards Purchaser all such obligations and responsibilities that Purchaser has assumed towards OWNER. Lower tier subcontractors and suppliers shall be apprised of the terms and conditions of this Agreement as it relates to their Work and shall be held liable, accountable for and subject to these terms and conditions in their own Work and supply contracts to the same extent and degree that the Seller is or would be liable, accountable for and subject to these terms and conditions in its Work.

**27. Inspection and Quality Control**

Seller shall maintain a quality management system throughout the term of all Contracts. Seller shall notify Purchaser in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include a description of the cause of the delay, the estimated period of the delay and corrective actions being undertaken. Seller shall notify Purchaser and must obtain Purchaser approval for any work that the Seller sub-contracts. As and when requested by the Purchaser, Seller shall provide the schedules and periodic progress reports of Seller and the Sub-suppliers to demonstrate Work progress in form and manner directed by Purchaser.

**28. Non-Disparagement; Injunctive Relief**

During and after the Term, Seller will not, except in connection with a legal proceeding or Order (including a proceeding relating to this agreement) or as otherwise required by law, criticize, ridicule, or make any

statement that disparages or is derogatory of Purchaser, or any of Purchaser's members, investors, officers, directors, agents, employees, or any of its products, services, or procedures, whether or not such disparaging or derogatory statements are true. Each party understands and acknowledges that the other party's business and reputation are of special, unique, and extraordinary character, which gives them a particular value, the loss of which cannot reasonably be compensated in damages in an action at law. Accordingly, each party further agrees that in addition to any other rights or remedies that any other party may possess at law, any aggrieved party will be entitled to injunctive and other equitable relief in order to prevent or remedy a breach of the provisions of this Section by the other party.

**29. Notices or Claims**

All written notice or claim requirements hereunder are to be strictly construed without waiver. Notices and claims not submitted in strict accordance with these requirements, including, without limitation, time requirements, are hereby waived. In no event shall actual, oral, constructive notice constitute notice hereunder nor shall lack of prejudice constitute a defense for failure to give written timely notice as required by this agreement.

**30. Covenant Not to Compete**

In connection with its performance of the Work pursuant to the Purchase Order Documents, Seller will not, and will ensure that its representatives, employees, or subcontractors do not, perform or offer to perform services other than the Work or otherwise offer or sell other products or services to Purchaser's customer underlying the Order that directly competes with Purchaser's products or services.

**31. Publicity Limitation**

Seller shall not, without Purchaser's prior written approval, use Purchaser's name, image, or likeness or any information or photographs from projects for which Seller is performing Work for Purchaser in any public communication, including press releases, marketing materials, or social media posts, except as required by law or regulation.

Accepted as of the date written below:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date