

CONTRACT ORDER

March 1, 2004

> \_\_\_\_\_  
Contract Order No.      Alt. No.

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\_\_\_\_\_ **Issuing Point**

Attn:  
Fax:

\_\_\_\_\_ **Issued By**

This document, when properly executed by both parties, shall constitute an agreement ("Agreement") between ABC Corporation, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_, (hereinafter referred to as "ABC"); and \_\_\_\_\_, a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ (hereinafter referred to as "CONTRACTOR").

[NOTE: An abbreviated version of CONTRACTOR's name is to be substituted throughout the Agreement] ABC and CONTRACTOR may be referred to individually as "the Party" or collectively as "the Parties." In consideration of the promises and mutual undertakings hereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

**1. DEFINITIONS**

When used in this Agreement the following terms have the meanings listed below:

[Add definitions for any items referenced throughout the agreement and delete any that do not apply]

- "Agreement" means this document, including any attachments or exhibits referenced herein, and any contract order or purchase order which specifically refers to and incorporates these general conditions.
- "Parties" mean ABC and CONTRACTOR.
- "ABC" means ABC Corporation and such other ABC Subsidiaries, Affiliates or Divested Businesses as ABC Corporation elects to include.
- "Affiliates" means those organizations in which ABC has a minority ownership position.
- "Divested Businesses" means those businesses which have been sold by ABC.
- "Subsidiaries" means those organizations in which ABC has an equal or majority ownership position.

Any Affiliate, Subsidiary, or Divested Business ABC Corporation elects to include shall have the right, but not the obligation, to purchase Services pursuant to the terms and conditions of this Agreement. Any Affiliate, Subsidiary, or Divested Business that ABC Corporation elects to include shall have the same rights and obligations under this Agreement as ABC Corporation and the purchasing Affiliate, Subsidiary, or Divested Business, not ABC Corporation, shall be responsible and liable for the Affiliate's, Subsidiary's, or Divested Business' obligation.

- “Services” means the activities to be performed by CONTRACTOR as set forth in the Scope of Work Article.
- “Specifications” means the requirements with which the services have to conform.

## 2. **SCOPE OF WORK**

[Choose either A, B, or C and delete the one that does not apply]

[Option A – Brief description, on ABC Site]

CONTRACTOR shall, except to the extent otherwise expressly stated herein, furnish all labor, supervision, materials, tools, equipment, facilities, permits, and activities to properly and efficiently do all things necessary to perform \_\_\_\_\_ [description of the services] at the ABC \_\_\_\_\_ location. This Scope of Work may be modified from time to time by mutual written agreement.

[Option B – Detailed description, on ABC Site]

CONTRACTOR shall, except to the extent otherwise expressly stated herein, furnish all labor, supervision, materials, tools, equipment, facilities, permits, and activities to properly and efficiently do all things necessary to perform \_\_\_\_\_ [brief description of the services] at the ABC \_\_\_\_\_ location, as more fully set forth in Exhibit \_\_\_\_, Scope of Work, attached and made a part hereof. Such Scope of Work may be modified from time to time by mutual written agreement.

[Option C – Detailed description at Contractor Site]

CONTRACTOR shall, except to the extent otherwise expressly stated herein, furnish all labor, supervision, materials, tools, equipment, facilities, permits, and activities to properly and efficiently do all things necessary to perform \_\_\_\_\_ [brief description of the services] at the Contractor’s \_\_\_\_\_ location, as more fully set forth in Exhibit \_\_\_\_, Scope of Work, attached and made a part hereof. Such Scope of Work may be modified from time to time by mutual written agreement.

## 3. **GENERAL CONDITIONS**

CONTRACTOR will perform all Services in accordance with the ABC General Conditions \_\_\_\_ [Based on the scope of work, fill in the appropriate “GC” number or reference the appropriate Master Agreement – when referencing another agreement, the Buyer is responsible for reviewing the terms of that agreement to ensure there are no conflicting terms] attached hereto as Exhibit \_\_\_\_, and made a part hereof.

## 4. **SITE CONDITIONS** [Use only if work to be done on ABC Site]

CONTRACTOR shall comply with Exhibit \_\_\_\_, Site Conditions dated \_\_\_\_\_, and the ABC Safety Handbook, revised\_\_\_\_, all of which are attached hereto and made a part hereof. CONTRACTOR and their subcontractors shall be required to furnish to ABC a written safety program that all CONTRACTOR and subcontractor employees shall be required to follow while on the job site. Minimum acceptable program shall meet OSHA and ABC requirements.

## 5. **QUANTITIES**

[NOTE: Choose either A or B below. The third paragraph should remain with either option. Option B will result in an agreement that is not fully enforceable. CONTRACTOR will have the option to supply to ABC or to not supply to ABC at its own discretion]

[Option A]

CONTRACTOR shall provide and ABC shall purchase a) a minimum of \_\_\_\_ percent (\_\_\_\_%) of the purchase requirements for ABC Corporation for the Services described herein for its \_\_\_\_\_ [SBU], \_\_\_\_\_ [Plant], at \_\_\_\_\_ [location] and b) such

other additional quantities as ABC elects up to a maximum of one-hundred percent (100%) of its purchase requirements per Agreement year.

**[Option B]**

ABC will use CONTRACTOR's Services as ABC elects and nothing in this Agreement should be construed as a commitment by ABC to purchase Services.

ABC will provide CONTRACTOR with forecasts of the needs of ABC for Services. All such forecasts are estimates only and are not commitments. **[The following sentence is optional]** ABC may submit written confirmation of its purchase requirements for Services, from time to time.

**6. PERIOD OF AGREEMENT**

This Agreement is effective as of \_\_\_\_\_, 20\_\_\_\_, and shall continue in full force and effect for a period of \_\_\_\_\_ (\_\_\_\_) years until \_\_\_\_\_, 20\_\_\_\_ unless and until earlier terminated pursuant to other provisions hereunder. ABC may terminate this Agreement at any time, without cause, by giving CONTRACTOR \_\_\_\_\_ (\_\_\_\_) days prior written notice. Any termination under the Agreement shall be accomplished without penalty and shall not relieve or release either ABC or CONTRACTOR from any rights, liabilities or obligations that may have accrued under the law or terms of this Agreement prior to the date of such termination.

**7. COMPENSATION**

**[Choose the appropriate language based on the method of compensation – delete all that do not apply]**

**[Management Fee]**

As consideration for Services properly provided hereunder, ABC shall pay and CONTRACTOR shall accept as full compensation the amount of \_\_\_\_\_.

**[When using an attached detailed Compensation Schedule]**

As consideration for Services properly provided hereunder, ABC shall pay and CONTRACTOR shall accept as full compensation the amounts shown in Exhibit \_\_\_\_\_, Compensation attached hereto and made a part hereof.

From the effective date of this Agreement through \_\_\_\_\_, 20\_\_\_\_, CONTRACTOR's price for Services shall not exceed those set forth in Exhibit \_\_\_\_\_. Thereafter, either Party may request a price change by giving the other Party \_\_\_\_\_ (\_\_\_\_) days prior written notice and such price change shall only become effective upon the other Party's written approval. New prices shall be firm for a minimum of twelve (12) months. Any proposal for price increase must be substantiated by CONTRACTOR in detail.

If the proposed price change and its substantiation is not satisfactory to both Parties and a mutually agreed upon compromise is not reached within \_\_\_\_\_ (\_\_\_\_) days after the request for price change notice is received, then either Party may terminate this Agreement upon \_\_\_\_\_ (\_\_\_\_) additional days written notice. During this \_\_\_\_\_ (\_\_\_\_) day termination period, CONTRACTOR will continue to provide Services at existing prices in effect prior to the request for price change. If neither Party so terminates this Agreement, then the existing prices will remain in effect.

CONTRACTOR may decrease prices at any time upon written notice to ABC.

**8. TAXES**

[Choose the option that applies and delete all others]

[Option A]

Applicable State of \_\_\_\_\_ Sales and Use Tax for Services and related materials provided hereunder will be paid directly by ABC under Direct Pay Permit Number \_\_\_\_\_.

[Option B]

ABC will reimburse CONTRACTOR's actual documented cost for applicable State of \_\_\_\_\_ Sales and Use Tax for Services and related materials provided hereunder,

[Option C]

Services and related materials provided hereunder are tax exempt or not taxable under the State of \_\_\_\_\_ Sales and Use Tax.

**9. TERMS OF PAYMENT**

CONTRACTOR shall invoice ABC \_\_\_\_\_ [frequency] for all Services properly provided under this Agreement during the preceding \_\_\_\_\_[time period].

Terms of payment will be net\_\_\_\_ days after ABC receives a properly prepared and correct CONTRACTOR invoice. A properly prepared and correct invoice is an original document received at the proper ABC address, as defined in the Notices Article herein, that clearly and legibly includes, as a minimum: [from the list below, delete items that do not apply]

- A. the ABC Contract Order number and release number (if applicable);
- B. CONTRACTOR's complete name and remit to address;
- C. "bill to" stating applicable ABC entity;
- D. a detailed description of Services;
- E. price, consistent with the Compensation Exhibit of this Agreement;
- F. quantity, consistent with the Compensation Exhibit of this Agreement;
- G. unit of measure, consistent with the compensation Exhibit of this Agreement;
- H. CONTRACTOR's invoice number;
- I. invoice date;
- J. total monetary amount;
- K. terms of payment, including any applicable discount calculations;
- L. freight terms;
- M. tax amount/rate information ; and
- N. bill of lading number or packing list number as appropriate.
- O. any other records or written proof as ABC deems necessary to verify the billings appearing therein.

Incomplete invoices will be returned to CONTRACTOR unpaid and unprocessed.

If CONTRACTOR's invoice does not indicate that CONTRACTOR is an incorporated entity, by use of the words (or abbreviations) "Incorporated", "Corporation", or "P.C." as a part of CONTRACTOR's company name, then CONTRACTOR shall display its tax identification number (TIN) on the invoice in lieu of such designations. Failure to furnish such information may result in withholding Agreement payments in accordance with IRS regulations.

Payment shall be considered made when payment checks are mailed by ABC or when Electronic Funds Transfer through the Automated Clearing House (EFT/ACH) is initiated by ABC.

Should payment not be received by CONTRACTOR as required hereunder, CONTRACTOR shall so notify ABC in writing. Thereafter, CONTRACTOR and ABC shall determine the reason payment was not received (or sent) and shall take such steps as may be reasonably required to comply with these provisions.

**10. CONTRACT ADMINISTRATOR [Could be a Travel Manager, CFO, Finance Manager, Procurement]**

The Contract Administrator will represent ABC in the administrative phases of the work to be performed under this Agreement. The Contract Administrator shall be the principal interface with CONTRACTOR and shall keep the Sourcing function of ABC or any successor department or function informed at all times as to the adequacy of CONTRACTOR's performance and progress.

In the performance of this assignment, the Contract Administrator and others associated with the administration of this Agreement will have no legal right to authorize changes of any kind that are outside the scope and compensation of this Agreement, nor shall the Contract Administrator's actions be construed as giving implied approval of any such change. Except as otherwise specifically provided herein, such changes shall be effected only by a properly executed modification to this Agreement.

The ABC Contract Administrator for this Agreement is \_\_\_\_\_.

**11. NOTICES**

All notices required under this Agreement shall be in writing, or if oral must be confirmed in writing by electronic mail or facsimile (with proof of transmission capability) the next business day. Written notices shall be deemed received if delivered to the Party entitled to receive the same by hand or if deposited in the United States Mail (First Class, Registered Mail or Certified Mail, Return Receipt Requested) or by confirmed courier addressed to such Party at the address set forth below:

All notices required or contemplated under this Agreement shall be addressed as follows:

- A. Proposed price changes, correspondence or notices involving the contractual relationship should be sent to:  
ABC Corporation  
Attention:  
P. O. Box
  
- B. Insurance Certificates, Accountability Reports, Safety Reports, and routine performance summaries are to be sent to:  
ABC Corporation  
Attention:

C. All freight bills for the account of ABC shall be by third party billing and forwarded to:  
ABC Corporation  
P.O. \_\_\_\_\_  
\_\_\_\_\_

E. Invoices will be sent to:  
ABC Corporation  
Attention:

F. ABC correspondence, information, documents, or notices to CONTRACTOR shall be sent personally or by first-class mail to:

G. ABC payments to CONTRACTOR shall be sent to:

Either Party may change its address for notice hereunder upon no less than thirty (30) days prior written notice thereof to the other Party.

**12. ENTIRETIES AND PRECEDENCE**

This Agreement, together with the attachments and exhibits specifically referenced, embodies the entire understanding between ABC and CONTRACTOR and, except as otherwise specifically stated herein, there are no contracts, agreements or understandings, oral or written, with reference to the subject matter hereof which are not merged herein.

Where conflict exists within and between parts of the Agreement the following order of precedence shall be used: (1) Contract Order, (2) Special Site Conditions, (3) These General Conditions, (4) Scope of Work, (5) Specifications, (6) Drawings and/or Charts (7) CONTRACTOR's Proposal.

Except as otherwise specifically stated, no modification hereto shall be of any force or effect unless (1) reduced to writing and signed by a duly authorized person of each Party hereto, and (2) expressly referred to as being a modification or amendment to this Agreement.

Please have your authorized representative execute in the space provided below, indicating acceptance of this Agreement. CONTRACTOR will keep one original and return one executed copy of this Agreement to \_\_\_\_\_, ABC Corporation, \_\_\_\_\_, The ABC copy must be returned, before work can begin or payment can be made against this Agreement.

CONTRACTOR

ABC Corporation

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_