

PURCHASE ORDER TERMS & CONDITIONS
(Applicable only to procurements less than \$10,000)

1. WARRANTY

The Seller warrants that the supplies or equipment delivered hereunder shall be free from all defects in material and workmanship and shall comply with all the requirements of this Order for a period of one (1) year from date such supplies or equipment are placed in use, but in no event longer than 18 months from the date of delivery of such supplies or equipment.

2. CHANGES

The Buyer through its Manager or his designee may at any time, by a written order, and without notice to the sureties, if any, make changes within the general scope of this Purchase Order, in any one or more of the following: (a) drawings, designs, or specifications; (b) method of shipment or packing; and (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this Purchase Order, an equitable adjustment shall be made in the Purchase Order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this section must be asserted within 30 days from the date of receipt by the Seller of the notification of change: provided, however, that the Buyer if it decided that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this Purchase Order. However, nothing in this section, "CHANGES," shall excuse the Seller from proceeding with the Purchase Order as changed. Except as otherwise provided herein no payment for extra work shall be made, unless such extras and the price thereof have been authorized in writing by the Buyer.

3. INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the seller unless loss results from negligence of the buyer.

4. VARIATION IN QUANTITY

No variation in the quantity of any item called for by this Purchase Order will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Purchase Order.

5. DISCOUNTS

Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the buyer, whichever is later. Payment is made, for discount purposes, when check is mailed.

6. FOREIGN SUPPLIES

This Purchase Order is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

7. CONVICT LABOR

In connection with the performance of work under this Purchase Order, the seller agrees not to employ any person undergoing sentence of imprisonment except as provided by Executive Order (EO) 11755, as amended by EOs 12608 and 12943.

8. COVENANT AGAINST CONTINGENT FEES

The seller, warrants that no person or selling agency has been employed or retained to solicit or secure this Purchase Order upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty the buyer shall have the right to annul this Purchase Order without liability or in its discretion to deduct from the Purchase Order price or consideration, or

otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE & LOCAL TAXES

Except as otherwise provided in this Purchase Order, the Purchase Order price includes all applicable Federal, State, and local taxes and duties in effect on the date of this Purchase Order but does not include any taxes from which the buyer, the seller or this transaction is exempt. Upon request of the seller, the buyer shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the Purchase Order price pursuant to this clause. For the purpose of this clause, the term "date of this Purchase Order" means the date of the seller's quotation or, if no quotation, the date of this purchase order.

10. DEFAULT-DELAYS

Buyer may cancel this Purchase Order in whole or in part in the event that seller fails or refuses to deliver any of the items purchased, within the time provided or otherwise violates any of the conditions of this Purchase Order, or if it becomes evident that the seller is not conducting the work in accord with the specifications or with such diligence as to permit delivery on or before the delivery date. In the event the Buyer cancels this Purchase Order in whole or in part as herein provided, the buyer may procure, upon such terms and in such manner as the buyer may deem appropriate, materials or services similar to those so cancelled and the seller shall be liable to the buyer for any excess costs for such similar materials or services; provided, that the seller shall continue the performance of this Purchase Order to the extent not terminated under the provisions of this article. The rights and remedies of the buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Purchase Order.

11. AUTHORIZATION AND CONSENT

The Government has given its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this purchase order or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government or Fermilab under this Purchase Order or (ii) utilized in the machinery, tools or methods the use of which necessarily results from compliance by the Vendor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this Purchase Order, or (b) specific written instructions given by Fermilab or the Government directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this Purchase Order or any subcontract hereunder (including any lower-tier subcontract), and the Government has assumed liability for all other infringement to the extent of the authorization and consent hereinabove granted.

12. FOR PURCHASE ORDERS IN EXCESS OF \$2,500

The following cited Federal Acquisition Regulation clauses are hereby incorporated by reference. The referenced clauses are those in effect on the date of issuance of the Purchase Order. In such clauses, the words, "Purchase Order," "buyer" and "seller" will be substituted as appropriate for "contract," "Government" or "Contracting Officer," and "Contractor" respectively.

- A) **TERMINATION FOR CONVENIENCE**
(FAR 52.249-1)
- B) **CONTRACT WORK HOURS & SAFETY STANDARDS ACT – OVERTIME COMPENSATION**
(FAR 52.222-4)
- C) **AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES**
(FAR 52.222-36)

13. SUSPECT/COUNTERFEIT PARTS

13.1 Notwithstanding any other provisions of this agreement, the Subcontractor warrants that all items provided to the Laboratory shall be genuine, new and unused unless otherwise specified in writing by the laboratory. Subcontractor further warrants that all items used by the subcontractor during performance of work at Fermi National Accelerator Laboratory include all genuine, original, and new components, or are otherwise suitable and fit for the intended purpose. Subcontractor's warranty extends to labels and /or trademarks or logos affixed, or designed to be affixed, to items supplied or delivered to the Laboratory.

13.2 Subcontractor shall indemnify Fermi research Alliance, LLC and the U.S. Department of energy, their agents and third parties for any financial loss, injury, or property damage resulting directly or indirectly from material, components, or parts that are not genuine, original, and unused, or not otherwise suitable and fit for the intended purpose. This includes but is not limited to materials that are defective, suspect, or counterfeit; materials that have been provided under false pretenses; and materials that are materially altered, damaged, deteriorated, degraded, or result in product failure.

13.3 Types of material, parts, and components known to have been misrepresented include but are not limited to fasteners; hoisting, rigging and lifting equipment; cranes; hoists; valves; pipe and fittings; electrical equipment and devices; plate, bar shapes, channel members, and other heat treated materials and structural items; welding rod and electrodes; and computer memory modules.

13.4 Because falsification of information or documentation may constitute criminal conduct, Subcontractor acknowledges and agrees that Fermilab may reject and retain such information or items at no cost and identify, segregate, and report such information or activities to cognizant Department of Energy Officials.

14. ENERGY CONSUMING PRODUCTS

14.1 When the subcontract requires the specification or delivery of energy consuming products for use in a Federal facility, the Subcontractor will specify or deliver EnergyStar® qualified products or products conforming to the Federal Energy Management Program's (FEMP) Energy Efficiency Requirements, whichever may be applicable, provided products with such a designation are available and are life cycle cost effective and meet applicable performance standards. Information about these products is available for EnergyStar® at http://www.eere.energy.gov/femp/procurement/eeep_requirements.cfm.

15. ENVIRONMENTALLY PREFERABLE PURCHASING FOR DESKTOP OR LAPTOP COMPUTERS OR MONITORS

15.1 When the Subcontract requires the specification or delivery of desktop or laptop computers or monitors in a DOE facility, the Subcontractor will specify or deliver Electronic Product Environmental Acquisition Tool (EPEAT) registered products conforming to the IEEE 1680-2006 Standard, provided such products are available, are life cycle cost efficient, and meet applicable performance requirements. Information on EPEAT-registered computer products is available at www.epeat.net.

16. COMPLIANCE WITH INTERNET PROTOCOL VERSION 6 (IPv6) IN ACQUIRING INFORMATION TECHNOLOGY

16.1 If this subcontract involves the acquisition of Information Technology (IT) that uses Internet Protocol (IP) technology, the Subcontractor agrees that:

(A) All deliverables that involve IT that uses IP (products, services, software, etc.) will comply with IPv6 standards and interoperate with both IPv6 and IPv4, and

(B) It has IPv6 technical support for development and implementation and fielded product management available.

16.2 If the Subcontractor plans to offer a deliverable that involves IT that is not initially compliant, the Subcontractor agrees to:

(A) Obtain the Laboratory Procurement Official approval before starting work on the deliverable;

(B) Provide a migration path and firm commitment to upgrade to IPv6 for all application and product features by June 2008, and;

(C) Have IPv6 technical support for development and implementation and fielded product management available.

16.3 Should the Subcontractor find that the statement of work or specification of this subcontract do not conform to the IPv6 standard, it must notify Fermilab of such nonconformance and act in accordance with instructions provided by Fermilab.