



**TERMS AND CONDITIONS FOR PROCURMENT OF  
GOODS, PRODUCTS AND ANCILLARY SERVICES  
VERSION 2011-1**

The following terms and conditions apply to the procurement of goods, materials, products and ancillary services (collectively, the "Products") by Atmos Energy Corporation ("Atmos") or its designed integrated supplier. The party fulfilling a procurement request ("Order") is hereafter referred to as the "Seller." Orders may include, without limitation, a purchase order ("PO"), a written request under a preferred supplier agreement, or other written or verbal communication.

**1. ACCEPTANCE.** Seller accepts and agrees to be bound by the terms and conditions set forth herein. Any of the following acts by Seller shall constitute acceptance of the Order: delivery of any of the Products Ordered; commencement of performance or informing Atmos in any manner of commencement of performance; or returning Seller's own form on the face hereof. Acceptance of the Products covered by this Order shall not constitute acceptance by Atmos of Seller's terms and conditions.

**2. PRICING, INVOICE, AND PAYMENT.** Prices reflected in an Order are inclusive of all taxes, charges and costs of whatsoever kind, unless otherwise documented. In no case will an invoice be paid prior to receipt of the Products unless previously agreed to in writing by Atmos. No charges for packaging, boxing, trucking or freight will be paid by Atmos without its prior written consent. Shipments are to be made by the most economical transportation unless otherwise specified. Atmos will not be responsible for transportation charges unless products are shipped according to instructions contained herein. Delay in receiving invoices or errors or omissions on invoices will be considered just cause for withholding payment without loss of cash discount privilege. If applicable, Seller's invoice must bear the Order number set forth on the face hereof. Invoices accompanied by original bill of lading or express receipt must be mailed to Atmos on date of shipment. Seller agrees to accept all forms of payment from Atmos, including, but not limited to, check, credit card (Visa/Mastercard/American Express), wire, ACH, or bank deposit for purchase of Products at agreed terms and price. Seller is prohibited from assessing an additional surcharge or transaction fee based on Atmos' form of payment.

**3. INDEMNIFICATION.** Seller agrees to and will defend, protect, indemnify and hold harmless Atmos, its subsidiaries, affiliates, and all officers, directors, shareholders, employees and agents (the "Atmos Group") from and against all claims, losses, expenses, attorneys' fees, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever (hereinafter in this and the following paragraphs collectively referred to as "Claims" for personal injury, death, or property damage of any member employed by the Seller, all subcontractors of any tier employed by Seller, and all affiliated or related firms and entities, officers, directors, partners, shareholders, associates, employees servants and agents of each (collectively, "Seller Group") arising out of or

incident to or related in any way to, directly or indirectly to Products Ordered, or to any activities of any member of Seller Group while on any premises actually or allegedly owned, controlled, or operated by Atmos including, but not limited to, Claims arising out of or resulting from (1) any condition of the premises, (2) separate operations being conducted on the premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by Atmos; and **further, IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE SELLER'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM ATMOS GROUP'S SOLE OR CONCURRENT (1) NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE.**

For all Claims except those for personal injury, death, or property damage of any member of Seller Group within the scope of the preceding paragraph, Seller agrees to and will defend, protect, indemnify, and hold harmless Atmos Group from and against any and all Claims arising out of or incident to or related in any way to, directly or indirectly, the Products Ordered, or to any activities of any member of Seller Group while on any premises actually or allegedly owned, controlled, or operated by Atmos, including, but not limited to, Claims arising out of or resulting from (1) any condition of the premises, or (2) separate operations being conducted on the premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by Atmos; and **further, IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE SELLER'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM COMPANY GROUP'S CONCURRENT (1) NEGLIGENCE, (2) STRICT LIABILITY, OR (3) OTHER FAULT OF ANY NATURE.**

To the extent necessary to permit Atmos to enforce any term, clause, or condition contained herein, Seller agrees that with respect to any Claims brought against Atmos Group, Seller will and does hereby waive as to Atmos Group any defense it may have by virtue of the workers' compensation laws of any state.

**4. INSURANCE.** Seller will at its sole expense, purchase and maintain, and require its subcontractors to purchase and maintain insurance policies with substantial and sound insurers, having coverage of the types and in the minimum amounts as specified by Atmos: (a) Workers' Compensation

Insurance including Employers' Liability coverage with limits of not less than \$1,000,000 each incident; (b) Commercial General Liability Insurance, including contractual liability, insuring the indemnity agreement set forth herein and product-completed operations coverage with a combined single limit of not less than \$1,000,000 applicable to bodily injury (including personal injury), sickness or death and loss of or damage to property in any one occurrence; (c) Automobile Liability Insurance, including contractual liability, insuring owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 applicable to bodily injury, sickness or death and loss of or damage to property in any one occurrence and (d) an additional Excess/Umbrella Liability policy of \$4,000,000, which must follow form of the underlying liability policies and covers completed operations.

Increases to the minimum insurance requirements may be made by Atmos from time to time. In such event, Seller will be notified of any such adjustments and will be given 120 days to increase its corresponding insurance coverages.

The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess/Umbrella Liability Insurance policies will name Atmos as additional insureds under the policies. All policies will contain provisions whereby the insurers waive all rights of subrogation against Atmos and provide thirty (30) days advance written notice to Atmos prior to anniversary date of cancellation or any material change in coverage or condition.

The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess/Umbrella Liability Insurance policies will contain provisions that specify that the policies are primary and will apply without consideration for other policies separately carried and will state each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability will not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Only one deductible will apply per occurrence regardless of the number of insureds involved in the occurrence. Seller will be responsible for any deductibles or retention.

Upon request by Atmos, Seller agrees to provide a certified copy of each of the above referenced policies to Atmos. Atmos' review of such policies shall not be constructed as accepting any deficiencies in Seller's insurance or relieve Seller of any obligations set forth herein. In addition, Seller will require each of its subcontractors to provide adequate insurance. Any deficiencies in the insurance to be provided by subcontractors will be the responsibility of the Seller.

**5. TITLE AND RISK OF LOSS.** Title to Products and risk of loss, damage and destruction of the Product will remain with Seller until, and only pass to Atmos or its designated integrated supplier upon delivery of the Product to Atmos' designated delivery site, unless otherwise agreed to by the parties and so stated on the written order.

**6. CHANGE NOTICE, DELIVERY, AND TRANSPORTATION.** No changes in quality, quantity or nature of Products, delivery point or shipping instructions will be made except by a written agreement. If no delivery due date is specified then delivery will be within a reasonable time after the Order is placed. Any Products Seller delivers

in error or in excess quantity will, at Atmos' option, be returned to Seller at the Seller's expense.

**7. EXPEDITING, INSPECTION, AND RIGHT TO WITNESS.** At the discretion of Atmos, any Order will be subject to physical expediting, inspection and the right to witness all tests by Atmos or Atmos' designated representative prior to shipment. Seller will make all necessary arrangements and provide all reasonable facilities and provide proper and safe access for such review and observation of tests. Atmos or its designated representative may reject any Product found not to be in accordance with the Order, or specifications, regardless of the stage of its completion or the time or place of discovery of such errors, and regardless of whether Atmos' representative has previously accepted it through oversight or otherwise. A review will in no way relieve Seller from its obligation to furnish Products in accordance with any Order.

**8. QUALITY, PERFORMANCE WARRANTY.** Seller will provide all labor, tools, materials and supplies necessary for providing Products in a professional and workmanlike manner in accordance with practices acceptable and in accordance with Atmos' safety policies, product specifications, model numbers and drawings set forth in the Order. Seller warrants that it will provide qualified and experienced personnel to perform services or provide Products. Whenever Atmos or the Order specify personnel, equipment and supplies, same will not be substituted without Atmos' prior written consent. All Products are subject to inspection by Atmos within a reasonable time after actual delivery and acceptance of the Products by Atmos. Products rejected for failure to meet specifications or quality standards will be returned at Seller's expense, for repair, replacement or refund, at Seller's option, or, by mutual agreement, Atmos may perform such remedial work as Atmos deems necessary to make the Products acceptable and Seller will reimburse Atmos for such remediation costs. Seller warrants that it has good and complete title to the Products delivered hereunder. Seller also warrants the merchantability, fitness for use, design, workmanship and freedom from defects, and all Products are new and unused originals.

Seller warrants freedom from defects of the Products for a period of twelve (12) months from the date of commercial operation of the Products or eighteen (18) months from the date of receipt of the Products by Atmos, whichever occurs first or a warranty term as otherwise specified in the Order.

Seller warrants the Products for all reasonable costs incurred by Atmos to remove, replace and/or repair or remedy any defect(s) or damages in the Products as well as shipping and handling charges for replacement and/or return of defective Products. Any costs incurred by Atmos as a result of this provision will be promptly reimbursed by Seller to Atmos. Seller will transfer and assign to Atmos all manufacturer's or other warranties received by Seller, if any, regarding the Products and will provide commercially reasonable assistance to Atmos in the enforcement of any such manufacturer's or other warranties so transferred and assigned.

**9. TIME OF PERFORMANCE, CANCELLATION, AND SET-OFF.** Time is of the essence. Atmos reserves the right to cancel and reject delivery of all or any part of any Order placed under this Agreement if (1) delivery is not

undertaken and completed when specified, (2) such delivery is not in accordance with specifications, or (3) Seller fails to comply with any of the terms hereof. Atmos' right to cancel is in addition to any and all other rights and remedies that Atmos may have at law or in equity. Atmos shall also have the right to cancel any Order for convenience. Any indebtedness of Seller to Atmos may, at Atmos' option, be set-off and deducted from amounts owed to Atmos.

**10. TAXES.** Seller will be responsible for, and will hold Atmos harmless from, the reporting, filing and payment of any taxes (and any related fines, penalties or interest) imposed directly or indirectly on Seller Group as a result of Seller performance of the Order. Such taxes include, but are not limited to, the payment of all corporation or franchise taxes, VAT, sales or use taxes, excise or severance taxes, gross receipts taxes, contributions or taxes for unemployment insurance, old age retirement, other benefits, pensions or annuities and wage and income taxes with respect to persons directly or indirectly performing under the Order.

All sales, use, excise or similar taxes to be reimbursed by Atmos must be itemized separately on invoices. Atmos will reimburse Seller who will make the appropriate payments to the appropriate tax authorities. Any such tax paid by Seller on invoices or payments to third parties are exclusively for Seller's account. Where required by law or regulation, Atmos will withhold taxes from any amounts due Seller and account for such withholdings.

If applicable in the state within which the Products supplied, Atmos may choose to provide Seller with a direct payment exemption certificate which will eliminate the necessity of Seller's collection of State sales and use taxes from Atmos.

**11. GOVERNING LAW.** The Order and any supplements, issued hereto, will be governed by, and construed in accordance with, the laws of the State of Texas. The parties agree that venue and jurisdiction will be in Dallas County, Texas.

**12. CONFIDENTIALITY; PUBLICITY AND ADVERTISING.** Seller will not disclose any details of the Order, including, without limitation, confidential or proprietary business or technical information of Atmos, to any person except those engaged in its performance and only then to the extent required for the performance of this Order. Seller will not give any items concerning details of the Products to the press or news disseminating agency without Atmos' prior written approval. Seller will not use in its advertising any information pertaining to any part of the Products without prior written consent of the Atmos.

**13. LICENSE, CERTIFICATIONS, AND PERMITS.** Seller warrants that it has all permits, certifications and licenses necessary to provide the Products under the Order, or it will obtain at its costs all such permits, certifications and licenses.

**14. COMPLIANCE WITH LAW, ORDINANCES, REGULATIONS, AND CODES; SAFETY.** Seller will at all times be solely responsible for complying with all applicable laws, ordinances, regulations, and codes relating to the Product. Seller will defend, indemnify and hold harmless Atmos Group against any fines or penalties that are assessed against any of them for Seller failure to so comply. The Order is predicated upon Seller's compliance with applicable laws, ordinances, regulations, and codes in effect as of the

date of this Order and thereafter. If any changes will be made to such applicable laws, ordinances, regulations, and codes subsequent to date of the Order, such changes will be considered to be changes ordered by Atmos, but only to the extent Atmos is legally required to order such changes.

Seller will be subject to and cause Seller's personnel, agents and others under Seller's control during the performance of any services related to an Order or Product, to be subject to all applicable safety, health and environmental rules of Atmos.

**15. UTILIZATION OF SMALL BUSINESS CONCERNS.** As a provider of natural gas and/or other services to the Federal Government, Atmos adheres to, and requires all of its contractors to adhere to, the following Federal Regulation: UTILIZATION OF SMALL BUSINESS CONCERNS 48 C.F.R. 52.219-8

In addition to the above, if the total contract amount is expected to exceed \$650,000 (\$1.5 million for construction), Seller must submit, an annual Small Business Subcontracting Plan to Atmos as outlined in Title 48 of the Code of Federal Regulations (CFR), Section 52.219-9 (refer to <http://www.gpoaccess.gov/cfr/>) within 30 days after Order is executed.

Seller agrees to support Atmos requests for Direct or Indirect Tier II spend detail as reported to the Atmos Small Business program manager. This data request will include total spend on behalf of Atmos by the small and diverse business categories defined as: veteran-owned small business concerns; service-disabled veteran-owned small business concerns; HUBZone small business concerns; small disadvantaged business concerns; and women-owned small business concerns.

**16. EQUAL EMPLOYMENT OPPORTUNITY.** Equal employment opportunity - executive order no. 11246 and executive order no. 11375, race, color, religion, sex, or national origin; executive order no. 11701, veterans; executive order no. 11625, minority business; executive order 11758, handicapped; where applicable are incorporated herein by reference so that such provisions will be binding on Seller.

**17. UNIFORM COMMERCIAL CODE.** This order will be governed by the Uniform Commercial Code-Sales (Chapter 2 of the Texas Business and Commerce Code).

**18. SEVERABILITY.** In the event that any provision herein is determined to be invalid or contrary to existing applicable law, the enforceability of the remaining provisions will not be affected and will be given full force and effect unless Atmos determines that such invalidity materially affects the basic consideration of the Order.

**19. WAIVER AND HEADINGS.** No failure or failures on the part of Atmos to enforce, from time to time, all or any portion of these terms and conditions will be interpreted as a waiver of any such term or condition. The headings of articles, sections, paragraphs, and other parts of these terms and conditions are for convenience only and do not define, limit, or construe the contents thereof.

**20. ASSIGNMENT.** The Order shall not be assigned, in whole or in part by Seller without the prior written consent of Atmos, which consent, in the event of an assignment to an affiliated entity of Seller, shall not be unreasonably withheld.

**21. SUBCONTRACTING.** Seller will not subcontract any portion of the work called for by the Order without Atmos' prior written consent. Seller will not be relieved of any duty or liability by reason of subcontracting. There will be no contractual relationship between Atmos and any subcontractor by virtue of the Order.

**22. ENTIRETY AGREEMENT.** Except as may be provided in the Order itself or in a separate Preferred Supplier Agreement or equivalent agreement between the parties, these terms and conditions constitute the entire agreement between the parties and supersedes all prior written or oral agreements of any kind, expressed or implied, not set forth herein. In the event that Seller has added any additional terms or conditions; supplied its own contractual form with different or additional terms and conditions; or attempted to modify by striking or adding terms to this document, such additions/changes/modifications will be null and void and of no effect; and these terms and conditions which are incorporated fully into the Order will take precedence. Atmos will not be bound to any different or additional terms or conditions unless specifically agreed to in writing.