

ORANGE AND ROCKLAND UTILITIES, INC.

STANDARD TERMS AND CONDITIONS

PURCHASE OF GENERAL SUPPLIES AND MATERIALS

**March 31, 2006**

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[Appendix A](#) - Required Clauses and Certifications

STANDARD TERMS AND CONDITIONS  
PURCHASE OF GENERAL SUPPLIES AND MATERIALS

1. Definitions. The following terms as used herein shall have the meanings stated:

- “Orange and Rockland” - Orange and Rockland Utilities, Inc.
- “Seller” - The seller of goods or services named on the face of the Purchase Order.
- “Purchase Order” - The contract between Orange and Rockland and the Seller containing all provisions set forth on the face and reverse sides of and on any other pages of and attachments to the Orange and Rockland purchase order form and on documents or portions thereof expressly incorporated by reference herein, including, without limitation, special conditions, specifications and drawings. (The words “hereof,” “herein,” “hereto” and “hereunder” shall be deemed to refer to the Purchase Order.)

2. Contract Formation. Acceptance of the bid or proposal is expressly conditioned upon the Seller's assent to the terms and conditions hereof. The Seller shall be bound by the Purchase Order and its terms and conditions upon the mailing or delivery by other means of the Orange and Rockland Purchase Order form or other writing manifesting acceptance of the Seller's offer, unless the Seller's offer contains terms additional to or different from those expressed herein which are not accepted in writing by Orange and Rockland. In such event, the Seller shall be bound by the Purchase Order and its terms and conditions when it executes the acknowledgement copy or such other writing issued by Orange and Rockland (or of another document expressing the Seller's acceptance hereof), or when it delivers to Orange and Rockland any quantity of any of the items ordered hereunder. No terms or conditions stated by the Seller in its bid or proposal, acknowledgment or other correspondence shall be binding upon Orange and Rockland if different from or in addition to the express provisions of the Purchase Order.

3. Amendments. No modification of or amendment to the Purchase Order shall be valid or binding unless in writing and signed by an authorized representative of Orange and Rockland.

4. Firm Price. Unless otherwise expressly provided herein, the prices stated in the Purchase Order are firm and are not subject to increase.

5. Payment. Unless otherwise specified in the Purchase Order, payment shall be made by Orange and Rockland to the Seller, within thirty (30) days after receipt and processing of proper invoices. Invoices (the original) shall be submitted to the Account Payable section of Orange and Rockland's Corporate Accounting Department, after the delivery of the goods for which payment is to be made, in such detail and with such supporting documentation as may reasonably be required by Orange and Rockland for tax and regulatory purposes. Should the Purchase Order contain a schedule of payments, such schedule will be appropriately adjusted for any delays in delivery. The acceptance by the Seller of final payment shall operate as a release of Orange and Rockland from all claims of the Seller for payment for all goods and services furnished in connection with the Purchase Order. However, no payment, final or otherwise, shall operate to release the Seller from any obligations under the Purchase Order.

6. Taxes.

A. Sales Tax. Except as otherwise provided in the Purchase Order, the price does not include any federal, state or local sales, use, or other similar tax which may now or hereafter be applicable to the purchase hereunder, and Orange and Rockland agrees to pay or reimburse the Seller for any such tax. Orange and Rockland shall have the right to direct the basis on which any such taxes shall be paid or contested and to control any contest and shall reimburse the Seller for any interest, penalties or expenses the Seller may be required to pay on account of any such taxes or contest. Conducting any hearings or litigation regarding a tax dispute shall be Orange and Rockland's responsibility, but the Seller shall cooperate and assist Orange and Rockland therein.

B. Import Taxes (Duties). The prices contained in the Purchase Order include any and all import taxes, including, without limitation, regular, special, countervailing and antidumping duties, that are imposed at any time on the goods purchased hereunder. The Seller shall hold harmless and indemnify Orange and Rockland from and against any liability arising out of the imposition of any such import taxes. In the event that a notice of initiation of an antidumping or countervailing duty investigation or proceeding is published in the Federal Register covering the kind of goods and the country of origin involved in the purchase hereunder, Orange and Rockland shall have the right at any time thereafter, on written notice to the Seller, to cancel the Purchase Order without liability. The exercise or non-exercise of this right of cancellation shall not in any way

prejudice Orange and Rockland's right to be indemnified and held harmless.

7. Time of Performance. The Seller shall deliver the goods purchased hereunder to the location stated in the Purchase Order in accordance with the delivery dates and any schedule of performance stated herein. Time is of the essence of the purchase order and of each and every delivery of goods for which a date or length of time is fixed for delivery.

8. Warranties. The Seller warrants that the goods furnished under the Purchase Order shall be new and free from defects in title, design, material, fabrication and workmanship, shall conform strictly to any applicable samples and to specification, drawings and other descriptions incorporated herein, shall be suitable for their intended purpose, shall be of merchantable quality, and shall comply with and be usable in compliance with all applicable laws and regulations. Should any failure to meet any of the warranties stated herein appear within twelve (12) months of the commencement of commercial use or operation of the goods or eighteen (18) months after their acceptance by Orange and Rockland, whichever occurs first, the Seller shall upon notice by Orange and Rockland promptly replace or repair the goods not conforming to the foregoing warranties, without expense to Orange and Rockland. In the event of failure of the Seller to promptly remedy any breach of warranty, Orange and Rockland may do so and charge the Seller for the cost thereof. The aforesaid warranties shall survive acceptance of and payment for goods furnished hereunder. After any goods furnished hereunder have been repaired or replaced pursuant to the foregoing warranties, they shall be subject anew to the warranties provided for the original goods.

9. Inspection and Tests. Orange and Rockland shall have the right to inspect any and all records of the Seller or its subcontractors whenever Orange and Rockland believes that this is necessary to assure it that the goods to be furnished hereunder are being produced and will be produced in full compliance with the requirements of the Purchase Order and on schedule. In addition, the Seller shall provide, and shall cause its subcontractors to provide, access to factories and shops at all reasonable times for Orange and Rockland to inspect work in progress. Orange and Rockland shall have the right to be present and witness tests which are performed on the goods. Orange and Rockland, in addition, shall have the right to require additional tests to be performed at all reasonable times and places. Any special tests ordered in writing by Orange and Rockland will be paid for by Orange and Rockland, provided, however, that if any such tests reveal a defect or non-conformity with the Purchase Order requirements, the cost of the tests shall be borne by the Seller. No inspection, failure to inspect or waiver of inspection by Orange and Rockland shall relieve the Seller of its obligation to furnish goods fully in accordance with the requirements of the Purchase Order. Goods supplied hereunder shall be received subject to inspection and approval, notwithstanding prior payment, it

being expressly agreed that payment shall not constitute acceptance. All rejected goods will be held at the Seller's expense and at the Seller's risk pending the Seller's disposition instructions.

10. Assignment. The Seller shall not assign the Purchase Order or any of its rights under the Purchase Order without the prior written consent of Orange and Rockland, and any assignment made without such consent shall be void.

11. Termination for Convenience. Orange and Rockland may for any reason whatsoever, including its own convenience, by written notice to the Seller terminate the Purchase Order, in whole or in part, without liability to the Seller except as stated in this Article. In the event of such a termination, in full discharge of its obligations to the Seller in respect of the Purchase Order end such termination; Orange and Rockland shall pay to the Seller for goods delivered or specially manufactured prior to termination an amount which is equitable in light of the Purchase Order price. The Seller shall take all reasonable steps to minimize any termination charges of its suppliers as well as its own termination costs. If payments made under the Purchase Order exceed such termination amount, the excess shall be refunded to Orange and Rockland. Except as agreed in writing, termination shall not relieve the Seller of any obligation arising out of goods delivered prior to termination. In no event shall Orange and Rockland be liable to the Seller for damages of any kind arising out of the termination or for lost profit, unrecovered or increased overhead or lost opportunities to obtain other sales.

12. Cancellation for Default. In the event the Seller is in default of any of its obligations under the Purchase Order, Orange and Rockland shall have the right, by written notice to the Seller, to cancel the Purchase Order, in whole or in part, for such default. The Seller shall be deemed to be in default hereunder if the Seller is in default of any of its obligations under the Purchase Order or the Seller by a statement or conduct indicates that it will not perform one or more of such obligations (whether or not the time has yet arrived for performance thereof). In the event of cancellation for default hereunder, Orange and Rockland shall have all rights and remedies provided by law and under the Purchase Order. In addition, in such event Orange and Rockland may retain from any money otherwise due for goods delivered prior to cancellation an amount which Orange and Rockland determines is adequate to cover all damage resulting from the Seller's default. In the event that the Seller demonstrates that a cancellation of the Purchase Order for default is erroneous, the cancellation shall, at Orange and Rockland's option, be withdrawn or be deemed to have been issued as a termination for convenience pursuant to Article 11 hereof.

13. Title and Risk of Loss. Unless otherwise specified in the Purchase Order, title to, and the risk of loss of, all goods to be furnished hereunder shall pass to Orange and Rockland upon acceptance by Orange and Rockland at the Orange and Rockland facility to which the Purchase Order states delivery is to be made.

14. Compliance with Laws. The Seller shall comply with all federal, state and local laws, executive orders, regulations and rules applicable at the time of performance. Without limiting the generality of the foregoing, the Seller agrees to comply, as applicable, with the provisions contained in [Appendix A](#), "Required Clauses and Certifications," which is incorporated in these Standard Terms and Conditions as if fully set forth herein.

15. Set-off. Orange and Rockland shall have the right to set-off against any sums due the Seller hereunder any claims Orange and Rockland may have against Seller under the Purchase Order or any other contract between Orange and Rockland and the Seller without prejudice to the rights of the parties in respect of such claims.

16. Conflicting Documents. To the extent, if any, that the specifications, plans, drawings and other documents that may be incorporated herein conflict with the typewritten provisions of the purchase order form or the Standard Terms and Conditions of which this clause is a part, the typewritten provision of the purchase order form and these Terms and Conditions shall take precedence and govern. In any instance where there is a conflict or inconsistency between a typewritten provision of the purchase order form and the Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence and govern unless the typewritten provision, or any special condition incorporated by reference therein, expressly refers by number and title to the conflicting or inconsistent clause and states that it does not apply, in which case the typewritten provision shall take precedence and govern. In the event that the Seller's offer is referred to in the Purchase Order, in any instance where any terms of the offer are in conflict or inconsistent with other provisions of the Purchase Order, unless there is a clear statement to the contrary herein, said other provisions shall take precedence and govern. All rights and remedies provided by the Purchase Order shall, unless otherwise specified herein, be deemed to be cumulative so as to exist in addition to one another and to any other rights and remedies provided by law. The titles of the articles of the Purchase Order are for convenience only and shall not be construed to limit or qualify the meaning of any article or section thereof.

17. Transportation and Packaging. Unless specifically provided for herein, Orange and Rockland shall not pay the Seller any additional amounts for transportation or boxing, crating or other packaging.

18. Waiver. Neither the acceptance of goods or any part thereof nor any payment therefore nor any order or certificate issued under the Purchase Order nor any performance by Orange and Rockland of any of the Seller's duties or obligations nor any failure of Orange and Rockland to insist on strict performance by the Seller of the Purchase Order terms or to otherwise assert its rights in any one or more instances shall constitute a waiver by Orange and Rockland of such

performance, terms or rights, either then or for the future. No cancellation or rescission hereof, in whole or in part, because of breach hereof shall be deemed a waiver of any money damages to which Orange and Rockland may be entitled because of said breach. Any waiver shall be effective only if in writing and signed by Orange and Rockland's authorized representative, and only with respect to the particular event to which it specifically refers.

19. Entire Agreement. The Purchase Order, as it may be amended in accordance with Article 3 ("Amendments") hereof, contains the entire agreement between Orange and Rockland and the Seller. If any provision of the Purchase Order is or becomes legally invalid or unenforceable, the remainder of the Purchase Order shall not be affected thereby. Any prior or contemporaneous, oral or written, understandings or agreements relating to the subject matter of the Purchase Order are merged herein.

20. New York Law. The Purchase Order shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the state of New York.

21. Personal Injury and Property Damage. If a third party suffers personal injury (including death) or property damage for which the Seller is legally liable, no provision of the Purchase Order shall be interpreted as an agreement by Orange and Rockland to assume all or any part of such liability or, if Orange and Rockland is named or joined in any legal action or proceeding in connection therewith, to preclude, prejudice or limit Orange and Rockland's right to receive indemnification or contribution from the Seller.

22. Material Safety Data Sheets. The Seller shall complete and submit a Material Safety Data Sheet (MSDS) indicating any toxic substances that may be contained in the goods to be furnished. For this purpose, a toxic substance is any substance that is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances. The Seller's failure to complete and return an MSDS promptly when requested to do so by Orange and Rockland shall be grounds for cancellation of the Purchase Order for default.

23. Submission to Jurisdiction/Choice of Forum/Waiver of Jury Trial.

- A. The Seller hereby irrevocably submits to the jurisdiction of the courts of the State of New York with regard to any controversy arising out of or relating to the Purchase Order. The Seller agrees that service of process on the Seller in relation to such jurisdiction may be made, at the option of Orange and Rockland, either by registered or certified mail addressed to the Seller at the address shown in the Purchase Order or at the address of any office actually maintained by the Seller or by actual personal delivery to

the Seller. Such service shall be deemed to be sufficient when jurisdiction would not lie because of the lack of a basis to serve process in the manner otherwise provided by law. In any case, however, process may be served as stated above whether or not it may be properly served in a different manner.

- B. The Seller consents to the selection of the New York State and the United States courts situated within the City of New York or Rockland and Westchester Counties as the exclusive forums for any legal proceeding arising out of or relating to the Purchase Order.
- C. The Seller hereby waives trial by jury in an action, proceeding or counterclaim brought by either party against the other arising out of or in any way connected with the Purchase Order.

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