

BASIC ORDERING AGREEMENT BETWEEN

Airgas USA, LLC

AND

Alliance for Sustainability Energy, LLC
Management and Operating Contractor for the
National Renewable Energy Laboratory ("NREL")

BASIC ORDERING AGREEMENT

JHL-9-92285-01

PERIOD OF PERFORMANCE

Date of Execution through Five (5) Years

This Basic Ordering Agreement (BOA) between Airgas, Inc. (Vendor, hereinafter "Seller") and the Alliance for Sustainable Energy, LLC, manager and operator of the National Renewable Energy Laboratory (NREL) is entered into to provide products and services to Department Of Energy (DOE) Contractors and authorized Subcontractors in accordance with the following:

1. This BOA includes products and/or services listed in Attachment A.
2. This BOA is for DOE Prime Contractors (hereinafter collectively referred to as "Contractor").
3. This BOA may also be used by DOE Subcontractors with written authorization of the ICPT Chair.
4. General Terms and Conditions (04/2016) are included in Attachment B and made a part herein.

The parties agree that Contractors may place orders under this BOA and receive the appropriate discounted price. Each DOE Contractor shall place its own Orders under this BOA and shall be direct-billed accordingly.

ARTICLE 1 – SCOPE OF WORK

The Seller agrees to provide products and/or services as described in Attachment A that Contractor may order during the Period Of Performance (POP) of this BOA.

ARTICLE 2 – PERIOD OF PERFORMANCE (POP)

The Period Of Performance of this BOA, unless sooner reduced, terminated or extended in accordance with the terms and conditions of this BOA, shall commence on the Date of Execution and continue for five (5) years.

Option to Extend Term of BOA: Contractor may extend the term of this BOA by giving written notice to Seller by the date specified as the expiration date of this BOA. The exercise of an option to extend the term of this BOA shall be accomplished by a unilateral written modification issued by Contractor.

The term of this BOA may be extended pursuant to this clause for up to five years beyond the initial term. Such extension may be made from time to time or in one modification.

ARTICLE 3 – DELIVERY / PAYMENT

The work specified in Article 1 shall be completed and delivered as follows:

- F.O.B. Point (point of delivery): Destination
- Payment Terms: Net 30 from receipt of an accurate invoice.
- Delivery location and schedule shall be negotiated for each order under this BOA.

ARTICLE 4 – FIXED PRICES / DISCOUNT SCHEDULE

The Contractor shall be entitled to purchase goods and/or services listed in Attachment A at the fixed prices and/or discount schedule identified in Attachment B. The prices and/or discounts identified in Attachment B are firm for the effective POP of this BOA, unless otherwise agreed by the Parties.

ARTICLE 5 – ADMINISTRATIVE

Contractor BOA Administrator’s Address is as follows:

Abigail Watson
National Renewable Energy Laboratory (NREL)
15013 Denver West Parkway
Golden, Colorado 80401-3111
Abigail.Watson@nrel.gov
(303) 275-3138

Seller BOA Administrator’s Address is as follows:

Dave Domach
Airgas USA, LLC
N112 W13333 Mequon Road
Germantown, WI 53022-3609
Dave.Domach@airgas.com
(800) 558-8900 ext. 1351

All Orders placed hereunder shall reference this BOA No.

ARTICLE 6 – REPORTING REQUIREMENTS

The Seller shall submit a spend and savings report to the ICPT Chair for each quarter of the fiscal year. The report format and due date will be provided to the Seller near the end of each quarter. The Seller shall deliver the report by the due date requested. Savings shall be calculated at 10% below the Seller’s GSA listed prices.

The Seller shall attend Performance Review Meetings as requested by the ICPT or Contractor site.

ARTICLE 7 – SMALL BUSINESS RESELLER REQUIREMENTS [RESERVED]

ARTICLE 8 – SITE SPECIFIC TERMS AND CONDITIONS

The Seller acknowledges that the Contractor may have requirements unique to its site, mission, and/or geographic location. Therefore, the Seller agrees that the Contractor placing an Order under this BOA reserves the right to incorporate its own Site-Specific Terms & Conditions relative to Environmental Safety and Health considerations as well as FAR, DEAR, or other applicable regulations and laws.

ARTICLE 9 – LIST OF ATTACHMENTS

Attachment A – Products and/or Services
Attachment B – General Terms and Conditions

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year of the Alliance for Sustainable Energy LLC’s signature date.

ACKNOWLEDGED AND CONFIRMED:

ACCEPTED: Airgas USA, LLC	AUTHORIZED: Alliance for Sustainable Energy, LLC
BY: <i>[Signature]</i>	BY:
TITLE: <i>VP SABM</i>	TITLE: ASPC Team Manager
DATE: <i>8-2-20</i>	DATE: 6/7/2021

[Handwritten initials]

ATTACHMENT A
STATEMENT OF WORK

"Gas Cylinder Basic Ordering Agreement"

08/01/2020

The objective of this Basic Ordering Agreement (BOA) is to procure gas cylinders on an as-needed basis that are the highest purity, quality, and quantity requested. It is imperative that the Vendor meet Contractor customer requirements and expectations, as outlined below.

The following shall apply to all gas cylinder procurements placed under this BOA:

- The Vendor shall only provide the specific types and sizes ordered; substitutions will not be accepted.
- Quantities of gas cylinder purchases under this BOA will vary by procurement and are dependent on the Contractor's demand.
- The Vendor shall not invoice the Contractor for delivery, hazardous materials handling, or any other additional fees.
- Vendor shall propose pricing in two manners for Contractor review and acceptance:
 - Pricing that includes the cost of the gas cylinder and a one-time "cylinder processing fee" charge, regardless of the length of time the cylinder remains with Contractor during the procurement period of performance.
 - Cylinder rental charges may be charged after end of service period if gas cylinders remain at the Contractor's site
 - Pricing that includes the provision of the gas cylinder and a monthly cylinder rental fee for the timeframe the cylinder is on the Contractor's site.
 - Under both proposed methods, pricing is entirely inclusive of all costs, to include delivery and cylinder return if possible – negotiated on a per national lab basis.
 - Contractor will provide estimate of deliveries per month to include in the above pricing proposals.
- Gas cylinders shall be priced at a minimum of 10% below the Vendor's regional list price (but may be negotiated to be a lower discount by each site upon use of this agreement).
- All gas cylinders provided to the Contractor by the Vendor shall comply with all applicable Contractor regulations and industry standards.
- Prior to delivery, the Vendor shall ensure that none of the gas cylinders are leaking and meet the required purity standards.
- All cylinders shall be returned to the Vendor in good and non-contaminated condition with valves closed, complete with caps and fittings. Vendor is not responsible for the replacement value of any contaminated, lost or damaged cylinders, caps or fittings. Contractor shall not permit cylinders furnished hereunder to be filled with any product not furnished by Vendor.
- The Vendor shall be responsible for notifying the Contractor of errors on an order as soon as an error is discovered. The delivery requirements for such orders shall



commence upon correction of the error, unless it is determined that there was no error, or the error was made by the Vendor.

- The Vendor shall notify the Contractor placing the order within two (2) business days if an item is unavailable or on back order.



ATTACHMENT B
BASIC ORDERING AGREEMENT BETWEEN
GENERAL TERMS AND CONDITIONS
FOR COMMERCIAL ITEMS AND SERVICES
DOE CONTRACTORS (04/2016)

1. DEFINITIONS

The following terms shall have the meanings below:

- a. "Government" means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- b. "Seller" means the person or organization that has entered into this Basic Ordering Agreement (BOA).
- c. "Company" means any DOE Contractor and authorized Subcontractor utilizing the BOA.
- d. "Item" means "commercial items or services" and "commercial component", as defined in FAR 52.202-1.
- e. "Order" means individual requests for Items or Services (hereinafter referred to as "Item") issued under this Basic Ordering Agreement (BOA).
- f. "Authorized Subcontractor" means a Subcontractor holding an active Subcontract issued by a DOE Contractor.
- g. "BOA Procurement Representative" means the person responsible for negotiating and administering the BOA.
- h. "Order Procurement Representative" means the person responsible for negotiating and administration of the respective Order.
- i. "Site Specific Terms and Conditions" means those unique requirements of the Company issuing Orders under this BOA which will supplement these general Terms and Conditions.

2. ORDER OF PRECEDENCE

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) item description, (2) Site Specific Order, (3) Site Specific Terms and Conditions, (4) the BOA, and (5) the BOA general Terms and Conditions.

3. TITLE AND ADMINISTRATION

All property rights and interests resulting from this BOA and Orders shall pass directly from Seller to the Government. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its' own assets. The Company may assign the BOA and Orders to DOE or its' designee, and in case of such transfer and notice thereof to Seller, the Company shall have no further responsibilities hereunder.

4. ACCEPTANCE OF TERMS AND CONDITIONS

Seller, by signing the BOA or Orders or delivering the items identified therein, agrees to comply with all the Terms and Conditions, all specifications and all other documents that this BOA or Order incorporates by reference or attachment. Company hereby objects to any Terms and Conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirements of the BOA or Order, nor a waiver of any requirement, nor the right of Company to enforce each and every provision. All rights and obligations shall survive final acceptance of performance of the BOA or any Order there under.

5. WARRANTY; LIABILITY

Seller expressly warrants that items delivered under the Orders shall be in accordance with Compressed Gas Association guidelines at the time of delivery. Seller's sole obligation and Company's sole remedy for breach of the foregoing warranty shall be for Seller to promptly repair or replace said items or re-perform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. SELLER SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE. SELLER MAKES NO WARRANTIES OF ANY KIND FOR ANY TECHNICAL ADVICE PROVIDED BY SELLER TO COMPANY AND ASSUMES NO OBLIGATION OR LIABILITY FOR ANY SUCH TECHNICAL ADVICE WITH REFERENCE TO THE USE OF PRODUCTS OR RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IF GIVEN AND ACCEPTED IS AT COMPANY'S SOLE RISK. NEITHER SELLER NOR SELLER'S SUPPLIERS OF PRODUCTS ("SELLER'S SUPPLIERS") SHALL BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES. SELLER'S SOLE LIABILITY AND COMPANY'S SOLE REMEDY FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM PRODUCTS, DELIVERY OF NON-CONFORMING PRODUCTS, SELLER'S FAILURE TO DELIVER SUCH PRODUCTS, INSTALLATION OR MAINTENANCE OF EQUIPMENT, EQUIPMENT MANUFACTURED BY SELLER, OR SERVICES PROVIDED BY SELLER SHALL BE LIMITED TO, AT

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SELLER'S OPTION, THE REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE PRODUCT OR SERVICE IN QUESTION. THE LIMITATIONS CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, AND SHALL APPLY EVEN WHERE SUCH DAMAGES ARE CAUSED IN WHOLE OR IN PART, BY THE NEGLIGENCE OR ACTS AND OMISSIONS OF THE PARTY CLAIMING DAMAGES OR THE PARTY FROM WHOM DAMAGES ARE SOUGHT. ALL CLAIMS BY COMPANY HAVING ANYTHING TO DO WITH THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE MADE IN WRITING WITHIN ONE HUNDRED TWENTY DAYS AFTER THE EVENT GIVING RISE TO SUCH CLAIM AND FAILURE OF COMPANY TO GIVE SUCH NOTICE SHALL CONSTITUTE A COMPLETE WAIVER BY COMPANY OF SUCH CLAIMS AND DEFENSE FOR SELLER AGAINST SUCH CLAIMS. AS USED IN THIS SECTION, THE TERM "COMPANY" AND "SELLER" SHALL INCLUDE NOT ONLY THE PARTY TO THIS AGREEMENT BUT ALSO ALL OF ITS AFFILIATES. THE PROVISIONS GOVERNING REMEDIES, LIMITATIONS OF LIABILITY AND INDEMNITY SET FORTH IN THIS AGREEMENT SHALL SURVIVE EXPIRATION, TERMINATION, OR CANCELLATION OF THIS AGREEMENT.

6. ASSIGNMENT

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to payment, meaning financial compensation to a financing institution if Company is furnished written notice and a signed copy of said assignment at the time of or before request for payment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller.

7. NEW MATERIALS

Unless otherwise specified in the BOA or Order, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not include the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

8. TRANSPORTATION

Transportation shall be negotiated per national lab's Attachment A - Statement of Work or Attachment B: Pricing and no insurance cost shall be allowed unless authorized in writing on the specific Order. The bill of lading shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.

9. RISK OF LOSS

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of:

- (1) the agreed price of such items, or
- (2) Seller's cost of replacing such items.

Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

10. PAYMENT

Unless otherwise provided, terms of payment shall be Net 30 days from the latter of:

- (1) receipt of Seller's proper invoice, if required, or
- (2) delivery (and acceptance, if required by the Order) of items/completion of work.

Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check, purchase card or electronic funds transfer (EFT), at the option of Company. Payment shall be deemed made effective as of the date of mailing or the date on which an EFT is made. Notwithstanding anything to the contrary stated herein, the Company shall be entitled at any and all times to set off against any amounts payable by the Company hereunder any amount owing from Seller to the Company under Orders or any subcontracts with Seller.

11. DATA REPORTING REQUIREMENTS

Seller shall report quarterly savings to the contractually named point of contact from the individual sites utilizing this BOA. Savings shall be calculated in one of the following two established methodologies (noted in the Order of Precedence clause):

- (1) BOA pricing paid below Seller's pricing previous price paid (Historically Pricing or established GSA Pricing).
- (2) BOA pricing paid below Seller's most preferred supplier pricing.

12. COMPLIANCE WITH LAWS

- a. Seller shall comply with all applicable Federal, State, and local laws and ordinances and all pertinent Orders, DOE Directives, rules, and regulations (including DOE regulations) and such compliance shall be a material requirement of this BOA and resulting Orders. Seller warrants that each chemical substance constituting or contained in items furnished under this BOA is on the list of substances published by the Administrator of the Environmental Protection Agency (EPA) pursuant to the Emergency Preparedness and Community Right-to-Know Act (EPCRA) and Toxic Substances Control Act (TSCA) as amended. With each delivery, Seller shall provide Company any applicable Material Safety Data Sheet (MSDS) as required by the Occupational Safety and Health Act (OSHA) and applicable regulations including, without exception, 29 CFR 1910.1200. Airgas SDS's are available online: <https://www.airgas.com/sds-search>
- b. Seller shall include this Article in all Subcontracts, at any tier, involving the performance of this BOA.

13. TERMINATION FOR CAUSE

- a. Only the Company issuing the BOA may terminate the BOA for cause, in whole or in part, if the Seller fails to comply with any of the terms of the BOA, or fails to provide adequate assurance of future performance. Only the Company issuing any Order may terminate the Order for cause, in whole or in part, if Seller fails to comply with any of the terms of the Order or fails to provide adequate assurance of future performance. In either event, the Company shall not be liable for any amount for items not accepted.
- b. If the BOA or any Order is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the BOA or Order. The Company shall pay the mutually agreed-upon price for completed items delivered and accepted. The Company and Seller shall mutually agree on the amount of payment for all other deliverables.
- c. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Sellers' reasonable control and without its fault or negligence.
- d. The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under the BOA or resulting Order.

14. BANKRUPTCY

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the BOA Procurement Representative within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

15. TAXES

Tax collection and payment is specific to the Company issuing an order under this BOA; therefore, Seller should refer to the Site Specific Terms and Conditions for each order. In the event no Site Specific Terms & Conditions regarding taxes are contained in an order, the order prices shall include all Federal, State & local taxes and duties when applicable.

16. CHANGES

- a. The Company issuing the BOA reserves the right to make changes within the general scope of the BOA by issuance of a unilateral Change Order, or by a bilateral modification to the BOA. The Company issuing the Order reserves the right to make changes within the general scope of the Order by issuance of a unilateral Change Order or by a bilateral modification to the Order. Such changes may include, without limitation, changes in (1) the description of the item, (2) the quantities of items ordered, (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the BOA or any Order shall be made by the parties in a bilateral modification. Any claim for adjustment by Seller must be made within thirty (30) days from the date of receipt of the change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment.
- b. Only the BOA Procurement Representative is authorized on behalf of Company to issue changes whether formal or informal to the BOA. Only the Order Procurement Representative is authorized on behalf of Company to issue changes whether formal or informal to the respective Order. If Seller considers that any direction or instruction by Company personnel constitutes such a change Seller shall not rely upon such instruction or direction without written confirmation from the BOA Procurement Representative or the Order Procurement Representative, as the case may be.
- c. Nothing in this Article, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed by the BOA Procurement Representative or the Order Procurement Representative, as the case may be.

17. TERMINATION FOR CONVENIENCE

The Company issuing the BOA may, in its sole discretion, terminate the BOA, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. The Company issuing the Order may, in its sole discretion, terminate the Order, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits

thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination for convenience by the Company.

18. SUSPENSION

The Company issuing the BOA may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the BOA for an indefinite period of time. The Company issuing the Order may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the Order. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the BOA or any Order.

19. INCORPORATION BY REFERENCE

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company BOA Procurement Representative. The FAR clauses may be obtained from the Company upon request.

The following clauses are incorporated by reference:

- FAR 52. 219-8 Utilization of Small Business Concerns (MAY 2004)
- FAR 52.222-26 Equal Opportunity (APR 2002), (The required poster is available at: <http://www.dol.gov/dol/esa/public/regs/compliance/posters/eeo.htm>)
- FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (DEC 2001), and
- FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- FAR 52.227-3 Patent Indemnity (APR 1984)
- FAR 52.227-9 Refund of Royalties (APR 1984)
- FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

20. EXCUSE OF PERFORMANCE

Seller shall not be liable for failure to perform if prevented by circumstances beyond its reasonable control. If Seller is unable to supply products to Company, then Company may obtain replacement products from other sources and use them at Company location(s) for that period of time during which Seller is unable to supply Company.

21. PRICE ADJUSTMENTS

Initial pricing set forth on Attachment A shall be held firm for the first twelve (12) months of the term of this BOA. Seller may adjust pricing upon each anniversary of this BOA by providing written notice of such price adjustment at least thirty (30) days prior to each anniversary. If within fifteen (15) days of receiving such notice, Company furnishes Seller with a copy of a bona fide, firm, written offer to sell the goods subject to a price increase in the same quantities and of the same quality under similar circumstances at prices lower than such revised prices, Seller shall have fifteen (15) days within which to, at Seller's sole option, either meet the lower price, exclusive of surcharges, hazmat, or regulatory compliances fees, or revert to Seller's price in effect before the price increase. If Seller agrees to meet such lower price, or reverts to Seller's price in effect before the price increase, Seller shall have the right, at its option, to extend the term of this Agreement for the period of the initial term provided in this Agreement or the term of the competitive written offer. If Seller does not exercise its option to meet the competitive price or revert to Seller's previous Product price, Company may terminate this Agreement as to such goods by giving Supplier thirty (30) days' written notice of such termination. Company's rights regarding the terms of this Section shall not apply to any price increase arising as a result in whole or part of compliance by Seller or its suppliers with Federal, state, or municipal taxes, or government agency-required audits or other regulations.

In the event that the documented costs of any goods (other than those listed in the following paragraph) increase by more than ten percent (10%) during any contract year, notwithstanding the foregoing, Seller may request to adjust pricing of such goods at other times, and Company shall meet with Seller to negotiate, in good faith, such increase.

Notwithstanding the foregoing, pricing for argon, helium, refrigerants and fuel gases (propane, propylene and ethylene) shall be subject to adjustment based on market prices at any time, and such adjustment shall not be deemed a "price increase" subject to the foregoing paragraph.