



1. ACCEPTANCE TERMS: This purchase order constitutes the order of Xpress Natural Gas, LLC. (herein after “Buyer”) to the vendor identified on Page 1 hereof (hereinafter “Seller”) and shall become a binding contract on the terms and conditions set forth herein when accepted by Seller. Buyer reserves the right to revoke this order at any time prior to acceptance by the Seller. This offer may be accepted by Seller’s complete or partial shipment of goods conforming to the description contained herein, or by Seller’s acknowledgement of this order.

Acceptance of this offer must be made on its exact terms. Buyer hereby notifies Seller of its objection to any terms and conditions stated by Seller, whether or not material, that are in conflict with, inconsistent with, or in addition to those contained herein. Any acceptance contained herein or which may be implied from Buyer’s conduct is expressly made conditional upon Seller’s assent to the terms and conditions contained herein. These terms and conditions constitute the final, complete and exclusive statement of the agreement between Seller and Buyer.

2. CHANGES AND MODIFICATIONS: No change, modification, or revision of this order for these terms and conditions shall be valid unless assented to in writing and signed by Buyer.

Buyer shall have the right to make from time to time and without notice to any sureties or agencies, changes as to quantities, packing, testing, destinations, specifications, designs and delivery schedules. Seller shall immediately notify Buyer of any increase or decrease in cost caused solely by such changes, and an equitable adjustment of prices or other terms thereof shall be made by the parties.

Buyer may modify or cancel this order without further obligation to Seller in the event of circumstances of events beyond its control, including without limitation, suspension or termination of the Project, labor difficulties, government action, destruction or loss of premises or markets, consumer boycott or other organized consumer or governmental or judicial action, or acts of God, any of which in Buyer’s sole opinion, adversely affect the marketability of the goods and services described in this order or the timeliness or efficiency of their use or installation.

Seller may only markup changes in the Work for overhead and profit by ten percent (10%). All levels above may only markup changes in the Work for overhead and profit by five percent (5%) to a total of 15% maximum. In the event the Contract Documents set forth provisions different than noted above, the allowable markup in the Contract Documents shall prevail.

3. DELIVERIES: Buyer’s schedules are based upon delivery of the goods and/or services ordered by the Buyer by the date(s) specified on Page 1 of this order, and compliance with this delivery schedule is a condition of this offer. Time is therefore of the essence of this order. Seller shall not, without Buyer’s consent, manufacture in advance of reasonable flow time or deliver in advance of schedule.

In the event that the Seller fails to deliver the goods pursuant to the delivery by date on the first page of the Purchase Order the Buyer will suffer significant economic harm. The parties agree that Seller shall notify Buyer of any fact or circumstance that is reasonably likely to cause a delay in the delivery of the goods. The Buyer shall have the option to cancel the order at any time in the event delivery shall be delayed and receive a full refund of any deposits or progress payments made to such date. In the event the Buyer elects not to cancel the order a late penalty charge shall be assessed at a rate of 2.0% of the PO amount per week of delayed delivery. The penalty shall be assessed against the final purchase price due by Buyer to Seller and shall be capped at an aggregate of 10%.

4. SHOP DRAWINGS AND SUBMITTALS:

Submittals are to include the following:

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- A. Submittal transmittal
- B. All materials subject to approval by the Architect
- C. One reproducible document and eight copies
- D. Twelve brochures and/or literature packets from the manufacturer
- E. Samples as required by specifications (minimum of 3)
- F. Drawings size no larger than 30" x 42"
- G. Certificates of product data as required by specifications

The Seller shall not be relieved of responsibility for any deviations from the requirements of the Contract Documents by the Architect's approval of the shop drawings, product data, or samples unless the Seller has specifically informed the Architect, in writing, of such deviation at the time of submission and the Architect has given written approval to said deviation.

5. RECORD DRAWINGS AND O & M MANUALS: All Suppliers are responsible for their record drawings (as-built), O & M Manuals, guarantees, etc., and other closeout items required by the Contract Documents. These items should be collected and submitted as the project nears completion (28 days prior to completion). There will be no retainage reduction until these items are submitted and approved.

6. STARTING SYSTEMS: The start-up and testing of systems or equipment will be coordinated with the Construction Manager, Owner, Architect, and the Commissioning Agent. A seven-day written notice is required prior to the start-up of each item.

7. PRICES: Prices shall be as specified on Page 1 of this order. No additional charges will be allowed for any reason including packing, reels, boxes, crating, cordage or storage, unless so specified on the face of this order.

When this order is for services on a time and material basis and no price is settled for such services, the price will be deemed to be a reasonable rate for the time and materials. Seller warrants that the prices to be charged in accordance with the terms of this order will not be in excess of the permissible maximum prices, if any, established pursuant to law and pertinent governmental regulations in effect on the date hereof.

8. TAXES: Seller shall pay all governmental taxes, excises, and/or other charges that Buyer may be required to pay with respect to the production, sale of and transportation of any material provided hereunder, except those taxes, excises and/or other charges which are specifically noted on Page 1 of this order, as being excluded.

9. QUANTITIES: Shipments must be in the exact quantities ordered. Buyer shall have no obligation with respect to quantities shipped in excess of the firm delivery schedule of this purchase order.

10. WARRANTIES, QUALITY & COMPLIANCE WITH LAWS: All goods and services delivered hereunder shall be free from defect of materials or workmanship and shall conform strictly to any specification, drawings or samples specified or furnished. This warranty shall survive Buyer's Inspection, acceptance and payment.

Seller represents and warrants that any goods and services furnished pursuant to this order will be manufactured and sold in compliance with all relevant federal, state and local laws, rules, executive orders and regulations. When requested, Seller shall furnish Buyer or appropriate authorities with certificates of compliance with any applicable laws or regulations for all goods covered by this order.



Seller warrants that all goods supplied under the terms of this order will be adequately contained, packed, and labeled and that all such goods will conform to the promises, descriptions, and statements of fact made on the containers and labels of the goods and in any written document promulgated or furnished by or on behalf of Seller and in anyway relating to the composition, characteristics, virtues, qualities, measurements and/or propensities of the goods.

Seller agrees to replace, install or reinstall, or promptly correct, without expense to Buyer, any material not conforming to the foregoing requirements, immediately upon notification by Buyer. In the event of failure of Seller to perform its obligations as required herein, Buyer may replace, install or reinstall, or correct such material and charge Seller the cost thereof. Acceptance or use of the material furnished hereunder shall not affect Seller's warranty obligations hereunder.

In the event that any products delivered pursuant to this order are declared by any properly constituted governmental authority to be unfit for sale or use, Seller shall give Buyer prompt notice of such order, shall compensate Buyer for all expenses incurred by Buyer in connection with any recall of such products, including but not limited to repacking and shipment, and shall repurchase from Buyer all recalled products at the highest price Seller has charged Buyer for such products under this or any other contract, plus all storage and handling costs.

11. INSPECTION, ACCEPTANCE OR REJECTION OF GOODS: All goods shipped pursuant to this order shall be received subject to Buyer's inspection at Buyer's delivery location designated on the front of this order, within a reasonable time after delivery and Buyer's normal storage period. Any payment of invoice shall not constitute acceptance of goods covered by this order and shall be without prejudice to any and all claims of Buyer against Seller. Buyer may reject as nonconforming all goods not in accordance with this order, including but not limited to failure to comply with items 3 through 7 of these Terms and Conditions. Goods, products and supplies ordered hereunder shall be subject to inspection by buyer or governmental inspectors. Any acceptance of goods or services received pursuant to this order expressly made or implied from Buyer's conduct is conditioned upon Seller's cure of any nonconformity, whether or not such nonconformity substantially impairs the value of such goods or services.

12. REMEDIES: Any failure of Seller to comply with all terms and conditions of this order, whether or not material, shall constitute a breach hereof. In the event of any breach, Buyer reserves the following rights against Seller:

- 1) to cancel and reject so much of Seller's performance as is nonconforming and executory or at Buyer's option the whole order;
- 2) to recover so much of the price as has been paid with respect to such cancellation or rejection;
- 3) to make covering purchases at Seller's expense of any nonconforming goods or services and recover the cost thereof;
- 4) to recover all incidental and consequential damages as referred to in Article 2, Section 2-715 of the U.C.C. (Uniform Commercial Code); and/or
- 5) to recover from Seller the amount of any damage, injury or loss to Buyer resulting from any breach of physical warranty as to goods ordered hereunder, any breach of the price or delivery terms hereof, or any other breach of any other terms of this purchase order.

Articles which do not conform to the requirements of this order may be returned to Seller at Seller's expense for replacement, repair or credit at Buyer's option, or may be held for Seller's instructions at Seller's risk. Upon rejection or revocation of acceptance, Buyer shall have a security interest in Seller's goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody, and may hold or sell such goods and such resale shall be without prejudice to any other remedies or rights of Buyer against Seller. The remedies herein specifically reserved shall be cumulative and in addition to any other remedies provided by law or equity.



13. WAIVER: No waiver of a breach of any provision of this order, or failure or delay of Buyer to exercise any right hereunder, shall constitute a waiver of any other breach, or establish a course of conduct that will operate as a waiver of such right or provision.

14. INDEMNIFICATION, ETC.: Seller shall defend, indemnify and hold Buyer harmless from all loss, damage and expense sustained by Buyer and from all claims, liability and expense suffered by it by reason of any property damage (including patent and trademark rights), personal injury (including death) or other claim or action brought by any other person, firm or corporation, that results from the purchase, sale or use of any of the goods, products or services referred to in this order, provided that Seller shall have no such responsibility with respect to liability resulting solely from Buyer's gross negligence or intentional misconduct.

Seller shall be liable for the loss of or damage to Buyer's property while such property is in the possession of Seller. Seller shall maintain in serviceable condition, preserved and account for all property furnished by Buyer hereunder, and shall not use or dispose of the same except in accordance with Buyer's instructions. Seller shall also be liable for all losses to Buyer occasioned by Seller's failure to furnish timely written notice to it of loss of or damage to Buyer furnished property suffered in transit or prior to receipt at Seller's plant.

Seller agrees to defend, indemnify and hold buyer harmless of all loss, claims, fines, demands, costs, injuries, penalties or damages resulting from failure by Seller, its contractors or subcontractors to comply with standards set out in the Federal Occupational Safety and Health Act of 1970, or any applicable state laws pursuant thereto, which are within their control.

15. PAYMENT: Payment terms shall be determined from date of Buyer's receipt of goods or receipt of invoice, whichever is later. Invoices will not be payable before inspection and acceptance of goods. However, Buyer at its option may pay in advance of inspection and acceptance without prejudice to those or any rights hereunder. Drafts against Buyer will not be honored, nor C.O.D. shipments accepted absent prior written agreement, and items so tendered will be returned to Seller at Seller's expense. Notwithstanding anything to the contrary contained herein, receipt of payment from the Owner for goods and/or services described herein shall be, in each instance, a condition precedent to the Seller's right to any payment hereunder. Retainage shall be in accordance with Contract Documents. If no retainage is specified in Contract Documents, 10% retainage shall withhold until released by Owner. Payment for stored material shall be in accordance with the Contract Documents. If no provision for stored material is detailed in Contract Documents, Payment terms for stored material shall be set forth in the language of this Purchase Order.

16. SHIPMENT AND RISK OF LOSS: Notwithstanding the F.O.B. terms stated herein, Seller's tender of goods shipped pursuant to this order shall be upon receipt of the goods by Buyer at Buyer's delivery location as designated on the face of this order. Risk of loss and/or damages shall be upon Seller until the goods are physically delivered to Buyer's said location.

Charges for prepaid transportation must be agreed upon by Buyer and substantiated by attaching to the invoice original transportation bills signed by the carrier. Any losses accruing from deviation from Buyer's routing instructions will be charged to Seller's account.

17. SELLER'S INSURANCE: (A) Seller shall purchase and maintain such insurance as will protect it from all claims which may arise out of, or result from or on account of Seller's operations and/or products furnished under this purchase order, whether such operations and/or products be provided by Seller, or by any subcontractor or sub-subcontractor or supplier of Seller, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts, and/or products, any of them may be liable. Insurance Coverage shall include, but not be limited to the following:



- 1) Claims under Worker's or Workman's Compensation, Disability Benefit, and other similar Employee Benefits acts at limits required by statutes in the state where the Project is located:
- 2) Claims for damages because of bodily injury, occupational sickness or disease, or death of its employee;
- 3) Claims for damages because of bodily injury, of any other terms of this purchase order .occupational sickness or disease, or death of any person, other than its employees;
- 4) Claims for damages insured by usual Personal Injury Liability Coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Seller, or (b) by any other person;
- 5) Claims for damages, other than the work itself, because of injury to, or destruction of tangible property including loss of use therefrom; and
- 6) Claims for damages because of bodily injury to, or death of any person, or property damage, arising out of the ownership, maintenance, or use of any motor vehicle.

(B) The limits of liability shall not be less than the following:

BODILY INJURY	\$1,000,000 per person and occurrence
PROPERTY DAMAGE	\$1,000,000 per occurrence
PERSONAL INJURY	\$1,000,000 per person aggregate
WORKERS COMPENSATION	Statutory Limits

Buyer reserves the right to review any and all insurance policies carried by Seller in fulfillment of the obligation under this purchase order. In the event that Buyer desires to determine the adequacy of the Insurance coverage required under this purchase order, then, upon notification, certified copies of any insurance policies will be provided to Buyer within thirty (30) days of such notification.

18. **SAFETY PROTECTION MEASURES & PRECAUTIONS:** Seller agrees to take such safety protection measures and precautions as are required by Federal, State, or Local Laws, Ordinances, Bylaws, Industrial codes, including OSHA, and to cooperate fully with Buyer and any insurance carrier, by immediately complying with their recommendations, so that the work will be completed with the greatest degree of safety.

19. **EQUAL OPPORTUNITY:** (A) Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual preference, handicapped status, age or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual preference, handicapped status, age, or national origin.

Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices setting for the provisions of this Non-Discrimination Clause.

(B) Seller will, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment, without regard to race, color, religion, sex or national origin.



(C) Seller will send to each Labor Union, or Representative of workers with which he has a Collective Bargaining Agreement, or other Contract or understanding, a notice to be provided by the Agency Contracting Officer, advising the Labor Union or Worker's Representative of the Contractor's commitment under Section #202 of Executive Order #11246 of September 24, 1965, and shall post copies of the notice on conspicuous places available to employees and applicants for employment.

20. LISTING OF EMPLOYMENT OPENINGS: Seller, to provide special emphasis to the employment of qualified disabled veterans of the Vietnam era, agrees to the compliance with the Rules and Regulations of the Department of Labor, particularly Section #503, Title "V" of the Veterans' Employment and Re-Adjustment Act of 1972, and the Executive Order #11701, 38 FR 2675.

21. SPECIFICATIONS AND CONFIDENTIALITY: Any specifications, drawings, notes, instruction, engineering notices or technical data referred to in this order shall be deemed to be incorporated by reference as if fully set for herein. Seller shall make reference to Buyer for interpretation, instructions or decision with regard to any discrepancies or questions raised by such supplementary information. Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller, or the cost of which is charged against this order and intended for use in connection with the purchase order. Such drawings and specifications shall be held confidential by Seller, shall not be disclosed to any person, firm or corporation other than Buyer's or Seller's employees, subcontractors or government inspectors, shall be used only in connection with this order; and shall be promptly returned to Buyer immediately upon request or completion of this order. Goods manufactured in accordance with Buyer's specifications or drawings shall not be furnished or quoted to any person or concern. Buyer does not grant any reproduction rights to articles ordered of Buyer's design.

22. SUBCONTRACTING AND ASSIGNMENT: Seller shall not assign its rights to any person, subcontract or delegate to any other person the performance of its obligation hereunder, without the prior consent of the Buyer. Buyer may assign its rights under this order.

23. BANKRUPTCY, CREDITORS RELIEF PROCEEDINGS: Any insolvency, adjudication of bankruptcy, filing of voluntary or involuntary petition in bankruptcy, or any assignment for the benefit of creditors of, by or against Seller shall be a material breach of this contract, and Buyer shall be entitled, upon notice of such action, to cancel any unfilled part of this order without any liability whatsoever.

24. CONTRACT AND CONSTRUCTION: This order and the acceptance thereof shall be a contract made in the state where the Project is located. The validity and interpretation of this order and all related documents and the rights and duties of the parties hereunder shall be governed by the laws of the state where the Project is located.

25. OTHER TERMS: Buyer may attach hereto a Rider containing additions or modifications to these terms and conditions where requirement of the order or agreement of the parties dictates. The terms of such Rider shall supplement and supersede these terms and conditions to the extent that they are in conflict herewith.

26. SELLER IS AN INDEPENDENT CONTRACTOR: Seller shall in no event be construed, held, or become in any way for any purpose whatsoever an employee of Buyer, or a partner, associate, or joint venturer of Buyer in the conduct of Buyer's business or otherwise, nor shall Buyer be liable in any way for any debts incurred by Seller in conduct of Seller's business, it being agreed that Seller is an independent Contractor.

27. DISPUTE RESOLUTION: Any controversy or claim raising under or in relation to this order or any modification hereof, except any claim of Buyer against Seller in a case where Buyer has been sued or threatened with suit by a third party with respect to goods or services supplied by Seller pursuant to this order, shall be settled by arbitration at the sole election of the



Buyer. All claims, disputes and other matters in question between Construction Manager/Contractor and Seller arising out of, or relating to, this Purchase Order, the breach thereof, or work thereunder (for which a dispute resolution procedure is not otherwise provided in the General Contract), shall at the sole election of Construction Manager/Contractor be decided by binding arbitration before a single arbitrator, who shall be an experienced construction attorney practicing in the Project area, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless otherwise provided in this Purchase Order, or the parties mutually agree otherwise in writing. The arbitration hearings shall be conducted at the principal place of business of the Construction Manager/Contractor. Construction Manager/ Contractor and Supplier agree to be bound by the findings and award of such arbitration finally without recourse to any court of law other than for enforcement of the arbitrator's award. Supplier agrees that any claim or action by it against any bond provided by Construction Manager/Contractor shall be stayed pending such arbitration and further limited to the amount of any arbitrator's award or decision and Supplier waives any Miller Act or other bond or retainage act rights to the extent such rights may be inconsistent with such award or the provisions of this paragraph. In the event Construction Manager/Contractor elects not to arbitrate any disputes subject to this paragraph, the parties shall litigate such dispute under applicable law. Supplier agrees, at the election of Construction Manager/Contractor, to the consolidation or joinder of all claims and disputes between Supplier and Construction Manager/Contractor, including any claim or action against any bond provided by Construction Manager/Contractor, in a single arbitration or judicial proceeding, with claims or disputes between Construction Manager/Contractor and any other subcontractor, supplier, or party involved in or otherwise relating to the Project or the General Contract. In the event of any dispute between Construction Manager/Contractor and Supplier, the prevailing party shall be awarded its attorney's fees and costs including expert witness fees and arbitrator's fees if applicable. The Construction Manager/Contractor and Supplier waive all rights, if any, to a jury trial in any disputes arising from or relating to this Purchase Order or the Project.