

GRAND BAHAMA POWER COMPANY PURCHASING TERMS AND CONDITIONS

- 1) **Definitions.** For purposes of this PO (as defined below), the following terms shall have the meanings set forth below:
 - (a) "Business Day" means Monday to Friday, except statutory holidays within The Commonwealth of the Bahamas.
 - (b) "GBPC" means Grand Bahama Power Company, its successors and assigns.
 - (c) "Goods" includes machinery, equipment, goods, materials, supplies, drawings and other property specified in this PO.
 - (d) "Party" means either the Seller or GBPC and "Parties" means the Seller and GBPC.
 - (e) "PO" means this agreement/purchase order for the request of Goods and/or Services and any additional terms or conditions attached hereto.
 - (f) "Seller" means the persons, and/or corporations to which this PO is addressed and each of their respective heirs, personal representatives, successors and permitted assigns.
 - (g) "Services" means any and all services provided by the Seller to GBPC under this PO.
- 2) **Entire Agreement.** This PO and any confidentiality agreement(s) entered into between GBPC and the Seller represents the entire agreement between the Parties with reference to its subject matter. No modification or amendment shall be binding on either Party unless consented to in writing by both Parties. Each Party agrees that it has not relied on any representations of the other Party not contained in this PO. The terms and conditions of this PO shall supercede and abrogate all previous communications, commitments or agreements between the Parties unless a formal written agreement has been entered into between the Parties.
- 3) **Engagement as an Independent.** The Parties agree that the Seller is an independent contractor and that this PO shall in no manner be construed as creating any form of employer-employee or agency relationship between GBPC and the Seller. The Seller shall indemnify and hold GBPC harmless for any losses, damages, claims, taxes or deductions made by the Seller or any government or regulatory body, premised on the Seller being an employee of GBPC or having any employee rights.

Seller shall be solely responsible for its acts and omissions and the acts or omissions of its affiliates, agents, employees or subcontractors, if any, while performing Services hereunder. Seller agrees that it shall not, in any form or fashion, maintain, hold out, represent, state or imply to any other individual or entity that an employer/employee relationship exists between GBPC and Seller, its agents and employees, or between GBPC and any subcontractors or agents of the Seller. Seller has no right or authority to make any representation or warranty or assume or create any obligation or responsibility, express or implied, for, on behalf or in the name of GBPC, or to incur debts for GBPC or to bind GBPC in any manner whatsoever. Additionally, Seller hereby waives and relinquishes any right of subrogation it might have against GBPC under the provisions of the *National Insurance Act* of the Bahamas on account of any injury to its employees or employees of subcontractors, if any, caused in whole or in part by any negligence of GBPC. Seller further agrees that it will require its insurer, if any, to likewise waive and relinquish such subrogation rights and furnish evidence of such waiver to GBPC.

Seller shall not be eligible to participate in any employee benefit plan sponsored by GBPC, including, but not limited to, any retirement plan, insurance program, disability plan, medical benefits plan or any other fringe benefit program sponsored and maintained by GBPC for its employees.

- 4) **Goods & Services.** Unless otherwise agreed in writing by the Parties, the Seller shall manage, perform, and provide the Goods and/or Services as set forth in the PO. Delivery must be made on the date(s) specified herein.

If the Seller fails to make deliveries in accordance with this PO, GBPC may at its option terminate this PO in whole or in part and return (at the Seller's expense) or refuse to accept the Goods. Quantities received by GBPC in excess of quantities specified may, at the option of GBPC, be returned at Seller's expense.

Services must be performed by the date(s) specified herein. If the Seller fails to perform the Services in accordance with this Purchase Order, GBPC may at its option terminate this Purchase Order in whole or in part.

- 5) **Importation, Shipping and Freight Forwarding of Goods .**
 - (a) Unless otherwise specified herein, shipment of goods originating from the continental United States of America should be shipped to the identified Freight Forwarder (G&G Shipping, 1300 Eller Drive, Fort Lauderdale, Florida, 33316) for transshipment to Freeport, Grand Bahama, Bahamas. Shipment of goods originating from outside the continental United States of America should be shipped to the nearest transshipment terminal to Freeport, Grand Bahama, Bahamas. Shipments so shipped should be consigned to GBPC.
 - (b) Shipping documents, (Shipping Notices, Bills of Lading, Commercial Invoices, Airway Bills) should be e-mailed, faxed or couriered to the purchasing department of GBPC, prior to or immediately after each shipment regardless of origin, with copies to the identified US Based Customs Broker whenever the goods must transship through US Territory.
 - (c) Invoices accompanying the shipment of goods should include:
 - (i) GBPC identified as the Consignee
 - (ii) Seller identified as the Shipper
 - (iii) Unique Vendor generated Invoice number and date
 - (iv) GBPC generated PO number
 - (v) Count, unit value and explicit description of each item (in addition to part numbers or abbreviations)
 - (vi) Carryover and total values. Items issued gratis should have values that are identified as "For Customs Purposes Only
 - (vii) Total weight and volume of Goods shipped.
 - (d) Both the shipping documents and the goods should be clearly labeled with the PO number.
 - (e) For Bahamian Import purposes, the Bond Number of GBPC is "242".

- 6) **Inspections.** Goods are subject to inspection by GBPC. If GBPC determines that the Goods are not in accordance with specifications accompanying the PO, they may be rejected by GBPC and returned at GBPC's discretion. If inspection discloses defective Goods, or Goods of an inferior quality or workmanship, GBPC, at its option, may cancel any unshipped Goods and return the Goods at the Seller's expense. GBPC reserves the right to appoint its own inspector, at GBPC's cost, to inspect, examine and witness all tests on Goods. At all times, the Seller shall co-operate with GBPC's inspector. Inspection or lack of inspection does not relieve the Seller of the Seller's obligations (including warranties) under this PO.
- 7) **Title.** Unless otherwise specified herein, title to the Goods and risk of loss shall pass from the Seller to GBPC upon delivery to and acceptance by GBPC.
- 8) **Payment.**
- (a) As payment for its Services under this Agreement, Seller shall receive the compensation and payments described in the PO. Unless specifically identified otherwise on this PO, all invoices properly submitted by the Seller shall be paid by GBPC within thirty (30) days of receipt, provided the amounts invoiced are then due and payable and that Seller is in compliance with the provisions of PO. GBPC is not responsible for any interest or carrying charges unless consented to in writing by GBPC. Invoices shall include the following information:
- ii) GBPC PO number;
 - iii) Name and address of the payee;
 - iv) Payment terms and invoice date; and
 - v) Where wire transfer payment is requested, specific instructions of such, along with bank name, address, account number and SWIFT code number shall also be required.
- (b) Unless otherwise stated in this PO, the Seller will pay, be exclusively responsible for and indemnify GBPC against all sales and commodities taxes, withholding taxes, customs duties, excise taxes, export and/or import tariffs and fees and any similar taxes, levies, assessments, tariffs or fees as well as all social security taxes, unemployment taxes, sales/use taxes and workers' compensation insurance premiums.
- 9) **Warranty.** Seller warrants that all Goods are of good, sufficient and merchantable quality, fit for the purpose or purposes specified and are free from any defect in design, material, workmanship or title. The Seller, at GBPC's request, will either promptly replace or repair at the Seller's expense any defective or damaged Goods which, in GBPC's opinion, fail to comply with specifications or requirements under this PO or GBPC may, at its option and on reasonable notice to the Seller, correct such default, failure or damage and the Seller shall be liable to GBPC for all costs incurred in doing so. Neither payment for nor inspection, testing or acceptance of any Goods by GBPC excludes or limits any warranties hereunder or implied by law. The Seller will assign to GBPC, or enforce for GBPC's benefit, any warranties obtained from manufacturers or subcontractors. All warranties continue in full force and effect notwithstanding any termination of this PO. Unless set out otherwise herein, warranties with respect to the supply and/or installation of Goods will expire twelve (12) months from receipt by GBPC of such Goods. Should any Goods, or part thereof, be repaired, or replaced the warranty obligations of Seller under this PO shall extend to all such repairs or replacements.

The Seller warrants that all Services performed shall be performed in a professional and workmanlike manner using personnel with the skills and training appropriate for the assigned tasks and using equipment that is appropriate for the purpose for which it is supplied and functioning properly. Seller further warrants that it shall re-perform Services which are found to have been in breach of the foregoing warranties for a period of twelve (12) months following completion of the Services.

Except as otherwise provided herein, the foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

- 10) **Termination.** This PO may be terminated by GBPC, in whole or in part, by thirty (30) days prior written notice to the Seller for any reason subject to an equitable adjustment between the Parties for work or materials supplied up to the date of termination. Such adjustment does not apply to Goods which are Seller's standard stock. The Seller is not entitled to any compensation or damages for any direct or indirect damage, loss, prospective profits, economic loss or incidental or consequential damages as a result of such termination. Immediately upon receipt of such termination notice, the Seller will discontinue all work under this PO and make every effort to cancel orders or contracts that have been made. Any claim for adjustment by the Seller must be asserted within thirty (30) days from the date of termination.

GBPC may immediately terminate this PO upon notice to GBPC upon: (i) the Seller breaching a material term of this PO; (ii) the sale, transfer or relinquishment, voluntary or involuntary, by operation of law or otherwise, of legal control of the business of the Seller except for a transfer to a related corporation or a transfer resulting from a merger, acquisition, amalgamation or reorganization; (iii) the sale, transfer or assignment of all or substantially all the assets of the Seller; or (iv) the filing by the Seller of a petition in bankruptcy, the commencement against the Seller of any proceedings under any bankruptcy or insolvency legislation, the adjudication of the Seller as a bankrupt, the appointment by any competent court having jurisdiction of a temporary or permanent receiver, trustee or other officer having similar powers over the Seller, its business or assets, or the making of any assignment by the Seller for the benefit of its creditors.

- 11) **Insurance.** Throughout the performance of its obligations hereunder, Seller shall maintain, at its expense, a policy or policies of insurance for each type of coverage and with the limits stated below:
- (a) **Worker's Compensation** insurance in accordance with applicable statutory requirements or **Employer's Liability** insurance with limits of US\$1,000,000.00 for each accident or occupational disease;
 - (b) **Comprehensive General Liability** insurance, including Personal Injury Liability and Blanket Contractual Liability, with limits of US\$1,000,000.00; Combined Single Limits Each Occurrence and Annual Aggregate Bodily Injury and Property Damage Liability;

- (c) **Environmental Impairment Liability** insurance with an amount of \$1,000,000 per occurrence, if required by GBPC; and
- (d) **Professional Liability** insurance within an amount of not less than US\$1,000,000.00 per claim, if required by GBPC; and
- (e) Any additional compulsory liability insurances of any kind.

GBPC shall be named as an additional insured on the Seller's insurance policy(s). Upon request, the Seller shall provide GBPC with certificates of insurance satisfactory to GBPC evidencing that the foregoing insurance has been obtained.

- 12) **Notices.** All notices required, necessary or desired to be given pursuant to this PO shall be in writing and shall be delivered by personal in-hand delivery, sent by facsimile transmission, or sent prepaid by a recognized overnight courier service to the addresses and at the fax numbers for each Party set forth on the PO. Notice shall be given when received by the addressee on a Business Day.
- 13) **Liability/Indemnification.** The Seller shall assume all risk of loss, damage or injury, including death, to person or property, to the extent caused by its directors, officers, employees, sub-suppliers, agents or representatives in connection with the Goods or Services, and agrees not to make or bring any claim, action or demand against GBPC in respect of such loss, damage or injury arising out of or in any way attributable to the operation of this PO excepting such loss, damage or injury caused by the negligence or willful misconduct of GBPC.

The Seller shall at all times indemnify and save harmless GBPC from and against any and all liabilities, losses, expenses (including legal costs), claims, demands, actions, and causes of action, whatsoever suffered by GBPC by reason of:

- (i) Personal injury, death, loss or damage to property arising out of, in the course of, or in any way connected with the performance of this PO but excluding any such injury, death, loss, or damage to the extent that same is caused by the negligence or willful act or omission of GBPC; or
- (ii) any claim by a third party(s) that possession or use by GBPC of any intellectual property delivered as a part of or in connection with the Goods or Services infringes any patent, copyright, trade secret or other intellectual property right.

The provisions set forth in this clause shall apply and be effective with respect to any claim, cause of action, or legal theory whatsoever including without limitation, claims based upon breach of contract, breach of warranty, failure to meet performance guarantees, tort (including negligence) or strict liability and shall survive the termination or expiration of this PO.

Except for the Seller's obligations to indemnify GBPC, neither Party shall be liable to the other Party for any consequential, special, incidental, multiple, exemplary or punitive damages for performance or non-performance under this PO.

- 14) **Confidentiality.** The Parties acknowledge (as to information disclosed, the "Disclosing Party" and as to information received the "Receiving Party") each will be receiving, reviewing, and analyzing "Confidential Information" from the other in connection with this PO. "Confidential Information" means all information disclosed, directly or indirectly, by the Disclosing Party to the Receiving Party in connection with this PO and includes the terms and conditions of this PO and all information and documents disclosed or exchanged by the Parties (whether in tangible, electronic or digital form). Confidential Information shall be protected against unauthorized use or disclosure by the Receiving Party with the same degree of protection the Receiving Party uses to protect its own Confidential Information, but no less than reasonable care.

The Receiving Party shall use the Disclosing Party's Confidential Information only in connection with the purposes contemplated by this PO, and shall limit the disclosure of Confidential Information to the subcontractors or agents of the Receiving Party ("Representatives") who have a need to know such Confidential Information for the purposes of this PO. The Receiving Party shall be liable for any unauthorized disclosure of the Confidential Information by its Representatives. The foregoing restrictions shall not apply to Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party; (ii) is or becomes available to the Receiving Party or on a non-confidential basis from a source other than the Disclosing Party; (iii) has been or is subsequently independently developed by the Receiving Party without reference to the Confidential Information; or (iv) the Receiving Party is required to disclose by law or to a regulatory body with regulatory responsibility over the Receiving Party. The restrictions on the use and disclosure of Confidential Information contained in this Section 14 shall remain in force and effect for ~~five~~ three(3) years from the date of this PO and shall survive any expiry or termination of this PO.

The Receiving Party acknowledges and agrees that monetary damages would not be a sufficient remedy for any breach of this clause and that any breach or violation of the terms of this clause by the Receiving Party may result in immediate and irreparable harm to the Disclosing Party. The Disclosing Party will be entitled to seek from any court of competent jurisdiction injunctive and preliminary relief to remedy any such breach.

15) Work Product and Documents. The Seller acknowledges that all benefits and results arising from or incidental to the Seller's provision of Goods and/or performance of the Services (collectively, the "Work Product") shall belong entirely and solely to GBPC. The Seller, in advance, assigns and transfers to GBPC all right, title and interest to the Work Product and agrees, at GBPC's request, to execute any documentation required to effect such transfer.

16) Dispute Resolution. In the event of a dispute in connection with this PO, a senior officer of the Seller and a senior officer of GBPC shall meet to discuss and resolve the dispute and the parties shall have ten (10) days to resolve the dispute (or five (5) days if either party notifies the other party that the matter requires urgent resolution). Unless otherwise agreed by the Parties, in the event resolution cannot be achieved then such dispute or difference shall be referred to arbitration under the provisions of The Arbitration Act, 2009.

Within thirty (30) days of the aforesaid referral a single arbitrator shall, in the case where the parties can agree upon one, be appointed otherwise referred to three arbitrators, one to be nominated by each party and the third to be nominated by the two arbitrators nominated. The arbitration shall take place in Freeport and the language of the arbitration shall be English. The award by the

arbitrators shall be final and binding on the parties to the dispute, and judgment may be entered upon such award in any applicable court of competent jurisdiction. The arbitrators shall be authorized to award the costs of the dispute, including without limitation, Attorney's fees and investigation expenses.

Unless otherwise requested by GBPC, there shall be no stoppage in the provision of Goods or Services during any dispute resolution process.

17) Compliance with Laws. The Seller shall comply with all statutory and legal requirements within The Commonwealth of the Bahamas as necessary for the performance of this PO by the Seller as well as all GBPC safety policies. In addition to the foregoing, the Seller will comply with all safety programs and practices initiated by GBPC. All costs incurred by the Seller in relation to the compliance with GBPC's safety programs will be the responsibility of the Seller.

18) General.

- a. This PO shall be deemed to have been made in and shall be governed by, construed and interpreted in accordance with the laws of The Commonwealth of the Bahamas. The parties agree to attorn to the jurisdiction of the courts of The Commonwealth of the Bahamas.
- b. This PO shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- c. The Seller will not assign or otherwise transfer this PO or any part hereof without GBPC's prior written consent, which shall not may be unreasonably withheld by GBPC.
- d. Any failure by GBPC at any time or from time to time to enforce or require the strict keeping and performance of any of the terms or conditions of the PO shall not constitute a waiver of such terms or conditions. GBPC may at any time avail itself of such remedies as it may have for any breach of such terms or conditions.
- e. No consent or waiver, express or implied, by any Party to this Agreement of any breach or default by any other Party in the performance of its obligations under this Agreement or of any of the terms, covenants or conditions of this Agreement shall be deemed or construed to be a consent or waiver of any subsequent or continuing breach or default in such Party's performance
- f. If any section or part or parts of sections in this PO are determined to be illegal or unenforceable, it or they shall be considered separate and severed from this PO and the remaining provisions of this PO shall remain in full force and effect and shall be binding upon the Parties hereto as if such section or sections or part or parts of the sections had never been included.
- g. Section headings used herein are for the convenience only and shall not be construed so as to affect the interpretation or construction of this Agreement.
- h. In this PO, words importing the singular include the plural and vice versa and words importing a specific gender include all genders. The words "includes" or "including" shall mean "includes without limitation" or "including without limitation", respectively.
- i. In the event there is more than one Seller, all obligations of Seller hereunder are joint and several.
- j. All provisions of this PO which by their express terms or nature are continuing shall survive the expiration or termination of this PO, including this provision, and any provisions relating to notice, confidentiality, indemnification, termination, work product, dispute resolution, as well as any provisions which are required to determine, or which exclude or limit, any liability or which are otherwise required to give effect to or interpret any such provisions which are continuing. Without limiting the generality of the foregoing Sections 3, 9, 14 and 15 shall survive the expiry or termination of this PO and remain in full force and effect.
- k. The Business address of GBPC is:

Grand Bahama Power Company Limited
P.O. Box F-40888
Pioneers Way and East Mall
Freeport, Grand Bahama, Bahamas
Telephone Number: (242) 350-8900
Fax Number: (242) 351-1215