

1. **Parties to Purchase Order.** Seller is the firm, person, corporation, or business entity furnishing and/or performing the work specified in the order for goods and services previously sent to you by Company, to which these terms and conditions are hereby attached and made a part of. Collectively the order and these terms and conditions are hereby referred to as the "Purchase Order". This Purchase Order between Company and Seller includes the following terms and conditions, and any exhibits thereto, and contains the complete and final agreement between Company and Seller.
2. **Contract Formation.** Company offers to enter into a contract with Seller solely upon the terms and conditions stated in this Purchase Order. Any additional or different terms and conditions proposed by Seller prior to the execution of this Purchase Order are hereby expressly rejected. Any additional or different terms and conditions proposed by Seller after the date of this Purchase Order shall be of no force and effect unless expressly agreed to in writing by Company's authorized representative. Seller accepts and shall be bound by the terms and conditions of this Purchase Order upon the earlier of (1) the date on which it returns the acknowledgment either electronically or in writing; or (2) when it commences performance. No other form of acceptance shall be binding on Company.
3. **Independent Contractor.** Seller is furnishing goods and/or performing work under this Purchase Order as an independent contractor, and no principal-agent or employer-employee relationship or partnership or joint venture shall be created. Seller represents to Company that it is properly equipped, organized, staffed, financed, experienced, qualified, insured, and licensed to perform the work under this Purchase Order.
4. **Governing Law.** The entire relationship of the Parties, this Purchase Order, the remedies of the Parties, and any litigation or legal proceedings (whether grounded in tort, contract, statutory, equitable, or otherwise) between, involving, or arising among, the Parties, shall be governed by, interpreted in accordance with, and construed consistent with, the laws of the State of Texas, without regard to the choice of law principles which may otherwise dictate the application of laws of another state, including any applicable provisions of Texas' Uniform Commercial Code. Any lawsuit or other legal proceeding (whether at law or in equity) between, involving, or arising among the Parties, or relating to this Purchase Order, shall be commenced and pursued solely in the state or federal courts located in Dallas County, Texas, and the Parties hereby waive any challenge they may have to jurisdiction of such courts, consent to jurisdiction and venue in such courts, and relinquish any right to seek a change of venue or forum for any reason, including the alleged inconvenience of the venue or forum.
5. **Compliance with Laws.** Seller represents and warrants that it is familiar with, and at all times shall comply with, all applicable federal, state, tribal and local laws, ordinances, rules, regulations, and orders, which may now or hereafter exist. Company is an equal opportunity employer. Seller agrees that all applicable laws, rules and regulations relating to equal employment opportunities and affirmative action are incorporated herein and are binding on Seller, including Executive Orders 11246, 11625, 11701 and 11758 as amended or superseded from time to time.
6. **Change Orders.** Company may at any time, in writing signed by an authorized representative, direct or authorize Seller to make changes or modifications within the general scope of this Purchase Order. If such changes or modifications necessitate an increase or decrease in the amount due or in the time required for performance, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be made by Company for any change or modification not so directed or authorized prior to proceeding with the change.
7. **Invoicing; Payment.** If Seller's invoice price does not match the Purchase Order price, Company shall pay Seller the lesser amount. If Seller's invoice includes state gross receipts or sales tax, such tax shall be listed as a separate line item on Seller's invoice. Seller shall be liable for and shall indemnify, defend, and save Company harmless from any interest accrued and penalties imposed due to Seller's failure to make proper payment of said tax to the appropriate taxing authority.

In the event this Purchase Order shall be considered a "separated" contract as defined by the Texas Comptroller of Public Accounts or a "lump sum" contract as defined in the Texas Comptroller Rule 3.291, then the following shall apply, respectively:

  - (a) Seller shall pay all taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Seller by applicable laws or collective bargaining agreements with respect to persons employed by Seller for performance of work under this Purchase Order. Seller shall be liable for and shall pay and shall indemnify, defend, and hold harmless Company and its affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all such taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney fees (including, but not limited to, income, margin, franchise, withholding, gross receipts, compensating, sales, use, property and all other taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on Seller or on or because of the work (if any) to be performed by Seller, or on any materials, equipment, supplies, services, or labor furnished in performance hereunder, other than Texas sales tax for which Seller is responsible for, and any and all damages asserted or awarded against or incurred by such indemnities arising out of, resulting from or relating to such taxes.
  - (b) If this Purchase Order is considered a "separated" contract, then the sum to be paid shall be separated into the cost for materials and the cost for labor and, in addition to the sum, Company shall be responsible for any applicable Texas sales tax payable to the relevant taxing authority. Except as otherwise set forth, Seller shall endeavor and cooperate with Company to minimize any such taxes for which Company is responsible. Seller shall make available to Company and shall claim all applicable sales tax exemptions, credits or deductions relating to Purchase Order available to itself or Company, including any sale-for-resale exemption under applicable laws. Seller shall purchase all materials to be transferred to Company as part of the work (if any) tax free. Company shall not be required to pay or reimburse any sales taxes on equipment and materials that qualify for the manufacturing exemption under Section 151.318 of the Texas Tax Code or any other applicable exemption. For materials transferred to Company as part of this Purchase Order that do not qualify for any such exemption, subject to the terms and conditions set forth herein, Company shall be responsible for any applicable Texas sales tax on the actual cost of such materials. If this Purchase Order includes new construction as defined by the Texas Comptroller of Public Accounts, Seller shall not charge Company sales tax on the labor charges associated with such work. All invoices submitted by Seller shall separately state the charges for labor and for materials, and shall show separately all Texas sales taxes for which Company is responsible, indicating the amounts to which they apply; provided that in no event shall Company be responsible for interest or penalties on sales taxes. To the extent Seller is required by applicable law to collect sales tax from Company, Seller shall either collect sales tax from Company or Company, at its discretion, may provide Seller with a direct pay certificate issued to Company by the State of Texas. Seller shall promptly provide Company with reports or other evidence reasonably acceptable to Company showing the payment of taxes by Seller. **Seller shall indemnify, defend, and hold harmless Company and its affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all sales taxes and damages asserted or awarded against or incurred by such indemnities arising out of, resulting from or relating to sales taxes that are not properly and/or timely charged.** In the event that an assessment for sales taxes is levied against Seller or any subcontractor, Seller shall promptly notify Company and furnish to Company a copy of such assessment. In the event that Company determines that the assessment should be contested and so notifies Seller in writing, Company may, at Company's sole cost and expense, file such documents as are necessary to contest such assessment. Company shall exclusively control any necessary, re-determination or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. Seller shall cooperate with and assist Company in any contest or proceeding relating to sales taxes payable by Company hereunder.
  - (c) If Purchase Order is considered a "lump-sum" contract, then the amount to be paid shall not be separated into the cost for materials and the cost for labor, and Company shall not be responsible for any Texas sales tax or any other taxes with respect to any work performed by Seller hereunder. The amount shall reflect in all invoices as a lump-sum, and no invoice submitted by Seller shall separately state or itemize charges for labor or materials. The amount shall be paid by Company in one installment after completion and final acceptance of any work and/or goods in accordance with the terms and conditions set forth herein.
  - (d) All invoices shall be paid promptly and in accordance with Chapter 28 of the Texas Property Code, as applicable.
8. **Packaging and Delivery.** Unless otherwise stated on the face of this Purchase Order, the price includes all packaging, dunnage, containers, etc. to protect the goods in transit. Unless otherwise stated on the face of this Purchase Order, the Seller shall deliver the goods F.O.B. at Company's place of business.
9. **Overshipment.** Quantities of goods received in excess of that shown in this Purchase Order may be returned by Company at Seller's risk and expense by means chosen by Company, in its sole discretion. Any excess quantities which Company accepts shall be at a price which shall not exceed the price per unit specified in the Purchase Order for such goods or services.
10. **Inspection.** All goods and services purchased are subject to inspection, test, and approval at destination or worksite, as the case may be, by Company, notwithstanding prior payments or inspections at the source or worksite. Company, without limitation to its other rights under the Purchase Order, may reject any goods which contain defective materials, or services which contain defective workmanship, do not conform to the specifications, or are not as ordered. Rejected goods may be returned at Seller's risk and expense. Company shall notify Seller of any defective services, and Seller shall have a reasonable time after notice to cure the defect. If Seller does not cure, Company may retain another party to correct the work and deduct the amount paid to the third party from any amount owed Seller. Additionally, Seller shall pay Company any outstanding amount not covered by the deduction from compensation Company owes Seller. Acceptance of any goods or services shall not be deemed to alter or affect the obligations of Seller or the rights of Company under any other term or condition of this Purchase Order.
11. **Warranties.**
  - 11.1 Seller expressly warrants that all goods furnished pursuant to this Purchase Order shall be manufactured and operate in accordance with applicable specifications, shall be fit for the purposes intended by Company, shall be free from defects in materials or workmanship, and shall be free from liens or encumbrances of any kind. Seller expressly warrants that all services shall be performed in a good and workmanlike manner in accordance with applicable specifications and industry standards.
  - 11.2 The Seller represents and warrants that all goods and services furnished to Company pursuant to this Purchase Order shall not interfere or adversely affect any other computer systems, software and/or equipment being used by Company.
  - 11.3 If not otherwise specified, Seller hereby agrees that the foregoing warranties shall be in effect for twenty-four (24) months from the date of initial installation or thirty (30) months from the date of shipment by Seller, whichever period expires first. Consumables are warranted for a period of ninety (90) days from the date of shipment. Services are warranted for twelve (12) months from the date services were completed.
12. **Time.** Time is expressly agreed to be of the essence for each and every term and condition and provision herein.
13. **Indemnity.** To the fullest extent permitted by law, Seller shall indemnify, defend, and save harmless Company and its affiliates, their directors, officers, employees, and agents from any liability for injury, death, loss, accident, or damage to any persons, or to property, and from any claims, actions, proceedings, and costs in connection therewith, including reasonable attorney's fees, in any way connected to or arising out of the furnishing of the goods and/or services specified in this Purchase Order. This indemnity provision shall apply equally to injuries to Seller's employees.

14. **Insurance.** Seller agrees to carry and maintain in effect commercial general liability, or the equivalent, commercial auto liability, worker's compensation, employer's liability insurance and products liability insurance covering all performance under this agreement, in such amounts and with such terms as Company may reasonably require, but in no event less than insurance customarily carried by prudent persons or businesses in Seller's industry. [SS WILL HAVE TO REVIEW INSURANCE CERTIFICATES BEFORE ISSUING.]
15. **Assignment.** Seller shall not assign or subcontract any of its rights or obligations under this Purchase Order without the prior written permission of Company. In no event shall Company's written permission be construed as discharging or releasing Seller from the performance of its obligations specified in this Purchase Order.
16. **Intellectual Property (IP).** Seller expressly warrants that there has been no violation, misappropriation or infringement of any trade secret, patent, trademark, copyright, or other third party property right (including without limitation, any violation of a third party license) in any way connected with or arising out of the furnishing of the goods and/or services specified in this Purchase Order. Seller shall indemnify, defend, and save Company harmless against such claims related to any idea, work of authorship, design, program, process, or other IP provided by Seller to Company under this Purchase Order or created by the Seller under this Purchase Order. Any of the foregoing IP created by Seller under this Purchase Order shall be considered "works for hire" and are the property of Company. Seller shall promptly disclose in writing all such IP to Company. Seller shall assist Company, if Company decides to perfect its title in any of said IP, as well as assist in Company's defense of said IP; at Company's expense. Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Company is hereby granted a nonexclusive, irrevocable, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the goods only in conjunction with such goods. Company's use of certain firmware (as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third party owner's applicable license terms.
17. **Cancellation and Termination.**
- 17.1 Company may cancel all or any part of this Purchase Order upon the occurrence of any of the following events: (1) Seller becomes bankrupt or insolvent, (2) Seller fails to perform or violates any of the provisions of this Purchase Order.
- 17.2 Company may also suspend or terminate all or any part of this Purchase Order at any time at its sole convenience by written notice to Seller without incurring any liability to Seller for lost profits or any other costs or damages other than the proportionate value of the purchase price for services completed onsite or goods delivered. Termination shall be effective upon actual receipt by Seller or its representative of the notice, or 48 hours after deposit of the notice in the US mail, whichever occurs first. Upon termination pursuant to this section, provided Seller is not in default, Company shall pay Seller for any uncancelable actual costs incurred prior to termination. In no event shall such amounts exceed the unpaid part of the Purchase Order price. No termination, restocking or other charges shall be paid for an order terminated either before the planned delivery date or before the goods were shipped.
- 17.3 Seller's warranties and Seller's liability for defective or non-conforming work or goods, as well as any other undertaking or obligation as set forth in Sections 4, 11, 13, 17, 18 and 21, of this Purchase Order, shall survive cancellation and termination and remain in full force and effect.
18. **Audit.** Company reserves the right to audit and to examine any cost, payment, settlement or supporting documentation relating to any Purchase Order. Seller shall refund to Company the amount of any exception found in the audit within ten (10) days of written notice of the exception.
19. **Electronic/Facsimile Transmission.** If this Purchase Order is transmitted by fax or by other means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Seller.
20. **Validity.** The invalidity, in whole or in part, of any terms or conditions of this Purchase Order shall not affect the validity of any other terms or conditions.
21. **Disputes.** If the Parties are unable to resolve any dispute within thirty (30) days after written notice by one Party to the other Party of the occurrence of the event or circumstances giving rise to the dispute, the dispute may be submitted to mediation upon the mutual agreement of the Parties. In the event the Parties do not agree to mediate the dispute or are unable to resolve the dispute through mediation and the aggregate amount of the claim (including counterclaims) is less than One Hundred Thousand Dollars (\$100,000), then the dispute shall be resolved by binding arbitration. Except as set forth herein, such arbitration shall be governed by the Commercial Rules of the American Arbitration Association, as amended from time to time. A Party demanding arbitration shall give the other Party timely notice of such election pursuant to the notice instructions in this Purchase Order, with a copy to PNMR Services Company-Legal Department, 414 Silver Ave SW, MS-0805, Albuquerque, New Mexico 87158, and such notice shall describe the nature of the dispute and the amount in controversy. The Parties shall then jointly select an arbitrator and failing such mutual agreement within ten (10) days after written notice demanding arbitration, the arbitrator shall be appointed by the Chief District Court Judge from Dallas County, Texas. The arbitration shall be held in Dallas County, Texas. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ten (10) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration and a list of witnesses and a summary of the matters as to which each witness is expected to testify.
22. **Survival.** Seller's warranties, indemnities and other obligations under this Purchase Order shall survive consummation of the transaction contemplated by this Purchase Order.
23. **Remedies.** The remedies reserved in this Purchase Order are cumulative and in addition to any other remedies in law or equity which may be available to Company. The election of one or more remedies shall not bar the use of other remedies unless the circumstances make the remedies incompatible. Notwithstanding anything to the contrary contained in this Purchase Order or related documents, in
24. no event shall Seller be entitled to any payment on account of lost profits, incidental damages, consequential damages or punitive damages.
25. **Miscellaneous.** If applicable:
- (a) **Retainage.** Company shall retain an amount equal to ten percent (10%) of the amount to be paid. If the amount is payable on a time and materials basis, in progress payments, or otherwise in more than one installment, Company shall retain an amount equal to ten percent (10%) of each portion of the amount payable hereunder (or such greater amount as required pursuant to Section 53.101 of the Texas Property Code). The amount retained by Company under this section is referred to as "Retainage" and, if applicable, shall constitute retainage required under Section 53.101 of the Texas Property Code. In addition to any other rights and remedies Company may have, Company may make offset against the Retainage for payment of unpaid subcontractors, for payments made to remove liens filed by Seller or subcontractors, and for any and all amounts payable to Company hereunder. Company shall retain the Retainage until thirty (30) days after final acceptance, or such later date as required under applicable law, and thereafter shall pay the balance of the Retainage, if any, to Seller, provided that Company has received all waivers of liens and claims and other documents and evidence required by Company.
- (b) **Underground Facilities.** Seller shall be familiar with the requirements of the Underground Facility Damage Prevention and Safety Act, Tex. Util. Code Ann. §251.001 (the "UFA"). Seller shall comply with the UFA, including, without limitation, (i) providing all required notices, including to the Texas notification center, (ii) registering with all required parties, and (iii) causing the owners or operators of underground facilities (including all underground facilities subject to the UFA) to locate all such facilities in the area of the work site (e.g. gas, electric, telephone, water, drain lines, sewer) by makers or otherwise. Seller shall take reasonable steps to maintain such markers of owners and operators and to cooperate with the owners and operators to facilitate the location of such underground facilities. Seller shall take all necessary steps to safeguard such underground facilities. Seller shall notify the underground facility owner or operator, Company and the notification center established under the UFA in the event of any damage to such underground facilities. **Seller shall indemnify, defend, and hold harmless Company and its affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel from and against any and all damages asserted or awarded against or incurred by such indemnitees arising out of or relating to such underground facilities.**
25. **Regulatory Compliance and Non-Discrimination.** The Seller must comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction ("Laws") including, without limitation the applicable provisions of the following, all as amended and in effect as of the date of this Purchase Order: the Anti-Kickback Act (41 U.S.C. Sections 51 *et seq.*), the Civil Rights Act of 1964 (42 U.S.C. Section 9000a *et seq.*), Executive Orders 11246 and 11375, the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. Sections 701 *et seq.*), the Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*), and of all other applicable Laws dealing with labor and wages, workmen's compensation, employer liability, unemployment compensation, old age benefits, safety, antitrust and anti-collusion, fair trade, the environment, equal employment opportunity and discrimination on the basis of race, color, religion, gender, national origin, veteran's status or disability.
26. **Waiver.** Waiver, forbearance or inaction by Company of any Purchase Order term or condition shall not be deemed a waiver of future compliance with all terms and conditions of this Purchase Order, and all such terms and conditions shall remain in full force and effect.
27. **Complete Order.** This Purchase Order, which includes any supplemental documents attached hereto, sets forth the entire agreement between Company and Seller, and supersedes all other oral or written provisions. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT. No modification of any of the provisions shall be binding on Company unless expressly agreed to in writing.

28. Instructions and Notices.

28.1 RENDER ITEMIZED INVOICE IN TRIPLICATE FOR EACH SHIPMENT ON THIS PURCHASE ORDER, SHOW UNIT PRICE, DISCOUNT, PURCHASE ORDER NUMBER, AND DESTINATION. INCLUDE COMPANY'S P.O. NUMBER ON YOUR INVOICE. SEND ALL INVOICES TO:

Texas-New Mexico Power Company  
c/o PNMR Services Company  
414 Silver Ave. SW, MS 1055  
Albuquerque, New Mexico 87158  
Attn: Accounts Payable

28.2 SEND ALL NOTICES, CORRESPONDENCE, ACKNOWLEDGMENTS, AND SHIPPING INFORMATION TO:

PNMR Services Company (addressed to the Sourcing Specialist named on the

face of the Purchase Order documentation you received from Company).

28.3 ENCLOSE PACKING LIST AND SHOW COMPANY'S PURCHASE ORDER NUMBER ON EACH PACKAGE..

29. Restrictions Regarding Specially Designated Nationals. The Office of Foreign Assets Control ("OFAC") in the Department of Treasury ("Treasury") publishes and regularly updates an integrated and comprehensive list of designated parties referred to as Specially Designated Nationals ("SDNs") with whom U.S. persons are prohibited from conducting transactions or providing services, and whose assets are blocked. Seller represents and warrants it has checked the SDN list and that neither Seller, nor any of its employees or subcontractors who may provide services pursuant to this Purchase Order, is currently on that list.