

BASIC ORDERING AGREEMENT BETWEEN

Matheson Tri-Gas, Inc.

AND

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

BASIC ORDERING AGREEMENT

JHL-9-92247-00

05/01/2019

PERIOD OF PERFORMANCE

Date of Execution through Five (5) Years

This Basic Ordering Agreement (BOA) between Matheson Tri-Gas, 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. The pricing is in accordance with Attachment B.
5. General Terms and Conditions (04/2016) are included in Attachment C, 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:

Chase Donald
Matheson Tri-Gas, Inc.
4705 Nome Street
Denver, Colorado 80239-2713
cdonald@mathesongas.com
(303) 815-9402

All Orders placed hereunder shall reference the BOA No.

ARTICLE 6 – REPORTING REQUIREMENTS

The Seller shall submit a spend and savings report to the ICPT Chair, Contractor, and BOA Administrator 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 – Services
Attachment B – Product List and Pricing
Attachment C – General Terms and Conditions
Attachment D – [RESERVED]

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year of NREL's signature date.

ACKNOWLEDGED AND CONFIRMED:

ACCEPTED: Matheson Tri-Gas, Inc. BY: 	AUTHORIZED: Alliance for Sustainable Energy, LLC BY: 
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TITLE: RGM	TITLE: Acquisition Services Group Manager
DATE: 7/22/2019	DATE: 7/22/19

ATTACHMENT A

STATEMENT OF WORK "Gas Cylinder Basic Ordering Agreement" 04/17/2019

The National Renewable Energy Laboratory (NREL) advances the science and engineering of energy efficiency, sustainable transportation, renewable power technologies, and provides the knowledge to integrate and optimize energy systems. To facilitate this work effort, NREL requires a reliable source of high-quality compressed scientific gases.

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 Vendor shall provide to the Contractor the type and size of the compressed stock gas cylinders listed below on an as-needed basis.

NREL's Stock Number	Description
G001	NITROGEN USP 224 CFT CGA 580
G002	ARGON INDUSTRIAL GRADE 330 CFT CGA 580
G003	HYDROGEN UHP 99.999% 80 CFT CGA 350
G005	HELIUM INDUSTRIAL GRADE 194 CFT CGA 580
G007	OXYGEN INDUSTRIAL GRADE 244 CFT CGA 540
G011	FORMING GAS 5% HYDROGEN BAL NITROGEN 279 CFT CGA 580
G013	FORMING GAS 10% HYDROGEN BAL NITROGEN 279 CFT CGA 350
G018	ARGON UHP 99.999% 246 CFT CGA 580
G019	HELIUM UHP 99.999% 215 CFT CGA 580
G020	HYDROGEN UHP 99.999% 249 CFT CGA 350
G021	CARBON DIOXIDE BONE DRY CGA 320
G022	NITROGEN UHP 99.999% 230 CFT 580
G023	OXYGEN HP 99.995% 300 CFT CGA 540
G024	ZERO AIR 220 CFT CGA 590
G025	PROPANE 33 lb.

The Vendor shall provide to the Contractor the type and size of the compressed gas cylinders listed below on an as-needed basis (*Please Note: below is a preliminary list of non-stock gases – as the BOA work effort advances over time, non-stock gases may be added or removed*).

Description	UNIT_QTY	QTY	Count
CARBON MONOXIDE	300	cf	21
ACETYLENE	100	cf	10
5% ARGON BALANCE HYDROGEN	198	cf	9
METHANE	277	cf	9
21% OXYGEN BALANCE NITROGEN	225	cf	8
4% CARBON MONOXIDE BALANCE NITROGEN	175	cf	7
10% CARBON DIOXIDE BALANCE NITROGEN	338	cf	6
0.1% CARBON MONOXIDE BALANCE NITROGEN	140	cf	5
10% OXYGEN BALANCE NITROGEN	228	cf	5
ETHYLENE	250	cf	5
15% METHANE BALANCE HYDROGEN	200	cf	4
2.5% HYDROGEN BALANCE AIR	144	cf	4
2% HELIUM BALANCE NITROGEN	277	cf	4
5% HYDROGEN 10% CARBON DIOXIDE BALANCE NITROGEN	249	cf	4
AMMONIA	277	cf	4
DEUTERIUM	237	cf	4
PHOSPHINE	433	cf	4
10% NITRIC OXIDE BALANCE NITROGEN	211	cf	3
SILANE	330	cf	3
ARSINE	150	cf	2

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

- Purchase orders will be placed with the Vendor under this BOA to acquire gas cylinders.
- 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 purchase order and are dependent on the internal Contractor demand.
- Purchase orders for stock gas cylinders placed with the vendor by 2:00 P.M. shall require that the Vendor deliver the completed orders to Contractor by 9:00 A.M. the following business day. Back orders for stock gases are not acceptable.
- Purchase orders for non-stock gas cylinders placed with the Vendor by 2:00 P.M. shall require that the Vendor deliver the completed orders to the Contractor within two to five business days. Exceptions can be made for the delivery due dates for very uncommon gas mixtures.
- The Vendor shall honor the negotiated fixed unit prices under this BOA for each gas cylinder. Pricing shall include the cost of the gas cylinder and a one-time "adder" charge, regardless of the length of time the cylinder remains with Contractor. The

Vendor shall not invoice the Contractor for delivery, hazardous materials handling, rental, or any other additional fees.

- Gas cylinders not originally quoted for this BOA shall be priced at 10% below the Vendor's GSA list price. Once a gas cylinder has been purchased that was not originally quoted for this BOA, that price shall remain the same for the duration of the BOA.
- If required by the Contractor, the Vendor shall ensure that gas cylinders containing highly toxic, pyrophoric, or highly corrosive gases have a pneumatic (automatic) cylinder valve with a DISS connection and a flow limiting orifice.
- 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.
- Unless notified by the Contractor in advance of an alternate location, the Vendor shall deliver and pick-up the gas cylinders between the hours of 8:00 A.M. – 12 P.M. and 1:00 P.M. – 5:00 P.M., Monday through Friday at the location provided on the purchase order.
- The Vendor shall ensure that any of its, or its lower-tier vendors, officers, employees, or agents who are not U.S. citizens and who shall perform work at DOE facilities follow the site's security requirements. Access will be subject to DOE and the Contractor's approval.
- The Vendor shall provide a separate packing slip for each gas delivery. The packing slip shall contain the following information, at a minimum, for each cylinder delivered:
 - Contractor Purchase Order Number
 - Date Delivered
 - Description
 - Unique Vendor Barcode Number
 - Any other request identified on the purchase order
- The Vendor shall submit invoices according to the instructions provide on the individual purchase order.
- The Vendor shall pick up gas cylinders to be returned within two business days of being notified by Contractor.
- The quantity of used cylinders that need to be returned to the Vendor may vary, which may require that the Vendor schedule additional pickups.
- The Vendor shall provide the Contractor with a packing slip when used gas cylinders are picked up. The packing slip shall contain the following information, at a minimum, for each cylinder picked up:
 - Date picked up
 - Description
 - Contractor Stock Number (if applicable)
 - Unique Vendor Barcode Number
- On occasion, potential discrepancies related to the purity/contents of the gas cylinders are identified by Contractor personnel. When a discrepancy is identified, the Vendor will be notified of the circumstance. The Vendor shall pick up the gas cylinder within two business days of being notified and shall perform the required testing to validate the purity/contents of the gas.

- The Vendor shall provide written test results to the Contractor within two business days of picking up the gas cylinder that has been identified under the bullet above and the testing shall be performed at no cost to the Contractor. If the test results indicate that the Vendor is responsible for the discrepancy, the Vendor shall deliver a replacement gas cylinder to the Contractor within two to five business days. Exceptions can be made for the delivery of very uncommon gas mixtures.

Attachment B

Part #	Gas Cylinder	Firm Fixed Unit Price	NREL's Adder*	Total Price	List Price	Cost Savings
NI M300	NF Nitrogen (Medical), 300cuft	\$12.00	\$3.00	\$15.00	\$172.45	\$157.45
OX 300	Industrial Oxygen, 250cf, Size 1A	\$9.00	\$3.00	\$12.00	\$91.75	\$79.75
NI UHP1L	UHP Nitrogen, 99.999%, Size 1A 255cuft	\$18.00	\$4.00	\$22.00	\$46.58	\$24.58
AR 300	Industrial Argon, Size 1L, 33cuft	\$19.00	\$4.00	\$23.00	\$194.52	\$171.52
FG PR33	Forklift Propane	\$14.00	\$3.00	\$17.00	\$43.95	\$26.95
HY UHP2	UHP Hydrogen, 99.999%, Size 3, 80cuft	\$24.00	\$4.00	\$28.00	\$51.45	\$23.45
AR UHP1L	UHP Argon, 99.999%, Size 1L, 331cuft	\$20.00	\$4.00	\$24.00	\$89.25	\$65.25
CA Zero1l	Zero Air, Size 1A, 225cuft	\$39.00	\$4.00	\$43.00	\$78.00	\$35.00
HY UHP1L	UHP Hydrogen, 99.999%, Size 1L, 258cuft	\$32.00	\$4.00	\$36.00	\$58.80	\$22.80
SG G1123301	Carbon Dioxide Bone Dry, 99.8%, Size 1A 60#	\$20.00	\$4.00	\$24.00	\$70.00	\$46.00
OX UHP1L	UHP Oxygen, 99.994%, Size 1L, 337cuft	\$62.00	\$4.00	\$66.00	\$217.80	\$151.80
HE 300	Industrial Helium, Size 1L, 288cuft	\$105.00	\$3.00	\$108.00	\$174.88	\$66.88
HE UHP1L	UHP Helium, 99.999%, Size 1L, 288cuft	\$116.00	\$4.00	\$120.00	\$308.45	\$188.45
SX G2692999	Forming Gas, 5% H2 Bal N2, Size 1L, 237cuft	\$86.00	\$4.00	\$90.00	\$188.85	\$98.85
SX G2658538	Forming Gas, 10% H2 Bal N2, Size 1A, 212cuft	\$86.00	\$4.00	\$90.00	\$197.40	\$107.40
HG G2659745	Research Carbon Monoxide, 99.999%, Size QY	\$698.00	\$30.00	\$728.00	\$1,144.00	\$416.00
SG G1301202	Purified Acetylene, Size 1B	\$200.00	\$4.00	\$204.00	\$259.00	\$55.00
SX G2682030	5% Argon Bal Hydrogen, Size 1A, 210cf	\$199.00	\$4.00	\$203.00	\$223.65	\$20.65
HG G2271101	Research Methane, 99.995%, Size 1A, 286cf	\$436.00	\$30.00	\$466.00	\$546.00	\$80.00
SX G2683215	21% Oxygen Bal Nitrogen, Size 1A, 212cf	\$193.00	\$4.00	\$197.00	\$215.25	\$18.25
SX G2690125	4% Carbon Monoxide Bal Nitrogen, Size 1A, 175cf	\$264.00	\$4.00	\$268.00	\$294.00	\$26.00
SX G2681360	10% Carbon Dioxide Bal Nitrogen, Size 1L, 235cf	\$175.00	\$4.00	\$179.00	\$194.76	\$15.76
HX G2675765	0.1% Carbon Monoxide Bal Nitrogen, Size 1R, 140cf	\$209.00	\$30.00	\$239.00	\$233.10	(\$5.90)
SX G2675362	10% Oxygen Bal Nitrogen, Size 1A, 212cf	\$183.00	\$4.00	\$187.00	\$204.75	\$17.75
HG G2250101	Research Ethylene, 99.999%, Size 1A, 30LB	\$711.00	\$30.00	\$741.00	\$791.00	\$50.00
HX G2699655	15% Methane Bal Hydrogen, Size 1A, 210cf	\$213.00	\$4.00	\$217.00	\$236.44	\$19.44
SX G2684631	2.38% Hydrogen Bal Air, Size 1A, 170cf	\$207.00	\$4.00	\$211.00	\$231.00	\$20.00
SX G2700148	2% Helium Bal Nitrogen, Size 1L, 235cf	\$190.00	\$4.00	\$194.00	\$196.20	\$2.20
HG G1611123	SEMI Ammonia, 99.999%, Size QF, 50lbs	\$1,063.00	\$30.00	\$1,093.00	\$1,063.00	(\$30.00)
HG G2671968	ULSI Deuterium, 99.999%, Size QF, 177cf	\$6,400.00	\$30.00	\$6,430.00	\$7,483.00	\$1,053.00
HG G2675395	ULSI Phosphine, 99.9997%, Size QF, 40lbs	\$6,442.00	\$30.00	\$6,472.00	\$7,158.00	\$686.00
HX G2683163	10% Nitric Oxide Bal Nitrogen, Size 1P, 54cf	\$288.00	\$30.00	\$318.00	\$321.30	\$3.30
HG G1261623SS	ULSI Silane, 99.999%, Size QF, 26.4lbs (319cf)	\$2,457.00	\$30.00	\$2,487.00	\$2,730.02	\$243.02
HG H2684930D	ULTIMA 2 Arsine, 99.99995%, Size QH, 10lbs	\$6,600.00	\$30.00	\$6,630.00	\$6,600.00	(\$30.00)

**Adder charges shall be negotiated between the individual DOE national laboratories and the vendor*

ATTACHMENT C
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

Seller expressly warrants that Items delivered under the Orders shall be in accordance with Seller's affirmation, description, sample or model, and compliant with all requirements of the BOA and Order. The warranty shall begin upon Company acceptance and extend for a period of:

(1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item or

(2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacturer, of the item or has modified it.

If any nonconformity or latent defect with the item appears within the warranty period, Seller shall 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. If repair or replacement or re-performance of services is not timely, Company may elect to return the nonconforming items or repair or replace said item or re-procure the services at Seller's expense.

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 "FOB Destination" unless specified otherwise in the Order 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.

- 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 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 damages.
- 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 drawings that Seller has specifically produced or acquired for the terminated portion of the BOA or Order. The Company shall pay the price for completed items delivered and accepted. The Company and Seller shall mutually agree on the amount of payment for all items delivered and accepted.
- c. Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault.
- 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.

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:

- ❶ FAR 52.219-8 Utilization of Small Business Concerns (MAY 2004)
- ❷ 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>)
- ❸ FAR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, (DEC 2001), and
- ❹ FAR 52.222-36 Affirmative Action for Workers with Disabilities (JUN 1998)
- ❺ FAR 52.227-3 Patent Indemnity (APR 1984)
- ❻ FAR 52.227-9 Refund of Royalties (APR 1984)
- ❼ FAR 52.222-21 Prohibition of Segregated Facilities (FEB 1999)

FAR 52.216-2 Economic Price Adjustment – Standard Supplies (Jan. 1997)

a. The Contractor warrants that the unit price stated in the Schedule for gas cylinders is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term *unit price* excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term *established price* means a price that—

1. Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and
2. Is the net price after applying any standard trade discounts offered by the Contractor.

b. The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

c. If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

1. The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original unit contract price.
2. The increased contract unit price shall be effective—
 - i. On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or
 - ii. If the written request is received later, on the date the Contracting Officer receives the request.
3. The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.
4. No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.
5. Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

d. During the time allowed for the cancellation provided for in subparagraph (c) (5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)