Lower Neches Valley Authority (LNVA)
Purchase Order Standard Terms and Conditions

1. Effect of these terms. These terms shall govern the purchase order (the "Order"). In some cases, the Order may be in conjunction with a written agreement regarding the Goods, signed by both parties, containing terms and conditions in addition to these terms (a "Written Agreement"). These terms, and the terms of a Written Agreement, are intended to supplement each other and be harmonized as if they were embodied in a single instrument. However, in the event of a conflict between these terms and the terms of a Written Agreement, the terms of the Written Agreement shall control. The Order is comprised of the Purchase Order Document, including all documents incorporated therein by reference, these Purchase Order Standard Terms and Conditions and any Written Agreement.

2. Goods. The word "Goods" means the items identified on the face of this Order and include the furnishing, performing and paying, in strict accordance with the Order, all labor, services, materials, equipment, freight, delivery, storage, supervision, taxes, insurance, testing, inspection, training, documentation, drawings, data, plans, models, work product and start up necessary or incidentally required with respect to the items identified on the face of the Order.

3. Payments. Cash discount periods will be computed either from the date of delivery and acceptance of the Goods ordered, or the date of receipt of correct and proper invoices, prepared in accordance with terms of LNVA's Order, whichever is later.

Unless otherwise requested by LNVA, invoices shall be rendered separately for each delivery and (b) cover not more than one Order;

Each Invoice shall include:

a. Seller's name, address and telephone number
b. An invoice date and number
c. LNVA Order number
d. Invoice total
e. Amount of Order
f. Amounts previously paid on Order
g. Seller's "remit to" address
h. Supporting documentation of third party charges, if applicable

Each invoice line should include:

1. A full description of the material/service ordered, and the LNVA part number if provided on the Order.
2. Quantities ordered, quantities delivered, unit prices and extended prices if applicable.
3. Date(s) of services/delivery.
4. If the Order has multiple lines, the invoice lines should specify the Order line being charged.

Complete and accurate information is required for timely payment. If an invoice contains errors or fails to include required information, a corrected invoice should be submitted and payment delays will be incurred. The payment terms commence with delivery of conforming Goods and the receipt of a correct invoice.

Invoices shall be mailed to:

Lower Neches Valley Authority ATTN: Accounts Payable
7850 Eastex Freeway
Beaumont, TX 77708

Payment shall be made within forty- five (45) days from delivery of conforming Goods and receipt of a correct invoice. Any payments terms set forth on Seller's invoice are void and specifically rejected. All of Seller's invoices are subject to adjustment for errors, shortages, defects in the Goods or other failure of Seller to meet the requirements of the Order.

4. Disputed Amounts. In the event that LNVA disputes with Seller any amounts, in whole or in part, attributable to an invoice, or if an invoice is prepared or submitted incorrectly or without proper supporting documents, LNVA shall not be obligated to pay the disputed amount to Seller until said dispute is resolved. LNVA will notify Seller of the amounts in dispute and/or the reason(s) the invoice is not acceptable.

5. Termination for Convenience of LNVA. LNVA reserves the right to terminate this Order, or any part of it, for LNVA's sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately terminate all suppliers' and subcontractors' contracts related to performance hereunder on terms acceptable to LNVA. Seller shall be paid for all conforming work performed or conforming goods delivered prior to the date of termination, plus reasonable, actual direct costs resulting from termination but only to the extent such costs cannot be avoided or mitigated through the exercise of Seller's best efforts. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have avoided through its best efforts. In performing this Order, Seller shall not act unreasonably in anticipation of a notice of termination. Seller shall not be entitled to any consequential damages resulting from such termination including but

not limited to loss of anticipated profits. In no event shall LNVA's obligation to Seller under this Section exceed the lesser of the actual value of that portion of the Goods terminated or the agreed termination price.

6. Default and Termination for Cause. LNVA may also terminate this Order, or any part of it, for cause in the event of any default by Seller. Without limiting the generality of the foregoing, Seller's failure to comply with any of the terms and conditions of this Order, late deliveries, deliveries of products which are defective or which do not conform to the requirements of this Order, breach of any warranty or failure to provide LNVA, upon request, with adequate assurances of future performance shall all be defaults allowing LNVA to terminate this Order for cause. If at any time, it becomes apparent that the Goods cannot be delivered within the time specified in this Order, notice thereof must be given immediately by Seller to LNVA by courier, overnight delivery, facsimile or telegraph, to the address shown on the face of the Order, together with advice as to the best possible delivery date. It is agreed that upon any such notice, or in the event, with or without such notice, it becomes impossible for Seller to deliver the Goods within the time specified herein, such notice or event shall constitute an anticipatory repudiation of this Order. In the event of default or an anticipatory repudiation of this Order, LNVA may elect: (i) to terminate this Order, in whole or in part, and, if LNVA so chooses, LNVA shall have the right to effect cover and may proceed to purchase Goods in substitution for that due under this Order, in which event, Seller shall be liable to LNVA for the difference between the cost of such substitution and the prices under this Order, together with all incidental and consequential loss or damages incurred by LNVA; (ii) to notify Seller of the default and require Seller to correct the same, in which case the Seller shall remedy the same without expense or liability on the part of LNVA and shall further pay LNVA all incidental and consequential loss or damages resulting therefrom; to proceed upon forty-eight (48) hours' notice to Seller to cure and correct the default without liability on the part of the LNVA, in which event Seller shall reimburse LNVA for the cost of curing and correcting such default, and all incidental and consequential loss or damages incurred by LNVA resulting therefrom; or to return any defective or non-conforming Goods and, at LNVA's option, Seller shall either refund to LNVA the money and other consideration paid by LNVA for said defective or non-conforming Goods or furnish substitute Goods subject to the terms and conditions of this Order, and in either event Seller shall reimburse LNVA for the cost of returning said defective or non-conforming Goods and all incidental and consequential loss or damages incurred by LNVA resulting therefrom. In the event of termination for cause, LNVA shall not be liable to Seller for any amount (except for conforming Goods already received and accepted by LNVA as satisfactory to the extent the price for such conforming Goods exceeds LNVA's costs and damages incurred because of such default). If it should be determined that LNVA has improperly terminated this contract for default, such termination shall be deemed a termination for convenience. It is recognized that if Seller becomes a debtor in any voluntary or involuntary bankruptcy proceeding, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency or otherwise, such events could seriously impair or frustrate Seller's performance. Accordingly, it is agreed that should any of the foregoing events take place, Seller shall notify LNVA in writing within forty-eight (48) hours of the event. Further, it is agreed that upon occurrence of any one or more such events, LNVA shall be entitled to request of Seller or its successors, trustees or receivers, adequate assurance of future performance. In the event such adequate assurances are not given to the satisfaction of LNVA within seventy-two (72) hours of such request, LNVA shall have the right to immediately invoke the remedies of this section and as provided by law. Pending receipt of such adequate assurances of such future performance, LNVA may proceed to effect its remedies on a temporary basis and deduct the costs of same from any amount due or thereafter to become due to Seller under this Order or any other agreement with Seller. In this regard, Seller and LNVA agree and stipulate that delays in the delivery of the Goods could result in more damages to LNVA than would be sustained if LNVA failed to exercise such remedies

7. Warranty. In addition to any warranty implied by fact or law, Seller warrants that the Goods will conform strictly to their description, drawings, specifications and approved samples, if any, will be new and free from all defects in material and workmanship and all defects due to design (other than LNVA's design) and will meet or exceed all performance criteria set forth in the Order. Seller further guarantees and warrants that Seller has good title, free and clear of all liens, claims, security interests or encumbrances to all Goods furnished under this Order. If this Order includes the performance of services by Seller, Seller warrants that such services shall be performed in accordance with the terms of the Order and in a good and workmanlike manner. LNVA shall have the right to inspect and test any Goods before acceptance if such inspection and test are made within a reasonable time or as provided in the specifications. Seller shall pay the cost of inspecting and testing of rejected Goods and all transportation

charges thereon. Upon request of LNVA, Seller, at its sole expense, shall, at LNVA's sole option, repair, or replace all or any part of any Goods covered by this Order which, in LNVA's opinion, proves, (a) within the earlier of one (1) year from the date the Goods are placed in operation or within eighteen (18) months from date of delivery, or (b) such longer period as may be specified in the Order, to be defective in design, materials or workmanship or otherwise not in conformance with the requirements of the Order. Time is of the essence in modifying, replacing or repairing non-conforming items. If an Item is defective in design, materials or workmanship or otherwise not in conformance with the requirements of the Order, then Seller shall be responsible under this warranty, at its expense, for all costs associated with removal, reinstallation, and, if necessary, transportation to and from Seller's plant or other place of repair. If this Order involves the performance of services, then, upon request of LNVA, Seller, at its sole expense, shall re-perform the services covered by this Order which prove, within one (1) year from the date the services are rendered, to fail to conform to the foregoing warranty. Alternatively, LNVA may require Seller to refund the purchase price of the non-conforming Goods.

8. Quantity. Goods shipped in excess of the quantity designated in this Order may be returned at Seller's expense and at Seller's risk of loss.

9. Transportation Charges. Where transportation charges are allowed, or are separately charged LNVA by Seller, such charges shall in no event exceed the lowest legal freight charges in effect on the date of shipment.

10. Delivery. Each package shall be numbered and labeled with LNVA's Order number, contents and weight, shall contain an itemized packing slip (which must include a copy of the face of the Order) and shall be properly packed for shipment and safe transit to the destination. No charges will be allowed for packing, crating, freight, express or cartage unless otherwise specified in the Order. Time is of the essence to this Order. If any Goods are not delivered or performed within the time specified in this Order or within a reasonable time if no time is so specified, LNVA may (i) refuse to accept such Goods and terminate this Order, (ii) require Seller to ship the Goods by the most expeditious means of transportation whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller; and (iii) effect LNVA's remedies under Section 6. Unless otherwise stated on the face of the Order, delivery terms are F.O.B. LNVA receiving facility.

11. Patents. Seller shall protect, defend and indemnify LNVA from and against claims, damages, suits, liability, judgments, expenses and loss arising from infringement or alleged infringement of any patent, copyright, trademark of other intellectual property right resulting from or arising in connection with any of the Goods delivered hereunder, including the manufacture, sale, normal use or other normal disposition of any Goods furnished hereunder. Seller shall defend or settle at its own expense any suit or proceeding brought against LNVA for such actual or alleged infringement, provided that Seller is notified promptly in writing of the commencement of such suit or proceeding and is given authority, information, and assistance by LNVA for the defense or settlement thereof, and provided further that LNVA shall not settle or compromise any such suit or proceeding without the prior written consent of Seller. Furthermore, in the event that LNVA should be enjoined in such suit or proceeding from using any of the Goods, Seller, at its option and sole expense, shall promptly either (i) secure termination of the injunction and procure for LNVA the right and a license to use such Goods without any obligation or liability, (ii) replace said Goods with non-infringing goods or modify same to become non-infringing, all to LNVA's satisfaction, or (iii) remove said Goods at Seller's expense and refund to LNVA the amount paid to Seller therefore and reimburse LNVA for any damages incurred by LNVA arising in connection with such removal. The provisions of this paragraph, however, shall not apply to the extent such infringement is due to (a) the use of any of the Goods in combination with other materials not furnished by Seller or (b) modification of the Goods by LNVA.

12. Installation. In the event that the Goods include the performance of services, or in the event any Goods ordered hereunder require, in connection with the installation, commissioning and start up thereof, the services of a supervisor, expert or other employee connected with or employed by Seller, Seller shall, unless otherwise stated on the face of the Order, furnish the same without charge. Such supervisor, expert, or other employee shall not be deemed to be the agent or employee of LNVA, and Seller assumes full responsibility for their acts and omissions and exclusive liability for any payroll taxes or other employee-related taxes, exactions, or contributions imposed by or under any Federal or State law, including those dealing with any subjects covered by the Federal Social Security Act. Seller shall comply at all times with any applicable LNVA work site or facility health and safety rules and regulations.

13. Indemnification. **INDEMNITY FOR EMPLOYEE CLAIMS: SELLER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS (COLLECTIVELY "INDEMNIFY") LNVA AND ITS REPRESENTATIVES,**

DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES (COLLECTIVELY, IN THIS SECTION), FOR BODILY INJURY OR DEATH OF ANY EMPLOYEE OF SUPPLIER, ITS AGENTS, OR ITS SUBCONTRACTORS OF ANY TIER (COLLECTIVELY "EMPLOYEE" FOR THE PURPOSE OF THIS SECTION), ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISING OUT OF, IN WHOLE OR IN PART, THE GOODS, THE PERFORMANCE UNDER THIS ORDER OR THIS ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES, AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR RESPECTIVE AGENTS OR EMPLOYEES, OR ANY OTHER PARTY FOR WHOSE ACTS SELLER IS LIABLE. SELLER'S OBLIGATION TO INDEMNIFY SHALL APPLY EVEN IF SUCH CLAIMS ARE ACTUALLY OR ALLEGEDLY CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, OR NEGLIGENCE OF AN INDEMNIFIED PARTY, EVEN IF SUCH NEGLIGENCE OR OTHER ACTS OR OMISSIONS ARE ACTIVE OR PASSIVE, DIRECT OR INDIRECT, SOLE OR CONCURRENT. THIS INDEMNITY AGREEMENT IS INTENDED TO INDEMNIFY THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, AS PROVIDED ABOVE.

EXCLUDING CLAIMS RELATING TO BODILY INJURY OR DEATH OF AN EMPLOYEE, WHICH ARE COVERED ABOVE, EXCEPT TO THE EXTENT THAT CLAIMS (DEFINED BELOW) ARE CAUSED BY AN INDEMNIFIED PARTY'S (INCLUDING FOR THE PURPOSES OF THIS SECTION THE AGENT OR EMPLOYEE OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF AN INDEMNIFIED PARTY OTHER THAN SELLER OR ITS AGENT, EMPLOYEE OR SUBCONTRACTOR OF ANY TIER)

- **(A) NEGLIGENCE OR FAULT,**
- **(B) BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENT REGULATION, STANDARD, OR RULE,**
- **(C) BREACH OF CONTRACT,**

THE SELLER AGREES TO INDEMNIFY, HOLD HARMLESS, SAVE AND DEFEND (COLLECTIVELY "INDEMNIFY") LNVA AND ITS REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES (COLLECTIVELY THE "INDEMNIFIED PARTIES" OR INDIVIDUALLY AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, INJURIES, JUDGEMENTS, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING BUT NOT LIMITED TO ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEY'S FEES (COLLECTIVELY, IN THIS SECTION) PROVIDED THAT SUCH CLAIMS ARE ATTRIBUTABLE TO BODILY INJURY, DISEASE OR DEATH, OR DAMAGE TO PROPERTY INCLUDING LOSS OF USE THEREOF (INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS OR DEMANDS FOR DAMAGES TO SELLER OR ITS AGENTS, OR PROPERTY OWNED OR USED BY SELLER OR ITS EMPLOYEES OR SUBCONTRACTORS) AND ARE ACTUALLY OR ALLEGEDLY OCCASIONED BY, CONTRIBUTED TO OR ARISE OUT OF, IN WHOLE OR IN PART, THE GOODS, THE PERFORMANCE OF THE ORDER OR THIS ORDER, INCLUDING BUT NOT LIMITED TO CLAIMS DUE TO NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, VIOLATION OF ANY STATUTE, RULE OR REGULATION OR OTHER ACT OR OMISSION BY SELLER, ITS EMPLOYEES OR AGENTS OR ANY SUBCONTRACTOR OF SELLER OF ANY TIER, OR THEIR AGENTS OR EMPLOYEES.

14. Insurance. IN THE EVENT THAT THE PURCHASE ORDER REQUIRES THE SELLER OR THEIR AGENT TO PERFORM WORK ON LNVA PROPERTY, Seller shall, at its expense, procure and maintain Commercial General Liability including Products/ Completed Operations coverage, (with limits not less than $500,000 per occurrence and $1,000,000 in the aggregate); Automobile Liability, (with limits not less than $500,000 combined single limit); Worker's Compensation (as required by law) and Employer's Liability (with limits not less than $500,000); all such insurance coverage written on forms and with insurance carriers acceptable to LNVA. Seller shall furnish to LNVA written certificates in compliance with Texas Insurance Code Chapter 1811 and in a form acceptable to LNVA along with such other evidence requested by LNVA, including but not limited to copies of endorsements or policy provisions, establishing that the insurance required under this Section 14 has been procured and is being maintained, which certificates shall, to the extent permitted by Texas Insurance Code Chapter 1811, provide that written notice of cancellation shall be given to LNVA at least thirty (30) days prior to the effective date of such cancellation. Seller shall provide LNVA with thirty days advance written notice of any material modification, cancellation or non- renewal of Seller's insurance. Seller hereby waives all rights of recovery and damages against LNVA and its representatives, officers, directors, agents and employees to the extent such damages are covered or should have been covered by the insurance obtained or required to be obtained by Seller under this Order. ALL SELLER'S POLICIES OF INSURANCE SHALL INCLUDE A WAIVER OF SUBROGATION IN FAVOR OF LNVA, ITS REPRESENTATIVES, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES. Seller's insurance shall be and shall be endorsed to be primary and non- contributing with respect to any other insurance maintained by LNVA. LNVA, its representatives, officers, directors, agents and employees shall be named additional insureds under Seller's Commercial General Liability, Excess Liability and Automobile Liability insurance pursuant to ISO Additional Insured Endorsements CG 20-10-10-01 and CG 20-33-10-01 or their equivalents. LNVA reserves the right to require increased insurance limits on a project specific basis.

15. Force Majeure. Neither party hereto shall be liable to the other for default or delay in performing its obligations hereunder if such delay is caused by fire, strike, riot, war, act of God, delay of carriers,

governmental order or regulation, complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or power, and/or any other similar or different occurrence beyond the reasonable control of the party so defaulting or delaying. The party claiming the event of force majeure shall take appropriate steps to promptly remedy the force majeure conditions. Notice of force majeure events and the details constituting them shall be given to the other party in writing as soon as practicable after the occurrence of the event. Seller's prompt written notice to LNVA is a condition precedent to Seller's right to extensions of time for performance.

16. Drawings and Other Items: Unless otherwise expressly provided in this Order, all drawings, blue prints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the Goods, which are prepared or constructed by Seller pursuant to the terms of this Order, shall be the property of LNVA, and upon completion of deliveries of the Goods hereunder, or upon termination of this Order, shall be delivered to LNVA. Drawings, submittals and samples shall be provided to LNVA in the form and time set forth in the Order and the specifications.

17. Fair Labor Standards Act. Seller hereby agrees that the goods will be produced in compliance with the Fair Labor Standards Act, as amended.

18. Assignment. Any assignment of this Order by Seller without the prior written consent of LNVA is prohibited and shall be void. Seller shall not subcontract any part of the Goods without LNVA's consent.

19. Non-Waiver. No waiver by either party of any breach of any of the terms of this Order by the other party shall be construed as a waiver of any subsequent breach, whether of the same or of any other term of this Order.

20. Remedies. The rights and remedies of LNVA set forth in this Order are not exclusive and are in addition to all other rights and remedies of LNVA under the terms of this Order and at equity and at law. In a suit relating to this Order, the prevailing party shall be entitled to recover reasonable and necessary attorney's fees.

21. Governing Law. The validity, interpretation, and performance of this Order shall be governed by the laws of the State of Texas without regard to its conflicts of laws principles. Venue of any lawsuit arising under this Order shall lie exclusively in Jefferson County, Texas.

22. Compliance with Laws. Seller shall comply with all applicable federal, state and municipal laws, codes, regulations and ordinances and pay all fees, licenses, taxes, including sales and use taxes, and expenses required by such compliance, and shall also pay all taxes and contributions imposed or required by any law or any employment insurance, pensions, old age retirement funds, or similar purposes, in respect to the Goods and the employees of Seller in the performance of this Order. Goods shall comply with all applicable codes, laws, regulations, standards and ordinances at the time the Goods are delivered.

23. Tax Exemption. The LNVA is a governmental agency and claims exemption from payment of Sales and Use taxes under Sections 151.309, 321.207, and 321.208, Texas Tax Code, Federal ID **74-6000299.**

24. Changes. LNVA, without invalidating the Order, may order changes in drawings, designs, specifications, materials, quantities, packaging, time and place of delivery and method of transportation by issuing a written Change Order to Seller executed by LNVA's Finance Department. Seller shall not be entitled to any change in the purchase price or time of performance absent a written Change Order executed by LNVA's Finance Department. Seller shall promptly comply with any Change Order issued by LNVA.

25. Acceptance of Order. Acceptance of this Order is limited to the terms and conditions on its face, these Purchase Order Standard Terms and Conditions and any Written Agreement (as defined in Section 1). In case of any conflicts between the terms of this Order and the terms of Seller's forms, the terms of this Order shall control. By signing this Order, or by in any way commencing performance hereunder, Seller accepts all of the terms and conditions herein. No attempted acceptance which varies or adds to the terms and conditions stated herein shall be effective. Any such proposal shall be deemed rejected. All previous offers by Seller have been or are hereby rejected. LNVA shall not be bound by terms additional to or different from those contained in this Order that may appear in Seller's quotation, proposal, bid, acknowledgement, invoice, or any other communication from Seller, unless such terms are expressly agreed to in writing signed by LNVA. This Order (including any Written Agreement made part hereof) is intended by the parties hereto as the final expression of their agreement and is the complete and exclusive statement of the terms thereof. All written or oral negotiations, proposals, understandings and agreements prior to the date of this Order are merged herein and superseded hereby.

26. Title and Risk of Loss. Compete legal and equitable title to all Goods shall pass to the LNVA immediately upon identification of the Goods to the Order, payment, or final delivery at F.O.B. point, whichever is earlier. This provision shall apply irrespective of any terms of payment specified in the Order. Passage of title pursuant to this provision

shall not release or waive any continuing or subsequent responsibility of Seller under this Order.

Risk of loss to the Goods shall remain with the Seller until the Goods have been delivered to LNVA and accepted by LNVA; provided however, Seller shall not be liable for loss of damage caused by the negligence of agents or employees of LNVA acting within the scope of their employment.

Title to any drawings, plans, specifications, confidential information, know-how, and any other information provided to Seller by LNVA shall remain with LNVA.

27. Confirmation. Seller shall submit confirmations on all transactions arising from the subject Purchase Order. Confirmations shall reference the subject Purchase Order Number and be sent to:

Lower Neches Valley Authority
ATTN: Accounts Payable
7850 Eastex Freeway Beaumont, TX 77708

28. Right to Audit and Inspection. LNVA, or an independent certified public accountant selected by LNVA, shall have the right to audit, during Seller's normal working hours, all of Seller's books, information, accounts and records relating to the Goods including quantities, hours, manpower totals, costs, disbursements and other similar data relating to the calculation of the agreed compensation to Seller hereunder. The expense of such audit shall be borne by LNVA. The right to audit shall continue for three years following the date of final payment. The right to audit shall not extend to the costs underlying any specific unit rate, or lump sum amount specified in this Order.

Seller shall perform all inspections and tests as required by the Order. Subject to LNVA's reasonable advance notice to Seller, LNVA may observe, inspect and/or test all Goods at any time or place, including the Seller's and the Seller's premises. Seller shall furnish, without additional charge, all reasonable facilities, equipment and assistance required for safe and convenient observation, inspection and/or tests on Seller's premises.

If this Order specifies interim or final inspections prior to shipment, or witness of, or participation in tests, Seller shall give LNVA a minimum of five (5) working days advance written notice of the date established for such inspection or test.

If LNVA deems Goods as not in conformance with the Order, the Seller shall take prompt action to correct such non-conformance. At LNVA's discretion, the cost of all subsequent inspections by LNVA shall be deducted from the purchase price.

LNVA's inspection, or witness of, or participation in any tests (or the failure of LNVA to inspect or test) shall not relieve Seller of its obligations to assure Goods conform to all Order requirements.

29. Indirect, Special, or Consequential Damages, Including Damages for Delay. LNVA shall not be liable for indirect, special, or consequential damages, including damages for delay, lost profits, loss or productivity or loss of use. Seller's sole remedy for delay, including delays caused by LNVA, is to request and receive, if justified under the circumstances, an equitable extension of time for performance.

30. Miscellaneous. IF THIS ORDER CONSTITUTES AN OFFER, SELLER'S ACCEPTANCE OF THIS ORDER IS HEREBY EXPRESSLY LIMITED TO THE TERMS OF THIS ORDER AND COMMENCEMENT OF ANY WORK COVERED HEREUNDER. SHIPMENT OF ANY PART OF THE GOODS OR PERFORMANCE OF ANY PORTION OF SERVICES COVERED HEREUNDER SHALL BE DEEMED TO CONSTITUTE SUCH ACCEPTANCE. IF THIS ORDER CONSTITUTES AN ACCEPTANCE OF AN OFFER, SUCH ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON SELLER'S ASSENT TO THE TERMS OF THIS ORDER AND COMMENCEMENT OF ANY WORK COVERED HEREUNDER. SHIPMENT OF ANY PART OF THE GOODS OR PERFORMANCE OF ANY PORTION OF SERVICES COVERED HEREUNDER SHALL BE DEEMED TO CONSTITUTE SUCH ASSENT. This Order, including any Written Agreement, shall not be amended except (a) in writing signed by the parties hereto or (b) as provided in Section 24.

31. Blanket or Requirements Order. If the terms on the face of this Order indicate that this Order requires Seller to sell to LNVA multiple items over a period of time at a stated price or prices, LNVA may issue separate "Purchase Order Releases" to Seller under this Order each of which shall constitute part of this Order and shall be governed by all of the terms and conditions of the Order. If the Order includes a maximum dollar limit, Seller shall promptly notify LNVA, prior to shipment, if any Purchase Order Release would cause the maximum amount of the Order to be exceeded.

32. MSDS and Product Information. Seller shall notify LNVA in writing if Goods or parts thereof are subject to laws or regulations relating to hazardous or toxic substances or, when disposed of, to regulations governing hazardous wastes, or to any other health, safety and/or environmental regulations. Seller shall furnish all appropriate shipping certification, labeling and Material Safety Data Sheets in compliance with all applicable laws. Seller shall furnish instructions for shipping, safety, handling, exposure and disposal in a form sufficiently clear for use by LNVA's personnel and sufficiently specific to identify all action which the user must take regarding the material.