

## SECTION 4B - SPECIAL CONDITIONS



### NON COMMERCIAL ITEM

**Bechtel National Inc.**

Pueblo Chemical Agent Destruction Pilot Plant Project

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#### SC-1 AUTHORIZED REPRESENTATIVES

- (a) Immediately following the award of this PURCHASE ORDER, SELLER shall designate in writing an authorized representative to represent and act for SELLER and shall specify any and all limitations of such representative's authority. If SELLER is a joint venture or consortium of two or more members, such parties shall designate one authorized representative to act for them and to bind the joint venture or consortium and each of its members.
- (b) All communications given to the authorized representative by BUYER in accordance with this PURCHASE ORDER shall be binding upon SELLER. BUYER shall designate, in writing, one or more representatives to represent and act for BUYER and to receive communications from SELLER. Notification of changes of authorized representatives for either BUYER or SELLER shall be provided in advance, in writing, to the other party.

#### SC-2 NOTICES

Any notice pursuant to the terms and conditions of this PURCHASE ORDER shall be in writing and either (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight post or courier service with delivery receipt requested; or (d) sent by facsimile transfer or e-mail and acknowledged by recipient via a separate transmittal:

##### If to BUYER:

Bechtel National, Inc.  
5202 President's Court, Suite 300  
Frederick, MD 21703

Attention: Project Procurement Manager  
E-mail: [dphart@bechtel.com](mailto:dphart@bechtel.com)

##### If to SELLER

**[PN: insert SELLER name, address]**

Attention: **[PN:]**  
E-Mail Address: **[PN:]**

#### SC-3 NONDISCLOSURE

SELLER agrees not to divulge to third parties, without the prior written consent of BUYER, any information obtained from or through BUYER in connection with the performance of this PURCHASE ORDER unless (i) the information is known to SELLER prior to obtaining the same from BUYER; (ii) the information is, at the time of disclosure by SELLER, then in the public domain; or (iii) the information is obtained by SELLER from a third party who did not receive the same directly or indirectly from BUYER, its affiliates or related entities or its customers, and who has no obligation of secrecy with respect thereto. SELLER further agrees it will not, without the prior written consent of BUYER, disclose to any third party any information developed or obtained by SELLER in the performance of this PURCHASE ORDER except to the extent that such information falls in the category of (i), (ii), or (iii) above. If so requested by BUYER, SELLER further agrees to require its employees and its sub-suppliers and their employees to execute an appropriate nondisclosure PURCHASE ORDER prior to performing any work under this PURCHASE ORDER.

#### SC-4 BACKCHARGES

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- (a) BUYER may, in addition to any other amounts to be retained hereunder, retain from any sums otherwise owing to SELLER amounts sufficient to cover the full costs of any of the following:
  - (1) SELLER'S failure to comply with any provision of this PURCHASE ORDER or SELLER'S acts or omissions in the performance of any part of this PURCHASE ORDER, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements.
  - (2) Correction of defective or nonconforming work by redesign, repair, rework, replacement or other appropriate means when SELLER states, or by its actions indicates, that it is unable or unwilling to proceed with corrective action in a reasonable time.
- (b) BUYER may also backcharge SELLER for work done or cost incurred to remedy any other SELLER defaults, errors, omissions or failures to perform or observe any part of this PURCHASE ORDER. BUYER may, but shall not be required to, give SELLER written notice before performing such work or incurring such cost.
- (c) The cost of backcharge work shall include:
  - (1) Incurred labor costs including all payroll additives;
  - (2) Incurred net delivered material costs;
  - (3) Incurred lower-tier supplier and subcontractor costs directly related to performing the corrective action;
  - (4) Equipment and tool rentals at prevailing rates in the Jobsite area; and
  - (5) A factor applied to the total of Items (1) through (4) for BUYER'S Government-approved indirect rates and G&A costs.
- (d) The backcharge notice may request SELLER'S concurrence for BUYER to proceed with the required work. SELLER'S failure to concur shall not impair BUYER'S right to proceed with the action or work under this provision.
- (e) BUYER may separately invoice or deduct from payments otherwise due to SELLER the costs as provided herein. BUYER'S right to backcharge is in addition to any and all other rights and remedies provided in this PURCHASE ORDER or by law. The performance of backcharge work by BUYER shall not relieve SELLER of any of its responsibilities under this PURCHASE ORDER including but not limited to express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and meeting the promised shipment dates.

#### **SC-5 SAFETY FOR BUYER AND OWNER REPRESENTATIVES**

- (a) SELLER shall ensure the safety of BUYER and OWNER representatives while present at or in SELLER'S plants and the plants of SELLER'S suppliers for any purpose in connection with the PRODUCTS, or any part thereof, being furnished by SELLER under this PURCHASE ORDER. If, at any time, a BUYER and/or OWNER representative deems that the conditions at SELLER'S plants or the plants of SELLER'S suppliers are unsafe and promptly notifies SELLER accordingly, BUYER'S and OWNER'S representative(s) shall be entitled to suspend their activities (including, but not limited to, any activities relating to expediting, quality surveillance and delivery) at such plants until such time as the unsafe conditions are resolved by SELLER to BUYER'S reasonable satisfaction.

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- (b) If any BUYER or OWNER activities are suspended under this clause, SELLER shall promptly reschedule any work required to be conducted in the presence of a BUYER and/or OWNER representative and SELLER shall be fully liable for any resulting delay(s). SELLER shall also be liable for all costs (including, but not limited to, costs for labor, transportation and lodging) incurred by BUYER and OWNER due to any such suspension and subsequent resumption of BUYER and/or OWNER activities at SELLER'S plants or the plants of SELLER'S suppliers under this PURCHASE ORDER.

#### **SC-6 LABOR DISPUTES**

Whenever SELLER has knowledge that any actual or potential labor dispute is materially delaying or threatening to materially delay its performance on the Project, SELLER shall promptly give written notice thereof, including all relevant information with respect thereto, to BUYER.

#### **SC-7 HAZARDOUS AND TOXIC SUBSTANCES DISCLOSURE REQUIREMENTS**

In the performance of this PURCHASE ORDER, SELLER shall comply with all applicable laws, rules, requirements, and ordinances including, but not limited to, those relating to environmental law, toxic or hazardous materials, occupational health and safety. If this PURCHASE ORDER calls for the transfer to BUYER and/or OWNER by SELLER of any chemical substance or mixture, or any material which may generate or release a chemical substance or any hazardous agent, SELLER shall provide before or with said transfer a Material Safety Data Sheet (Federal OSHA Hazard Communication Standard, 29 CFR 1910.1200) and label which are current, accurate and complete, which include but are not limited to a statement of PRODUCT hazards and precautions for safe use. Copies of the Material Safety Data Sheet shall include the Purchase Order number, shipping location, and shall be sent to the shipping location identified in this PURCHASE ORDER.

#### **SC-8 SUSPECT/COUNTERFEIT ITEMS**

Items furnished under this Purchase Order are intended for use in a U.S. Government-owned facility. Items delivered under this Purchase Order may contain potentially suspect or counterfeit items or materials (i.e., fasteners, electrical components, mechanical devices, piping/piping system components, and/or raw-stock metals). SELLER and its sub-suppliers shall maintain sufficient control to prevent the procurement, installation, use, and delivery of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions. Additional information and guidance, to include the United States Department of Energy (DOE) Suspect Headmark List, can be obtained at: <http://www.qmo.bnl.gov/SCI/bkltview.pdf> (Brookhaven National Laboratory website)

SELLER is solely responsible for all costs associated with the discovery, removal, replacement, and impoundment of materials and equipment that contain or exhibit suspect or counterfeit item characteristics or conditions.

1. Unless otherwise specified, all materials and all material components and parts, associated with manufactured equipment, including that permanently installed into systems, subsystems, and/or assemblies, shall be new and unused. Refurbished, rebuilt, or modified items are strictly prohibited unless specifically authorized in writing by BUYER.
2. Materials and equipment delivered under this Purchase Order shall exhibit the manufacturer's original labels and identification. Materials and equipment delivered under this Purchase Order will be inspected by BUYER for indications of suspect or counterfeit characteristics and/or conditions.
3. Materials, equipment, or assemblies that consist of, or contain high strength fasteners (e.g., grades 5, 8, 8.2, A325, and A490, internally/externally threaded and greater than 0.25" in diameter), shall exhibit both grade marks and the manufacturer's identification symbol (headmark), in accordance with the applicable specification (i.e., ASTM, SAE, etc.). Fasteners with headmarkings identified on the DOE Headmark List, are STRICTLY PROHIBITED. Materials, equipment, or assemblies consisting of, or containing high

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strength fasteners, which DO NOT exhibit both grade marks and the manufacturer's identification symbol constitute a nonconformance with the Purchase Order requirements.

4. Materials, equipment, or assemblies that consist of, or contain electrical components shall exhibit as applicable, legible amperage and voltage ratings, operating parameters, and the product manufacturer's labels and identification. Electrical components shall exhibit as applicable to the item or component, Underwriters Laboratory (UL) or Factory Mutual (FM) labels.
5. Materials, equipment, or assemblies that consist of, or contain mechanical, piping, and piping system components and/or parts, shall clearly exhibit all markings as required by the ordering data or specifications and the original manufacturer's labels and identification.

Detection by BUYER of any suspect or counterfeit condition leading to evidence of deliberate misrepresentation of any supplied item may result in an investigation into the validity of certification, fraud, and/or forgery, by the U.S. Government.

#### **SC-9 BANKRUPTCY**

In the event SELLER enters into proceedings relating to bankruptcy, whether voluntary or involuntary, SELLER agrees to furnish BUYER written notification of the bankruptcy within ten (10) business days of the proceedings.

#### **SC-10 PUBLICITY**

SELLER shall obtain BUYER'S prior written approval of the text of any external announcement, publication, or other type of public communication concerning the Project prior to the release of the same by SELLER. SELLER agrees to obtain prior written approval in the same form from OWNER.

#### **SC-11 BUYER'S APPROVAL OF SELLER'S MAJOR SUPPLIERS**

SELLER is required to obtain BUYER'S approval for equipment or contracts, which will not be unreasonably withheld, two (2) weeks prior to placement of such orders. The intent is not to restrict SELLER'S ability to use global sourcing, but to ensure BUYER that SELLER is using reliable, proven and qualified suppliers, and to provide adequate notification to the US Government Representative in accordance with the BUYER's contract with the OWNER. This clause applies to all purchases and subcontracts of a value of US\$ 100,000 or greater.

#### **SC-12 SUBCONTRACTING PLAN**

- (a) A Subcontracting Plan shall be submitted in accordance with Appendix FOA-1 of this Agreement title "United States Government Flow Down Requirements," FAR Clause 52.219-9 titled "Small Business Subcontracting Plan" and approved by BUYER for this PURCHASE ORDER. Upon BUYER'S approval, SELLER'S Small Business Subcontracting Plan shall be deemed incorporated into this PURCHASE ORDER.
- (b) Subcontracting Reports will be submitted on FAR Standard Forms 294 and 295. In addition to the distribution contained on the reverse side of these forms, copies of these reports shall be delivered as follows:

##### Distribution

##### Addressee

1 original and 1 copy SF-294

Bechtel National Inc.  
Pueblo Chemical Agent-Destruction Pilot Plant  
5202 President's Court, Suite 300.

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Pueblo Chemical Agent Destruction Pilot Plant Project

Frederick, MD 21703

Attn: «BUYER»

1 original and 1 copy SF-295

Bechtel National Inc.

Pueblo Chemical Agent-Destruction Pilot Plant

5202 President's Court, Suite 300.

Frederick, MD 21703

Attn: «BUYER»

- (c) Failure of SELLER to comply in good faith with said plan may be considered a material breach and subject to termination.

#### **SC-13 GOVERNMENT FURNISHED PROPERTY**

- (a) If OWNER furnishes equipment or materials for SELLER'S use in performing this PURCHASE ORDER, ("Government Property") title of said property shall remain with OWNER.
- (b) SELLER shall have full responsibility for Government property while at SELLER'S or SELLER'S sub-vendor(s) facilities, including the repair or replacement of damaged or lost items, fair wear and tear excepted.
- (c) SELLER shall comply with the requirements of FAR subpart 45.5 in the administration of Government Property.
- (d) The equipment will be stored safely and properly in SELLER'S facilities in accordance with sound industrial practices. BUYER and OWNER, and their designees shall have access at all reasonable times to any premises in which Government property is located for this purpose of inspection.
- (e) SELLER shall indemnify BUYER and OWNER against any damages, injury or death which may occur as a result of the Government Property being located in SELLER'S facilities.

#### **SC-14 PERFORMANCE AND PAYMENT SECURITIES**

- (a) SELLER shall, within fourteen (14) calendar days after the effective date of the PURCHASE ORDER, furnish to BUYER an unconditional and irrevocable Bank Guarantee for the PRODUCTS delivered under this PURCHASE ORDER.
- (b) Such security shall be issued in a form and by a bank acceptable to BUYER in an amount equal to ten percent (10%) of the initial PURCHASE ORDER value, and shall remain valid until expiration of the warranty period specified in the General Condition titled "WARRANTIES AND GUARANTEES."
- (c) Subject to the satisfactory completion of all PURCHASE ORDER obligations and the warranty period, BUYER shall return any still valid security to SELLER.

#### **SC-15 SELLER'S PARENT COMPANY GUARANTEE - RESERVED**

#### **SC-16 ON-SITE SERVICES OF SELLER'S REPRESENTATIVES**

The following conditions will apply in the event BUYER requires the services of SELLER'S representative(s) at the PROJECT site to provide guidance during erection, start-up, or operator training. The representative will be subject to JOBSITE safety and procedure requirements including, but not limited to insurance requirements. BUYER may issue a technical service contract at a later date, if required.

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#### 16.1 Scope of Services

SELLER'S representative(s) is required to provide technical assistance, expert guidance, and direction to BUYER during installation of SELLER'S PRODUCTS, to ensure that the PRODUCTS become fully operational in accordance with the requirements of this AGREEMENT.

#### 16.2 Description of Services

Field Supervision/On-site SELLER'S Representative(s) Information:

- A. Point(s) of origin of Service Representative(s): To Be Determined
- B. Lead-time from BUYER'S notification of need to departure to the JOBSITE of the Service Representative(s):

**Ten (10) Days**

- C. Name and telephone number of person to contact to obtain SELLER'S Representative(s) services:

**To Be Determined**

**Subcontracts Administrator**

**(719) 549-XXXX**

- D. Contact after warranty expiration:

**Same as above.**

#### 16.3 Description of Compensation

##### **16.3.1**

The following are firm prices through the warranty period for the technical services of an erection/start-up or operator training representative in accordance with these requirements:

- A. Number of Work days: To Be Determined
- B. Unit Rates: **To Be Determined**

<b>Class/Title</b> (Types of representatives providing services at site)	<b>Per Diem Rate</b> (cost per 8 hour workday in <b>US Dollars</b> )	<b>Over Time Rate</b> (cost for overtime in excess of 8 hour work day or weekends/ holidays)

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#### Escalation Policy – Seller's Representatives

The Employment Cost Indice(s) (ECIs) for labor published by the U.S. Department of Labor Bureau of Labor Statistics (BLS) shall be used to track price changes for the services identified as follows: **(PN: insert ECI indice(s) number)**. These are available on the internet at <http://stats.bls.gov>.

Baseline prices at the time of award are established in the Compensation clause above. Price adjustments will be made based on percentage changes in the relevant price index compared to the index at time of award. Escalations may be positive or negative, increasing or decreasing the base prices on the annual anniversary date of the Purchase Order award.

#### 16.3.2 Travel Costs

All necessary travel (including airfare, per diem, and vehicle rental), for the SELLER'S Representative, as directed by the BUYER, shall be reimbursed strictly in accordance with the rates specified in the Federal Travel Regulation (FTR), in effect at the time travel occurs. The BUYER will notify SELLER in advance of when travel is required, with the purpose of the trip clearly defined, and the SELLER shall make all travel arrangements. The SELLER will submit a travel budget, if required, to the BUYER at the times and in the form specified by the BUYER. No profit shall apply to any travel costs.

Link to locate FTR: <http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/travel.shtml>

Airfare shall not exceed economy class travel, which is defined as the lowest customary standard, coach or equivalent airfare offered during normal business hours. Costs in excess of economy class airfare may be allowable where they result in other unreasonable circumstances or do not reasonably meet travel needs. Such applicable conditions must be documented and approved by the BUYER, in advance of travel.

#### Per Diem

Reimbursement for daily expenses is based on the actual cost of lodging up to the maximum allowable for that location, plus the Meals and Incidental Expenses (M&IE) per diem amount for that location as defined in the FTR. Receipts for lodging are required. The M&IE rate is payable to the SELLER without receipts. In those business travel locations where a prescribed per diem rate is not assigned, the traveler will be reimbursed up to the standard CONUS rate. It is the SELLER'S responsibility to secure such lodging and to request government rates when applicable.

- Lodging – Actual and reasonable, not to exceed the amount allowable under the FTR. Receipts are required for all lodging regardless of amount.
- Meals and Incidental Expenses (M&IE) – Payable to the traveler without receipts, not to exceed the maximum allowable for the geographical location. The M&IE rate for the day of departure will be reimbursed at 100% of the applicable rate; the day of return M&IE will be reimbursed at 50% of the appropriate rate.
- Vehicle - The rental vehicle shall be compact size – Should the rental agency not have a compact size vehicle available at the destination, a mid-size is allowable and the traveler is required to self certify that no compacts were available. All vehicle rental costs (includes gas) must be documented by actual receipts. The use of a private vehicle can also be authorized for local transportation. Private vehicle mileage will be reimbursed at the approved mileage rate.

Substantiation is required to be submitted with the SELLER'S invoice for the following expenses:

1. To support actual airfare or other public conveyance expenses.
2. To support car rental expenses for each rental day.
3. To support lodging expenses for each day.



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#### 16.4 Responsibility

SELLER'S Representative(s) shall be fully experienced and properly qualified to advise and give direction for the services provided in this AGREEMENT and shall act on behalf of the SELLER. SELLER certifies that it is properly licensed, equipped, organized, and financed to provide such advice and direction. SELLER shall act independently and not as an agent of the BUYER or OWNER in performing this work and maintaining complete control and responsibility over its employees.

#### 16.5 Insurance

During the performance of work by its Representative(s), SELLER shall maintain the following insurance in types and amounts shown below and with insurers satisfactory to BUYER.

##### 16.5.1. Workers' Compensation as required by any applicable law or regulation.

If there is an exposure of injury to SUBCONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

##### 16.5.2. Employer's Liability of not less than:

\$500,000 each accident.

##### 16.5.3. Commercial General Liability with limits of liability for bodily injury, property damage and personal injury of not less than:

\$ 500,000	Combined single limit for Bodily Injury and Property Damage each occurrence;
\$ 500,000	Personal Injury Limit each occurrence;
\$1,000,000	Products-Completed Operations Aggregate Limit; and
\$1,000,000	General Annual Aggregate Limit (other than Products-Completed Operations).

##### 16.5.4. Automobile Liability (Owned, hired and non-owned) with combined single limits of liability for bodily injury or property damage of not less than:

\$ 500,000 any one occurrence.

##### 16.5.5 In the event SUBCONTRACTOR maintains insurance covering loss or damage to equipment, tools, or any other property of SUBCONTRACTOR such insurance shall include an Insurer's waiver of subrogation in favor of CONTRACTOR and GOVERNMENT and their subsidiaries and affiliates.

The required limits of coverage 16.5.1 through 16.5.4 may be satisfied by a combination of a primary policy and an excess or umbrella policy.

Coverage 16.5.3 shall apply to the indemnity agreement in paragraph 16.6 below, titled "INDEMNITY" and shall include CONTRACTOR and GOVERNMENT, their subsidiaries and affiliates, and the officers, directors, and employees of the foregoing each as Additional Insured, but only with respect to liability arising out of operations for CONTRACTOR and GOVERNMENT by or for the SUBCONTRACTOR. Such insurance shall be primary as respects the Additional Insured and shall include a cross liability clause. Such insurance shall be on an

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occurrence policy form; not a claims made form and shall contain an Insurer's waiver of subrogation in favor of the additional insured.

Neither CONTRACTOR nor GOVERNMENT is maintaining any insurance on behalf of SUBCONTRACTOR covering loss or damage to the Work or to any other property of SUBCONTRACTOR unless otherwise specifically set forth herein.

None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by SUBCONTRACTOR are intended to and shall not in any manner limit or qualify the liability and obligations assumed by SUBCONTRACTOR under this subcontract.

SUBCONTRACTOR shall deliver to CONTRACTOR no later than ten (10) calendar days after subcontract award, but in any event prior to commencing the Work or entering the Jobsite, Certificates of Insurance evidencing such coverage and limits of insurance are in full force and effect. Certificates shall be issued in a form acceptable to CONTRACTOR and provide that not less than thirty (30) calendar days advance written notice will be given to CONTRACTOR prior to cancellation, termination or material alteration of such policies. Certificates shall identify on their face the project name and subcontract number. Delivery of the original and two (2) copies of the certificates and any notices of policy change shall be made to:

**Bechtel National, Inc.  
PCAPP Project  
PO Box 9510  
Pueblo, CO 81008-9510**

Attention: **Subcontract Administrator**  
Reference: Subcontract No. **TBD**

#### 16.6 Indemnity

SELLER hereby indemnifies and shall defend and hold harmless OWNER, BUYER and their subsidiaries and affiliates and the employees or authorized representatives of all the foregoing from and against any and all suits, actions, legal, or administrative proceedings, claims, demands, damages, liabilities, interest, attorney's fees, costs, expenses, and/or losses of any kind or nature in connection with or incidental to the performance of this AGREEMENT, including those arising out of injury to or death of SELLER'S employees, whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of SELLER, or of its sub-contractors, sub-suppliers, or anyone acting under its direction or control, or on its behalf. SELLER'S aforesaid indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, of the party indemnified to the fullest extent permitted by law. However, in no event shall they apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

For all work in the United States, SELLER specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute.

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#### 16.7 Site Requirements

SELLER' s Representative(s) must comply with all site requirements necessary for access to the Pueblo Chemical Depot (PCD ) and PCAPP sites. Such requirements include meeting the Site's Security Program including but not limited to being a U. S. citizen. SELLER' s Representative(s) site access shall be subject to the PCAPP Job Site Work Rules and Regulations, including but not limited to the PCAPP Safety Program and the Drug and Alcohol Program. Any failure to comply may result in SELLER' s Representative(s) forfeiture of site access. In such event, SELLER shall be responsible for all costs in providing a suitable replacement on an expedited basis.

SELLER shall provide all necessary documentation for the granting of Site access at least **four weeks prior** to the scheduled arrival of its Representative(s). In the event any Representative is delayed or denied site access due to non compliance with any of PCAPP' s site access requirement, SELLER shall be solely responsible for all costs including travel and living expense for such Representative and his replacement.

Contact the Seller's Representative noted in Section 14.2 for copies of the PCAPP Job Site Work Rules and Regulations and necessary documentation to be submitted for the granting of site access.

#### SC-17 MODIFICATIONS TO GENERAL CONDITIONS

The following modifications to the General Conditions apply to this PURCHASE ORDER:

[PN: If there are no modifications, enter "NONE."]