

**Opportunity:** Greensboro, NC WWTP  
**Location:** Greensboro, NC  
**Quote N°:** T5687 Rev 08  
**Engineer:** Hazen and Sawyer  
**Date:** February 28<sup>th</sup> 2014

**Represented by:** Max Foster  
Premier Water, LLC  
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### ***Siemens Blower per Specification Sections 11183 Aeration Blowers & 15100 Valve Operators and Electric Valve Actuators***

Two (2) Siemens high efficiency single-stage centrifugal air blowers model KA44SV-GL225, accessories and controls with variable diffusers for variable output capacity control and inlet guide vanes to provide a dual vane control system for efficiency optimization and minimized power consumption. The blowers are designed for a capacity of 21,650 ICFM (@14.7 PSIA, 68°F & 36% RH) at 12.1 Equivalent Air Pressure (EAP) psig.

#### ***Standard Major Skid Components (pre-piped and pre-wired):***

Siemens blower with integral speed increasing gearbox  
1,300 HP Premium efficiency electric motor: 4160v/60hz/3ph WPIL enclosure, suitable for reduced voltage start (80% of minimum voltage)  
Coupling and guard  
Structural steel base  
Oil lube system with mechanical and electrical oil pump, duplex oil filter, temperature control valve and air-to-oil cooler

#### ***Standard Skid Instrumentation (pre-piped and pre-wired):***

Blower bearing RTD's	Differential pressure transmitter
Blower gearbox velometer	Reverse rotation switch
Blower gearbox XYZ probes and transmitters	Surge switch
Motor winding and bearing RTD's	Low oil pressure switches
Motor bearing X-Y vibration probes and transmitters	Inlet temperature gauge
Motor current transmitter	Oil temperature gauge
Key Phasor	Oil temperature transmitter
Inlet pressure gauge	Oil level switch
Inlet temperature transmitter	Oil dirty filter indicator and switch
	Oil pressure gauge

#### ***Shipped Loose Components (for each blower, shipped loose for field mounting and wiring by Contractor):***

Siemens design local inlet filter/silencer (eliminates inlet piping)	Blow-off check valve, wafer,
Two additional local inlet filter/silencers (for existing blowers)	(includes one additional 14" valve for existing multistage)
Air filter differential pressure indicator/switches 1 <sup>st</sup> & 2 <sup>nd</sup> stage	Siemens design blow-off valve silencer
Inlet and discharge flex connectors	Discharge cone/silencer
Set of vibration isolation pads	Discharge temperature transmitter
Motor conduit box with lightning arrestors, surge suppressors	Discharge pressure gauge
and current transformer	Discharge check valve, wafer type
Blow-off valve, 480v/60hz/3ph electric-actuated, flanged	Discharge valve, 480v/60hz/3ph electric-actuated, flanged

#### ***Tools and Spare Parts:***

One (1) Set of special tools (one common to all units)

#### ***Local Control Panels (Remote mounted, wiring by contractor):***

Each blower includes a Remote mounted NEMA 12 Local Control Panel with GE Fanuc PAC systems RX3i or equivalent programmable logic controller that will contain the start-stop permissive sequence, surge alarms, all safety monitoring and shutdown controls. Starters and controls for variable vanes, electric oil pump, oil cooler, discharge and blow-off valves are included. Panel door mounted items include GE FANUC Quick Panel View Series or equivalent color operator interface monitor, main disconnect, hourmeter, and emergency stop. A 480v/60hz/3ph 30 amp power supply is required and the panel is a UL listed assembly. Panels also include TCP/IP Ethernet communication and a UPS.

#### ***Paint:***

Manufacturer's standard finish.

#### ***Start-up Service:***

Two (2) trips for a total of five (5) days on-site are included for blower start-up and operator training. Additional service is available per the current service rate schedule. Advance notification of 10 working days is required for scheduling.

**Factory Test (Non-witnessed):** *(for additional or witness testing, contact Siemens)*

Factory Performance Test - air-end/gearbox  
Functional Control Panel Test  
Lubrication System Mechanical Run Test  
Motor Complete Test

**Payment Terms:** 10% upon issuance of Submittal package  
40% upon receipt of raw materials, including: gearing, casings, and impellers  
20% upon successful completion of blower factory Performance Test  
30% at time of final shipment

Terms are 100 percent of invoiced value without deduction and to be paid Net 30 days after invoice date. Payment shall not be dependent on the contractor being paid by any third parties. Under no circumstances will payment be dependent on acceptance of the equipment by the Owner.

**Drawings and Shipment:**

Submittal for approval will be in 14 weeks after acceptance of the order by Siemens. Shipment will be 48-52 weeks after receipt of submittal approval by Siemens.

Siemens' price includes for a maximum of three submitted issues of Approval Drawings including finals. If the Customer requests any further amendments to the drawings then Siemens may provide further revisions which shall be at the Customer's cost. Siemens shall be responsible for any errors, omissions or discrepancies in the drawings unless they are due to incorrect drawings, samples, patterns, models or information supplied by the Customer.

First issues are 'Preliminary', indicating Siemens design and scope of supply for the contract, and are dependent on Siemens receiving the necessary Customer information with the contract order. Customer to approve or comment on the scope and layout on that basis.

Second issue will follow 10 weeks after approval of the first issue, and will incorporate agreed comments.

A final submission will then be made if necessary to incorporate any additional changes arising during the engineering phase of the contract. When each document is approved by the Customer without comments, the latest issue is considered to be "final". No further issues will be supplied unless further engineering changes occur which affect the document content.

No formal dossier of final drawings is compiled by Siemens as standard, but can be arranged at additional cost.

**Warranty:**

Warranties will expire thirty (30) months after shipment or twenty-four (24) months after start-up (which shall be the Siemens certified date the equipment is available for beneficial use), whichever occurs first. Under no circumstances will the warranty begin upon "beneficial use", completion of the project, or acceptance of the equipment as determined by the engineer or end user. Any and all warranty terms and conditions detailed in the proposal herein shall supersede and/or supplement the warranty language denoted in the Siemens standard terms and conditions.

**Items Not Included:**

Installation, taxes or bonds, main motor starters, anchor bolts, interconnecting pipe, fittings, bolts, nuts, gaskets, wiring, valves, oil and lubricants, or any other items not specifically listed above.

**Notes & Clarifications:**

1. This proposal is based on specifications emailed February 13<sup>th</sup>, 2013 from Joe Rohrbacher at Hazen and Sawyer to Max Foster at Premier Water. Specifications include section 11183, Aeration Blowers and section 15100, Valve Operators and Electric Valve Actuators. Referenced specification sections were not provided and have not been reviewed or priced into this quotation.
2. 11183.2.13.N. Siemens will supply standard control screens.
3. 11183.2.13.O. Siemens will supply standard control screen functionality and layout.
4. 11183.2.13.P. Standard Siemens control operator interface screens will be supplied.
5. 11183.2.13.AA. Siemens will supply standard terminal convention within the LCP.
6. 11183.2.13.AC. Note that engraving and plastic name plates for each terminal are not included nor provided.
7. Motor Comments:
  - o 11183.2.03.I. Rotor will be constructed from die cast aluminum.
  - o 11183.2.03.I. This offer includes motor bearing RTDs to perform the same function as motor bearing oil level switches, with greater accuracy. The trip temperature is set by bearing RTD to alarm for shut down of the motor if the bearing temperature exceeds the set temperature. Oil level switches are older technology and were used to alarm/trip the motor when the bearing temperature exceeded the setting.
  - o 11183.2.03.N. Bearing RTDs offered are direct immersion type without thermowells.
8. Blower storage and maintenance by Siemens at the manufacturing facility in Springfield, MO is available for \$600 per month per blower and will be available after the blowers are ready for shipment. Complete storage requirement instructions are available for review on request.
9. This proposal is a budgetary offer. Under no circumstances shall it establish any obligation on Siemens' behalf nor shall it be considered to be a firm or binding offer by Siemens. This proposal is based upon the attached Siemens terms and conditions as further restricted or limited to the conditions of this proposal.
10. Freight from Springfield, MO to Greensboro, NC Jobsite, DAP (INCOTERMS 2010).
11. This proposal is valid for 90 days.

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**STANDARD EQUIPMENT PRICING RECORD**


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Quantity/Size/Model №:	Two (2) STC-GO-44SV-GL225
Capacity of each, ICFM:	21,650 (14.7 psia, 68° F, 36% RH)
Equivalent Air Pressure (EAP), psig	12.10
Motor HP:	1,300
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Total Base Price (U.S. Dollars):	\$ 1,780,000.00

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**THE TERMS AND CONDITIONS ON THE BACK OF THIS SALES AGREEMENT ARE INCORPORATED HEREIN AND MADE PART OF THE AGREEMENT. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY.**

**Siemens Energy, Inc.**  
10730 Telge Road  
Houston, Texas 77095-5002

**Selling Policy 1000**

(For Sales in the United States, except Louisiana)

July 2011

These Terms and Conditions Govern  
the Sale of Equipment and Services

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The terms and conditions set forth in the Siemens Energy, Inc. ("Siemens") proposal and in this Selling Policy 1000 are the terms and conditions governing the Siemens proposal and any Agreement between the parties for the Equipment and/or Services covered by such proposal. Each proposal is valid for sixty (60) days from the date of the proposal unless extended or withdrawn in writing by Siemens. The issuance of a Purchaser purchase order or any other reasonable manner of acceptance by Purchaser communicated to Siemens during such validity period will form an Agreement based upon the terms and conditions of the Siemens proposal and this Selling Policy 1000.

## **1. Definitions**

Whenever used in this document with initial capitalization, the following definitions shall be applicable:

"Agreement" or "Contract" means the Siemens proposal, this Selling Policy 1000, Purchaser's purchase order, as accepted by Siemens, (excluding any preprinted terms and conditions on said purchase order and in any attachments to or Purchaser documents referenced in said purchase order) and any other document set forth in the Siemens proposal; or an integrated agreement signed by Siemens and Purchaser; for the Equipment, and/or Services.

"Field Installation Services" means the installation by Siemens of Purchaser's Material at the Site.

"Field Repair and Modernization Services" means the repair, modification or modernization work, or some or all of them, performed by Siemens on Purchaser's Material at the Site and for certain activities at a repair facility selected by Siemens.

"Equipment" means equipment, components, parts, materials and Software provided by Siemens pursuant to the Agreement.

"Maintenance Services" means the disassembly, inspection and reassembly of Purchaser's Material at the Site.

"Party" means individually either Siemens or Purchaser.

"Parties" means collectively both Siemens and Purchaser.

"Purchaser" means the entity purchasing Equipment and/or Services, as well as any other owners of the facility where the Equipment or Purchaser's Material is or will be installed.

"Purchaser's Material" means the equipment, materials, components and items of any kind owned by Purchaser or any other owner of the Site for which Services are to be provided or are provided under the Agreement.

"Services" means Shop Repair and Modernization Services, Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and Technical Services; or some or all of them provided pursuant to this Agreement.

"Services on Third Party Parts" means Services in connection with the installation of Third Party Parts.

"Shop Repair and Modernization Services" means work performed by Siemens on Purchaser's Material at a Siemens manufacturing plant, a Siemens repair facility or another suitable facility selected by Siemens.

"Siemens" means Siemens, and its affiliated companies and their subsidiaries, successors and assigns.

"Site" means the Purchaser's facility where the Equipment or Purchaser's Material is or will be installed.

“Special Services” means the performance by a Siemens field service representative of diagnostic and operational troubleshooting on Purchaser’s Material, both on line and off line. This work may be conducted on Site or by telecommunication.

“Software” means instructions in machine readable form, other than source code, and associated documentation delivered by Siemens to Purchaser in chip, disk and/or tape format.

“Supplier” means any subcontractor or supplier of any tier who supplies goods and services to Siemens in connection with the obligations of Siemens under the Agreement.

“Technical Field Assistance” means the advice and consultation given to Purchaser’s personnel by a field service representative of Siemens with respect to: (i) installation, inspection, repair and/or maintenance activities performed by others at the Site; and (ii) any Siemens recommended quality assurance procedures for activities performed at the Site. Technical Field Assistance does not include management, supervision or regulation of Purchaser’s personnel, agents or contractors.

“Technical Services” means (i) Technical Field Assistance; (ii) Special Services; (iii) inspection of equipment which has been disassembled by Purchaser or others; (iv) technical evaluation of inspections performed by Siemens, Purchaser or others; (v) technical information provided by Siemens, including data interpretation and reports; (vi) inspections, technical evaluation of inspections, technical analysis of materials and technical recommendations related to Shop Repair and Modernization Services; (vii) advice and consultation given to Purchaser’s personnel at the Site or at a Siemens facility by a Siemens engineer or technician; and/or (viii) advice and guidance given to Purchaser by Siemens field engineer(s) regarding methods and procedures for installation, maintenance and/or calibration of the Equipment or Purchaser’s Material.

“Third Party Parts” means parts, components, equipment or materials provided by Purchaser under the Agreement which were not manufactured or supplied by Siemens or the predecessors of Siemens or which were originally supplied by Siemens or the predecessors of Siemens and subsequently repaired, serviced or otherwise modified or altered by any party not affiliated with Siemens or with a predecessor of Siemens.

## **2. Scope**

Siemens will furnish to Purchaser Equipment, and/or Services as specified in and pursuant to the Agreement.

## **3. Price Policy**

For an Agreement for Equipment supply only, unless otherwise stated in the Siemens proposal, the price does not include disassembly and reassembly of Equipment at the Site.

Prices are firm for (i) Equipment with a scheduled shipment date of 60 weeks or less from the date of the Agreement and (ii) Services which are scheduled to be performed within 60 weeks or less from the date of the Agreement.

For (i) Equipment with a scheduled shipment date in excess of 60 weeks and (ii) Services scheduled to be completed beyond 60 weeks from the date of the Agreement, the prices are subject to adjustment upward or downward for changes in the specified labor and material indexes in accordance with the provisions of the applicable Siemens Price Adjustment Policy.

## **4. Terms of Payment**

- A. Unless otherwise specified, Siemens shall issue invoices in accordance with the schedule set forth in the Siemens proposal. If an invoice schedule is not set forth in the Siemens proposal, Siemens shall issue invoices as the work is completed, but no more often than monthly. In any event, all invoices shall be paid within thirty (30) days after the date of the invoice.
- B. In any instance where Purchaser is unable to return components to Siemens for fitting or for coordination with other assemblies by the specific date agreed to in the Agreement, Siemens reserves the right to invoice Purchaser for work performed to date and either ship the components to Purchaser in their existing state or hold the components in storage at Purchaser’s risk and expense. That portion of the work which is to be performed by Siemens at a later date will be performed as a Purchaser requested change under Article 18, Changes.

- C. If shipments are delayed by Purchaser, affected payments shall become due based on the date Siemens is prepared to make shipment.
- D. Any past due payments shall, without prejudice to the right of Siemens to payment when due, bear interest at a floating rate equivalent to one-twelfth (1/12) of the per annum prime rate charged by JP Morgan Chase Bank, New York, New York, U.S.A., as such prime rate is published on the first banking day following the date payment is due, plus an additional one-half of one percent (0.5%), payable each month or portion thereof that payment is delayed. If payments are not made when due Siemens, upon fifteen (15) days written notice, may, at its option, (i) terminate this Agreement (which termination shall be treated as a termination pursuant to Article 11, Termination) or (ii) suspend all further work hereunder. Resumption of work thereafter is contingent upon correction of the payments deficiency by Purchaser. The schedule for the resumed work will be established by Siemens based on its then current work load and the availability of other resources. All Siemens expenses associated with any such suspension shall be for the account of Purchaser.
- E. If there exists a good faith dispute over the amounts to be paid, Purchaser shall pay the undisputed amount. The disputed portion may be held in abeyance until resolution of the dispute with that portion, together with the interest charge specified in Paragraph D above, due thirty (30) days after said resolution.
- F. Unless otherwise set forth in the Siemens proposal, if shipment (from the manufacturing plant or repair facility where the work is performed) and/or Delivery of an item of Equipment or completion of the Services is delayed for causes which are within the reasonable control of Siemens, issuance of the invoice covering the final 5% payment for the work will be deferred for twice the number of months by which shipment and/or Delivery of such item of the Equipment or completion of such Services is delayed; provided, however, that such deferral of the final invoice shall only be applicable if the delay in shipment and/or Delivery of the Equipment or the delay in completion of the Services has actually delayed the Purchaser's project for which the Equipment and/or Services were purchased.
- G. THE REMEDIES OF PURCHASER SET FORTH ABOVE AND/OR IN THE SIEMENS PROPOSAL FOR DELAY IN SHIPMENT/DELIVERY OR COMPLETION OF SERVICES CAUSED BY SIEMENS ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES AND NO OTHER REMEDIES OF ANY KIND WHATSOEVER SHALL APPLY. Deferral of the issuance of the final 5% invoice as set forth above and/or provision of the remedy set forth in the Siemens proposal shall constitute complete fulfillment of all liabilities of Siemens to Purchaser for delay in shipment and/or Delivery of Equipment or completion of Services whether based in contract, in tort (including negligence and strict liability), or any other theory of recovery.

## **5. Delivery, Title and Risk of Loss or Damage**

- A. Unless otherwise stated in the Siemens proposal, Delivery of each component of Equipment shall be made EXW (INCOTERMS 2000) at the manufacturing plant. Subject to the provisions of Paragraph B below, legal and equitable title and risk of loss or damage to each such component of the Equipment shall pass from Siemens to Purchaser upon Delivery.
- B. Title to and right of possession of any Software licensed hereunder, without legal process, shall remain with Siemens or its licensor, except that Purchaser shall have the right of possession and use of the Software provided hereunder for the terms of the corresponding license provided herein, so long as no breach of this Agreement has been made by Purchaser and all payments due Siemens have been paid. Nothing in this Agreement shall be construed as giving Purchaser any right to sell, assign, lease or in any other manner transfer or encumber Siemens' or its licensor's ownership of the Software, or as limiting Siemens or its licensor from using and licensing the Software to any third party.
- C. Purchaser's Material sent to Siemens for Shop Repair and Modernization Services or Purchaser's Material or Equipment being returned pursuant to the provisions of the Warranty or Patents Articles of the Agreement will be delivered by Purchaser at its expense to the repair or manufacturing plant designated by Siemens where the work is to be performed. Title to such Equipment or Purchaser's Material will remain at all times with Purchaser. Risk of loss or damage to such Equipment or Purchaser's Material will transfer to Siemens upon its arrival on board the carrier at the repair or manufacturing plant and will transfer back to Purchaser upon its delivery to the carrier at the repair or manufacturing plant for return to Purchaser after the work is performed. Delivery of Purchaser's Material shall be made when the item is placed on board carrier at the repair or manufacturing plant after the work is performed. When repair work is performed by Siemens at the Site, title and risk of loss or damage to the Equipment, to Purchaser's Material and to other property shall remain at all times with Purchaser. Title to any defective or nonconforming components of the Equipment that are replaced by Siemens, as part of its warranty obligations shall, at Siemens' option, revert back to Siemens upon completion of the replacement, with a deemed value of zero.

- D. Risk of loss of or damage to Purchaser's Material or other property located at the Site shall remain with Purchaser at all times during the performance of work hereunder. If Purchaser procures or has procured property damage insurance applicable to occurrences at the Site, Purchaser shall obtain a waiver by the insurers of all subrogation rights against Siemens and its Suppliers.

## **6. Transportation**

### **A. Transportation and Storage**

When items of Equipment are ready for shipment or Shop Repair and Modernization Services are completed on Purchaser's Material, Siemens will notify Purchaser to arrange for shipment. If Siemens has agreed in the Siemens proposal to transport Equipment, when items of Equipment are ready for shipment or Shop Repair and Modernization Services are completed on Purchaser's Material, Siemens will (i) in the absence of shipping instructions inform Purchaser of pending shipment and Purchaser will thereafter promptly give shipping instructions to Siemens (ii) determine the method of transportation and the routing of the shipment and (iii) ship the Equipment or Purchaser's Material freight prepaid and included in the price by Normal Carriage either: (a) to Purchaser's designated destination when shipped by highway transport; or (b) to the nearest suitable rail siding to Purchaser's designated destination when shipped by rail transport.

In the event that Purchaser fails to provide Siemens with timely shipping instructions, Siemens will ship the Equipment or Purchaser's Material by Normal Carriage to Purchaser or to a suitable storage location selected by Siemens.

If the Equipment and/or Purchaser's Material is to be placed into storage in accordance with the above, delivery of the Equipment or Purchaser's Material shall be deemed to have occurred for all purposes under the Agreement, including any payment due upon Delivery, at the time the Equipment or Purchaser's Material is placed on board carrier for shipment to the storage location. If the Equipment and/or Purchaser's Material is to be stored in the facility where manufactured, or where Shop Repair and Modernization Services are performed, delivery shall be deemed to have occurred when the Equipment and/or Purchaser's Material is placed into the storage location at such facility.

In the event of storage pursuant to the preceding Paragraph, all expenses thereby incurred by Siemens, such as preparation for and placement into storage, handling, freight, storage, inspection, preservation, taxes and insurance, shall be payable by Purchaser upon receipt of an invoice(s) from Siemens. When conditions permit and upon payment to Siemens of any additional amounts due hereunder, Purchaser shall arrange, at its expense, for removing the Equipment and/or Purchaser's Material from storage.

### **B. Normal Carriage**

When Siemens is providing the transportation of the Equipment and/or Purchaser's Material, Siemens shall make every reasonable effort to ship by highway transport unless rail transport is required. Normal Carriage means carriage either by highway transport (provided this does not necessitate use of specialized riggers trailers) or by rail transport, on normal routing from the repair facility or manufacturing plant to (i) Purchaser's designated destination when shipped by highway transport or (ii) the nearest accessible suitable rail siding to Purchaser's designated destination when shipped by rail transport or (iii) the port of export selected by Siemens if shipped by water transport outside of the United States.

### **C. Special Transportation and Services**

Purchaser agrees to pay or to reimburse any transportation charges in excess of regular charges for Normal Carriage, including, but not limited to, excess charges for special routing, special trains, specialized riggers trailers, lighterage, barging and air transport.

Purchaser also agrees to pay or to reimburse any cost incurred or charge resulting from special services performed in connection with the transportation of the Equipment or Purchaser's Material, including, but not limited to, the construction and repair of transportation and handling facilities, bridges and roadways, of whatever kind and wherever located.

## **7. Warranty**

### **A. Equipment Warranty and Exclusive Remedy (excluding Software)**

Siemens warrants that each component of the Equipment (excluding Software and consumables) furnished to Purchaser, including any part repaired or replaced by Siemens during the Equipment Warranty Period, will be free of defects in design, workmanship and materials until the earlier of eighteen (18) months after the Delivery of such compo-

nent of the Equipment or one (1) year from the date of first use of the item of Equipment (the "Equipment Warranty Period").

If during the Equipment Warranty Period Siemens is promptly notified in writing that the Equipment or any component thereof fails to conform to the Equipment Warranty, Siemens will at its option and expense correct such nonconformity by repair or replacement.

**B. Software Warranty and Exclusive Remedy**

If Equipment includes Software, Siemens also warrants that the Software will be free of errors which materially affect its utility until the earlier of eighteen (18) months after the Delivery of such Software or one (1) year from the date of first use of the Software (the "Software Warranty Period"). If during the Software Warranty Period, Siemens is promptly notified in writing that the Software fails to conform to its warranty, Siemens will at its option and expense correct the nonconformity by correction in the medium originally supplied or by providing a procedure to Purchaser for correction of the nonconformity. Third party Software shall be warranted on a pass through basis in the same manner and for the same period and extent provided to Siemens by the entity which supplied said third party software.

**C. Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty and Exclusive Remedy**

Siemens warrants that the work performed by Siemens on Purchaser's Material, including any materials (excluding consumables) supplied by Siemens in connection therewith (hereinafter in this Paragraph C referred to as the "Work"), will be free of defects in design, workmanship and materials until the earlier of eighteen (18) months after the completion of such services or one (1) year from the date of first use of Purchaser's Material (the "Field and Shop Repair and Modernization Services Warranty Period").

If during the Field and Shop Repair and Modernization Services Warranty Period, Siemens is promptly notified in writing that the Work or any part thereof fails to conform to the Field Installation Services, Field Repair and Modernization Services, Maintenance Services, and/or Shop Repair and Modernization Services Warranty, Siemens will at its option and expense correct such nonconformity by repair, replacement or reperformance of the defective portion of the Work. If repair, replacement or reperformance is impracticable, Siemens will refund the amount of the compensation paid to Siemens for such nonconforming portion of the Work.

**D. Technical Services Warranty and Exclusive Remedy**

Siemens warrants for each item of Technical Services that (i) the advice, recommendations and performance of its personnel will reflect competent professional knowledge and judgment and (ii) the technical information, reports and analyses transmitted by Siemens in connection therewith will reflect competent professional knowledge and judgment, beginning with the start of the item of Technical Services and ending one (1) year after completion of said item of Technical Services by Siemens (the "Technical Services Warranty Period").

If during the Technical Services Warranty Period, Siemens is promptly notified in writing that any portion of the Technical Services fails to conform to the Technical Services Warranty, Siemens will promptly reperform such nonconforming portion of the Technical Services. If reperformance is impracticable Siemens will refund the amount of the compensation paid to Siemens for such nonconforming portion of the Technical Services.

**E. Title**

Siemens warrants that the Equipment, upon Delivery, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any failure to conform to this warranty, Siemens, upon prompt written notice of such failure, shall defend the title to the Equipment.

**F. Performance Guarantee(s) and Exclusive Remedy**

There are no performance guarantees of the Equipment and/or Services unless specifically set forth in the Siemens proposal. In the event any performance guarantees are provided in the Siemens proposal, Purchaser's sole and exclusive remedy and Siemens' sole and exclusive liability for any failure of the Equipment and/or Services to comply with such performance guarantees under any theory of recovery shall be the liquidated damages specified in such Siemens proposal up to the limit specified therein, which liquidated damages shall only be paid on a "no harm, no foul" basis. The Parties agree that such liquidated are a reasonable determination of the damages that Purchaser would incur as a result of the failure of the Equipment and/or Services to meet the Performance Guarantees and do not constitute a penalty.



## G. Warranty Conditions

The warranties and remedies set forth in this Article are conditioned upon:

- (1) Purchaser's receipt, handling, storage, installation, testing, operation and maintenance, including tasks incident thereto, of the Equipment and/or Purchaser's Material in accordance with the recommendations of Siemens to the extent applicable or, in the absence of such recommendations or to the extent not applicable, in accordance with the generally accepted practices of the industry. In addition, such Equipment and Purchaser's Material shall not have been operated in excess of limitations specified in writing by Siemens and not have been subjected to accident, alteration, abuse or misuse.
- (2) For all warranty work, where disassembly, removal, replacement and reinstallation of Equipment, materials, structures or Purchaser's Material was not part of the Siemens scope of work under the Agreement; Purchaser providing, without cost to Siemens, access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, materials, structures or Purchaser's Material to the extent necessary to permit Siemens to perform its warranty obligations.
- (3) All warranty work being performed on a single-shift straight-time basis, Monday through Friday. In the event Purchaser requests correction of warranty items on an overtime or multiple shift schedule, the premium portion of such overtime or multiple shift shall be to Purchaser's account.
- (4) Purchaser, without cost to Siemens, making its Site facilities and personnel (to the extent consistent with personnel job classifications) available to assist Siemens in the performance of its warranty obligations.
- (5) the Purchaser, with respect to Paragraph 4 above, reimbursing Siemens for all costs incurred in the transportation of personnel and defective, repaired or replacement parts to and from the Site.

## H. Additional Conditions Applicable to the Sale of Monitoring Devices

Monitoring devices supplied by Siemens pursuant to the Agreement, such as but not limited to, monitors for generator condition and for steam chemistry, are intended to enhance the availability and reliability of the equipment. These monitors normally represent state-of-the-art technology which enables users to better diagnose and control conditions within a turbine generator. While such monitors follow conditions and trends within the equipment and thereby permit earlier detection of harmful conditions, Siemens does not warrant or represent that the use of such monitors will prevent failure or detect all harmful conditions in a turbine generator and Purchaser acknowledges the same.

## I. Additional Conditions Applicable to Diagnostic and Non-Destructive Examination and Testing

Diagnostic and non-destructive examination and testing techniques employed by Siemens represent the current Siemens techniques for detecting defects in (including indications of cracking) and evaluation of the condition of Purchaser's Material. However even these current techniques, when performed according to the standards detailed above in this Article, may not detect all of the defects in Purchaser's Material (including indications of cracking) and such failure shall not constitute a breach by Siemens of its warranty obligations. Purchaser acknowledges that Siemens will not be responsible for the consequences of undetected defects including undetected cracks.

## J. Additional Conditions Applicable to Technical Field Assistance

Where Siemens furnishes Technical Field Assistance under the Agreement, Purchaser is responsible for (i) the supervision, management, regulation, arbitration and determination of the number of its personnel, agents, or contractors and their work and (ii) the planning, scheduling, management and progress of the work. Unless expressly agreed to in writing by Siemens, under no circumstances shall Siemens provide or be obligated to provide Technical Field Assistance directly or indirectly to any competitor of Siemens or their employees, representatives, or consultants.

## K. Purchaser Supplied Third Party Parts and Materials

Purchaser assumes the entire liability and risk arising out of or resulting from Third Party Parts and Services on Third Party Parts. The warranties and remedies set forth herein do not apply to any Third Party Parts or Services on Third Party Parts, and SIEMENS DISCLAIMS ANY AND ALL WARRANTIES AND REMEDIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, FOR OR WITH RESPECT TO THIRD PARTY PARTS OR SERVICES ON THIRD PARTY PARTS.

L. Exclusivity of Warranties, Performance Guarantees and Remedies.

THE WARRANTIES AND PERFORMANCE GUARANTEES SET FORTH IN THIS ARTICLE ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES AND PERFORMANCE GUARANTEES, WHETHER STATUTORY, EXPRESS, OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). Correction of nonconformities in the manner and for the period of time provided above constitute Siemens' sole and exclusive liability and Purchaser's sole and exclusive remedy for defective or nonconforming Equipment and/or Services whether claims of the Purchaser are based in contract, in tort (including negligence and strict liability), or any other theory of recovery.

**8. Taxes**

The price paid or to be paid to Siemens under the Agreement does not include any federal (other than federal and state income taxes imposed on Siemens), state, or local property, license, privilege, sales, use, excise, value added, gross receipts, or similar taxes now or hereafter applicable to, measured by, or imposed upon or with respect to the transaction, the Equipment and Purchaser's Material, its or their sale, their value or their use, or any Services performed in connection therewith. Purchaser agrees to pay or reimburse Siemens for any such taxes which Siemens or its Suppliers are required to pay.

**9. Additional Conditions Applicable to Nuclear Installations**

In the event the Services or the Equipment provided under the Agreement are to be performed or utilized at or in any manner in connection with a nuclear installation, the following conditions shall apply:

A. Purchaser Insurance

- (1) If Purchaser procures property damage insurance applicable to occurrences at the Site and third party non-nuclear liability insurance, or either of such types of insurance, such insurance will name Siemens and its Suppliers as additional insureds.
- (2) Purchaser shall have at its own cost, prior to the arrival of nuclear fuel at the Site, secured and shall thereafter maintain in force protection against liability arising out of or resulting from a nuclear incident (as defined in the Atomic Energy Act of 1954, as amended) as required by the Nuclear Regulatory Commission; provided, however, that if the nuclear liability protection system in effect on the date of the Agreement expires or is repealed, changed, or modified, Purchaser will, without cost to Siemens, maintain liability protection through government indemnity, limitation of liability, and/or liability insurance which will not result in a material impairment of the protection afforded Siemens and its Suppliers by such nuclear liability protection system which is in effect as of the date of the Agreement, taking into account the availability of insurance, customary practice in the industry for plants of similar size and character, and other relevant factors in light of then existing conditions. In any event, the protection provided pursuant to this Article shall remain in effect until the decommissioning of the nuclear plant.

B. Waivers by Purchaser

Neither Siemens nor its Suppliers shall be liable for any loss of, damage to, or loss of use of property or equipment wherever located, arising out of or resulting from a "Nuclear Incident." Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Suppliers on account of any such loss, damage, or loss of use. All such waivers shall be in a form acceptable to Siemens.

In the event Purchaser recovers damages from a third party based on losses at the Site resulting from the hazardous properties of source, special nuclear or byproduct material (as defined in the Atomic Energy Act of 1954, as amended), Purchaser shall indemnify Siemens and its Suppliers against claims by such third party which are based on Purchaser's recovery of such damages. In addition, Purchaser waives and will require its insurers to waive all rights of recovery against Siemens and its Suppliers, for any and all costs or expenses arising out of or in connection with the investigation and settlement of claims or the defense of suits for damage resulting from the nuclear energy hazard.

C. Third Party Property Protection

Purchaser will indemnify Siemens and its Suppliers for any liability arising out of loss of or damage to property at the Site which arises out of a "nuclear incident". In addition, Purchaser shall obtain for the benefit of Siemens and its Suppliers, protection against liability for, arising out of, or resulting from damage to any property or equipment located at the

Site which is used or intended for use by Purchaser in connection with the operation of the nuclear power plant (including but not limited to fuel) and which is owned by parties other than Purchaser.

**D. Decontamination**

Purchaser shall, without cost to Siemens, perform any required decontamination and health physics to the extent necessary for Siemens to perform its contractual obligations. This includes decontamination of any Siemens equipment or tools used in the performance thereof. Purchaser shall provide documentation demonstrating that components or parts being returned to Siemens meet the requirements designated for unrestricted release as set forth in 10CFR20.

**10. Force Majeure**

- A. Siemens will not be liable for failure to perform or delay in performance of any obligation resulting from or contributed to by any cause beyond the reasonable control of Siemens or its Suppliers or from any act of God; act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act or priority) of any governmental authority or Purchaser; act of terrorism; civil disturbance, rebellion, insurrection, riot or sabotage; fire, inclement weather conditions, earthquake, flood or natural disaster; strike, work stoppage or other labor difficulty; embargo, epidemic or quarantine; railroad car, fuel or energy shortage; major equipment breakdown; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor, or materials from usual sources.
- B. In the event of a delay in performance excusable under this Article, the date of Delivery or time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of such delay, and Purchaser will reimburse Siemens for its additional costs and expenses resulting from the delay.

**11. Termination**

- A. Purchaser may terminate the Agreement for convenience upon thirty (30) days prior written notice to Siemens and payment of reasonable and proper termination charges. Should the work be delayed for a period in excess of six (6) months for any reason attributable to Purchaser and/or force majeure, or should any payment from Purchaser be thirty (30) days or more past due, at the option of Siemens, the Agreement may be deemed to have been terminated by Purchaser. Termination charges in either event will be the applicable Termination Fee from the Termination Fee Schedule set forth in the Siemens proposal. The Parties agree that such Termination Fees are a reasonable determination of the damages that Siemens would incur as a result of such termination and do not constitute a penalty. In the absence of a Termination Fee Schedule, the termination charges shall be calculated based upon the portion of the purchase price for the work performed, man hours expended and materials acquired at as the date of termination plus the expenses associated with the termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Suppliers, and any applicable cost allocated in contemplation of performance. Siemens will make every reasonable effort to minimize such termination charges. All termination charges shall be due and payable thirty (30) days from the date of the Siemens invoice.
- B. Purchaser may terminate the Agreement for cause in the event of (i) an act of insolvency or bankruptcy by Siemens or (ii) a material breach of the Agreement by Siemens which Siemens fails to commence to cure within thirty (30) days after notice thereof from Purchaser and fails to diligently pursue thereafter. In such event, Siemens will reimburse Purchaser for its reasonable and verifiable costs to complete the Services or obtain replacement Equipment up to twenty percent (20%) of the total price paid to Siemens under the Agreement.
- C. In the event of any breach of the Agreement by Purchaser, Siemens shall be entitled to an extension of time to the extent necessitated by the breach and to reimbursement for all costs and expenses incurred by Siemens as a result of such breach. Siemens may also terminate the Agreement for cause in the event of (i) an act of insolvency or bankruptcy by Purchaser or (ii) a material breach of the Agreement by Purchaser which Purchaser fails to commence to cure within thirty (30) days after notice thereof from Siemens and fails to diligently pursue thereafter. In such event, Purchaser shall pay Siemens the applicable Termination Fee set forth in the Termination Fee Schedule plus all costs and expenses incurred as a result such breach and termination. In the absence of a Termination Fee Schedule, the termination charges shall be calculated based upon the portion of the purchase price for the work performed, man hours expended and materials acquired at as the date of termination plus the expenses associated with the breach and termination, including, but not limited to, any additional expense incurred by reason of termination or cancellation of agreements between Siemens and its Suppliers, and any applicable cost allocated in contemplation of performance.

## 12. Intellectual Property Infringement

- A. Siemens will, at its own expense, defend or at its option settle any suit or proceeding brought against Purchaser so far as based on an allegation that any Services on Purchaser's Material or the Equipment (including parts thereof), or use thereof for their intended purpose, constitutes an infringement of any United States patent or copyright or misappropriation of a trade secret, if Siemens is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Siemens will pay the damages and costs awarded in any suit or proceeding so defended. Siemens will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Services on Purchaser's Material or the Equipment, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement of any such United States patent, copyright or trade secret, or its use by Purchaser is enjoined, Siemens will, at its option and its own expense, either: (i) procure for Purchaser the right to continue using said Equipment and/or Purchaser's Material; (ii) replace it with substantially equivalent non-infringing equipment; or (iii) modify it so it becomes non-infringing.
- B. Siemens will have no duty or obligation to Purchaser under this Article to the extent that the Services on Purchaser's Material or Equipment is (i) supplied according to Purchaser's design or instructions wherein compliance therewith has caused Siemens to deviate from its normal course of performance, (ii) modified by Purchaser or its contractors after delivery, or (iii) combined by Purchaser or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Purchaser. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Siemens, Purchaser shall protect Siemens in the same manner and to the same extent that Siemens has agreed to protect Purchaser under the provisions of Paragraph A above.
- C. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS, COPYRIGHTS OR TRADE SECRETS AND DIRECT OR CONTRIBUTORY INFRINGEMENT THEREOF AND OF ALL THE REMEDIES OF PURCHASER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS, COPYRIGHTS OR TRADE SECRETS. Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to patents, copyrights or trade secrets.

## 13. Confidential Information

- A. Siemens may have a proprietary interest in information that may be furnished pursuant to the Agreement. Purchaser will keep in confidence and will not disclose any such information which is specifically designated as being confidential to Siemens or use any such information for other than the purpose for which it is supplied without the prior written permission of Siemens. The provisions of this Paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Purchaser without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any confidentiality obligation of Purchaser, or which is received from a third party without limitation or restriction on said third party or Purchaser at the time of disclosure.
- B. Siemens also has a confidential interest in its proposal and the Agreement. Accordingly, neither document will be disclosed in whole or in part to third parties without the prior written permission of Siemens.
- C. When required by appropriate governmental authority, including governmental regulations, applicable law or regulation, by order of a court of competent jurisdiction or lawful subpoena (hereinafter collectively referred to as "Governmental Authority"), Purchaser may disclose such confidential information to such Governmental Authority; provided, however, that prior to making any such disclosure, Purchaser will: (i) provide Siemens with timely advance written notice of the confidential information requested by such Governmental Authority and Purchaser's intent to so disclose; (ii) minimize the amount of confidential information to be provided consonant with the interests of Siemens and its Suppliers and the requirements of the Governmental Authority involved; and (iii) make every reasonable effort (which shall include participation by Siemens in discussions with the Governmental Authority involved) to secure confidential treatment and minimization of the proprietary information to be provided. In the event that efforts to secure confidential treatment are unsuccessful, Siemens shall have the prior right to revise such information to minimize the disclosure of such information in a manner consonant with its interests and the requirements of the Governmental Authority involved.

## 14. Limitation of Liability

- A. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, PURCHASER EXPRESSLY AGREES THAT NEITHER SIEMENS NOR ITS SUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS

OR DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT; LOSS OF PROFITS OR REVENUE OR LOSS OF USE THEREOF; LOSS OF USE OF PURCHASER'S MATERIAL, EQUIPMENT OR POWER SYSTEM; COST OF CAPITAL; COST OF FUEL; COST OF PURCHASED OR REPLACEMENT POWER; INCREASED COSTS OF ANY KIND; OR ANY CLAIMS OF CUSTOMERS OF PURCHASER.

- B. PURCHASER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED IN THE AGREEMENT ARE EXCLUSIVE, AND THAT NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SIEMENS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, EXCEED THE TOTAL PRICE PAID TO SIEMENS UNDER THE AGREEMENT.
- C. ALL LIABILITY OF SIEMENS AND ITS SUPPLIERS UNDER THIS AGREEMENT SHALL TERMINATE NO LATER THAN TWELVE (12) MONTHS AFTER THE EXPIRATION OF THE WARRANTY PERIOD.
- D. THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THE AGREEMENT.

## 15. Transfer and Export Compliance

- A. Prior to the transfer to another party of any Equipment or Purchaser's Material or the transfer of any interest in said Equipment or Purchaser's Material or Purchaser's facility in which said Equipment or Purchaser's Material is installed, Purchaser shall obtain for Siemens written assurances from the transferee of limitation of and protection against liability following the proposed transfer at least equivalent to that afforded Siemens and its Suppliers under the Agreement. Transfer contrary to the provisions of this Article shall make Purchaser the indemnitor of Siemens and its Suppliers against any liabilities incurred by Siemens and its Suppliers in excess of those that would have been incurred had no such transfer taken place.
- B. Siemens shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.
- C. If Purchaser transfers goods (hardware and/ or software and/ or technology as well as corresponding documentation, regardless of the mode of provision) delivered by Siemens or works and services (including all kinds of technical support) performed by Siemens to a third party Purchaser shall comply with all applicable national and international (re-) export control regulations. In any event of such transfer of goods, works and services Purchaser shall comply with the (re-) export control regulations of the Federal Republic of Germany, of the European Union and of the United States of America.

Prior to any transfer of goods, works and services provided by Siemens to a third party Purchaser shall in particular check and guarantee by appropriate measures that:

- (1) There will be no infringement of an embargo imposed by the European Union, by the United States of America and/ or by the United Nations by such transfer, by brokering of contracts concerning those goods, works and services or by provision of other economic resources in connection with those goods, works and services, also considering the limitations of domestic business and prohibitions of by-passing those embargoes;
- (2) Such goods, works and services are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization is provided; and
- (3) The regulations of all applicable Sanctioned Party Lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered.

If required to enable authorities or Siemens to conduct export control checks, Purchaser, upon request by Siemens, shall promptly provide Siemens with all information pertaining to the particular end customer, the particular destination and the particular intended use of goods, works and services provided by Siemens, as well as any export control restrictions existing.

Purchaser shall indemnify and hold harmless Siemens from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with export control regulations by Purchaser, and Purchaser shall compensate Siemens for all losses and expenses resulting thereof.

## 16. Software License

Siemens grants to Purchaser a nonexclusive, nontransferable license to utilize the Siemens Software furnished hereunder. Such license is limited to Purchaser's internal use at or for the Equipment with which such Software is incorporated. All title and ownership of the Siemens Software, including, without limitation, the copyright to such Software, shall remain exclusively with Siemens. Purchaser may make a reasonable number of backup copies of the Software for evaluation, installation, and maintenance of the Siemens Equipment. Purchaser shall not itself, or with the assistance of others, reverse compile, reverse engineer, or in any other manner attempt to decipher in whole or in part the logic or coherence of any Software licensed hereunder. Third party Software provided by Siemens may be subject to a separate license agreement and /or registration requirements and limitations on copying and use.

## 17. Compliance with Laws

The price for the work is based on compliance by Siemens with the applicable laws, regulations and technical codes and standards as they are in effect on the date of the Siemens proposal (or the effective date of the Agreement if no proposal was provided).

## 18. Changes

- A. Purchaser may request changes within the scope of the Agreement and, if accepted by Siemens, the price, performance, schedule and other pertinent provisions of the Agreement will be adjusted by mutual agreement of the parties prior to implementation of the change.
- B. Expenses incurred by Siemens due to (i) delays, other than delays which are deemed to be within the reasonable control of Siemens, and (ii) changes in applicable laws, regulations and technical codes and standards or the imposition of new laws, regulations and/or technical codes and standards after the applicable date set forth in Article 17 will be treated as changes to the scope of work and the Agreement will be adjusted as set forth in the previous Paragraph.
- C. Siemens may make a change(s) in the Equipment, Services on Purchaser's Material or the other Services without additional compensation from Purchaser if such change(s) does not adversely affect the warranties, the interface with Purchaser's equipment, materials and plant, the technical soundness of the work, the operability of the facility where the Equipment or Purchaser's Material is installed or for which Siemens is providing Services under the Agreement, or the schedule.

## 19. Inspection by Purchaser

Purchaser shall have reasonable access to the areas of the Siemens plants where work under the Agreement is being performed to enable Purchaser to observe tests on the work. Siemens, if requested, will inform the Purchaser of those tests and procedures which can be witnessed. Should Purchaser elect to witness specific tests, Purchaser must so specify such requirement in ample time to permit Siemens to include said witness tests in the schedule. Siemens, if requested, will advise Purchaser of the schedule of such tests. However, no rescheduling of tests or delays in manufacturing or shipment will be made to accommodate such inspection. Siemens will exercise reasonable efforts to secure similar rights with respect to the inspection of Purchaser's work at Supplier's premises.

## 20. Returning Equipment or Purchaser's Material

Prior to the return of any Equipment or Purchaser's Material to Siemens, the Purchaser must obtain authorization and shipping instructions from Siemens and remove all asbestos material.

The Equipment or Purchaser's Material must be returned with complete identification in accordance with instructions furnished by Siemens. In no event will Siemens be responsible for Equipment or Purchaser's Material returned without proper authorization and identification.

## 21. Purchaser's Third Party Parts Warranty

Purchaser warrants that any and all Third Party Parts which may be the subject of any Services shall (i) be fully compatible with the corresponding part, component, equipment or material of the Original Equipment Manufacturer ("OEM") in terms of form, fit, and function; (ii) shall be timely provided to Siemens hereunder; and (iii) shall be capable of installation in the same manner and within the same time as the corresponding OEM part, component, equipment, or material.

## 22. Indemnity

Until the expiration of the applicable Warranty Period, Siemens shall indemnify, hold harmless and defend Purchaser its officers, directors and employees from and against any claims, demands, suits, liabilities, judgments, losses, damages, costs or expenses (including reasonable legal fees, costs and charges) for personnel injury or death or loss of or damage to third party property (except property of customers of Purchaser or property incorporated in or intended to be incorporated in the project), to the extent caused by or arising out of any negligent act or omission or willful misconduct of Siemens, or any of its officers, directors, agents, employees or Suppliers in connection with performance of work under the Agreement.

## 23. Siemens Insurance

In connection with the Agreement, Siemens shall maintain insurance (or self insurance) as specified below:

- A. Worker's Compensation: Siemens shall comply with workers compensation laws (or equivalent) in each jurisdiction where work is performed, and shall maintain a Workers Compensation and Employers Liability insurance policy. If any work is to be performed on or near navigable waters, the policy shall include coverage for United States Longshoreman's and Harbor Worker's Act, Death on the High Seas Act, Jones Act, or their equivalent as required by the applicable law in the jurisdiction where such work is performed. The limits of such insurance shall be as follows:

Worker's Compensation – Statutory  
Employer's Liability      \$1,000,000 each accident and in the aggregate  
   \$1,000,000 disease each employee.

- B. Commercial General Liability: Siemens shall maintain commercial general liability insurance on an occurrence basis to provide coverage for: Bodily Injury; Personal Injury and Death, Property Damage, Explosion, Collapse and Underground hazards; Contractual Liability (particularly applicable to the provisions of the Indemnity Article of this Agreement); and Products and Completed Operations with limits as follows:

\$1,000,000 each occurrence and in the aggregate.

- C. Business Automobile Liability: Siemens shall maintain business automobile liability insurance which shall include coverage for all owned, non-owned and hired vehicles with the following limit:

\$1,000,000 Combined Single Limit Bodily Injury and Property Damage

- D. Umbrella Liability: Siemens shall maintain umbrella liability insurance with a limit of \$2,000,000 each occurrence and in the aggregate. The policy shall be excess over the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.

## 24. Purchaser's Insurance

In connection with the Agreement, Purchaser shall purchase and maintain insurance as specified below:

- A. All Risk Builders Risk: Purchaser shall purchase and maintain throughout construction of the project, "All Risk" Builders Risk insurance for the Site. Such insurance shall be purchased and in effect at least ten (10) calendar days before the start of any Services at the Site or the arrival of the first item of Equipment at the Site, whichever first occurs. Siemens and its Suppliers shall be named as an additional insured, with a waiver of subrogation, for physical loss or damage to the property at the Site (including the Equipment once at the Site and the Purchaser's Material) on such All Risk Builders Risk policy.
- B. Property Insurance: Upon completion of the project, Purchaser shall purchase and maintain property damage insurance for the facilities at the Site until the expiration of the last of the applicable Warranty Periods. Such insurance will name Siemens and its Suppliers as an additional insured, with a waiver of subrogation, for physical loss or damage to the property at the Site (including the Equipment and Purchaser's Material).

## 25. Miscellaneous Provisions

- A. Shipment Dates

Shipment dates are the dates the Equipment or Purchaser's Material will be ready for shipment from the manufacturing plant, Siemens repair facility or other facility where the Services are performed and are predicated on the prompt receipt by Siemens from Purchaser of all information necessary to commence and complete the work without delay or interruption.

B. Waivers

The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of the Agreement or any parts thereof, or the right of either Party thereafter to enforce each and every provision.

C. Modification

No waiver, modification, or amendment of any of the provisions of the Agreement shall be binding unless it is in writing and signed by duly authorized representatives of both parties.

D. Headings

The headings used in the Agreement are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in the Agreement.

E. Assignment

Except for assignment by Siemens to an affiliate of Siemens, the Agreement will not be assigned by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment without such prior written consent shall be null and void.

F. Governing Law

The Agreement will be construed and interpreted in accordance with the laws of the State of New York without application of its choice or conflict of law rules

G. Personnel

Siemens reserves the right to change any of its personnel performing Services under the Agreement. In such event, Siemens will provide replacement personnel of equivalent capabilities and bear any additional travel and living expense associated with providing such replacement personnel.

H. Environmental Compliance

Purchaser recognizes that the performance of Services at the Site may involve the generation of hazardous waste as such term is defined by the laws of the United States, the laws of the state in which the Site is located and the rules or regulations issued thereunder as are now in effect or hereafter amended from time to time (such generated hazardous waste being herein referred to as "Hazardous Waste").

Purchaser shall at its expense furnish Siemens with containers for Hazardous Waste and shall designate a waste storage facility at the Site where such containers are to be placed by Siemens. Purchaser shall handle, store and dispose of Hazardous Waste in accordance with all applicable federal, state and local laws, rules, regulations and ordinances. Purchaser shall reimburse Siemens for additional costs, if any, incurred in complying with any such laws, regulations, rules and/or ordinances.

Siemens shall have no responsibility or liability with regard to any Hazardous Waste which it does not know or have reason to know will be generated in the performance of the Services, and Purchaser shall be responsible for all pollution and environmental impairment arising from the Purchaser's property, the Equipment and the Services.

I. Asbestos and Thermal Insulation

The terms "Asbestos" and "Presumed Asbestos Containing Material" shall have the meanings set forth in United States Code of Federal Regulations Chapter 29 Section CFR 1926.1101 et seq.



- (1) The Purchaser, by allowing access to the Site, thereby warrants, represents, and certifies that any areas there associated with the Siemens scope of work, including, without limitation, areas of ingress and egress thereto (the "Work Areas") either (a) are free of asbestos or asbestos containing materials (collectively "ACM"), or (b) any ACM there present is lawfully abated and conspicuously and specifically marked as asbestos or ACM.
- (2) Prior to Siemens' commencement of Services at the Site:
  - (a) The Purchaser shall, at Purchaser's expense remove all thermal insulation, sprayed-on surfacing material, and/or Presumed Asbestos Containing Material ("PACM") the disturbance of which could occur in or removal of which is required for the performance of the Services; and,
  - (b) The Purchaser shall ensure that any areas where any activities involving the abatement or removal of thermal insulation or ACM shall be conspicuously identified, posted and isolated, all as required by applicable law.

PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SIEMENS IN PERFORMING THE SERVICES AND PERMITTING EMPLOYEES TO ENTER THE WORK AREAS IS RELYING UPON THE COVENANTS, AGREEMENTS, WARRANTIES, CERTIFICATIONS AND REPRESENTATIONS MADE BY PURCHASER ABOVE.

Without limiting its other rights and remedies Siemens shall not be obligated to commence or may stop any work in any Work Areas unless fully satisfied that the Purchaser is in compliance with Paragraph 25.I.(1) above and this Paragraph 25.I.(2), and shall be entitled to an equitable adjustment in the schedule, price and other provisions of the Agreement affected thereby or otherwise affected by Purchaser's non-compliance.

- (3) In no event shall Siemens be obligated to install, disturb, handle, or remove any thermal insulation, sprayed-on surfacing material, or PACM except as specifically agreed in writing by Siemens and only after Siemens has been provided acceptable chemical analyses verifying that the same are not ACM.
- (4) Siemens does not represent that it is licensed to abate ACM. Where the Services include activities such as handling, modification, removal, or reinstallation of generator wedges, packing, or high temperature gaskets (such materials herein "GPW"), then, and unless Siemens is provided satisfactory written evidence that such GPW is not ACM, Siemens shall be obligated only to the extent (a) such activities do not require a permit, license, or authorization, (b) such activities are not likely to generate airborne asbestos fibers, and (c) all such GPW is non-friable. In all other cases, such activities shall be Purchaser's responsibility and Siemens shall be entitled to an equitable adjustment in the schedule, price and other pertinent affected provisions of the Purchase Order should the same not be performed in a timely manner. The disposal of any GPW or scrap or waste material resulting from its disturbance or removal shall in all cases be the Purchaser's responsibility.
- (5) Purchaser shall defend, indemnify and hold Siemens harmless against any and all claims, demands, damages, losses, liabilities, fines, penalties, costs or expenses, including without limitation any clean up or remedial measures arising out of, connected with, or resulting from the Purchaser's failure to comply with the provisions of this Article 25.I.

#### J. Integration

The Agreement contains the entire agreement and understanding between the parties as to the subject matter of the Agreement, and merges and supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between them. Neither of the parties will be bound by any prior or contemporaneous obligations, conditions, warranties, or representations with respect to the subject matter of the Agreement.

#### K. Survival

The provisions entitled "Intellectual Property," "Additional Conditions Applicable to Nuclear Installations," "Confidential Information," "Limitation of Liability," "Transfer and Export Compliance," "Software License" and the second Paragraph of "Delivery, Title and Risk of Loss or Damage" shall survive termination, expiration or cancellation of the Agreement.