

BASIC ORDERING AGREEMENT BETWEEN

Fisher Scientific Company, L.L.C.

AND

Battelle Memorial Institute, Pacific Northwest Division, Management & Operating Contractor of the
U.S. Department of Energy's Pacific Northwest National Laboratory (PNNL)
On Behalf of ICPT for the Department of Energy

BASIC ORDERING AGREEMENT

No. PNNL-ICPT-BOA-2019-026

This Basic Ordering Agreement (BOA) between Fisher Scientific Company, L.L.C. (hereinafter referred to as "Seller") and Battelle Memorial Institute, Pacific Northwest Division (hereinafter referred to as "Contractor") is entered into to provide products and services to DOE Contractors and authorized subcontractors in accordance with the following:

1. This BOA includes products and/or services listed in Attachment B and C.
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. Value Added Services may be charged in accordance with Attachment C.
6. General Terms and Conditions (04/2016) are included in Attachment A, 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 Agreement and shall be direct-billed accordingly.

ARTICLE 1 - SCOPE OF WORK

The original term of this BOA is five (5) years from the effective date of this BOA. Effective term of BOA is as follows May 1, 2019, through April 30, 2024.

ARTICLE 2 – PERIOD OF PERFORMANCE (POP)

The performance period of this BOA may be extended by two (1)-year periods prior to the expiration of the original period of performance. The exercise of an option to extend the term of this BOA shall be accomplished by a unilateral written modification issued by Contractor.

The Contractor may cancel this BOA at any time upon 60 days written notice without further obligation, except for those obligations associated with any outstanding Contractor orders.

The Seller agrees to furnish such quantities of products or services described herein as Contractor may order during the term of this Agreement. The Seller's obligation to each Contractor shall become effective upon acceptance of particular orders issued under the Agreement.

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, standard ground freight is paid by Seller for deliveries to locations within the contiguous United States. Contractor is responsible for freight charges for deliveries outside of the contiguous United States and any expedited or special shipping or handling.
- Payment Terms: Prompt payment discount or Net 30 days from receipt of accurate invoice.
- Delivery location and schedule shall be negotiated for each order under this BOA.

ARTICLE 4 - FIXED PRICES/DISCOUNT SCHEDULE

- a. The Contractor shall be entitled to purchase goods and services listed in Attachment B, Master Discount Schedule, at

the fixed prices identified therein. The discount percentages are held firm until April 30, 2020. These discounts may be adjusted no more than annually through issuance of a bilateral modification to the BOA. Once established, the discounts will not be subject to change unless the net price for any item falls beneath the Seller's cost plus 11%. In the event this occurs, the price for that item will then be priced as Seller's cost plus 11% provided however, that at no time shall the Seller charge more than the Manufacturer's or Seller's List Price.

By entering into this BOA, Seller warrants that it provides the most competitive pricing with its Government and Government contractor customers, where such customers operate in substantially similar industries, purchasing substantially similar annual volumes, for like quantities for the same or similar materials under substantially similar conditions of sale. In the event that a price audit reveals a product or products that the Contractor deems to be qualified MFC price products, the parties shall use good faith best efforts to convene and come to an equitable resolution.

Contractor and/or the U.S. Government shall have the right to examine Seller's records to ensure compliance with this warranty.

- b. Electronic Order Placement Pricing: Seller agrees to apply an additional 1% discount to the then-current discount for that particular category code as identified in Attachment B, Master Discount Schedule. This additional discount applies to all orders placed electronically, regardless of the volume and/or value of orders placed in this manner. This discounts shall be payable to the individual ICPT participating Contractor's in the form of a rebate check annually which will be calculated concurrently with the Seller's annual review and reconciliation of the actual prices charged to ICPT Contractors versus the contractually allowed prices.

ARTICLE 5 – GROWTH INCENTIVE

Seller agrees to offer Customer a growth rebate based on annual net purchases (excluding any returns, freight and handling charges of any kind) of Catalog products (specifically excluding any Non-Catalog Products or Third Party Products) by Contractor (Net Purchases) for each contract year of the term of this Agreement as compared with the Net Purchases for the previous contract year. Seller will measure Contractor's Net Purchases for each contract year of the term of this Agreement and will compare the current year's Net Purchases (Current Net Purchases) against the previous contract year's Net Purchases (Previous Net Purchases). In the event that Contractor's Current Net Purchases meet or exceed the Previous Net Purchases, Contractor will be entitled to a Growth Rebate calculated by multiplying the incremental Net Purchases (Current Net Purchases minus Previous Net Purchases) by five percent (5%).

Notwithstanding the foregoing, regardless of the actual Current Net Purchases by Contractor in any year, in no event will the Previous Net Purchases ever be lower than the Net Purchases by Contractor in 2018 for purposes of calculating this incentive.

The Contractor will not be entitled to a Growth Rebate in any calendar year in which the Current Net Purchases fail to exceed the Previous Net Purchases. Seller will make payment of any earned Growth Rebate to Contractor no later than forty-five (45) days following the end of each contract year.

ARTICLE 6 - ADMINISTRATIVE

Contractor BOA Administrator's Address is as follows:

Ms. Brianna Yi
Pacific Northwest National Laboratory
(509) 371-7742
brianna.yi@pnnl.gov

Seller BOA Administrator's Address is as follows:

Jesse Nicholson, Industry Director – Government, US
Fisher Scientific Company, L.L.C.
(301) 915-5013
jesse.nicholson@thermofisher.com

All Orders placed hereunder shall reference this BOA No.: PNNL-ICPT-BOA-2019-026

ARTICLE 7 - REPORTING

In accordance with Section 11, "Data Reporting Requirements" of Attachment A, General Terms and Conditions, of this Agreement, the Seller agrees to provide quarterly spend and savings reports broken out by site, on or before the 10th business day of the month following the end of each quarter during a Fiscal Year.

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

ARTICLE 8 - SMALL BUSINESS RESELLER REQUIREMENTS

Seller agree to offer all products and services described herein to Contractors through authorized dealers/resellers who have entered into certain Dealer Agreements with the Seller and are thereby deemed a preferred strategic small business partner. Seller shall utilize its preferred strategic small business partners in assisting Contractors meet established socio-economic goals as directed by the Department of Energy. This includes local small/small disadvantaged, woman-owned, HUBZone, veteran-owned and/or service disabled veteran-owned businesses for the Contractors. The Seller agrees to propose a pricing strategy that would allow Seller's preferred strategic small business dealers/resellers to offer pricing as identified in Attachment B to this BOA.

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

1. Attachment A – General Terms and Conditions
2. Attachment B – Master Discount Schedule
3. Attachment C – Value Added Services
4. Completed Representations & Certifications dated 3/19/19 (incorporated by reference)

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year of Battelle Memorial Institute, PNWD, signature date.

ACKNOWLEDGED AND CONFIRMED;

Fisher Scientific Company, L.L.C. 	Battelle Memorial Institute, PNWD  Digitally signed by Brianna Yi Date: 2019.06.17 08:51:31 -07'00'
BY: Jill Jones	BY: Brianna Yi
TITLE: Vice President Sales, Academic & Government	TITLE: Sr. Contracts Specialist
DATE: June 19, 2019	DATE: June 17, 2019

ATTACHMENT A
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 administrating 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, 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)